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Impact of Covid-19 Pandemic on Legal Professionals and Courts of Uttarakhand

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ABSTRACT

This paper brings to the notice of all the stakeholders about the effects of the covid-19 pandemic on legal professionals and Courts of Uttarakhand. Two pertinent questions: one, how the legal professionals have been suffering throughout the COVID-19 pandemic period? and second, how the lost glory of legal professionals and courts of Uttarakhand can be achieved?

The bar and therefore the bench are thought of to be the protector of human rights. The outbreak of the COVID-19 pandemic and ulterior lockdown greatly wedged the two. this article focuses to re-strategize the judicial procedure technologically that ultimately leaves the legal professionals in a better position. The state of Uttarakhand got separated from the state of Uttar Pradesh on nine November 2000 and have become the 27th state of India. it's well-established judicial structure with a high court at Nainital and Subordinate Courts at different levels. The Family Courts, Labour Courts, Public Service Tribunals, and so forth have conjointly been come upon for dealing with different cases. Around sixteen thousand registered lawyers are practicing in these courts.

The pandemic not solely affected the health, profession, and education however also the livelihood of the many lawyers. The courts were suddenly closed down and were limited to hear only urgent matters through video conferencing. As a consequence, several lawyers suffered a financial crunch. They weren't allowed to visit courts to carry out legal proceedings for which they were obtaining emolument from their clientele.

The Government & the Bar Council of Uttarakhand took commendable steps by providing financial aid to the needy lawyers. After subsequent unlocking, efforts are made to normalize the life but there's something that is required to be restructured. Existing rules post-pandemic ought to be amended. E-courts should be established whereby video conferencing of cases should be conducted routinely. Legal professionals need to be advanced techno soft, as this will not only serve as a source of their uninterrupted financial gain however conjointly sharpen their professional techniques.

Keywords: legal professionals, E-courts, video conferencing, techno soft.

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I. INTRODUCTION

The bar and thus the bench are thought of to be the protector of human rights. It is because of the coordination between the two; access to justice has been ensured. The COVID-19 pandemic not solely affected the health, profession, and education but also the Courts, lawyers & litigants. The normal procedure of the courts was halted. And the elementary rights of the legal professionals were greatly impacted.

When it comes to the legal realm of the state of Uttarakhand, it was intensely affected by the pandemic. The state got separated from the state of Uttar Pradesh on 9th November 2000 and has become the 27th state of India. It has well established judicial structure with a High Court at Nainital and Subordinate Courts at different levels. The Family Courts, Labour Courts, Public Service Tribunals, and so forth have conjointly been come upon for dealing with different cases. Around sixteen thousand registered lawyers are practicing in these courts whose very question of survival aroused midst pandemic. The working procedure of these courts has moved to electronic mode during pandemic thereby securing virtual access to justice to public at large.

II. THE IMPACT OF COVID-19 PANDEMIC ON THE COURTS OF UTTARAKHAND

Justice John Paul Stevens of the US Supreme Court has evidently observed that, "*It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law*". The sudden closure of the courts not only unhinged the rule of law but resulted in outrage among the lawyers and litigants. The whole system stranded even in the age of technological innovations. Although technology is not new to judiciary as it has already framed a "National policy and action plan for implementation of Information and Communication Technology in the Indian Judiciary" back in the year 2005, but it is the pandemic that forced to scale it up. The state judiciary quickly responded to the waning situation and under the guidance of the Apex court, immediately established online courts. The provisions for virtual hearing of cases were ensured so that the courts could continue to function within their respective jurisdiction. The hearing was limited to matters corresponding to life and liberty, PIL, bail, remand, and injunctions etc. Remaining matters were deferred. As per the "**Standard operating procedure for hearing through video conferencing**" of the Hon'ble High court of Uttarakhand, an application for hearing of urgent matters was required to be electronically mailed which shall later be heard through JITSI MEET software application. Only 25 cases were required to be listed before a single bench in a working day. The entry to the court premises was allowed after obtaining e-gate pass that too with negative COVID-19 report. A similar standard operating

procedure² was adopted for the subordinate courts. As per this procedure, the hearing of urgent cases could be initiated after synopses of the same were e-mailed to the concerned court. Some of the subordinate courts maintained a drop in box in their premises wherein the applications pertaining to urgent matters could be dropped a day before hearing. After a thorough review of the synopses, the court decides whether there exists urgency which is required to be heard or not. If court accepts to hear, it is intimated to the advocate of the party who then shall send a detailed plaint to the email of the concerned court. On receiving the plaint, the court shall intimate the time and date for virtual hearing. Post hearing the court passes such order which shall be published on its website.

In the matters of remand, bail, release of property etc. the legal procedure remained almost similar with a minor variation that on first remand the personal appearance of the accused was required. And his bail application, if any, may be dealt with accordingly at that time itself. But in subsequent remands, accused is required to give virtual appearance. It is noteworthy that despite virtual proceedings, all laws were conformed may it be related to bail, remand or any other urgent matter. A separate guideline³ was also issued for litigants and their advocates for appearing in video conferences that required the advocates to be more technologically sound.

(A) The courts' procedure post UNLOCK guidelines

At one hand the courts became virtually exalted; on the other hand, legal process was delayed. Since only urgent matters were heard and remaining was deferred, it resulted in pendency of cases. The judiciary is already overburdened with cases and COVID-19 kept on amplifying it. Plethora of cases pertaining to section 3 of the Epidemic Diseases Act, 1897 that provides penalty to a person in accordance with sec 188 of Indian Penal Code, 1860 for violating the lockdown guidelines, were pended. Meanwhile the Unlock guidelines were also issued by the Government of India for phased re-opening of the different activities in order to gear up the economy of the country. Having considered all the facts and circumstances, the Hon'ble High court resumed the normal case filing with virtual hearing for all type of cases⁴. The Hon'ble High court also guided the courts below for recommencing the routine work. They were given discretion to regularize the court proceedings. Having strict adherence to COVID guidelines, most of the courts resumed the physical hearing and started receiving evidences. Some courts adopted one court one file approach wherein only one witness related to case was called for

²https://highcourtofuttarakhand.gov.in/files/SOP_for_subordinate_courts_1.pdf (Visited on 07 January 2021 at 10.21pm)

³https://highcourtofuttarakhand.gov.in/files/Video_Conferencing_Guidelines_for_Advocates.pdf (Visited on 05 January 2021 at 11.12pm)

⁴ <https://highcourtofuttarakhand.gov.in/files/180.pdf> (Visited on 06 January 2021)

examination. Children and pregnant women were not allowed to enter the court premises.

Presently the courts have recommenced physical hearing but on a small gage. They have adopted blended model for conducting legal & judicial proceedings physically as well as virtually. The court has still permitted the advocates to appear through video-conferencing. And the physical appearance of the litigants has still been dispensed with if no urgency is there. The advocates and litigants are allowed entry in the premises only after strict observance to the COVID guidelines of wearing mask and social distancing. To combat the threat of the pandemic, efforts are also been taken to minimize the crowd by prohibiting unnecessary entries of the advocates, law interns, litigants and paralegals in the court premises.

III. IMPACT OF THE COVID-19 PANDEMIC ON THE LEGAL PROFESSIONALS

Legal profession is one of the oldest professions of the world. Every year thousands of law graduates enroll themselves as advocates in various bar councils with an aim to practice in different courts of the country. Litigation practice while facilitating the administration of justice is a source of livelihood for many legal and para-legal professionals. The pandemic not solely affected the health, profession, and education but also the livelihood of many lawyers specially those who are new to this profession. Due to sudden closure of the courts, several lawyers suffered a financial crunch. They could not visit the courts to carry out legal proceedings which in turn impacted their pocket. Their daily income almost dripped. Law firms also suffered a huge financial paucity. They either had to retrench their employees or cut down wages. On the other side law interns, clerks, steno and law assistants etc. who succor the lawyers in preparing the legal documents and in conducting legal research, were all put on furlough devoid of remuneration.

Considering the financial woes of the lawyers, the Bar Council of India filed a writ petition in the Hon'ble Supreme court of India for a direction to all the state governments to provide financial aid to needy advocates enrolled at different state bar councils. On the related note, a writ petition⁵ was filed in the Hon'ble High court of Uttarakhand urging for financial assistance to the needy advocates and their clerks. Relief for Free legal medical aid was also sought for those advocates who are suspected COVID-19 positive. Although the reliefs as claimed were not granted but the Hon'ble High court directed the Bar Council of Uttarakhand and Uttarakhand Advocates Welfare Fund Trustee Committee to find solution for tackling financial crisis caused to young lawyers due to the lockdown. In compliance to this, the Bar Council laid

⁵ Manmohan Kandwal and others V. State of Uttarakhand and others HC WP(PIL) No. 54 of 2020

down certain pre-requisite conditions⁶ which an advocate is required to fulfill in order to get monetary assistance. He must be enrolled with the Bar Council of Uttarakhand and must be in active litigation practice. He must not be receiving remuneration from any senior advocate or any other Bar Association and his spouse must not be getting any salary from any government authority. He and his immediate family members must not own any property and he must not be subjected to income tax. These were some of the conditions strictly required to be adhered and in case any material fact was suppressed by the concerned advocate, disciplinary actions would be taken against him under section 35 of the Advocate Act, 1961.

Some of the Bar Associations have also distributed ration and other essentials to the needy advocates thereby ensuring food security to all of them. On the other hand, few advocates filed a writ petition⁷ for exemption of payment of rent for their offices during lockdown, which was outrightly rejected by the Hon'ble Supreme Court observing that if advocates be given special dispensation, then all other professionals may also approach court for the same relief.

IV. PRO-ACTIVE ROLE OF JUDICIARY DURING PANDEMIC

The Judiciary at all levels played a proactive role during the pandemic period by delivering catena of orders and judgments virtually for protecting and ensuring fundamental rights of the people. Finding the massive breakout of the COVID-19, the Hon'ble Supreme Court directed each of the state to take steps for release of prisoners so that the prisons could be decongested and spread of the virus be prevented. In compliance to this the government of Uttarakhand formed a High-Powered Committee to identify those prisoners who could be released depending upon the gravity of the offence committed by them and accordingly many prisoners were released on bail/parole.

In another move the Hon'ble court extended the time limit in every case where limitation period was prescribed and accordingly proceedings under the Arbitration and Conciliation Act, 1996, the Commercial Courts Act, 2015 were commenced at the state level. Limitation period is the period prescribed for taking any legal action related to the any suit, appeal or application. Services of summons, notices and other documents were permitted to be served through messaging applications like WhatsApp, Telegram, Signal etc. so that justice delivery system would not be hindered.

⁶ Guideline for filling of form for financial assistance due to ongoing COVID-19 pandemic by Bar Council of Uttarakhand. Visited in: http://webcache.googleusercontent.com/search?q=cache:t_yli_cDj8J:barcouncilofuttarakhand.org/+&cd=2&hl=en&ct=clnk&gl=in (Visited on 06 January 2021 at 04.20pm)

⁷ Pawan Prakash Pathak and others v. Union of India & Anr, Writ Petition No. 11005 of 2020 (Supreme Court, 05/05/2020)

The High courts of various other states could be seen adjudicating proactively for safeguarding the rights of migrant workers. The Karnataka High court directed the state government to frame a cogent policy for migrant Labourers and workers so that they could return to their home towns through shramik special trains without any transport fare. The Andhra Pradesh High court asked the government to provide shelter to the migrant workers with basic amenities like food, water and medicines. On the other side the Madras High court could be proactively seen to ensure safety of the migrant workers.

V. CONCLUSION AND SUGGESTIONS

The Government & the Bar Council of Uttarakhand took commendable steps by providing financial and others aids to the needy lawyers. After subsequent unlocking, efforts are made to normalize the life but there's something that is required to be restructured post pandemic. Existing rules ought to be amended. Reinhold Niebuhr, an American Theologian has said that "*change is the essence of life; be willing to surrender what you are for what you could become.*" The time has come when the courts are required to strengthen their IT infrastructure. In my view, the legal and judicial procedure needs to be revamped. Today demand of society is to have access to justice without any hurdle may it be related to technology or pandemic. Professor Richard Susskind, in his book titled "Online Courts and the Future of Justice" has expressed the view that "*technology can transform litigation. Online courts provide tools to help users understand relevant law and to formulate arguments and assemble evidence.*" At this juncture, it becomes very necessary that our courts and the legal professionals be advanced techno soft, as this will not only serve as a source of their uninterrupted financial gain however conjointly sharpens the professional techniques.

The need of the hour is to consider legal services as essential as food, water, electricity & medical aid and hence it should be available at all time to each and every litigant even during force majeure conditions. It is not at all recommended that the physical courts be replaced with virtual courts but our courts can proceed towards a hybrid/blended model of virtual and physical hearings for the cases. For ensuring the same, some rules could be framed as to the type of cases that could be heard physically and those which could be dealt with virtually. Video conferencing of the cases should be routinely conducted along with physical proceedings.

In this era where we are being controlled by Internet and artificial intelligence and everything is available at one click of mouse, resorting only to traditional court system is not justified. The virtual revolution will make our judiciary more receptive to efficiency. No one can ignore the

fact that how effectively virtual courts have dealt with urgent cases during pandemic time. The Hon'ble Supreme court's e-committee has been endowed with Platinum award for Excellence in Digital Governance for successfully implementing the e-courts project on mission mode at pan India level. The various courts in India heard 55,417,58 cases⁸ through virtual conference during the pandemic that indicates that shifting to virtual mode is beneficial in all respect. It eliminates the long travelling hours of lawyers, litigants and witnesses, saves court's valuable time and aids in reducing the pendency of cases.

There are some measures which the executive and the judiciary can mutually take into consideration for setting up the online courts permanently. Though the steps should not be taken in a hurried manner rather a pilot experiment can be done to ensure that the new blended system is working in the right direction. It is proposed that all the courts across the state may adopt a uniform technology. With the help of this technology, certain days of a month can be fixed for virtual hearings. And at least half of the total number of cases can be heard and decided virtually. The courts below High court especially the trial courts need to be digitalized more as the proceedings from arrest to punishment are being accomplished at this level only. The data base for legal research should be made robust so that all the judges, legal & paralegal professionals, law researchers and students could access it at all time. Initiatives should be taken to set up e-law libraries wherein all the law journals like All India Reporter (AIR), legal articles, case laws, parliamentary proceedings and law books etc. can be accessed just at one click. Access to legal database like LexisNexis, Westlaw, Manupatra etc. should be made affordable. In addition to this, special training programs on technological developments should be conducted for judges and legal professionals from time to time as there are still some senior judges and advocates who even don't know how to operate a computer. The government should make provision for a separate special budget for securing technological infrastructure for courts wherein software for scanning large volume of court papers like complaints, written statements and evidences etc. should be developed. It not only enables the litigants and the lawyers to access them at any time but saves paper which is a step ahead in the direction of environment protection. The Bar Council of India and the State Bar Council should conjointly frame guidelines for online technology and aid the courts in implementing it. A special chapter on e-courts system can be added to the curriculum of legal education as it would prepare the law students at grass root level to tackle upcoming challenges of law.

Everything has its pros and cons. Not all the aspects of virtual courts are positive one; there are

⁸ <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1684770>, [accessed on 16/01/2021]

some negative aspects too. In this regard the Bar Council of India has made an important observation that "*Not all requests for listing of cases even in the urgent category are adequately entertained. Only two percent of this category succeeds in getting the matter listed for virtual court hearing. Only a handful of privileged class of advocates is the beneficiaries of the virtual court system. Access to justice remains a dream for more than 95% of litigants*". In future this concern of the Bar Council needs to be taken into consideration while framing policies for virtual courts. But the merits overpower the demerits. Online courts have so many pluses that its pros outweigh the cons. Hence this model should be adopted along with the traditional one with an aim that each and every citizen could file case at anytime from anywhere and secure justice.
