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Challenges and trauma in handling the administration of small estate cases during covid-19 pandemic: a call for proceeding through remote communication technology in malaysia and pakistan

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Abstract

In Malaysia and Pakistan, the worldwide COVID-19 pandemic causing tension, fear, stress, and anxiety leading to the postponement of cases at the small estate offices. Due to the social disruption in Malaysia and Pakistan, this paper aims to highlight the challenges and obligation on the petitioner in dealing with the administration of the small estate of the deceased person. The hearing of cases at the small estate's offices is not possible to be conducted in both countries resulting in frustration amongst the petitioners of an estate including beneficiaries. Hence, this paper seeks to examine the issues on how to expedite the hearing of small estate cases at the small estate offices and to ensure the proceedings to be conducted fairly during the COVID-19 pandemic. This paper adopts a qualitative

research methodology as it provides a deeper understanding relating to small estate matters. In order to expedite the proceeding of hearing of cases of distribution of the small estate in Malaysia and Pakistan, it is relevant and practical that remote communication technology to be implemented. With this new procedure, the harm of COVID-19 may be reduced. The proposed recommendation also promote justice to the petitioners, beneficiaries and society in the COVID-19 era.

Keywords

Administration of Small Estate, Malaysia and Pakistan, Challenges during COVID-19 Pandemic, Remote Communication Technology.

1.0 Introduction

1.1 Trauma During COVID-19 Pandemic And Challenges In Handling The Administration Of Small Estate In Malaysia And Pakistan.

In Malaysia, the Small Estates (Distribution) Act 1955 [1] provides that a small estates means an estate of a deceased person consisting wholly or partly of immovable property situated in any State and not exceeding two million ringgit in total value (section 3(2) of the Small Estates (Distribution) Act 1955), and the Land Administrator of the district where a petition has been lodged, shall have exclusive jurisdiction to deal with the distribution and administration of the whole estate (section 4(2) of the Small Estates (Distribution) Act 1955). The place of hearing of petition for distribution is at the Land Administrator's office (section 11(1) of the Small Estates (Distribution) Act 1955) and the Land Administrator shall record in writing the evidence of all witnesses in attendance, and allow cross-examination of any such witnesses by any person present who claims to be interested in the estate and all such evidence shall be given oath or affirmation (section 12(1) of the Small Estates (Distribution) Act 1955).

In Malaysia, few authors noted that the lack of knowledge and the attitude of the beneficiaries has been identified as the key factors which lead to delay in the administration of the estates. According to them, there is a need for a cohesive approach to educate the beneficiaries of the law and to change their attitude in understanding their actual roles in the deceased's estate administration [2]. Since May 2020, the process of hearing as mentioned in section 12(1) of the Small Estates (Distribution) Act 1955 cannot be conducted due to the COVID-19 pandemic, resulting frustration among the petitioners and beneficiaries. As a result, there is a delay in the administration of small estate cases in Malaysia.

In Pakistan, a succession certificate is required to establish a legal heir issued by the Competent Court under Succession Act, 1925[3] to establish ownership regarding to claim movable assets i.e. deposit in Banks, shares, financial certificates and bonds, insurance amount, stocks etc. However to obtain immovable

properties, letter of administration is needed for the purpose. Besides, Inheritance certificate is another registered document issued by the civil court. It is pertinent to mention here is that the issuance of succession certificates and Letter of Administration falls under section 372 of Succession Act 1925 by establish civil judges, yet one must not forget that the process can take months. It is important to know that without the above mentioned certificates, the revenue authorities i.e. the Registrars will not allow legal heirs to transfer immovable property in their own names. Warasatnama or inheritance certificate, letter of administration and a succession certificate are important documents establishes the right of heirs and determines their right in the property. Unfortunately many studies confirmed that millions of Pakistanis are likely to be involved in litigation, whereby courts are required to issue orders for the grants of letters of administration and succession certificates. In case of loss of a family member, these certificates must be obtained for transferring the assets of the deceased to their legal heirs. Pakistan follows the Sharia rule for division of property, however the Law is different for Muslims, Hindus, and Christians etc., keeping in view their respective religious background. In a Muslim majority country, there are three main laws that protect the rights of inheritance in the country: Muslim Family Law Ordinance, 1961[4] and The West Pakistan Muslim Personal Law, 1962[5]. Furthermore, all the procedure for Succession Certificate has to be followed in accordance with the Succession Act 1925.

In Pakistan, like other government and non-governmental offices, as well as commercial and industrial establishments were ordered to close from March 22, 2020. The offices dealt with small estate were also closed down vide a circular and continuously closed till May, 2020. However, from May 4, 2020 these offices i.e. dealt with small estate affairs called office of the sub-registrar were allow opened with strict conditions observance following SOPs. Public were asked to book their appointments prior to visit these offices and every case were fixed 20 minutes where minimum staff available on duty [6]. Another problem is that the time for registration and transfer of small estate are from 149 days to six months. And there is still no mechanism for online process. That is great hurdle for petitioners. It is suggested that private sector can help to reduce time by way of online protocols with efficient system and trained professionals. For the purpose facilitation centres may established to redress public complaints that deal with and expedite the registration, transfer and mutation cases in few days' time. Along with above mentioned mechanism, an e-stamping system may also be launched for generating revenues [7].

The spread of COVID-19 in Malaysia is at a critical stage resulting in Emergency Proclamation since early January 2021 to contain the spread of the virus. In Pakistan, the lockdown measures distresses the most vulnerable, working class and the poor. Due to the social disruption in Malaysia and Pakistan, this paper aims to highlight the challenges and obligation on applicants in dealing with the administration of the small estate of the deceased person. Hence, this paper seeks

to examine the issues of how to expedite the hearing of small estate cases at the small estate offices and to ensure the proceedings to be conducted fairly during the COVID-19 pandemic.

2.0 Methodology

This paper adopts a qualitative research methodology as it provides a deeper understanding relating to small estate matters. For understanding of the subject matter, to identify the challenges with the administration of small estates and how the COVID-19 disordered the every aspect of life, the authors adopting case study approach that involved identification of the phenomenon of COVID-19 with in-depth analysis. Identifying key risk factors i.e. quarantines, shutdowns, closure of government offices and courts who dealt with small estate registrations and responsible for issuing of succession certificates and letter of administration and heir-ship certificates etc, will be done as a qualitative study. Secondary data from previous researches and some statistics already obtained from the government will be used in this study. Moreover, primary data/first-hand data will also be an essential methodology as this is an exploratory as well as descriptive study. Through case study approach, the authors can identify evidence-based policy and programmes that are necessities to response the needs of the vulnerable segments of the society, to mitigate adverse effects from the pandemic and reduce risks. The analysis of data examining and evaluating arrangements undertaken of pre, during and post COVID-19 pandemic situation could provide useful policy suggestions to adopt remote communication technology as the proceeding in the small estate cases.

3.0 Results And Discussion

3.1 COVID-19 Pandemic and Social Impact on People Around the World.

Duane A. M et al. defined that the COVID-19 crisis as a collective trauma which leads to an upheaval of community functioning such as inconsistency in mental health support [8]. Meanwhile, Liu, S. R. et al. contended that racial trauma is also experienced by Asian, Black, and Latinx communities due to the COVID-19 pandemic [9]. On a similar note, Thompkins, F. et al. claimed that the current pandemic caused not only ritual disruption, but also caused negative reactions such as disobeying public health guidelines and culture [10]. Novacek et al. observed on the points of mental health clinicians and researchers. According to them, the issue of unique needs of Black Americans who have been disproportionately affected by the COVID-19 pandemic must be addressed [11].

Ijadi-Maghsoodi et al. mentioned about the fact that the pandemic also caused widespread of social disruption such as school closures. They also revealed about the problems of the economic impact and loss of lives due to the COVID-19 widespread [12]. Misra, S. et al. observed that there is a discrimination against

Chinese and other Asians leads to negative impact on mental health[13]. Slobodin, O. et al. contended that the COVID-19 pandemic contributes to social, economic, and health care inequalities [14]. Shigemura, J. et al. have given an example that as of May 20, 2020, the COVID-19 death toll in Japan was 771. Not only that, the 2020 Tokyo Olympics/Paralympics had to be postponed to 2021 due to the pandemic. They also raised the concern about many health care workers have been affected and discriminated [15]. Nguyen, T. H. D. et al. viewed that similar to other nations in the world. They noted that Vietnam has showing resilience to fear, stress, and anxiety because of the pandemic and the country have taken measures by transforming many aspects of society to contain the spread of COVID-19.

3.2. COVID-19 Pandemic in Malaysia

In Malaysia, the first wave of COVID-19 infection started on 24 January 2020 [17]. Since then, as of March 4 2021, over than 300 thousand of confirmed positive cases have been reported [18]. To fight the deadly virus, several states and regions in Malaysia are put under various stages of Movement Control Order (MCO), such as Conditional MCO, Recovery MCO. The inter-state journey is prohibited in Conditional MCO and Recovery MCO states, while in the MCO states, even the inter-district journey is not allowed. MCO areas have the highest constraints and restrictions, most of the economic sectors are not permitted to operate except for some important economic sectors [19].

The infected patients and the health care workers have been affected leading to several effective measures have been taken by the government of Malaysia. As a result, several known restrictions such as prohibition of inter-state and inter-district travel, restrictions on social activities, school closures, economic impact, and loss of lives lead to the mental health burden. With regards to Small Estate Distribution's cases, during the spread of COVID-19 period, the petitioner and deceased's beneficiaries are unable to file any petition or application for distribution order. This is due to the closure of land offices in all States in Malaysia. Under the normal circumstances, the applicant and other beneficiaries must attend the hearing which will be conducted by the land administrator.

3.3 COVID-19 Pandemic in Pakistan

Since the first coronavirus case reported on 26th February 2020 in Pakistan, the figures reached out to 579,973 with active cases 21,836 and deaths reached to 12,860 [20]. Till the writing of these lines, as per statistics provided by Pakistan's Ministry of National Health Services, Regulations & Coordination showing vis-à-vis alarming picture whereby 1,392 new cases were reported in last 24 hours [21]. Pakistan still have more than 22,098 active cases of COVID-19, on the other hand recoveries reached to 94% of the total cases. Pakistan has conducted 89,90,176 tests till now with average 30, to 40 thousands daily tests capacity, on few occasions it reached 50 thousands per day. Although, with the help of

international supporting agencies, Pakistan has set up a system of responses i.e. prevention strategies and providing a continuity of essential diagnostic and treatment services fighting COVID-19. However, while evaluating the preparedness, response and the capacity of its health system in anticipating, preventing, managing, detecting, and controlling coronavirus outbreak is below standard and it really not ready to be challenged till today. In terms of assessment and investigation of coronavirus cases also very low [22]. Pakistan is unable to handle such outbursts of COVID-19 cases in compare to Iran, Brazil and the USA and the Europe as being under-resourced country with a weak health system [23].

It could be argued that and as it confirmed that this pandemic has devastating impact on the poor economies, having inadequately resourced healthcare system with insufficient tertiary-care services [24]. COVID-19 destroyed economies of the world. A World Health Organization's report confirmed that Pakistan has level-2, i.e. 40% preparedness capacity to deal with coronavirus pandemic. Its National Action Plan has major flaws i.e. in its implementation strategy that failed at multiple stages [25]. Due to COVID-19, the World Bank has projected Pakistan with a severer drop of 2.6 per cent for 2019-2020 to 0.2 per cent for 2020-2021. Even after the year the signs of economic recovery are still few [26]. Unfortunately, the lockdowns shutdowns and global economic astonishments due to COVID-19 badly affected Pakistanis and throw up to 125 millions out of 222 millions Pakistanis below the poverty line. This pandemic disproportionately impacted on marginalized groups i.e. women, daily-wage workers, disadvantaged households, homebased workers, agriculture, small and medium enterprises (small shops, self-employed persons and families) and other the informal sectors. The United Nations Office for the Coordination of Humanitarian Affairs in its exclusive report pointed out that due to the lack of human resources, lack of isolation and quarantine facilities and infrastructure, supplies, equipment and proper management and technical expertise, the whole protection and prevention system is poorly performed. Although to ensure effective coordination among federal and provincial governments a National Command and Control Centre has been established, however SOPs were not being implemented [27].

One of the reasons of failure of such state is the response of political leadership that according to one author once again a confused response. The finding of study suggests that there is a lack of coordination among institutions and stakeholders i.e. provinces and the federal governments on shutdown and quarantine measures. Federal and Provincial governments were on conflict zones on the issue of complete lockdown or partial or smart lock-down, yet having severe economic pressure [28]. Federal Government and the Prime Minister emphasised on many time that lockdowns will destroy the economy of Pakistan and the population who live below poverty line i.e. almost 24.3% will suffer most, includes daily wage vendors and the labour class. Enforcement of lockdowns put adverse social impacts. On the other hand, opposition governed provinces are in favour of lockdowns [29]. However it did not had happened. Pakistan struck in a dilemma, if

adopts shutdown policy, the majority of population would be in trouble because involved in informal labour and earn wages on daily basis. On the other hand, coronavirus could be contagion and due to insufficient resources for the healthcare system can be deadly and cause millions of deaths [30]. An epidemic like COVID-19 damaged the social and economic fabric of Pakistani society [31]

3.4. Court Proceeding during COVID-19 pandemic: Position in Malaysia.

In Malaysia, the Rules of Court (Amendment 2020) has come into operation on 15 December 2020 [32]. The Rules of Court 2012 [P.U. (A) 205/2012] are amended in Order 1, in rule 4, by inserting the definition of "remote communication technology", [33] has the same meaning assigned to it under the Courts of Judicature Act 1964 (Act 91), [34]. the Subordinate Court Act 1948 [35].and the Subordinate Courts Rules Act 1955(Act 55) [36]. The new Order 33A the Rules of Court (Amendment 2020), shall apply to any proceedings conducted through a remote communication technology. Under Order 33A. rule 3 (1), (2) and (3) provides the procedure for attendance of person, witness or prisoner as witness or party by way of remote communication technology.

3.5. Court Proceeding during COVID-19 pandemic: Position in Pakistan.

The foremost thing is that in the eye of Apex Court of Pakistan, it is incompetence of the government when it failed to observed effective preventive measures on entry points of the country and the corona virus disease landed in this country [37]. The fact matter is that judicial system is on halt when it almost stopped working due to the corona pandemic and only most urgent cases were fixed and heard before subordinate as well as in higher judiciary. This situation adversely affected cases of civil nature and small estate and rights of downtrodden masses been neglected due to suspension of routine work. It is suggested that e-courts, e-submissions and e-hearing facilities shall be established in Subordinate Courts as well as at High Courts as a relief for litigants. Lockdown and moment restriction orders made it impracticable for the litigants to initiate or complete legal formalities for institution of case etc. [38].

COVID-19 scenario, the working of all courts was limited to cases of urgent and important nature and all matters of civil nature included cases related to small estate suspended except those deemed 'urgent and important' and in the Pakistani context that 'urgent and important' phrase means of criminal side. Unfortunately government is failed to maintain functioning of courts and tribunal system that is vital for administration of justice and holding rule of law in the time of public health emergency [38]. However it is need of time that this model should be introduced other part of the country.

The challenges as highlighted by Mr. Kalanori were of lack of software, lack of rules, lack of training and of linkage of stakeholders and the establishments. A

similar system based on remote technology was offered by Lahore High Court in March 2020, however this e-court systems was completely failed as acknowledged by Mr. Zafar Kalanori, practicing in Supreme Court of Pakistan. He more contended that while judging the efficacy of such system by the administrative committee of the High Court a complete waste of time and caused millions of public money due to 'bad program design'. Emphasized on lack of poor connectivity of internet is one of the most pressing issues as well as the unavailability of electronic devices can be predicted of failure of such a system. Various reports, most importantly the Data Digital Report 2020 emphasized that only 35% of public have access to internet services, though 76% of Pakistan's population is mobile users. On the other hand, many of public cannot pay for electronic devices, especially computers or smartphones, a video conferencing set-up seems to impractical, and an uninterrupted and smooth virtual internet connection made this more challenging. In that scenario, Mr. Kalanori suggested that government should take initiatives of foundation of facilitation centers in towns and cities, as well as in all districts across the country with availability of fast internet connections and all required electronic devices and video conferencing equipment does make a difference. Furthermore, government should arrange training sessions for court staff and lawyers on digital literacy and the Higher Court be recognized. If government is successful to establish such facilitation centers on large scale as per needs of the litigants than it is feasible for lawyers as well as litigants to use such facilities and more comfortable then to travel to districts or High Courts. This initiative from the government not only would reduce cost of traveling but also offer a cost-effective and efficient way for the justice system to progress and flourish without the risk of spreading of coronavirus and in times of moment control orders and lockdowns. [40].

In the times of Covid-19 pandemic, when court were closed, and reducing and adjusting its functions and hearings, it negatively impacted the provision of fair and timely hearings, not only caused of increasing of backlogs, but also its judicial and administrative proceedings become lengthy. In this scenario, explicit efforts will be required to improve access to justice and other legal services that can empower public at large to resolve their disagreements, as well as to seek restitution of their rights violations, and to fight discrimination on a range of concerns, including employment, housing, residency status, access to social protection mechanisms and health benefits etc. [41]. The Supreme Court of Pakistan almost a year ago, while initiating the establishment of an e-court system within the country considered the first and the remarkable step towards the using of remote technology to be speeding the litigation process for its users. Resultantly, all four provincial capitals i.e., Lahore, Karachi, Quetta, or Peshawar where Supreme Court registries are situated were linked through the video-conferencing connectivity that allow lawyers to argue the cases and Supreme Court judges could hear and adjudicate from the principal seat in federal capital Islamabad. This step was considered revolutionary and in right direction from all segments of the society. Similarly, in the province of Khyber Pakhtunkhwa, with the help of United Nations

Development Fund, its High Court established 14 virtual courtrooms to guarantee that justice is served to the very people seeking justice in criminal and civil courts. This kind of virtual court allow people involved in litigation and their legal counsels to register their cases, submit the required documents, receive summons and notices, schedule of hearing of cases through an electronic system. Through the help of video conferencing software, a virtual court could be proceeded with hearings and could be able to record evidence and presentation of witnesses, etc. With the above provided example, the litigants and segments of the society now demands to establish a virtual and remote-technology-based court system to be implemented all over the country by the state functionaries.

The findings of United Nation body shown that COVID-19 spared the judiciary in Pakistan. Courts are either closed or partially operational challenged by suspending the majority of hearings. Unfortunately, judiciary lack technological means and deprived state governments to hold virtual litigation that would have been ideal in coronavirus like situations [43]. The situation is that through circular dated 22-03-2020 directions/preventive measures were issued, accordingly, "all the civil work in District Judiciary in the entire province shall stand suspended except urgent matters and bail matters till further orders." And these directions imposed until dated 14/7/2020, when the above-mentioned circular modified with adding "Matters of letters of administrations and succession certificates". One must not forget that in June and July every year's judicial staff have annual leave and judicial work are at halt in civil courts completely and partially continued in criminal courts. So it could be argued that from the month of March 2020 to August 2020 our judicial system were paralyzed in account of Corona Pandemic. Unfortunately, no system of digital services and technology-based system of access to justice and justice services delivery i.e. E-courts concept were enacted/established by the state governments and wholly depended on manual system. Admittedly, the concept of work from home during pandemic especially in legal field in Pakistan was largely non-existent. On the other hand, judiciary at large particularly Civil, Magistrate, District and Sessions Courts, the environment is inhospitable. Although, with the help of Asian Development Bank's 350 million grant, Pakistani judiciary started digitalized while provided computers, setting up a website and making an online cause list and case record system to help and ease dispensing justice to litigants. However, one cannot consider it equal to E-Court. With the concept of E-Court system, it should have provided the ability to file cases, case documents and applications electronically and review case diaries of proceedings without the need to physically visit the courts. E governance is not a new phenomenon in Pakistan, one can see online service portals i.e., the Federal Board of Revenue's Iris platform, the Securities and Exchange Commission of Pakistan, where one can find a good example of public services and digitalization [44].

4.0 Conclusion

The government of Malaysia and Pakistan are compelling the initiative

system in dealing with world pandemic i.e. Covid-19 at various perspective such as health systems, including but not limited to national level policies and infrastructures, the legal practitioner, the judiciary as well as establishing connections and support for their citizens. Nevertheless, in both countries, the worldwide COVID-19 pandemic causing tension, fear, stress, and anxiety leading to the postponement of cases at the small estate offices.

This paper suggests that in Malaysia and Pakistan, the proceeding through remote communication technology should be made available at the Small Estate Distribution's office during the spread of COVID-19 period. The land administrators at all States are to be given a power and guidelines on how to apply the proceeding through remote communication technology. There must also be a clear provision on attendance of petitioners, beneficiaries, and witnesses to attend and give evidence in the hearing by way of remote communication technology. Sufficient administrative, technical facilities, and arrangements are to be made available by the government of Malaysia and Pakistan to enable parties to give evidence. It is recommended that to promote fairness to all parties and to expedite the hearing of cases of the small estate, the proceedings are to be broadcast to enable parties and the small estate officer to keep an audio- visual record of all proceedings.

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