

Impact of COVID-19 on Court Proceedings

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Introduction

The court proceedings have been affected and the discussion of important cases has been adjourned because of the pandemic in the country and around the globe. Amidst the COVID-19 pandemic, some urgent cases have been decided through video conferencing and their verdict has been produced.

Surya Prakash, programme director of civil society organisation DAKSH, in response to the video conferencing of urgent litigation matters, said that “It also gives us an opportunity to understand its day-to-day functioning and see what further tweaks are necessary, the Judiciary must also start thinking about ramping up e-filing and using smart forms instead of uploading scanned files. Ensuring that the input into the system is digital can transform the entire chain into digital.” The Indian Council of Arbitration (ICA) has appealed to the Tribunals, asking them to adjourn the hearing of the cases, wherever necessary. A penalty of 15, 000/- was imposed by the Bombay High Court on a litigant asking for the hearing of non-urgent matters.

Many High Courts and subordinate courts have tried their best to resume the court proceedings and notices have been issued in pursuance of the same. For instance, Bombay High Court has issued an order and has directed the courts to start proceedings in case there is a possibility for the same. The period of limitation to file any necessary pleadings, appeals, or application has also been suspended from the point of view of Section 4 of the Limitation Act 1963. However, for the hearing of an urgent matter, the person can ask the Court to schedule the hearing for the same.

Main Functions of the Court

Courts have resorted to the urgent only, online-only mode of online filings and email facilities for exceptional cases and have been addressing urgent matters via online video conferencing. For instance, the hearing regarding bail for Wadhawan brothers could not be postponed by the Bombay HC and hence was addressed via video conferencing. Lockdown has made the legal fraternity realise that they need to keep up with the technological advancements. Some

countries across the globe have already adopted online-court systems and India is yet to do that.

India adopted the E-Courts project following the creation of the E-Committee for making court-proceedings online. To make this possible, all the documents need to be made available online, so that they can be accessed anytime. When Indian lawyers started using platforms like Zoom, privacy issues regarding the usage of these apps arose. A strong cyber-security system where confidentiality can be maintained needs to be in place.

The issues before the Court due to the pandemic are¹:

- ***Increased number of civil suits***- The economic condition of the country has worsened since the lockdown and this has led to the increase in cases relating to non-payment of loans, non-profit assets, insolvency and so on. Since court proceedings have been suspended temporarily, the number of cases before the Court has increased immensely. Companies in India are expected to analyse the effects that delayed court proceedings can have on their work.
- ***Implementation of social-distancing in courts***- In the light of the reports stating that the Supreme Court might reopen during its usual summer vacation period, the implementation of social distancing is an important issue that needs to be addressed.
- ***Increasing working hours to cope-up with the number of pending cases before the courts***- This requires that a uniform Guideline/ Regulation be passed addressing the concerns of the Court functions, post and pre-lockdown. For instance, the UK has passed the Coronavirus Act, 2020.
- ***Improving the efficiency of the system***- The pace of the court proceedings might have to be increased, considering the increasing number of cases in the country (backlogs). The pandemic has put the spontaneity and efficiency of court-systems to check. Lawyers had to find a way to communicate the submissions, made in writing, electronically. The use of technology for the filing of documents needs to be improved.
- ***Cases involving Force Majeure***: Considering the situation in the country, parties may claim Force Majeure and try escaping liability. The application of Force Majeure depends on the situations that can be foreseen by the parties, not just on the external circumstances.

¹ Mirza Aslam Beg & Chandni Arora , *Impact Of Covid-19 on Arbitration Proceedings in India*, MONDAQ (Apr. 02 ,2020), <https://www.mondaq.com/india/operational-impacts-and-strategy/911554/impact-of-covid-19-on-arbitration-proceedings-in-india>.

The issue can arise between parties within India, between an Indian and a foreign party and between an employee and an employer.

- **The need for amendments:** The pandemic may require the amendment of the existing laws in the country, and this will add on to the workload. Rules and Regulations for a lot of Acts like the Indian Evidence Act and Indian Epidemic Act may need amendments.

The advantages of online courtroom systems are as follows²:

1. Lawyers can save the time they spend while commuting to their place of work and to Courts. The amount of work, when disputes are solved manually, might be comparatively more depending on the case.
2. Transparency and better discourse in litigation and the lawyers also learn to equip themselves with online platforms like Zoom and Skype.
3. Improved participation of judges and advocates and better management of cases.
4. Fast and easy hearing of cases, saves time spent in courts, in addition to the convenience in the hearing of cases.
5. More use of technology and cost-effectiveness- Court service is costly and processes like Online Dispute Resolution reduces the attorney fee. The fee paid to the third parties is also significantly cut down.
6. Lawyers can avoid overcrowding and also, waiting for their cases in Courts.
7. Increased access to justice and people from anywhere can get access to the service since they need not be physically present. There is also no need for infrastructural facilities.
8. Due to the pendency of cases, Alternate Dispute Resolution and Online Dispute Resolution are other dispute resolution methods that can be put to use.
9. Since there is no clarity about when the court proceedings could be resumed, the use of platforms like Zoom can make sure the urgent issues are addressed immediately.

Landmark cases adjourned

The coronavirus pandemic has affected the extradition of Vijay Mallya to India. Of the important cases whose hearing has been adjourned, as per The Hindustan Times, some of them are given below:

- **Citizenship Amendment Act (CAA)**

² Paras Joshi, *Functioning of Courts in India And Abroad during Covid-19 Pandemic*, MONDAQ (May 28,2020), <https://www.mondaq.com/india/litigation-contracts-and-force-majeure/918068/functioning-of-courts-in-india-and-abroad-during-covid-19-pandemic>.

This has been listed as the most important case to be discussed as per many sources. More than 150 petitions have been filed against the passing of the Citizen Amendment Bill. The hearing was delayed due to various reasons, one among which was hurting the religious sentiments of the people. It was rescheduled twice, first to March and then to April, but the hearing did not take place due to the lockdown.

We are moving towards the 4th phase of the lockdown and the Supreme Court has planned on scrapping the 45-days summer vacation in case the nation-wide restrictions are lifted. There was a massive protest against the passing of the Bill and Section 144 of the CrPC was imposed on places to avoid the gathering of people. The protest seemed to have died on account of social distancing necessary to counter the current situation.

- **Article 370**

In August 2019, the special status Kashmir was enjoying was scrapped down. After the abrogation of Article 370 of the Indian Constitution, around 23 petitions were pending before the Supreme Court³. The laws passed by the Parliament of India could only be made applicable to Kashmir on account of approval by the Governor. After the abrogation of the said Article, Kashmir was divided into two Union Territories: Ladakh, and Jammu and Kashmir. The matter was scheduled for hearing on March 2 where the 5 judge Constitutional Bench refused to refer the case to a 7-judge bench.

- **Sabarimala issue**

Another important issue pending before the Supreme Court of India was the hearing of the Sabarimala matter. In 2018, the restriction imposed on the entry of women into Sabarimala was lifted. The issues regarding the same and other concerning the religious faith of Islamism and Hinduism were pending before the Court. The petition was to be heard by the nine-judge bench of the Supreme Court in March but it hasn't been heard yet.

- **Use of Money Bill route**

A Money Bill, passed by a simple majority in Lok Sabha, need not take up the recommendations of the Rajya Sabha. The government has used this to pass some contradicting

³Anumeha Varma, *Supreme Court of India Declares Internet Ban in Jammu and Kashmir Unconstitutional*, ADVOK GLOBAL VOICES (Jan. 31,2020), <https://advok.globalvoices.org/2020/01/13/supreme-court-of-india-declares-internet-ban-in-jammu-and-kashmir-unconstitutional/>.

laws many times and this was challenged before the Judiciary. It was to be addressed by a 7-judge bench but has been adjourned due to the nation-wide lockdown.

- **Creamy layer**

Creamy-layer is the term coined to denote the well-off families among the Other Backward Classes (OBCs). For better understanding, the income of such households is more than 8 lakhs. The Center is against the application of this to the SC and ST categories on the grounds that they have been discriminated against for so long that they deserve to get reservation despite their financial conditions. The case was to be heard on April 21.

How are urgent hearings conducted?

The Delhi High Court has decided to hear the urgent matters in the following manner⁴:

1. **Establish a case of urgency** – Until April 4, one can contact designated officers of the High Court of Delhi via telephone to request the Court to consider hearing the case. Telephone calls can be made between 10:30 am and 12 noon only. On this telephone call, one is required to satisfy the Court that the dispute is truly one of urgency. The designated officers of the High Court for this task hold the position of Registrar or Joint Registrar.
2. **Hearings through a video conference** – If the Joint Registrar concerned is satisfied that the matter requires an urgent hearing, the case shall be listed at 11:30 AM on the next date. The hearings shall accordingly take place through video conferencing.

Impact on other foreign countries

The United Kingdom: England and Wales

Orders have been issued in these States and the courts have been asked to function despite the lockdown, with the available resources with adjustments. The civil courts are functional and are operating wherever it is possible. A new “Protocol Regarding Remote Hearings” was issued on March 20, 2020, to provide other regulations with respect to remote functioning of the civil courts. The Supreme Court has been temporarily closed until the issuance of further notice. The London Court of International Arbitration (LCIA) has asked to conduct all the proceedings

⁴ Vaishali Mittal & Siddhant Chamola, *COVID-19: The Impact on IP Proceedings in India*, IP STARS (May 26, 2020), <https://www.ipstars.com/NewsAndAnalysis/COVID-19-The-impact-on-IP-proceedings-in-India/Index/5252>.

online, wherever necessary, since the provision under which the Court was established does not mandate hearing in person.

United Arab Emirates

A notice was issued at the beginning of the lockdown, postponing all the matters which were to be heard. Later, some of the most urgent matters were heard via videoconferencing, and the Microsoft team helped them in the process. The DFIC staffs are working from homes (remotely) and all the important matters are being discussed via teleconferencing. The judges and advocates hear the matter via videoconferencing whenever they are directed to do the same.

The Dubai International Arbitration Centre (DIAC) has tried to remain fully functional despite the lockdown. They have also successfully made provisions for cases to be registered and heard online. In addition to the same, they also have provisions for people to check the status of the case. For safety, the judges and advocates have also been advised to work remotely using telephone or other apps like Zoom.

The United States of America

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) allows hearings to take place via videoconferencing in The United States of America (USA). The court website also has a separate page for COVID-19 where the rules and the cases before the Court could be accessed at one click. Initially, the matters to be heard were postponed and after some time, the urgent matters were heard through videoconferencing. The American Arbitration Association (AAA) has postponed all its hearing to June and is still discussing the possibility of conducting proceedings using the internet⁵.

Canada

National Courts have implemented Emergency Practice Directions (EPDs) to hear the urgent matters, and this shall remain in force until it is terminated. All the urgent matters are heard electronically, and a notice has been issued listing out the matters whose hearing was most affected during the lockdown. The British Columbia Commercial Arbitration Centre and ADR Institute are open for normal hearing and social-distancing is maintained while the process is in progress.

France

⁵ AMERICAN ARBITRATION ASSOCIATION, COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES (2016).

The hearing of essential matters has been postponed and the court proceedings via video calls are discussing urgent matters like (essential litigation):

- Correctional hearings for pre-trial detention and judicial review measures
- Immediate appearances
- Appearances before the investigating judge and the liberty and custody judge and;
- Hearings of the sentence enforcement judge for emergency management.

The International Chamber of Commerce (ICC) has been asked to keep up with the technological advancements so that the court proceedings could be resumed.

Germany

Despite the regional differences, the courts operated with a smaller number of staff for the oral hearing of urgent matters. The DIS (German Arbitration Institution) has published its “Announcement of Particular Procedural Features for the Administration of Arbitrations in View of the Covid19 Pandemic”, for addressing the pending and upcoming cases. In order to combat the travel restrictions imposed, tribunals may be required to hold videoconferencing in future. The German Civil Procedure Law makes provision for the hearing of cases via videoconferencing, but it is not used.

Singapore

Even before the pandemic, Singapore had a system in place through which lawyers made applications electronically. The High Court has been divided into Team A and Team B and it has been made sure that social-distancing is maintained. The Singapore International Arbitration Centre (SIAC) has also split their staff into teams and its functioning hasn't been affected by the pandemic. All the payments are also made electronically.

Conclusion

Needless to say, there is a possibility that parties will take undue advantage of the lockdown and delay the hearing of cases. The scope for holding the proceedings electronically through tele-conferencing and videoconferencing has increased amidst the lockdown, especially for arbitration. Despite the disadvantage that the parties have, the alternate mode of dispute resolution through video calls might be a need of the hour. Online Dispute Resolutions are advantageous compared to normal court proceedings requiring the physical presence of the accused, third parties and anyone else necessary. In the coming days, tribunals may even switch to video conferencing as per the Arbitration & Conciliation Act, 1996.

When the Supreme Court asked the district courts to hear the matters electronically, there were some objections raised, and it was said that the courts must do so. The government, in the coming days, has to make sure that the economically and socially backward people have access to justice. There must also be fair access to the legal system and alternate mechanisms to resolve the dispute and enhanced use of technology and other resources. People from the vulnerable sections of the society like the marginalised section and women are more prone to risks and at such a time, they should be given fair access to the judicial system.