

India needs comprehensive law on coronavirus to replace maze of piecemeal guidelines, clarifications; UK, Singapore offer examples

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Citizens and commercial establishments are presently struggling to understand the implications of the coronavirus-induced lockdown on a wide variety of issues, including commercial contracts, wages, court hearings, weddings, last rites of loved ones, etc.

As a result, assistance from courts across India has been sought on a variety of issues, including decongestion of prisons, dealing with the mortal remains of a person diagnosed with coronavirus, payment of salaries, virtual hearings, moratorium on loans. Many litigants have also approached courts seeking protection under force majeure clauses so as to prevent coercive steps being taken against them by opposing parties. Thus, many writ petitions, public interest litigations, petitions and suits have been filed in high courts and the Supreme Court. In some cases, overlapping proceedings have been filed simultaneously before different courts and are being dealt with independently, resulting in the possibility of conflicting decisions. There is no foreseeable end to such litigations.

Experts have opined that coronavirus is here to stay for the near future at least. In future, the pandemic will inevitably raise legal dilemmas and legal proceedings resulting from coronavirus will only increase in the future.

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Presently, the Epidemic Diseases Act, 1897, the Disaster Management Act, 2005, the Code of Criminal Procedure, 1973 and the Indian Penal Code, 1860 are providing legal backing to the lockdown measures. In addition, commercial contracts, creditors/debtors, fundamental rights of those in custody, families of persons deceased due to coronavirus are also governed by various other legislations including the Indian Contract Act, 1872, the Insolvency and Bankruptcy Code, 2016 and the Constitution of India.

Although certain amendments have been carried out to legislations such as the Insolvency and Bankruptcy Code to cope with coronavirus, several other legislations have remained untouched. Further, various ministries and departments are issuing a plethora of notifications, guidelines and clarifications with respect to COVID-19. For example, the Union government has issued clarifications and circulars stating that coronavirus could be treated as a force majeure event in certain cases.

However, there is no comprehensive law at present that deals specifically with coronavirus in India and the consequences of the short-term and long-term disruptions that are likely to be caused as a result of the pandemic. In order to secure one's rights, the only remedy currently available is to piece together all of the aforesaid legislation and interpret the relevant provisions thereof read with the notifications, guidelines and clarifications and thereafter approach an appropriate court of law seeking individual orders of relief.

Amending certain legislations that are in force whilst ignoring others and issuing notifications, guidelines and clarifications on a daily basis can never be a sufficient substitute to a comprehensive and specific legislation aimed at providing certainty and specificity.

Globally, there are examples of laws having been passed to deal with coronavirus. The United Kingdom has accorded its Royal Assent to the Coronavirus Act, 2020 on 25 March, 2020. The UK Act's introduction reads that it is "An Act to make provision in connection with coronavirus; and for connected purposes." The UK Act defines coronavirus and provides various other safeguards to healthcare professionals, social workers, and volunteers, along with pensions and insurance. The UK Act also provides for the procedure to transport, store and dispose of the mortal remains of a person who died due to coronavirus. In India, some of these provisions are currently being laid down by our judiciary, instead of the legislature.

In addition to the aforesaid medico-legal provisions, the UK Act also provides for a moratorium on forfeiture of commercial leases for non-payment of rent. The UK Act makes a provision for the live screening of 'virtual' hearings (either wholly video or wholly audio) in criminal courts, the intention being that a larger number of court hearings be held by phone or video.

Similarly, Singapore has enacted the COVID-19 (Temporary Measures) Act 2020 on 7 April, 2020. On similar lines as the UK Act, the Singapore Act was enacted to "provide temporary measures, and deal with other matters, relating to the COVID-19 pandemic". The Singapore Act provides temporary relief to parties that are unable to perform their obligations due to coronavirus, and also includes other provisions — such as permitting oral testimony to be recorded over live video

The Singapore Act provides temporary relief to certain scheduled contracts which were entered into before 25 March, 2020, with contractual obligations to be performed on or after 1 February, 2020. These scheduled contracts include a contract for the grant of a loan facility by a bank, an agreement between a developer and a purchaser for the sale and purchase of housing accommodation, leases or licences for non-residential immovable property, construction or supply contracts, performance bonds, contracts for the provision of goods and services for events and tourism-related contracts.

The range of protection that is offered is extensive and prohibits the commencement or continuation of any court or arbitration proceedings, insolvency proceedings, enforcement of judgments and domestic arbitrations, enforcement of security over immovable property and movable property used for the purpose of a trade, business or profession; and termination of leases or licences of immovable property in connection with non-payment of rent or

other moneys. The Singapore Act provides that a non-refundable deposit made pursuant to an event or tourism contract must be refunded. The protection under the Singapore Act is also extended to the guarantors of the party suffering such inability. There are no such laws currently in place in India providing relief with respect to event or tourism contracts.

To receive relief under the Singapore Act, the party which cannot perform its obligation due to coronavirus has to serve a notification of relief to the counterparty. This could be as simple as a tenant addressing an e-mail to the landlord stating that the tenant is unable to pay the rent due to the reduced footfall as a result of coronavirus.

There can be little quarrel with the fact that India is currently in a state of ambiguity in so far as coronavirus and its legal implications are concerned. In the absence of a comprehensive legislation dealing with coronavirus, litigants are flocking to courts across the country seeking clarity and protection as a result of these unprecedented circumstances. It is in fact now more than ever that India needs a specific and comprehensive legislation. Such a law, if enacted, would provide certitude on the effects of coronavirus on businesses, contracts, employers/employees, and the nation as a whole. India can also enact a legislation which is far more comprehensive than the UK Act or the Singapore Act and better suited for India.

Such a legislation would ensure that the daily filing of proceedings seeking clarity and interim relief across the country will reduce remarkably. In certain cases, such a law could also prevent conflicting decisions from being delivered in different courts. Consequently, a large amount of judicial time could be better utilised to clear past arrears, instead of the current conundrum of what constitutes an urgent matter and what does not. A comprehensive legislation will help overcome the current difficulty of referring to isolated amendments, piecemeal circulars, directives, notifications and guidelines issued by ministries and departments from time to time.

In the form of the pandemic, India is currently dealing with a black swan event with lasting consequences. The legislature, therefore, must step up and enact a comprehensive Coronavirus Act. In the least, parties to a contract must be made aware of the extent of protection granted to them due to their inability to perform their obligations as a result of coronavirus, without having to approach courts to seek such legislative clarifications.

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