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LITIGATION AND VIRTUAL COURTS: PROSPECTS AND CHALLENGES

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Abstract

In the wake of the COVID-19 virus, the world has switched from manual systems to virtual systems to follow their day to day activities in the safety of their homes. Many companies and organizations have adopted the “work from home” policy in order to ensure the safety of their employees and reduce the risk of being exposed to the virus. Such a measure was also taken by the Supreme Court of India by shutting down all the courts and the access to the public to prevent further spreading of the virus. Despite the fact that technology arrived in India in the early 90s, the adoption of technology by the Indian Judicial System hasn’t shown the same adept and potency. All court proceedings and hearings are being done by virtual courtrooms. This implementation, thus, has its own positive aspects & challenges which is discussed in this article.

Introduction

The current pandemic scenario has affected the day to day lives of thousands of people by spoiling their business, slowing down world trade movements, and disturbing the global economy. The Indian Judicial System was also immensely affected due to measures that were implemented by the Central and State Governments to curb the menace of the outbreak of COVID-19. Around the end of March, the Supreme Court had directed a complete shutdown of all courts. Several courts had partially shut down & only urgent hearing was being carried out in order to avoid human interference. Partial hearing of open courts was allowed to function in a few states, but due to the rise in cases, this was stopped and complete adaptation of virtual courts was done. Such proceedings enabled the judges as well as the advocates to be at homes

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and attend their hearings along with their clients. E-filing of cases, digitalization of old court documents and many other things are in motion to help reduce the difficulties faced by advocates & judges in virtual courts. While this change brought about some relaxation to everyone, it was a bane for those technologically challenged as there were no measures taken or guidelines given to help those who didn't have the resources or didn't know how to use their resources to attend a virtual court.

Virtual Courts and their positive aspects

Virtual Courts are court proceedings that are done by the mode of video conferencing on various video calling platforms. In the wake of the COVID-19 pandemic, all kinds of court proceedings and urgent case hearings are done via virtual courts; and parties, counsel as well as the judges meet at a prescribed time and start the proceedings through video conferencing. The adoption of this method by the courts in India has succeeded in maintaining the social distancing norms and reduced the risk to the exposure of the virus among different people.

In India, e-justice has been treated as an instrument of e-governance. E-courts shall facilitate to accomplish various objectives to help the judicial administration in the distribution of cases, to decrease delay and cost of litigation, to contribute databases, to assure e- Filing, e-notices, generating witnesses via video conferencing, digitally signed court orders and digitalized ADR. Only because of technology, the open courts of different countries are able to run and are able to act as a shield to protect the rights of citizens during the pandemic.

Virtual Courts have the potential to bring more transparency and cut out the extension of corruption in this profession. It may enhance the standard in the legal profession greatly. It will decrease the cost of litigation to a large extent and will make the justice system much more accessible, especially to the poor. It will also be able to cover vast geographical areas while assessing a case through virtual courts as it helps in repressing the vast traveling expenses made by parties, especially those in cases relating to family courts, for example – two people living in different states working on their divorce case. Virtual Courts are immensely effective as it subdues the costs related to workforce & desk work. People don't have to worry about accessibility because of the adoption of virtual hearings as it is now made easily accessible to both the parties and their representatives. The security of witnesses is ensured by way of virtual hearings. Virtual Courts have proved effective in providing help in the automation of workflow management in courts. Thus, it would help in building a better court & case administration.

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Can Virtual Courts replace Open Courts?

Even though the courts have stopped advocates from coming to court, important matters securing the life and liberty of citizens are being settled by courts using video conferences from virtual courts. Policy makers and other influencers want court hearings to be operated via video conferencing even after convalescing of the situation due to the scope of new technology and to provide a means of entry to justice for litigants staying in inaccessible areas. At the same time, there are others who are of the consistent notion that video conferencing cannot take over open court hearings since the most essential principle in the administration of justice is that courts have to be open to the public.

While taking all things into account for the submissions in-camera proceedings, the court held that declaration to hold in-camera proceedings, must be performed with great discretion and such an order may be passed only if the court is convinced beyond any reason that the edges of justice themselves would be defeated if a case is tried in open court. The Supreme Court while hearing a case² in the year 2018, on the concern with live streaming of its proceeding held that that the approach to justice can never be perfect without the litigant being able to see, hear and accept the chain of proceedings firsthand. The Court also accepted that the principle of open court hearings would have to be stuck to when rules for live streaming of court proceedings are made. The court also acknowledged the conception of the universally accepted principle of open court hearings and that live streaming is a crucial aspect of a susceptible judiciary which secures and recognizes that it is answerable to the worries of those who want justice.

Hence, the concept of virtual court hearings should only be implemented for as long as this current pandemic scenario persists. After the situation has stabilized, certain guidelines need to be formulated which would ensure the reopening of courts around India and also access to the public while maintaining social distancing norms. The implementation of virtual courts was only made to reduce the risk of spreading of the virus and if this virus had never come or spread in India, today, open court hearings would have had continued as usual.

Issues and Challenges of Virtual Courts

In the recent judgment of Bombay High Court in the month of April 2020, amidst the pandemic that has changed the whole arena of adjudication of cases has come as a big query in the mind of the readers. In Bombay High Court³, it has given its judgment by dismissing a regular bail

²Swapnil Tripathi v. State of Maharashtra, Supreme Court of India [(2018) 10 SCC 628]

³Span Ramesh Linear v. The State of Maharashtra, Bail Application Number 691 OF 2020

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petition referred to it by filling of section 439 of Cr.P.C. The Court has broadened the ambit of its judgment by further explicitly defining the concept of 'Urgent matters' while deciding cases. In this case above, the applicant had filed for regular bail under the section abovementioned, which was dismissed on the ground of 'urgency' and 'wake of pandemic Covid-19'. The court has stated that the process of granting bail to an applicant, certain dimensions must also be looked into, and during such trying times the procedure as mentioned in Cr.P.C for bail cannot be duly followed. Two factors were highlighted while refusing the bail application.

Firstly, it was said that due to the pandemic locale, the courts are only adjudicating bail matters that are said to be urgent. Secondly, granting bail to the applicant would endanger his life and that of others given the fact that he might not be able to travel back home due to the lockdown. To save such circumstances, the bail has been denied to him.

Now, the most important question that might arise in the mind of the rationale is that 'Does the technical or procedural errors on part of the judiciary and the bureaucracy refrain a person from exercising his basic fundamental rights as mentioned under articles 11, 19 and 21 to name a few?'

It is something to think about, but not to shed an ounce of doubt that time immemorial in the ambit of law it has been upheld that the fundamental rights of a person approaching court shall never be sacrificed, and I believe that holds true even during the pandemic situation. The judgment is available for public scrutiny if its decision is hampering even one person's welfare.

Another major roadblock is the problem of digital illiteracy prevalent in most parts of India. It was mentioned by Justice Chandrachud was "virtual courts is an attempt by the judiciary to make the citizens believe that we value your time", provided it reaches and is accessed by the citizen adequately. Statistics push us to believe that this area is not falling under the expertise of our lawyers in India and their LLB degrees do not train them per se for the same.

The next agreeable negative is that of the threat to the open court concept. The court proceedings were available to the public as interns, reporters, and even bystanders according to section 135B CPC and 327 Cr.P.C. Unfortunately, the range of digital courts does not guarantee the same.

Thirdly another crucial barrier is the disadvantage faced by the judge while scrutinizing the body movements and the expressions of the convicts while deciding a case as doing so holds paramount importance.

The ambit of Covid-19 is extremely vast but the adjustment to the same as awakening the need of virtual courts to function. However, its true implementation will only materialize when

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digital illiteracy is dealt with in a country like India, where most people are technologically not very progressed even though it is far easier for the millennial ear to adapt to such digital changes. As it has been widely reported by lawyers who have attended virtual courtrooms that the present virtual infrastructure is constructively inadequate relating to problems of login issues and poor bandwidth due to which filing and connecting to video becomes almost impossible. Thus have prayed many times that virtual courts be only limited to the present times only.

In another profound case⁴, a nine-judge bench of the Supreme Court had said that “*Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice*” all cases brought before the courts, whether civil, criminal, or others, must be heard in open court.

Conclusion

The need of the hour compelled certain significant changes in the lifestyle of the mass all around the world with the onset and prolongation of the pandemic that has thrilled everyone. The article circled around the pros and cons, the flip of a coin to decide what might help the judicial system to make the new normal. However, reading along with those points the normalcy that so specifically needs the citizens to adapt to its changes is far from the actual reality. The vastness of our nation makes it even more challenging to adapt to the millennial era of technology that most of the nation doesn't show a lot of comfort dealing with. At the brim of this very argument, the lawyers have been most affected during such trying times, with litigation taking a complete makeover. Digital illiteracy is one of the paramount roadblocks that cannot be achieved unless all the disadvantages are satisfactorily addressed by the government and its policy makers through mass sensitization. The prospect of litigation and virtual courts can be benefitted when disparity to its proper and equitable access is given to all.

⁴NareshShridharMirajkar v. State of Maharashtra, (1966) 3 SCR 744

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