



**10<sup>th</sup> June 2020**

Revised response to Fraud Net Questionnaire

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## **COUNTRY: INDIA**

### **1. THE MOST CRITICAL PHASE OF THE CRISIS**

**As long as measures to prevent the spread of Covid-19 restrict freedom of movement: What are the effects of the Covid-19 crisis on civil justice?**

- **Is there special legislation on the effects of the crisis on civil justice?**

No. There are no special legislations that have been enacted targeting the functioning of judicial institutions including tribunals.

The Government of India (“GoI”) in the exercise of powers under the Disaster Management Act, 2005 (“Act”) had imposed a complete lockdown upon any residents within the territory of India. The lockdown was extended till 31.05.2020 by subsequent notifications. Currently, w.e.f. 01.06.2020 all activities including movement of residents within the country have been permitted barring certain exceptions vide notification dated 30.05.2020. The said guidelines are to be in force till 30.06.2020. Also, lockdown continues to be imposed in certain areas identified as containment zones affecting the movement of residents to and from the said area.

- **Does the crisis have an effect on court hearings?**

- Do court hearings take place during the crisis?

Yes. The courts are only taking up a certain category of matters including urgent matters, fresh e-filings, etc are being taken for court hearings with the consent of the parties and concerned advocates **only** through the medium of video conferencing facilities. Eg.

The Supreme Court of India (“SCI”) pursuant circular dated 16.05.2020 had issued instructions for the functioning of virtual courts for the period of 18.05.2020 to 19.06.2020. The said circular specified the protocol and the category of matters that would be taken up by the SCI. Recently, a

circular dated 02.06.2020 issued by SCI mentions the possibility of in-person appearance/hearings subject to the consent of parties. Further, several High Courts located in state capitals such as the High Court of Delhi, High Court of Bombay, High Court of Karnataka, etc are following a similar practice.

- Do court hearings take place in the form of video conferences?

Yes. The court hearings are being conducted through the video conference facility only for limited matters which are urgent or have been notified by the concerned institution. The counsel for the parties must make a special application stating the grounds of urgency to the institution. The same is considered and if accepted, the matter is listed through video conference.

For example, the Supreme Court of India allowed the listing of urgent matters based on the application in prescribed format to be submitted by the Party-in-Person/Advocate on Record to the designated e-mail IDs and further, the hearing of such matters would be conducted strictly through video conferencing facilities using 'Vidyo' service. The aforesaid directions have been further replicated and implemented by the various High Courts and District Courts functioning in different states in India as per notifications issued by the respective Courts.

- **Does the crisis have an effect on deadlines (of procedural and substantive law)?**

- Are deadlines of ongoing proceedings affected?

Yes. With the functioning of judicial institutions restricted to urgent cases and hearings only, the deadlines for ongoing proceedings including matters such as extensions of any interim stay orders have been extended till further orders by the concerned institutions.

- Are deadlines for bringing actions affected (limitation periods)?

Yes. The Supreme Court of India exercising its extraordinary powers under Article 142 of the Constitution of India has extended the limitation period of petitions/applications/suits/appeals and all other proceedings whether in Courts/Tribunals. The limitation period of matters stands extended w.e.f. 15.03.2020 till further orders to be passed in the future by the court.

- **Does the crisis affect enforcement?**

- Are enforcement orders issued?

Any enforcement orders that would constitute a matter of extreme urgency may be issued by the concerned judicial institution.

- Are there any effects on deadlines?

The deadlines in matters stand extended with restriction to urgent matters only.

- **How do courts work during the crisis?**

- Are courts closed?

No. The functioning has been restricted to urgent matters only which are being taken up through video conferencing facilities. Judicial Institutions in certain places are permitting hearing in person, however, those are few and far in between and on a case-to-case basis.

- Can courts/judges be contacted?

Yes. Further, the protocol to approaching courts/judges has been issued through guidelines by various judicial institutions.

- Are documents served?

In India, the service of documents is affected by counsels personally or through the court process. Currently, very limited in-person service of documents is being undertaken. Certain counsels are being able to serve documents over e-mail to opposite counsels where possible.

Further, the judicial institutions have recognized service through alternative means such as Whatsapp, e-mail, etc subject to appropriate permission from the concerned institution.

- **How are particularly urgent matters handled, in particular requests for interim measures such as injunctions and freeze orders?**

The Parties can approach the concerned judicial institution with a request for urgent hearing and seeking interim measures. Further, while there are no single set of guidelines for determining the urgency in the matter, the same is considered on case to case basis.

Accordingly, the counsels for the parties may file an application seeking a listing of a matter and hearing citing the urgency. The concerned judicial institution may hear the matter if the urgency of the matter is accepted and also grant requisite reliefs based on the facts of the matter.

- **How do lawyers work during the crisis?**

Given the lockdown imposed by the Government of India and the need for social distancing, lawyers have been working from home. Several law firms have extensively developed Information Technology infrastructure to allow its members to continue rendering legal services from home and ensure that the client's request is met seamlessly. Lawyers have been participating in court

hearings through video conference facilities and appearing before courts. Further, there's a thrust by the legal community to develop facilities for Online Dispute Resolution in Judicial Institutions to expand the functioning of the judicial institution beyond hearing of urgent matters.

- **How do banks work during the crisis?**

Banking institutions continue to function during the pandemic period. Although, the functioning is restricted, and the banks are usually operating with only essential employees. The four essential services including cash deposits and withdrawals, cheque deposits, remittances, and government transactions are being maintained. Further, the banks have been encouraging citizens to utilize net bank services wherever feasible.

- **Does the crisis affect insolvency law?**

Yes.

The National Company Law Tribunal has adjourned all hearings till 03.05.2020 except where urgency is requested by the parties/counselors.

Further, the Government of India has increased the minimum threshold of default debt for a creditor to approach the National Company Law Tribunal(s) seeking the initiation of the Corporate Insolvency Resolution Process against any corporate Debtor. The minimum threshold has been increased from Rs 1,00,000 (equivalent to 1310 US\$ approx) to Rs 1,00,00,000 (equivalent to 131,000US\$ approx.) w.e.f. 23.03.2020. Further, with the functioning of the National Company Law Tribunal restricted to urgent matters, the ongoing resolution process for corporate debtors has come to a halt.

The Government of India has amended the Insolvency and Bankruptcy Code, 2016, and suspended initiation of Insolvency/Bankruptcy in India against Companies for all payment defaults arising on or after 25.03.2020 until a period of six months.

The National Company Law Appellate Tribunal, New Delhi has also in exercise of its powers has excluded the period of lockdown due to COVID-19 from the timelines prescribed under the Insolvency and Bankruptcy Code, 2016 for the resolution process of a Corporate Debtor.

- **Are there any further effects not addressed in the questions above?**

No

## **2. FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS**

**What are the consequences of the COVID 19 pandemic once the pandemic has abated, in the gradual return to a new normality and what are the long-term effects?**

- **Which measures introduced during the crisis will be withdrawn immediately?**

It is expected that the regular functioning of the judicial institutions shall soon resume, and the hearing of non-urgent matters shall be taken up. Further, it's expected that relaxation given for extension of limitation by the Supreme Court of India shall be withdrawn immediately.

- **Which measures will remain in place?**

The information technology network being sought to be developed in judicial institutions may remain in place. The process of physical filing of documents may graduate to the e-filing of documents.

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