

“The effect of Corona’s Uprising in Indian Judiciary System”

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INTRODUCTION

Corona Virus disease or as we know it as (COVID-19) is an infectious disease caused by a newly founded Coronavirus. People infected with this virus will have a moderate respiratory illness and may recover without requiring special treatment. Certain people with underlying medical conditions such as cardiovascular disease, diabetes, chronic respiratory disease and cancer are more prone to develop serious illness. The best way to prevent and cutting down the transmission is to be well informed about the disease and keeping self-hygienic and by protecting ourselves by washing our hands, rubbing our hands with alcohol based sanitizer and by not touching our face. The COVID-19 virus spreads through drops of human saliva or gets discharge from nose when an covid-19 infected person coughs and sneezes, so it’s important that we need to simply practice respiratory etiquettes. At this time, there is no specific vaccines or treatment for COVID-19.

The ongoing nationwide lockdown in the wake of the global pandemic caused by the novel coronavirus has suddenly bought forth an interesting colonial legislation into the limelight.

Starting from March 2020 India have imposed the Epidemic Act, 1897 to contain the spread of Covid-19 in the respective areas. Article 245 of the Indian Constitution states that the Parliament or Central government may make laws for whole or any part of India, and the state government may make laws for whole or any part of the state. Article 245 states lays the basic division of powers between the state, whereas, Article 246 provides provides for the “Distribution of Legislative Subjects’ between the central and state governments. It is done so by creating three lists, enumerated in the VIIth Schedule of the Constitution, namely the

- UNION LIST
- CONCURRENT LIST, &
- STATE LIST

Constitutionally, the state Government is empowered to deal with matters related to public order and public health, listed in the state list Entry 1 and 6, respectively, However, Entry 29 of the concurrent list empowers the central and state governments to legislate on matters pertaining to the prevention of an infectious or contagious disease spreading from one state to another. The entry does not limit the powers of the legislating authority to simply public order or health but allows for any relevant legislations to be passed, so long it is to prevent the disease from

spreading across one state to other. Entry 29 of the concurrent list empowers the Central and State governments to legislate on matters pertaining to the prevention of an infectious or contagious disease spreading from spreading from One State to another.

The World Health Organisation (WHO) has declared that the new coronavirus outbreak is a public health emergency of international concern, officials announced on Thursday, 30th January, 2020. WHO proposed calling the disease “2019-nCoV acute respiratory disease.” The 2019 novel corona virus (2019- nCoV) originating in Wuhan, China, has spread to 24 more countries alarming public health authorities across the world. More than 4,900 people have died and over 132,000 have been infected globally, according to the WHO on 13 March, 2020. According to Situation report-48 on Coronavirus disease 2019 (COVID-19) on 08th March 2020. Approx a Hundred Countries have reported positive case of Corona Virus. Karnataka has five coronavirus patients, Maharashtra 11 and Ladakh 3.¹

IMPACT OF COVID-19 ON JUDICIARY SYSTEM OF INDIA

Covid-19 has been declared a world pandemic by the World Health Organisation (WHO). All the aspects of have been hit hard and the Indian Judiciary is no exception. The Lawyers, Courts and litigants are facing unavoidable situation. It is necessary to look out for the options that might keep a balance between the interest of the judiciary system and taking preventative measure against this epidemic.

One interesting question that has arisen is the effect of coronavirus on the period of limitation and whether the Courts would be inclined on treating COVID-19 as a cause sufficient to cease the period of limitation. This has been answered by the Hon'ble Supreme Court vide its order dated 23 March 2020 in the affirmative (to some extent).

The Limitation Act, 1963 ("Act")

The Act provides for the period of limitation for institution of various suits, applications, petitions etc. in India. Section 2(j) defines "period of limitation" as the period of limitation prescribed by the Schedule to the Act for any suit, appeal or application, and "prescribed period" means the period of limitation computed in accordance with the provisions of the Act. Section 3 of the Act provides that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Section 4 provides that if the prescribed period expires on a day the Court is closed, filing may be completed when the Court reopens and Section 5 grants the power to the Courts to condone the delay in filing beyond the prescribed time period.

¹ As per an Article published in Time of India

Exceptions to condonation of delay under the Act:

The power to condone the delay as granted by Section 5 of the Act is not available under certain legislations. For instance:

(i) Commercial Courts, Commercial Divisions and Commercial Appellate Division of High Courts Act, 2015 - Proviso to Order VIII Rule 1 of the Code of Civil Procedure, 1908 provides for a maximum period of 120 days for filing of written statement from date of service of summons, which period is not extendable by the Court while Section 13 provides for 60 days for preferring an appeal from the date of judgement or Order of a Commercial Court.

(ii) Arbitration and Conciliation Act, 1996 ("Arbitration Act") - Section 34 prescribes a maximum period of 120 days for preferring an application seeking setting aside of the arbitral award. The Arbitration Act further provides for strict timelines to be adhered to in Order to achieve timely and expeditious adjudication of the disputes. For example, the latest amendment to the Arbitration Act mandates the pleadings to be completed within a period of 6 months, the proceedings to be completed and award be rendered within a total period of 18 months extendable by 6 months.

(iii) Insolvency and Bankruptcy Code, 2016 ("IBC") - The IBC provides for appeals to the appellate tribunal under Section 61 as well as the Supreme Court under Section 62, both of which have mandatory and strict timelines of 45 days and 60 days, respectively.²

(iv) Consumer Protection Act, 1986 ("Consumer Act") - Section 24A of the Consumer Act provides for a maximum period of 2 years for filing of a complaint before the relevant consumer commission. The Consumer Act provides for various other timelines for completion of pleadings, service of summons and passing of the judgement by the commissions.³

There is a plethora of precedent which has upheld the legislative intent of non-application of Section 5 of the Act and adherence to the strict timelines prescribed by the special legislations.

² Section 62 of the IBC, 2016. (1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

³ Section 24AB of the Consumer Protection Act (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period: Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

While the issue of limitation could have become extremely contentious and had the potential of opening multiple litigations in various Courts/Tribunals, the Hon'ble Supreme Court has once again come to the rescue. While exercising its powers under Article 141 and 142 of the Constitution vide its order dated 23 March 2020 In Re : Cognizance For Extension Of Limitation being *Suo Moto* Writ Petition (Civil) No. 3 of 2020, the Hon'ble Supreme Court has brought respite to litigants and lawyers by extending the period of limitation under all general and special laws, irrespective of the same being condonable or not, for proceedings pending before all Courts and Tribunals in the country with effect from 15 March 2020 till further orders.

The Hon'ble Supreme Court has come up with a rescue and idea to eradicate any prohibition of rules set up by the Government and therefore it has issued directions that needs to be followed,

The courts and the lawyers must be facing many practical hurdles in meeting the strict timelines of filling under various legislations and also approaching for grievances redressal Such hurdles may be.:-

- Jam-Packed of Courts.
- Effecting mandatory services.
- Face interaction for signing of documents, attesting of documents and affidavits
- Mis-interpretations of urgent cases. i.e, One's urgent case might not seem urgent for other and it may create dispute.

ORDERS FROM COURTS THAT NEEDS TO BE FOLLOWED

i) **Supreme Court** – The Hon'ble Supreme Court took *suo motu*⁴ cognizance of the threat and has been issuing several directions on dealing with Court procedures and on 22 March 2020 issued an order that a two judges bench will hear extremely urgent cases through video conference for the week commencing 23 March 2020. Subsequently, vide Circular dated 23 March 2020 has issued detailed directions and Hon'ble Supreme Court is attempting no physical presence of lawyers in the Court premises and hearing to be done by virtual Courts only.

(ii) **High Court of Delhi** – As per the notice, the working of the High Court is limited to hearing of urgent matters only. The registry and filings counters shall remain open and limitation period shall continue to run in the usual course of time.

(iii) **High Court of Judicature at Bombay** - As per the latest Circular, the functioning of the High Court is limited to listing and hearing of urgent matters only. The registry remains operational and filings continue in their usual course. Benches will sit only on limited days as per order dated 23 March 2020.

⁴ Latin: “of his, her, it's or their own accord”

(iv) **High Court of Judicature at Allahabad** – An order has been issued directing certain measures to be taken for prevention of spreading of COVID-19. In furtherance of the same, an Order was passed whereby it was directed that only urgent matters would be taken up by the High Court.

(v) **High Court at Calcutta** – As per the notice, the functioning of the High Court is limited to listing and hearing of urgent matters only, while it is business as usual for the registry and filing continues in normal course.

(vi) **High Court of Karnataka** – vide Circular dated 20 March 2020, it was directed that all benches of the High Court would take up and hear matters stated to be urgent by the members of the Bar.

(vii) **High Court of Punjab and Haryana** – the High Court issued a Notice dated 16 March 2020 whereby it enlisted the manner in which cases would be taken up till further Orders and only those matters which are urgent in nature will be taken up for the time being.

(viii) **High Court of Judicature at Madras** – a comprehensive Circular was issued wherein apart from directing that only urgent and fresh matters be taken up for hearing by the Court, other safety measures for prevention from COVID-19 were suggested.

(ix) **High Court for the State of Telangana** – through a notice dated 16 March 2020 it was said that the Court shall be presiding only on select days to hear urgent matters. The Registry of the High Court remains operations and filings continue as usual.

(x) **National Company Law Tribunal** – It ordered listing and hearing of urgent matters only. However, as per the latest Circular dated 19 March 2020, all registries of the various benches of NCLT have been directed to remain closed till 27 March 2020, however it is clarified that limitation would not cease. Vide Notice dated 22 March 2020 it has been decided to close sitting of all benches of NCLT with effect from 23 March 2020 till 31 March 2020 while taking up urgent matters through notifying the registry of the urgency via an email, however, no decision has been made with respect to pausing the period of limitation.

RECENT JUDICIAL ACTIVITY ADMIST COVID-19 PANDEMIC

1. SC issues notices in Suo Motu case on COVID-19 treatment and disposal of bodies; takes note of “deplorable” conditions, decreasing testing.

Yesterday Supreme Court issues notice to the Centre and five state governments in the suo motu case on proper treatment of COVID-19 patients and disposal of dead bodies who died due to this disease. The said matter was heard by a Bench of Justices Ashok Bhushan, Sanjay Kishan Paul & M R Shah. It was observed that in many state the dead bodies are tied with rope and dragged mercilessly and even in some state the dead bodies were found in garbage. Reports also states

that morgues were facing disappearance of bodies, relatives reluctant to claim bodies, disposal without family's consent, and long queues at crematoria or cremeteries.

2. Bombay High Court reserves order on Arnab Goswami's plea for quashing FIRs against him.

The Bombay High Court concluded the hearing on plea filed by the Editor in Chief of Republic TV Arnab Goswami seeking quashing of FIRs against him. The court, while reserving its order, also extended the protection granted to Goswami from arrest till delivery of order.

3. Now that COVID-19 has taught a good lesson, give serious thought to increasing budgetary allocation for public health: Bombay High Court.

While delivering its judgement on a batch of PIL petitions raising various issues emanating from the COVID-19 pandemic and lockdown, The Bombay HC on Friday was prompt to observe that it is time to prioritise public health better in budgetary allocation.⁵

CONCLUSION

It is said that necessity is the mother of invention. Crisis brings an opportunity to learn something for the future and for our Indian Judiciary System, and specially for the Supreme Court, the ongoing pandemic is one such opportunity to re-think about its plan to function in future. Here's some of the suggestive list to make in convenient for the judiciary to function keeping in mind about the safety and preventive measures to be followed during this pandemic.

1. MAKE ALL COURTS VIDEO- CONFERENCE COMPLIANT.

The nationwide lockdown has put all things on hold but definitely Justice can't be put to hold as we know Justice delayed is Justice denied. And, so some of the Judges of the SC are now hearing cases through various modes of Video Conferencing confining themselves at their homes. And in order to set up an example, the SC should start hearing and deciding more cases through VC. Yes it debatable that it may have some glitches and hiccups but we are confident of our IT companies that would fix our technical issues.

2. STOP BEING COURT OF FIRST RESORT FOR ALL CASES

The SC should not get initially involved all the cases at any first instance, until and unless the matter involves a constitutional crisis. All these cases involve serious questions of law and Constitution and would require several days of hearing of them to be decided. The question that the SC should be asking itself: does it have the time to hear that matter before any other important matter.

⁵ Jan Swasthya Abhiyan and Anr. V. State of Maharashtra and ors.

3. FOLLOW THE SETTLED LAW

In order to lessen its own and subordinate court's work load the SC must make it compulsory for judges to strictly follow the settled law. But, this rule is mostly followed in the breach especially in the political related case.