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Gearing Up for A Fresh Start?

The Mighty Indian Judiciary & Its Combat against COVID 19

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C OVID-19, or more popularly known as the Novel Corona Virus has been declared to be a Pandemic by the World Health Organization (WHO) “an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people”. COVID-19 has been declared a Pandemic by the World Health Organization (‘WHO’) on 11th March 2020¹. As of 27th March 2020, over 24,000 people have died worldwide and over 5.32 Lac people have tested positive for being infected with the Corona Virus.

With over a million cases worldwide, this novel virus has created panic across the world. The World Health Organisation (WHO) declaring it as pandemic; Governments across nations have been forced to shut down the operations which have affected almost all sectors of the economy, the functioning of judicial systems and the life of a common man.

Most of the countries are observing total lockdown including India. It is indeed a matter of pride that India has managed to contain the spread of the said virus but there still seems to be a rise in fresh cases that need to be kept in control.

The populace has been instructed and advised to stay at their homes. Although



the elevation of ‘Work from Home’ culture is at its peak, it is still not feasible to conduct essential functions of the economy, Government Administration, and Judiciary.

COVID-19 has made it tough for the Judicial System to operate in its usual course. Since the entire Judicial Machinery is under a total lockdown, no regular cases are being heard except urgent matters.

THE TECH TALKS

Nevertheless, the Judiciary has been syncing all corners of technology and utilizing video conferencing putting in all possible efforts that are not only adhering to the norms of social distancing but also ensuring a seamless revival of the court affairs to normalcy.

To minimize the possibility of transmission of this disease, the Supreme Court of India initially issued Direction that it shall address only urgent matters through video conferencing. The Supreme Court has also directed to restrict physical entry in the Court premises by suspending all proximity cards and sealing lawyers’ chambers. Further, the Supreme Court while taking cognizance of such grim circumstances has also issued guidelines and procedures that need to be adhered to for mentioning ‘urgent matters’. Supreme Court has gone one step further by passing detailed directions on April 6, 2020, and also directing High Courts to issue appropriate guidelines for ensuring smooth functioning through video conferencing.

Further, the Hon’ble Supreme Court of

India issued directions to the High Courts, Subordinate Courts and Governmental authorities to initiate and take adequate measures to control overcrowding in the Courts, Government Offices as well as prisons, as it will also affect the victims of crime, as several cases shall not be taken up and heard till further orders.

Further, given the Order No. 40-3/2020-DM-I(A) by the Ministry of Home affairs announcing lockdown of the country, the High Courts and Tribunals throughout the country have issued similar directions and have suspended work. In all High Courts, only urgent matters are being taken up and matters listed in the normal course have been adjourned.

Operations in National Company Law Appellate Tribunal (NCLAT) and Debt Recovery Appellate Tribunal (DRAT) have been suspended and matters of only extremely urgent nature will be addressed. Further, NCLAT vide order dated 30.03.2020, while taking suo moto cognizance, held that the period of lockdown shall be excluded for counting of the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal. Other Tribunals such as NCLT, Consumer Forums, APTEL, etc. have also suspended work.

Supreme Court of India and various High Courts, because of the current situation, have taken the initiative of passing various Orders to deal with the situation by exercising inherent jurisdiction under Article 32 and 226 of the Constitution of India.

Hon'ble Supreme Court also invoked its plenary power to extend the Limitation

period for filling of Appeals. A Bench of Chief Justice S A Bobde and Justices L.N. Rao and Surya Kant taking suo moto cognizance of the matter stated that "it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

Delhi High Court, while taking suo moto cognizance of the scenario has extended all the interim orders passed by the High Court as well as the courts subordinate to it till 15.05.2020 vide order dated 25.03.2020. The other High Courts of the country are taking similar steps to reduce the overcrowding as well as the hardships caused to the litigants.

For example, Tripura High Court has also extended all the interim Orders subsisting as on 20.03.2020 till 30.04.2020. The Kerala High Court vide order dated 30.03.2020 has also granted bail to undertrial to the prisoners charged with offences with imprisonment upto seven years to decongest the prison because of COVID-19.

On 1st April 2020, the Supreme Court sought Centre's response in a plea seeking to ensure the availability of WHO graded protective gear for all medical professionals and health workers, actively attending to COVID-19 patients.

BUT, THE NUMBERS CONTINUE TO SOAR HIGHER

Despite such positive steps taken by the Indian Judiciary, as the courts are currently entertaining cases of extremely urgent nature only, which constitutes the need for such grim circumstances, other cases continue to pile up every day leading to additional burden on the already

overburdened judiciary.

More than 32 million cases are pending in the Indian courts and their pendency shall only increase with the outbreak of this pandemic. The Tribunals shall also be overburdened due to such a long non-efficient period, which as a result, shall lead to an increase in pendency of the cases. The Indian Judiciary is already overburdened with the pendency of the cases which also includes the ongoing cases from decades. Out of 32 million pending cases, the Subordinate Courts account for over 86% pendency of cases, followed by 13.8% pendency before the 25 High Courts. The remaining 0.2% of cases are pending with the Supreme Court. Between 2006 and 2018 (up to April), there has been an 8.6% rise in the pendency of cases across all courts. Pendency before Supreme Court increased by 36%, High Courts by 17%, and subordinate courts by 7%.

SIGNING OFF

Looking at the current scenario, the Indian judiciary, which is already over-burdened and experiencing such mandatory, unavoidable and need of the hour lockdown due to the pandemic will further increase the backlog of the cases. The Judges in the Supreme Court of India and courts subordinate to it are forced to handle and decide an "avalanche" of backlogged cases along with the innumerable number of fresh cases.

It may not be out of place to mention that India does not have an adequate number of Judges compared to its rising population, resulting in the pendency of cases. The Hon'ble Supreme Court of India in *All India Judges Association v. Union of India and Ors.* has observed that the strength of the judges in India should be increased to at least 10 per million every year for at least five years to meet the

adequate goals of reducing the backlogs.

Looking at the vacancies and then analyzing the impact of the pandemic on the pendency of cases, it is apparent that even the Judiciary which is already in pain with the pendency of cases has its fight against the deadly disease. The Supreme Court, to tackle the pandemic has also recommended adjusting their summer vacation with the unwanted holidays caused by the lockdown along with conducting video conferences for urgent matters.

Apart from the general fresh cases and increase in the backlog of the cases, COVID-19 will bring the additional burden of cases which involve interpretation of contractual terms under the realm of the 'force majeure' clause. Since many of the contracting parties cannot perform their obligation due to complete lockdown, they seek to hide under the 'force majeure' clause envisaged in a contract, but the burden of proving the validity of claim which will arise due to present circumstances shall be on the affected party. This needs immediate attention from the courts, however, since the courts are not working even this problem cannot be solved at this stage.

Judiciary, in such circumstances, becomes overburdened and overworked. Though Courts are playing an important role in dealing with the situation and exercising inherent powers to pass orders

in urgent matters are taking up via video conferencing by the Supreme Court and High Courts. However, the overall impact on the judiciary will be clear only once the lockdown period is over.

COMMENDABLE & COURAGEOUS

However, we all know that modern technology has enhanced the effectiveness of the administration of justice. The Indian judiciary has incorporated Information and Communication Technology Systems through the e-Courts Integrated Mission Mode Project (e-Courts Project) as part of the National e-Governance Plan (NeGP). The use of technology has already found judicial recognition. In line with the positive steps taken by the Supreme Court of India to deal with the present situation and taking up matters through video conferencing, the Supreme Court on April 6, 2020, issued various directions for ensuring smooth working of courts through video conferencing and also authorized the High Courts to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies by the High Court and Districts Courts.

Such landmark steps taken by the Indian judiciary will go a long way in further shaping our judicial system in line with modern technology.

One would not but agree to the fact after looking at the factual representation

above that, there is indeed a very tough path for the Indian Judiciary to cross over during the COVID 19 ambience. Whether the pendency of cases or the new pile-up of litigation flood gates that we all have to see, it is inevitable to look at the proactive approach that the apex court is invaluable creating and setting as a benchmark for the lower courts to follow. This showcases nothing but the spirit of delivering justice to the citizens of the country remains the main motive in the silent corridors of the courts of the country. **W**

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¹Supreme Court Circular dated 23.03.2020 available at https://main.sci.gov.in/pdf/lu/22032020_161235.pdf last retrieved on 25.03.2020 at 18.35 p.m., ²Supreme Court Circular dated 23.03.2020 available at https://main.sci.gov.in/pdf/cir/23032020_153213.pdf last retrieved on 25.03.2020 at 18.35 p.m., ³NCLAT order dated 30.03.2020 available at <https://nclat.nic.in/Useradmin/upload/7281701495e81d18e254d0.pdf> last retrieved on 31.03.2020, ⁴SC invokes plenary power to extend limitation of appeals, available at <https://economicstimes.indiatimes.com/news/politics-and-nation/sc-invokes-plenary-power-to-extend-limitation-period-of-appeals/articleshow/74777321.cms?from=mdr> last retrieved on 26.03.2020 at 10.35 a.m., ⁵In Re : Cognizance For Extension Of Limitation available at https://images.assettype.com/barandbench/2020-03/edcda9a6-fc17-4036-823f-ae591bc8536c/ln_re_cognizance_of_extension_of_limitation_order.pdf last retrieved on 26.03.2020 at 10.50 a.m., ⁶Coronavirus lockdown: Kerala high court grants bail to undertrials available at http://timesofindia.indiatimes.com/articleshow/74891695.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpsst last retrieved on 31.03.2020 at 15:15 p.m., ⁷Statistics as per the National Judicial Data Grid (NJDG) available at <https://njdg.ecourts.gov.in/njdgnew/?p=main/index> last retrieved on 26.03.2020 at 02.45 a.m., ⁸Statistics as per the National Judicial Data Grid (NJDG) available at <https://njdg.ecourts.gov.in/njdgnew/?p=main/index> last retrieved on 26.03.2020 at 02.45 a.m., ⁹Pendency of cases in the judiciary, available at <https://prsindia.org/policy/vital-stats/pendency-cases-judiciary> last retrieved on 26.03.2020 at 14.35 p.m., ¹⁰AIR 2002 SC 1752