



COVID-19: INFERENCE ON LAW FIRMS IN INDIA

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ABSTRACT

As the world is surrounded and remodeled by coronavirus outbreak, many industries, organizations, business units will face a huge transformation in management and working of the company.

Due to lockdown and shutdown of the economy, delays in the hearings of the case, cancellations of depositions, rescheduling of the cases, deadlines being extended are taking place which is hampering the legal system. The persistence that acquires the application of law has been to a great extent eliminated. So has the requirement of individuals to appoint attorneys in the short term. The delays and the hindrances faced constitutes ultimatum to income.

The circulation in the cash flow has been hampered and finances are in disruption. People in this situation acquires access to funds which includes structured payment plans, investments etc. In this situation, attorneys who assisted their clients in providing with the financial activities should be ready to act expeditiously.

The COVID-19 pandemic will encourage the business owners and industrialists to hire attorneys and seek support in incorporation and legal protection to their business. The business owners will need assistance in making decisions regarding tax and further to resolve which type of entity should be created

whether partnership, sole proprietorship or limited liability corporation. Customers will also acquire help in handling membership consensus who are accountable for voting shares, profit and loss, stock and various other fields.

Law firms will reappraise and accomplish more strategies during COVID-19. The transformations and accommodation from this outbreak will recoup the attorneys and legal firms in a much better and greater position.

Keywords: COVID-19, Coronavirus Outbreak, Epidemic, Law Firms, Pandemic

INTRODUCTION

While the world is bounded by COVID-19 pandemic and resumes to hamper the wealth of the economy, law firms are brawling with queries related to how to proceed further and provide assistance to their clients. Each and every industry or firm will respond to the pandemic differently. For some of them the coronavirus outbreak will spell the termination of their workings, while for others it will be challenging and coerced to adjust with these changes.

But for law firms, this will set out as an propulsion for change. Accepting the substantial and major changes is censorious in the working of the law firm and is not only the modulation for survival but flourishing throughout and post COVID-19 pandemic. The inceptive position of firms in COVID-19 is a glitch on the radar be it financially or socially.

- Debt taken by the industries or organisations or business units of all sizes in this pandemic will essentially require all the firms to the



centre of attention on the substitutes and accolade costs to create at least a minimal income to brace the debt.

- Clients became habitual and comfortable to deal and seek assistance from their professional service contributor through auto-electronic systems. The law firms possessed such things so that the level of comfort and efficiency in dealings can be provided to their clients.
- Due to the shutdown there is huge backlog in the court proceedings which have not taken place due to the virus. The courts will respond to the backlogs in addition to the person who files and maintains documents, signatures and more. For non-criminal hearings, tele-conferencing including members from home will be more feasible and manageable.
- Video conferencing and meetings taking place on zoom, google meet and so more has provided an easement in the workings of the firm and includes comfort in computing from office to home, workplace requirements, intensified network security, reduction spending to customers in accommodations, travel etc.

For the effective working in the near future firms, considering the increase in demand. Firms should be aware with the advanced technology and hiring technology consultant experienced in teleworking. Auditing of the firms with the current software and hardware. Planning in the management and working of the internet connections which not only involves software and hardware but includes they type of internet connections used in homes, location and placing of site to organise the clouds, apparatus outline for setting up home computers. Adopting and developing cybersecurity policies and operations for home and offices. Upgradation

in the hardware of virtual private network for home and office.

Transmission of documents at home is expensive and adequately high, where the firms ensure that lawyers must have a proper machinery or hardware and to avoid any type of happening or risks well established cybersecurity should be installed. Furthermore to have a positive and healthy relation between the firms and their clients, firms should provide virtuous and satisfactory assistances and favours to the clients. Firms need to be adaptive and transform with the passage of time.

Outspread range of demand retaliation covering legal areas and practice sectors. It is anticipated that litigation, prosecution and reconstructing practice sectors will do much better than the transactional operations. During the coronavirus outbreak there are unparalleled slowdowns in the working of the court systems, investigation and dispute applications are as a matter of fact less harmonized from the entire world than transactional operations are.



Transactional practices tend to contract during a downturn, whereas litigation practices tend to be steady.

Demand for law-firm services, 2007-10, % (year-over-year change)



Source: Peer Monitor

McKinsey
& Company

Figure 1: Transactional Practices tend to contract during a downturn whereas litigation practices tend to be steady.¹

COVID-19: PECULIAR TO FORCE MAJEURE?

In India, the outset of COVID 19 pandemic has not affected to be magnanimous crisis, but also constitutes to an economic depression. Precisely, curtailment on movement of individuals and commodities, set aside for those who are engaged in essential services, uplifted the significant issues on the capacity of parties to discharge their duty mentioned in contracts when it is not specifically restricted as 'essential services'. Uncertainty as to the performance of contracts has led to parties envisaging

¹ <https://www.mckinsey.com/industries/financial-services/our-insights/covid-19-implications-for-law-firms>

²

<https://corporate.cyrilamarchandblogs.com/2020/04/force-majeure-in-the-times-of-covid-19/#more-3597>

³ 2003 7 SCC 197

breaches of contract and assessing their rights and remedies in relation to the same.²

Epidemic or Pandemic is equivalent to Act of God

Indian courts have not straight away concluded or governed that whether the epidemic COVID-19 will constitute as an 'Act of God'. In the case of *The Divisional Controller, KSRTC v. Mahadeva Shetty*³, the Supreme Court concluded that Act of God means the occurrence of the natural forces without any interventions of humans with the admonition that every unforeseen natural happening does not function to defend from liability if there exists any rational probability of predicting their occurring. Alike judgements were also proceeded by Kerala High court⁴ and Madras High court⁵. Nevertheless, courts in U.S and U.K. stated that Act of God embraces pandemic or epidemic.

The case of *Lakeman v. Pollard*⁶, workman left his job due to spread of cholera pandemic with the harm that he may contract this disease and failed to finish his work as prescribed under the work contract. The mill owners took an action against the worker for the breach of work contract and wanted to claim compensation. It was held by the court of Maine that the cholera pandemic was an Act of God, thus it will not result in the breach of work contract.

Broadly, there are following tests which must pass for event to be force majeure:

⁴ *R.R.N. Ramalinga Nadar v. V. Narayana Reddiar* AIR 1971 Ker 197 and *Kerala Transport Co. v. Kunnath Textile*, 1983 KLT 480

⁵ *P.K. Kalasami Nadar v. Ponnuswami Mudaliar*, AIR 1962 Mad 44

⁶ 43 Me 463 (1857)



1. Uncertain- The event occurred must be unforeseeable and unpredictable.
2. Externality- Cause must not be created and produced by the party who is at fault.
3. Irresistibility- The event must make implementation of the contract unattainable.

COVID-19: Is the frustration self-imposed or voluntary?

In scrutinizing the doctrine of frustration, it was perceived by the Supreme Court that section 56 states the rule of positive law and matter is not left and governed according to the purpose and objective of the parties.

When the happening of an event which is ostensible to have frustrated the contract makes an appearance from the action of a party, doctrine of frustration will not provide any yield to it. Presumptions observed by the Supreme Court can be asserted that commercial requisites cannot escort to frustration.

Exemplifying, the above situation may appear in contract of sale of goods, where parties agree to sell and purchase material of product on certain particular terms and conditions. Eventually, overdues to the government foisted lockdown persuaded by COVID-19, the purchaser seeks to jiggle out of the contract in particular adducing commercial reasons. The contract, although, lays out for the transfer of title and the menace of the goods upon shipment. In this situation, besides to self-induced frustration, the purchaser's request for discharge of the contract may not be assisted since the buyer's act of election may not encounter the tests set out above.

Judicial lens

⁷ Suit (L(307 of 2020, decided on 30-03-2020)

⁸COMMERCIAL ARBITRATION PETITION (L) NO. 404 OF 2020

Indian courts have started to witness the explosion in particular to commercial conflicts involving around doctrine of frustration. Various orders have been passed by Bombay high court and Delhi high court. *Rural Fairprice Wholesale Ltd. & Anr. vs IDBI Trusteeship Services Ltd. & Ors.*⁷, The Bombay high court acknowledged the market situation following the COVID-19 and perceived that share market had subsided due to coronavirus outbreak. Accordingly it was an appropriate case to impede the bank from the stage of acting upon sale notifications and a way to extract any unresolved sale orders for guaranteed shares.

*Standard Retail Pvt. Ltd vs Gs Global Corp And Ors.*⁸ The Bombay high court refused to accord the interlude measures to petitioner noticing that commodity is an indispensable item and the lockdown exists for restricted time. Therefore, the petitioner cannot rebound from its contractual commitment to make payments to the defendants.

*M/s. Halliburton Offshore Services Inc. vs Vedanta Limited & Anr.*⁹, The case was concerned to impede on invocation of bank guarantees. While permitting interim relief on the invocation of bank guarantees, it was observed by the Delhi high court that the entire nation was in lockdown in the event of force majeure. Consequently, it could be said that special valuation do exist, as would account for granting of the prayer, citing bank guarantees on an injunct basis.

*Indirajth Power Private Limited v. UOI & Ors*¹⁰, The Petitioner on the outlook for injunction of the bank guarantee inter-alia on

⁹ O.M.P. (I) (COMM) & I.A. 3697/2020 | 20-04-2020

¹⁰ W.P.(C) No.2957/2020 & CrI.M.A.10270/2020



consequence of the lockdown in the nation due to spread of coronavirus pandemic, which would result the petitioner to be declared as non-performing assets. The court noticed that despite of the extension of 12 months the petitioner was unable to fulfil its commitment under the contract hence, the grant relief was refused. It was observed petitioner's position was not worsened by lockdown.

The performance of contract ought not to be pretentious by the coronavirus outbreak, and where the employees have to isolate themselves working in the service industries. Since the workers have been working from home, hence there is not much impact on the carriage of commodities. The non-performance of any kind in the business due to economic shutdown and deterioration from the epidemic are not sufficient grounds resulting to force majeure, to seek justification from performance of contract.

In a contract, force majeure may also have relevance on how direct the informal link between the force majeure occurrence and the non-performance desires to be. A clause that mentions the party which prevents force majeure occurrence by performing its responsibility will probably be interpreted as this will acquire more direct and forthcoming informal link than one which only needs party to be obstructed or impeded in performance of its responsibility.

The force majeure clause comprises of 'best efforts' clause, then the party necessarily needs to grip reasonable endeavour to execute the contract by oscillating means. Although in the non-appearance of expressed provision, the party who anticipates on the force majeure happening to defend its non-

performance needs to illustrate that it was impotent to carry out its responsibility in spite of taking steps to alleviate the consequence of force majeure occurrence.

Although some contracting parties might try to recoil from the contracting commitments considering the COVID-19 pandemic, fortunate dependency either under force majeure clause or under section 56 of the Indian Contract Act. The liability of exhibiting that whether the performance of specific contracting responsibility was actually affected by COVID-19, but in some specific cases it relies on the party for the non-performance justified. It is being scrutinized that whether COVID-19 epidemic lies within the purview and in context to force majeure.

TECHNIQUES TO ENDURE IN THE COURSE OF COVID-19 PANDEMIC

1. Availing and utilizing advanced technology Telecommunicating and geographically neutral technology are unparalleled, that is it has never been more easy going, approachable, easily acquired and grasped, strapping than it is today. From cloud computing services to documents to three way calling and attending phone meeting through meeting apps. Multiplex organizations including law firms have managed and co-operated with the employees and workers in the pandemic.

After the COVID-19 outbreak ends, cooperating and accommodating tele working will become much feasible. But that does not mean law firms can just rely on the video conferencing and meeting apps. Physical presence is more significant as it necessary to embrace digital modification.



Lawyers who have been obtuse in adapting the advanced technology must learn to clasp it. It will be considered as animating spirit of firm potentiality to work.

2.Safeguard against Cybersecurity threats

These days workers and labor force have shifted to virtual jobs and home-based office, it has become imperious for law firms to examine security activities and procedures associated to authentication of corporate system. Lawyers must ensure that their systems are not being hampered and any personal information or sensitive data related to client should not be exposed off. Encrypted zip files should be used and two-factor authentication on the applications and documents for security purposes.

Additionally, lawyers must prevent connecting their devices or mobile phones to any public WIFI be at any tea shop or any cafeteria. It amounts to Phishing where personal information, passwords, information from e-mails, Social Security numbers or any sought of attachments can be hacked, misused and misinterpreted. Various guidelines have been issued related to cyber-attacks and crime by the World Health Organization, U.S Secret service and other different institutions.

3.Munificent and Positive Attitude to Clients

In the pandemic days, its important to note that it is not only clients that are being impacted to businesses, clients are also being personally impacted through COVID-19. Firms must have a healthy and generous relationship with clients, reach out to them as to how have been they doing in these pandemic days and

lend a helping hand to them even if it is not concerned to legal work.

4.Assisting clients in discovery and alleviate COVID-19 risks.

The purge of the COVID-19 outbreak will have long running inference. Due to the shutdown and lockdown of the economy various challenges have to be faced by the business and organisations where they were forced to make enormous conclusion without understanding what the legal consequence will be.

Labour and employment issues are being raised regarding the shutdowns, layoffs, tele commuting, video conferencing etc. The increase in the cyber-attacks, data and privacy issues is crucial scrutiny for the businesses. It is binding on lawyers to have hard-boiled consultants for clients to take them through this situation and issues.

5.Bone of Contention of this opportunity to master plan for next crisis

The whole world is suffering from the consequences of COVID-19 pandemic. As rightly said by the philosopher George Santayana "*Those who cannot remember the past are condemned to repeat it.*"¹¹ Various organisation and business units should learn from the steps taken in these crisis. For the continuation and existence of business numerous actions have taken place and continuity plans have been mastered. Advanced technology should be utilized and the lawyers must be skilled to adapt it.

POST COVID-19: CONFRONTING CHALLENGES AND REMEDIES IN LEGAL SECTOR

¹¹ <https://www.iep.utm.edu/santayan/>



The catastrophe that the globe is surrounded by unmanageable and out of control spread of the coronavirus is not only unparalleled in modern period but hampering and damaging on numerous fronts. Since the whole world was in complete lockdown, only the movement of essential and necessary services were permitted and operated.

The post COVID-19 will bring out a drastic change and transformation in the way of living, hygiene and what further challenges and how things will be embosomed remains a million- dollar question. It is undoubted reality that unforeseen changes lead to manifold challenges, but in the present situation will be adaptable and extensive. Only focusing on financial commotion and fall down in economy will be wrong. The world has experienced financial requisites in the past with a constricted and engrossed objective to come out from such financial problems and crisis. Nevertheless, after pandemic things will turn out to be completely divergent. Changes in psychological and sociological behavior of humans will be reflected more. The precision and ethos of globalization will be calamitous. Countries would bring out changes in the policies concerned to globalization. After the coronavirus outbreak, more intractable and multiplex policies will be expected.

In the legalized sphere of our country, things will undergo with major transformation. With all industries currently dealing with financial crisis the legal industry has also succumbed to the same pressure, it is difficult for clients to empty their pockets for payment of legal fees where it's hard to earn bread butter for home. Big multinational companies and corporations are at the verge of dissolution as they cannot bear the losses

coming their way due to the pandemic in addition to that paying salaries to employees, dividend and interest to security holders is another issue. Here the corporate players are trying to avoid the legal expenses since in a country like India it's not easy to find a good attorney with minimalistic fees. Moreover, the amount to be spent on litigation cannot be ascertained before-hand since it is very uncertain in nature the number of hearings that will take place the amount of court fee to be paid and other petty expenses aggregate to a big large figure.

As they say when life is at stake you don't want to take any chances, like in the case: if you are suffering from an ailment you will visit to the best doctor available since that will provide you with the confidence to heal aster. Same is the case with lawyers when a person has a sword of litigation hanging on his head he would want a person of Experian to save him from going to prison rather than some junior attorney not considering the fact that the juniors form the case files from the scratch and are responsible for doing all the field work. The writer does not intend to argue demerits of senior councils as advocates but the fact that litigations cannot take place the way they used to after the pandemic.

Lawyers with singular practice are safe players at this point in time because they do not have to bear exorbitant costs of maintaining offices, a staff of multiple people etc. Medium size law firms that were at the verge of expansion may be suffering high risks because the cash inflow has decreased and outflow of cash has increased.

A resilient water like attitude has to be adopted in a situation like this to tackle it successfully. The law firms have to equip



themselves with the right means to ensure social distancing and ensure digitization of work environment because the legal proceedings are taking place virtually. Junior lawyers are also required to become self-sufficient (*aatam nirbhar*) so that they can function and deal with clients without senior lawyers. Senior councils have to take a slight hit on their prestige and charge slightly less from their clients. A lump sum payment structure might come to the rescue instead of per fee charges which cause a hole in the pockets of the clients.

Law firm to confidence

Law firms and individual lawyers must equip themselves with the necessary means to deal with matters in the times to come after the pandemic comes to an end. Though the litigation work is bound to increase post COVID because of the current halt at proceedings, however the rising volume of work might not be able to satisfy the expected revenue by lawyers. The working structure of firms has to be reformed in a manner that establishes a balance between stakeholders. As per statistics, Law is one of the most sought after profession therefore a lot of law graduates become part of the legal fraternity and have to be accommodated amid the crisis. One has to instill confidence in their clients and the legal sector is also fully prepared to face all the challenges. Utmost care has to be taken that due to lack of revenue the quality of legal support is not compromised because in certain cases it is a matter of life and death. Prospective cost cutting avenues have to be identified without

subjecting employees to harsh methods. All the above factors have to be taken care of.

In order to deal with the coronavirus pandemic effectively various bar councils have come up with proposals to deal the crisis. The legal fraternity also consists of lawyers who earn living on a day to day basis which means that they need continuous income generation on a day to day basis. We can say they are the ultimate sufferers in terms of financial dependence the Delhi bar council as a response to this issue deposited Rs 5000 in bank accounts of young lawyers in order to help them in financial sustainability. The challenges faced during this effort were that the bar council does not have its own income cycle also it is very difficult to identify lawyers actually in need of funds. Even though a lot of senior lawyers have contributed funds it is difficult to establish how many layers actually received benefits.

It would not be out of place to mention that the apathy of the state towards the legal fraternity is not the only reason which has restricted which has formulated and restricted welfare politics for lawyers. It is saddening to notice that despite occupying ministerial positions bar council associations have failed to pitch policies for lawyers welfare.¹²

The fraternity including well settled members have to step their foot down to support their suffering brethren. Every senior member of the bar knows one lawyer or the other who is suffering to meet ends, it is humbly submitted to support them and form a corpus. The

¹²<https://www.law.com/legaltechnews/2020/03/25/6-ways-lawyers-should-adapt-for-their-clients-and-themselves-during-the-covid-19-crisis/?slreturn=20200528033219>



corpus should be promptly deliberated and finalised. Time however tough it may change we must adapt and have the potential, capacity and aptness of embracing change.

Contradictory, it could also be contended that the legal sector would witness an inundation of work in the fallout of COVID-19 since the reopening and restarting of economic and social order would result in an aggressive rise in litigation. This may be accurate and veracious to certain extent as well. Nevertheless, this incursion of litigation would not escort the revenue proportionate to what it could have delivered before. There emerges a strange and unusual situation where the lawyers, on one hand, have to deal with post COVID-19 corporate and contractual disputes, while on the other, they have to embrace and overcome the challenges of such disputes not generating adequate revenue, as it used to generate earlier.

CONCLUSION

Outspread range of demand realisation covering legal areas and practice sectors. It is anticipated that litigation, prosecution and reconstructing practice sectors will do much better than the transactional operations. During the coronavirus outbreak there are unparalleled slowdowns in the working of the court systems, investigation and dispute applications are as a matter of fact less harmonized from the entire world than transactional operations are.

It is natural to expect that litigation and restructuring practice areas will do well while other transactional practices will suffer, but the reality will be more nuanced. While there are unprecedented near-term slowdowns in some court systems, over time, dispute and

investigation practices are indeed less correlated with the rest of the economy than transactional practices are.

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