

PANDEMIC LED LITIGATION: AN ERA OF E-COURTS IN INDIA

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ABSTRACT

Covid-19 has challenged the entire human population on the planet earth. That has opened avenues to the online opportunities to be flourished in different aspects in different professions. Litigation is no exception to this prevailing practice; online litigation has given a thrust only to the elite practicing lawyers not to the district level practicing lawyers to whom Covid-19 has hit the most. Researcher will be discussing how the Supreme Court of India has given an avenue to the virtual court hearing? Following many High Courts have also started online hearing. For the first time Indian legal fraternity has encountered e-court set up which was hailed by the lawyers as well as by the judges. Researcher will also discuss that technology has played a crucial role in the virtual court hearings and e-court system can be relied upon if need may arise ahead. Researcher also has given an insight to the post-Covid-19 disputes that are most likely to come to the court once current situation gets normalized. How the legal industry of the other countries has dealt with the Covid-19 or has been affected by it will also be discussed by the researcher. At the end researcher will give his concluding remark.

Key words: Litigation, Pandemic, Virtual, Hearings, Technology

INTRODUCTION

The most unprecedented time, which the whole world will remember for always, was come up in 2020 when almost everybody was infected from a virus name Coronavirus. The situation of starvation, unemployment, economic crisis was all around the world. Means of transportation were closed, Poor people used to travel thousands of kms to their homes on their foot or bicycle. The entire nation was in complete lockdown. No food, no money was available to Labors and daily wages worker. No job security was available, no jobs were available, employers started laying off their employees, every sector of the nation got affected badly and scenarios were changed to deal with it. Things from physical got transferred into virtual. From classes to court hearing everything went online. People started working from home and norms of physical distancing were being followed. Citizens were

directed by the government to put mask on their face whenever they go out. When so many things were happening in the country, so many questions were also arising. Questions like, whether Indian legal system is ready to embrace all these new technological changes? Or the changes like this should be made much before in the Indian legal system to overcome with uncertain situations like this pandemic? Or are we going really slowly in adopting these technological measures in our legal system? To answer all these questions new changes were also made to be brought in the Judicial System. During these unprecedented times, Indian legal system was in utmost need to introducing an alternative method of conducting court proceedings. Without physical presence of Judges, Advocates, Clients and other court staff the court proceedings needs to be conducted.

In this article, we need to see the after effects of Covid in litigation, and how far this pandemic affected the legal sector. Also, what are the changes were brought in the legal sector post pandemic.

VIRTUAL COURT HEARINGS

The first step which was decided by the legal fraternity to overcome with this situation was to close the courts and keep it open for matters which are extremely important in nature. Supreme Court on 16th March, 2020 issued a notice related to it and directs that, keeping the advisory issued by government in mind and also by considering the health of litigants, lawyers, visitors and other court staff all the courts shall remain closed and will be restricted to hear only urgent matters. By closing all the courts, legal profession was also started affected and many lawyers had to face challenges, due to this many high courts of the nation including Karnataka HC came up with a proposal to shift the hearing of matters online.¹⁹¹³ The set-up of e-courts was introduced in the country and got very successful. This step was pretty much important for the growth of legal system in our country since huge amount of cases is already pending in the courts of country and situation like pandemic will only accelerate the pendency of cases. To overcome with this problem, introduction of this concept was very much needed.

Many people were thinking, we are yet to wait for few years to have such kind of e-court platform in our country. Bu the way whole legal system adapts in this new platform of e-hearing, it was appreciated all around the nation.

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¹⁹¹³ Supreme Court of India, *Notification*, SUPREME COURT OF INDIA (August 14, 2020, 2:29 PM), https://main.sci.gov.in/pdf/Notification/13032020_120544.pdf

Three judges' bench of the Honorable Supreme Court comprised of honorable Chief Justice of India Mr. S.A Bobde, Honorable Justice D.Y Chandrachud & Honorable Justice L. Nageshwara Rao issued guidelines under article 142 of Indian Constitution on 6th April, 2020. By keeping all the norms related to this pandemic in mind like social distancing, health of lawyers, litigants, court staff and visitors. The guidelines were to set up video conferencing for all courts

The guidelines were followed as:

Keeping all the scenarios in mind, and all the health-related issues. All the hearings must take place through video conferencing.

- Helpline number will be available, if any technical error or has arisen up.
- If needed amicus curiae will be appointed by the court to ensure all these facilities available to lawyers and other judicial staff.
- These guidelines are mainly focusing the argument part and for producing evidence both the parties have to give consent and the evidence will be recorded by way of video conferencing. Social distancing will be followed if the recording is in court room.
- Restricted number of litigants will be allowed to enter into the court room and if a person is suffering from any infectious disease, he will not be allowed to enter into the court room.¹⁹¹⁴

The honorable Supreme Court said that, all the safety and precautionary measures were taken by keeping a view of social distancing, and other government guidelines in mind. These guidelines are being framed for ensuring the safety of Judges, Advocates, Litigants and other court staff and deemed to be lawful as well. Later on, it permits the High Courts to acquire the measures which are required in order to maintain the continuous functioning of courts and legal system.

ROLE OF TECHNOLOGY IN COVID-19

As we all know when there is already a pendency of many cases in the courts of our nation, situation like pandemic will going to harm it or accelerate it only, during these unprecedented

¹⁹¹⁴ Supreme Court of India, *Guidelines for Court Functioning through Video Conferencing during COVID-19 pandemic*, SUPREME COURT OF INDIA (August 15, 2020, 9:37 PM), https://main.sci.gov.in/supremecourt/2020/10853/10853_2020_0_1_21588_Judgement_06-Apr-2020.pdf

times, situation of legal system would only get worse day by day and uncontrollable. There are still many numbers of people in our country who are awaiting justice and justice is getting delayed. As we also heard justice delayed is justice denied sometimes.

By introducing the concept of video conferencing, the legal system has taken a step forward in the direction of delivering justice to the citizens of this country. By the way of video conferencing we can assure the proper legal proceedings to be conducted without any hindrance. Hassle free and speedy justice will be delivered to the parties.

By keeping all these measures in mind, we can say that the future of litigation is in safe hands. Now the parties do not have to wait for situation like this pandemic to get over and the technology has played a very crucial role in giving the growth to the legal system in the new direction. As we all know we are developing nation and majority of the population of our country is not very well equipped with using these new technologies and also cannot afford the same. Considering it, the honorable SC has also issued guidelines to ensure that all the facilities related to video conferencing shall be available to litigants. This act of Supreme Court was appreciated all around the nation.

Many advantages can be seen by introducing technology in the legal system, this will the system in many ways like it will help in reducing the unnecessary crowd from the court room, pendency of cases will be decreased, no delay in justice, proceedings will be conducted with-out any delay, judges, lawyers and litigants do not have to travel to the courts of jurisdiction.

Technology has all the power to change the world and now is the time for legal system as well to adopt these certain changes and make it easier and available for everyone in these tough times.

HEARING IN FOREIGN COURTS

As we all know that whole world is got affected by this pandemic and not only the legal profession but some other professions as well were face hugged loss during this pandemic. But this is not something on which people can sit quietly and wait for it to finish as soon as possible and then start resume their work and activities. This is something which people has to face in their daily lives and has to beat it by taking specific measures and precautions.

Like India, many other countries as well, adopted a method of transforming business from offline to online mode. In the similar manner of Indian Courts, Courts of USA, UK,

Singapore and many other countries also adopted this methodology of virtual hearing so that there shall be no hindrance in prevailing justice to the society.

STATUS OF LITIGATION IN UNITED STATES OF AMERICA

In USA, various courts released notification regarding hearing of cases, where it is notified that, all the court proceedings shall be conducted through online mode amid this pandemic. The hearing should take place either through video conferencing or audio conferencing. In USA, every state has its own different law & strategy. If you consider the example of New York, In New York, trial procedure is being done through video conferencing only. The new convicts are appearing in the court through video conferencing. On the other hand, if we see the example of California, clear restriction has been imposed on Juries to assemble or meet in the courts whereas in New York no such restriction is imposed on Juries.

STATUS OF LITIGATION IN UNITED KINGDOM

United Kingdom has enacted a new law related to Coronavirus which is Coronavirus Act, 2020 to ensure safety and security of all of its citizens. This act carries certain important provisions related to participating in court proceedings. This act permits the participants to take part in the proceedings of the court through online mode. UK Courts have utilized the technology to ensure proper court proceedings for the purpose of delivering justice during these unprecedented times as well. There are many important matters which were brought in the court and were decided by the court through video conferencing. The courts of UK also appoint a media person who ensure that no technical glitch will be occurred in between the proceedings and people can easily access this new mode of proceedings and adapt themselves in it. He also makes sure that, the objective of conducting online proceedings shall be achieved.

Status of Litigation in Singapore

Singapore also came up with a bill which is obviously related to Coronavirus Measures called Covid-19 (Temporary Measures) Bill. This bill is not permanent in nature and contains the measures and precautions which should be followed while online court proceedings. It contains all the conduct of court and also allowing the convict and witnesses to provide evidence pertaining to the case through video conferencing only. It is also declared that, the Supreme court & all the state and family courts are allowed to entertain or listen to the matters which are of utmost importance and urgent in nature. The matters shall be taken up through electronic mode only.

Status of Litigation in European Union

From general courts to ECJ all the courts in European Union has postponed many numbers of cases and the importance is being given only to the urgent matters. Matters which are urgent, expedited and interim proceedings are given priority. The timelines related to filing of an appeal remain unaffected but the extension of one month is given to all other matters. All the matters which were listed to hear in April have been postponed. All the courts buildings were shut down and all the court staff was working from home.

Status of Litigation in France

Like other countries, France is also dealing with the urgent litigation. Urgent litigation here means litigation which is related to custody, urgent cases, or which is related to eviction of a person who has committed any criminal act. The Government of French on 23rd March introduced a decree which contained the order of extending the timelines.

CASES POST COVID-19

Since, all the sectors of the nation got affected very badly and many have incurred huge loss as well. But there are professions like law who may use this pandemic in a positive aspect and will gain a chance to help nation to overcome with this situation.

1. Disputes related to Employer-employee are most likely to come amid this lockdown because there are situations in the period of lockdown where employer laid off their employees as it was not possible for them to pay during the period of closure of industries and companies.

The Ministry of labor and Employment, Government of India came up with an advisory note on 20th March, 2020 in which it was directed that public and private employers should not terminate their employees. Hence there are fair chances that the case related to challenging advisory issued by government will come up in the court of law.

2. The second area in which the cases may arise due to the result of lockdown in the nature nation is landlord-tenant disputes. Since the tenant went to other big cities for the search of job and reside in those big cities on rent. Due to crisis because of COVID-19, many tenants couldn't able to pay the rent to their landlords.

In respect of this, request was made by Honorable Chief Minister of Delhi to the landlords not to force on rent from the tenants for 2-3 months. Later on, Ministry of Home Affairs passed an order on 29th March, 2020 in which it was directed that owners shall not ask for

rents from their tenants for the next 1 month and it was also ordered that strict action will be taken against those landlords who do not abide by this order.¹⁹¹⁵

3. Many contracts may also be breached due to this pandemic, and the party aggrieved will approach the court of law for seeking damages, for negotiation or rescinding the contract.

4. Complete ban of International flights was also imposed by government because of its people could not able to move to other country for business purpose or for professional purpose or for any other personal purpose. Issue or renewal of passport got delayed, visas were also not issued. This issue may also be challenged in the court of law.

5. Issues related to domestic violence were also seen in the period of lockdown. This is also one of the major issues to bring up in the court of law.

6. Insurance claims to the aggrieved party were also affected due to the lapse of time which again takes the party to follow the same, complex procedure to claim its insurance.

7. Also, there is high probability of cases in which people break down the lockdown rules and regulations. By keeping all the safety measures in mind regarding the health of citizens Government of India set up certain rule and regulations to which are to be followed strictly by every citizen of this country. But there may be scenario where people violated those rules and regulations. Therefore, there are fair chances that matter related to breaking of lockdown rules and regulations will also come up in court.

8. They are many more issues which may arise in the court of law which cannot be seen or assuming which only get to know by their practical approach in the court.

EFFECT OF COVID-19 ON ARBITRATION

Not only litigation but Arbitration is somewhere also got affected due to this pandemic. Many Arbitration institutions have issued guidelines and measures to keep in mind the proper working of Arbitration institutions. Since the Arbitration system is also one of the pillars of our society in resolving disputes of the parties.

Few Arbitration institutes which are mentioned below have changed their functioning due to this pandemic and taking care of all the measures.

Hong Kong International Arbitration Centre (HKIAC) introduced an idea of conducting regular webinars to ensure continuation in the terms of service provided.

¹⁹¹⁵ Ministry of Home Affairs, *MHA Order restricting movement of migrants and strict enforcement of lockdown measures*, GOVERNMENT OF INDIA (August 18, 2020, 05:36 PM), https://www.mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%202020.03.2020_0.pdf

ICC also postponed all its hearings which were scheduled till the end of June and also decided to take over all the hearings through virtual mode.

The London Court of International Arbitration (LCIA) also notifies that, they are working under the supervision of all safety and precautionary measures.

Singapore International Arbitration Center (SIAC) also started working remotely and no work was being operated through offices.

CONCLUSIVE REMARKS

Technology has not only reduced the crowd of the courts but also reduced the requirement of space which is needed for court rooms or benches. Law is such a Nobel profession of our country and everybody owe their respect towards lawyers and judges in our country. Court of law is the platform where people have so much of faith and seeks justice. In these unprecedented times, the rendering justice should not be stopped and technology played an important role in it. By adopting technological measures, legal system proved that, in situation like this pandemic, justice should not be stopped in any ways. People have the right to seek justice and it is our duty to provide them. The Honorable Supreme Court has come forward and taken all the solid steps in the direction of introducing virtual court proceedings in the country and we hope that it will last longer for many upcoming years so that nobody remains unheard or left with justice just because of lack of technology to fight with situations like Covid-19.