

ISSN: 2582 - 2942



# LEX FORTI

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LEGAL JOURNAL

VOL- I ISSUE- VI

AUGUST 2020

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**Access to Justice Amid Corona Virus**

**Ritika Juneja**

## ABSTRACT

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*The Covid-19 has made a catastrophic effect on the lives of the people living across the globe. The health care systems are in crisis, the world economy is collapsing, businesses are running into bankruptcy and our lives have come to a standstill. Amid this international crisis, one of the most affected spheres of our lives is the access to justice. Access to justice which is regarded as the fundamental right of the democratic society and is the crucial element to the rule of law. The cardinal principle of rule of law upholds supremacy of law and prevents arbitrary actions by the people in power. But with the outbreak of this crisis most of the power has been concentrated with the executive organ of the state. Undoubtedly, the police officials have been doing a tremendous work in this situation of crisis and acting as warriors but on the other hand, we should also not ignore and forget the various incidents and reports where these police officials have acted in excess of their power in the guise of making people follow the law. Thus, this paper would highlight how particularly in these circumstances, access to justice becomes imperative when the executive agency is trying to become the all powerful machinery with no regards to the human rights. Unfortunately, this crisis has made the judicial system paralysed and handicapped leading to the fundamental right of access to justice as practically unenforceable. Further, the paper focuses on the guidelines issued by the Supreme Court to the lower courts of the country regarding dealing only with the urgent matters without specifying any criteria as to what constitute urgent matters, thus, making the fundamental right of the access to justice at the arbitrary discretions of the concerned courts. The paper would also discuss on the issue that apart from litigants being severally affected by non-functioning of the courts, how this pandemic has affected the lives of the lawyers. At the last the paper analyses the lessons which are judicial system needs to learn from this unprecedented pandemic to sustain itself as a "Justice Delivery System" even in situation of crisis.*

## INTRODUCTION

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The Covid-19 has made a catastrophic effect on the lives of the people living across the globe. The crisis is causing large-scale loss of life and severe human suffering globally. The health care systems are in crisis, the world economy is collapsing, businesses are running into bankruptcy and our lives have come to a standstill. This international crisis has not only affected human health but judicial health too. Access to justice is regarded as the fundamental right of the democratic society and is also the crucial element to the rule of law. The cardinal principle of rule of law upholds supremacy of law and prevents arbitrary actions by the people in power. However, in the present times in the effort to combat the spread of the virus, the functioning of the courts has been suspended thereby making judicial system handicapped and collapse of the most cherished right of the democratic societies i.e. access to justice. Though, the role of the police officials in this challenging situation has been appreciated and applauded by one and all. The police officials have been rightly acknowledged as “corona warriors” but unfortunately there is also an ugly side of the prevailing situation to which most of us are ignorant. In the situations of unbridled and uncontrolled powers, there have been no dearth of the incidents wherein the police officials are using excess of powers entrusted to them in order to make the people comply with the law and order. In many situations, the excesses have gone to the extend where there has been utter disregard to the human rights of the persons. Thus, taking advantage of such unfortunate situation by the persons who are entrusted with the task of execution of the laws i.e. the police officials since the courts are non-functional and making all attempts to rise above the rule of law is injurious for the survival of the democracy. It must be remembered that Public compliance cannot be obtained with violence and using excess force leading to a situation of dictatorship.

This unfortunate event has also unrevealed the bitter truth of our times that however pride we may take and claim that we are technologically advanced but in essence we are still technologically challenged. It is certainly a reality check for our judiciary that they are incapable of functioning in the times of crisis. In the times where Digital space has taken precedence and work from home is the new norm indeed, there is a need for proactive and decisive action by the governments in order to ensure that the most vulnerable people have access to the justice in such times of difficulties rather than perceiving the present situation as an opportunity of concentrating all the powers and collapsing the institution i.e. the Courts which are the guardians of human rights and liberties. Apart from the



situation of unprecedented lawlessness amid the widespread panic by the non-functioning of courts, the closure of the courts has also led to financial crisis for the advocates. Majority of the lawyers across the country function on case to case basis, thus, with the restriction of taking only urgent matters most of the cases are pending before the courts which is resulting in far reaching financial consequences for the lawyers. This situation could have been very well avoided if our judicial system was capable of working virtually thereby, resolving the problem of financial crisis for the lawyers and also regarding pendency of cases.

## **CORONA AND THE COURTS**

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The impact of the Corona Virus is seen in every realm which touches upon the mankind. This pandemic is leading to a transition from one world to another thereby replacing our cherished conventions. This transition is also certainly being witnessed by the judicial system of our country. Thus, with the outbreak of this novel virus the Apex Court of our country invoked special powers conferred under Article 142 of the Constitution in consonance with the social distancing norms and issued guidelines restricting entering, attending or taking part in the court hearings with the objective to prevent the spread of the virus. Thus, the conventional mode of open hearing has been replaced by the video conferencing system. Further, the High Courts of the concerned states were made responsible to frame rules regarding the implementation of the video conferencing mechanism. These guidelines of the Supreme Court have certainly marked the arrival of virtual courts which is indeed a turning point in the life of our judicial system. The idea of e-courts and virtual hearing which appeared to be a distant dream a few months ago would certainly be a reality in times to come as experts are of the opinion that the social distancing norm is here to stay.

Though, the prompt action of the judiciary from transition of physical courts to e- courts and limiting the physical hearing of the matters to “urgent matters” in order to balance public health concern and access to justice is commendable but this makes one question whether justice is been done to the most cherished fundamental right of *access to justice?*

Though, whatever limited experiences our stakeholders have of hearing via video conferencing mode is unfortunately very disappointing. Frustrating the efforts of lawyers and judges, hearings in virtual courts have been plagued by technical glitches. Justice UU Lalit expressed his dissatisfaction with virtual court hearings when he referred to the disturbances caused by too many counsels in a case and

listed it for further hearing in an open court<sup>1</sup>. Such dissatisfactory and disappointing experiences give a clear and a loud message that our judicial system is not well equipped to function in situation of crisis. Thus, the failure to make use of the technology will have serious repercussions on the individual rights and more specifically right of access to justice along with mounting in the pendency of the cases.

Another evidence of the haphazard response of the Hon'ble Supreme Court to deal with the crisis is in the notification issues by the Hon'ble Court to limit the hearing to only *urgent matters*. Now, what constitutes *urgent matters* is left at the arbitrary discretion of the concerned High Courts, thus, leaving the *access to justice* at the peril of the High Courts. Consequently, different courts are adopting different methods to categorise matters as *urgent matters*. For instance, the notification issued by Gauhati High Court does not mention listing of bail matters and habeas corpus petitions, which are indeed are urgent in nature as they involve loss of liberty. On the other hand, the Patna High Court emphasises that bail applications are to be given preference, but the number of such matters is arbitrarily restricted to 25 applications a day. Further, the District and Family Court are in a worse situation as they are dependent on the instructions from the higher judiciary and are already living in a neglected condition. Thus, the implementation of the haphazard guidelines issued by the Hon'ble Supreme Court is clearly reflective of the fact that our judicial system is not well equipped to function at the times of crisis, thereby, adding to the already miserable situation by denying people their most cherished right of access to justice. To remedy the situation, the need of the hour is to provide judiciary with requisite technological infrastructure. On the similar lines, recently, the Chief Justice of India, SA Bobde, asked Solicitor General Tushar Mehta *"to convey to the Centre the need of improving the virtual court system by ensuring seamless connectivity. "Bobde told Mehta to ask the telecom minister to ensure that the virtual court system works better"*. Similarly, the BCI has also expressed concern over the functioning of virtual courts *"On one hand, cases of Covid-19 are increasing and on the other, the problems of litigants and advocates are mounting. Litigants are unable to get justice through...virtual courts."*

Thus, these statements are reflective of the intentions of the judiciary to work even at the time of crisis provided requisite infrastructure is provided for its proper functioning.

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<sup>1</sup> [https://economictimes.indiatimes.com/news/politics-and-nation/lawyers-start-consultations-on-return-to-physical-courts/articleshow/75880586.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/lawyers-start-consultations-on-return-to-physical-courts/articleshow/75880586.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) By

Though very recently, on June 14,2020, the Supreme Court registry has set up video conferencing facilities in the seven district courts of Delhi including – Rohini, Saket, Karkardooma, Patiala House, Tis Hazari, Dwarka and Rouse Avenue for facilitating learned lawyers and the litigants to join hearing for their matters listed before the Hon’ble Supreme Court in virtual courts through video conferencing but the pertinent concern which needs to be addressed is how far this facility would be made available to the courts located in the remote areas of the country and also this facility is limited only for the matters listed before the Hon’ble Supreme Court, thus, the video conferencing facilities for the matters before the District and High Court is still in the state of uncertainty and so is the right to access to justice. Further, this step by the concerned authorities taken after almost four months of the closure of the courts reflects the realisation of the fact that access to justice cannot be denied.

Though, virtual courts is the need of the hour to meet the current challenges posed by the pandemic situation but, one must remember that virtual courts should supplement the physical courts and not replace them. As the litigation profession is not only about the lawyers like Harish Salve, there are lawyers who are struggling hard to make two ends meet and therefore do not have access to e-resources. In such a situation such lawyers and their clients would be denied right to access to justice if the entire court system is replaced by virtual courts.

## **THE CRISIS AND THE EXECUTIVE ROLE**

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The fight to combat and defeat the corona virus is indeed the greatest challenge the man has faced in an era with the exemplary role played by the Executive. The advent of COVID-19 has indeed changed the political landscape of India. The Legislature, the executive and the judiciary are the three pillars of the democratic India but the COVID-19 is all about the executive show. Though, in India we have adopted the doctrine of separation of powers with checks and balances on each organ but these checks have indeed taken a back seat while the executive orders dealing with the crisis ; the orders which are unchecked and have indeed become the rule of law. The Central Government by invoking the Disaster Management Act, 2005, which allows the government to take any measure it deems necessary to address a disaster or epidemic, has taken very courageous steps like imposing a nationwide lockdown. The Act, has in fact, enabled the government to take broad policy measures without being checked by the parliamentary procedures.

While the government is being applauded and appreciated for its laudable efforts in dealing the unprecedented situation and the police officials have been applauded for their sacrifices and dedication

but one must also not forget the various reports and incidents wherein the police officials have acted beyond their powers in guise to make people obey and follow law. There have been numerous reports on the incidents where the police officials have disregarded the human rights in order to make people obey law. The non-functioning of the courts and thus no check on the exercise of the powers of the police officials have made them all powerful and courageous to exercise unbridled powers. The police of our country is already known for abusing its power and for its inhuman conduct, the present times have infact given more stimulus for such conduct and exercise of power.

Thus, in the prevailing circumstances the inference and the check by the judiciary therefore becomes even more imperative to prevent executive overreach. On the contrary, the efforts and the role of the judiciary is very disappointing and disheartening. For instance, in a recent petition entertained by the Hon'ble Supreme Court demanding the government to pay wages to out-of-work migrant workers. The Petitioners urged before the Supreme Court to mandate the payment of wages to these workers because the loss of livelihood is a result of the government-imposed lockdown. After holding a number of inconsequential hearings, the Court astonishingly dismissed the petition, directing the government to "take such steps as it finds fit to resolve the issues raised in the petition."

The present Supreme Court's passive response is at contrast with the institutional image of custodian of human rights that it has carved for itself over the years. The Supreme Court's inability or unwillingness to function as an effective check on executive action is of particular concern, as a number of other measures implemented by the central and state governments or the measures to be taken in near future will go unchallenged. Thereby, making executive the repository of all the powers in dealing with COVID-19 response and may be in the post COVID era.

## CONCLUSION

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Access to justice and speedy justice have been placed on the high pedestal of fundamental right in our Constitution and are also considered as a hallmark of a free society. However, the situations like corona virus crisis have given a loud and a clear unfortunate message that these rights have no soul and are a mere letter of law as our judicial system is an apparent failure in such times. But as it is rightly remarked “*Failure is the key to success; each mistake teaches us something.*”<sup>2</sup> Indeed, this pandemic has given a reality check to the Indian Judicial System and certainly a lot of lessons to be learnt. As this pandemic is here to stay and will be the part of our everyday lives, therefore, a lot of reforms are required in our transition from one world to another. Thus, progressive reforms are the need of the hour. Certainly, reforms cannot be brought by the will of some handful people, it requires willingness from all the stakeholders and more importantly, cooperation from various organs of the state, particularly, in case of India, where there is inter-dependency on each organ.

As in the present times our courts are not well equipped with the requisite technological infrastructure and as we know that in the post corona era, the digital and the physical has to go together hand in hand, therefore, the immediate efforts of the executive should be to revive the judicial system and make its functioning in consonance with the changing times and demands.

The traditional mode of case filing is to be replaced by the mechanisms of e-filing. However, such a mechanism has to be user-friendly and less time consuming. As the present system of e-filing (in whatever limited courts that is available) is a nightmare for most of the advocates as one filing consumes almost a day. Thus, technology should be a new friend for all stakeholders, instead of being a nightmare. As the use of technology is the only way out.

Further, there is a need to frame legislative policy that focuses on how the courts should function during the times of pandemic is very crucial, thereby, avoiding the chance of arbitrary exercise of powers by few chosen ones during these times. Since, now the virtual courts will be supplementing the physical courts there is also a need to frame policy regarding data protection so that the confidence of the general public is kept intact in the reformed judicial processes and proceedings.

Time and again our judiciary have been criticised for delay in delivering justice due to pendency of cases, the lockdown has further added to this crisis. As due to lockdown the courts were dysfunctional thereby, increasing the pendency of cases. Thus, in order to remedy the situation and provide speedy justice to the litigants it has now become even more imperative to create more benches to deal with the pendency of cases. And, also to further the cause of speedy justice it is also necessary to make courts functional even on holidays. Apart from this, it is also necessary to take stringent measures

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<sup>2</sup> Morihei Ueshiba

against taking unnecessary adjournments by the litigants, which is indeed a great contributing factor in increase in the pendency of cases.

Also, to reduce the pendency of cases and over burdening of the courts there is now even more necessity to opt for alternative dispute mechanisms. Thus, the efforts of the lawyers should be towards this end by mobilising their clients. The future of the dispute resolution should be dependant on measures like arbitration and mediation which can be solely done by lawyers encouraging their clients. This would certainly lead to speedy and amicable settlement of disputes.

Further, it is imperative to understand that these features and change in the judicial process should not be made limited at the times of crisis but be made regular feature of our judicial system. As the fact of the matter is that it is the present judicial system which is responsible for the harassment of the parties and delay in delivering justice. In our country access to justice is still not accessible to one and all due to factors like physical or financial constraints or professional commitments. Thus, measures like video conferencing is indeed a necessity even in the best of times.

Undoubtedly, this transition will be not be an easy one as this would require a lot of technological support and as also most of the stakeholders have lack of exposure to the technology this would certainly be a great challenge for them. But, one must remember *“change is the only constant. Change is what drives life ahead. Without changes, real and lasting ones, we are humdrum beings stuck in a rut.”* This is the time of long waited change in our judicial system in order to facilitate the fundamental right of access to justice. Thus, the pro- active role of the stakeholders will certainly accomplish the goal. It is imperative for us to understand and realise that this crisis needs to be converted into an opportunity of reforming our Indian judicial system.