



**MANAGING THE PRESENT,
PREPARING FOR THE
FUTURE**





Courts across India have been closed since the lockdown was announced by the Union Government in March 2020. Some judges have been hearing urgent matters remotely during this period. The continuous shut down of the judiciary is unsustainable since the rule of law and access to justice depend on the courts functioning every day. This note lists some measures that can be implemented immediately to keep courts accessible to the public.

I. Alternative Dispute Resolution

In civil cases, trial court judges need to encourage the use of Alternative Dispute Resolution (ADR) before going into the merits of the case. Parties should be encouraged to resort to time-bound ADR mechanisms, wherever possible. This will help in reducing the additional caseload during this period. This would involve encouraging the local bar to take up ADR-related workload on priority. Online ADR platforms may be explored for this purpose.

II Prioritisation

1. Trial Courts

Trial courts handle the largest workload in the Indian judiciary. Limitations of capacity and bandwidth require such courts to prioritize hearings in some cases over others until courts can begin their regular functioning. The following cases may be considered for prioritization at the trial courts:

a. Remand

If the statutorily prescribed period for police custody is over and if no grounds exist to extend such custody, courts must hear such cases.

b. Bail and anticipatory bail

Bail and anticipatory bail cases should be prioritised because they involve the loss of liberty. In such cases, courts should explore con-custodial alternatives given the overcrowding in prisons and the nature of the spread of COVID-19.

c. Grant of injunction, interim relief, stay, etc.

Matters regarding injunction, interim relief, stay, and extension of stay where there is a possibility of irreparable damage should be heard by courts.

d. Child abuse cases

Given the sensitivity of cases under the Protection of Children from Sexual Offences Act, 2012, such cases such be prioritized.

The existing provisions regarding in-camera trials can be easily extended to virtual hearings.

e. Labour disputes concerning layoffs

The economic slow-down resulting from the lockdown is likely to lead to job losses. Labour disputes in connection with such lay-offs should also be prioritised.

f. Cheque bounce cases

Wherever cheque bounce cases are simple on the facts and law and can be resolved by courts through virtual hearings, such cases can be prioritized for hearing.

g. Release of seized property

Cases involving seized goods can be heard and disposed by courts on priority since these are relatively simple. This is especially so if such seized goods are perishable or of importance to people during the pandemic or if vehicles seized are required for transportation of essential goods.

h. Rent and eviction disputes

The nation-wide lockdown will affect adversely affect the incomes of several people. This may lead to rent and tenancy disputes. Since there is a possibility that such disputes may increase due to the pandemic, courts must look to resolve these at the earliest and provide necessary relief to parties.

i. Domestic violence

There has been an increase in domestic violence cases during this lockdown since people are confined to their homes.[1] It is important to offer women the protections guaranteed under law. To this end, it is recommended that courts prioritize the hearing of matters concerning domestic violence.

j. Cases for maintenance

As the pandemic is likely to result in economic hardship, courts must ensure that applications for maintenance are heard and disposed at the earliest to avoid any undue hardship to women and children.

k. Suspension of sentences

Cases regarding the suspension of sentences under Section 389 of the Code of Criminal Procedure 1973, where an appeal is pending can be considered and heard by the trial courts when appellate courts are unlikely to hear appeal cases.

l. Miscellaneous cases

Courts can also be given the power to hear any other cases of urgent nature or cases belonging to a specific stage as they see fit for virtual hearings - for instance, courts could dispose cases reserved for judgment, or hear cases at the stage of admission, filing of the chargesheet, and arguments.

m. Final hearing matters

Cases that have reached final hearing stage can also be prioritised, as the presence of only lawyers is required which can also be carried on over video conferencing.

n. Old infructuous matters

There are old cases before trial courts that do not involve any question of law and whose questions of fact are simple and they may have been rendered infructuous by now. Such cases can also be prioritized and disposed of off to reduce the backlog.

1. High Courts

Apart from appeals and writ petitions from the categories of priority cases specified for trial courts, the following cases should be prioritized in the high courts:

a. Writ Petition and Public Interest Litigation (PIL)

Writ petitions and PILs that raise serious public interest concerns, especially related to the lockdown or the pandemic should be prioritised. Habeas corpus writ petitions should be prioritised as they relate to individual liberty.

Bail and remand petitions and POCSO matters that have been under indicated under trial courts in this note can also be taken up by High Courts if such matters come up before them.

[1] 'Coronavirus lockdown | Over 50 helplines set up across India to help women facing domestic violence' The Hindu available online at <https://www.thehindu.com/news/national/coronavirus-lockdown-over-50-helplines-set-up-across-india-to-help-women-facing-domestic-violence/article31376933.ece> (accessed on 24 April 2020).



b. Miscellaneous cases

High courts can also hear cases that are old, infructuous and do not involve any complicated issue of fact or law. With the help of video conferencing certain old and non-complex matters can be disposed of to reduce the existing backlog. Courts can also dispose of cases that are reserved for judgment.

c. Final hearing matters

Cases that have reached final hearing staged can also be prioritised, as the presence of only lawyers is required which can also be carried on over video conferencing.

II. Re-opening physical Courts

As all the court records (except for the cases filed during the current lockdown) are in physical form, there is no option but to reopen the courts, once it is safe to do so. However, physical distancing should be enforced strictly. The following simple steps can ensure both physical distancing and limiting the number of people who come to the court halls:

- List a fewer number of cases each day, but ensure that hearings take place in each of the cases listed.

- Fix a time slot for different cases- if there are 30 cases listed on a day, split them into groups of 10 and allot different time slots during the day
- For evidence matters, allot a specific time slot so the witnesses need not come in the morning and stay all day in the court premises.
- Facilities for parties and their lawyers to participate in the proceedings remotely should be made available. Adjournments should not be granted merely due to the inability of lawyers and parties to attend court.
- E-filing or filing through email should be encouraged. While disputes that arise due to the pandemic should be given priority (as indicated below), care should be taken that the progress of old cases does not suffer due to this. One judge in a court/court complex may be nominated to hear only pandemic-related disputes.

The video conferencing proceedings that have started during the lockdown should not be discontinued. These can continue along with regular court proceedings as it will cut down the reasons seeking adjournments for frivolous reasons.

Bar associations across the country should be encouraged to set up video conferencing facilities by setting up

laptops and internet connections in their offices.

IV. Legal Aid

State Legal Services Authorities have begun to provide 24x7 helplines to extend assistance and advice, with particular attention to women, children, and victims of domestic violence.[2] Their assistance should be extended to poor citizens who are suffering due to lack of employment, and who often are stranded far from their home states. Using video calls/conferencing can be explored. Legal aid authorities should also reach out to potentially affected groups to see whether they need any assistance.

V. Technological options

The following technological options are available to courts to continue functioning during the lockdown:

1. Video

Once a case has been decided as urgent, video hearings can take place in matters pertaining to civil and criminal cases. The types of cases listed in section I can be treated as urgent and taken up for video hearings.

2. Audio

In the event, video conferencing facilities are not available, audio hearings can be used, especially for extending stay/interim orders in force and giving the next date of hearing

[2] The Delhi state Legal Services Authority has initiated one such helpline. The relevant office order is available here: <http://dlsa.org/wp-content/uploads/2020/04/OFFICE-ORDER-of-PURNIMA-MALIK.pdf> (accessed on 24 April 2020).

in matters.

Audio hearings can also be used in for maintenance petitions, protection orders and applications to retain the status quo of things within divorce proceedings and guardianship matters before the family courts. It can also be used for deciding whether a case is urgent and deserves to be heard. Some district courts in Delhi use telephone hearings to decide urgency in civil and criminal matters.[3]

3. Emails/ Post/ Fax

Where e-filing is not set up, pleadings can be sent by email. Delhi district courts are using e-mail to enable filings in urgent matters.[4] Email filing should be allowed in cases where the limitation period is expiring. Emails, post or fax can be used to ask for adjournments for non-urgent civil and criminal cases.

4.Virtual courts

In cases where there are fines to be paid due to violations in the current lockdown scenario, the same can be adjudicated in a mode akin to the Delhi virtual court for traffic challans, [5] wherever feasible.

VI. Overcoming the Digital Divide

To provide all citizens with effective access to justice during the lockdown, courts must make provisions to overcome the digital divide. This divide could be because of :

Lack of access (especially private access) to smartphones or any other means of accessing the internet;

- Lack of digital literacy;
- Language barriers because citizens often cannot speak, or are not literate in, the official languages of the state they live in;
- Physical disabilities; or
- Poor network coverage.

The following factors must be kept in mind to bridge the digital divide:

1.Design

Digital processes themselves should be designed to not exclude those who are not familiar with computers or the internet. These processes should as far as possible, to be easy to use, with step-by-step instructions for all users. Great care must be taken in interface design to ensure that all symbols and visual aids used are well-understood across varied cultural contexts in India. Following stringent accessibility standards would ensure that people with physical challenges can use virtual courts.

[3] Order dated 28 March 2020 available online at <https://delhidistrictcourts.nic.in/Circulars/March20/28bb.pdf> (accessed on 24 April 2020).

[4] Modified Office Order dated 30 March 2020 available online at <https://delhidistrictcourts.nic.in/Circulars/March20/30.pdf> (accessed on 24 April 2020).

[5] 'Virtual Court For Online Payment Of Traffic Challan Launched' available online at <https://lawstreet.co/legal-insiders/virtual-court-for-online-payment/> (accessed on 24 April 2020).



2. Interpreters

The language barrier can be overcome with interpreters, who would need to be familiar with the official languages of the jurisdictions they serve, as well as English. Such interpreters can be used across video conferencing, making it easier for courts to employ interpreters who can assist citizens across many jurisdictions.

3. Phone assistance

Gaps in digital literacy can be addressed by providing assistance via phone. Trained professionals can guide users through processes over phone calls. Similar services are offered as part of the UK's 'Assisted Digital' service, which supplements the provision of digital services by the UK government, including their courts and tribunals.[6]

[6] Broad guidelines followed by the UK's 'Assisted Digital' service can be found here: <https://www.gov.uk/service-manual/helping-people-to-use-your-service/assisted-digital-support-introduction> (accessed on 24 April 2020).