

MANAN KUMAR MISHRA
Senior Advocate
Chairman
Bar Council of India



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BCI:D:1373/2020 (Council)
To,

Date: 28.04.2020

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

Sub.: System of Video-Conferencing after Lockdown is over.

My Lord,

The 19 lakhs Advocates of the country are taking all sorts of precautions and advising others to stay put at home. At the same time, we are also trying our level best to do the urgent work' through means of teleconferences, emails, whatsapp, video conferencing etc. during this period of lockdown, till the time we are able to get back to normal life without having to adhere to social distancing.

However, I must point out that, that while all this is the need of the hour at this juncture, as there is simply no other option at the moment; but there is a disturbing trend, and an impractical thought process is being advocated by some people, including some eminent names too at this point in time.

It appears that while speaking, stating or planning something, some Senior Advocates, former Judges (and even a few of the Hon'ble sitting Judges) seem to be completely oblivious and/or either they are closing their eyes, and ears to the ground realities of our own country. They are thinking on such a tangent and making such Utopian plans, which is as if, they are planning upon implementing and executing such ideas for a fully developed nation like UK, USA or in some country, other than India. Even after racking my brains, I was at a loss to find any logical explanation to this line of thinking. People are asking! could this be possibly, due to their own, (or their wards) education in a foreign country (which has a bountiful of resources and advance technology available on their fingertips) or could it be because such people are ignorant of the vicissitudes prevalent in the Indian society.

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My Lord!

We should not forget that a large strata of society here in India still have no drinking water in their vicinity, are unable to eat even two meals a day, while at the same time there is another strata of society which has access to private jets even. There are so many strata of people in between these two strata, some areas have no electricity, no schools and colleges. Yet it is among them, some want to study law, become a lawyer to serve his/her society and they go and seek admission in nearby centers of legal education for pursuing his/her dreams. Such students' parents maybe labourers or may be exceedingly poor or from the lower middle class, and they might have just somehow managed to pay the college fee, and still have no possibility of having any computer and net connection at home and/or for giving/imparting or making available any such technology to their children due to their limitations and/or due to the lack of facilities in their vicinity.

My Lord!

Thus, my humble submission is that the people sitting on elevated chairs seem to be, probably, far away from the ground realities and that is why they are harboring and advocating such thoughts. They have perhaps forgotten the resources and technology or rather lack of it available on a wider spectrum here in India, though our capabilities are wide and far reaching. However, practically, India is a vast and diverse country, where there is often a yawning gap between the resources and the technologies available in metro cities, as compared to other urban areas, and rural areas. Even in urban cities, there are both more developed cities and less developed cities.

There is humongous difference in the technical knowhow of persons often according to age gap, and often according to difference in mode and manner of education, and resources and technology available from place to place.

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My Lord!

Inspite of all this, justice is expected to permeate to all levels and people flock to the courts near their vicinity in the hope of justice being delivered to them, Courts provide them with a ray of hope, when they have failed after knocking at the doors of the police, local administration and government. Less educated, less fortunate people all seek help of Advocates, many of such Advocates are good at arguing but due to their economic position, and/or situation prevalent at the time when they studied law or due to the late advent of technology in their vicinity and even in courts where they practice, where there may still be typewriters in use, are unaware of such modern technology scanning, e-filing, video conferencing.

However, I say, why them alone! I can emphatically say, that 90 percent of Advocates, and Hon'ble judges throughout the length and breadth of the country are themselves unaware about the technology and about its nuances, maybe some of them could learn after proper training and maybe some of them would still find it a difficult task even with training to make themselves self sufficient in this regard.

My Lord!

However, at the same, I must appreciate the idea of our Indian Courts (particularly our Apex Court and the High Courts) in conducting "virtual hearings" only for extraordinary urgent matters.

At the same time, as I was saying, though the above is appreciable, but during this lockdown, some former Judges, some Advocate and even some sitting Judges have started talking of sudden and overnight change in the situation and they wish to do everything relating to courts and judiciary through e-filings, video-conferencing etc. and probably they have started planning to continue with the judicial work through video conferencing even after lockdown is over.

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My Lord!

It must be kept in mind that Virtual hearing (Video-conferencing) requires sufficient knowhow of the technology, full digitalization, Special Software for Video-Conference, Laptop/Computer with fully working and effective networks in the hands of each and every Citizen, Advocate and Court of the country.

My Lord!

I have seen the opinion of Mr. Justice A. P. Shah, Former Chief Justice of Delhi High Court. His Lordship says that the Courts should be treated as "service" and not as "a place" for imparting justice.

I fear that, that if we stretch the idea too far, then after a few years, maybe we won't even require a building for Supreme Court or for any High Court or any Lower Court in the country. The Judges and the lawyers can then merely function from their residence office only. There will be no need for any residence for the Judges at Delhi or at any State Headquarters where the High Courts are situated. In that case there will be no need of a separate Bench for any High Court too. Supreme Court will not require any huge building. Open Seminars will all be converted in webinars. There would be no need of any Auditorium and there would be no huge expenses.

In course of time, then even Parliament or Assemblies will require no building and sittings. Sessions could be held through Video-Conferencing only. There would be no need for any school or college, every education could be imparted through Video-Conferencing and webinars.

Thus, as per this process of thought, there should be only e-filings and Video-Conferencing, and that's enough and this should be the norm for the future times to come, Mr. Justice Shah has advised our Hon'ble Chief Justice of India to do this and leave a wonderful legacy behind.

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Well, dare I say, our thought process is very advanced, and it should be so too, but we can't be jumping the gun and foraying into a totally impractical and unworkable world. It is easy to always spread utopian ideas among the people, but ideas have to be always weighed and balanced with the practical position and its results.

My Lord!

We are not well aware, about the computer friendliness of Hon'ble Judges of Supreme Court of India but, we know that most of the Hon'ble High Courts' Judges are not so computer friendly. Same is the case with the Advocates.

Our Hon'ble Judges have either been elevated from the Bar or from Lower Judiciary only.

Moreover, the condition of the Indian Bar, the mix of the people who form the Indian Bar, cannot and should not be overlooked.

My Lord!

The Indian Judiciary has often been criticized for confining itself to a few families only. Now, again vast majority of Advocates are deeply concerned and are apprehending that a deep-rooted conspiracy is being hatched up to grab the Legal Practice from common Lawyers and to limit it in the hands of a handful of Lawyers of elite class having close nexus with big families.

I have received several such calls from the Lawyers from all corners of the country. The Indian Bar is very much anxious to know about the planning and programs of the e-Committee of Supreme Court. Our grievance is that Bar is never consulted in such matters.

However, I am sure that the apprehension of the common lawyers would be proved futile, because our e-committee is being headed by a very efficient Judge, who is a down to earth man and a very practical Judge.

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My Lord!

I have dared to convey the feelings of the Indian Bar to our Hon'ble beloved Mr. Justice S. A. Bobde because I know that he always takes care of problems of the Bar, he has deep concern for the Advocates, he hears the Advocates patiently with a shining smile on his face, and that is the reason that Mr. Justice Bobde is one of the most popular Chief Justices in the history of Supreme Court. Bar has seldom found such qualities and virtues in anyone sitting at the top of the system.

My Lord!

The Bar Council of India, though, has issued directions to all the Centers of Legal Education to start and continue online education during the period of lockdown, but, this could be treated only as an exception, not a rule. Legal education cannot be complete unless there are class room teachings, accompanied by effective internships and practical training in court rooms and lawyers' chambers, Law Firms etc.

The biggest impediment of our legal profession is the lack of proper infrastructure and lack of technical education of computer science which will always come in the way of the practice of law through Video-Conferencing.

My Lord!

The Bar Councils are opposing such moves and idea propagated by Mr. Justice A. P. Shah keeping in view the ground realities of our country. If, such practice is encouraged and allowed to continue (even beyond lockdown) there is not an iota of doubt that more than 95% of the Advocates of the country will become brief less and work less and the practice of law will become confined to a limited group of lawyers and justice delivery would be badly affected.

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There cannot be any doubt that the open court room practice has its own values and importance. It is full of transparency and it results in true justice; the arguments through the Video-Conferencing can never be substitute to the "open court room judicial functions". In video-conferencing one can never be sure of transparency, while in open court hearings, justice is delivered in open court, discussions/arguments are made not only in presence of concerned parties and their Lawyers but in front of other Advocates, Media people and Litigants who are all present. Justice should not only be done but seen to have been done.

As per my information, no other country, is planning to by-pass the existing system and to continue with the Justice Delivery System through Video Conferencing even after lockdown. This is only being proposed and thought of only from some of our so called learned Advocates and Judges; what is the truth, we don't know.

My Lord!

As the representative of Indian Bar, my humble submission would be that the Bar may not allow any such idea to prevail here in a country as vast and diverse as India. It is akin to the thought process of the Queen Marie-Antoinette, the queen of France during the French Revolution who upon being told that her starving peasant subjects had no bread stated "Let them eat cake". Thus, sitting on a high chair, and making and agreeing to such thought process (like Mr. Justice Shah) shows how such persons are so so distant from the ground realities.

Therefore, if anyone is thinking of imposing such ideology or system upon our old-aged, well proved Judicial System, they would be best advised to drop such ideas. One should not forget that even for Corona Virus, while no allopathic medicine is working, our old age well established "Ayurvedic Desi Medicines" and treatments are being recommended and proving well for its prevention and cure.

So, let's not undermine our existing successful system of working of Legal and Judicial Systems. If anything has to be done, it has to come about in a slow and phased manner and the technology can never be a substitute to the practice of law, and the practice of the bench, and to the justice system as it exists today.

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Technology can always aid the justice delivery system where needed, but to propose to have the court proceedings being heard and decided only on video with all three concerned, (the judge and the two parties), all sitting at three different places and to propose to do away with the norm and practice of society, the law courts and open arguments, cross arguments, cross examinations of a witness, a question by a judge, an immediate response or lack of the same by the Advocate can never ever be acceptable. In our opinion it can never be substituted totally and if the same is proposed to be done, the justice delivery system will lose its sheen, shine, and trust of the people.

My Lord!

It is also not out of place to mention here that during the period of lockdown, lakhs of Advocates are facing serious problems of livelihood. Some of the High Courts have taken notice of this fact and have issued certain directions also. But, neither the Union Government nor any State Government has come to the rescue of the Advocates in need. The Bar Council of India, the State Bar councils and various Bar Associations are trying to do their bit with the limited resources. Bar Council of India has been/is disbursing money from and through Bar Council of India Advocates Welfare Fund for the States.

But, if the lockdown continues for a longer period, we shall have to find out and take some safe, adequate and secured measures for the workings of the Courts of the country, so that, on the one hand social distancing could also be maintained and on the other hand the work of the Courts would not suffer and citizens galore would stand to get relief in the form of legal justice even in such trying times.

Obliged

(Manan Kumar Mishra)
Senior Advocate, Supreme Court,
Chairman, Bar Council of India.