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Restrictions on Court Hearings Lawful

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Why in News

Recently, the Supreme Court held that all **restrictions imposed on people** from entering, attending or taking part in court hearings **are lawful in the wake of the Covid-19 pandemic**.

The court said these **restrictions were in tune with the social distancing norms** and best public health practices advocated to contain the Covid-19.

Key Points

- **Duty vs Discretion:** The apex court invoked its extraordinary Constitutional powers under **Article 142** to step away from the **convention of open court hearings**. It further clarified that use of this extraordinary power was **not a matter of discretion but of duty**.
- **Convention vs Public Health:** Although the open court system ensures transparency in administration of justice, scaling down of conventional operations was done to avoid congregation of a large number of people. The court made it clear **that public health takes precedence over conventions**.
- **Cooperation and Participation:** The court said every individual and institution is expected to cooperate in the implementation of measures designed to reduce the transmission of the virus.

It also argued courts at all levels respond to the call of social distancing and ensure that court premises do not contribute to the spread of virus.

- **Covid-19 and Rule of Law:** Access to justice is fundamental to preserve the **rule of law** in the democracy envisaged by the Constitution of India. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.

The challenges occasioned by the outbreak of Covid-19 have to be addressed **while preserving the constitutional commitment** to ensuring the delivery of and access to justice to those who seek it.

ICT and Delivery of Justice

- **Guidelines:** The Supreme Court also issued the following **guidelines to streamline the use of Information and Communications Technology (ICT)** in effective delivery of Justice:
 - **High Courts:** The High Courts to decide the modalities for the use of videoconferencing technologies in their respective States.
 - **District Courts:** District courts in each State would adopt the mode of videoconferencing prescribed by the respective High Courts.
 - **Helplines:** Helplines to be set up to receive and rectify technical complaints.
- The **courts should make available video conferencing facilities** for litigants who do not have it or appoint an amicus curiae (friend of the court).
- **Mutual Consent of Parties:** The court said in no case shall evidence be recorded without the mutual consent of both the parties by videoconferencing.
- **Social Distancing:** If it is necessary to record evidence in a courtroom, the presiding officer shall ensure the social distancing to be followed.

Article 142

- It provides **discretionary power to the Supreme Court** as it states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is **necessary for doing complete justice** in any cause or matter pending before it.
- **Constructive Application:** In the early years of the evolution of Article 142, the general public and the lawyers both lauded the Supreme Court for its efforts to bring complete justice to various deprived sections of society or to protect the environment.
- In the **Union Carbide case**, relating to the victims of the Bhopal gas tragedy, the **Supreme Court placed itself above the laws made by the Parliament** or the legislatures of the States by saying that, to do complete justice, it **could even override the laws made by Parliament**.

However, in the *Supreme Court Bar Association v. Union of India*, the Supreme Court stated that **Article 142 could not be used to supplant** the existing law, but only to **supplement the law**.

- **Cases of Judicial Overreach:** In recent years, there have been several judgments of the Supreme Court wherein it has been **foraying into areas which had long been forbidden to the judiciary by reason of the doctrine of ‘separation of powers’**, which is part of the basic structure of the Constitution. One such example is:

The ban on the sale of alcohol along national and state highways:

While the notification by the central government prohibited liquor stores along National Highways only, the Supreme Court put in place a ban on a distance of 500 metres by invoking Article 142.

Source: TH