

IMPACT OF COVID-19: ANALYSING INDIAN LEGAL SCENARIO**-NIPUN BANSAL & PRABHAT TYAGI¹****ABSTRACT**

“All endings are also beginnings we just don’t know it at that time” - Mitch Albom.

A virus named ‘corona’ originated from a food market in Wuhan which got out and brought the whole world to a halt. Aim of this research paper will be to answer questions of the effects of COVID -19 on the legal world. Questions like what is ‘Force Majeure’? How is the Indian Judiciary coping up with this pandemic? Is this the beginning of remote work for litigation? What is the state of quarantine and epidemic law in India?

Keywords - Force Majeure, Corona, COVID -19, Remote work, Indian Judiciary.

Introduction

The advent of Novel Coronavirus Disease (COVID-19) had brought great misery and despair to the mankind. The impact of the virus can be seen throughout the world. World economies have taken a gigantic hit in countries, political systems of multiple countries are affected resulting in the suspension of their legislative activities and rescheduling of elections due to fear of spreading of the virus.

To its inevitable impact, governments across the globe had no other option but to issue an order for a complete lockdown. The pandemic has affected the worldwide education system leading to the closure of schools and colleges. Health care services around the world have been busy fighting the good fight against COVID-19.

The fight against this virus can only be successful if the Governments across the globe ensure adequate measures are being taken at the apparent time. Developed nations like United States, China, Italy, United Kingdom were the ones that got the most hit by the virus as all of them were slow to realize the crux of the problem and did little to nothing to curb the virus by issuing a

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lockdown sooner. This led to a huge increase in the number of casualties due to COVID-19 in these countries with their death toll predicted to reach between 1,00,000 - 2,00,000 by the time this virus dies out. It is understood that the total death toll reported by the countries at this point of time is nowhere near the real amount of fatalities this virus must have caused, there is an expected 60% rise in calculation of numbers of deaths around the world once the countries start considering the death's outside hospitals and real figures come out².

In this fight against a pandemic, many sectors of the society are suffering including the Judicial System of the country and the workforce employed in the legal world. Due to fear of spreading of the virus, the technical activities on ground have been suspended, which in this case is more problematic as, unlike others, this sector fosters less efficiency working online.

Current Situation

The World Health Organization (WHO) declared the outbreak to be a Public Health Emergency of International Concern and recognized it as a pandemic on 11 March 2020. The virus is primarily spread when people makes close contact, via small droplets produced by coughing, sneezing, or talking. The droplets usually fall to the ground or onto surfaces instead remaining within the air over long distances. People can also become infected by touching a contaminated surface and then touching their face.

As a result of the epidemic, many countries have imposed entry bans, quarantines and other restrictions for citizens of or travellers to the most influenced areas. The outbreak created problems and has been blamed for several instances of supply shortages, due to the panic buying (essential items such as food, bottled water etc.) and disruption to factory and logistic operations. Amidst all this hassle, false information has been spread through social media and has resulted in conspiracy theories and misinformation regarding the origin, scale, and treatment of COVID-19.

The Indian Government on 24th March, 2020 took the matter in their own hands and announced a nation-wide lockdown and invoked The Disaster Management Act, 2005³ and The Epidemic

² John Burn-Murdoch, Valentina Romei and Chris Giles-Global coronavirus death toll could be 60% higher than reported-Financial Times (April 26 2020), <https://www.ft.com/content/6bd88b7d-3386-4543-b2e9-0d5c6fac846c>.

³ Amanpreet Kaur, Disaster Management Act does not restrict citizens to post updates on Covid-19-India Today (April 2nd 2020 <https://www.indiatoday.in/fact-check/story/fact-check-no-disaster-management-act-does-not-restrict-citizens-to-post-updates-on-covid-19-1662457-2020-04-02>).

Disease Act, 1897. The Central government has included COVID-19 under the act as a ‘Notified Disaster’ and “critical medical condition or pandemic situation”⁴. The Epidemic law is meant for the containment of epidemic diseases by granting special powers required for the implementation of containment measures to control the spread of the disease.

By invoking the Disaster Management Act, 2005, the government has facilitated itself by enacting necessary steps and raising the ‘National Disaster Response Fund’. Using this fund, the government will be able to fund the medical facilities and medical research to restrain the concern of rise in positive COVID-19 cases.

The Apex court of the country had to take measures into their own hands considering the backlog of pending cases, which already existed before the lockdown. On March 23, 2020, the Supreme Court made history by announcing its decision to conduct virtual hearings through video conferencing. The Supreme Court decided to hear the very essential cases through video conferencing.

For such hearings, judges would possibly assemble at the residence or either chambers of one of the judges on the Bench hearing a given case, along with lawyers joining the proceedings from their homes or offices. The Supreme Court is also looking at the possibility of making the District courts and High court available to the parties in due time. Despite the technological advancements, Supreme Court advocate Mr. KTS Tulsi says the lockdown will further delay justice. "Even if [the courts] open on April 14, [cases] will be lagging by six to eight months. If the lockdown is extended, the lag period could increase to a year.”

In this time of the disaster, work from home has become a way of living for the litigators to keep their practice afloat in this time of crisis. Meeting with clients are being organized through apps which provide video calling. Many lawyers are adamant to get their client’s case recognized by the court as an essential case so that their cases move forward in the time of pandemic also.

⁴ [BS Web Team](https://www.business-standard.com/article/current-affairs/what-is-disaster-management-act-terms-you-should-know-in-time-of-covid-19-120032401631_1.html), What is Disaster Management Act? Terms you should know in time of Covid-19, Business Standard, (March 25, 2020 17:27 IST), https://www.business-standard.com/article/current-affairs/what-is-disaster-management-act-terms-you-should-know-in-time-of-covid-19-120032401631_1.html.

Why Force Majeure?

The concept of 'Force Majeure' is nowhere to be seen in the Indian Contract Act, 1872, but the doctrine can be located under Section 56 of The Indian Contract Act which states that force majeure is an express provision of impossible circumstances given under law which allows temporary suspension of contract⁵. Under Section 56, the word "impossible" doesn't mean that the completion of contract is literally impossible from the point of view of the parties involved; it means that judging by the then present scenario if the fulfillment of promise by the promisor seems impossible by no fault of his own then this section can be invoked⁶. It is said that the word 'Force Majeure' is coined out of 'Code Napoleon' and it has a wider meaning than 'Act Of God'.⁷

Section 32 of The Indian Contract Act is also associated with force majeure as it states that the obligation of performing a contract is depended on the happening or not happening of an event. If that event is implausible to happen, then such a contingent contract cannot be performed by the parties involved and hence it will come under the concept of force majeure.⁸ Nevertheless, the parties involved must honor the contract to the extent which the circumstances allow them to, any negligence on this part will not be entertained by the court, hence such omissions in taking action will not come under the doctrine of 'Force Majeure'.

Typically under the definition of force majeure, events like floods, earthquakes, terrorist attacks, war, etc. are included but the inclusion of the spread of COVID-19 in this list shows the fathomless fear that the Government has for the country if this virus spreads. By including coronavirus in the list, the Government on 19th February, 2020 has officially made it easier for the parties to invoke the FMC in a contract and safeguard themselves from incurring heavy losses because of the outbreak of the coronavirus.

Understanding the situation of the outbreak of COVID-19 in China, the Indian government and The Ministry of Finance were swift in releasing an office memorandum dated 19.02.2020 stating that any delay in supply of goods to China or any other country will be dealt under the Force

⁵ Dhanrajamal Gobindram v. Shamji Kalidas & Co, AIR 1961 SC 1285 (India).

⁶ Satyabrata Ghose Vs Mugneeram Bangur and Co., AIR 1954 (India).

⁷ Elzekiel Abraham Gubray Vs Ramjusroy Golabroy, AIR 1921 Cal 305:33 CLJ 151:63 IC 267 (DB).

⁸ Energy Watchdog vs. CERC (2017).

Majeure clause (FMC) in the contract⁹, it also said that FMC can also be invoked in a commercial contract where the interest of the parties is to be safeguarded from any loss which the outbreak of coronavirus can cause them.

Now this time, the Indian Government has included COVID-19 under the definition of force majeure but there have been cases in the past where the applicability of the concept has been discussed in the courts. In the case resolved by Central Electricity Regulatory Commission involving Solar Energy Corporation of India, hereinafter (*SECI*) VS *M/S Krishna Wind farms Developers Pvt. Ltd.*, the defendant claimed that due to the announcement of demonetization in the country the on 8th of November 2016, the defendant was not able to complete its obligation to SECI, so this should be regarded as a force majeure event. The Commission, however, ruled against the defendant as SECI had previously given the defendant an extension for the same reason and still the work was not completed in the extended period and also demonetization is no force majeure event in concern with PPA (Power Purchase Agreement).¹⁰

Force majeure is going to play a major role after the lockdown is lifted by the government as numerous numbers of cases will be filled in the courts moving for the application of Force Majeure Clause in their contract. It will be interesting to see how the courts will deal with such a humungous load of new cases.

Covid-19 Impact on other Countries and their Legal State

The Judiciary across the world has been dealing with the spread of the virus in their own way. Below are the different methods used by the legal fraternity to keep the wheels of justice turning in this time of crisis.

- **United Kingdom**

The United Kingdom resorted to passing a temporary emergency legislation to deal with this problem and named it The Corona Virus Bill 2020¹¹. Under this bill 3 practice directions have

⁹ No. F18/4/2020-PPD, Ministry of Finance.

¹⁰ Nithin Thomas Prasad, CERC Rules In Favor Of SECI, Does Not Consider Demonetization A 'Force Majeure' Event, Mercom India, <https://mercomindia.com/cerc-demonetization-seci-refund-wind-developer/>.

¹¹ Corona Virus Bill: Summary of Impacts, 2020, Department of Health & Social Care, Gov. of UK, <https://www.gov.uk/government/publications/coronavirus-bill-summary-of-impacts/coronavirus-bill-summary-of-impacts>.

been issued, PD 51Y provides for hearings to be conducted remotely (whether by video or audio); PD 51Z stays certain possession proceedings for 90 days; and PD51ZA allows parties to agree time extensions of 56 days in certain circumstances¹². The act also places huge emphasis on conducting hearing online and through video conferencing¹³. Only urgent matters are being heard through this method.

- **United States**

The lockdown regulations in the US are not very rigid. States have not announced a complete lockdown and the small amount of lockdown which has been placed is being protested against by the citizens because this pandemic has resulted in many of them losing their jobs. Now the United States judiciary is trying to take adequate measures as courts in most states have been closed and it is said that they will hear cases remotely in May. By Issuing an Order, the courts have explained the manner in which the people visiting the court premises have to behave.¹⁴

- **Germany**

The impact of coronavirus was not that much in Germany which has allowed The Federal Court of Justice to continue although the visitors are not allowed to come to the court. Social Distance is being imposed as The General Administrative Court is holding only 1 or 2 hearing each day¹⁵. It is believed that Germany will be one of the first countries to bounce back from this pandemic.

- **Italy**

Italy was the first country to get critically affected by COVID-19 epidemic. The Italian government, specifically the head of its executive branch, the President of the Council of Ministers (PCM), by implementing Decree Law 6/2020, imposed restrictive measures on those

¹² Practice Direction 51za – Extension of Time Limits And Clarification Of Practice Direction 51y – Coronavirus, Justice (2 April 2020), <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/practice-direction-51za-extension-of-time-limits-and-clarification-of-practice-direction-51y-coronavirus>.

¹³ HM Courts & Tribunals Service HMCTS telephone and video hearings during coronavirus outbreak (22 April 2020),https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak?utm_medium=email&utm_source=.

¹⁴ (BAH)United States District Court for The District Of Columbia ,Order No 20, <https://www.dcd.uscourts.gov/sites/dcd/files/COVID-19%20Standing%20Order%20Face%20Coverings%20or%20Masks.pdf>

¹⁵ Ben Knowles, Maurice Kenton, COVID-19 Global: Arbitration and court impacts, Clyde &Co(24th April,2020), <https://www.clydeco.com/insight/article/covid-19-impact-on-courts-and-arbitration>.

living in the most affected areas ‘red areas’, suspension of all public activities, public events, and mandatory social distancing. The government has passed some tax measures to reduce the negative effects of COVID-19 on its economy.

Indian Judiciary amidst Lockdown

Amongst various social and economic sectors, the impact of this recent epidemic is considerably extreme and high. The judicial system also doesn’t remain untouched and unaffected from its pernicious effect.

Keeping the utmost care and safety from its detrimental consequences, the Supreme Court of India took *suo motu* cognizance of the threat and announced a series of moves such as; dealing with Court procedures, cases through video conferencing and also maintain social distancing measures within the judiciary¹⁶. March 16, 2020 onwards, the SC heard urgent matters. The aim of doing this was that the SC wanted no physical presence of lawyers in the Court premises and hearing to be done by virtual Courts only.

The lawyers will be allowed to argue their cases through video conferencing, file cases online 24×7 and also watch proceedings on smart TVs in the press rooms of the court complex, whereas casual visitors will not be permitted to enter the court premises for any non-essential reasons such as tours or museum visit etc.

It has also directed that only lawyers acting on the matter, either for arguments or making oral arguments, along with one litigant only, will be permitted in the courtroom. As a precautionary measure, the SC has also reserved the right to require thermal-screening at all entry points, and to not allow persons found to have high body temperature.

Along with the SC, similar restrictions have been announced by various courts, including the Bombay High Court, Delhi High Court, Karnataka High Court, NCLT, and other tribunals, wherein only hearing of urgent matters, upon the court’s satisfaction of its urgency, and presence of lawyers only in the cases of mandatory nature (in view of court) will be allowed.

¹⁶ Manish Chhibber, Overburdened Supreme Court can use Covid lockdown period to change Indian judiciary for good, The Print(1 April, 2020), <https://theprint.in/opinion/overburdened-supreme-court-can-use-covid-lockdown-period-to-change-indian-judiciary-for-good/392478/>.

In this time of crisis, the Supreme Court has done a stupendous job in keeping the wheels of justice spinning by hearing the cases through video-conferencing. Although there were only 87 benches hearing cases in this time, a total of 593 cases were heard during the 17 working days between March 23 and April 24 which is a lot less considering that on an average, the SC disposes of around 3500 every month but considering the times of panic caused by corona, the work of Supreme Court needs to be praised¹⁷.

A Change of Pace for Lawyers

- **Work from home**

Since the nation is under lockdown, all the law firms, offices, Legal NGOs, etc. are closed. All the lawyers are working from home to prevent the impeding of services. They are preparing files, making agreements, researching, and drafting legal documents. The working mechanism has changed a bit because now the senior leaders have to provide a detailed and structured work to their juniors.

Some of the big firms like L&L Partners, Cyril Amarchand Mangaldas, JSA etc. have provided the bonus early to the employees despite the disarray caused due to COVID-19¹⁸. As a managerial concept, to keep employees motivated, providing monetary benefits always helps the employees to work better.

- **Connecting with clients via video conferencing**

Though the pandemic has caused dismay, it is providing some benefits to various groups of people. With the aid of interacting with the clients through video conferencing, lawyers from a

¹⁷ Press Trust Of India, Supreme Court Heard 593 Matters, Delivered Judgments In 215 Cases During COVID-19 Lockdown, Live Law (26 April 2020), <https://www.livelaw.in/top-stories/supreme-court-heard-593-matters-delivered-judgments-in-215-cases-during-covid-19-lockdown-155813?infinitescroll=1>.

¹⁸ Japnam Bindra, Covid-19 lockdown: SC issues norms for holding proceedings via video conference, Live Mint (07 Apr 2020), <https://www.livemint.com/news/india/covid-19-lockdown-sc-issues-video-conferencing-guidelines-for-courts-11586166492796.html>.

smaller town are able to approach and build a connection with a client based in a bigger town and vice-versa.

Virtual meeting platforms like Skype, Zoom, etc. have made it convenient, cost-effective and time-saving for lawyers to approach new clients, and stay in touch with the existing ones. The need of physical availability in the office is being fulfilled by using these technical tools.

- **Managing online interns**

With time online internships have become a trend in the past few weeks. Along with balancing their own work, the lawyers are providing research questions, instructions, and are reviewing the work of their interns as well. Various law firms have also converted the offline internships into online internships. Lawyers are motivating young interns, law students to write blogs, research papers, articles etc. and providing them with the opportunity to get their work published at their websites, journals.

Professional Inequality and Struggle

The nationwide lockdown has brought a great disparity in the legal profession. The lawyers who are famous names and who move around in their luxury cars and charge massive amounts of money may not be getting fees as per their expectations.¹⁹ Though legal profession features some senior counsels who charge hefty amounts for a hearing, but the vast majority of lawyers, especially in the lower courts, function on a case-to-case basis for their income and in the situation like this, when the courts do not function, their economic situation becomes unstable and precarious.

Due to the apex court's order of only hearing of urgent matters, the high courts of states have only one bench functioning and are taking only a few cases. The District Courts are not hearing any matters at this moment which leads to an enormous number of the legal fraternity staying out of work especially those lawyers in criminal courts, as under-trial prisoners have been given

¹⁹ Nilashish Chaudhary, How Covid-19 Lockdown Has Affected Lawyers? Some Accounts, Live Law (20 April 2020), <https://www.livelaw.in/top-stories/how-covid-19-lockdown-has-affected-lawyers-some-accounts-155491>

interim bail by most of the states in matters which are of less heinous nature. In the normal course of things, bail matters are the ones which provide for a major income source for many lawyers working in the sessions court.

In this time of crisis, the Supreme Court Bar Association came forward to deal with the COVID-19 situation by giving the order to start a Helping scheme for the impecunious lawyers who are members of the SCBA. “The object of this scheme is to aid and support those Members of the SCBA who in the present difficult time may need financial assistance to tie over the difficulties” quoted the SCBA circular²⁰. Under this scheme, the member can prove that he has no other source of income to the Executive Committee and get a loan of a maximum of Rs 25000 from SCBA at no interest, to be returned within two years of grant of loan²¹.

The Bar Council Of Delhi (BCD) were rapid in assessing the situation and acting upon it, on 27th March, 2020, the Council announced a Rs5000 relief to the needy lawyers who are not able to meet their day to day food or medicine needs. Needy lawyers will be allowed to avail through the scheme²². This action of BCD has led to other states Bar Council asking the same questions about any financial assistance to the needy and many of the council in other states followed the footsteps of BCD and has granted some kind of relief to their members.

Conclusion

The spread of COVID-19 made everyone realize that things might not be the same ever again, it has forever changed the way we experience things. Also, the interpretation of the law must change substantially to cope up with the change in times. The whole country is in lockdown and this is going to bring a whole plethora of new cases and claims in courts. The interpretation of the courts will be interesting to see. There is going to be increase in companies claiming to be insolvent as many of them will be out of business due to the imposition of the nationwide lockdown. Keeping this in mind and in an attempt to reduce the blow to the market, this

²⁰ Pallavi Saluja, SCBA sets up COVID-19 Helpline Scheme to provide financial assistance to lawyers, Bar And Bench (5 April,2020), <https://www.barandbench.com/news/scba-sets-up-covid-19-helpline-scheme-to-provide-financial-assistance-to-lawyers>

²¹ SCBA COVID-19 helpline scheme.

²² Resolution by Circulation: Financial Support during Covid-19 Lockdown, Bar Council of Delhi (29 March 2020),<https://delhibarcouncil.com/featured/resolution-by-circulation-financial-support-during-covid-19-lockdown/>

lockdown has also resulted in increase of Mergers & Acquisition in the country like Facebook acquiring 10% of Jio.

The Judiciary has also done all it can to reduce the impact of this virus by conducting proceedings online. Lawyers across the country took matters in their own hands by providing their clients with personalized expertise even in the time of lockdown by connecting with them through the use of technology. The Legal fraternity also came forward to help each other as many of the senior lawyers helped new budding lawyers and the clerical staff who are in need of finance in this tough time by donating certain sums of money in their aid.

Law is known to be a dynamic subject and that is why it is believed that the impact of COVID-19 pandemic would tantamount to opening of a new set of challenges and opportunities for the lawyers. It would also enjoin upon the judicial system and the legal fraternity to be more technologically equipped so as to enable the courts to hear the matters in large numbers through video-conferencing.

There is still a long way to go for Judiciary to shift its proceedings online in all the levels of court as India itself as a country is quite backward when it comes to the question of technology accessibility, even if the technology is made easily available to the people there are many people in the country who do not have the practical knowledge to use the technology which is being provided to them. The Indian Government must learn from this pandemic that in future if such forceful time returns we must be evermore ready with the technological advancement which is lacking in the current day to get us through another pandemic without the wheels of justice slowing down.