



# DELHI HIGH COURT BAR ASSOCIATION

Sher Shah Road, New Delhi-110 503 Phone : 011-2338-5562

21.07.2020

To,

**Hon'ble the Chief Justice**  
High Court of Delhi  
New Delhi

**Re: Request for resumption of physical court hearings in the  
Hon'ble High Court of Delhi**

Respected Sir,

Warm greetings from the Delhi High Court Bar Association.

Pursuant to the issuance of Guidelines by the Central Government as well as the Government of the NCT of Delhi, over the last two odd months, to unlock the nationwide lockdown, virtually all sectors have gradually opened including all private and government offices, market places and even shopping malls etc. *sans* any restrictions but subject to the adherence to social distancing and other SOPs to contain the spread of the virus. In view of the same and for other factors/reasons as enumerated below, there is an urgent and pressing need to resume physical hearings in the Hon'ble High Court of Delhi as well, which have been suspended for nearly 120 days now. Practically one-third of the year 2020 has been lost in this lock-down.

It is true that the Hon'ble High Court of Delhi has, with the employment of modern digital technology, kept the litigants' access to justice quite unimpaired with the holding of video conference hearings for '*extremely urgent*' cases

*Abhishek*





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initially and '*urgent cases of all kinds*' thereafter. Even a few Regular cases have been heard. For the exemplary work done in ensuring that access to justice dispensation is not impeded we must place on record our appreciation to the Administrative and Information Technology Committees of the Hon'ble Court as also to the staff of the Registry, under your command and guidance.

Having said that, Sir and as you would undoubtedly appreciate, Court hearings through video conferencing can never be a complete and adequate substitute for physical Court hearings and in the opinion of the Bar Association, the following, amongst others, are the reasons that make gradual, graded physical resumption of courts imperative:

1. Certain recent developments indicate the enormous mental and economic strain that our lawyer brethren are under due to the continued suspension of physical Courts and restriction of hearing only to urgent matters through video conferencing. The grim psychological and economic impact of suspension of physical Courts has to be considered and every possible attempt to restore normalcy needs to be made. The same is in keeping with the policy of the Central and State Governments which have by issuance of unlock guidelines, provided for a gradual return to normalcy in all sectors and courts cannot continue to be the exception at the cost of the livelihood of the vast majority of lawyers. The system of virtual hearings was devised to meet the challenges posed by the lockdown imposed and must now give way to a hybrid system in keeping with the unlockdown guidelines.
2. With the inherent limitations of virtual / video hearings, majority of the matters, both fresh non-urgent matters as also the matters that are sub-judice before the Hon'ble Courts, have been in a state of suspension for 4 months now, thereby retarding the efficiency of the justice dispensation system. Needless to state, this has also added to the backlog of pending cases. Denial of listing and hearing of non-urgent category of cases (both fresh and pending ones) has also rendered a vast majority of lawyers in a precarious financial position. While some regular list matters are sought to be taken up, the same are extremely few and largely not in a position to be heard virtually due to the bulky records. Lack of inspection facilities, not having access to the Trial Court Records etc. have also handicapped Advocates from effectively assisting the Hon'ble Courts.
3. One of the facets of rule of law, which forms the basic structure of the Constitution of India, is conducting open courts hearings accessible to one and all. Conducting of hearings via video conferencing in place of open court hearings disturbs this delicate equilibrium on which our Constitution was drafted by our

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fore-fathers. While an option has been provided to obtain links from court masters to view the hearings, the same has its obvious limitations.

4. Another factor which cannot be lost sight of is the present limitation of the technology itself, with internet connectivity and speed issues posing a problem in the virtual hearings and bandwidth issues being the reason that all cases are not being taken up for hearing.

5. Furthermore, a majority of lawyers and litigants do not have the access to technology needed for the virtual Court hearings i.e., computers and high speed internet resultantly making justice inaccessible and unaffordable for the vast majority.

6. Apart from the technical issues of poor connectivity rendering virtual hearings at times ineffective, the virtual hearings also do not do justice to the art of advocacy – with the opportunity to actually argue and put forth one's case and change the course of arguments based on the changing dynamics of a case during the hearing, being lost. Most lawyers find it difficult to present their case effectively and efficiently vide video conferencing.

7. The coordination and cooperation between the briefing counsel and the arguing counsel is completely lost in virtual hearings through the medium of video conference. This results in lengthier arguments which, invariably leads to wasting precious judicial time. The aforementioned also leads to inefficient assistance to the arguing counsel by the briefing counsel which in fact works to the detriment of the litigant.

8. Further, hearings via video conferencing are generally time consuming as it takes time for all the parties to connect and settle down, thus, rendering hearings to be much lengthier than they would otherwise be.

9. Another factor which makes resumption of physical courts imperative is conducting of trials. Several jurists have gone on record to say that holding of trials through video conferencing would have several pitfalls and could be a tool for misuse in the hands of unscrupulous litigants. The whole purpose of judicial tools such as cross-examinations would be defeated. The trial through video conferencing would encourage witness tutoring and prompting. It would be extremely tough to confront the witness with various documents.

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The reasons enumerated hereinabove (though not exhaustive) leave no manner of doubt that a phased, graded and gradual resumption of physical hearing in the High Court and its subordinate Courts, is the need of the hour. This is also in consonance with the spirit of the Guidelines of both the Central and State Governments.

Accordingly, the Delhi High Court Bar Association proposes the following for the urgent, graded resumption of physical courts:

## **Physical Courts and physical hearing protocols**

- A. Physical courts may resume initially with limited number of Benches, which can be increased gradually thereafter. The remaining Benches can continue with virtual hearing of matters (both urgent and non-urgent) and the same can be done on a rotational basis.
- B. Initially only few matters a day be listed for physical hearing and fixed time slots can be given for the matters to avoid overcrowding. At a given time only Advocates for two time slots at the maximum be allowed entry into the respective lobbies / waiting areas of the Court buildings.
- C. That restrictions could be placed on number of advocates per party (at the maximum including a Senior Advocate, (if any) in a matter who would be allowed entry for the hearing, with others allowed access through Video Conferencing.
- D. That fresh non-urgent matters also be taken up for listing and heard both through online and physical Courts depending on the roster. To start with limited fresh non-urgent matters per court be listed each day.
- E. Standard Operating Procedures (SOPs) with regards to social distancing norms to be followed in the Court premises including mandatory wearing of masks, use of hand sanitisers, maintaining high standards of hygiene etc be devised and widely circulated using the website, Email etc. The Delhi High Court Bar Association assures its co-operation in circulating the same through email and SMS as also on the social media. Some suggestions for standard operating proposals that can be considered have been included in Annexure A hereto. The said suggestions are only illustrative and further protocols can be incorporated

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after deliberations and with mutual consent to ensure that there is adequate adherence to social distancing norms and minimization of exposure for all parties concerned and to contain the spread of the virus.

The above are only but a few suggestions and are in no manner, exhaustive. The Bar Association would be grateful if the present request is considered favourably.

With warm regards,

Your's truly  
*Abhijit*  
Abhijit  
Hony. Secretary





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## ANNEXURE A

1. Entry to the Court buildings be restricted only for Advocates and their Court clerk having cases listed for hearing a particular day/ slot. Thermal temperature scanning of all individuals must be done by the security staff at entry points before entry into of the High Complex and / para medical personnel can also be deployed.
2. Social distance marking at areas for parking areas, chamber blocks, bank, post office, registry, in court corridors should be ensured to aid social distancing. There should be social distancing markings in all common areas as well.
3. Regular sanitisation of the court premises including court rooms, lobbies, chamber blocks be done on a daily basis including fumigation etc. of files and Court records.
4. The main Cafeteria and Glass Canteen in the court premises may be directed to remain completely closed for some time initially.
5. The seating capacity in lobbies be substantially reduced and other restrictions on regulating egress/ingress may also be considered.

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