

# Virtual Courts in the Era of Covid-19: The Challenges Confronted by Women Legal Professionals of Kolkata

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## Abstract

This study puts forward the challenges encountered by the women legal professionals during the pandemic. Prior empirical works suggest that women lawyers face innumerable challenges in creating and sustaining their own legal identities within their professional ambit which, so far, has remained men's strong hold, since the inception. The study explores how their gendered identities and spaces are negotiated, when the virtual courts and the work-from home are the 'new normal' phenomena. As limited cases are heard through the virtual court, women lawyers are pushed towards their customary unpaid labour due to the loss of work.

**Keywords:** Covid19, Female Lawyers, Pandemic, Professional Challenges, Virtual Court

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## Introduction

Covid-19 not just imposed a health crisis but it had immense influence on the economy and the society. Social distancing and lockdown had been used as effective methods to check the spread of the disease. The lockdown forced major work trends to shift to online basis, engaging the population at home and intensifying the conventional role of women. Both working and non-working women have seen a surge in their contributions towards the unpaid domestic labor (Policy Brief: The Impact of COVID-19 on Women, 2020). With legal profession being dominated by men and the representativeness of women being limited, the present situation pushed this marginalized group to the edge. It becomes necessary that an understanding is extended to the women legal professionals. For women the professional challenges are extended to include the use of technology and gender differences that further pushed the women to the periphery, thus highlighting their contributions to the

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household more than the workplace. This article discusses these challenges faced by women lawyers during the pandemic and tries to identify comprehensive and inclusive solutions.

### **Indian Legal system during the pandemic**

A complete lockdown was declared in India by the government on 24<sup>th</sup> March, 2020, owing to the Covid-19 crisis. The lockdown also shut the working of the Legal System physically, imposing alternative ways to run. In order to avoid the physical hearing of the cases virtual courts had been set up around the world. In India the legal system's virtual operation has been hindered due to the lack of proper infrastructure. (Modak & Gokhale, 2020). According to a Bar and Bench report the Calcutta High Court announced a set of guidelines for its virtual functioning from 27<sup>th</sup> July, 2020. Nevertheless, only the most urgent matters were heard through these virtual courts (Thomas, 2020). According to the Indian Express report, "While the High Court functioned through e-filing, uploading of scanned documents for parties, judges and through video conferencing, subordinate courts functioned with limited staff" (Modak & Gokhale, 2020).

### **Review of Literature**

There is very little literature available regarding the legal profession in India and there is hardly any literature available regarding the legal profession at the time of the pandemic. There is hardly any discussion on the use of technology within the legal field. After the Legal Practitioners (Women) Act was passed in 1923, it allowed women to enroll in the profession. According to an early study 1980's saw a surge in the number of women who entered the legal profession. However there was noted difference between the female and male lawyers in terms of their professional achievements, as a result of the male lawyers' dominance in the profession viewed as structural constraint and the attachment of domestic roles associated with women viewed as the cultural constraint (Sethi, 1987).

Diverse patterns of discrimination within the legal profession have been reported through studies conducted in different countries. A study conducted in Ontario, Canada reported on the struggle for survival of the women lawyers in the male dominated paradigm, which demands undisturbed devotion to work on full-time basis. Women faced internal struggles pursuing these paradigms thus unable to make successful careers while balancing the demands of motherhood (Leiper, 2006). Another study conducted in law firms reported on women not being considered for leadership position neither credit for their work. As women are not given networking opportunities they are unable to acquire new cliental (Hayes, 2011). As the number of law firms increased during the globalised era, women have achieved professional upgradation, though the same cannot be said regarding workplace autonomy (Ballakrishnen, 2013). In India legal firms, were not ready to invest in women's talent, as highlighted by a study conducted in certain cities of India. (Makhija & Raha, 2012). The Covid-19 created new challenges for the lawyers as it was carried online.

Lack of study on gender gaps in virtual operation of the legal field has been realized. Thus this study explores women legal professional's struggle to meet with the technology oriented changes within the legal profession due to the spread of the pandemic, within the city of Kolkata. Extensive exploration of the technical and professional challenges faced by women adds value to this area of research and calls for policy formulations.

## **Research Methods**

This paper is a part of the larger research project which is being undertaken at present. Hundred female lawyers practicing within the Calcutta High Court had been interviewed in 2019. To collect the data from the samples the snow-ball sampling method had been used. Semi-structured interviews were conducted through personal acquaintances. As the pandemic spread in India forty-five of these hundred women lawyers were contacted. Depending on their willingness to participate and their accessibility, they were interviewed between June to July 2020, for the second time. The second phase of the interviews was mainly telephonic conversation owing to the lockdown declared by the government to control the spread of Covid-19.

The interviews were manually transcribed and codes were developed. Different themes were understood from the codes. This is an exploratory study and thus inductive method was followed in order to recognize different themes, patterns and categories. For the coding process grounded theory was utilized. As the study of covid-19 and its impact is a recently developed area to explore, grounded theory was preferred. To maintain the autonomy of the respondents their names have been changed. Also it was assured that the valuable information shared by the respondents would be used for the purpose of research and its related publication.

## **Analysis**

The analysis has been divided into two broad ideas; the alternative way to run the legal system during the pandemic and the limited case hearing due to virtual court resulting in financial crisis.

### *An alternative path for the legal profession during Covid-19*

The Legal Profession involves the study of law, a period of apprenticeship under an established senior lawyer, maintaining relationship with others in the court, finding a clientele and working with autonomy as well as observing the rules set by the authority (Sharma, 1982). These professional challenges were further intensified during the pandemic as cases were disposed with the help of technology. The virtual courts were conducted through video conferencing via Microsoft Teams. The huge piles of cases which were heard per day within the court premises had already trickled down. The virtual court made it possible to hear only urgent matters. Covid-19 exposed the backdated way of administering justice. To keep up with the present situation extensive use of digital technology is required. Attention is provided towards such technology that

remained underutilized in the profession. The speed at which these alternatives were applied highlights the long standing non-acceptance of digital technology and substitute paradigms within the legal system (Cohen, 2020). For those who are associated with the legal field, the use of digital technology proved challenging. Lack of proper infrastructure and lack of trained staff add to the barriers faced by the lawyers while conducting the virtual courts. The women lawyers who were interviewed reported on facing digital challenges. Arti, a forty-one-year-old lawyer, found it difficult to cope with the new form of virtual court. She said,

‘...the work is getting into virtual mode I am unable to cope with it. I discuss with the others and tried to understand the working of digital technology. I always prefer to read books and journals regarding different cases rather than reading online’.

Covid-19 brings an all new challenge of learning the work digitally which is completely different from its manual operation. For such lawyers who are not comfortable with the digital technology, they need to familiarize themselves with the use of the internet, the different portals for resource finding, referencing and reading, portals through which virtual courts are held and e-filing of cases through scanned documents. Staying away from technology means that time has to be spent in learning and practicing these processes to stay updated. Some women lawyers heard about virtual courts and online resources without experiencing or acquainting with it. Devyani, a thirty-eight-year -old lawyer, said that,

‘I feel left out of my own profession as I have not made any virtual appearances and neither have I used any online resources. At this time, the whole idea of virtual court and digital technology seems like a utopian world’.

According to the findings of a survey digital divide and its related inequalities strengthen the already existing social inequalities at the micro and macro level (Ragnedda, 2009). Similarly, another study voiced that technology and its related skills has been shaped and redefined according to cultural contexts. With the increased use of internet men were seen as more responsive participants. For women the use of internet was considered ‘unsafe’ and ‘unfriendly’(Kennedy et al., 2003).

The Calcutta High Court continued its operation virtually from 27th July, 2020. This made it important for lawyers to familiarize with the use of internet and digital medium (Thomas, 2020). However some women lawyers considered themselves technologically updated. Sreetama, a twenty-nine-year-old civil lawyer believes herself to be technologically sound. According to her,

‘Virtual courts are conducted through Microsoft Team or Google Meet, I do not find any difficulty using them. The link for the hearing is shared in our email address. Usually the Judges and the contending lawyers appear. Scanned copies of documents are uploaded for e-filling of cases. Being a tech-savvy I do not face the digital challenge’.

Digital technology has made an extraordinary impact in our daily lives during the period of the pandemic. The lockdown had to be extended for a lengthy period of time making the concept of work-from home the new normal. The use of digital medium brought forward the complexities faced by those who were technologically not upgraded.

### *Loss of work and pay*

It was reported that in 2019, across India on an average 14 lakh cases (1.4 million cases) were filled per month, whereas 13.25 lakh cases (1.325 million cases) were disposed (Chhibber, 2020). With so many cases being disposed, substantial work and pay was available. The pandemic situation narrowed the large number of cases that were disposed. This pushes the lawyers towards a no work situation, directly impacting their income. According to Mansi, a thirty-two-year-old criminal lawyer,

‘...as the number of cases that I dispose has reduced, so is my income. I used to handle two or at times three cases on the same day, now in a week I handled only three cases and at times not even that’.

The situation has made it mandatory to compromise on the number of cases that a lawyer now handles. Anxiety is associated with the inability to predict the circumstances. According to most of the women lawyers they feel that the non handling of cases today might have serious consequences for them in future. Pramita, a twenty-five-year-old lawyer, states that,

‘My finances have been brought down greatly due to the less number of cases disposed during the pandemic. I feel that I have lost control of my future and my profession. I am very concerned about this uncertainty’.

As earning depends on the lawyers’ portfolio, there is wide disparity that develops in the income range of the lawyers. Disparities did exist earlier but the Covid-19 situation has exposed the vulnerabilities further. According to a survey conducted by Vidhi Centre for Legal Policy (Vidhi), the income disparity between senior lawyer and new entrants were stark. In Calcutta High Court lawyers who had less than two years of practice should earn in between Rs.5, 000- Rs. 10,000 a month. The survey also suggests that many lawyers were financially assisted under the Advocates Welfare Fund Act, 2001 (Krishnan, 2020). As courts were shut for precautionary measures, the income of the already troubled lawyers had come to a standstill. Thirty-three-year-old criminal lawyer Shreya, practicing in the Calcutta High Court for the past eight years, informs that her financial ability is already halved. According to her,

‘...my savings are being drained out. I have not been able to make a lot of savings. I work and I earn, so being without work is stressful’.

Sudhi had been unfortunate in not getting associated with the virtual court. According to her,

‘I have some cases which at this moment is completely stagnant. Only when the court functions I will be able to work on these cases again. So I am not getting any fees. It is a complete deadlock. And I fear that in near future my income will become nil’.

This situation is common for many junior lawyers. The fear of losing her income drove the twenty-eight- year- old lawyer, to join a law firm so that she gets some work and thus some pay. She says,

‘I know of a colleague who at the present moment is out of work. I did not want to face this situation. There was a law firm that was hiring lawyers to make briefs. I joined it. The pay offered was not lucrative, but in these troubled times at least I have some income’.

There have been appeals made to assist these lawyers from the High Court Bar Council. Due to the suspension of normal court functioning, the lawyers who were not in a good financial condition along with their juniors are facing distress. For this reason the West Bengal Bar Council had asked for financial assistance from the State Law Minister.

Under such circumstances, women are making maximum contribution to the household. Many respondents opine that this is a greater cause of worry. In this regard, Rachna, a forty-one-year-old civil lawyer exclaims,

‘Household work takes away most of my time. Since I am attending all the chores I feel more of a house maid than an advocate. If I have to be the housemaid, then what was the point in getting a degree and building my career over the past years....’

Women lawyers associate their profession with their self-identity. Their profession gives them the required independence and also exhibits their rational side. According to a study it is said that when women work outside the home it opens new world, broadens their horizon and social associations and enriches their experience (Valk & Srinivasan, 2011). When the same earned identity is threatened and all the enriching experience is jeopardized, then the individual feels at a loss, much like the women lawyers.

## **Discussion and Conclusion**

As the pandemic spread in the country it imposed stringent measures of social distancing, viewed as the best way to control the spread. It became mandatory to dispose cases through digital platforms. Virtual courts set in a new trend of work requiring the knowledge of using internet. Among the respondents not all had the opportunity to appear in the virtual courts. Their non appearance was a result of not getting a date of hearing (till the time the interviews were taken) as well as not getting any case to represent and thus staying away from the virtual court. It has also been pointed out that even the digital technology was constructed along the lines of gender, thus keeping women away from it, claiming it as unsafe (Kennedy et al., 2003). There

was a dichotomy in the opinions of the women lawyers. Some considered themselves to be upgraded with technology while others were not. According to a study, women had the tendency to feel nostalgic about books and libraries and thus did not connect with computers. This, the writers termed as being technophobic and having a general dislike for technology (Dixon et al., 2014). Similar views were seen among the women lawyers. However they were inclined to learn, even if the comfort factor was missing.

Though the courts operated virtually, only urgent matters were heard, this also meant that all lawyers do not have fortune to ensure that they get to present a case, this leads to shortage of work and pay. Women lawyers find it difficult to survive in the profession, due to numerous obstacles and exclusions. Under these circumstances use of digital platforms and virtual courts aggravate the situation. Due to the lockdown and the unavailability of work the contributions made by the female lawyer in their professional life has reduced, thus pushing them towards the unpaid domestic work.

To address the technology related gaps, training regarding the functioning of different technical and information portals and understanding the operation of the virtual courts are required. Software can be developed for integrated training and upgradation of the lawyers, as well as for easier uploading and sharing of videos, pictures and citations related to different cases and locating of archival information database. Opportunity to address different matters in the virtual courts will help in greater participation of women. An integrated digital portal or software can be developed that will maintain the profile of the lawyers. This software can help the women lawyers to preserve information regarding the cases that they have represented and are representing. It can also assist in easier case filling and payment of court fees. Clients too can be involved as they can access the names of the different lawyers and the type of cases that they handle.

The pandemic intensified the already existing inequalities within the profession; however it is also a possibility to enhance technological capabilities. At present the physical and virtual courts have blended giving greater opportunities to the lawyers. Virtual courts can be effective for women lawyers as they can tackle the profession and household responsibility together, however training, refresher courses and comprehending the technological aspects is recommended.

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