

LAWYERS' EXPERIENCES DURING THE COVID 19 PANDEMIC

A Study of Delhi, Karnataka and Madhya Pradesh

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Background

The COVID 19 global pandemic has forced the Indian judiciary to adopt digital processes at an unprecedented speed and scale. With a countrywide lockdown being imposed on 25 March 2020 and the enforcement of physical distancing, courts across India started using video conferencing to hear cases. This was accompanied by facilities for e-filing and e-payment, wherever possible. These changes were driven by a need to ensure that citizens continue to have access to justice during the lockdown and to avoid a justice gridlock once the pandemic has passed.

The primary goal of the judicial response to the COVID-19 pandemic has been to ensure continuity of essential judicial services while safeguarding the health and safety of those responsible for providing those services and other stakeholders such as lawyers and litigants. Courts across India signalled their commitment to continue delivering justice by establishing facilities for online hearings, e-filing, and e-payment. The use of audio and video conferencing technology, in particular allowed for judges, lawyers, and court staff to continue to convene and confer as necessary, albeit in a different format through the pandemic.¹ While the transition to digital functioning allowed courts to continue to function in certain capacities, they also restricted public and media access to court proceedings.²

Needless to say, the number of online hearings has been far less than physical hearings. The transition to online modes of functioning occurred quite suddenly and neither lawyers nor judges had time to prepare for this new model of working. In most district courts, only bail and injunction matters were heard. Other cases were adjourned during this period. Poor internet access, lack of adequate assistance and inadequate technical skills made this transition difficult for several lawyers and judges. This has serious implications on the problem of judicial backlog and access to justice. According to the National Judicial Data Grid, as of 30 September 2020, over 3 crore cases are pending across all courts in India. The suspension of physical court activities in the lockdown period is a setback to efforts at reducing this backlog of cases.³ The issue of backlog and delay in the judicial system is not merely a legal issue, it is also a social one. The prospect of delayed justice is a driving factor behind an increasing trust deficit between citizens

¹ Julie Marie Baldwin, John M. Eassey, and Erika J. Brooke. 2020 'Court Operations during the COVID-19 Pandemic', p. 747.

² 'Court Operations during the COVID-19 Pandemic', p. 747.

³ It is not possible to quantify this setback because we do not have historical data regarding the number of cases pending right before the lockdown.

and the justice system, prompting people to support extrajudicial actions by law enforcement authorities and themselves.⁴

As of 15 September 2020, some district courts have re-opened, but given the need to maintain physical distancing the number of cases listed in these cases will be lower than before. This is an opportunity for courts to rationalise their systems for scheduling cases so that cases that got adjourned during the lockdown get priority along with cases filed during that period and to ensure that the cases listed are actually heard. If such changes are not made and the number of substantive hearings drops, it will have serious consequences for citizens' access to justice, especially those who are marginalised and affected by fallouts of the lockdown such as job loss and domestic violence. Thus, while it is important to deal with short-term measures to allow courts to function during the pandemic, courts must have a strategy for handling the inevitable backlog once they begin functioning normally.

Against this background, the researchers undertook a rapid review of lawyers' experiences of accessing courts during the COVID 19 pandemic. For researchers studying the judicial system, this transition has provided an unexpected experiment into the effectiveness of online hearings and related digital processes like e-payment. Although there has been media coverage of online hearings in the Supreme Court and a few High Courts, the experiences of district court lawyers remain at the margins of public awareness. Given that the district courts are the first port of call for litigants it is critical to understand the circumstances under which lawyers in these courts worked during this period. Since this is India's first large-scale implementation of online hearings, e-filing and e-payment, the findings of this review will be vital in shaping the way forward for virtual courts, both immediately and in the longer term.

Objectives

The overarching objective of this rapid study is to understand lawyers' experiences with accessing the courts during the COVID 19 pandemic. Since this was the first time that Indian courts were conducting online hearings at such a scale, this review needed to be conducted rapidly so that its findings can inform the future implementation of online hearings and virtual courts. This study looks at the extent to which between 23 March and 20 September 2020, lawyers in nine districts in Delhi, Karnataka and Madhya Pradesh were able to access the court machinery, remotely or physically; what processes they used and how effectively they could present their cases. The findings foreground the challenges as well as suggest what measures need to be put in place to

⁴ Abhinay Deshpande, Hyderabad vet rape and murder: People shout slogans in support of police, CM at encounter site 6 December 2019 <https://www.thehindu.com/news/national/telangana/hyderabad-vet-rape-and-murder-people-shout-slogans-in-support-of-police-cm-at-encounter-site/article30203940.ece>

ensure that the new requirements of distancing are adhered to while ensuring that none of the principles that ground fair adjudication are compromised.

In specific the objectives of this rapid review are:

1. To enquire into the accessibility of the formal justice system during the lockdown;
2. To examine what kinds of cases were listed for online hearings;
3. To examine the ease of use or otherwise of the digital platforms that were used for online hearings during the lockdown;
4. To understand the economic, social and technological barriers to accessing online hearings;
5. To understand how courts are hearing cases listing matters after the re-opening of courts;
6. To formulate suggestions for designing courtrooms and court processes, given the needs of physical distancing and keeping in mind due process; and
7. To formulate suggestions for making online hearings more effective.

Methodology and Limitations

This rapid review began on 1 July 2020 and ended on 20 September 2020. It covered district courts in Delhi (Shahdara and Central Delhi), Madhya Pradesh (Bhopal, Barwani, Morena, and Sidhi) and Karnataka (Bengaluru Urban, Dakshina Kannada, and Kalaburagi). These districts were selected to be geographically diverse and to represent urban and peri-urban geographies. The following table is a snapshot of these districts:

State	District	Location	No of court complexes	Pending cases (civil and criminal as of 20 October 2020)
Delhi	Shahdara	North-east Delhi	1	52317
	Central Delhi	Central Delhi	2	137236
Madhya Pradesh	Bhopal (state capital)	Central Madhya Pradesh	3	99289
	Barwani	South-west Madhya Pradesh	5	11244
	Morena	North Madhya Pradesh	4	39198
	Sidhi	East Madhya Pradesh	4	24484
Karnataka	Bengaluru (state capital)	South-east Karnataka	21	1692983
	Dakshina Kannada	Coastal Karnataka	25	54664
	Kalaburagi	North Karnataka	19	39831

The researchers surveyed 124 civil and criminal lawyers practising in these seven districts across Delhi, Karnataka and Madhya Pradesh. Obtaining a random sample of respondents was challenging given the short duration of the study. These 124 respondents were therefore selected through a snowball sampling method from the professional networks of the researchers. The researchers reached out to lawyers in the selected districts and these lawyers nominated other lawyers in their districts for the rapid review. The researchers were unable to travel to the selected districts to meet any of the respondents in person because of the restrictions on travel during the study period. They interacted with the respondents online or over the phone.

The views of lawyers in the selected districts were obtained through an online survey (questions are listed in the Annexure) administered through the website www.surveymonkey.com, focus group discussions, and in-depth interviews. The online survey contained questions about the listing of cases, online hearings and filings, lawyers' experiences of these hearings and the manner in which courts are re-opening post the lockdown. The online survey was administered to 124 lawyers across the selected districts, and focus group discussions (on Google meets) and in-depth interviews (over the phone) were conducted with 27 of these lawyers.

The researchers also carried out a study of court directions, notifications and guidelines in the three states between 23 March and 16 July, using search engines, databases, and court websites. This study of court directions, notifications and guidelines was aimed at understanding how courts in the selected districts provided access to justice during the unprecedented circumstances created by the lockdown, and how these courts changed their processes on re-opening. This review of secondary sources was also carried out to frame and give context to the findings from the survey of lawyers practising in these districts.

This rapid review is limited to lawyers and has not examined the impact of COVID 19 on the other stakeholders in the judiciary. A limitation of this rapid review is also that it is not intended to be a quantitative representation of the views of the lawyers in these districts. Since a non-probability sampling technique was used, these lawyers were not randomly selected. The findings from this study thus cannot be generalised to the wider population of court users. This rapid review does not account for individual characteristics that may determine comfort or discomfort with online hearings and related digital processes.

Lockdown of courts

In the wake of the countrywide lockdown, the Supreme Court issued the following series of directives on the functioning of courts during the lockdown on 6 April 2020:

- The Supreme Court and the High Courts were to take all measures to reduce the

need for the physical presence of people within court premises.

- The Supreme Court of India and the High Courts were authorized to adopt measures to ensure the robust functioning of the judicial system through the use of video conferencing technologies.
- Every High Court was authorised to determine the modalities which were suitable for the temporary transition to the use of videoconferencing technologies.
- The courts were to maintain a helpline to deal with complaints regarding the quality or audibility of the feed.
- District courts in each state were to adopt the mode of video conferencing prescribed by the concerned High Court
- Courts were to notify and make available the facilities for video conferencing for such litigants who did not have the means or access to video conferencing facilities.
- Until appropriate rules were framed by the High Courts, video conferencing was to be mainly employed for hearing arguments whether at the trial stage or the appellate stage. In no case was evidence to be recorded by videoconferencing, without the mutual consent of both the parties.⁵

The technology and physical infrastructure required for online hearings were not available in all courts when they transitioned to online hearings. According to data released by the government in 2019, 488 court complexes⁶ (out of a total of 3280 court complexes) and 342 prisons (out of a total of 1350 prisons) in the country had video conferencing facilities.⁷ According to the data provided by the e-Committee of Supreme Court to the Department of Justice, as of September 2020, 3477 courtrooms had videoconferencing facilities and 14443 courtrooms did not. As many as 2992 sites are yet to get WAN (wide area network) connectivity.⁸ It is thus natural that the transition from physical to online hearings reduced the number of cases that were heard by courts since there was a shortage of bandwidth and physical infrastructure to conduct online hearings. Additionally, only certain types of urgent cases (mostly bail and injunction cases) were considered for online hearings. Hon'ble Justice DY Chandrachud stated that between 24 March 2020 and 24 July 2020, as many as 18,03,327 cases were

⁵ *In Re: Guidelines for Court Functioning Through Video Conferencing During Covid-19 Pandemic*, Suo Motu Writ (Civil) No.5/2020 in the Supreme Court of India.

⁶ A court complex is a physical court structure with different courtrooms within it.

⁷ *State/High Court-wise Court Complexes and Corresponding Jails where Video Conferencing facility is Operational* (in reply to Unstarred Question on 11 July, 2019), from Ministry of Law and Justice, available online at <https://data.gov.in/resources/statehigh-court-wise-court-complexes-and-corresponding-jails-where-videoconferencing> (accessed on 9 August 2020).

⁸ Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. 2020. *One Hundred-Third Report on Functioning Of Virtual Courts/ Court Proceedings Through Video Conferencing* (Interim Report) available online at https://districts.ecourts.gov.in/sites/default/files/pdf_upload-381310.pdf (accessed on 5 September 2020), p. 15

registered across the country, of which 7,90,112 have been disposed of.⁹ To put these numbers in perspective, as per the Supreme Court's Court News for the quarter of April to June 2019, 52,82,790 cases were filed in the high courts and the district courts and 41,54,158 cases were disposed in the same period. During the lockdown, the number of cases filed was thus 34% and the number of disposals was 19% of the same numbers during a similar period in 2019.¹⁰

State-specific court guidelines

The researchers reviewed the guidelines and directives issued and uploaded by the High Courts of Madhya Pradesh¹¹, Karnataka,¹² and Delhi¹³ on their websites from 25 March till 16 July to understand how the judiciary planned to cope with a situation where physical hearings were not possible.

Madhya Pradesh

The Madhya Pradesh High Court directed district courts (1600 courtrooms)¹⁴ to shut from 25 March till 27 June 2020. The courts worked for fewer hours than they usually did, from 11 AM to 2 PM.¹⁵ The office hours were from 10.30 AM to 2 PM. From 16 March 2020 till the end of March, the High Court directed these courts to hear only bail and urgent stay/injunction matters that received the prior permission of the Principal District Judge (PDJ) online. All other cases were to be adjourned, and the details of these cases were to be shared by SMS to litigants/lawyers and by affixing dates on the notice boards of the district courts. From May 2020 onwards, the hours of work increased marginally. Some judges worked from 11 AM to 2 PM, while other judges (civil judges class I and II) worked from 2 PM to 5 PM to prevent crowding in courts. The Centralised Filing Center in the district courts operated for 4 hours a day. Undertrial prisoners were to be produced from prison through videoconferencing from prisons which had videoconferencing facilities. Copies of bail orders and other orders were to be sent by

⁹ The New Indian Express. 2020. 'Over 18 lakh pleas filed in courts across India during lockdown: Justice Chandrachud' 25 July. available online at <https://www.newindianexpress.com/nation/2020/jul/25/over-18-lakh-pleas-filed-in-courts-across-india-during-lockdown-justice-chandrachud-2174680.html> (accessed on 10 August 2020).

¹⁰ Supreme Court. 2020. 'Court News' Vol. XIV Issue No.2, April - June, 2019 available online at https://main.sci.gov.in/pdf/CourtNews/24062020_163746.pdf (accessed on 30 August 2020)

¹¹ Madhya Pradesh High Court. 2020. 'High Court of Madhya Pradesh' available online at <https://mphc.gov.in/latest-updates> (accessed on 10 August 2020).

¹² Karnataka High Court, 2020. 'All Archived Notifications' available online at <https://karnatakajudiciary.kar.nic.in/allnotice.asp> (accessed on 10 August 2020).

¹³ Supreme Court of India. 2020. 'Circulars issued during COVID-19 lockdown by Supreme Court Of India' available online at <http://delhihighcourt.nic.in/lockdown.pdf> (accessed on 1 September 2020)

¹⁴ Summary Report of Courts on Date: 20-10-2020 available online at https://njdgcourts.gov.in/njdgcnew/?p=disposed_dashboard/info_mang (accessed on 20 October 2020).

¹⁵ District courts in Madhya Pradesh normally work from 2:30 to 5:30 PM as well.

email to requisite authorities, as required.¹⁶

An internal team comprising of the senior judiciary and court staff in each district was set up to take stock of the situation. From May to 4 July 2020, all district courts (except Indore, Ujjain and Bhopal) were directed to hear non-urgent matters alongside urgent matters that did not involve oral evidence. Courts could list final hearings, criminal revision, civil appeal, bail, and remand matters. Presiding judges could also fix day-wise slots to hear civil and criminal matters. However, if a court was in a COVID 19 containment area, its functioning was suspended. Judicial officers in the courts located in containment areas could work from home for urgent matters. From June 2020 onwards, 50 per cent of the court staff and officers below the rank of administrative officer attended office on alternate days on a rotation basis from 10 AM to 5 PM. From July 2020 onwards, the High Court of Madhya Pradesh directed district courts to conduct physical hearings alongside online hearings, with the necessary precautions.

Karnataka

In Karnataka, after the lockdown was announced, the High Court directed district courts across the state to shut from 24 March to 6 April 2020. Only two courts were to work from 11 AM to 12.30 PM on March 24, 27, 31 and April 2 in each district.¹⁷ The filing section also worked on the same days and followed the same timings. Only urgent cases could be filed on these four days. Lawyers' clerks with permission slips from the respective law offices and bar members were allowed to file on these days. From 16 April 2020 onwards, the High Court of Karnataka notified that online hearings were to be conducted only on Tuesdays and Fridays from 11 AM to 12.30 PM. From 20 March 2020 to 23 March 2020, trial courts in Bengaluru worked from 11 AM to 2 PM and the magistrate courts worked from 11 AM to 3 PM. The section staff worked from 11 AM to 2.30 PM in trial courts and from 11 AM to 3.30 PM in the magistrate courts. A specific counter to handle the payment of hearing-related court fee for urgent online matters was to open on Tuesdays and Fridays. Court fees had to be paid only for cases in which notices have been issued and e-filing had been allowed.¹⁸

On 30 March 2020, the High Court of Karnataka issued a notification stating that only urgent matters were to be heard in the district courts. Such matters were to be heard on Tuesdays and Fridays between 11 AM to 12.30 PM. This notification did not specify if the hearings were to be conducted online or physically. However, online hearings were compulsory for courts in containment areas. Parties in person could only participate in their case through videoconferencing. Recording statements under Section 164 of the

¹⁶ Madhya Pradesh High Court. 2020. 'High Court of Madhya Pradesh' available online at <https://mphc.gov.in/latest-updates> (accessed on 10 August 2020).

¹⁷ In Bangalore in normal times courts worked from 10:30 AM - 1:30 PM and 2:30 PM - 4:40 PM. In Dakshina Kannada and Kalaburagi the courts worked from 11 AM - 2 PM and 3 PM - 5 PM.

¹⁸ Karnataka High Court, 'All Archived Notifications'.

Criminal Procedure Code was to be also done using videoconferencing. To increase the convenience and acceptability of online hearings, Principal District Judges (PDJs) were involved in training advocates for e-filing and videoconferencing hearings. PDJs were directed to work alongside bar associations to enable the smooth functioning of the courts. Hearings were to be conducted in the manner prescribed in various notifications issued in April and May. From 30 March 2020 onwards, presiding officers of the district court were also given powers to grant interim bail to undertrial prisoners to decongest the prisons.¹⁹ This was in response to the Supreme Court directions to decongest prisons on 23 March 2020.²⁰ This notification also provided a list of judges who were appointed to deal with bail matters.²¹

The High Court of Karnataka released a Standard Operating Procedure (SOP) on 28 May 2020 with Videoconferencing Rules annexed. This SOP allowed for physical and online hearings (in the event advocates requested). Routine matters were to be heard along with urgent matters. This included cases ready for arguments, exchange of statement of objections, interim applications etc. 20 cases were to be heard per day, 10 in the morning and 10 in the evening. The cause list was to be uploaded a day before the hearing and was also to be affixed on the notice board. In the last two weeks of June, hearing of evidence stage cases was also allowed, if the parties consented. Evidence could be recorded only using videoconferencing, except in cases of official witnesses. All other cases were to be adjourned and the dates were to be informed to the respective advocates through SMS. Courts located in containment areas had to continue with online hearings.²²

Judicial officers were asked to resume functioning under the SOP from 1 June 2020 onwards. Only advocates appearing in the listed cases were to be allowed inside the court. Parties-in-person were not to be allowed in court and had to appear online. Only 20 people were to be allowed inside each courtroom and vacant courtrooms were used as waiting rooms. From 1 June 2020 onwards, in districts with 10 or more courts, 50 per cent of courts were to start functioning on alternate days. In a district with less than 10 courts, the PDJ could decide the parameters for the functioning of courts in the district. The court schedule for the first two weeks of June was notified by 30 May. Courts in containment areas were not permitted to resume physical hearings. From 13 July onwards, it was stipulated that 50 per cent of the courts in districts with more than ten courts should start functioning. This was affected by intermittent lockdown orders

¹⁹ Karnataka High Court, 'All Archived Notifications'

²⁰ *In Re : Contagion of Covid 19 Virus in Prisons*, Suo Motu Writ Petition (C) No. 1/2020 available online at https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_1_8_21570_Order_23-Mar-2020.pdf (accessed on 1 September 2020)

²¹ Karnataka High Court, 'All Archived Notifications'.

²² Karnataka High Court. 2020. 'Modified Standard Operating Procedure (Sop) - District Judiciary' available online at <http://karnatakajudiciary.kar.nic.in/noticeBoard/Modified-SOP-District-Courts-28052020-v2.pdf> (accessed on 20 August 2020)

operating in the state, including one that was in force from 15.7.2020 till 21.7.2020.²³

The High Court extended this limited functioning of district courts till 6 July 2020. The district courts that were functioning continued to hear only urgent civil matters (injunction/stay) and bail matters. There was an option to handle remand matters physically or digitally from the home offices of the judges. All other cases were adjourned with dates provided on the courts' websites and the court notice board. No cases involving final arguments or evidence were to be heard. During this time, presiding officers who had to travel to fill in for vacancies in the courts located at other villages and talukas for hearings were asked to manage such hearings remotely.²⁴

The Karnataka High Court released the following statistics regarding the functioning of district courts in the state during the lockdown:

Details of functioning	26.3.2020 till 31.5.2020 ²⁵	1.6.2020 till 6.6.2020 ²⁶
No. of cases heard through videoconferencing	6831	724
No. of e-filings	5348	1362
No. of physical filings	2759	10,556
No. of videoconferencing sittings	6225	704
No. of cases disposed of	7145	3073
No. of cases listed for physical hearing	Not specified online	81,489

The number of physical filings increased dramatically after 1 June when the lockdown was eased. This indicates that the experience of e-filing was not convenient or simple enough for lawyers to continue using it once the lockdown ended or that there was a lack of willingness among them to adopt this new format of filing.

Delhi

In Delhi, district courts were shut on 25 March 2020. Through March 2020, in each of the district courts and family courts, one judicial officer was working as per the regular court timings and was also handling the caseload of two additional judges since a

²³ Karnataka High Court, 'All Archived Notifications'.

²⁴ Karnataka High Court, 'All Archived Notifications'.

²⁵ Karnataka High Court. 2020. 'Statistical information of cases from 26.03.2020 to 31.05.2020 at District Judiciary in the State of Karnataka during the period of Covid-19' available online at <https://karnatakajudiciary.kar.nic.in/noticeBoard/pressnote-dj-26032020-to-31052020-v1.pdf> (accessed on 1 September 2020).

²⁶ Karnataka High Court. 2020. 'Statistical information of cases from 01.06.2020 to 06.06.2020 at District Judiciary in the State of Karnataka during the period of Covid-19' available online at <https://karnatakajudiciary.kar.nic.in/noticeBoard/pressnote-dj-01062020-to-06062020-v1.pdf>

majority of the cases were being adjourned. There was a provision to suspend judicial work if it was not possible to open up the courts in certain areas due to the spread of COVID 19. It was stipulated that district courts could depute judicial officers to hear matters related to bail and urgent civil/injunction cases, corresponding to the need and requirement of the concerned district. From April 2020 onwards, judgments could be pronounced in court physically, provided the necessary precautions were taken.²⁷

As of 15 July 2020, district courts in Delhi were still shut. The initial set of instructions issued by the High Court of Delhi on 13 March 2020 dispensed with party presence and allowed for the liberal grant of adjournments. Only urgent cases were to be heard. Urgent matters comprised bail, urgent stay/injunction. Remand cases were heard by judicial officers who were deputed in the respective jails.²⁸

On 16 May 2020, the High Court of Delhi issued a direction to focus on listing other cases alongside urgent matters. These included domestic violence, rent control, cases where accused is in judicial custody, cases that have been pending for more than ten years, and cases ready for final hearing. These cases were to be heard only online. From 16 June 2020 onwards, all the subordinate courts heard urgent cases online, excluding cases where evidence was to be recorded.²⁹

Lawyers' experiences during the COVID-19 pandemic

Cases heard online

41 lawyers from Barwani, Bhopal, Morena and Sidhi in Madhya Pradesh responded to the online survey. 35 of them attended online hearings. Most of them (n=21) said that while courts were shut, 5 or more of their cases were heard. 39 of the 43 respondents from Shahdara and Central Delhi in Delhi attended online hearings during the lockdown. A majority (n=31) of them had more than five online hearings during this period. These respondents said that their hearings were for arguments, final hearings, and bail. A majority of these respondents attended online hearings for criminal matters (n=20). Apart from bail applications, some criminal matters related to domestic violence were also treated as urgent and heard online. This was not surprising given that the National Commission for Women (NCW) registered an increase of at least 2.5 times in domestic violence complaints since the nationwide lockdown.³⁰ The civil cases were largely related to injunctions. One of the respondents attended an online hearing on non-

²⁷ Delhi High Court. 2020. 'Circulars issued during COVID-19 lockdown by Delhi High Court' available online at <http://delhihighcourt.nic.in/lockdown.pdf> (accessed on 15 August 2020).

²⁸ Delhi High Court, 'Circulars issued during COVID-19 lockdown by Delhi High Court'.

²⁹ Delhi High Court, 'Circulars issued during COVID-19 lockdown by Delhi High Court'.

³⁰ Jagriti Chandra, 2020 'NCW records sharp spike in domestic violence amid lockdown' June 15 <https://www.thehindu.com/news/national/ncw-records-sharp-spike-in-domestic-violence-amid-lockdown/article31835105.ece> (accessed on 15 August 2020).

payment of wages, which was a major fallout of the economic distress caused by the lockdown.

In Bengaluru, Dakshina Kannada and Kalaburagi in Karnataka, 32 of the 40 respondents attended online hearings. Similar to Madhya Pradesh and Delhi, more than half of the respondents in Karnataka (n=19) said that more than five of their cases were heard online when courts were shut. In Karnataka, none of the respondents' cases that were heard online was at the evidence stage, following the High Court's SOP. Most of the cases that were heard during this period were criminal matters or property matters (n=27), while a few cases concerned commercial matters and family matters.

Procedural and practical aspects

Key findings:

- Lawyers found e-filing inconvenient because of the restrictions on file sizes and formats, and technical issues with the websites.
- In several places, e-filing had to be followed by the physical filing of the same documents, making the process of e-filing redundant.
- Lawyers were not clear how cases were classified as urgent since this decision was partly dependant on the discretion of the registry. This was especially true in the case of civil cases.
- In places where lawyers had to attend online hearings from designated rooms in the court, they did not think that such hearings were convenient and time-saving.
- Technical issues with bandwidth and connectivity led to disruptions in online hearings, especially in peri-urban areas.

E-filing

Online hearings are only one component of virtual functioning for courts. For instance, if hearings go online but all the pleadings continue to be in physical form, court staff and judges will still need to be physically present in court daily. Other related processes of digitization, e.g. e-filing, e-payment and digital case management, need to be implemented alongside online hearings to make online hearings effective. Of these processes, in this rapid review, we focused on the implementation of e-filing in the selected districts. E-filing which allows submission of pleadings and other documents such as the vakalatnama, required for a case online, is an important aspect of the virtual judicial process. These documents can then be accessed by the registry, or the concerned judge, and by the other parties. E-filing increases transparency and accountability by reducing the role of the registry in the acceptance or rejection of pleadings.

E-filing was part of the eCourts Phase 2 project and was integrated with CIS 3.1.³¹ However, e-filing had not been implemented in the districts under the study prior to the lockdown. E-filing seems to have got off to a sputtering start in all three states and was accompanied by physical filing in several instances which was an unnecessary duplication of effort.

In Madhya Pradesh, the High Court website provided specific e-filing instructions during the months of March and April 2020. Initially, the case-related papers were to be emailed to the email IDs of the district court representatives. Later, designated email IDs were created for e-filing. Only urgent matters filed using the official e-filing link were entertained. There were also helpline numbers provided to help with e-filing and e-payment of court fee. In May 2020, centralised filing centres were operated by the district courts from 10.30 AM till 2 PM. Only 50 filings a day were permitted. Notifications by the High Court acknowledged that lawyers were not adept at using the e-filing mechanism. In case of issues faced by lawyers and parties due to lack of understanding of e-filing or other reasons, advocates were asked to use the assistance of the Bar Association representative nominated to manage filings.³²

In Delhi, lawyers were asked to send emails regarding filings, and maintain frequent contact with the registry via phone to clarify the procedure. In May and June 2020, non-urgent cases could be filed in district courts using a new e-filing link. Filing was allowed for both fresh and pending cases. However, non-urgent filings were to be scrutinised only after the lockdown ended. Some districts had designated e-filing centres (including Tis Hazari, Rouse Avenue, Rohini, Saket, Karkardooma and Patiala House). There was a proposal for designated centres for e-filing for all matters from 22 June 2020, to create a streamlined process.³³

In Karnataka, email IDs of the district judicial officers were provided to lawyers to send memos for urgent hearings. Urgency applications were to be sent to the PDJ and after their approval, detailed e-filing instructions was sent to the advocate/party in person. After e-filing, VC link was shared for the hearing.³⁴

We asked respondents who had cases listed for online hearings during the lockdown about whether they submitted any pleadings and documents to the court online and how easy they felt this online submission process was. In Madhya Pradesh, a majority of the respondents who filed pleadings online (n=17) said that despite filing pleadings

³¹ eCommittee Supreme Court of India. 2019. 'Innovations: Phase II of the eCourts project' available online at https://ecourts.gov.in/ecourts_home/static/manuals/FINAL%20INNOVATIONS%20IN%20PHASE%20II.pdf (accessed on 10 August 2020)

³² Madhya Pradesh High Court. 2020. 'High Court of Madhya Pradesh' available online at <https://mphc.gov.in/latest-updates> (accessed on 10 August 2020).

³³ Karnataka High Court, 'All Archived Notifications'.

³⁴ Karnataka High Court, 'All Archived Notifications'.

electronically, they were asked to submit physical copies as well. More than half the respondents in Madhya Pradesh who filed pleadings online (n=18) found the process difficult. According to them, the e-filing website was not user friendly and was not working at all times. Even after registering on the website lawyers would be told that their registration has failed or that they had not registered. Very few document types were supported by the website. These challenges made the e-filing process more cumbersome rather than simpler than the physical filing process.

In Karnataka, similar to Madhya Pradesh, a little less than half the respondents who filed pleadings online (n=13) had to file physical copies too. This defeated the purpose of e-filing as a means to ensure physical distancing in the registry. In Karnataka, a majority of the respondents who filed pleadings online (n=23) were comfortable with the process. 11 of these lawyers are from Bengaluru and hence are likely to be more familiar with online processes.

Since e-filing is a new experience for court staff and lawyers, there were bound to be some teething issues. For example, a respondent from Dakshina Kannada said that he preferred to physically file cases because the registry had once failed to print a page with the main argument, which he was relying on to argue the case. Another hearing had to be postponed because the registry failed to file documents in chronological order. A respondent from Dakshina Kannada said that she prefers to file the case physically as there is no facility for e-signatures and the process of filing needs the lawyer's signature. Some of the respondents from Kalaburagi said they preferred to e-file than to physically file in the circumstances of the pandemic because physical files needed to be sanitized and are not handled for 24 hours, thus increasing the time the file takes to be seen by the registry.

In Delhi, a majority of the respondents (n=22) who filed pleadings during the lockdown said that they were required to file physical copies within seven working days of approval/acceptance of case/documents by the registry. This is perhaps because the record-keeping process at the district courts is still mostly physical and hence they require physical copies of the pleadings and other documents. Lawyers in Delhi are expected to be more tech-savvy and thus more comfortable with the process of e-filing. This is not an age-related issue since the average age of the respondents in Delhi is similar to that of Madhya Pradesh and is probably associated with the comfort of the respondents in Delhi with technology. In Delhi too the process was not glitch-free. Issues reported with e-filing included difficulty of attaching documents, particularly those with many pages. One respondent reported that due to file size limits for uploading documents, they were forced to split the file into multiple files. The registry objected to them uploading multiple files but reducing the scan quality enough to upload the document as a single file rendered it illegible.

The pandemic and lockdown provided an opportunity for courts to institutionalise e-filing in Indian courts. To get a sense of the commitment of courts to making e-filing a permanent feature of their functioning we asked the respondents about the status of e-filing after courts re-opened. In Madhya Pradesh, 25 respondents said that e-filing facility was available, and six said it is available for select cases. Respondents from Bhopal stated that e-filing was available in April and May but courts there have reverted to physical filing from June onwards. In Karnataka, most of the respondents (n=35) said that e-filing facility was available even after the re-opening of courts. A couple of respondents felt that the e-filing facility was still available only for some cases. The statistics put out by the High Court of Karnataka reveal that once courts began to re-open, the number of physical filings far exceeded e-filings, indicating that the preference among lawyers continues to be for physical filing.³⁵ 27 of the respondents in Karnataka have used the facility after courts re-opened. Two respondents from Bengaluru pointed out that e-filing is easier than physically filing cases as it saves time and effort spent on formatting and stitching the case file. Some of the respondents felt that the current e-filing facility is only set up until the pandemic lasts and therefore they are required to file physical copies to ensure there are proper case records once the courts resume normal functioning. A comprehensive system of digital case management still does not exist, necessitating physical copies. A majority of the respondents in Delhi (n=31) stated that e-filing is available after courts have re-opened and some of them stated that it was only available for some cases.

Urgent cases

There seems to be an element of discretion on the part of the registry in deciding what cases are urgent in all three states. The determination of urgency was important because urgent cases were prioritized in the district courts when courts were shut. This was because all judges did not have videoconferencing facilities and hence the number of hearings that were possible online was significantly less than if physical hearings were possible. The High Court of Madhya Pradesh directed that bail and urgent stay/injunction matters were urgent matters and could be heard online.³⁶ Courts in Sidhi, Barwani, Morena, and Bhopal in Madhya Pradesh followed these guidelines and only heard these urgent cases. Some respondents from Sidhi stated that matters under section 375 of the Indian Penal Code, 1860 (rape), Protection of Children from Sexual Offences Act, 2012 and Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 were also listed for hearing during this period as they were classified as urgent.

Regarding the determination of urgency, most of the respondents (n=32) in Madhya Pradesh felt that it was according to guidelines or partly based on the discretion of the

³⁵ Karnataka High Court, 'Statistical information of cases from 01.06.2020 to 06.06.2020 at District Judiciary in the State of Karnataka during the period of Covid-19'.

³⁶ Madhya Pradesh High Court. 2020. 'High Court of Madhya Pradesh' available online at <https://mphc.gov.in/latest-updates> (accessed on 10 August 2020).

registry and partly based on guidelines. The guidelines issued by the High Court only mentioned that bail and urgent stay/injunction matters were to be heard. On bail matters there is limited scope for confusion. However the guidelines did not elaborate the basis on which stay and injunction matters were to be classified as urgent.³⁷ Interestingly, two respondents from Bhopal said they felt that despite the guidelines, in reality, the classification of urgent matters was dependent on lawyers who had to establish before the judges that their cases are of grave importance which warranted urgent hearings. Such a practice would favour older and more established lawyers and ones with more influence in the court. In terms of stages, online hearings were conducted for bail hearings, admission of cases, or arguments. *Only two respondents said they had online hearings at the stage of evidence.*

In Delhi through March and April 2020, urgent matters were moved by contacting the administration officer vide telephone. At the district court level, one administration officer was appointed per court. It was up to the district courts to frame mentioning mechanisms for urgent cases. Most of the respondents in Delhi stated that the cases that were heard online were urgent. Similar to Madhya Pradesh, the perception among most of the respondents in Delhi also was that cases were classified as urgent based on guidelines issued by the court and the registry's discretion. Some of the respondents felt that several criminal matters were listed in Delhi during this period pertaining to the riots in February 2020.

When the respondents in Karnataka were asked if the case that was heard was urgent in nature, most of the respondents (n=27) replied in the affirmative. They, however, had mixed views about how urgency had been determined. 14 of them felt that a combination of guidelines and registry discretion determined urgency and 9 felt that the decision on what cases are urgent is made by the registry. This indicates a lack of certainty for lawyers and litigants regarding whether their cases would be treated as urgent. Some of the respondents in Dakshina Kannada felt that the urgency of a case should be decided once a hearing is provided to the party filing the case and should not be dependent solely on the written submissions. Most of the respondents also stated that cases that were heard online were either at the hearings or arguments stage.

The respondents in Bengaluru who participated in the focus group discussion were satisfied with the way filing of new cases was handled during this period. They said that most of their new cases were heard by the court. These respondents were however critical of the manner in which older cases were listed. While the guidelines state that for cases filed before the lockdown the courts will hear 10 cases in the morning and 10 cases after lunch, the decision about whether such an old case is urgent or not lies with

³⁷ Madhya Pradesh High Court, 'High Court of Madhya Pradesh'.

the district judge. These respondents felt that there was no clarity as to how the urgency of older cases was determined.

Digital platforms and connectivity

The High Court of Madhya Pradesh instructed district courts to conduct online hearings through a platform called VIDYO, a private video conferencing platform. However, in practice, online hearings were conducted over other platforms like Jitsi Meet, an open source platform and even WhatsApp. Although the idea behind online hearings was to allow lawyers to join remotely to avoid overcrowding in courts, in several districts, lawyers did not have the necessary infrastructure (computers or smartphones) and faced severe internet connectivity issues. To address this issue, in Madhya Pradesh, designated rooms were set up in district courts where lawyers could attend online hearings. A majority of the respondents in Madhya Pradesh who attended online hearings (n=23) did so through such designated rooms on the court premises. Of the others, 11 respondents used their mobile phones or computers for such hearings, and interestingly, one respondent mentioned that he used the phone of one of the court staff to attend an online hearing.

As none of the platforms used for webinars and meetings is customized for court hearings, hearings on these platforms take place in the same manner as a virtual meeting and do not emulate the experience of a physical court. The responses in Madhya Pradesh reflect this shortcoming. A majority of the respondents (n=22) we spoke to found it difficult to connect and navigate online hearings. This was not a factor of location. These responses were spread across the less urbanised districts of Barwani, Morena, and Sidhi and the more urban district of Bhopal which is also the state capital. Respondents from Bhopal and Barwani complained about the poor quality of video transmission in VIDYO. Some of them stated that they could not see the judge at all and were unable to ascertain if their arguments were audible to the judge. Respondents from Sidhi stated that they regularly used WhatsApp calling for online hearings as they often faced difficulties in joining the videoconferencing link that was sent to them. WhatsApp calls by design are not accessible by the public.

In Delhi, the High Court asked all the district and sessions judges to use the Cisco WebEx platform for online hearings.³⁸ The respondents confirmed that they attended hearings through Cisco WebEx. There was also a centralized computer committee to help with training for online hearings. All the respondents in Delhi attended the online hearings through their personal or office computer, mobile phone, or tablets. None of them attended hearings through booths in courts. A majority of the respondents were

³⁸ Delhi High Court. 2020. 'Suspension of Functioning of Courts Subordinate to Delhi High Court till 03.05.2020 available online at http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_K81Q1VBLCEI.PDF accessed on 30 August 2020)

informed of hearings in their cases through a phone call, while others were informed through WhatsApp, email, text messages, and online causerlists. Online causerlists were accessible to the general public but as a practice, lawyers inform their clients about hearing dates.

In Karnataka, the High Court did not specify which platform was to be used for online hearings. Respondents told the researchers that Zoom, Jitsi Meet, and WhatsApp were used. After a direction from the Karnataka High Court to not use Zoom, district courts started to use Jitsi Meet. Some of the respondents felt that Zoom was better than Jitsi Meet in terms of video and audio quality. However, the use of the free version of Zoom means that the hearing could not go on beyond 40 minutes and thus hearings sometimes got interrupted mid-way.

Respondents from Dakshina Kannada and Kalaburagi thought that lawyers need to be trained on how to use technological facilities provided by the courts. A respondent from Kalaburagi said that until basic awareness is created and technological facilities are provided to lawyers, online hearings cannot be used as a long-term solution to physical hearings. Respondents from Kalaburagi said that a videoconferencing booth should be set up in the court premises. They referred to instances where lawyers could not take up cases because they did not have access to proper technology. They also raised the issue of older lawyers being adversely affected by the transition to online hearings, as some of them are not comfortable with operating computers and navigating the internet.

When we asked the respondents in Karnataka how they attended online hearings, 19 of them said they used their personal or office computer/laptop, 11 said they used their mobile phones, one lawyer used a tablet, and one sought prior permission of the court to appear in person. Interestingly, none of the respondents in Karnataka had to visit the courts to attend such hearings through a designated room on the court premises. This indicates that they were familiar enough with video conferencing to use it without assistance for online hearings and that the connectivity in their houses and offices was adequate for online hearings.

Convenience and ease of use

The convenience of online hearings across the three states seems to vary depending on connectivity and familiarity with technology. As online hearings can be attended from anywhere and reduce the travel time between different courts, the researchers also asked the respondents if they felt that such hearings save time for them. A majority of the respondents in Madhya Pradesh who attended online hearings (n=21) felt that these hearings did not save time for them. This is not surprising given that in Madhya Pradesh, most respondents attended online hearings from the designated videoconferencing rooms in the court premises and thus still had to travel to courts. They also told us that

the number of computers/laptops present in these videoconferencing rooms was inadequate given the large number of advocates who needed to use them. Thus, lawyers often had to wait in a queue for their turns between 10 minutes to over two hours. Apart from being a waste of time, waiting for such long periods also led to crowding and inability to maintain physical distancing.

A majority of the respondents in Delhi (n=31) said that online hearings saved time for them. All the respondents in Delhi attended online hearings from their office or home. In Karnataka, a majority of the respondents (n=21) were of the opinion that online hearings saved time for them since these hearings can be attended from anywhere and thus cut down the travel time between different courts. The reason for these responses in Delhi and Karnataka is probably that none of the respondents had to visit the courts to attend online hearings through a designated room on the court premises. They attended hearings from their homes or offices through computers, tablets or mobile phones. Respondents from Bengaluru, Dakshina Kannada, and Kalaburagi also indicated that they spent less time waiting for online hearings as compared to physical hearings. Respondents from Bengaluru had a similar opinion and said that for the district court hearings they had to wait for only 3-5 minutes because every case is given a timeslot and the online hearing link is shared accordingly. By contrast, in the Karnataka High Court, lawyers have to log in for the day with a link that is accessible by all the lawyers whose cases are listed on that day and wait for their matter to be called.

When asked about the ease with which they could access and navigate online hearings, most respondents (n=26) in Karnataka said that they were able to access and navigate the online hearings or were comfortable doing so. Some respondents in Bengaluru also said that they were able to understand the orders dictated by judges better during online hearings and they did not have to go to the stenographer to clarify the order details which frequently occurs during physical hearings. The comfort with online hearings does not seem to depend on location. These responses were spread over the urban district of Bengaluru and the less urban districts of Dakshina Kannada and Kalaburagi. In Delhi, only two respondents were uncomfortable with navigating online hearings. The comfort with online hearings does not seem to be dependent on age since the average age of the respondents in Delhi was 37.4 years which is not too different from that of the respondents in Madhya Pradesh which was 37.8 years. However, with Delhi being the capital of India, it is to be expected that lawyers there will be more familiar with the use of technology and that internet connectivity will be good enough for online hearings.

Access to information

In the normal course, lawyers access physical or online weekly or daily causelists to ascertain if their cases are listed for hearing. The closure of courts made physical causelists difficult to access. In Madhya Pradesh, the court staff were directed to

provide details of hearings of the cases by way of SMS to the litigants/lawyers, including details of the time slots, and to affix details of hearings in the court complex. The court orders were to be uploaded and also sent vide email to the respective lawyers. 22 respondents told us that they were informed about online hearings through phone calls. Email, SMS, and Whatsapp were also used to inform lawyers about their hearings. In Karnataka, most respondents (n=28) were informed of their hearings via email or phone call. Most of the respondents in Delhi (n=28) were informed of their hearings through a phone call.

Substantive aspects

Key findings:

- The public was not given access to online hearings across the three states.
- Most lawyers in Madhya Pradesh did not think that online hearings gave them the same opportunity to present their cases as physical hearings. Most lawyers in Delhi and Karnataka felt otherwise.
- Undertrial prisoners were not present during all the online criminal hearings.
- The digital platforms used for online hearings do not have any provision for private communication between undertrial prisoners and their lawyers.
- The volume of litigation in district courts reduced considerably while courts were shut and this has adversely affected the livelihood of some lawyers, especially ones in smaller towns.

Opportunity to present case

The process of presenting legal arguments before judges has a physical element to it and the body language of the lawyers and witnesses play a key part in the trial.³⁹ It is thus important to ensure that online hearings do not compromise lawyers' ability to effectively present their case and represent their clients. Through this review, the researchers wanted to understand how far online hearings could approximate lawyers' experiences of physical courtrooms.

Lawyers across the three states had varying levels of the belief that online hearings give them the same opportunity to present their as physical hearings. A majority of the respondents in Madhya Pradesh who attended online hearings (n=23) felt that these hearings did not provide them with the same opportunity they would have got in a

³⁹ Martin S Remland. 1993. 'The Importance of Nonverbal Communication in the Courtroom' Paper presented at the Annual Meeting of the Eastern Communication Association, New Haven, CT, April 29-May 2, 1993.

physical courtroom hearing. Given the issues with internet connectivity, it was difficult for lawyers to gauge the reaction of the judge and craft their arguments accordingly. For a lawyer, it is important to see the judge's reaction in real-time to be confident that the judge has understood what was being argued properly. One respondent from Bhopal stated that there was an atmosphere of haste during online hearings, unlike in physical hearings. He said that when the judge's attention was called to a particular precedent, they would simply state that it would be taken into consideration, without allowing the advocate to explain the significance of such a precedent to the matter at hand. A respondent from Sidhi stated that sometimes advocates are not aware of all the facts of a case at the time of filing and learn certain facts only at a later stage. In physical hearings, such facts are brought to the attention of the judge during arguments but in online hearings, it became difficult to convince the judges about such additional facts as they are not mentioned in the pleadings.

By contrast, in Karnataka, nearly half the respondents (n=18) felt that online hearings gave them the same opportunity to present their case as a physical case. However, a respondent from Dakshina Kannada explained that it is difficult to present evidence through online hearings. For example, if a witness is testifying, it is difficult to assess their body language and figure out whether they are being tutored or not, unlike in physical hearings. She said during cross-examinations it gets difficult to mark documents and identify them through a computer screen. Generally, in a physical hearing examination-in-chief and cross-examinations can be completed in a single hearing but now once the examination-in-chief of a witness is completed, the lawyer has to wait for certification of the evidence and the cross-examination takes place only at the next hearing. She felt that this delays the progress of cases. Among the respondents in Delhi, more than half the respondents (n=23) felt that online hearings gave them the same or nearly the same opportunity to present their case as normal hearings did. The use of unfamiliar technology by the judges caused some problems for some of the respondents. One respondent told the researchers about how he was muted by a judge while in the middle of their arguments.

Open justice

Indian courts are based on the open justice principle. Indian courts are *public forums*, characterised by transparency and openness to public scrutiny.⁴⁰ The principle of open justice — 'that justice should not only be done but should manifestly and undoubtedly be seen to be done' is a central feature of the administration of justice under the common law.⁴¹ This implies that judicial proceedings should be conducted and decisions pronounced in 'open court', that evidence should be communicated publicly to those present in the court and outside, and nothing should prevent or discourage the making

⁴⁰ *Swapnil Tripathi Vs Supreme Court Of India* Writ Petition (Civil) No. 1232 Of 2017.

⁴¹ *Rex v. Sussex Justices*, [1924] 1 KB 256.

of fair and accurate reports of judicial proceedings, including by the media.⁴² The Supreme Court has also emphasized the importance of open trials and access to the public during the hearing of cases before the Court as an accepted proposition.⁴³ The principle of open justice should continue to apply even in online hearings. Citizens should feel confident that even in an online hearing their case will be heard on merits, while giving a fair hearing to all parties, leading to enforceable remedies, utilising procedures that are conspicuously fair and perceived to be so.⁴⁴

Online hearings should try and replicate this openness as far as possible, by allowing for litigants and the general public to watch the hearings. In practice, given the nature of the digital platforms used for online hearings, public access to hearings was not given priority. A majority of the respondents in Madhya Pradesh (n=25) said lawyers of all parties to the case were present during the online hearings they attended. Most respondents in Karnataka too (n=23) said the lawyers of all parties or some parties were present at the hearings. One advocate from Barwani and one from Sidhi stated that in bail matters, at the time of furnishing the bail amount, the person depositing the money was presented online. Significantly, a majority of the respondents stated that the litigants were not present at the online hearing in Madhya Pradesh and Karnataka. In Karnataka, there were a few instances where the judge did not object to the litigant joining the online hearing, provided they put themselves on mute and turned off the video. However, the general public could not watch these hearings.

In Delhi as well, a majority of the respondents (n=30) said that all the lawyers were present in the online hearings they attended. In over half the cases (n=25) the respondents attended, litigants also attended the online hearings. Similar to Karnataka, the open justice principle was being ignored and the public had no access to online hearings in Madhya Pradesh as well. Across the four selected districts in Madhya Pradesh, respondents said that third parties were not allowed to watch the hearings. Neither were transcripts of the proceedings available to the public. Respondents from Bengaluru said that according to the guidelines, the general public cannot join the hearings. A respondent from Bengaluru felt that while the general public should have access to online hearings to abide by the open court principle and to bring in transparency, the public lacks etiquette and fails to maintain decorum during online hearings. He felt that sensitising the public about these norms is essential for a smooth hearing to take place. This concern is valid but denying the public access to online hearings because they may disrupt proceedings is a specious argument. The judge can mute them and avoid any such possibility.

In the selected districts, online hearings have turned all hearings into in-camera

⁴² Jason Bosland and Jonathan Gill. 2014. 'The principle of open justice and the judicial duty to give public reasons', *Melb. UL Rev.* 38 : 482-524., p. 483-4

⁴³ *Swarnil Tripathi v. Supreme Court of India Writ Petition (Civil) No. 1232 of 2017.*

⁴⁴ Dame Hazel Genn, 'Online Courts and the Future of Justice' at Birkenhead Lecture, 2017, p. 6.

proceedings, accessible only to lawyers and litigants. It is understandable that when online hearings began at the start of the lockdown, judges and court staff were unfamiliar with technical aspects and hence were focussed on providing only lawyers and litigants access to such hearings. However, it seems that no effort was made subsequently to meet the requirements of open justice in online hearings. This is a crucial omission especially because the manner in which online hearings were conducted while courts were shut due to the COVID-19 pandemic will form the framework for online hearings in the future.

Online hearings in criminal cases

Fair trial safeguards

Criminal trials require specific safeguards because they involve an individual in confrontation with the state. How the state treats a person accused of a crime provides a concrete demonstration of how much it respects individual rights and liberties. Thus, even in a scenario where hearings are being held online, it is important to examine how fair trial safeguards are being maintained.

The production of the accused person is a crucial part of a criminal trial and cannot be dispensed with for the sake of expedience. The presence of the accused person during their trial is a fair trial right guaranteed under the constitutional and statutory framework in India. Section 167(2)(b) of the Code of Criminal Procedure provides that a magistrate cannot remand an accused person in custody unless the accused is produced before them. The production of an accused person before a magistrate is an important fair trial requirement because it allows the magistrate to enquire whether the accused has legal representation, to determine the age of the accused, enquire about their health, and make a reasoned decision on the need for further confinement.⁴⁵

Production through video conferencing facility

Across the three states, the production of undertrial prisoners remotely was not considered mandatory and seemed to depend on the judge hearing the case. The Supreme Court on 23 March 2020 directed that the physical presence of all undertrial prisoners before the courts must be stopped forthwith and recourse to video conferencing must be taken for all purposes. To reduce overcrowding in prisons, all states and union territories were asked to constitute High Powered Committees comprising (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation they are known as, (ii) Director-General of Prison(s), to determine which class of prisoners could be released on parole or an interim bail for such period.⁴⁶ In an advisory dated 16 March 2020, the Delhi High

⁴⁵ Commonwealth Human Rights Initiative. 2010. *Conditions of detention in the prisons of Karnataka 2010*, available online at <http://humanrightsinitiative.org/publications/prisons/conditions-of-detention-in-the-prisons-of-karnataka.pdf> (accessed on 3 September 2020)

⁴⁶ *In Re : Contagion of Covid 19 Virus in Prisons* Suo Motu Writ Petition (C) No. 1/2020

Court directed that instead of the physical production of undertrial prisoners from jails, the facility of video conferencing be availed of. With a view to decongesting prisons during the COVID 19 lockdown, the Delhi High Court on 9 April 2020 directed that undertrial prisoners be released without furnishing a surety bond ⁴⁷

The use of videoconferencing for producing undertrial prisoners in court is not recent. In 2008, the Code of Criminal Procedure (Amendment) Act, 2008 amended Section 167(2)(b)1 of the Code of Criminal Procedure 1973 (CrPC) and introduced electronic video-linkage as an alternative method for production of an accused in court. In recent times, with petitions on non-production of undertrial prisoners in courts, incidents of their fights and escapes during transit, the insistence on production through video conferencing has gained favour.

Following the guidelines of the Supreme Court, the Madhya Pradesh High Court directed that undertrials be produced over videoconferencing once courts were shut. Despite this, the lawyers the researchers spoke to in Madhya Pradesh who did online bail hearings told us that undertrials were not produced during these hearings. Respondents from Dakshina Kannada and Kalaburagi said that undertrials were being produced remotely but the former pointed out that in the hearings they attended, the judge did enquire about the health or wellbeing of the prisoner. The respondents in Bengaluru said that undertrials were not produced remotely in the online hearings they attended. Respondents from Delhi stated that while some judges insist on the virtual presence of the accused person for online hearings, others do not. Lawyers in Delhi representing those accused in criminal matters said that in their experience, judges do interact with undertrials during online hearings, a practice which had already been established before the lockdown. It is important such the presence of the accused person should be made mandatory even in online hearings and should not be left to the discretion of individual judges.

Communication between undertrial prisoners and their lawyers

Across the three states, online hearings did not provide opportunities for lawyers to speak to incarcerated undertrial prisoners in private while maintaining attorney-client privilege. Physical hearings provided an opportunity for undertrials to meet their lawyers in court. In online hearings, the location of the defence lawyer in a different location from the defendant may prevent crucial consultation which otherwise takes place in a physical court. It is thus necessary to provide the defendant with a means to communicate privately with his attorney even in online hearings.⁴⁸

⁴⁷ *Court of its own motion v. State* W.P. (CRL.) 779/2020

⁴⁸ DAKSH. 2020. *Video Conferencing In Indian Courts: A Pathway to the Justice Platform* available online at <https://dakshindia.org/next-generation-justice-platform/> (accessed on 17 August 2020), p. 35.

Some of the respondents in Delhi said that judges were very accommodating of their use of these online hearings to speak to their clients in prison in online hearings, although there was no private channel for such interactions. There is also an online mechanism for lawyers to contact their clients at Tihar jail, which lawyers described as effective. However, there was no facility for lawyers to have private conversations with their clients remotely. Two respondents from Dakshina Kannada said that they were able to speak to their client in online hearings. The judge was not present in these interactions but prison staff was. The respondents from Madhya Pradesh were unable to communicate with the clients in prison during online hearings.

Impact on new litigation

The closure of courts for the lockdown led to a decrease in fresh litigation with fewer people approaching courts with disputes. Data released by the High Court of Karnataka illustrates this. In 2019, between April and June 2019, 285189 cases were filed in the district courts of Karnataka.⁴⁹ Between 26 March and 6 June 2020, only 20025 new cases were filed in the same courts, a drop of 92%.⁵⁰ Unfortunately, data on the number of cases filed during the lockdown in district courts is not available from Madhya Pradesh and Delhi. A majority of the respondents in Madhya Pradesh (n=23) stated that fewer people filed cases during the lockdown. When asked about their clientele, most (n=38) said that the number of clients approaching them with cases had dropped since the pandemic began. This trend continued even after courts opened. This has adversely affected the livelihood of lawyers. One lawyer from Bhopal stated that litigation, in general, has gone down significantly as clients are aware that the courts are not functioning to their full capacity. Another lawyer stated that many advocates are suffering financially due to a fall in the number of cases and have been forced to find alternative employment. One lawyer in Morena stated that he was personally aware of at least two lawyers with thriving civil practice in the district, who started alternate businesses like oil processing and food packaging to support themselves financially as they were not receiving any new matters.

A little less than half the respondents in Karnataka (n=19) said that people filed fewer cases during the lockdown. More than two-thirds of the respondents (n=28) said that fewer people approached them with cases during this period. The respondents in Bengaluru believed that causes of action were still arising as before the pandemic or have increased slightly but believed that people were reluctant to file new cases. They surmised that since the economic downturn has resulted in a cash crunch, even if a cause of action arises, parties would think twice before spending money on litigation. Another lawyer from Bengaluru said that because the period of court closure under

⁴⁹ Supreme Court of India, 'Court News' Vol. XIV Issue No.2, April - June, 2019.

⁵⁰ Statistical information of cases from 26.03.2020 to 31.05.2020 at District Judiciary in the State of Karnataka during the period of Covid-19' and 'Statistical information of cases from 01.06.2020 to 06.06.2020 at District Judiciary in the State of Karnataka during the period of Covid-19'.

Section 4 of the Limitation Act, 1963 has been extended to 30 September, there has been a pause in the filing of fresh cases. The initiation of insolvency proceedings was suspended for six months from 25 March 2020 and that stopped the suits from being filed for recovery of money. Moreover, suits for the recovery of money were not considered urgent cases.

Most of the respondents in Delhi (n=27) felt that people filed fewer cases during the lockdown than before. Since courts were not only hearing urgent cases, it made sense for litigants to file cases only if their cases were within the ambit of urgency in their district. They also said that the cases they were receiving had also dropped. Some of the respondents in Delhi felt that the volume of criminal causes of action did not decrease as much as civil cases, although lawyers often advised their clients to wait until physical hearings resume before filing a complaint.

Re-opening of courts

Key findings:

- The number of people allowed inside courtrooms was restricted after re-opening.
- Courts have started listing non-urgent cases after re-opening
- Courts are trying to enforce physical distancing norms within courtrooms but it is becoming difficult to enforce it outside courtrooms

The re-opening of courts was inevitable once the impact of the pandemic decreased. As the court records (except for the cases filed during the current lockdown) are currently in physical form, there was no option but to reopen the courts, once it was safe to do so. However, given the need to continue taking precautions to prevent the spread of COVID-19 in courts, courts could not revert to the manner in which they functioned before the pandemic. As on 29 September 2020, 12 lawyers in Madhya Pradesh said that some courts in their districts had re-opened. In Delhi around half the respondents (n=23) said that some of the courts had re-opened. Most of them said that there were restrictions on who could enter the courtrooms to avoid crowding.

In Karnataka, a majority of the respondents (n=28) said that some courts had re-opened as on 20 September. Given the need to continue to enforce physical distancing there are restrictions on the number of people permitted inside courtrooms. In Karnataka, according to the High Court guidelines, the presiding officer could regulate the number of people in the court halls and the judges tried to enforce these rules and ask lawyers to not loiter. In most of the courts that have re-opened in Madhya Pradesh and Karnataka, only advocates whose presence is required for the hearings are allowed to enter.

Already, though, enforcement of physical distancing norms in some courts in Karnataka seems to have become lax over time. Some of the respondents from Bengaluru said that when the lockdown was lifted, only lawyers with appointments would enter the premises but these rules are not being enforced anymore. They pointed out that there is only a single point of entry to the court where temperature checks and sanitisation are done, thus making physical distancing difficult to enforce. The respondents from Dakshina Kannada and Kalaburagi said that people maintained physical distancing within the courts. Chairs were arranged away from each other, keeping this in mind. One respondent remarked that physical distancing is maintained within the court but not outside the courtrooms

When asked about the criteria used to list cases for hearings after courts had reopened, most of the respondents in Madhya Pradesh, Delhi, and Karnataka said that cases were listed either based on urgency or the subject matter of the case. Some respondents in Delhi felt that the discretion of the registry plays an important role in getting matters listed as urgent and doing so requires calling the appropriate member of the registry and convincing them that a matter is urgent. One lawyer each from Barwani and Sidhi said that there are no specific criteria and all cases were being listed. It appears that subjectivity that characterised the listing process during the lockdown continued even after courts have opened. If clear rules were consultatively drafted on how cases are to be listed, this would improve court functioning in a pandemic or outside of it.

Most of the lawyers in Sidhi and Morena said that under 10 cases were being listed for physical hearings and heard per day per court hall. In Barwani this number was less than 20 cases. Lawyers in Bhopal said that courts were listing between 11 and 60 cases per day per court hall after re-opening. Two of them stated that in April over 50 cases were listed per day but the number has decreased to 25-30 cases in August. Most of the respondents said that less than 40 cases were actually heard.

In Karnataka, a majority of the respondents (n=26) said that 11-20 cases were being listed on average per court hall. When asked about how many cases were actually heard, a little more than half of the respondents (n=23) felt that less than 10 cases were actually heard. A majority of the respondents (n=29) said time slots were provided, although not for all cases. The time slot provided was the time when the hearing would start. No limit was placed on when the hearing was to end. In Delhi, most of the respondents (n=26) said that up to 20 cases were being listed and heard per court hall per day. Many (n=17) also said that time slots were not being provided.

Looking at the future

Key findings:

- Hi-speed internet connectivity is an essential prerequisite for online hearings.

- Helplines, training videos and FAQs are essential to enable lawyers to navigate online hearings effectively.
- Evidence hearings are not suited for online hearings, giving the current state of technology.
- Most lawyers are not comfortable in Madhya Pradesh and many in Karnataka with continuing online hearings as an institutional practice.

Assistance

The COVID 19 pandemic has opened up the possibilities for online hearings and there is a growing realization that they are here to stay in some form or the other, it is important to understand how the current system can be improved. In Madhya Pradesh when asked how the process of online hearings could be made easier for lawyers, most of the respondents (n=21) suggested better connectivity. Training videos, a helpdesk, helpline numbers and FAQs were the other suggestions. The respondents in Karnataka and Delhi had similar suggestions. One respondent from Karnataka suggested that the online hearing platform should allow sharing of memos, documents, citations, and easy options to navigate between courts. Interestingly, 32 respondents from Madhya Pradesh stated that they would not be comfortable having hearings through video conference for regular court hearings after the COVID 19 pandemic. Respondents from Bhopal expressed dissatisfaction with the court staff whom they described as having a “very short-term view of things”. According to these lawyers, the attitude of the court staff was that virtual hearings were only temporary and that courts would open up soon and hence any suggestions for improving online hearings given by the respondents were not taken seriously.

Cases that can be heard online

Most lawyers across the board did not think that online hearings should not be used for the evidence stage. This was an expected response given the architecture of the platforms being used for online hearings and issues with internet connectivity. Examination and cross-examination of witnesses and presenting documentary evidence require high-quality video and audio. Non-verbal cues like body language and tone of voice are important for judges and lawyers in the process of examination and cross-examination and unless the audio and video quality is of very high quality and uninterrupted, these cues can be overlooked in online hearings.

Most of the respondents in Madhya Pradesh recommended that criminal cases and specifically bail matters can be heard through online hearings. The arguments in bail hearings are not very complex and therefore easier to communicate online. Some of them recommended that all cases be heard online barring those at the stage of evidence. *When asked specifically about which cases are not suitable to be heard online, most of the*

respondents indicated that cases at the evidence stage should not be heard online. Some respondents in Madhya Pradesh were also of the opinion that civil cases must not be heard online. They were also of the opinion that hearings for evidence should not be conducted online.

In Delhi, some lawyers recommended that criminal cases specifically bail matters and interim matters can be heard online and some suggested civil cases. When asked specifically about which cases must not be heard through online hearings, most lawyers recommended that cases at the evidence stage must not be heard online and some lawyers also recommended that cases at the stage of final arguments must not be heard online. However, one respondent provided an example of a case in which he was able to cross-examine an investigating officer in an online hearing. In this instance, counsel on both sides trusted each other and consented to such an online hearing after the judge gave them the option. The reluctance to conduct evidence online was also echoed by lawyers in Karnataka.

Continuation of online hearings

With the growing realization that the pandemic situation is not going to end in the near future, courts across India are considering hybrid modes of functioning, where some cases are heard online and some in person. In this context, the researchers sought to obtain lawyers views on the continuation of online hearings. When the respondents were asked how comfortable they were with doing online hearings in the future, a majority of the respondents in Madhya Pradesh (n=32) did not want to do so and only seven said they would be comfortable with hearings continuing to be online. Most of the respondents who maintained that they would be comfortable with a continuation of online hearings were from Bhopal, which being the capital city would have better internet connectivity. One advocate from Bhopal said that routine matters like interim applications should continue to be heard online whereas recording of evidence and final hearings can be done through physical hearings. She said this will help in speeding up the trial process. Respondents described bad network connectivity and technical glitches as marring their experience of online hearings. One respondent stressed on the need to ensure physical distancing and proper sanitization for lawyers who use the designated rooms for online hearings within the court premises.

The researchers perceived a similar reluctance to continue with online hearings in Karnataka as well. In Karnataka as well, 22 respondents felt that online hearings do not provide the experience of a physical courtroom hearing and would therefore be uncomfortable with continuing with them. This reflects a level of serious dissatisfaction with online hearings that will require substantial effort to surmount. The respondents who were comfortable with online hearings continuing were mostly from Bengaluru. Respondents from Bengaluru however acknowledged that the system of online hearings needed improvement and suggested better infrastructure, providing training

to court staff, and ensuring streamlining of case scheduling to improve the process of online hearings. Technical issues like bad network connectivity, technical glitches, and lack of moderation which caused people to speak over each other have made the respondents sceptical of the efficacy of continuing with such hearings. *Respondents in Karnataka suggested that district court complexes should have booths for online hearings.* They explained that it would help lawyers and litigants who do not have access to laptops and internet connections and that it would mitigate the effect of the digital divide that many lawyers and litigants face. *A little more than half of the respondents in Delhi (n=28) were comfortable with continuing with online hearings.* Respondents in Delhi also stated that connectivity issues marred their experience with online hearings. Some respondents raised the issue of cross-talk between other lawyers waiting for their hearings on the video call and suggested that lawyers require training and familiarization with the protocol and etiquette to be followed in online hearings. They also felt that a booth in the court complex for lawyers without access to smartphones or a computer, as implemented in Madhya Pradesh, would greatly benefit many of them.

The Parliamentary Standing Committee on Personnel, Public Grievances, Law And Justice's Interim Report on 'Functioning of Virtual Courts/ Court Proceedings Through Video Conferencing' has also acknowledged that poor quality audio/video, frequent loss of connection, disruptions and high latency ⁵¹affects the judicial assessment of demeanour, emotions and other nonverbal cues and the changing communication dynamics which are also important variables in deciding a case.⁵²

Conclusion

This rapid review is aimed at understanding the experiences of lawyers during the COVID 19 pandemic, identifying the drivers of lawyers' satisfaction with online court processes, and using these to recommend ways in which such processes can be improved to ensure access to justice. An understanding of the transition to online modes of working, through the experience of the primary users of the justice system, lawyers, is crucial to informing any future digitisation efforts of the judiciary.

⁵¹ The term latency refers to any of several kinds of delays typically incurred in processing of network data, the most obvious delay being the time it takes for a packet of data to go from a user's computer to the website server they're visiting and back (round-trip-time or RTT). A so-called low latency network connection is one that generally experiences small delay times, while a high latency connection generally suffers from long delays. 'High Latency vs Low Bandwidth - Impact on Web Performance' available online at <https://www.globaldots.com/blog/high-latency-vs-low-bandwidth-impact-web-performance> (accessed on 5 September 2020)

⁵² Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. 2020. *One Hundred-Third Report on Functioning Of Virtual Courts/ Court Proceedings Through Video Conferencing (Interim Report)* available online at https://districts.ecourts.gov.in/sites/default/files/pdf_upload-381310.pdf (accessed on 5 September 2020), p. 7

This rapid review has revealed that the COVID-19 pandemic has adversely affected access to justice. The non-availability of video conferencing for all judges, the reduction of hours of work of courts, and the existence of paper records led to fewer online hearings, compared to physical hearings. This led to a reduction in the number of cases that could be heard by district courts and made people reluctant to approach courts. It is important to keep in mind that the circumstances that led to the lockdown were unprecedented and given the circumstances, district courts made a sincere effort to ensure access to courts, as far as possible.

Technological aspects

Any moves towards the online functioning of courts must account for the digital divide in India. While mobile phones are used widely, access to the internet and advanced digital equipment remain limited to some urban users.⁵³ This rapid review revealed that lawyers in semi-urban and rural districts found online hearings challenging because of internet connectivity issues and unfamiliarity with this mode of working. In Madhya Pradesh, a majority of the respondents opted to attend online hearings from designated booths in the court premises because of poor connectivity and the lack of smartphones and/or computers in their homes and offices. Although having booths within the court premises addresses the technological barrier, it raised a fresh set of challenges in the context of the COVID-19 pandemic because it became difficult for court staff to enforce physical distancing in such enclosed spaces. Given the need to continue taking precautions to safeguard the health of all the users of court premises, wherever online hearings are continuing it is advisable to assign time slots to lawyers and allow them inside the booth only when their case is being heard.

The platforms being currently used are not customised to the needs of the judicial system. Platforms used for online hearings should be designed to give lawyers and litigants an experience that approximates that of a physical court, as far as possible. To illustrate this point in the context of criminal trials, a defendant may feel comfortable telling a judge before whom they are physically present about custodial violence, but cannot do so on video conference from prison because the prison staff are present in the same room. Therefore, the architecture of the platform must allow the defendant to speak to a judge without prison staff being present. Additionally, there must be a provision for undertrial prisoners to confer in private with the lawyers.

Given poor internet connectivity and low levels of technical skills, the platform used for online hearings should be easy to use and should not require the users to undergo specialized training or to use special equipment. The platform should be secure and not

⁵³ Nikita Kwatra. 2020. 'India's digital divide is not just about accessibility' *The Mint*, 20 August available online at <https://www.livemint.com/news/india/india-s-digital-divide-is-not-just-about-accessibility-1566287337995.html> (accessed 31 July 2020)

vulnerable to unauthorized third parties. Access of vendors to the data stored on the platform should also be controlled. The platform should be accessible with poor internet connectivity and have the flexibility of being used on different devices, such as desktops, smartphones, tablets, and laptops.

Judges in district courts were unable to hear cases from their homes because the Court Information System (CIS), the application used by courts, in its current form is on the intranet and accessible only from the court premises. Even during the lockdown, they had to take the risk of travelling to the court premises and attending hearings from there. Given the unpredictable nature of the COVID 19 pandemic and need to prepare the judicial system for other emergencies in the future, CIS must be available to judges on the internet.

Training and incentivisation

The experience of several respondents with e-filing has not been agreeable and they have reverted to physical filing. Respondents from all three states have stressed on the need for support in the form of training videos and helplines for lawyers to help them navigate online hearings. The legal services authorities and bar associations at the state and district level should create mechanisms to assist lawyers and litigants with online hearings and associated processes like e-filing and e-payment. Law students should be trained to handle online hearings in college. This will make them comfortable with the process and equip them with the skills to handle these hearings effectively.

Online hearings need to be accompanied by related digital processes like e-filing and e-payment. These processes can potentially diminish the scope for rent-seeking and reduce transaction costs for lawyers since they can file at any time from the comfort of their offices or homes. Several respondents expressed their dissatisfaction with the e-filing process in the form in which it was implemented. In order to improve the process of e-filing, lawyers and litigants should be able to upload pleadings and documents, digitally sign them, and share them with other parties, online. Realistic limits must be set for the sizes of files to be uploaded, keeping in mind the nature of pleadings. Lawyers and litigants should not be asked to file cases physically once they have filed online since this is an unnecessary duplication of effort and defeats the purpose of e-filing. The adoption of e-filing and e-payment can be incentivised by providing a discount on court fee or the possibility of an early listing. It is important that courts institutionalise e-filing as a permanent feature and not view it as a temporary measure.

Fairness and openness

Since the spatial organisation of an online hearing is so different from the setting of a physical court, efforts must be made to reassure litigants and lawyers that these virtual courts will approximate the experience of a physical court, as far as possible and guarantees fairness. Fairness implies transparency in procedures, conspicuous

impartiality and consistency, explanation of rules and decisions, and the promotion of procedures that give parties a voice in the proceedings.⁵⁴ This is especially critical in criminal proceedings where the liberty of an individual is at stake. One of the most worrying findings of this rapid review is that in certain courts, the requirement of the production of unndertrial prisoners before the judge was often dispensed with for online hearings. Fair trial safeguards like production of the accused and the right to be represented must be substantively integrated into the design of online hearings and not left to judicial discretion.

What also emerged from this review is that a significant drawback of online hearings in district courts was the bar on public access to such hearings. Such a bar on public access to court proceedings violates the principle of open justice. It weakens public trust and confidence in the courts and reduces the credibility of the judiciary as an institution. Certainly, there are practical issues with allowing public access to online hearings but these can be managed quite easily even with the current state of technology. Judges have complained of disturbance caused by members of the public when they join online hearings, making it difficult for lawyers to argue their cases and for judges to follow what the lawyers are saying.⁵⁵ However, these problems can be solved with modifications in the design of online hearings and need not lead to the extreme step of barring public access. For example, members of the public can be provided with a different level of access from lawyers and litigants, where they are kept on mute with their video turned off.

Suitability of case types and stages for online hearings

Courts across the country are now looking at a hybrid model of working, with some cases being online and some in physical courts. To make such a hybrid model work, it is important to decide what types of cases and what stages can be heard online. Karnataka's SOP for re-opening of courts states that priority shall be given to hearing of interlocutory applications, hearing of final oral arguments and recording of evidence in part-heard civil and criminal cases.⁵⁶ Other states need to frame similar guidelines to give some measure of certainty to litigants and lawyers regarding the progress of new and old cases.

There seems to be a consensus among the respondents against conducting evidence hearings online. The inherently physical nature of the examination of witnesses and marking of documents makes it difficult to replicate online. However, further research

⁵⁴ *Mahender Chawla v. Union of India* WP (Criminal) No. 156 of 2016.

⁵⁵ *Sofi Ahsan*. 2020. 'Delhi HC judge bars public, media from virtual hearings' *The Indian Express*, 28 September, available online at <https://indianexpress.com/article/cities/delhi/delhi-hc-judge-bars-public-media-from-virtual-hearings-6623252/> (accessed on 29 September 2020)

⁵⁶ High Court of Karnataka. 2020. *Highlights of Modified Standard Operating Procedure for the District and Trial Courts Effective from September 28, 2020*.

needs to be carried out to study the potential of conducting evidence hearings online and the prerequisites for doing so.

The respondents seem to be satisfied with the use of online hearings for bail matters. The nature of bail hearings is such that the arguments are not very complex and the nature of the contestation between the parties is not difficult for a judge to comprehend. However, it is essential in online bail hearings for the undertrial prisoner to be produced from prison.

Further research is required to identify other cases and stages suitable for online hearings. Some examples may be cheque bounce cases, money recovery suits, and mutual consent divorces.

Way ahead

The shutdown of courts across India provided an opportunity to adapt to digital modes of working. The large strides made in this regard, albeit in unfortunate circumstances need to be evaluated and improved upon. It is important to not lose this momentum and institutionalise a hybrid model of working along with systems like e-filing, e-payment while safeguarding due process and ensuring access to justice to people on both sides of the digital divide.

This rapid review is intended to provide the grounding for further investigations into coping with the delivery of justice during emergencies and the move to virtual courts. There is a need to capture the experiences of other stakeholders such as judges, court staff and litigants as well. A larger survey of lawyers from other parts of India is also required to capture other possible perspectives. It would also be interesting to understand the impact of online hearings on outcomes.

Table of cases

1. *Court of its own motion v. State*, W.P. (CRL.) 779/2020 in the High Court of Delhi [April 9, 2020].
2. *In Re: Contagion of Covid 19 Virus in Prisons*, Sua Motu Writ Petition (C) No. 1/2020 in the Supreme Court of India.
3. *In Re: Guidelines for Court Functioning Through Video Conferencing During Covid-19 Pandemic*, Sua Motu Writ (Civil) No.5/2020 in the Supreme Court of India .
4. *Rex v. Sussex Justices*, [1924] 1 KB 256.
5. *Swapnil Tripathi v. Supreme Court of India*, Writ Petition (Civil) No. 1232 of 2017 in the Supreme Court of India.

Table of abbreviations

1.	COVID 19	Severe acute respiratory syndrome coronavirus 2 or SARS-CoV-2
2.	CrPC	Code of Criminal Procedure, 1973
3.	E-Courts	Electronic courts
4.	e-filing	Electronic filing
5.	FAQs	Frequently asked questions
6.	IT	Information technology
7.	PDJ	Principal District Judge
8.	Supreme Court	Supreme Court of India
9.	SMS	Short message service
10.	SOP	Standard Operating Procedure
11.	WAN	Wide area network

Annexure

Survey of lawyer experiences

1. Name
2. Phone number
3. Email ID
4. Age
5. State
 - a. Delhi
 - b. Karnataka
 - c. Madhya Pradesh
6. District in Delhi
 - a. Central Delhi
 - b. Shahdara
7. District in Karnataka
 - a. Bengaluru
 - b. Dakshina Kannada
 - c. Kalaburagi
8. District in Madhya Pradesh
 - a. Barwani
 - b. Bhopal
 - c. Morena
 - d. Sidhi

Experiences when courts were shut during the COVID lockdown

9. How many of your cases were heard through video conference when courts were shut due to the COVID lockdown?
 - a. 0
 - b. 1
 - c. 2

- d. 3
 - e. 4
 - f. 5
 - g. Above 5
10. Case type of the case where you were heard through video conference when courts were shut due to the COVID lockdown
11. What was the nature of the case(s)?
- a. Civil
 - b. Criminal
 - c. Both
12. Was the case urgent in nature?
- a. Yes
 - b. No
13. Are there guidelines for what is an urgent case or is it decided according to the registry's discretion?
- a. Guidelines have been provided
 - b. Registry discretion
 - c. Both
14. What was the subject matter of the case? (e.g. property, family, crime, etc)
15. Did you submit any pleadings/documents to the court during lockdown?
- a. Yes
 - b. No

Submission of documents

16. If yes, did you submit the pleadings/documents online or physically in the court?
- a. Physical submission in court
 - b. Online submission
17. If you submitted any pleadings/documents online during the lockdown, how easy was it for you to submit the documents to the court?
- a. Very difficult
 - b. Not easy
 - c. Comfortable

- d. Easy
 - e. Very easy
18. What pleadings/documents did you submit online to the court during the lockdown?
19. If you submitted pleadings/documents online during the lockdown, did you have to submit physical copies of the pleadings/documents to the court?
- a. Yes
 - b. No
 - c. Sometimes

Video conference hearings

20. How did you attend the video conference hearing?
- a. Designated room in court
 - b. Personal/office computer
 - c. Mobile phone
 - d. Tablet
 - e. Other (please specify)
21. What was the criteria used to list cases for hearing through video conference during the lockdown?
- a. Urgent cases
 - b. Depending on subject matter of case
 - c. Depending on stage of case
 - d. Only civil cases
 - e. Only criminal cases
 - f. Other (please specify)
22. How comfortable were you with accessing the video conference (VC) and navigating through it?
- a. Not comfortable
 - b. Found it difficult
 - c. Was able to access and navigate
 - d. Comfortable
 - e. Very comfortable

23. What stage was the case at when heard through video conference?
24. How were you notified about the hearing through video conference?
- a. Phone call
 - b. Text message
 - c. Email
 - d. Whatsapp
 - e. Online causelist
 - f. Other
25. Were the advocates of all parties involved present at the video conference hearing?
- a. Yes
 - b. No
 - c. Not all
26. Was your client (party to the case) present at the video conference hearing?
- a. Yes
 - b. No
 - c. Not all
27. Was there any witness testimony taken through video conference?
- a. Yes
 - b. No
28. Did you feel you were given the same opportunity to present your case as in a physical courtroom hearing?
- a. Not at all
 - b. Not really
 - c. Somewhat
 - d. Almost the same
 - e. Yes, absolutely
29. Do you feel having video conference hearings helps save time for lawyers?
- a. Not at all
 - b. Not often

- c. Not sure
- d. Yes, sometimes
- e. Yes, definitely

30. Any other feedback regarding hearings through video conference?

31. Do you think people did not file as many cases as they normally would during the lockdown period?

- a. Yes
- b. No
- c. Not sure

Experiences after courts have re-opened following the COVID lockdown

32. Has there been any change in the number of people who have approached you with cases after the COVID lockdown?

- a. Yes, number of new cases I have got has reduced
- b. Yes, number of new cases I have got has increased
- c. No, I am receiving the same number of cases as I did before COVID

33. Have courts re-opened in your district?

- a. Yes
- b. No
- c. Some courts have re-opened

34. Is there a facility for e-filing cases in your district?

- a. Yes
- b. No
- c. For some cases

E-filing

35. If yes, have you used the e-filing facility?

- a. Yes
- b. No

Hearings after courts have re-opened

36. What is the criteria used to list cases for hearing after the courts have re-opened?

- a. Urgent cases
- b. Depending on subject matter of case
- c. Depending on stage of case
- d. Only civil cases
- e. Only criminal cases
- f. Other (please specify)

37. How many cases are being listed on average per day (per courthall) in your district after re-opening?

- a. 0 - 10
- b. 11 - 20
- c. 21 - 30
- d. 31 - 40
- e. 41 - 50
- f. 51 - 60
- g. 61 and above

38. Are time slots being provided for the cases listed in a day?

- a. Yes
- b. No
- c. Sometimes

39. How many cases are actually being heard on average per day in your district after re-opening?

- a. 0 - 10
- b. 11 - 20
- c. 21 - 30
- d. 31 - 40
- e. 41 - 50
- f. 51 - 60
- g. 61 and above

40. Would you feel comfortable having hearings through video conference even for regular court hearings?

- a. Not comfortable

- b. Would not prefer it
- c. Indifferent
- d. Comfortable
- e. Very comfortable

41. If you are not comfortable, what assistance would make this experience better?

- a. Training video
- b. Helpline phone number
- c. Help desk at court
- d. FAQs
- e. Better network connectivity
- f. Other (please specify)

42. What kind of cases do you feel can be heard through VC?

43. What kind of cases do you feel should not be heard through VC?

44. Are there restrictions on people attending hearings in courts in your district?

- a. Yes - restricted number of people can physically enter courts
- b. Yes - restricted number of people can participate through video conference
- c. Yes - only advocates are permitted to enter courts, parties are not allowed
- d. Yes - a person can only attend a case hearing if they are a party/advocate to the case
- e. No restrictions
- f. Other (please specify)

45. What do you think the lockdown has taught us to change in the way courts function?

46. Do you think people did not file as many cases as they normally would after courts have re-opened?

- a. Yes
- b. No
- c. Maybe