



# BOMBAY BAR ASSOCIATION

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To  
The Hon'ble the Chief Justice,  
The Hon'ble High Court of Bombay,  
Fort, Mumbai.

Date: 29.11.2020

Sub: Request to modify the Office Order dated 27.11.2020

Respected Sir,

This is with reference to the Office Order dated 27.11.2020, whereby almost all Courts have been started physically and physical presence in these Courts have been made mandatory.

Bombay Bar Association (“**BBA**”) has received feedback and responses from a large number of its members expressing grave concern on the making of physical appearances mandatory in so many Courts in the given circumstances of the COVID-19 pandemic. Considering the input received by its members, a meeting of the Standing Committee of BBA was held on 29 November 2020 and the present representation is being made pursuant to the Resolution passed at the said meeting.

BBA understands and appreciates the need for a gradual commencement of the physical Courts. BBA also relates and associates itself to the difficulties faced by various lawyers due to the non-commencement of physical Courts. However, the Standing Committee of BBA feels that in the current situation of COVID-19, the opening of physical Courts should be done gradually and in a phase-wise manner - initially in a hybrid form, giving an option of appearing through the virtual platform if members are unable to appear physically.

The commencement of physical hearing and the mandatory requirement of physical appearances in such a large number of Courts without an option for appearance in the virtual platform is likely to pose a serious threat to the lives and health of lawyers, their staff, the clients and consequently their families.

In this context we state as under:

1. COVID-19 continues to grow and infect persons rapidly across India, with new positive cases exceeding the 43,000 per day mark as on 26.11.2020. In Maharashtra, the total number of new cases recorded on 26.11.2020 stood at 6,406, with 1,147 new cases in Mumbai city. In the past seven days, Mumbai alone has seen a 24% rise in the active number of Covid 19 cases. After a steady decline of cases during October, there has been a noticeable resurgence in the number of new cases in November, with the 7-day average of new positive cases exceeding 3000 cases as on 25.11.2020. The total number of active Covid cases in Maharashtra as on 26.11.2020 is 85,963. The number of active cases in Mumbai have risen by 30% in the last ten days.
2. It is pertinent that after the administrative committee meeting held on 25.11.2020, in view of rising COVID-19 cases, the Maharashtra Government on 27.11.2020 extended the lockdown in

the state till midnight of 31.12.2020. The Government notification states that the Government is satisfied that the State of Maharashtra is threatened with the spread of COVID-19 virus and therefore to take certain emergency measures to prevent and contain the spread of the virus, the Government found it expedient to extend the lockdown in the entire state till 31.12.2020. Local Train travel is also restricted to a limited class of passengers. Although advocates are allowed in a limited manner to travel under the orders of this Hon'ble Court, it is for restricted timing. At other times there are various logistical issues. The staff of lawyers and law firms are also not allowed to travel at any time. Without office staff, lawyers will be completely handicapped. In any case, clients are not permitted to travel by local trains.

3. This resurgence or a second wave has been seen across the country, with the National Capital recording over 8000 cases daily after recording an average of 4000 cases a day in October. Other countries such as the United Kingdom, France, Spain, Germany, Italy, and many others in Europe have also been forced to go into another lockdown after an unregulated opening up of public spaces and institutions.
4. In the face of this growth in the number of cases, the risk of transmission of the virus in Courts to judges, lawyers, court staff, members of the Registry, clerks, etc., is a real threat. As is the nature of this virus, persons attending courts will carry the same to their family members. Most Judges and senior lawyers who practice in this Court are above the age of 50 with varying comorbidities and fall in the category of vulnerable patients at fatal risk should they contract Covid 19. Even younger lawyers and court staff who may not be at risk themselves, but live with elderly parents or young children under the age of 10 years, are at risk of transmitting the disease to someone who could be fatally affected.
5. The interaction of persons in Courts is difficult to regulate. In terms of the present Office Order, physical hearings, even in a limited manner, will exponentially increase human interaction and consequently, the transmission of the virus. The Order states that only arguing parties will be allowed into the courtroom, and others will be required to wait outside the Court room/Bar room. This may restrict the number of people inside the Courtroom. This would also result in young junior lawyers losing their briefs where they are appearing along with a senior. In given circumstances this will cause immense hardship to junior lawyers. Further, it is impossible to regulate the number of people entering the Court building. The other lawyers, their clerks and clients who are waiting for their cases to reach would crowd the narrow corridors and the Bar Rooms. It would be extremely difficult to maintain social-distancing, consequently exponentially increasing the risk of spread of the pandemic.
6. Considering the number of Courts proposed to be started physically and the number of persons likely to attend Court as a result thereof, the same will lead to long queues and crowding at the entrance of the Gate and people would have to wait for a long time due to temperature checking, sanitization etc. This was also experienced during the Diwali vacation hearing which were fully physical courts. This is despite the fact that very few courts hearing only very urgent matters were in session. Additionally, advocates/counsel's clerks who will be required to carry physical papers to court would also be at risk.
7. Also, with such a heavy load of cases being taken up by each court, the procedures of sanitisation and cleanliness will become impossible to follow. Something as necessary as cleaning the table where lawyers stand to address the court, will not be possible after each matter. As a result, all lawyers, their clerks, on any given day will be using the same court room, chairs, etc., in rapid succession, thereby increasing the risk exponentially.

8. It is a well-documented medical fact that common bathrooms are one of the super-spreaders of the virus. There are not sufficient toilet facilities available in the High Court premises even in ordinary times particularly for litigants. In such a situation, it could lead to disastrous consequences.
9. In fact the following High Courts in India, have tested the waters with experimental reopening of Courts, only to shut down again, due to the spread of the virus within Courts:
  - i. Whilst the Delhi High Court had also resumed physical hearings, the same had to be suspended due to the exponential spike of Covid 19 cases in the capital, which continues unabated.
  - ii. On 17.08.2020, the hearing in the Jaipur Bench of the Rajasthan High Court had to be suspended after some staff tested positive for the COVID-19 virus. In recent weeks and months, the High Courts of Karnataka, Chennai, Patna, Allahabad, Jharkhand, Meghalaya, and others, have reopened and been forced to shut down again due to the detection of positive cases.
  - iii. On 29.11.2020, it is reported that 52 members of the High Court staff from the Indore Bench of the Madhya Pradesh High Court have been tested positive for Covid-19.
  - iv. The Delhi High Court has passed an Order dated 24.11.2020 in VM Singh v Madam Lal Mangotra & Ors CM(M) 586/2020 & CM APPL.29734-35/2020 directing that whilst physical hearings may be attempted, it must be optional and no one can be forced to attend hearings physically.
10. It is therefore humbly requested that initially, there may be an addition of 3 Courts taking up physical matters. The kind of matters which may be taken up by the Courts may be the matters which do not entail too many lawyers attending the Court, such as Courts hearing final hearing of Single Judge Writ Petitions under Articles 226 and 227 of the Indian Constitution, final hearing of Appeals from Order, final hearing of first and second appeals etc. This was also suggested by our representatives at the meeting held on 25 November 2020. However, if more physical Courts are to be added, a hybrid system of physical and virtual Courts as was being operated in the Court of the Hon'ble Chief Justice should be considered. In this regard, BBA would be willing to seek assistance of technical agencies to aid the technical team of the Court in setting up such an arrangement so that Courts can operate seamlessly. This will serve the purpose of the opening up of physical Courts, making the Court accessible to those who are unable to operate virtually while also giving an option to those who do not seek to attend the court physically to make an appearance virtually. Such an arrangement will best serve the interests of all concerned. If such an hybrid arrangement is not possible, since the facility for video conferencing already exists and has been successfully used for many months, that may be continued till at least 31 December 2020, after which it may be reassessed/reconsidered. BBA is also willing to provide certain portals in the Bar Association Room and also in the Bar Library to enable lawyers to make appearances through the virtual platform.
11. In light of the reasons stated hereinabove, pursuant to the Resolution passed by Standing Committee of the Bombay Bar Association, we humbly and sincerely request you to kindly modify the Office Order dated 27.11.2020 as under:
  - (i) At present, three additional physical courts be added to the physical courts which have been operating till 27 November 2020. These additional courts may hear matters which

do not entail too many lawyers attending the Court, such as Courts hearing, final hearing of Single Judge Writ Petitions under Articles 226 and 227 of the Indian Constitution, final hearing of Appeals from Order, First Appeals, Second Appeals etc

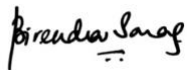
- (ii) In the alternative, a hybrid system of physical and virtual Courts (as is being operated in the Court of the Hon'ble Chief Justice) be provided in the newly added physical courts as per the office order dated 27 November 2020, giving an option to those lawyers who do not seek to attend the court physically to make an appearance virtually. Till such time as technical arrangement for such hybrid hearing can be made, since the facility for video conferencing already exists and has been successfully used for many months, that may be continued till at least 31 December 2020, after which it may be reassessed/reconsidered.

The technical difficulties faced in operating hybrid hearings have been successfully overcome in several High Courts like Delhi and Rajasthan. In this regard, BBA would be willing to seek and offer assistance of technical agencies to aid the technical team of the Court in setting up such an arrangement for hybrid hearings so that such Courts can operate seamlessly.

BBA is also willing to provide certain portals in the Bar Association Room and also in the Bar Library to enable lawyers who do not have the technical wherewithal, to make appearances through the virtual platform.

Sincerely,

Bombay Bar Association



Dr. Birendra Saraf

Honorary Secretary