



SUPREME COURT BAR ASSOCIATION (Regd.)

SUPREME COURT OF INDIA, TILAK MARG, NEW DELHI-110001 (INDIA)

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Ms. Nandanl Gupta

30th August, 2021

To,

Shri N.V. Ramana
The Chief Justice of India
Supreme Court of India
New Delhi – 110001

Sub: Standard operating procedure for physical hearing

Dear Sir,

We have examined the SOP for physical hearing with hybrid mode issued by the Secretary-General on 28.08.2021. In our view, the SOP is a nonstarter as our members would not like to take the options for physical hearing with so many conditions attached. Sir, you will appreciate that the Supreme Court has a distinct architecture where the lawyers are moving from one court to the other in an open corridor (without any air conditioning) where the chance of infection is negligible. According to us, the restriction should only be with regard to going inside the courtroom and not with regard to entering the high-security area. The high-security area has large open areas in form of corridors where lawyers wait for matters. It also has a large number of bar rooms, libraries, canteens where the lawyers can sit with the covid protocol in place. The SOP prohibits the entry of lawyers to the high-security area without special passes which will, in turn, dissuade our members from applying for physical hearing.

Our clear suggestion is that entry to the high-security area should be permitted by the use of a proximity card and the waiting areas would be the libraries and the lounges where lawyers will wait on their own after observing covid protocol. If those areas were to get full then the lawyers can easily wait in the corridor which is like being in an open space where minimal restrictions are required. The system of issuing special passes should be dispensed with in the SOP.

As far as limiting the number of people to twenty in every courtroom is concerned the same is also arbitrary as the size of the courtroom differs substantially. The number of persons permitted to enter the courtroom should be based on the size of a courtroom and the number of twenty can be justified only in the smallest courtrooms. Moreover, the discretion given to a Judge to adjourn the matter last minute if the number in a particular matter increases more to than twenty people is also unjustified as this will disrupt a lot of hearings in the court. A decision on such matters should be taken before listing the same. As



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the matters involving PILs where all States are parties and matters involving a large number of respondents are known to the Registry in advance and they may be listed only through the virtual mode for some time till the full physical hearing is resumed.

The number of covid cases in Delhi/NCR has fallen considerably and positivity rate in the national capital is 0.4%. Among other experts, Dr Soumya Swaminathan, the World Health Organization's chief scientist, has also opined that India has entered into the endemic stage of Covid-19. Experts have observed that India is reaching a stage where there is a low level of transmission, unlike the exponential growth and peaks that we saw a few months ago. The endemic stage is reached when a large section of the population becomes immune to a disease - either through vaccination or through antibodies acquired from prior infection. At this stage, the spread of the disease starts to slow down, and the rate becomes predictable. Thus, after an experiment of one week or so, we must start physical hearing to restore normalcy in the Supreme Court. With nine new Judges being sworn in on the 31st we can have fifteen courts functioning. If the hearings were to resume on the physical court the number of cases disposed of will be very large and the huge pendency created during the pandemic will get some respite. While the bar is also apprehensive about the third wave, the same will be immediately known either when the mutation of the virus takes place or if the number of cases suddenly start spiking. We can take our call with regard to the manner of the functioning of the Supreme Court at that stage and the said fear does not justify restricting the functioning of the Supreme Court now.

The Supreme Court being the apex court of the country should be a guiding star for resumption of normal work in courts in the country as the High Courts and Lower Judicial Courts look upon us for such guidance. Therefore, we should resume normal functioning at the earliest to send the right message down the line. The Courts in the country account for a very small aggregation of people and our functioning cannot by any strength of imagination result in the spike in covid cases. This is because our premises can be a place where the activities will be controlled completely (by following the covid protocol). It is pertinent to mention that the city has opened up completely and eased restrictions amid a fall in its Covid-19 caseload. Public spaces such as malls, cinema halls, marriages, parties, and restaurants have been allowed to open where the covid protocol is difficult to maintain (most of the times people remove their masks while eating, drinking, and socializing). In contrast to our premises where lawyers will compulsorily wear masks all the time. Delhi had a swine flu outbreak a decade ago and cases are reported till date. Every disease pathogen that has affected people over the last several decades stayed in some form or other as it is impossible to fully



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eradicate them. Similarly, Covid-19 is not going to end completely but we will have to learn to live with it and be proactive.

Hoping for a positive response.

Thanking you

Sincerely,


[VIKAS SINGH]

CC to :

1. Hon'ble Mr. Justice Uday Umesh Lalit
2. Hon'ble Mr. Justice A.M. Khanwilkar
3. Hon'ble Mr. Justice D.Y. Chandrachud
4. Hon'ble Mr. Justice L. Nageshwar Rao
5. Shri Sanjeev S. Kalgaonkar, Secretary General