

DRAFT RULES

INDEX

Index	1
Explanatory statement	2
Draft Rules	3 - 11
Notes on specific clauses	12 - 15
References to other jurisdictions and sources	16 - 19

Explanatory Statement

On 11th March 2020 the World Health Organisation declared the global outbreak of Covid-19 a pandemic. To contain the spread of the disease which is highly contagious and which can lead to death of the infected person particularly amongst vulnerable groups, stringent measures have been adopted by the Government of India. In this backdrop, it is advisable and necessary to maintain physical distancing at the workplace to minimize the risk of being infected by Covid-19 virus and to prevent adverse health impacts and transmission.

Rule of Law is cardinal to the working of a democracy. Equally, access to justice is fundamental to preserving the Rule of Law.

The present circumstances require new procedures to be adopted by the Supreme Court of India as a temporary measure until the health threat caused by Covid-19 fully abates or recedes substantially to a level where work may resume normally. These rules are issued as a temporary measure to ensure functioning of the Supreme Court of India with a view to provide access to justice and to uphold the Rule of Law.

DRAFT

THE SUPREME COURT (COVID-19 PANDEMIC) EMERGENCY
PROCEDURE RULES, 2020

In exercise of the powers conferred by Article 145 of the Constitution, and all other powers enabling it in this behalf, the Supreme Court makes, with the approval of the President, the following rules:

PART I

GENERAL

1. Short title – These rules may be cited as the Supreme Court (Covid-19 Pandemic) Emergency Procedure Rules, 2020.

2. Commencement – These rules shall come into force on

OR

These rules shall come into force on such date as the Chief Justice of India may appoint by notification in the Official Gazette and different dates may be appointed for different provisions of these rules.

3. Sunset provision – These rules shall cease to operate on 31 December 2020

OR

such other earlier date as the Chief Justice of India may appoint by notification in the Official Gazette.

PART II

HEARINGS BY VIDEO LINK

4. *Video link hearings* - (1) The Supreme Court shall provide a video link facility for the conduct of hearings.

(2) The video link facility shall be provided to all parties to the proceedings. A maximum of three links shall be provided to each party (appearing through an advocate) to enable the advocate on record, arguing counsel and one other person being either an advocate engaged in the case or the client/client's representative to participate in the hearing.

(3) A party in person shall be provided a video link for the entire duration of the hearing to enable the party in person to participate in the video hearing.

(4) A maximum of three law correspondents from media organizations/the press shall be provided video links. In addition, in cases of public importance or interest, the Registry shall endeavour to provide a video link to the designated press room(s) on the premises of the Supreme Court of India.

(5) Access through the video link will open one minute prior to the commencement of the hearing and the access will be withdrawn upon conclusion of the hearing.

(6) All persons appearing through video link shall register their name prior to joining the hearing.

(7) No person shall record the video hearing save and except an officer of the Court duly authorized in this behalf.

(8) The record of proceedings of all hearings conducted through video conferencing shall record the fact of the hearing having been so conducted and shall also record the opening time and closing time of the hearing.

(9) The Registry will designate rooms in the Court premises equipped with video link facilities for the use of advocates and parties in person who find it convenient to present cases by video link from the Court premises.

5. Notification of the date and time of hearing - (1)

Subject to sub-rule (3), with respect to hearings for admission or interlocutory cases, the Supreme Court Registry shall draw up and publish a cause list indicating the day, date and approximate timing of the video conference hearing two working days prior to the date of the hearing.

(2) Subject to sub-rule (3) below, with respect to final hearings, the Supreme Court Registry shall draw up and publish a cause list indicating the day, date and approximate timing of the video conference hearing ten working days prior to the date of the hearing.

(3) Urgent cases may be listed for a video conference hearing at a shorter interval and shall appear in a supplementary cause list notified on the day prior to the date of the hearing.

6. *Dress code and etiquette* - (1) All advocates and senior advocates participating in a video conference hearing shall be fully attired as if appearing physically before the Court, save and except, that the wearing of a gown is dispensed with during the hearing.

(2) During a video conference hearing, advocates as well as parties in person may remain seated and may address the Court from their seats.

(3) During the hearing all participating parties shall keep their microphone in the mute mode, save and except when addressing the Court.

(4) All persons other than advocates and senior advocates participating in a video hearing shall ensure that they are dressed soberly as they would when appearing physically before the Court.

(5) All persons participating in a video conference hearing must ensure that they are participating from a quiet, indoor setting with a sober backdrop.

(6) Arguing counsel must follow a strict sequence when addressing the Court. Ordinarily, the petitioner /appellant

/applicant /plaintiff shall first address the Court followed by counsel for the respondent /defendant appearing in the sequence indicated in the array of parties in the case cause title. The sequential order for addressing the Court shall also apply to parties appearing in person.

7. *Duty of the advocate on record/party in person* - (1)

The advocate on record or party in person shall notify the Court Master as well as all other parties in the case, the list of persons appearing on their behalf at the video hearing along with their designation(s). She shall also indicate the name of the arguing counsel.

(2) This communication shall be addressed by email or other similar means of electronic communication at least 12 hours prior to the commencement of the hearing.

8. *Procedure for admission and for interim orders* -

Matters at the stage of admission and interlocutory proceedings shall be automatically listed for video hearing, unless the party seeking admission of the case or applying for interim orders issues a written request to the Registry that it seeks a hearing in Court.

9. *Procedure for hearings before Chamber Judge and Registrar Court* - All matters to be heard by the Chamber

Judge or a Registrar shall be listed for video hearings, unless the Registry indicates otherwise. The date and time of hearing of such matters will be notified four days in advance.

10. *Procedure in case of technical or connectivity*

problems - (1) Any party which is unable to present its case during a video hearing, owing to technical or connectivity problems, may apply to the Court within two working days of the hearing. Such an application shall be supported by an affidavit of the applicant.

(2) If the Court is satisfied that due to a technical or connectivity problem the applicant was prevented from presenting its case, the Court may make such order as it deems fit to serve the ends of justice, including re-scheduling the hearing or directing that the matter be taken up for hearing in Court at a later date.

11. *Live Streaming of video hearing proceedings* - (1)

Proceedings conducted through video link will be streamed live on the official website of the Supreme Court.

(2) The guidelines laid down by the Supreme Court in *Swapnil Tripathi v. Supreme Court of India* [Writ Petition No. 1232 of 2017, decided on 26.09.2018] shall apply to live streaming of video hearings to the extent possible.

(3) A video recording of the live stream will be made available on the official website of the Supreme Court.

12. Daily Transcripts - (1) Daily transcripts of proceedings conducted through video hearing shall be maintained by a duly authorized officer of the Court.

(2) Copies of daily transcripts shall be provided to the parties on the basis of an application made in this regard.

PART III

COURTROOM HEARINGS

13. Physical distancing and courtroom operations -

(1) To apply rigorous physical distancing norms, the Chief Justice of India shall notify from time to time: (a) the courtrooms in the Supreme Court premises where hearings will be conducted; and (b) the number of working sessions during the day and the timings of these sessions.

14. Attendance at hearings - (1) Each party in a case may be represented in the courtroom by a maximum of three advocates including the advocate on record and the arguing counsel.

(2) A party in person may be accompanied by one other person during the courtroom hearing.

(3) One clerk will be permitted in the courtroom on behalf of the petitioner/ appellant/ applicant/ plaintiff and one clerk

will be permitted on behalf of the respondents/ defendants. The clerks will be permitted into the courtroom before the commencement of the hearing and after the conclusion of the hearing. They will remain outside the courtroom during the course of the hearing.

(4) A maximum of three law correspondents from media organizations/the press shall be permitted entry into the courtroom for a case. In cases of public importance or interest, the registry will endeavour to provide a video link to the designated press room(s) on the premises of the Supreme Court of India.

15. *Pre-hearing procedure* - (1) The Registrar will designate suitable waiting rooms on the premises of the Supreme Court of India.

(2) Advocates and other persons present in the waiting rooms shall comply with all physical distancing norms.

(3) Advocates and other persons who are to appear at a hearing, will be required to await their turn in the waiting rooms with a view to keep all corridors free and uncongested.

16. *Pre-hearing filing of submissions* - In all cases listed for final hearing, all the parties shall submit four days prior to the date of the hearing (a) a common chronology of

events agreed upon by all parties; (b) a short note of written submissions including the authorities relied upon; and (c) a common compilation of documents arranged in chronological order.

17. *Time limits for oral submissions* - (1) Parties shall adhere to the time limits fixed for oral submissions at the hearing of each case.

(2) In computing the time assigned to a party, the time during which questions or observations are made from the Bench and the time taken to answer or respond, shall be excluded.

18. *Post-hearing filing of submissions* - With the permission of the Court, parties may supplement their oral submissions with further written submissions.

19. *Hearing of cases for admission and interlocutory matters* - (1) Rule 17 with respect to the time limits for oral hearing shall apply to cases that are heard for admission and interlocutory hearings.

(2) Rules 16 and 18 with respect to the filing of written submissions shall not apply to cases for admission and interlocutory hearing.

- 20. *Court Attire*** - (1) All advocates and senior advocates shall be fully attired for a courtroom hearing, save and except, that the wearing of a gown is dispensed with during the hearing.
- (2) All persons entering the court premises may be required to pass through a disinfectant tunnel.

PART IV

CONSENT PROCEDURE

- 21. *Consent procedure for final hearing*** - (1) Thirty days prior to the listing of a case for final hearing the Registry shall inform the advocates on record or the parties in person about the prospective date of hearing. Where all parties agree to a hearing through a video link, the case shall be listed for hearing through a video link. In the absence of consent of all parties, the case shall be listed for hearing before the Court.
- (2) Where the Court is of the opinion that having regard to the nature of the case, the matter requires to be heard in Court, notwithstanding the consent of the parties for a video link hearing, the case shall be listed for a hearing in Court.
- (3) The Chief Justice of India may notify certain classes of cases that will not be heard through a video link and shall be heard in Court.

PART V

MISCELLANEOUS

- 22. *Supreme Court Rules, 2013*** - (1) These rules are in addition to the Supreme Court Rules, 2013.
(2) To the extent of any inconsistency, the provisions of these rules shall have effect, notwithstanding anything contained in the Supreme Court Rules, 2013.
- 23. *Power to issue practice directions*** - To give effect to these rules and for better functioning, the Registrar of the Court may issue practice directions from time to time.
- 24. *Interpretation*** - Unless the context otherwise requires, words and expressions used and not defined in these rules but defined in the Supreme Court Rules, 2013 shall have the same meaning assigned to them in those rules.

NOTES ON CLAUSES

THE SUPREME COURT (COVID-19 PANDEMIC) EMERGENCY PROCEDURE RULES, 2020

Clauses 1 and 2. These clauses correspond to Order I rule 1 of the Supreme Court Rules, 2013, indicating the title of these Rules and their date of commencement.

Clause 3. This clause indicates that the Rules are not of indefinite duration. The rules will come to an end on a specific date or earlier notified date. This clause is to curb the tendency to normalize temporary emergency provisions.

Clause 4. This clause pertains to accessibility of the video link hearings. All parties, including parties in person, shall be given at least one video link; there is a limit of three video links per party. Members of the press will in totality be provided three video links. In cases of public importance or interest, a designated press room within the Court premises may be provided a separate video link. A video link will be accessible from one minute prior to the scheduled time of commencement until the hearing concludes. This is to prevent overloading the Court servers or interfering with the available bandwidth. The video hearing shall not be recorded by any person, except for a duly authorized officer of the Court. The mandatory contents of the record of proceedings have been provided. The provisions with respect to video links to law correspondents from media organisations/the press assumes that there is no live streaming of video hearing proceedings. Upon live streaming being made available, the provisions for special media access may not be necessary.

Clause 5. This clause provides for the individual timelines for notification of the time and date of admission hearings and interlocutory cases; final hearings; and urgent cases.

Clause 6. This clause covers the formalities pertaining to dress code and etiquette of senior advocates, advocates and all other persons participating in the video hearing. The purpose of this clause is to maintain Court decorum during video hearings. This clause corresponds to Order IV rule 3 of the Supreme Court Rules, 2013.

Clause 7. This clause deals with the duty of an advocate on record or party in person to give advance notice to the Court Master via e-mail or other electronic communication, of the name(s) and designation(s) of all persons appearing on behalf of the respective party at the video hearing.

Clauses 8 and 9. These clauses provide for video hearings of all matters for admission, interlocutory proceedings and matters before the Chamber Judge, unless indicated otherwise as provided. These clauses seek to minimize Courtroom presence and interaction in order to maintain physical distancing.

Clause 10. This clause lays out the procedure in case any party is unable to effectively present its case during a video hearing due to technical or connectivity issues.

Clauses 11 and 12. These clauses relating to live-streaming and daily transcripts of video hearings before the Supreme Court seek to bring in greater accessibility and transparency in the conduct of court proceedings. These clauses seek to provide access to, and information regarding, court proceedings to persons who are otherwise unable to witness proceedings of the Supreme Court during the Covid-19 pandemic.

Clause 13. This clause provides the power of the Chief Justice of India to notify court rooms for hearings to be conducted, the number of working sessions during the day as well as the timings of these sessions. This clause seeks to apply rigorous physical distancing norms to prevent the spread of Covid-19 within the Court premises.

Clause 14. This clause caps the number of persons permitted to be physically present in the Courtroom during a hearing. A maximum of three advocates, including the advocate on record and arguing counsel, may represent a party before the Court. A party in person may be accompanied by one other person during a hearing. All the petitioners/appellants/plaintiffs/applicants will collectively be permitted one clerk inside the Courtroom, as with the respondents/defendants. The clerks will not be permitted inside the Courtroom except before commencement and after conclusion of the hearing. No more than three members of the press shall be permitted to attend the Courtroom hearing. In cases of public importance or interest, a designated press room within the Court premises may be provided a separate video link.

Clause 15. This clause lays out the procedure to be followed prior to each Courtroom hearing. Waiting Rooms will be designated by the Registrar within the Court premises. All physical distancing norms will be strictly followed within the Waiting Rooms. This clause seeks to implement social distancing norms to prevent the spread of Covid-19.

Clause 16. This clause provides for the filing of submissions four days prior to a final hearing. The parties shall submit a common chronology of events agreed upon by all of them. The parties shall submit a common compilation of documents arranged in chronological order. All parties shall submit a short note of their respective written submissions accompanied by the authorities relied upon. This clause seeks to reduce the time taken during oral submissions in the interest of physical distancing, including limited physical presence and interaction in the Courtroom.

Clause 17. This clause requires the parties to adhere to time limits fixed for oral submissions, excluding the time taken to answer or respond to questions or observations from the Bench. The purpose of this clause is observing physical distancing norms and preventing spilling over of Court sessions.

Clause 18. This clause provides that the parties may take permission from the Court and file further written submissions to supplement the oral submissions.

Clause 19. This clause makes Rule 15 applicable to oral submissions in admission and interlocutory hearings, with the same intention. However, there is no requirement to file submissions as laid out in Rules 14 and 16 for admission and interlocutory hearings.

Clause 20. This clause corresponds to Order IV rule 3 of the Supreme Court Rules, 2013 and Rule 6 of Part II pertaining to video hearings. Full Courtroom attire is mandated, save and except that the requirement to don a gown is dispensed with. This clause also provides that all persons entering the Court premises may be required to pass through a disinfecting tunnel. This clause seeks to maintain sanitary and hygiene conditions within the Courtroom which curb the spread of Covid-19.

Clause 21. This clause lays out the procedure to be followed for final hearings listed before the Court. The prospective date of final hearing shall be notified to the advocate on record or party in person thirty days prior to the said date. This clause provides for three possibilities regarding video hearings in such matters:

(i) The Chief Justice may notify certain cases that will only be heard in the Courtroom. Video hearings cannot be held in such matters.

(ii) All the parties agree to a video hearing in cases not covered by point (i).

(iii) The Court before which a matter is listed for final hearing is of the opinion that the matter requires to be heard in the Courtroom, having regard to the nature of the case, and directs accordingly, notwithstanding consent of the parties to hold a video hearing.

Clause 22. This is a non-obstante clause providing an overriding effect to the present Rules over the Supreme Court Rules, 2013. These Rules are in addition to the Supreme Court Rules, 2013

and shall have effect in case of any inconsistency, notwithstanding anything contained in the Supreme Court Rules, 2013.

Clause 23. This clause empowers the Registrar to issue practice directions from time to time to give effect to these rules and for better functioning.

Clause 24. This clause provides that words and expressions used and not defined in these Rules shall be interpreted to have the same meaning as assigned to them under the Supreme Court Rules, 2013, unless the context requires otherwise.

**TABLE OF PROCEDURAL GUIDELINES BEING FOLLOWED
BY PROMINENT CONSTITUTIONAL COURTS ACROSS THE
GLOBE DURING THE COVID-19 PANDEMIC**

S. NO.	JURISDICTION	COMMENTS (WITH HYPERLINKS)
1.	United Kingdom	Physical hearings are being held on certain limited and essential matters. However, there appear to be no specific guidelines to determine what would qualify as a matter for a regular physical hearing and it appears the Courts have complete discretion to decide accordingly and information regarding a physical hearing is sent by the Court Registry to the concerned parties. Such physical hearings are held in limited specified premises and in compliance with physical distancing and hygiene norms. For virtual hearings, as per the guidelines, it is the Court Registry which is to contact the parties or counsel to check whether a video hearing is possible depending upon the parties having the right equipment and granting consent. Summary of guidelines: (https://www.gov.uk/guidance/changes-to-court-and-tribunal-hearings-during-the-coronavirus-outbreak) - The Coronavirus Act, 2020 also covers the courts Practice Directions:

		(http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51y-video-or-audio-hearings-during-coronavirus-pandemic) Ministry of Justice report on video hearings: (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740275/Implementing_Video_Hearings_web_.pdf)
2.	United States of America	As per a press release, the U.S. Supreme Court will hear oral arguments by telephone conference on May 4, 5, 6, 11, 12 and 13 in a limited number of previously postponed cases. The Justices and counsel will all participate remotely. (https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-13-20) Every Circuit Court has released its own set of guidelines/notices as to the continuation of court operations and how they are to be carried out. For example, the <i>United States Court of Appeals for The Ninth Circuit</i> has released a Notice that Panels may exercise their discretion under the rules to submit cases without argument; to postpone argument to a

		later date; or to hold argument via telephone or video. <i>The United States Court of Appeals for the First Circuit</i> on the other hand, chose to completely close the Court in April and has now opened once again for hearings. It also appears that every District within a Circuit Court has also been given discretion to take all necessary steps to appropriately carry out regular operations as far as possible. (https://uk.practicallaw.thomsonreuters.com/w-024-4634?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&firstPage=true&bhcp=1)
3.	Australia	The High Court of Australia has decided that it will not be sitting in Canberra or on circuit in the months of April, May and June. The question of future sittings will be reviewed in June. The Court will continue to deliver judgments and deal with special leave applications including hearings as necessary at individual registries and will hear any urgent matters that may arise using video conferencing technologies. The High Court has also released a short two page note on the protocol for video conferencing hearings. (https://cdn.hcourt.gov.au/assets/registry/information/VC_Hearings_Protocol.pdf)

		The Federal Court of Australia is using the software 'Microsoft Teams' to carry out hearings and a document titled '<i>National Practitioners and Litigants Guide to Online Hearings and Microsoft Teams</i>' has also been released for the benefit of the public. (https://www.fedcourt.gov.au/__data/assets/pdf_file/0019/62416/National-Practitioners-and-Litigants-Guide-to-Online-Hearings-and-Microsoft-Teams-V2.pdf) A write up also seems to suggest that the Court is attempting to make such virtual hearings "the new normal" and is continuing to regularly hold hearings as far as possible. (https://www.lexology.com/library/detail.aspx?g=f9abd2ee-921d-452e-b26f-961c77793996)
4.	Republic of Singapore	The courts in Singapore are hearing essential and urgent cases till the 1st of June, 2020. Hearings for all other matters have been adjourned. The courts aim to resume hearings for most matters on June 8, barring any further extensions. (https://www.straitstimes.com/singapore/courts-crime/courts-to-hear-only-essential-urgent-cases-till-june-1) The courts are using the software

		‘Zoom’ for all such hearings. There are certain guidelines/FAQ’s which have been released by the Singapore Supreme Court as well as for the State Courts, but these are limited only to the use of the software for the hearing. Singapore Supreme Court – https://www.supremecourt.gov.sg/docs/default-source/default-document-library/2020-03-27---guide-to-telephone-conferencing-and-video-conferencing11082d0c2d8042478a9434c23af6fdac.pdf Singapore State Courts – https://www.statecourts.gov.sg/cws/covid-19/Documents/Guide_VC_with_the_Courts_using_Zoom.pdf
5.	Peoples Republic of China	It is not clear as to whether or how the courts have been functioning in the country. An article on the official website of the Supreme Court of the Peoples Republic of China claims that an online/mobile application filing system has served its purpose well. http://english.court.gov.cn/2020-05/09/content_37535800.htm However, the Application seems to designed for court filings, and as per the website of the Court, a matter was scheduled for hearing on 17th January, 2020 and thereafter, only on 21st and 22nd April, 2020, i.e., post the lockdown being lifted in the country.

		(http://english.court.gov.cn/hearings.html)
--	--	---