

JUSTICE AT A STANDSTILL

The pandemic has upended global legal business, be it in courts or law firms. The stark reality is that justice will be delayed and there will be a fundamental shift in the way it will be administered in future

By Dilip Bobb



The scene was surreal. A local court judge dressed in a robe and facing a screen was ‘hearing’ a criminal case without any of the parties being physically present. The case concerned a violation of quarantine control regulations. The defendant, who was not present, was sentenced to nine months in prison. This may seem like science fiction but it is actually science fact—the case was heard in China. As the coronavirus pandemic spreads its deadly wings, courts across the world are facing a new reality—that the deliverance of justice will have to wait, indefinitely. While Indian courts, including the Supreme Court, are still struggling to perfect the technology required for highly restricted online proceedings, other countries have taken drastic measures. Across Europe, most governments have shut down their court systems altogether. Italian and Irish courts have been closed under government decrees. In France, the courts are closed for all but “essential litigation”. A similar system is being followed in the UK, but the value judgment as to what



PARADIGM SHIFT
(Left) On March 24, 2020, the US Supreme Court conducted its first ever remote hearing; many law firms in the US are now using video and telephonic equipment for their business



amounts to “essential” is making it more difficult for courts to function at all. According to surveys conducted by global agencies like Norton Rose Fulbright and others, here’s how the global legal landscape looks like under the Covid-19 umbrella:

Italy: The courts have suspended all but the most urgent cases. Filing of cases can be done electronically, no physical attendance at courts.

Spain: Court proceedings have been suspended, with the limited legal process restricted to matters concerning essential services. Courts are currently operating under the orders of the health authorities.

Germany: A significant number of hear-

ings have been postponed. S203 of the German Civil Code (BGB) states that a time bar will be suspended by operation of the law, where the administration of justice is at a standstill.

The Netherlands: Courts have been closed since March 17, and only urgent cases will be heard. Dutch judicial authorities have stated that a case will only qualify as “urgent” if the delay of the court decision would have a negative impact on the rights of a suspect or litigant. Such “urgent cases” include the hearing of bankruptcy applications, matters of custody of suspects in criminal cases and certain family law matters to do with divorce or domestic abuse.

UK: The number of courts open to the

public has been reduced. Courts are only proceeding with the most urgent cases, including custody hearings. The Supreme Court conducted cases by video link for the first time in its history; virtual courts are to be set up to hear criminal and civil cases as part of emergency laws announced by the government.

Portugal: Courts are operating a highly limited service and dealing only with matters where fundamental rights are at stake.

South Korea: Hearings have been postponed but the court system itself is operating, with submissions and filings being done electronically.

China: The courts are operating with a limited service due to government restrictions. Unless urgent, hearings have been rescheduled. Courts are encouraging hearings held via video link and alternative dispute resolution is being encouraged. Some local courts are using an online video communication system app called Yunshenpan, which literally means “trial in the cloud”.

US: On March 24, 2020, the Supreme Court conducted its first ever remote hearing. The Court building has closed and it will be hearing all cases and delivering judgments through video conferencing until further notice. The approach varies from state to state but jury trials, where jurors sit close together in →



ENSURING JUSTICE Justices NV Ramana (rear), R Subhash Reddy and BR Gavai (foreground) of the SC at a hearing through video conferencing in a case related to internet restrictions in J&K

court, have been suspended. Most court-houses have closed their doors to the public and high-profile trials have been postponed, from litigation involving Elon Musk to Donald Trump's financial records. In New York, the hardest hit by Covid-19, the federal court in Manhattan has indefinitely delayed all criminal and civil trials that were due to begin before April 27.

Hong Kong: Has introduced a GAP or "Generally Adjourned Period", under which only urgent matters can be heard via a Duty Judge System. Documents can be lodged but not filed with the court. Judges are giving directions via email.

Canada: The Court of Appeal continues to hear appeals, applications and motions but as of March 23, these are not in person. The court has implemented Emergency Practice Directions under which all matters will be heard by video conference or telephone.

United Arab Emirates: On March 17, all Dubai courts ushered in a temporary postponement of all ongoing proceedings and court hearings. Filing of new cases can, however, be processed electronically. The Abu Dhabi Criminal Courts have introduced virtual hearings to allow defendants to take part in proceedings while in custody.

Singapore: Even before the coronavirus hit Singapore, courts had an existing system to enable lawyers to make applica-

tions by video link. Since Covid-19 hit, the Singapore Court has implemented a justice continuity plan by dividing the judges of the High Court into two separate teams so that no judge from Team A will be in physical proximity with a judge from Team B. In situations when two judges are from Team B and one judge is from Team A, the judge from Team A attends by video link.

Australia: Following the adoption of policies restricting travel and meetings and remote workplace arrangements, the High Court of Australia will not be sitting in April, May and June. The Court will deal with special leave applications at individual registries and will hear any urgent matters that may arise by video link.

The coronavirus outbreak has had an impact on the conduct of legal business around the world. The International Court of Justice in The Hague has suspended operations for an unspecified period. The European Court of Human Rights has cancelled all hearings, apart from those where a suspension would cause "irreparable damage." The European Court of Justice is suspended till further notice. The impact is also being felt in law firms around the world. In Milan, Italy's hotzone, at least ten law firms have shut their offices. Even law firms in mainland China, where the outbreak originated, and Hong Kong

and other Far Eastern territories, have shut shop for now. What is evident is that the coronavirus pandemic has upended the day-to-day operations of the global justice system. Everybody, from judges to lawyers and defendants, confronts a stark reality—justice will be delayed.

For India, the reality is even starker. Once normal service returns, the courts will face the headache of confronting a judicial system already overburdened with a huge backlog of cases (as of August 2019, there were more than 3.5 crore pending cases). That will additionally include hearings that have been suspended during the lockdown, however long that may be. Then, there will be the additional burden of "corona litigation". We have already seen the Supreme Court and High Courts dealing with cases related to Covid-19—free testing by private labs, now amended; the issue of migrants; release of prisoners from jails; bail applications; and pleas against media coverage, among others. Then there will be an avalanche of cases to do with money owed to banks and businesses, insurance claims and employment tribunals. Courts will be stretched to unprecedented limits but what is clear is that the post-corona era will see a fundamental shift in the means by which justice is administered. ■

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