

VULNERABLE SURVIVORS AND THE RIGHT OF ACCESS TO JUSTICE IN TIME OF DISASTER

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ABSTRACT

The Covid-19 pandemic has a dominos effect on our life and exposes the vulnerabilities of some group in the population. The right of access to justice is affecting the community in one way or another with vulnerable groups continues to be the most impacted even before disaster struck. This paper aims to highlight and analyse the situation of vulnerable people's access to justice and the magnitude of disaster especially Covid-19 pandemic on their access. The conceptual theory of the right of access to justice unfolds the discussion encompassing its scope and content according to international and domestic law. It draws attention to the prevailing stumbling block for the vulnerable survivors in accessing the justice system and the effect of the problem. An amalgamation of factors deepened the obstruction in accessing justice and this study shows that only real recognition of human rights by the authorities coupled with strong political commitment can surmount the predicament of vulnerable survivors.

Keywords: *vulnerable people; survivor of disaster; access to justice.*

INTRODUCTION

The effects of the Covid-19 pandemic are still being felt globally, and one of the most impacted areas of our life is our right to access justice. Movement restrictions have a larger impact on access to courts and judicial proceedings. It is now clear how movement restriction order affect business, economics, society, and the law, as well as income, the safety of vulnerable individuals, and access to services. During the pandemic authorities have stronger powers to address the emergency situation that influence citizen and public rights These authorities are considered a necessity to maintain public order in time of emergency. Nevertheless, it is important that these powers are not abused, and that rule of law is maintained.

One of the fundamental tenets of the rule of law is access to justice. People are unable to exercise their rights, speak out against injustice, or hold decision-makers responsible in the absence of access to justice. All rights are supported by access to justice, which guarantees access to remedy (Rachagan & Sothirachagan, 2018). Access to justice and procedural laws demand that a defendant be brought to justice without delay, that the arresting officer tell the suspect of the reason for the arrest, and that the suspect has access to legal counsel before testifying during the inquiry. The epidemic and governmental reactions to it are having an unprecedented impact on how just systems operate around the world (UNODC, 2020). Courts are discontinuing, decreasing, or altering their services because of COVID 19.

Without access to justice, vulnerable groups may become even more exposed because they may be unable to defend their rights, seek redress, or rectify injustices. The cycle of oppression, discrimination, and marginalisation will continue if a person lacks access to legal protection for their rights. Without access to justice or legal redress, marginalised groups may suffer structural obstacles to receiving basic services, may not receive equal protection under the law, and may become trapped in an abusive environment where it will be unable to hold offenders accountable.

Scope And Content Of Right Of Access To Justice

Access to justice in Malaysia is enshrined in the Federal Constitution where the rights of the individuals, equality before the law and fundamental rights and liberty are equally protected without discrimination (Haniff, 2014). Although the term "access to justice" might imply different things to different individuals, it typically refers to a wider social context of the judicial system and removing systemic

obstacles that different community members must overcome (Zuhairah Ariff Abd Ghadas & Rabiatal Adawiyah Mohd Ariffin, 2019). Article 5 of the Federal (concerning a person's freedom) and Article 8 (concerning equality) are invoked in claims relating to access to justice (Faridah Abdul Jalil, 2015). While Article 8 (1) provides that everyone is equal before the law and is entitled to equal protection, Article 5 (3) guarantees that everyone has the right to be legally represented in the court system. According to Vaibhav (2020), having access to justice is a guarantee of equity and equal protection, as well as a component of the right to life.

Essentially, "access to justice" includes the following components: the State must provide an efficient adjudicatory mechanism; the mechanism must be reasonably accessible in terms of distance; the adjudication process must be swift; the litigant's access to the adjudicatory process must be affordable; remedies should be readily available; and the capacity of the individual must be taken into consideration (Lexicon, 2012). As stated in the Brasilia Regulations Regarding Access to Justice for Vulnerable People, 2018, Paragraph 32, it also entails providing the procedure in the community language and giving parties who do not speak the language the right to an interpreter. It also includes providing high-quality legal services or legal aid (OECD, 2016; Brasilia Regulations Regarding Access to Justice for Vulnerable People, 2018, Paragraph 30), as well as alternative conflict/dispute resolution methods (Brasilia Regulations Regarding Access to Justice for Vulnerable People, 2018, Para 43).

Exceptional Situations During The Covid-19 Pandemic That Increase The Demand For Access To Justice

Some states may declare an emergency during the COVID-19 pandemic, which would result in restrictions on human rights. Italy, for instance, declared a year-long public health emergency from January 31, 2020, to January 31, 2021. States are permitted to deviate from certain of their human rights duties during times of emergency, if certain requirements are met, such as need, proportionality, non-discrimination, and time limits. However, some rights remain non-derogable (International Commission of Jurists, 2020). People may be held without being informed of the reason for holding them and under everyday circumstances. They are permitted to request a writ of habeas corpus. Due to lockdown orders, increased delay, and a backlog of cases, the application may take longer to be tried. Under all circumstances, it must be possible to contest the validity of a detention or request a writ of habeas corpus from a judge or other authority. No matter how urgent the circumstance, it is a non-derogable right (The Working Group on Arbitrary Detention, 2020). Additionally, during the movement control order, there were a lot of arrests, detentions, and compounds for breaking the law or SOP. Occasionally requiring Covid-19 tests at both public and private institutions is also troublesome.

According to reports, laws requiring people to stay inside their homes have resulted in a sharp rise in domestic violence and child abuse as well as a lack of safety for women and children (UNODC, 2020). In addition to non-payment of child and wife maintenance to parents who have no other source of income or whose income is impacted by the pandemic, child abduction by parents who take advantage of border close maintenance while they have no other source of income is also recorded. The pandemic has brought attention to the issue of kids being ignored, not being heard, and not being allowed to participate (UN Convention on the Rights of the Child, Article 12).

Changes in court procedures brought on by the pandemic have a severe impact on detainees at immigration detention facilities (UNODC, 2020). When bond or parole hearings are postponed because to the pandemic, prisoners who are eligible for early release or those in pretrial detention are kept in custody for longer than necessary (UNODC, 2020). When it comes to employment, employers use the epidemic as an excuse to fire workers or pay unjust compensation even when the firing is justifiable. According to Dawuni (2020), emergency measures prevent residents and businesses from taking the necessary procedural action in a cross-border case, which causes gender discrimination to increase during the pandemic (E-European Justice, 2020). There is also delays in enforcing a decision in a cross-border context or in serving a judicial document (E-European Justice, 2020). Moreover, limited operation of 'non-essential' public services e.g. departments responsible for the registration of births, deaths, marriage, and divorce are affecting legal documentation, a pre-requisite for access to many rights and services. COVID-19 has also tested the principle of open justice in which the rapid shift to online or 'virtual' courts and tribunals curtail the ability of the general public and the media to access hearings (Law Council of Australia, 2020).

Covid-19 And Access To Justice For Vulnerable People

According to Blaikie et al. (1994) and Wisner et al. (2004), disasters "diminish the capacity of vulnerable people/group to 'predict, cope with, resist and recover from' dangers," and Covid 19 is one of those disasters. Vulnerable persons are those who find it particularly difficult to properly exercise their legal rights before the court system due to factors such as age, gender, physical or mental condition, or due to social, economic, ethnic, or cultural situations (Brasilia Regulations Regarding Access to Justice for Vulnerable People, 2018). They are individuals who are more vulnerable to unanticipated injury or institutional discrimination, as well as vulnerable groups that find it difficult to protect themselves.

There are different ways of defining vulnerable people as it no longer based on personal characteristics. The present definition is based on the situations that render a person vulnerable and the level of support needed; for example, a person is vulnerable while in the hospital, when they are incapacitated, or when they have a chronic health condition. Children who have lost their parents or primary caregiver, people who are the victims of domestic violence, or people who become homeless for whatever reason, including a natural disaster like a flood, are all at risk.

Wagatsuma (2018) cites a number of factors that prevent vulnerable people from accessing justice, including ignorance of their obligations, rights, and procedures; physical limitations and cost considerations; persistent illness and domestic violence; a lack of knowledge and specialised services for people with special needs; a lack of information sources and referral points; poverty and marginalisation (Open Society Foundation, 2016). Other barriers to accessing justice include those related to illiteracy, culture, and tradition (Benjaminsson, 2014); intellectual disadvantage (Zainun Ali, 2019); geography (Zainun Ali, 2019); corruption; and a bad public perception of the justice system (Benjaminsson, 2014). Therefore, vulnerable populations need more protection from potential threats than the general population.

It is suggested that a digital approach with virtual hearings can increase access to justice (Law Council of Australia, 2020) Even so, it is known that online meetings can negatively affect participant communication and increase stress, especially in cases when the technology is poor or unreliable. Justice outcomes may be impacted by these difficulties. In addition to being effective and efficient, access to justice must be financially viable (Pathmanathan, 2021) for everyone regardless of their financial means.

According to research, the accused may feel dehumanised during criminal procedures conducted online. Examining the merits and drawbacks of online hearing should be done before proceeding (Leonard Yeoh and Chuah Chong Ping, 2020). There should be more administrative complaint procedures included in free legal services, like those offered in Japan (Wagatsuma, 2018). According to the Brasilia Regulations Regarding Access to Justice for Vulnerable People (2018), a clear policy and guideline dealing to access to justice during difficult periods, such as the pandemic, may serve to increase access to justice.

While UNODC proposed in 2020 to promote vulnerable people's access to technology to empower vulnerable people and expand their capabilities to seek redress for grievances, Frattini (2007) suggested a civil justice programme for those who are vulnerable. It is also advocated that courts handle only "urgent" and "extraordinary" situations, rather than all cases. Another workable alternative is to prepare law students to contribute to social justice.

Improving Access To Judicial Institutions In Malaysia

To increase access to justice in Malaysia, a variety of initiatives have been made to improve access to judicial institutions. The administration of the Malaysian states of Sabah and Sarawak has created two types of mobile courts to ensure access to justice for the populace in distant places where geographic challenges predominate (Federal Court Malaysia, 2012). The first type involves turning cars into "mobile courtrooms," each with a magistrate, a commissioner of oaths, and an interpreter as well as a recording system and portable IT equipment. These trucks will travel the difficult terrain where court officials provide those in need with justice and legal assistance. The second type of mobile courts is where the Magistrates, Commissioners of Oath and court interpreters converge to remote parts by

longboats, vehicles or light aircraft. In addition to that, the Rules of Court 2012 was gazetted, creating simpler Court process which would improve access to justice (Federal Court Malaysia, 2012).

The e-court system was established to address issues with delay and a backlog of cases that could limit access to justice. In this regard, a number of mechanisms are particularly pertinent to access to justice, such as the video conference system that was used in Kuala Lumpur courts and allows parties to talk through fixed line or mobile phone without being physically present in the same location. This is a practical venue because it removes the waiting period, saves time and travel expenses, and helps clients save litigation costs. The second approach, which has been used since 2011, is case transcription and recording. The proceedings of the trial are recorded, and a transcriber records them for the judges. The parties and judges are then given access to a copy of the recorded trial, which they can access whenever they choose. The Federal Court of Malaysia's Office of the Chief Registrar released and distributed the following papers on May 3, 2020, specifically in response to Covid 19: (i) Case Conduct Guidelines during the CMCO and post-MCO; and (ii) Prevention of Covid-19 Standard Operating Procedures during the CMCO and post-MCO. The Malaysian courts have made provisions for online hearings and other methods of ensuring a fair trial.

CONCLUSION

For some groups of people, access to justice is already challenging, and COVID-19 made matters worse. Even while some aspects of access to justice have improved, there are still issues, such as poor internet service and problems with open trials. The legal system and the society now have the chance to benefit from technological innovation thanks to COVID-19. Maintaining the rule of law and preserving public health during the pandemic necessitates striking a fine balance between the two.

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