

FREE AND UNHINDERED JUSTICE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

It is ironic that it has taken a pandemic to acknowledge the significance of fair and equal access to the Supreme Court, or the lack thereof. While the lockdown limited people's movements, it opened new vistas for litigants and lawyers across India to approach, through technology, the country's highest court with relative ease. It is no wonder then that despite demands for a return to physical hearings by the Bar in Delhi, there are calls for virtual access to the Supreme Court to continue.

Even at the time the Constitution was being debated by the Constituent Assembly, geographical access to the Supreme Court was flagged as a concern. The B.R. Ambedkar-led Drafting Committee was nevertheless of the view that the Court must have a specified place of sitting and that litigants should "know where to go and whom to approach". However, the framers of the Constitution agreed that the volume of litigation from different parts of the country may require the Supreme Court to increase its reach and hold court elsewhere. Accordingly, in recognition of the same, the Constitution empowered the Chief Justice to hold sittings of the Supreme Court through Circuit Benches in places other than Delhi as well. However, despite an increasing caseload and repeated pleas by litigants and governments, successive Chief Justices have refused to invoke this constitutional power for reasons best known to them.

In India, given the unified, single-pyramidal structure of the judicial system, all types of cases can potentially make their way to the Supreme Court, irrespective of the place or forum of the original institution. It is the effective exercise of that right, however, that is curtailed by the court assembling exclusively in Delhi. According to a report by the Centre for Policy Research, a disproportionately high number of cases filed in the Supreme Court originated in High Courts closer to Delhi. For instance, cases from States like West Bengal, Bihar and Andhra Pradesh, which collectively account for around a fifth of India's total population, contribute to less than 10% of the court's docket. On the other hand, almost 18% of all cases in the Supreme Court originate from Punjab and Haryana, with less than 5% of the total population share.

Geographical constraints have also meant that appearing before the Supreme Court has inescapably become the domain of a select few lawyers in and around Delhi. Such implied exclusivity consequently translates into steep and often prohibitive monetary costs for litigants. Without the option of a local advocate of their choice, litigants are forced to choose from what the Bar in Delhi offers, both in terms of quality and costs.

Thus, the pandemic, although for different reasons, has compelled the Supreme Court to attempt to overcome physical constraints in an effort to increase access, albeit virtually. Over the past year, with virtual hearings, what was seen as the exclusive domain of a limited number of lawyers in Delhi has opened up to advocates from all over India, most of whom could only ever have dreamt of addressing the Supreme Court in their lifetimes. Litigants now have the option to engage a local lawyer of their own choice and convenience, including the same lawyer who argued their case before the lower court.

Indeed, virtual hearings may not be the perfect alternative, but such imperfections must be preferred over a denial of the right to access justice itself. It is only when each person in India is provided unhindered access to its corridors can the Supreme Court be said to have fulfilled its constitutional promise. More than one Law Commission and Parliamentary Committee have recommended Circuit Benches of the Supreme Court to be set up around the country.

Nonetheless, till the judiciary acts on such proposals, virtual hearings should be allowed to continue, if not as a matter of right, then at least as a matter of just and equitable policy.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

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