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भारतीय विधिज्ञ परिषद् BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, New Delhi - 110 002

BCI:D:1399/2020

Date: 26.05.2020

To,

Hon'ble Mr. Justice S. A. Bobde,
The Chief Justice of India,
5, Krishna Menon Marg,
New Delhi.

Sub.: Views of the Bar Council of India after seeking the opinion of the State Bar Councils and majority of the Bar Associations of the country directly or through the State Bar Councils and/or through the Members of the Bar Council of India, representing each State Bar Council in the Bar Council of India.

Sir,

This is in continuation to our earlier letter dated 28.04.2020 on the issue of working of courts in the present lockdown situation resulting from Covid-19 pandemic.

The Bar Council of India has consulted and taken opinion of the State Bar Councils and majority of the Bar Associations directly or through the State Bar Councils and/or through the Members of the Bar Council of India, representing each State Bar Council in the Bar Council of India.

I, therefore, wish to bring to your lordship's notice, the consensual view and aspirations of the overwhelming majority of advocates in the country for appropriate action.

As of now, in the Supreme Court, most of the High Courts and District Courts (barring Kerala, Karnataka and Chhattisgarh, where normal court functioning has started after lockdown 3 was over) only most urgent and urgent matters are being heard through virtual court hearing. Although, there are directions at the High Court and District Court level to list other matters for virtual court hearing upon joint request by both Counsels, but, in a adversarial litigation, where one of the parties is generally interested in delaying the matter, we can't expect that both the parties will reach a mutual understanding to approach the court to fix a VC hearing.

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We all know, that almost 80% of the total pendency of court cases in our country are trial matters. Appeals, Revisions, Writ Petitions etc. would fall in the rest 20%. The most urgent and urgent matters among these would be hardly 10%. Thus, only 10% cases qualify for hearing these days though Video Conferencing or Virtual Court.

The feedback that we have overwhelmingly received, is that not all requests for listing of cases even in this category are adequately entertained (we are told that only 2% out of this category succeed in getting the matter listed for VC hearing) and, as pointed out by us in our last communication to your Lordship, only a handful of privileged class of Advocates are beneficiaries of the virtual court system. Thus, access to justice through virtual courts remains a dream for more than 95% litigants. This is the harsh truth.

Your Lordship can verify this fact from getting the cause-lists, orders sheets (appearances of Advocates) of different High Courts and your Lordship would find that only a limited number of (selected people) have got access to courts through Virtual Hearings during Lockdown. The cases of only a few fortunate persons are being fixed, the kith and kin of only a few have earned huge money during this Lockdown in almost all the High Courts. Such messages are pouring regularly in BCI.

This has caused great loss to Common Advocates and there is a resentment developing among 95% of Advocates in almost all Courts.

Therefore, we are bringing all these harsh facts to the knowledge of our Apex Authority. Almost same is the case with Supreme Court Advocates.

My Lords!

When about 95% matters are languishing in courts without any hearing; it further means that almost 95% advocates are without any court work and court appearances these days. It naturally indicates that almost as many Judges as well, have no court work these days and their valuable time is left underutilized now a days as they are either sitting at home or in court chambers and not able to attend to judicial work. Even reserved orders/judgments being made scarcely. We won't say about the bench, but, almost 95% lawyers are struggling to make both ends meet with no chances of any respite given the present road map rolled out for functioning of courts.

I may point out that different State Bar Councils have received several lakhs of applications for financial assistance from needy advocates. Bar Councils, with their limited resources, have responded and done their bit to help such Advocates most of whom are young and/or needy advocates, but, this system can't go on for long as Bar Councils don't get any state grant.

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A lot is being argued in favour of virtual courts and it is perceived as the future of justice administration mechanism in the country.

However, our view is that virtual court cannot displace and replace traditional courts even partly due to lack of knowledge and training in technology, lack of technological infrastructure and also due to law and procedures of dispensation of justice in trial matters, which, as we said, occupies a space of 80% in the litigation spectrum in India.

My Lord!

Just one hard fact is good enough to demolish the misconception about virtual courts. We cannot even imagine of trial court work being done in/through virtual courts proceedings. Can we think of recording of evidence in virtual courts? Exhibiting documents, confronting witnesses with documents, watching the demeanor of witnesses and, above all, ensuring that the witness is deposing without any pressure, coercion or undue influence, are some salient features of traditional court which would be impossible to achieve in virtual courts.

The same is the case with the Hearings in Supreme Court and High Courts. My Lord !, we deeply ponder and wonder and find no plausible answer, as to why are we encouraging virtual hearings in the Supreme Court and High Courts when the system of Actual/Physical/face to face open court Hearing is full-proof and fully successful. It is fully transparent and gives full satisfaction to all and when more than 80% of Supreme Court and High Court Lawyers are comfortable with Actual Hearings in court rooms, then why should we encourage Virtual Hearings and to think further about continuing with this system even after Lockdown.

My Lord, it's now a hard reality that Covid-19 is not going to go soon.

We will have to learn to work with Corona and adopt all necessary measures to keep the virus at bay. National lockdown of over sixty days has taught us much about the precautions to be taken and that's why many government and private sector offices and establishments have started working, though, with restricted presence.

Therefore, lets have suitable scheme, containing guidelines to be followed by Advocates of the country (to keep everyone safe) for Actual/ Physical/face to face open court Hearings. We request Your Lordship to kindly issue appropriate directions to all the Courts to start Physical/face to face open court hearings from 1st June, 2020.

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We could start with listing of limited number of cases, and allow only those Advocates whose matters are listed to enter court rooms/premises, and time slots for hearings may be fixed, leading to even lesser people inside court rooms/premises at a particular time slot. Waiting halls ensuring social distancing norms may be developed in the already available area. The Bar Associations/Chambers/Libraries may not be opened for general sitting of the Advocates, only those Lawyers may be allowed to enter the Bar Rooms/Chambers who have some work in the Courts.

Those Advocates who wish to mention their matters may be allowed entry at a fixed time subject to showing their identity to the appropriate authorities at the entry gates of the Courts and particular time slots may be fixed for mentioning too, to be regulated by someone deputed for each of the courts which are sitting and working. All Advocates wishing to mention may be asked to wait in a hall, where social distancing may be ensured and their mentioning be regulated and after mentioning they would be requested to leave the court premises and regulators will have to ensure the same in a strict but polite manner.

As an exception and considering the situation only where, Advocates of both parties mutually agree, by signing a consent form, and/or when the Advocate/s of the plaintiff/petitioner/applicant and/or of the defendant/respondent may be medically unfit to travel, or venture out due to age, or comorbidity like diabetes with BP and/or heart disease, and is at more risk from the Corona Virus, as compared to others, then only in such matters Virtual hearings may be considered and allowed, that too only till the time the threat of Corona Virus looms large.

Your Lordships might have already received several such suggestions from the Lawyers in this regard.

Therefore, our request is to give a deep thought to the request of the Legal Fraternity of the country, and take appropriate decision.

Obliged!



(Manan Kumar Mishra)
Chairman,
Bar Council of India