
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

Virtual Courts: The New Normal?- Swati Singh & Subodh Singh¹**Abstract**

While the COVID-19 pandemic has brought the entire world to a standstill, with its prolonged lockdown and need for social distancing, it has also presented the need for shifting the judiciary of India to a virtual system. Virtual Courts have emerged as an opportunity in these adverse circumstances. This article focuses on the prospects and challenges brought by the use of the virtual court system and whether this will act as a catalyst to enable the digitization of the Indian judicial system.

Introduction

The COVID-19 pandemic presented many challenges to the various avenues of human life which required the implementation of innovative and unprecedented steps to ensure that essential services keep working. Judiciary is one of such services that had to adapt to continue functioning in the adverse circumstances presented by stringent lockdown measures taken to halt the infection. The Indian judiciary was quick to shrug off the haze on the future of courts as the Supreme Court in April 2020 laid down directions for all the Courts in India to conduct their proceedings over video conferencing. The SC further asked the High Courts to make rules for this transition in their respective benches and the district courts under them.²

In June, a committee of seven Supreme Court judges decided to continue the Virtual method of hearing cases, given the alarming rate of growth of the Coronavirus.³ It is interesting to note that although Indian courts have never operated in the virtual mode before, it is common for the procedural and jurisdictional hearings of arbitration proceedings to happen through tele or video-conferencing.⁴ Arbitration has been preferred by parties that want an expedited route to

¹ Students at ILS Law College, Pune

² SUO MOTU WRIT (CIVIL) NO.5/2020,

https://main.sci.gov.in/supremecourt/2020/10853/10853_2020_0_1_21588_Judgement_06-Apr-2020.pdf

³ Supreme Court to continue virtual court system, The Hindu (June 15, 2020, 02:53 IST),

<https://www.thehindu.com/news/national/sc-to-continue-virtual-court-system/article31828053.ece>

⁴ Ila Kapoor, #PleaseMuteYourself: Cross-examinations in the new virtual reality, Bar and Bench (Aug 14, 2020,

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

justice and one of the main reasons that the process of arbitration is faster than Courts is the conduction of proceedings in the virtual world as video conferencing helps save a great amount of time and resources that are usually required for physical proceedings. Thus, besides fulfilling the ad-hoc purpose of prevention of the spread of infection, virtual courts can be a groundbreaking solution to the Goliathan problem of pendency plaguing the Indian judiciary.

Prospects presented by Virtual courts

The prospects coming out of virtual courts can only be fairly assessed if a ground evaluation of the status quo is done. The Supreme Court started functioning at a fast pace the moment it shifted to virtual mode. In the data released by the Court, it has been disclosed that 15,596 matters were heard in the period of virtual functioning i.e. between 23rd March and August 20th, and approximately 4300 matters were disposed of. The extensive statistics shows that the Supreme Court constituted almost 1020 benches while functioning via video conferencing.⁵

The Delhi High Court also provided information regarding the Court's functioning during the lockdown period. The Court heard 13000 matters and disposed of almost 2800 cases in the period of April-July.⁶ The Delhi district court reported that it had heard 67000 cases in the same period through video conferencing. The Delhi HC stated all the Bar members had "actively and whole-heartedly participated in the virtual hearings", again highlighting that the virtual model was certainly a feasible one. Although these numbers seem to suggest that Indian Courts are indeed ready for shifting to the virtual mode in normal times as well, it is merely the optimistic view of the half-full glass. No Indian court has functioned at its full capacity due to the lacunas in online infrastructure available and this has resulted in a significant drop in the disposal rate of matters. Jharkhand High Court due to a barely working online system worked with only 2 benches instead of the mandated number of 12.⁷ Thus, to present the paradigm in its entirety, we must look at the impediments in the functioning of the judiciary via video conferencing. Over 15,000 matters heard, 4,300 matters disposed of: How has the SC fared

2:25 PM IST)<https://www.barandbench.com/columns/pleasemuteyourself-cross-examinations-in-the-new-virtual-reality>

⁵Over 15,000 matters heard, 4,300 matters disposed of: How has the SC fared after over 100 days of virtual functioning amid COVID-19, Bar and Bench (Aug. 20, 2020, 10:57 AM), <https://www.barandbench.com/news/litigation/supreme-court-virtual-functioning-amid-covid-19-over-15000-matters-heard>

⁶Aditi Singh, Virtual Courts: Delhi HC, subordinate courts hear around 13,000 and 67,000 cases, respectively, from April 1 till July 31, Bar and Bench (Aug. 21, 2020, 07:52 PM),

⁷Candler, Blake. "Discussion with Rupesh Singh." 18 May 2020

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

after over 100 days of virtual functioning amid COVID-19, Bar, and Bench (Aug. 20, 2020, 10:57 AM),

Challenges

1. Lack of infrastructure

Since the Internet's reach can be widespread and general, an online Court system can increase access to justice as enshrined in Article 39A of the Constitution. If the entire Court system is to function virtually, it can help in mitigating expenses on infrastructure, transportation, security etc. Currently, this system seems like a fantasy in India considering 72% of the population don't have access to the Internet.⁸ Most people in India are rural and unprivileged, hence they have no access to quality Internet. The divide between different States depending on their network infrastructure and relative affluence is huge. While metropolitan cities like Bangalore, Mumbai and Delhi, have continuous access to the internet, there is still a vast majority of citizens who would continue to suffer due to lack of basic infrastructure, for example, the entire North-East region has only 4.3 lakh Internet connections.⁹ In order to overcome these barriers, it is imperative that the government upgrade the e-infrastructure of all courts and the people using its services for effective virtual transformation.

2. Retaining professionalism and decorum: Instances of casualness by lawyers during virtual proceedings

Litigation and advocacy, much like any other formal professions has its own set of ethics and decorum. But these ethical standards inside the courtroom are placed at a very high pedestal as the Court is to be treated with honor and dignity. This fact is being stressed upon by us because there have been certain incidents of breaking of court decorum that were widely reported during the period of virtual functioning of the court.

The Rajasthan High Court's Jaipur bench had to adjourn proceedings in a case because the petitioner's counsel was wearing a vest instead of the 'proper uniform'. The High Court while adjourning the matter stressed upon the fact that the virtual mode of functioning of the court did not make following the decorum of the Court any less important.¹⁰ In an even more

⁸AaratiKrishan, How many Indians have Internet?, The Hindu (March 27, 2017, 01:07 IST) <https://www.thehindu.com/business/how-many-indians-have-internet/article17668272.ece>

⁹*Id.*

¹⁰ Rajasthan HC Adjourns Hearing After Advocate Appears on Video Call in Baniyan, The Wire (April 25, 2020), <https://thewire.in/law/rajasthan-hc-adjourns-hearing-after-advocate-appears-on-video-call-in-baniyan>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

disconcerting incident, a senior counsel of the Supreme Court, was seen smoking a pipe during a virtual hearing of the Rajasthan political matter in the Supreme Court. This was not merely breaking the discipline of the Court but a flagrant violation of the Bar Council Rules.¹¹

Although, it is fair to argue that such incidents are rare but the clout arising from even one such incident can go far and wide in impugning the case being made for judicial proceedings to a virtual mode permanently. It is thus extremely essential to ensure that the conduct of the advocates and litigants during virtual proceedings are reflective of the same virtues that their profession calls for in the physical courtroom.

3. Digital literacy of everyone right from the room clerk to the judge

Since the reach of the internet in India is scant, lack of digital literacy of people can be an impediment in achieving the E- court system. In order to overcome this obstacle, advocates, judges, judicial officers need to be trained in this aspect. Digital illiteracy can be overcome through providing assistance via phone. Trained professionals can guide users through the process over phone calls. This service is offered by the UK's Assisted Digital Service which supplements the provision of digital service as provided by the UK Government which includes their courts and tribunals.¹²

4. Risks of cyber attacks

The primary technical challenge in virtual courts is the risk of a cyber-attack. Hackers have been known to target government agencies of many countries of the world and thus, having the entire judiciary operate on the internet will invite attacks from all sorts of hacker groups. This issue can only be dealt with employing strong encryption technology and unbreachable firewall systems. The virtual platforms have been working with the governments to help protect the integrity of the system. For instance, Zoom introduced mandatory passwords to enter meetings and other similar measures to secure the video conferencing from unwarranted participants.¹³

5. Open- court principle violated?

¹¹ShrutiMahajan, Recall Senior designation from Dr. Rajeev Dhavan for smoking during virtual court hearing: Petition filed in Supreme Court, Bar and Bench (Aug 19, 2020, 10:15 PM IST), <https://www.barandbench.com/news/litigation/recall-senior-designation-from-rajeev-dhavan-petition-filed-in-supreme-court>

¹²Assisted digital support: an introduction, UK Govt., <https://www.gov.uk/service-manual/helping-people-to-use-your-service/assisted-digital-support-introduction>

¹³ Setting updates for free accounts and single Pro users, Zoom (April, 2020), <https://support.zoom.us/hc/en-us/articles/360041408732-April-2020-Setting-updates-for-free-accounts-and-single-Pro-users>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Open Court principle requires the court proceedings to be free and accessible to the public and the media. Presently, Indian courts have not allowed the public to witness proceedings. Article 19 of the Indian Constitution enshrines the fundamental right to freedom of speech and freedom of press, both of which include public and media personnel attending trials. The Apex Court spoke about the importance of Open Courts in the case of Naresh Shridhar Mirajkar vs State of Maharashtra stating that, “Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice.” The principle of Open Court is further encapsulated in Article 145 (4) of the Constitution, Section 153B of Code of Civil Procedure 1908, section 327 of the Code of Criminal Procedure 1973. A proposed solution to which is live streaming of the video conferencing for the public to view as suggested by the SC itself in Swapnil Tripathi vs Supreme Court of India.¹⁴ The Supreme Court laid down a set of guidelines that include the public being permitted to trials and proceedings through a password protected link which would be generated by the Supreme Court office. However, this still means that the trials won’t be open for everyone. In this regard, the Supreme Court can take inspiration from the Coronavirus Act 2020 in the UK, which provides provisions for broadcasting and recording of court proceedings through video-conferencing.¹⁵

Advantages of Virtual Courts

If we can counter these challenges successfully and ensure a smooth transition to the virtual mode permanently, it can be extremely beneficial to the justice system in India. Among the plethora of consequential advantages, the most concrete ones are:

1. Increased access to justice:

The conducting of court proceedings via the internet could make judicial remedies available to more and more people living in remote places of the country. If access to the internet is ensured to every village and town of the country, litigants will be able to file petitions, participate in

¹⁴Arundhati Katju, Live streaming of court proceedings is part of the right to access justice, Indian Express (July 3, 2020 9:32 am),

<https://indianexpress.com/article/opinion/columns/live-streaming-supreme-court-proceedings-coronavirus-6487482/#:~:text=Over%20the%20last%20few%20years,to%20make%20justice%20more%20accessible.&text=During%20the%20lockdown%2C%20journalists%20have,then%20view%20court%20proceedings%20themselves.>

¹⁵ Coronavirus Act, 2020 c. 7,

<https://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

hearings and trials from their home only. This process will not only increase the reach of justice but also reduce the costs incurred by common people in transit for physical hearings.

2. Speedy disposal of cases:

Virtual Courts will ensure expedited proceedings because there would be no time spent on setting new dates because of the unavailability of lawyers, witnesses, and litigants. Trials will also function at a faster pace as there would be lesser bureaucratic hurdles in getting a witness or an alleged to join a video conference. Virtual courts will further act as a deterrent to unnecessary rhetoric and redundant dramatic monologues that happen in physical courts because of the limited physical aspects on display on a laptop screen. This not an ignorant assumption but derived from instances that were observed during the virtual court proceedings. In the Karnataka High Court, essential matters about migrant labors, health workers, and guidelines on social distancing were brought before various benches and the advocates made precise and concise arguments consequently leading the Court to pass some swift judgments that were extremely instructive to the State government.¹⁶ Thus, there is a positive psychological impact of virtual courts as well.

3. Saving of resources:

Lastly, an important advantage of virtual courts is the conservation of many resources such as police personnel escorting witnesses, courtroom guards, etc. whose services can be better utilized in doing other police work. Further, shifting to the online world would also mean reduced usage of stationery and paper that is otherwise used in counsel submissions, filing cases, etc. Collectively, a lot of resources can be saved by Courts transferring to the virtual model.

Conclusion

Even though virtual courts currently are meant to temporarily assist the courts to surpass the pandemic, they are very likely to stay here forever as marked by the Chief Justice of India¹⁷ and Chief Justice of Tamil Nadu HC.¹⁸ Virtual hearings strongly point out the fact that the judiciary

¹⁶Roshan P. Kothari, In a Virtual Courtroom, Signs of Long-Awaited Change, The Wire
<https://thewire.in/law/coronavirus-lockdown-virtual-court>

¹⁷ZarirBharucha, India: India's Embrace Of Online Courts, Mondaq (July 28, 2020),
<https://www.mondaq.com/india/operational-impacts-and-strategy/969822/india39s-embrace-of-online-courts?signup=true>

¹⁸Virtual courts will benefit masses, says SC judge, The Hindu (May 26, 2020 23:37 IST)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

is an essential public service that needs to function perennially. In conclusion, there is a lot of work still left to make virtual courts feasible and glitch-free in India but the anticipated benefits are a motivating incentive for the government and the judiciary to actively take steps for ensuring its realization timely in this ever-changing world.



<https://www.thehindu.com/news/cities/chennai/virtual-courts-will-benefit-masses-says-sc-judge/article31682001.ece>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>