

Delivering Justice during COVID-19 pandemic.

Manjari Singh, (Ph.D Student)

(LL.M, NET)

Department of Human Rights and International Humanitarian Laws

Saurashtra University, Rajkot (Gujarat), India.

Email - manjari86singh@gmail.com

Abstract: *This paper takes a look to the lockdown situation in the country due to pandemic covid 19. In current situation, it also affect the day to day work of legal system. It is required that legal system works effectively, So there are some suggestions which is helpful for the proper functioning of the court system.*

Key Words: *COVID-19, court, law, pandemic, corona virus, justice, system, contract*

1. INTRODUCTION:

The Corona virus outbreak came to light on December 31, 2019 when China informed the World Health Organization of a cluster of cases of pneumonia of an unknown cases in Wuhan City in Hubei Province. Subsequently the disease spread to more Province in China and to the rest of the World. The World Health Organization has now declared it a Pandemic. The Virus has been named SARS-COV-2 and the disease is now called COVID-19. The Government of India confirmed India's first case of Corona Virus disease 2019 on 30th January, 2020. In the state of Kerala, when a University Student from Wuhan travelled back to the state as the number of confirmed COVID-19 positive cases closed 500, Prime Minister Mr. Narendra Modi on 19th March, asked all citizens to observe 'Janta Curfew' on Sunday 22nd March, 2020. Following this while addressing the nation second time on 24th March, 2020 he announced the nationwide lockdown from midnight of that day for a period of 21 days. He said that the only solution to control the spread of corona virus was to break the cycle of transmission through social distancing.

Government of India is taking all necessary steps to ensure that we are prepared well to face the challenge and threat posed by the growing pandemic of COVID-19 the corona virus with active support of the people of India. We have been able to contain the spread of the virus in country. The most important factor in preventing the spread of the virus locally is to empower the citizens with the right information and taking precautions as per the advisories being issued by Ministry of Health and Family Welfare. We are facing a global health crisis unlike any in the 75 year history of the United Nations one that is killing people, spreading human suffering and upending people's lives. But this is much more than a health crisis. It is a human economic and social crisis.

2. Effect of COVID-19 in Legal System :

The COVID-19 outbreak affects all segments of the population and is particularly detrimental to members of those social groups in the most vulnerable situations, continues to affect populations including people living in poverty situations, older persons, persons with disabilities, youth and indigenous people. If not properly addressed through policy the social crisis created by the COVID-19 pandemic may also increase inequality, exclusion, discrimination and global unemployment in the medium and long term. Hardly is there any discipline that has escaped the impact of COVID-19. It is impacting the legal framework of every country. In the coming days, court across the world including India will be riddled with number of cases related to COVID-19 such as manpower rationalization (retrenchments), closure of business units, disruptions in supply chains and non-performance of contracts, calling off projects, implementation delays and what have you. That can add to the existing massive pendency of cases at various courts, breakdown in commercial activities, loss of livelihood etc. Therefore, a proactive approach is needed to insulate the legal system from possible breakdowns. There are some possible legal issues and the solutions thereof, which can help the judicial system to clear the backlogs

3. Use of technology to clear the backlog:

Every crisis brings in its wake, opportunities COVID-19 can be leveraged to bring about greater use of technology in the legal system from the apex court to the grass roots layers of the legal system. A limited experiment is being carried out in the Supreme Court and High Court for introduction of technology to make access to the system easy and affordable to litigants. For instance, a few benches of the Supreme Court and some High Courts are hearing important cases through the virtual medium. This has to be intensified and widened so as to equip every court with right technology and band width to facilitate the process.

4. Force Majeure Cases:

During the COVID-19 and post of cases that focus on force majeure since the parties to contract would seek the escape route because of the disruptions in the supply chain and other eventualities. Under both Indian and English law, force majeure does not simply mean anything outside the control of the parties to a contract. Its meaning and applicability depends on the wording of a contract intended to anticipate unforeseen events and remedies for what happens on their occurrence. There are possibilities that some contracts might not have visualized this eventuality or would have given a restricted narration of the clause –

- Contracts that arise between Indian parties, who have entered into contract.
- Contracts that arise between Indian and Foreign parties.
- Contracts that arise between employers and employees.

The Government of India has clarified that the disruption of supply chains due to spread of corona virus in China or any other country should be considered as a case of natural calamity and ‘force majeure clause’ may be invoked, whatever considered appropriate following due procedure.

5. Some of the risk perceptions that can arise:

1. **Tenancy:** Already these are talks whether the lockdown would prompt the tenants from paying rentals during the period of lockdown. In that case, what is the mechanism to protect the interests of the land lord or any other party / parties.
2. **Exports:** There are many exporters, who fear that overseas buyers may cancel the contracts using the Doctrine because of disruption in the supply chain. In that event, what would be the exporters remedies vis a vis supplies, vendors and a event.
3. **Importers:** Because of shutdown of factories overseas many of them would not be able to perform the contractual obligations, leading to disruptions in production and consequent losses, some people may cancel or delay payments.
4. What would be the contractual obligation between vendors and borrowers, despite the deferment of term loan for a period of three months and the incidental interest payment including how the staggering of capital payment.
5. What are the remedial actions for those who have entered into contracts where force majeure is not invoked or where wording is such that it favors one party to the detriment of others.

In the given situation, it is important for the Supreme Court to revisit the Doctrine and lay down conditions for applicability of the doctrine, especially when the Indian Contract Act is mostly silent on this issue and there will be preponderance of such cases in the future. It is also worthwhile for the legislature to consider amending the Indian Contract Act. So, that it takes care of disruptions caused in the supply chain in a balanced manner.

6. Matters Relating to Employer and Employee :

COVID-19 triggered fear among both employer and employees about the continuity of employment and continued operation of business enterprises. All segments of business, such as manufacturing, services, agri – based, etc. are being affected by COVID-19. Even if the lockdown is lifted in the conceivable future, the impact will be felt for some time or even years together. A few enterprises have already announced wage cuts and retrenchment of contract workers, including public sector undertakings. The Government should amend the labour law to help the corporations to hire people on a contract basis whenever the need arises and lay them off when the work is completed. Cases emanating from COVID-19 will further increase the pendency of cases in the courts. Alternative dispute settlement mechanisms like arbitration, conciliation and mediation should be resorted to in setting the cases arising out of COVID-19 particularly relating to tenancy, employment, deferment of loans and the interest chargeable thereof etc. Special courts and benches also can be considered across the country to handle COVID-19 commercial cases and other related ones.

7. Review of Existing Laws :

COVID-19 also necessitates existing laws to make them contextual to the changes that are conceived Indian Contract Act, Indian Evidence Act, Intellectual Property Act, Indian Labour Act, Indian Disaster Management Act, Indian Epidemics Act etc. are some of the legislations that need review to align with the perceived changes in the economic and legal framework.

8. Suggestions for effective functioning of Courts :

Courts in India have for time immemorial, functioned as ‘physical courts’. The COVID-19 Pandemic has resulted in an extraordinary and unprecedented crisis that, has affected the world at large and has also posed many challenges on the ability of the judiciary to administer and effectively dispense justice. It is imperative that during such testing times. We as a community, strive towards arriving at practical solutions, so as to assist the court in performing its duties. Courts are an essential service for civil society. Courts across the country have gone into an urgent only online

– only mode with electronic filings, mentioning by way of emails and in certain exceptional cases, conducting online hearings via video conferencing / video calling facilities. E-courts have their own limitations, as has been experienced by lawyers, litigants and judges. The underlying object of this piece is to supplement the already existing solutions and steps taken by the authorities as the functioning of the Hon'ble Supreme Court of India is concerned and throw light on certain aspects that may be taken into consideration for the effective dispensation and administration of justice.

- The E-courts system must be made robust by cogent strategy regarding the implementation of the digital platforms details with proper training of lawyers and court staff in E-court management.
- In order to enable seamless functioning of virtual court rooms, the administrative wing of the Supreme Court ought to ensure out the digitization of court records in a speedy manner to give full effect to E-courts. Digitization of records will enable remote access for all at the click of a button and mark a shift into a new era for courts. It is only fit that the Apex court leads all other subordinate courts in this direction by setting an example.
- The culture of lengthy arguments can be dispensed with by setting time limits for counsel to present their submissions and conclude hearings in timely and expeditious manner. This can be supplemented with a direction to the courts to submit brief written submissions in furtherance of their oral pleadings.
- On the bases of experiences of lawyers and judges with virtual courts till now, certain teething problems have arisen in as much as far as the 'efficacy' aspect of this alternative is concerned. Over a period of time they will all addressed by strengthening the band width etc.
- It is suggested that matter concerning constitutional challenges original suits state inter-se dispute and well as old matters, matters with extremely voluminous records are concerned or where there are numerous parties and several legal representative are involved, it would be impractical to conduct proceedings through the video conferencing model. Those can be tried up the Social distancing has to be maintained beyond a few weeks.
- The Alternate Dispute Resolution systems such as conciliation and mediations must be encouraged wherever possible.
- For the convenience of litigants from remote areas the video conferencing links provided can be accessed from District Court Compounds or Collector in exceptional cases.
- Over a period of time when the courts will have to sit in open court, the Hon'ble judges can sit with appropriate social distancing and the Bench can be separated through glass partition as further precautionary measure. It should be ensured that the mic system installed in all courts be mandatorily used.

9. CONCLUSION:

Humanity has to come through with stand and out last this pandemic with solution – oriented approach. Infrastructure and technology will need to be rapidly elevated this presently is the best way forward. The legal fraternity has never been rigid nor averse to changes. The legal fraternity has come a long way from times of typewriters to photocopies to emails to video conferencing methods in serving the society as judges and lawyers. Justice through digital platforms is the new age phenomenon. Ever the conservative traditional methods have gradually evolved and are widely accepted by all. Therefore, justice through digital platforms are going to be the new normal in times to come. Access to justice to all and opportunity to effectively present the case is a core aspect of administration of justice. Therefore, a blend of both the options i.e., the hearing through virtual courts and the limited benches of physical courts will go a long way in serving the needs of the time.

REFERENCES:

1. economicetimes.com
2. www.ndtv.com
3. indiatimes.com
4. www.hindu.com
5. www.livelaw.com
6. Criminal Procedure Code, 1973
7. Civil Procedure Code, 1908
8. Indian Contract Act, 1872
9. Indian Evidence Act, 1872