



What are the digital dividends for women seeking e-Justice?

Access to Justice for Women in Asia and the Pacific



The digitization of justice has gained considerable momentum over the past year as the COVID-19 pandemic has socially distanced societies and rendered yesterday's approaches to justice temporarily unworkable. But how do you access e-Justice when you can't access the internet? When Asma spends a whole day trying unsuccessfully to download Zoom over Kashmir's 2G network,¹ how do you explain to her that her right to justice is experiencing a network outage?

There is no doubt that digital technologies have brought rapid advancements to the justice sector: Digital case management, information system interoperability, and public access to judgements have reduced red tape, increase efficiency, and enhance transparency. The preservation and investigation of digital

evidence has also been crucial in cases of human rights violations, as demonstrated by the Independent International Fact-Finding Mission on Myanmar who gathered evidence of hate speech disseminated through social media.²

But as we stand at the crossroads of the COVID-19 pandemic and the unprecedented acceleration of digital technologies, what are the digital dividends for women seeking e-Justice?

It is estimated that 58 per cent of women in the Asia-Pacific region do not have access to the internet, with South Asia leading the world's widest digital gender gap.³ Even when women have access to the internet, their meaningful use of digital technologies is adversely impacted by their lower digital literacy. In communities where conservative patriarchal norms prevail, women are rarely the holders of technology. And many of those who have access to the internet and functional digital literacy do not necessarily have the higher skill levels required to use that access

¹ <https://restofworld.org/2020/lockdown-kashmir-internet/>

² <https://iimm.un.org/>

³ <https://www.statista.com/statistics/491387/gender-distribution-of-internet-users-region/>

to resolve a legal problem or navigate a justice system online

In the context of COVID-19 and the surge in family violence during lockdowns, so endemic that it became known as the “shadow pandemic”, simply moving reporting and processing online is unlikely to adequately support women in their quest for justice.

Quick to respond to the shadow pandemic, some governments have modified their family law and policies to allow courts to enable online filing of restraining orders, among other measures.⁴ However, as many survivors of violence remain trapped with their abusers in lockdown, their ability to engage online services, such as legal aid, is limited, and the enforcement of online rulings, such as protection orders, has often not been ensured, resulting in additional risks for women.

The rapid adoption and expansion of e-Justice services, designed in part to ensure continued access to justice during the pandemic, has had the unintended consequence of further marginalizing women from low-income backgrounds, elderly women, and women who have support needs in accessing technology, including those with language barriers.

As courts struggle to deal with the backlog of cases caused by the pandemic, more and more justice mechanisms have adopted remote procedures and hearings, raising concerns about victims’ rights and the right to a fair trial. Remote access to a lawyer has been shown to undermine the quality of legal assistance provided compared with in-person legal counsel.

Accessing legal aid makes a crucial difference in the lives of women, enabling them to navigate justice systems that are often complicated and overwhelming. Moreover, access to legal aid has a positive impact on families and the community as it prevents justice mismanagement.

Remote hearings have similarly been seen to undermine principal elements to a fair trial, resulting in weak victim and witness statements, lack of access to legal files, and increased difficulty for women to follow online procedures.

For women in conflict with the law, remote confidential communication whilst in detention has proven challenging. In addition, the ability of legal counsel to prevent ill-treatment during custody and ensure participatory rights, such as access to translation, have been hampered. Simultaneously, the unparalleled amount of digital data collected on individuals during COVID-19, including through contact tracing and surveillance schemes, carries an increased risk of misuse of collected data with ramifications for privacy, rule of law, and fairness of proceedings, notably criminal proceedings.

Remote hearings have been justified by some with the argument that their speed and efficiency help safeguard, during the pandemic, the accused’s right to a trial within a reasonable time. On the other hand, the relatively short timeframe for remote proceedings has compounded difficulties for women with multiple and intersecting vulnerabilities, such as those with disabilities who require additional support to engage and understand proceedings. While virtual trials in cases of violence against women should not be conducted, technology can be used for women’s protection, with some governments in Asia facilitating online registrations of cases of gender-based violence with police and court officials.

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<https://reliefweb.int/sites/reliefweb.int/files/resources/justice-for-women-amidst-covid-19-en.pdf>

With digital technologies accelerating at an exponential rate, the justice sector is not only embracing the automation of manual tasks, such as court transcription and remote hearings, but also adopting frontier technologies that superimpose onto human values and judgments, such as artificial intelligence. Critics have questioned whether these practices in fact improve safety or perpetuate existing inequities.

Despite the likelihood of false positives for facial recognition for women being two-to-five times higher, and false positives for women from East and South Asia being even higher,⁵ law enforcement across the region is increasingly using facial recognition to manage the pandemic.

Predictive policing programmes, underpinned by machine learning in the crime-control domain, are redirecting police patrols to areas deemed to have high crime rates, while negating the fact that sexual and gender-based violence is chronically underreported and therefore not contributing to the dataset determining policing priorities.

Artificial intelligence (AI) is also increasingly being used in the judiciary, with courts relying on algorithms to assist legal decision-making, for example, to assess the likelihood of recidivism. However, algorithms are trained on historical crime data, and as a result, can amplify and perpetuate embedded biases, for example if they do not factor in that women are less likely than men to reoffend.

⁵ <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>

While the use of algorithms and AI systems in the judiciary is still at an early stage in Asia and the Pacific, early awareness-raising of a gender-responsive and ethical use of such programs will allow justice providers from the region to avoid the same mistakes made by pilot programmes from other parts of the world.

It is human nature to develop and deploy tools, including technology, to solve problems. However, technology alone cannot be relied upon to assist those marginalized in society to find justice.

The increased use of e-Justice witnessed during COVID-19 should not be an objective in itself, but a tool to increase access to justice for all

In a world where the gender digital divide is still so great, and gender discrimination so pervasive, that seemingly gender-neutral technology often actually reinforces gender biases. In this state of affairs, plurality of access to justice offline and online, as well as oversight by women human rights defenders, offer essential safeguards against discrimination, and enhances the likelihood of women's equal access to justice.

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