

Access to Justice for Women Litigants in Family Courts *Vis-à-Vis* Prospect of a Virtual Court System: A Post- Pandemic Study With Special Reference to the Family Court in Ahmedabad District of Gujarat, India

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Abstract

The COVID-19 pandemic has deeply affected the way Indian courts function and has disrupted the normal course of adjudication. While the higher judicial bodies in India such as the Supreme Court and High Courts were quick to adapt to the new norm, this was not the case for the courts at the lower rung of the hierarchy. Family Courts, where matrimonial disputes related to adoption, maintenance and divorce are adjudicated, was not an exception to this. Lockdown halted physical hearings which impacted recourse to access of Court and facilities provided to litigants. Prolonged lockdown periods have led to the suspension of case hearings which has led to several hassles for both the women litigants seeking alimony and maintenance in matrimonial cases, as well as the registered advocates practising before the family courts. The fate of these cases, along with the pending cases in family courts, remains undecided. This is a very worrisome situation, especially for women litigants whose survival depends upon the speedy resolution of cases. Through this research paper, the researcher aims to explore the current scenario at the family courts of India and the level of severity of pending cases which might have hampered the justice delivery mechanism through analysis of statistics and interviews with stakeholders. This paper also aims to navigate the possibilities of introducing a virtual court system in India in order to help the litigants who faced financial and other losses during the suspension of court hearings.

Keywords: COVID 19, Justice, Post-Pandemic , Court, Lockdown.

I. Introduction

Law is the basic foundation on which the entire mechanism of access to justice rests. Access to justice, in general, includes inexpensive, fair and speedy justice.¹ Access to justice for the protection of fundamental rights of the weaker sections of India is

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¹ V R Krishna Iyer, *Law and Life*, Vikas Publishing House, India, 1979.

almost illusory due to poverty, illiteracy and lack of knowledge.² When a woman seeks remedy against violation of rights outside the household or immediate community, members of the family and society view her action as a fundamental threat to the institution of marriage and security.³ Despite the Constitutional provisions and special laws specifically enacted to promote gender justice, improvement of the status of women continues to be a cause of concern not only in India but in majority of the countries around the world, including the most developed ones.⁴

Under the powers guaranteed by various provisions of the Indian Constitution, the State has enacted many women-specific legislations for shielding women against social discrimination, violence, atrocities and social evils like child marriage, dowry related deaths and rape among others. However, the underlying concern lies with the non-implementation of laws.⁵ Personal or family laws includes laws related to marriage and its related aspects such as separation, succession, inheritance, maintenance, adoption, children's custody and guardianship. In all these affairs, religion based personal laws still exercise an upper-hand due to which the standing power of both the parties are not equal. Societal norms and practises arising out of such personal laws tend to look down upon women approaching the Court for such matters, thereby creating an added disadvantage for female litigants.

Family Court has the jurisdiction to decide upon matrimonial disputes by exercising the State's judicial power conferred on it by a Statute in a judicial manner and declaring the rights of both the parties.⁶ It is obligated under law to settle and decide the disputes by relying upon the evidence produced by the parties.⁷ Section 7 of the Act declares Family Court as a District Court or subordinate Civil Court to which provisions of Civil Procedure Code (C.P.C) and the Code of Criminal Procedure (Cr.P.C.) have been applied by Section 10 of the Act.⁸ The procedure adopted at the Court is simplified to a great extent in order to provide justice to the litigants in a speedy and hassle-free way without involving them in legal complexities.

However, the pandemic has adversely affected the mode of adjudication in Family Courts. This research paper will navigate through the establishment of Family Courts in India. The study is a statistical research on the post-pandemic situation with Family Court of Ahmedabad district of Gujarat taken as the sample study. To ascertain the depth of crisis and the pendency of cases, the record has been analysed till the year 2014 as provided through the data of National Judicial Data Grid (NJDG). To get a clearer picture of the current scenario at Family Court at Ahmedabad, the Researcher interviewed members of Bar and Bench to understand their perspective on the status quo. To manoeuvre the Family Courts out of the impending crisis, the options of

² A.S. Anand, *Approaching the 21st Century: The state of the Indian Judiciary and the Future Challenge*, 3rd edition, 2008.

³ P D Kaushik, *Women Rights Access to Justice*, 1st edition, 2007.

⁴ Anand (n 2), p. 13.

⁵ Ibid, p. 25.

⁶ E.L. Bhagiratha Rao, *Marriage Laws and Family Courts Act*, 7th edition, 2008.

⁷ Ibid.

⁸ Ibid.

Virtual Courts and their utility vis-à-vis their objective will be analysed along with the suggestions derived from other jurisdictions of the world. As the second-most populous country with a secular framework dominated by personal laws, Indian Family Courts have their own distinctive adversities. The steering out of the pandemic-induced crisis will serve as a specimen for advanced global legal studies in the post-pandemic legal reformation.

II. Family Courts in India: Development, Objective and Present Day Functioning

A. Historical Development

Family Courts were established in India after the enactment of the *Family Courts Act* on 14 September 1984. Before the implementation of the *Family Courts Act* in India, suits and proceedings relating to matters concerning family disputes were to be dealt by a regular civil court as provided in by Order XXXII-A of the C.P.C.⁹ Before the setup of Family Courts in India, every petition for judicial separation had to be presented before the District Court within the local limits of whose ordinary civil jurisdiction the marriage was either solemnised, either party resided or is currently residing.¹⁰

B. Objective of the Act

The Act provides for a judicial institution which will both facilitate the expedient disposal of cases relating to family courts as well as reduce the existing burden of the local level judicial bodies. The intention and determination of establishing Family Courts when exercising powers and jurisdiction relating to the matters referred to in explanation to sub-section 1 of the Act is a Civil Court.¹¹ It is a Criminal Court equivalent to the Magistrate 1st Class Court when it is functioning as per the powers and jurisdiction under Chapter IX of the Cr.P.C.¹²

In the case of *Munna Lal v. State of U.P.*¹³, the issue before the Division Bench of the Allahabad High Court was whether Family Court is a Court or not. It was claimed that firstly, the aim and object of the Act is not to give verdict on a dispute but to settle it. Secondly, the legal practitioner is not a mandatory representative and thirdly, there is no essential requirement to record evidence and witnesses. All these factors imply that Family Court is not a Court.

⁹ Ibid.

¹⁰ Devinder Kumar Singla, *Judicial Separation under Hindu Law: Statutory Provisions of the Hindu Marriage Act and Judicial Approach*, Deep and Deep Publication, India, 1992.

¹¹ Ibid.

¹² Ibid.

¹³ *Munna Lal v. State of U.P.*, Allahabad High Court, 1990.

C. Establishment of Family Courts in India

Section 3 of the Family Courts Act provides for the formation of Family Courts by respective State governments after consultation with the concerned High Courts.¹⁴ The Act calls for the establishment of a Family Court in every town or city where the number of residents exceeds more than a million. As per Section 5 of the Act, an association of any social welfare agency or professionals may be permitted which would empower the Family Courts to exercise its jurisdiction more efficiently and in consonance with the purpose of the Act.¹⁵ The Family Court exercises jurisdiction equivalent to a district or subordinate civil court.¹⁶ Further, as per Section 8 of the Act, no district court or any subordinate civil court or a Magistrate shall have or apply any jurisdiction in respect of the above-mentioned suits and proceedings.¹⁷

D. Procedure adopted by the Family Court in India

Family Courts follows the same procedure as the proceedings under Chapter IX of the Code of Civil Procedure, 1973.¹⁸ It is the responsibility of the Family Court to make attempts for settlement between parties.¹⁹ If it appears that there is a practical likelihood of a settlement between the parties at any stage, the Family Court may adjudge the proceedings for such period as it thinks fit to enable attempts to be made to influence such accord.²⁰ For such settlement, the Family Court has the freedom to lay down its own system with a view to arrive at a settlement to ascertain the truth of the facts claimed by one party and denied by the other.²¹ The Court may grant the services of an advocate only in cases where the parties might not be well equipped about legal procedures and other legal nuances.

Despite such relaxations, as per the *Rajasthan State Women's Commission Report for 2003*,²² the Family Courts have not been able to ensure timely justice to litigants, especially women litigants, in issues related to maintenance, protection from financial deprivations and speedy disposal of cases. The Report also highlighted that the spouse abruptly stops making payments soon after the final hearing takes place, which is the prime grievance of the litigants. Few other observations were that the majority of the cases involved maintenance where most women who filed

¹⁴ 'Family Courts in Varanasi: A Case Study,' *National Institute of Public Cooperation and Child Development*, 2007, India.

¹⁵ *The Family Courts Act*, 1984, India, s. 5.

¹⁶ Singla (n 10).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² 'Annual Progress Report', *Rajasthan State Women Commission*, 2003.

for maintenance often had no fixed source of income of their own. Furthermore, nearly three-fourth of the female litigants who were interviewed claimed that the sanctioned awards were never fully honoured nor enforced despite bearing large sums as courts expenses.

III. Analysis of Current Functioning of Family Court in Ahmedabad

There were 535 functional Family Courts in India as per the official website dated 31 December 2018.²³ Uttar Pradesh had the maximum number of Family Courts (78), followed by Madhya Pradesh (58), Rajasthan (39) and Bihar (39).²⁴ The States/Union Territories of Andhra Pradesh, Dadra and Nagar Haveli, Daman and Diu, Himachal Pradesh, Meghalaya and Mizoram had no Family Courts in their jurisdiction.²⁵

A. Relevant Statistics for further development

In this section, primary data obtained on the pendency of the cases have been analysed in the light of the various lockdown stages which hampered the working of the Court's Registry. To tabulate month wise data and establish the trend in filing of cases, 1492 cases have been tabulated numerically through NJDG.

Table A.1. Month wise Distribution of cases filed before the Family Court, Ahmedabad in the year 2020 and 2021

| Month | No. of cases filed |
|---------------|--------------------|
| January | 16 |
| February | 3 |
| March | 9 |
| April | 0 |
| May | 0 |
| June | 0 |
| July | 11 |
| August | 135 |
| September | 220 |
| October | 236 |
| November | 161 |
| December | 158 |
| January 2021 | 154 |
| February 2021 | 188 |
| March 2021 | 201 |

Source: National Judicial Data Grid, 2021

²³ 'Family Courts', available at <https://doj.gov.in/sites/default/files/Family%20Courts%20pdf.pdf>, accessed on 07 April 2021.

²⁴ Ibid.

²⁵ Ibid.

Majority of the cases are filed under Section 125 of the Code of Criminal Procedure, which provides for maintenance. Out of the 4450 criminal cases filed by women litigants in the Ahmedabad Family Court under Section 125 (3) of Criminal Procedure Code before 31 March 2021, 1973 remain pending. Apart from maintenance, the other cases which were filed were concerning divorce, judicial separation, declaration of spouse, custody and guardianship.

The first case of coronavirus in India was detected on 27 January 2020.²⁶ The Government of India implemented a nation-wide lockdown in different phases to curb the spread of the infection: Phase 1 (25 March to 14 April), Phase 2 (15 April to 3 May), Phase 3 (4 to 17 May) and Phase 4 (18 to 31 May).²⁷ As evident from table A.1, no cases were filed in the Family Court in the months of April, May and June. The Government lifted the lockdown from 1 June 2020 with restrictions in certain containment zones identified by public health authorities.²⁸ Although filing began in July, only 11 cases were filed. The reason for the low number of cases was a lack of awareness regarding the resumption of official works of the Court. This unawareness can be attributed both to the litigants as well as the Court where the court officials should have taken more efforts in disseminating information regarding reopening of Courts. The continued fear of coronavirus infection also made it difficult for the litigants to physically approach lawyers and Family Courts.

Once the filing was resumed in the month of July and the lockdown regulations were gradually eased, the number of litigants approaching the Court increased steadily. Table A.1 shows an increase in the number of filings in August, September and October with a slight decrease in the month of November and December.

It was rare for Family Courts to have a month without any new case filed in its early years of establishment. However, the closure of Registry during lockdown restricted litigants from approaching the Court, which had many repercussions.

Firstly, the maintenance allowance given to women litigants, children and parents in cases of separation under Section 125 and Section 488 of CrPC, and Section 18 of Hindu Adoption and Maintenance Act, 1956 could not be secured. The plight for the women litigants' dependent solely on allowance is very concerning in this time of financial uncertainty when the entire economic cycle ceased to run.

Secondly, in cases related to marriage such as decree of judicial separation, restitution of conjugal rights, dissolution of marriage or nullity of marriage, no new petition could be filed during the lockdown which could have led to several financial, social and mental problems.

Thirdly, in cases of adoption where the guardianship or custody or access to minor

²⁶ M.A. Andrews et al., 'First confirmed case of COVID-19 infection in India: A case report', *Indian Journal of Medical Research* p. 490, volume 151:5, 2020.

²⁷ Balram Rai, Anandi Shukla & Lakshmi Kant Dwivedi, 'Dynamics of COVID-19 in India: A review of different phases of lockdown', *Population Medicine*, volume 2:21, 2020.

²⁸ Ibid.

was in question, the restriction in access to court could have raised considerable difficulties both to the minor as well as the guardian.

Table A.2. Year Wise Distribution of pending cases in the Family Court of Ahmedabad District (Up to 31/03/2021)

| Year (in descending order) | No. of cases pending |
|----------------------------|----------------------|
| 2021 | 125 |
| 2020 | 949 |
| 2019 | 1874 |
| 2018 | 742 |
| 2017 | 200 |
| 2016 | 90 |
| 2015 | 16 |
| 2014 | 0 |

Source: National Judicial Data Grid, 2021

The pendency of cases has always been a block on the judiciary in India. The picture is not different in the Family Courts as well. The Family court in Ahmedabad, established in the year 2014, does not have any pending cases from that year. However, as evident from table A.2, cases that dates back to 2015 remains pending in the Court. As of 31 March 2021, 1973 out of the 4450 criminal cases filed by women litigants in the Ahmedabad Family Court under Section 125 (3) of Criminal Procedure Code remain pending.

One interesting observation is noted in the year 2020 which saw a 60.4% drop in the number of cases from 2019, contrary to the pattern of upsurge in the quantum of pending cases. This is a notable trend as the year 2020 saw the Courts being closed for around 3 months. The disposal of cases at this remarkable speed, hence, makes it an important observation. A similar trend can be seen in the year 2021 as well, although it has to be further analysed as the data in record is limited only till March.

B. Views of Concerned Stakeholders

1. Views of practising lawyers

Similar concerns had been shown by Advocate Aarushi Desai who has been practicing in Family Court for the past five years.²⁹ According to her, lockdown increased matrimonial disputes and will certainly lead to higher numbers of cases in the near future. Matrimonial disputes were increasing during lockdown as cases

²⁹ *How the pandemic impacted Family Courts*, Aarushi Desai, Advocate at Gujarat High Court, India, March 2021.

of domestic violence were increasing, especially in the village area, due to sudden unemployment, sudden withdrawal of alcohol for alcohol addicts and joint family being forced to reside in small living spaces. Another concern was that warrants were not being issued during lockdown and even post-lockdown. Due to this, maintenance cases were not being decided which sometimes led one party to take undue advantage of the other.

2. Views of sitting Family Court Judges

To get hold of the views of the judges in this unprecedented situation before the Judiciary, the researcher interviewed Mr. Rajendra Ganerival, Hon'ble Judge of Family Court of Palanpur district of Gujarat.³⁰ According to him, the Family Court opened post lockdown on the directions of the Hon'ble High Court of Gujarat. The filing of cases in Palanpur District Court can only be done physically through 'field cover mode' as no arrangement of online filing is available as of yet. Fast-track or such filing procedure for speedy filing of urgent cases related to maintenance has not been implemented either.

As far as resorting to online procedure is concerned, only the delivery of judgements had been conducted using the video conferencing facility. In some bigger districts, with a comparatively bigger backlog of cases, infrastructure for online conferencing has been provided. Though the High Court had issued directions for online working procedure, no training sessions of registrar or other court officials had taken place. Further, no special infrastructure had been provided for facilitating the shift from physical hearing to online virtual system. When asked about the transition from physical to online setup, especially in cases related to mutual separation and divorce where there is a close-knit interaction between the parties and the counsellors, he pointed out the essential role of all the stakeholders in making this transition a success. The Court is bound to function as per the convenience of the parties according to which the Court has to resort to physical proceedings if the parties cannot appear through an online medium. For an instance, if deposition is to be recorded of either parties, such an activity has to be conducted physically as the present infrastructure does not support online deposition facility. However, if the High Court issues guidelines for the online conduction of certain type of matters, the Family Courts are bound to act as per the directions.

3. Evaluating the Efficacy of Virtual Family Courts during the Pandemic

The issues addressed by Family Courts are very delicate in nature. The intention of the legislature, therefore, was to create a separate judicial body which can act as a safe space and facilitator in speedily addressing these issues in an enclosed and trusted place. The proceedings are in-camera with relaxations in the legal

³⁰ *How the pandemic impacted working at Family Courts*, Rajendra Ganerival, Hon'ble Judge at Palanpur Family Court, India, April 2021.

stringencies in order to expedite the process in a fair and conciliating matter. The pandemic has forced Courts to shut its door closed and open a new window of Virtual Courts. It is yet to be seen how effectively this system can be implemented in Family Courts which rely on cohesive caucuses.

A. Post Lockdown changes adopted by Courts in India

The coronavirus required a complete shutdown of almost all the activities of the country, even barring the most essential ones required for survival. Consequently, all the judicial bodies, Courts and tribunals had to be shut down for a temporary period. The concept of virtual courts had been raised through scholarly discussions before the lockdown but it had not been treated as an immediate necessity. One of the primary reason for such reluctance could be the overhauling of the complete system from the very bottom of the structure which is a herculean process.

What was earlier seen as a luxury became a necessity during the pandemic. Supreme Court took the first step and initiated online hearings of urgent cases which was soon followed by various High Courts. The shift to virtual courts initially led the Judges and advocates to face a lot of difficulties with initial technical glitches and official mismanagement. Online hearings are continued by the Courts till the date physical hearings are resumed on a full-fledged basis. The Supreme Court exercising its civil original jurisdiction under powers provided through Article 142 of the Constitution released the guidelines for Court functioning through video conferencing during the COVID-19 pandemic.³¹

IV. Virtual Courts: Needs and Challenges

The integration of the judicial system with technology was flagged off almost two decades back with the 'e-court mission mode project'. Hence, virtual courts as a concept is not entirely alien to the judiciary. It has endorsed substantial gains to be made by the Indian judiciary if it simplified routine operational activities, case-wise pendency and provided a digital infrastructure for online service delivery.³² The current pandemic and the digitalization of judicial activities of Courts can change the rules in Courts.³³ The gaps in procedural legislations and other technical and legal limitations of the rules and institutions of civil procedural law can considerably affect access to justice.³⁴

As per the 103rd Report (Interim) on functioning of virtual court proceedings through video

³¹ *Suo motu writ civil no. 5/2020*, Supreme Court of India, India, 2020, available at https://main.sci.gov.in/supremecourt/2020/10853/10853_2020_0_1_21588_Judgement_06-Apr-2020.pdf.

³² Deepika Kinhal et al., 'Virtual Courts in India: A Strategy Paper', *Vidhi Centre for Legal Policy*, India, 2020.

³³ Liliana Cătălina Alexe, 'Restricting the stage of Oral proceedings in some cases pending in Courts- Is such a transitory solution necessary in the pandemic context or not', *Analele Universității Titu Maiorescu*, 2020, p. 102.

³⁴ Tejasvi Pandit & Manovi Mitra, 'Custody of children', *The SCC ONLINE BLOG*, 25 November 2019, available at <https://www.sconline.com/blog/post/2019/11/25/custody-of-children>, accessed on 14 March 2021.

conferencing laid on the table on both the Houses of the Parliament, during the pre-COVID era, the VC was set up principally for piloting remand matters to avert movement of prisoners between jails and Courts.³⁵ Such services have been operationalized between 3240 Court complexes and corresponding 1272 prisons.³⁶

i. The Needs

If virtual courts are to become the need of the future, requisite efforts must be taken at this stage for the smooth transition from offline to online setup. Necessary skills such as *Digital literacy* is essential for individuals willing to enter legal professions either in capacity of a lawyer or a court official. To transform this unprecedented crisis as a learning opportunity, the Committee recommended the Bar Council of India to include computer course as one of the topics in the curriculum of law students in order to help them adapt to the digitalized legal system.³⁷

Technologically advanced nations such as the United Kingdom and other countries from the European Union, China, United States of America, Singapore and Hong Kong have been relying on Online Dispute Resolution (ODR) for a considerably long period. The adjudication used to be limited to civil disputes such as consumer disputes. With COVID-19, these countries were quicker in adapting to the expansive ODR system given their already gained momentum in this direction. The Indian judiciary can adopt some of the prominent features from these ODR systems and implement it accordingly to the Indian setup. For example, the Department of Justice of the Government of the Hong Kong Special Administrative Region has announced the “COVID-19 Online Dispute Resolution Scheme” which is a multi-tiered ODR process developed to resolve disputes arising from COVID-19, especially those involving MSMEs.³⁸ The UK, through the *Coronavirus Act, 2020*, accommodates open courts principles by making specific provisions for recording and broadcasting court proceedings conducted via video conferencing.³⁹

In addition to the Supreme Court guidelines, a specific law or an overarching legislation is needed to address the frequent problems evolving from the continuing use of technology and setting up of virtual courts.⁴⁰ The need is to utilize unprecedented times for implementing the pending and introducing desired amendments.

³⁵ 'Report on the functioning of virtual court proceedings through video conferencing (interim report)', *Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Rajya Sabha, Parliament of India*, 2020, India.

³⁶ Ibid.

³⁷ Ibid.

³⁸ 'COVID-19 Online Dispute Resolution (ODR) Scheme', *Department of Justice, Hong Kong*, 2020, available at https://www.doj.gov.hk/eng/public/blog/20200413_blog1.html, accessed on 25 February 2021.

³⁹ *Coronavirus Act 2020*, 2020, United Kingdom.

⁴⁰ Family Courts in Varanasi: A Case Study (n 14).

ii. The Challenges

The primary factor which impairs the virtual court systems is the issue of *digital divide*. Majority of the lawyers practicing at the Bar are not technologically equipped. Even if they learn the nuances of virtual courts, many lawyers are not financially well off to support the infrastructure and additional expenses the virtual setup will incur. Furthermore, the internet speed and Wi-Fi connectivity is not uniform in the country with rural areas and 2nd or 3rd tier cities receiving a very poor bandwidth. The litigants and lawyers living in such areas are at a disadvantaged position in comparison to those litigants and lawyers having the means and resources to afford a seamless virtual hearing. This also impairs the access to justice of a part of population who will be made inaccessible to the justice delivery mechanism. Such digital divide is bound to make access to justice inaccessible and unaffordable.

Another concern is regarding the *transparency* and *openness* of virtual courtroom hearings. It is claimed that virtual hearings are not in consonance with the concept of open court encapsulated in the Constitution of India under Article 145(4), Section 327 of the CrPC and Section 153 of the CPC.⁴¹

It might be appropriate to say that barring few High Courts, a big share of High Courts do not have advanced IT infrastructure and facilities such as the ones in North-East India. Currently, Courts are using third party applications for conducting virtual hearings such as Zoom and Cisco Webex. Such online platforms are insecure modes of hearing as it does not guarantee hundred percent safety of data protection and privacy. The Committee had recommended the Ministry of Law and Justice and the Ministry of Electronics and Information Technology to develop a new platform using indigenous software applications for Indian judicial system to eliminate dependency on third party platforms which creates security concerns.

Budgeting and planning in the judiciary has been one of its weakest competencies. While there has been a mandate for better sovereignty for the judiciary in financial planning, the way judiciary handles its administration, which comprises budgeting and planning for its numerous needs, seems inadequate.⁴²

During the pandemic, the judiciary was caught off-guard in respect to technology integration into its routine working despite the availability of digital infrastructure.⁴³ Therefore, the crucial task before the judiciary is not to negotiate justice delivery courts during the rush to create technology driven courts.⁴⁴

⁴¹ *Suomotu writ civil no. 5/2020* (n 32).

⁴² Chitrakshi Jain, Tarika Jain & Shreya Tripathy, 'Back to Basics: A call for better planning in the Judiciary', *Vidhi Centre for Legal Policy*, 2019, available at <https://vidhilegalpolicy.in/2020/03/27/back-to-basics-a-case-for-better-planning-in-the-judiciary>, accessed on 25 February 2021.

⁴³ *Suomotu writ civil no. 5/2020* (n 32), p. 20.

⁴⁴ *Ibid*, p. 17.

B. Can Virtual Courts be a Reality for Family Courts?

On 25 January, 2021, a PIL was filed in the Gujarat High Court to seek resumption of physical functioning for family courts in Ahmedabad district along with three other districts of Gujarat. The reopening of Family Courts as well as the Magisterial Courts was demanded because the condition of the women, children and elderly who were dependent on court-ordered maintenance had worsened after the suspension of hearings. It has been contended that in most cases, the payment on monthly maintenance has not been made since the country went into lockdown and there was no remedy available for those destitute women to recover the pending amount.⁴⁵ Thus, even if the filings of new cases resumed in the month of July, there is no certainty when the pending cases will be adjudicated, particularly in cases related to maintenance allowance which calls for urgency.

Such an unprecedented situation has compromised justice to the thousands of litigants whose cases remain pending without any certainty about the next hearing. The question which arises here is if the virtual conferencing technology which is currently being used by the Supreme Court and High Courts since the lockdown was implemented can be used for the hearing of pending cases at Family Courts.

It has been almost a year since the higher judiciary has resorted to a virtual courtroom system for the disposal of cases. One reason the alternative system has not been introduced in Family Courts could be the nature of jurisdiction of the Family Court. As stated earlier, a Family Court is a civil Court. The civil proceedings, generally, have been designed by lawmakers as a trial 'conceived for the courtroom', in which the human factor and the direct perception of proceedings may be considered as an important element.⁴⁶ These elements cannot be completely fulfilled in a virtual court system. Nonetheless, a middle ground needs to be established to address the issues of pending cases.

C. Finding the middle way to safeguard access to justice

Different nations of the world have adopted different strategies to cope with judicial emergency during the COVID-19 pandemic. In response to the COVID-19 outbreak, the court system in the USA postponed all non-essential functions, where matters of Family Court relating to child protection proceedings, juvenile delinquency proceedings, family offences and support orders were deemed as essential functions.⁴⁷ The in-person operation began quite soon and the court system was reopened on a rolling basis from 18 May 2020 onwards.

⁴⁵ 'PIL seeks functioning of Family Courts', *Times of India*, 26 January 2021.

⁴⁶ A.K.A. Rahmaan, 'Family Courts: Evidence. Procedure and Role of Lawyers', *Tamil Nadu State Judicial Academy*, January 27, 2021.

⁴⁷ John M Tietler, Nicholas W Lobenthal & Paul D Getzels, 'Family Law in the United States: New York: An Overview', *Thomson Reuters Practical Law*, 01 October 2020, available at [https://uk.practicallaw.thomsonreuters.com/1-571-0269?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/1-571-0269?transitionType=Default&contextData=(sc.Default)), accessed on 14 March 2021.

In the UK, although remote hearings remain a prominent method for hearings during the pandemic, many hybrid hearings were carried out where one or more of the participants were in person and some fully attended hearings.⁴⁸ The Courts, through various judgements, have made it overt that it is a matter of judicial discretion in each case whether remote hearing is apt for the case or not. However, any delay can be detrimental if there is a need to achieve finality in decision-making for families and children, and adjourning will only increase the backlog of cases in the system.⁴⁹ Furthermore, the divorce and financial remedy consented applications online services has been made available to practitioners advising clients in divorce and finances throughout this period.⁵⁰

The above discussed modalities enhance the access to justice in the current scenario where its undermining is highly feared. Given these possibilities of refining access to justice, it is necessary for the video conferencing system to be designed keeping the end-users in mind with suitable checks and balances for the security of citizens and safekeeping of data.⁵¹

The 2020 OECD Policy Paper highlighted the need of people-centric approach to justice during and after the pandemic.⁵² Although it is an accepted fact that access to justice is not an absolute right, ensuring 'equal access to justice for all' is a core pillar of 2030 UN Agenda for Sustainable Development in the form of Goal No. 16. The Right to access to the Courts may be subjected to certain limitations⁵³, alike the current situation where citizens are refrained from approaching the Court directly. However, such restrictions must comply with the principle of legality, proportionality and necessity, and be the least restrictive.⁵⁴ By its very nature, access to justice calls for directive by the State and regulation which may vary in time and place.⁵⁵

V. Conclusion and Suggestions

Access to justice was undermined in these exceptional times where courts had to be

⁴⁸ James Stewart and Rebecca Dziobon, 'Family Law in the UK (England and Wales): Overview', *Thomson Reuters Practical Law*, 01 September 2020, available at [https://uk.practicallaw.thomsonreuters.com/1-590-4465?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/1-590-4465?transitionType=Default&contextData=(sc.Default)&firstPage=true), accessed on 15 February 2021.

⁴⁹ Ibid.

⁵⁰ See 'MyHMCTS: Online case management for legal professionals', *GOV.UK*, available at <https://www.gov.uk/guidance/myhmcts-online-case-management-for-legal-professionals#what-is-myhmcts>, accessed on 16 March 2020.

⁵¹ 'Video Conferencing in Indian Courts: A Pathway to the Justice Platform', *Daksh*, 2020, India.

⁵² 'Access to Justice and the COVID-19 pandemic', *OECD and the Law & Justice Foundation of New South Wales*, 2020.

⁵³ Pandit & Mitra (n 35).

⁵⁴ Joint Declaration on Access to Justice in the context of COVID-19 pandemic, Inter-American Commission of Human Rights & UNHCR, 2021, Report no. 015/21, available at http://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/015.asp, accessed on 03 September 2021.

⁵⁵ *Golder v. The United Kingdom*, European Court of Human Rights, 1975, Application no. 4451/70.

closed globally due to the fear of the coronavirus. To address this legal hassle, the primary alternative was to resort to online medium for adjudication, which is being used in almost all developed nations. On the Indian front, courts promptly adopted the virtual e-court and gradually paved the way for a smooth transition from physical hearings to virtual ones. While the Supreme Court as well as the High Courts have the required infrastructure, technology, and skilled manpower to ensure hassle-free virtual court hearings, it is an unlikely expectation for the courts at the lower rung of judicial hierarchy which neither have the proper infrastructure nor technologically equipped staff. The switch to virtual justice system has, therefore, widened the already large digital divide.⁵⁶ Further, it is not an effective strategy to be used in matrimonial disputes. Family Courts are mediation and conciliation oriented where the Court aims to reconcile the parties by counselling. Online adjudication, however technologically advanced, cannot replace the actual courtroom setting, particularly in delicate family cases where physical presence is paramount in settling of disputes.

In countries like USA and UK, Family Courts have adopted a hybrid mode of hearing so as to maintain the essence of physical hearing while resorting to virtual system wherever required. Guidelines have been released in the UK Family Courts for Judges, professionals and counsellors for adopting the hybrid mode of hearing till the time physical hearings can be resumed.⁵⁷ The need of the hour calls for such modification in the current Indian setup to fasten the disposal rates of the pending cases. Some of the amendments which can be adopted at the Indian Family Courts are:

1. Cases involving maintenance allowance, where the husbands have stopped providing financial assistance during the lockdown to their wives, parents and children, must be heard urgently through the virtual court system. If the Family Court premise does not support the online system, a temporary bench can be created in the High Court. The necessary summons and warrants should be issued at the earliest to ensure the recovery of maintenance dues.
2. Cases of judicial separation, divorce by mutual consent and restoration of conjugal rights require counselling before proceeding to the court hearing. An online counselling, though possible, will not be effective in establishing communication between the couple and the counsellor. In this situation, a socially distanced in-camera proceeding can be organized in the chamber itself. Proper distance must be ensured between the parties and the counsellor and the documents should be sanitised afterwards. Other legal formalities can be completed by the advocates using online filing system.
3. In the cases of custody and guardianship, the presence of the concerned child is very crucial for the Court to settle the dispute. However, the safety of children cannot be compromised if there is any iota of risk involved in

⁵⁶ 'Access to Justice for all and the COVID-19 pandemic: Recommendations for Action', *World Justice Project*, 2020.

⁵⁷ 'The Family Court and COVID-19: The Road Ahead' UK Judiciary, October 2020, available at https://www.judiciary.uk/wp-content/uploads/2020/06/The-Road-Ahead_FINAL.pdf, accessed on 15 March 2021.

bringing the child to the courtroom. Online hearing must be regarded as the last resort in such situations. If possible, the Court must arrange for a hybrid hearing in order to maintain the objective of physically addressing the child by the Judge.

4. Cases involving property distribution and declaration do not necessarily call for a physical hearing and hence can be taken up through the online system till the time complete physical hearing commences.
5. The Government shall have to respond to the demand of the Family Courts in providing proper video conferencing gadgets with secured high speed internet connection and sufficient training to the Judges, Court Staff and advocates so that video conferencing is carried out without distressing the objective of in-camera proceedings.

The statistics reveal the depth of the crisis of the pending backlog of cases and the related financial, mental, social and emotional issues it is causing to the litigants. If access of justice is to remain unhindered, the virtual court system is the need of the hour. It will ensure that litigants, though remotely, will have recourse to the judiciary. In Family Courts, the adjudication process needs to be temporarily moulded as per the objective of the act and the advice of the higher judiciary. Thus, to salvage the crisis of pending cases and ensure timely resolution of disputes, Family Courts must adopt the virtual court technology to fulfil its objective of reconciliation and dispute resolution between families.