

THE EPIDEMIC AND ENSURING SAFETY IN COURTS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

In a letter addressed to the Chief Justice of India, the Bar Council of India has opposed the continuation of virtual hearings once the lockdown is lifted, on the grounds that 90% of the advocates and judges are “unaware of technology and its nuances”. The [COVID-19](#) crisis is far from over. Once the lockdown is lifted, unless the number of advocates/litigants is restricted in open court proceedings, the possibility of the virus spreading is high.

[Coronavirus](#) | [Restrictions on court hearings lawful, says Supreme Court](#)

On April 6, invoking its powers under Article 142 of the Constitution, the Supreme Court issued certain directions for the functioning of courts through video conferencing during the lockdown. The Court directed the State officials of the National Informatics Centre (NIC) to liaison with the respective High Courts and formulate a plan for the virtual functioning of courts. A virtual court hearing is one where there is no physical court room. All the participants take part in proceedings using telephone or video conferencing facilities. It was made clear that the guidelines for this would be formulated by the NIC and sent to the respective courts and lawyers. But the NIC has not yet notified the guidelines. In its order, the Supreme Court had also indicated that the district courts would follow the video conferencing rules as formulated by the respective High Courts.

Once the crisis hit the U.K., the Judiciary of England and Wales issued New Court Practice Direction 51Y (Audio Hearings in Civil proceedings) and practice direction 51Z (Stay of possession proceedings and extension of time limits) for the duration of the COVID-19 period. Practice Direction 51Y, which (a) (a) clarifies the manner in which the court may exercise its discretion to conduct hearings remotely in private; and (b) (b) details what steps the Court may take make to ensure access by the public to remote hearings that have been held in private. It also issued Practice Direction 51Z, which makes provision to stay proceedings for, and to enforce, possession. sets out that all proceedings for possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession are stayed for a period of 90 days from March 27, 2020. Claims for injunctive relief are not subject to this stay. Where face-to-face hearings are essential, HM Courts and Tribunals Service has taken steps to consolidate the work of courts and tribunals into a small number of ‘priority’ buildings. Where face-to-face hearings are essential, HM Courts and Tribunals have taken steps to consolidate the work of Courts and tribunals into a small number of ‘priority’ buildings. A daily update of which court buildings are open is available online. In a similar vein, the Court of Appeal has published a document which sets out how it the Court of Appeal is currently operating – including prioritising only urgent applications in the Civil Appeals Office. In the United Kingdom, a considerable amount of work has gone into putting in place the infrastructure necessary to facilitate remote court hearings. As part of a £one billion programme of reforming judicial system Courts in England and Wales have adopted new forms of digital technology and e-filing procedure. e-filing of cases involves software and hardware requirements. For instance, a user must have a personal computer running Windows, OS X or Linux; a web browser such as Mozilla Firefox or Google Chrome; the Adobe Reader 11 software; and a scanner. Only documents in PDF format are accepted for e-filing. PDF documents can also be created by scanning hardcopies of the documents when paper documents are scanned, the resolution must be set to 200 dpi. Currently the maximum size a document can be uploaded is 25 MB per document pages for a doc or docx format. There are various other procedures including user registration by an advocate. Filing and uploading the

miscellaneous documents, e-signing the documents and payment of e-court fee. Thus, e-filings involve a certain amount of technical knowledge and capability.

In India, most advocates and litigants are unaware of and unwilling to use these services. The e-filing system was introduced in the Delhi High Court in 2009. Initially in 2013 it was introduced in Company and Tax jurisdiction. In 2015 it was extended to Arbitration jurisdiction. In this process, the pleadings and documents are filed electronically at the e-filing centres. A digital signature of the lawyer/litigant is needed for filing such cases. An e-filing kiosk in the High Court of Delhi to enable the lawyers desirous of acquaintances with the e-filing procedures has been set up. Compared to the other High Courts in the country, the Delhi High Court is far ahead in terms of technology. About 10 courts in the Delhi High Court function as e-courts. The entire credit for the success of the tech-friendly system in the Delhi High Court goes to Mr. Justice Badar Durrez Ahmed of the Delhi High Court, who subsequently retired as Chief Justice of Jammu & Kashmir High Court. In the Delhi High Court about 10 Courts are functioning as e-Courts. In e-courts, the case files are digitised as searchable PDF format and PDF files are bookmarked according to the index-sheets and thereafter converted into portfolios containing different folders as per the records of the case file i.e., pleadings, orders, office noting etc. The portfolios of case files are linked with the e-Cause List of the Court. The Judge(s) presiding over the e-Courts have been provided with a “Wacom 24” or “Wacom 27” high resolution monitor with interactive ‘Stylus’ connected with high end CPU, which responds to the slightest nuance of the touch and with ability to work directly on screen enabling the Judge(s) to navigate conveniently through the portfolios of cases as well as write down personal notes. In case of Division Bench, two complete set of systems have been provided for both the Judges. Besides, an additional 46” LCD Monitor has also been installed inside the Court Room for the Judge(s) to project any screen for viewing by the lawyers/litigants. The lawyers can argue their cases through the portable digital devices i.e., laptops, tablets etc., and if need be the lawyers can also plug into the system to display the screens of their laptops/tablets on the LCD Monitor for viewing by the Judge(s), lawyers and other parties. Moreover, there are 13 e-courts functioning in the district courts attached to the Delhi High Court. Another 11 e-courts will soon be functional. Installation of requisite hardware, setting up video-recording system, installation of document and evidence management system, establishing connectivity, setting up web-enabled video conferencing system for data archiving, providing scanners in the court for scanning of documents filed in the case, in existing e-courts, are complete. In district courts, the following hardware has been installed in the e-Courts: - 21.5” Wacom Touch Screen; - Wireless Keyboard and Mouse; VGA Splitters, VGA Switcher with cables; scanjet scanner; and storage device.

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There is also sufficient technical manpower in the Delhi High Court (70) and district courts (30). In the Delhi High Court, e-filing is mandatory for company, taxation and arbitration jurisdictions. The facility for e-filing of cases pertaining to the Delhi High Court was also made available from April 7, 2020, at all the court complexes of the Delhi district courts.

Realising that the lockdown may continue for a while, the Delhi High Court formed a panel to create a graded plan for courts functioning after the lockdown. The committee, headed by Justice Hima Kohli, was formed with the expectation that there will be a deluge of new cases after the lockdown is lifted. The letter addressed by the Registrar General to the district judges attached to the Delhi High Court clearly mentions that it may not be possible to predict a definite cut-off date for the resumption of normal functioning of the court system as there is no certainty about when the COVID-19 threat will end. One of the issues refers to ensuring availability of proportionate court infrastructure till normalcy is completely restored. The Delhi High Court has sought suggestions from the district courts for the effective functioning of e-courts.

In the Bombay High Court, e-courts started functioning from 2013. Initially they started taking up company matters, arbitration and conciliation matters, income tax appeals and suits. Now even writs, suits and testamentary matters are heard by e-courts. In the Madras High Court, the facility for e-filing of cases, which was initially only for bail applications, was launched on April 22, 2020. Filing of urgent cases through e-mail is also permitted now.

While it is true that there is less pressure on the courts now, this will change once the lockdown is lifted. It is in this context that suitable safety measures must be put in place for conducting proceedings after the lockdown is lifted. The method of hearing post lockdown will depend on the facilities available at the court concerned. While such facilities are largely available in the Supreme Court and the Delhi High Court, they are not available in the various other High Courts and subordinate courts. The judiciary must be allotted sufficient funds for self-administration and timely delivery of justice. Today, technology dictates our lifestyle, but because of lack of allocation of sufficient funds to improve and strengthen technical support for the judiciary, we in India are unable to make full use of technology.

As much of the Supreme Court and many High Courts will remain closed for the summer, the High Courts can consider constituting committees, as the Delhi High Court did, to create graded plans for the courts functioning after the lockdown. They can formulate plans based on the availability of infrastructure to conduct virtual hearings or actual hearings, or by running courts in shifts. In case any of the courts are inclined to conduct open court hearings, they may have to implement some guidelines. One, only those lawyers/litigants whose cases are listed for the day's hearing should be allowed to enter court halls. Two, the lawyers must enter in batches according to the serial number in the list. Three, thermal image cameras must be installed at the entrance of every court building, to identify risk persons. Four, every person entering the court premises must install the Aarogya Setu app on their phones. Five, The Central Industrial Security Force Security personnel may be directed to use the App e-office specially designed to check the papers and other objects carried by the lawyers/clerks/litigants without touching the said papers/objects. At the entrance of every court complex, an automatic hand wash faucet should be installed. This equipment is operated with a foot tap, which has liquid soap dispensers. Six, there should be regulations on the manner of functioning and running of public utility services, canteens, etc., within the court premises with all necessary precautions. Seven, masks, gloves and sanitisers should be made available. Importantly, as junior lawyers have been seriously impacted by the lockdown, they should receive financial assistance (even in the form of a loan from a nationalised bank) from the Central government.

However, one hopes that restoration of time tested open court hearings would be back in future, since open court hearings are based on the concept of open justice.

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