

MAY 2020

ISSUE BRIEF

**KNOWLEDGE**

**WEB-SERIES**

SESSION I

# THE NEW NORMALS IN DISPUTE MANAGEMENT

Jointly Organised by



## SUMMARY

On 23 May 2020, Hammurabi & Solomon Partners & the India Strategy Group jointly convened a knowledge web-series (“KWS”) on the new emerging normals in dispute management. In the present times, where the ongoing pandemic brought courts and tribunals to a standstill, the KWS was intended to gather inputs from various stakeholders and legal professionals regarding the future trends in dispute management. This report tries to capture the discussions with the distinguished speakers and to highlight the dos and don’ts in this regard.

The KWS was convened with the aim to discuss, deliberate, and analyze implications of recent legal developments – legislative, regulatory/policy as well as judicial pronouncements.

## DISTINGUISHED SPEAKERS



**Dr. Manoj Kumar**

Founder & Managing Partner,  
Hammurabi & Solomon Partners



**Mr. Badrinath Durvasula**

Ex-Vice President & General  
Counsel, HCC Limited



**Mr. Gopal Jain**

Senior Advocate,  
Supreme Court of India



**Mr. Rajiv Arora**

Chief Legal, Regulatory  
& Corporate Affairs,  
Bharti Infratel Ltd.



**Mr. N Swaminathan**

General Counsel,  
Tower Visiond



**Mr. Shujath Bin Ali**

General Counsel,  
Ramky Enviro Engineers

## KEY POINTS

### Ramifications of COVID-19 on Alternative Dispute Resolution

COVID-19 has had and continues to have its ramifications on all realms of the legal profession i.e. litigation, judiciary, the service providers and legal professionals. Alternative Dispute Resolution has come to a standstill since the beginning of the pandemic in India. The obvious consequence of this is that while there were already innumerable cases and proceedings waiting to be heard and/or in the process of being heard before the courts and tribunals, the pandemic has only further stressed the situation for the judicial organs of the country.

COVID-19 has adversely affected the judicial and arbitral arms of the legal profession. It has put forth an enormous challenge before legal professionals in going about the dispute resolution mechanism in the present challenging times. The distinguished speakers unanimously concur that legal professionals will have to find different ways to fight the battle and recoup the irreparable loss that they are being faced with during this period.

### Online dispute resolution: The new normal

The distinguished speakers agreed that the legal profession can never come to a standstill, the court system can never come to a grinding halt since delivering justice is the fundamental purpose of law. Post Covid-19, the new normal would basically involve greater transparency and communication between the disputing parties with an effort to side-step the rigours of the complete life-cycle of a litigation.. This communication would enable the contracting parties to come to an understanding and/or settlement which in turn would enable them to solve their issues on their own, thus reducing the burden on the courts of law. Instead of a winner and a loser, disputing parties are expected to recognise each other positions which enable both to emerge as winners.

The parties after the pandemic will have found different ways to deal with their problems. Technology is here to stay and the online arm of technology has been of vital importance since it prevents the denial and delay of justice to a large extent. The dispute resolution mechanism may change its approach from finding ways to win to finally seeking ways to finding a resolution to the issues in hand. The establishment of the hybrid format by emphasizing the need to balance the virtual hearings with physical court proceedings is required. Focusing on Arbitration and Mediation and enaging in “without-prejudice” conciliations and mediations throughout the lifecycle of a dispute will be an order of the day. Thus, this is also expected to reduce the burden on the courts and the tribunals.

## Adaptability is key during these unprecedented times

The transition to a post-covid19 phenomenon is something that the human enterprise will overcome eventually. The justice delivery mechanism can never come to a halt though all of us may face problems while imparting justice. Problems that the courts of law and other law experts are facing during virtual conferences and meetings with clients and parties are due to the lack of adaptability. A more inclusive advocacy will need to be undertaken across all stakeholders in the judicial delivery system to ensure adaptability and preparedness by them and to ensure uniformity on ways to overcome those difficulties through up by Covid19..

## The right of access to justice vis-à-vis virtual hearings

Every citizen has the right of access to justice. It is the very fundamental rule of law which has been obstructed during the ongoing situation since not everyone has access to appropriate technology and good online facilities. On the positive side the Hon'ble Courts of Law have been prompt to attended to a record number of hearings and have passed judgements, thus, setting before us an example of an enabling judiciary.

Justice Krishna Iyer, a pioneer of judicial activism in India, once said that justice would be imparted and delivered impartially only when the Supreme Court of India becomes the Supreme Court for Indians. The highest court of justice has to lead its subordinate courts by living up to its motto and ensure to impart justice at the door step rather than opening a temple of the same.

## Court hearings v. virtual hearings: The need to find the right balance

One needs to understand the importance of balancing court proceedings with virtual hearings post COVID-19. Court hearings are a vital part of every case and cannot entirely be substituted with virtual hearings. The Speakers agreed that experts will have to come up with reforms to balance out court proceedings with virtual hearings and thus, ensuring a 'new normal' for the Hybrid Model. Additionally, their will be a deeper role played by pleadings and written submissions going forward as the window for physical hearings in cases is expected to shrink rapidly. This entails reorientation and reskilling of a wide set of practicing advocates who have since long placed greater reliance of physical hearings and in-court strategies in practice of dispute management.



## TAKEAWAYS

### The way moving forward

The speakers acknowledge that there is a need for more accommodation and sensitization than ever before. One would need to step into the shoes of the other side to understand in detail their problems and the ground reality of the same. The management would have to pushed in a way that immediately after COVID-19 one does not burden the courts and tribunals with innumerable cases.

Further, there is a need for the development of technology at the grassroot level. It is of vital importance that all the courts of law have proper access to technology for imparting justice. India being a technology hub should not have difficulties in providing the services to the courts and tribunals provided everyone accommodates, works together and uses all their available resources judiciously.

Coordination between various stakeholders is necessary to prevent the delay of justice in the near future. The ongoing situation is acting as a catalyst as has been pointed out by our experts. Thus, it is vital that one uses the current opportunities and devise a strategy in dealing with the ongoing crisis and ensure that nothing ever obstructs impartial justice.

### Click below to watch the KWS session

<https://www.youtube.com/watch?v=hZtPHsF6tc8>

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**The New Normals in Dispute Management**

Dispute Resolution, Mediation & ADR Processes in the times of COVID 19

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PODCAST

## ABOUT US

**Hammurabi & Solomon Partners** was founded in the early 2001 and is ranked amongst the top #15 law firms in India. Our journey has been marked by stellar growth and recognition over the past 2 decades with over 16 partners handpicked from the top of their fields. Paving our way into the Indian legal landscape we believe in providing complete client satisfaction with a result driven approach.

We have always aimed at being the change-maker for a newer India and the world around us. With our portfolio of services - law, public policy, regulation and justice converge to enable solutions to our client needs within the legal framework to operate in India with ease and predictability.

Our main aim is to provide world-class legal services with a unique client-centric approach. We aim at providing the utmost quality and result-oriented solutions with our out of the box thinking and teamwork. We focus on being very approachable and highly reliable legal advice with a practical and relevant approach, we tailor solutions with each client's needs.

Our firm implements a holistic approach towards client satisfaction by offering higher level of services, in-time solutions and exercising greater insights to understand the clients' sectors.

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