



GRAVITAS LEGAL

Covid-19 and the revamping of the Indian legal system

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“The legal establishment is “no longer at ease here, in the old dispensation” – it has witnessed the birth of new ways of doing things and the death of the old order.”

-T.S. Eliot ¹

Introduction

Coronavirus is the typical ‘Black Swan’ event.² The global Coronavirus outbreak has led to destabilization of the world economy, a loss of earnings for companies as well as individuals, rise in the unemployment rate and a significant drop in the stock markets. As India battles the Covid-19 tsunami, the likelihood of a worsening global impact looms.³

The global pandemic⁴ that has caused lockdowns in numerous nations around the world, has caused disruption in all facets of life for an uncertain period. Social-distancing has emerged as the most powerful weapon to curtail the spread of this highly contagious virus in the society at large. However, these social distancing directives have reshaped and transformed many industries around the world.

The Indian legal landscape has also been disturbed and severely impacted by this pandemic. With the social distancing obligations and the nation again under lockdown orders, law firms in India and the Indian judicial system have had to once again close their doors to the general public. Nevertheless, considering that a complete shutdown of the Indian justice system is

¹ T.S. Eliot, ‘The Journey of the Magi’ (Faber and Gwyer, 1927)

² ‘Black Swan’ is an unforeseen and unpredictable event with great consequences outside the realm of regular expectations because nothing in the past can convincingly point to its possibility and therefore its outcome.

³ Gary L. Benotn, ‘How will the Coronavirus Impact International Arbitration?’ (Kluwer Arbitration Blog, 13 March, 2020) < <http://arbitrationblog.kluwerarbitration.com/2020/03/13/how-will-the-coronavirus-impact-international-arbitration/> > accessed on 22 April, 2021

⁴ WHO Director General’s opening remarks at the media briefing on Covid 19- 11 March 2020 (WHO) < <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> > accessed on 22 April ,2021

unfavourable, the law firms have implemented work from home policies, whereas, the judicial administrators have embraced technology by conducting hearings through video conferencing. This article seeks to study and critically analyze the impact of the global pandemic on the legal system of India. The article will further consider and evaluate the approaches adopted by the judiciary and the legal professionals to minimize the impact of Covid-19 on the Indian legal industry.

Changes to the Indian Legal System

Covid-19 has affected the Indian Legal System like never before. It has casted a harsh light on the outdated way justice is dispensed, law is taught, and legal services are delivered.⁵ Coronavirus has harnessed the potential of under-utilized tools and alternative work models long resisted by the Indian legal industry.⁶ Traditional ways of working have been altered and accepted at an astounding speed and with ease.

In just a matter of days, law schools had transitioned to online schooling and learning, the Courts had resorted to the Virtual Courts System and law firms are continuing to work from home proving technology to be a lifeline for the Indian legal landscape.

The impact of the pandemic has been majorly seen in the Indian courtrooms. In order to adhere to social distancing norms and to curb the spread of second wave of this infectious virus, the Indian Courts have again resorted to Virtual Court Rooms to ensure that administration of justice remains uninterrupted.⁷ It must be noted that, the concept of Virtual Courts is not a novel concept in India. In 2003, the Supreme Court of India in *State of Maharashtra v. Prafulla Desai*⁸ held that recording of evidence by a Court through video conferencing shall be considered to be ‘as per the procedure established by law’.⁹ Since then, several subordinate Courts in India have already framed guidelines in this respect and have held judicial proceedings through video conferencing.

India’s spiraling Covid-19 crisis has hit the Indian Legal System in a major way as most of the judicial officers and staff members of various courts test positive for the virus. Sadly, many judicial officers have also succumbed to this deadly disease. During these quarantined times and keeping in mind the public health concerns, the Indian Courts are now hearing only extremely urgent matters filed in the year 2021 only at all levels. The cases which do not fall under the aforesaid categories have been adjourned “*en bloc*”¹⁰, depositions have been cancelled or rescheduled, and various deadlines have been extended. In this Virtual Courts

⁵ Mark A. Cohen, ‘ Covid-19 and the Reformation of Legal Culture’ (Forbes, 14 April, 2020) < <https://www.forbes.com/sites/markcohen/2020/04/14/covid-19-and-the-reformation-of-legal-culture/#4b8c3168171d>> accessed on 28 April, 2021

⁶ *ibid*

⁷In Re: Guidelines for Court Functioning through Video Conferencing during COVID- 19 Pandemic, 2020 SCC Online SC 355

⁸ (2003) 4 SCC 601

⁹ *ibid*

¹⁰ Office Order dated April 18, 2021, High Court of Delhi at New Delhi < https://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_59R6UXN01KB.PDF) accessed on 28 April, 2021

System, besides the parties and their respective advocates whose cases are being heard by the Bench, the parties and/or Advocates awaiting their turn are also permitted to join ‘virtually’ beforehand exactly like in physical Courts.¹¹ These individuals witness on their screen, the live proceedings of cases taken up by the Bench. Furthermore, a special facility has also been provided to the Media, as representatives of the public, wherein they are permitted to access the Virtual Court Room and can observe all the case proceedings being held by the Bench(s). In light of the pandemic and to prevent the spread of this virulent virus, many criminal Courts in India have granted interim bail to under trials due to congested prisons. Whereas, in child custody and visitation rights cases the Indian Courts have advised that parents substitute physical visits with electronic contact.¹²

However, keeping in mind the difficulties due to this pandemic, the Supreme Court of India has extended statutory timelines in all proceedings including filing of pleadings, irrespective of the limitation period prescribed in general or Special Laws whether condonable or not till further orders.¹³ This directive of the Supreme Court of India providing extensions in the limitation periods is applicable to all Courts and Tribunals in India.

The Covid-19 outbreak has also disturbed the liquidation process under the Insolvency and Bankruptcy Code, 2016 (IBC). It has been ordered that the period of lockdown is to be excluded from the calculation of any statutory timelines under the IBC. Moreover, the National Company Law Appellate Tribunal has also ordered that any interim order/stay orders shall continue to operate till the next date of hearing, which may be notified later.¹⁴ Additionally, in the wake of the pandemic, the Insolvency and Bankruptcy Board of India (IBBI) has introduced a Regulation 47A to the Insolvency and Bankruptcy Code, 2016 which states that “*Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process*”.¹⁵

Likewise, the alternate dispute resolution mechanisms in India have also been affected by the Coronavirus pandemic. The nationwide lockdown prevents the physical conduct of Mediations and Arbitrations. Mostly hearings have been postponed or are being conducted virtually through video conferencing. Nevertheless, considering the severity of the pandemic and that India is again under curfews and lockdowns, the Supreme Court of India has suspended the

¹¹Standard Operating Procedure for Ld. Advocate/Party-in person for Mentioning, e-Filing and Video Conferencing Hearing dated 15 April, 2020, Supreme Court of India < https://main.sci.gov.in/pdf/LU/15042020_134922.pdf > accessed on 05 April,2021

¹² Vishal Verma v. Twinkle Vinayak<https://images.assettype.com/barandbench/2020-04/13dad7c-e292-4c5f-99f0-a46ad4e7e107/Vishal_Verma_Order.pdf> accessed on 21 April, 2021

¹³ In Re: Cognizance for extension of limitation, Suo Motu Writ Petition (Civil) No. 3/2020, order dated 23 March, 2020 and order dated 06 May, 2020 and order dated April 27, 2021

¹⁴ <https://nclat.nic.in/Useradmin/upload/7281701495e81d18e254d0.pdf>

¹⁵ No. IBBI/2020-21/GN/REG060 , INSOLVENCY AND BANKRUPTCY BOARD OF INDIA < <https://ibbi.gov.in/uploads/whatsnew/4697af9d01b6c12c0816f4be28ea6835.pdf> > accessed on 01 April,2021

limitation period for passing of arbitral award as obligatory in the Section 29A of the Arbitration and Conciliation (Amendment) Act, 2015 till further orders. ¹⁶

The pandemic has also transformed the way law schools impart education to students. The law schools in India have suspended campus learning processes and have moved to online teaching methods to ensure continuity of the learning process. Furthermore, to embrace the new normal and to remain connected to law, many judges and lawyers in the country have been holding webinars, lectures and talks on numerous areas in law.

Law Firms have also enforced work from home policies during this countrywide lockdown period to minimise the potential business impact of Covid-19. The pandemic has kept lawyers and law firms engaged in advising and assisting clients on force majeure provisions and termination of contracts. Lawyers are now reanalysing contractual terms including provisions as to arbitral seats and venues, governing laws, institutions, procedures and force majeure. The global pandemic has also led to a rapid increase in the rate of unemployment in the country causing companies to deal with a lot of legal complications. Thus, legal professionals have been engrossed in guiding these businesses as they navigate unemployment, confidentiality and non- compete clauses, gratuity, severance pay and numerous other challenges.

Looming Challenges to the Legal Culture

None of the previous downturns have ever weakened the legal business or triggered the prompt implementation of new operational procedures and policies. Coronavirus is the first Black Swan event having a long lasting and an unpredictable impact on the legal landscape of India.

As the world is embracing the social distancing measures, the fervour that litigation once professed as the champion of dispute resolution, now seems to be waning.¹⁷ The regular hearings in the Indian Courts are being adjourned or being shifted to the Virtual Court Room System. With the courts of India already overburdened with staggering backlogs, the virus may just be adding to the same. However, the postponement of hearings is not the only difficulty that the legal system is facing. The movement constraints throughout the country is also making the practice of gathering evidence and examining witnesses more challenging. The shift in the court room justice delivery system to virtual hearings has also led to many genuine concerns amongst the advocates and the parties. Many parties fear their safety and privacy under this new video conferencing system. Moreover, several judicial administrators and parties have been facing technical glitches which has also affected the way in which justice is delivered. Furthermore, many cases in India are represented by an army of lawyers assisting their seniors during the arguments. The new procedure of virtual hearings has caused severe hardships to these lawyers who struggle to coordinate with each other during the online proceedings.

¹⁶ Supra 10

¹⁷ Alok Jain and Dhruv Jain, 'Arbitration in the time of COVID-19' (Bar and Bench, 26 March, 2020) <<https://www.barandbench.com/columns/arbitration-in-the-time-of-covid-19>> accessed on 02 April, 2021

The impact of coronavirus may also lead to an end of many arbitral seats as the travel restrictions continue and countries struggle to recover from its aftermath.

Lastly, the transformation of the justice delivery system to that of a digital court system may eventually lead to the increased implementation of artificial intelligence. This may hamper the manner in which justice is delivered due to the partial nature and the incomprehensibility of the artificial intelligence structure.

Advantages of the Legal Systems' cultural reboot

Having reformed the Indian legal landscape by embracing technology during this unprecedented global crisis, the Indian Legal System has implemented and safeguarded our ancient custom – Justice, at all Cost, Always!

Even during these unprecedented times, information technology has ensured that dispensation of justice is not hampered. The Indian legal industry is becoming majorly dependent on IT-enabled virtual systems and communication facilities to minimize the effect of the global pandemic. Nevertheless, despite the challenges of this new system, the virtual technology in the Indian legal system is flourishing.

Undoubtedly, as the pandemic is going to have a long-lasting effect, more hearings will be conducted virtually. This change in the justice delivery system may be the turning point of the Indian legal landscape as Online Dispute Resolution will be widely executed and adopted. Moreover, with the remarkable reach of the internet in today's times, it will provide access to justice to all while addressing the health concerns.

The virus will also transform the way evidence is collected and transmitted. Reliance on paper documents is expected to drastically reduce as Courts promote e-filing and electronic documents are majorly being relied upon to curtail the spread of this contagious virus. This will in turn lead to reduction in the wastage of paper which is a major environmental concern in India. Moreover, the special facility given to the Media is also leading them to widely report almost all cases and their outcomes. All these are signs that modernisation of the India Legal System is likely to occur. This pandemic will transform and change the Indian Legal Culture.

A New Way Forward

The present pandemic situation is unpredictable. It is difficult to say for how long the social distancing orders and movement restrictions will remain in force. It is anticipated that these preventive measures will remain for a long time even after the current situation has subsided.

The existing circumstances are likely to turbocharge the transformation of the Indian Legal System. It is likely that Covid-19 will drive law into the digital era and restructure its landscape. The judicial directive of introducing the Virtual Court System to make the justice delivery system accessible to everyone is a welcome change. In doing so, Indian courts have sustained the chief principle of the Indian Legal System, i.e., *justice must not only be done but*

seen to be done. In the present circumstances, Arbitration is expected to be the most desired and versatile mode of resolution of disputes.

The challenges in these trying times should be harnessed as an opportunity for the Indian Legal System to revamp and strengthen their operating procedures to mitigate the effects of the Covid-19 pandemic at the earliest. That being said, where on one hand even though a quick transition is the need of the hour, yet, on the other, it ultimately would depend on the individual capacity of the stakeholders to adapt and adopt to this dynamic situation.



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