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Justice Amidst COVID – 19

G. Cheritha Mahalakshmi

This short note throws light upon the process of justice amidst COVID-19 lockdown. The article elucidates on the application of Limitation Act, 1961, and on the pending cases as a result of the closure of courts and finally about the video conferencing system.

We are in the year of 2020, confined to the four walls of our homes, empty streets, covering our faces with masks with hand sanitizers that had replaced our handkerchiefs, nearly half of the economic activities paused. This is all due to the spread of the novel coronavirus which is sucking the lives of numerous people 'round the world. Amidst all, there have always been certain issues that need to be resolved, which may be of regional, national, or international in nature. So, the role of courts has become indispensable and mandatory. Recently, the courts in India had implemented the video conferencing system to hear the cases that are urgent and cardinal in nature. So, the million-dollar question is what happens to the cases which are not so important? And on what basis the importance is marked? The Supreme Court of India has not particularly listed out the nature of cases which is urgent, it's completely based on the discretion of the Judges depending on the subject matter and circumstances.

LIFE OF SUITS

We all know that “time” plays a crucial role in the filing of cases of any sort and is governed by the Limitation Act of 1961. This leads to the question, “Would these cases lapse as a result of the expiry of time? To answer these above questions, the Delhi High Court stood first to address the issue of Limitation and had passed an order on 23.03.2020 stating,

“Lockdown/Suspension of work of Courts shall be treated as “closure” within the meaning of the Explanation appended to Section 4 of the Limitation Act, 1963 and other enabling provisions of the Act and other Statutes, as may be applied to court proceedings. Thus, the limitation for any court proceeding shall not run w.e.f. 23.03.2020 to 04.04.2020 subject to further orders.”¹

With regard to this particular order, the Supreme Court of India, in *Suo Motto cognizance* came forward and released the order with the view to curb this issue.

“To obviate such difficulties and to ensure that the lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under general law or Special Laws whether

¹ Order of High Court, Delhi, dated on 23.03.2020

condonable or not shall stand extended w.e.f. 15th March, 2020 till further orders to be passed by this Court in present proceedings”²

According to Article 141 and 142 of the Indian constitution, the order of the Supreme Court stands supreme, so the order of the Delhi High Court was replaced and the date was extended. The quintessence of the above order is that the time of limitation pauses on 15.03.2020 till it resumes on the particular date which is yet to be announced. It is important to note that the Honorable Supreme Court, on announcing the date of the resume must ensure the availability of all the facilities to the petitioner, which he had on the *status quo ante position* of lockdown.

PENDING SUITS

Pending of suits is one of the critical issues that the Indian Judiciary faces, “*There are 59,867 cases pending in the Supreme Court, and 44.75 lakhs cases in various high courts. At the district and subordinate court levels, the number of pending cases stand at a shocking 3.14 crores*”³ as said by the Union law minister of India (27.09.2019, Ravi Shankar Prasad). The reasons for the pendency may be due to a long-established procedure by law, paucity in the number of judges, the number of appeals available for each case, etc. COVID- 19 has now been added to these lists of reasons. Though matters which are in dire need are immediately redressed through the video conferencing system, it alone isn’t sufficient.

What would happen if the ceaseless closure of courts continues for months? The cases which have been pending for year will continue to remain pending, in addition to these, a hefty number of cases will be put into trial and in the end, pending of cases will only increase just like COVID positives. So, the question arises as to how these issues could be dealt with. We all know “Justice delayed is justice denied”. So it’s desirable to form committees to make quick-witted recommendations and implement them to tackle these issues and also to avoid overburden on the sect, Indian Judiciary.

JUSTICE GOES ONLINE

The third part of the writing deals with Video conferencing system which the Indian courts have adopted to deal with the issues that need immediate attention. Necessity is the mother of inventions likewise this crisis had led to technological development in the Indian judiciary. This invention is not

² Order of Supreme court of India, New Delhi dated on 23.04.2020

³ (2020) <https://m-thewire-in.cdn.ampproject.org/v/s/m.thewire.in/article/law/pending-court-cases/amp?amp_js_v=a3&_gsa=1&usqp=mq331AQIKAGwASDYAQE%3D#aoh=15954374488496&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fthewire.in%2Flaw%2Fpending-court-cases> accessed 22 July 2020.

something that has emerged due to the closure of courts as it traces way back to 2014 in the case *Krishna Veni Nagam v. Harish Nagam*⁴. A two-judge bench while dealing with transfer petition regarding matrimonial issues falling under section 13 of the Hindu Marriage Act, 1955, conducted the trial through virtual courts because one of the parties was not in the said jurisdiction. But the same has been overruled in the case *Santhini v. Vijaya Venkatesh*⁵ where the three-judge bench of Supreme Court in the ratio of 2:1 held that virtual "in transfer petition, video conferencing cannot be directed"⁶. Now the situation has entirely changed.

Due to public health emergency, the Supreme court of India stated under the order of the three-judge bench, headed by Chief Justice of India, SA Bobde, "All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful,"⁷ The bench, also including Justices DY Chandrachud and L Nageswara Rao, added that "the Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video-conferencing technologies."

In this regard, the Chairman of the Bar Council of India had addressed a letter to the CJI⁸ in opposing the virtual hearing during the post lockdown period. As a reply to the above letter, the Supreme Court has recently issued a press note ⁹ addressing the criticism against the continuation of virtual court hearing post-lockdown and stating that the aim of both, the system of adjudication through the open court system and the court system being conducted via video conferencing is a mode of delivery of justice. The press notes further stated that "*Open Court hearings cannot be claimed as a matter of absolute right and process of adjudication itself does not demand Open Court*". However, in the present era where we rely on technology for almost every aspect of our lives, the Virtual Court Rooms cannot be "antithetical" to the open court system in any manner. Despite the handful of issues and technical glitches concerning the virtual courts, there are numerous advantages that can be derived from the very same mode of delivery of Justice. For instance, it reduces the physical

⁴ Transfer petition (CIVIL) NO. 1912 OF 2014

⁵ Transfer Petition (CIVIL) NO.1278 OF 2016

⁶ Transfer Petition (CIVIL) NO.1278 OF 2016

⁷ Suo motto writ (CIVIL) NO.5/2020

⁸ Letter BCI: D: 1372/2020 (Council) dated 28.04.2020

⁹ Supreme Court of India, Note on open court hearings, 2 May 2020, retrieved from https://images.assettype.com/barandbench/2020-05/06c7b93c-c27a-4702-9b16-5a47841aa88f/Note_on_Open_Court_Hearing.pdf

presence of the parties, counsels, and Judges; saves cost and time; most importantly it reduces the usage of hardcopies and in turn, it avoids paper usage. So virtual courts are the nifty process for the administration of Justice.

CONCLUSION

The order passed by the Honourable Supreme court with regard to the Limitation Act assures and secures the parties their rights to redressal. In the pending cases, it would be desirable not only to form a committee to make recommendations but also to implement them. So, we may as well conclude that it's a necessity to have virtual courts as substitutes in the future as it serves as a positive breakthrough in the era of Modern Indian Judiciary.

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