

## ANALYSING THE SCOPE OF VIRTUAL COURT HEARINGS IN India

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### ABSTRACT

*With the increasing internet accessibility in India and the challenges posed by the Covid-19 pandemic, the practice of virtual court hearing has been accelerated in India. Virtual court acts as an effective means to conduct Court proceeding debarring geographical barriers and uplift the productivity of Courtroom functioning. Along with the practical applicability of virtual court hearing in India comes the glitches or challenges posed by the virtual hearing of matters and nonetheless the necessity of physical hearing of matters cannot be ignored. In pursuance of this, arguments in favour of reverting towards physical hearings after the pandemic situation ends are being posed before Indian Judiciary which negate the applicability of virtual courtrooms. Thereby, this article aims to analyse the applicability, necessity and efficacy of virtual court hearing along with the challenges posed by Virtual Court hearings in India.*

**Keywords-** *Virtual Courts hearings, applicability, efficacy, challenges*

### INTRODUCTION

With the continuous upsurge in the internet users, India is the second largest internet users base in the world with half of the India's population having access to the internet in the year 2020.<sup>1</sup> In this scenario of increasing internet accessibility coupled with the issue of social distancing due to COVID-19 outbreak, it becomes expedient that Courts adopt new technological driven mechanism to continue the justice delivery system. Even Hon'ble Chief Justice Sharad Bobde embarked that the technology and advancement in artificial intelligence

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<sup>1</sup> Sandhya Keelery, *Internet usage in India - statistics & facts*, STATISTA (Jul 7, 2020), <https://www.statista.com/topics/2157/internet-usage-in-india/>.

have created an opportunity for courts to shift to digital solutions for justice delivery and simultaneously to reduce the pendency of cases by enabling sophisticated mechanisms.<sup>2</sup>

In India, the concept of digitalization of the judiciary was not an alien concept as this task was formally started in the year 1990 by the National Informatics Centre (NIC) which began digitization of courts through specially designed applications like COURTIS: a court information's system which enabled computerisation of information related to cases and JUDIS which provided complete text of cases.<sup>3</sup> This system was functional in selective court only yet it formed the backbone of judiciary in the pandemic. Further, the remand and disposition statements of prisoners was conducted through video conferencing which has been operationalized in around 3200 courts in India even before the pandemic hit the country.<sup>4</sup> The Apex Court in the PIL case of *Swapnil Tripathi v Supreme Court of India*,<sup>5</sup> provided the set guidelines for public broadcasting of the decided cases at Courts' discretion. All these instances readily suggest that Indian Judicial system is already marching towards the technology driven courts which enables low contact and efficacious justice delivery mechanism.

## WHAT ARE VIRTUAL COURTS?

To understand the working of virtual courts, it is necessary to understand the meaning of Virtual Court. No legislation or report of Law Commission defines the term 'Virtual Courts' however, Section 3 of Indian Evidence Act defines 'Courts' as inclusive of all Judges and Magistrates and every person excluding arbitrator or any other person legally authorized to take evidence.<sup>6</sup> However, the Apex Court in the case of *Ram Rao v. Narain*,<sup>7</sup> observed that the definition of 'Courts' under Section 3 of Indian Evidence Act is not restricted to the Courts hearing Civil and Criminal matters but this definition can be given wider

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<sup>2</sup> *Virtual Courts in India: A Strategy Paper*, VIDHI: CENTRE FOR LEGAL POLICY PROJECT JALDI: JUSTICE ACCESS & LOWERING DELAYS IN INDIA 5 (Apr. 2020), [https://vidhilegalpolicy.in/wp-content/uploads/2020/06/20200501\\_Strategy-Paper-for-Virtual-Courts-in-India\\_Vidhi-1.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2020/06/20200501_Strategy-Paper-for-Virtual-Courts-in-India_Vidhi-1.pdf).

<sup>3</sup> Shalini Seetharam and Sumathi Chandra Shekran, *E Courts in India From Policy Formulation to Implementation*, VIDHI LEGAL POLICY (2016), [https://vidhilegalpolicy.in/wp-content/uploads/2019/05/eCourtsinIndia\\_Vidhi.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2019/05/eCourtsinIndia_Vidhi.pdf).

<sup>4</sup> Sobhana K. Nair, *Law Ministry panel bats for more virtual courts*, THE HINDU (Sept. 11, 2020), <https://www.thehindu.com/news/national/continue-virtual-courts-in-post-covid-period-as-digital-justice-is-faster-cheaper-panel/article32579533.ece>.

<sup>5</sup> *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 628.

<sup>6</sup> The Indian Evidence Act, 1872, No.1, Acts of Parliament, 1872, § 3.

<sup>7</sup> *Ram Rao v. Narain*, AIR 1969 SC 724.

interpretation. Even under Indian Penal Code, the term ‘Court of Justice’ refers to ‘a judge or a body of Judges who are empowered by law to act judicially as a body.’<sup>8</sup>

The meaning accorded to the ‘Virtual Courts’ connotes virtual courtroom to be judicial forum where litigants and lawyers are not required to be present physically, while the judicial services are rendered electronically by using the technology.<sup>9</sup> By this definition the virtual courts can be considered as ‘Courts’ within the meaning of Section 3 of the Indian Evidence Act and even under Indian Penal Code as Virtual Courtroom consists of Judges who is empowered to act judicially but in a virtual setup.

The Rajya Sabha Committee presented its 103<sup>rd</sup> Report on the ‘Functioning of Virtual Courts’ highlighting the meaning of virtual courts to be a place of justice delivery wherein the plaint and other documents are filed electronically, evidences and court fees is submitted digitally, arguments of lawyers are heard over video-calling, witnesses give their testimony remotely over videoconferencing and Judge decide the dispute virtually by presiding from the Courtroom or from any other place.<sup>10</sup> Further, the Supreme Court having taken the cognizance of problems posed by the pandemic, issued guidelines for modus operandi of virtual courts and observed that the advancement of technology and digital platforms have turned virtual court into reality which works similar to physical courts.<sup>11</sup>

## **BENEFITS AND CHALLENGES OF VIRTUAL COURTS**

Two fundamental objectives are to be taken into consideration while dealing the benefits and challenges related to virtual courts. Firstly, technology needs to be viewed as an enhancer of access to justice, as stated above, physical/social distancing should not hamper the rights of the citizens and every course of action should be adopted which can provide access to justice to all citizens. Secondly, technology should be viewed as a service rather than a rule, this kind of approach will help us enhance the contours of virtual courts and will make it more inclusive in character. The essence behind this switch is basic i.e. to maintaining access to

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<sup>8</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, § 20.

<sup>9</sup> Chitranjali Negi, *Virtual Courtrooms: Concept & Overview*, SSRN ARTICLE (Apr. 16, 2016), <http://dx.doi.org/10.2139/ssrn.2765766>

<sup>10</sup> Rajya Sabha, Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *103<sup>rd</sup> Report on Functioning of Virtual Courts/Courts Proceedings through Video Conferencing* 3 (Sept. 11, 2020).

<sup>11</sup> In Re: Guidelines for Courts Functioning through Video Conferencing during Covid-19 Pandemic, Suo Moto Writ (Civil) No. 5/2020, at 3, [https://main.sci.gov.in/supremecourt/2020/10853/10853\\_2020\\_0\\_1\\_21588\\_Judgement\\_06-Apr-2020.pdf](https://main.sci.gov.in/supremecourt/2020/10853/10853_2020_0_1_21588_Judgement_06-Apr-2020.pdf).

justice. In the pandemic the administrative actions are exorbitant and it is the duty of the courts to maintain the standards of rule of law for the country in all circumstances this further highlights the need to keep a functional judiciary in these times.

In this backdrop, when “technology is here to stay” the need for analysing the benefits and challenges of this new method of justice delivery becomes the need of the hour. However, in this process the needs and the concerns of all the stakeholders of this justice delivery system needs to be taken and no one can be excluded from this process, the stakeholders include, the litigants, advocates, judges, court staff, media, and other dependent parties related to these principle stakeholders.

## ADVANTAGES OF VIRTUAL COURTROOMS

The advantages of switching towards virtual courts are manifolds namely;

- The most fundamental reason for adoption is the cost-effective characteristic of the interface. The geographical locations often seem difficult for both the advocates and the witnesses. Earlier, this distance was used malefically by advocates to push the dates of the hearings, this extended the time period of cases and hindered speedy trials, but with the recourse to video conferencing the geographical barriers are removed to a great extent. This further, amidst the pandemic, ensures safety of individuals.
- The e-services have a huge database and make the proceedings more and more transparent and thereby make it more efficient. The case logs and its files today are all available in the websites of the court which are made accessible to the public at large. This helps both the litigants and the advocates, as it saves time and helps lawyers avoid excessive file and paper sifting.
- With growing environmental concerns, the paper-based systems have to be made restrictive. The Supreme Court has promoted this need by making changes in the filing procedures time and again. Further, the e-databases make it easier for the courts to access and update files. The filing procedures are completed in a click of button rather than taking days at the hands of the court staff. This also helps in making data sharing among the courts easier and further facilitates the process of speedy trials.

- The criminal justice system can never be put to a halt as it will end up hampering one of the most fundamental and human rights of the citizens in a very deep way. The provisions like those of bail, parole and sentencing of convicts forms the core of criminal justice system and not taking speedy considerations of these hampers rights to life and liberty of the citizens.

Moreover, in a country like India, where the population of under trial prisoners is overwhelming, the need for disposal and hearing of cases becomes a key goal for the judiciary. The shift to virtual courts has brought justice to the plight of the prisoners to an extent. Lastly, the laws of the country are also very much in consonance with this technological shift in the justice delivery mechanism. For example, under section 65A and 65B of the Indian evidence act there are special provisions of electronic evidence and their admissibility in courts. In the case of *State of Maharashtra v. Praful B Desai*<sup>12</sup>, the Supreme Court expanded the scope under these sections and highlighted the technological trend and need to include video conferencing in judiciary. Moreover, the courts have time and again allowed the witnesses especially victims of sexual crimes to appear through video conferencing.<sup>13</sup> Moreover if the data of the cases that have been dealt with by the judiciary is looked at and the modus operandi adopted through virtual hearing does present an optimistic picture and can be taken as a scheme which can be made a generality rather than an exception.<sup>14</sup>

## CHALLENGES POSED BY VIRTUAL COURTROOMS

The key to growth is being critical of the situations and therefore, the problems and the challenges that might come ahead in this road to digitalization also require a glance. Firstly, The Telecom Regulatory Authority of India (Hereinafter referred as TRAI) in its report, poses a very perplexing state of affairs. It states that from 2014 to 2018 the internet usage has come up from 828 million to 4640 million, suggesting that the country has experienced an expansion of its digital base.<sup>15</sup> On the other hand the data for internet density and penetration

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<sup>12</sup> State of Maharashtra v. Praful B Desai, 2003 4 SCC 601.

<sup>13</sup> Sakshi v. Union of India, AIR 2004 SC 3566.

<sup>14</sup> *Supreme Court's 1021 Benches Conducted Over 15,000 Hearings Amid Covid-19*, NDTV NEWS (Aug. 20, 2020) <https://www.ndtv.com/india-news/supreme-courts-1021-benches-conducted-over-15-000-hearings-amid-covid-2282193>.

<sup>15</sup> The Indian Telecom Services Performance Indicator Report, TRAI: Telecom Regulatory Authority of India (Jan. 8, 2020).

in the country shows that only 20% of the population has access to the internet. This suggests a divide in the urban and rural population in terms of technological advancement. On one hand where the urban population is enhancing itself each day the rural population struggles with basic internet connections at their end and this consequently deepens the divide. Another problem attached to this divide is the problem of digital literacy. Not all advocates and litigants find themselves to be comfortable with technology. People coming from backward areas in spite of having genuine claims might be excluded from this digital justice system. Moreover, in the background that the advocates and court staffs are struggling to meet their ends and have approached the courts to give them some means to sustain burdening them with the tasks of getting decent internet connections is something that is not acceptable.<sup>16</sup> Further digital literacy cannot be restrictive to advocates and litigants, it involves various other personnel also especially the court staffs. The court staff has been working manually since the inception of courts and therefore turning them into technologically savvy and efficient individuals under this new regime seems a difficult and time taking task.

Secondly, along the same lines comes the problem of technological infrastructure that is uneven across the country. The people on cities like Mumbai and Delhi have a very different network and connection as compared to the people like in north east states or extreme north borders of the country. The internet penetration in these places is scarce. Furthermore, the courts only in these regions do not have the basic IT infrastructure that is needed. Therefore, without making internet penetration reasonable enough the functioning of virtual courts will not be successful. Thirdly, technology has its own vices which cannot be ignored. The world is witnessing a trend in cyber hacks and increasing cybercrimes. Against this idea, building efficient systems for an institution like judiciary seems a difficult task. Further the technical glitches that accompany each video conferencing often end up making the process redundant. Thirdly, the whole profession of law rests on the art of persuasion; virtual hearings have ended up restricting this and have made things mechanical to an extent owing to several technological and psychological factors which are often beyond control.

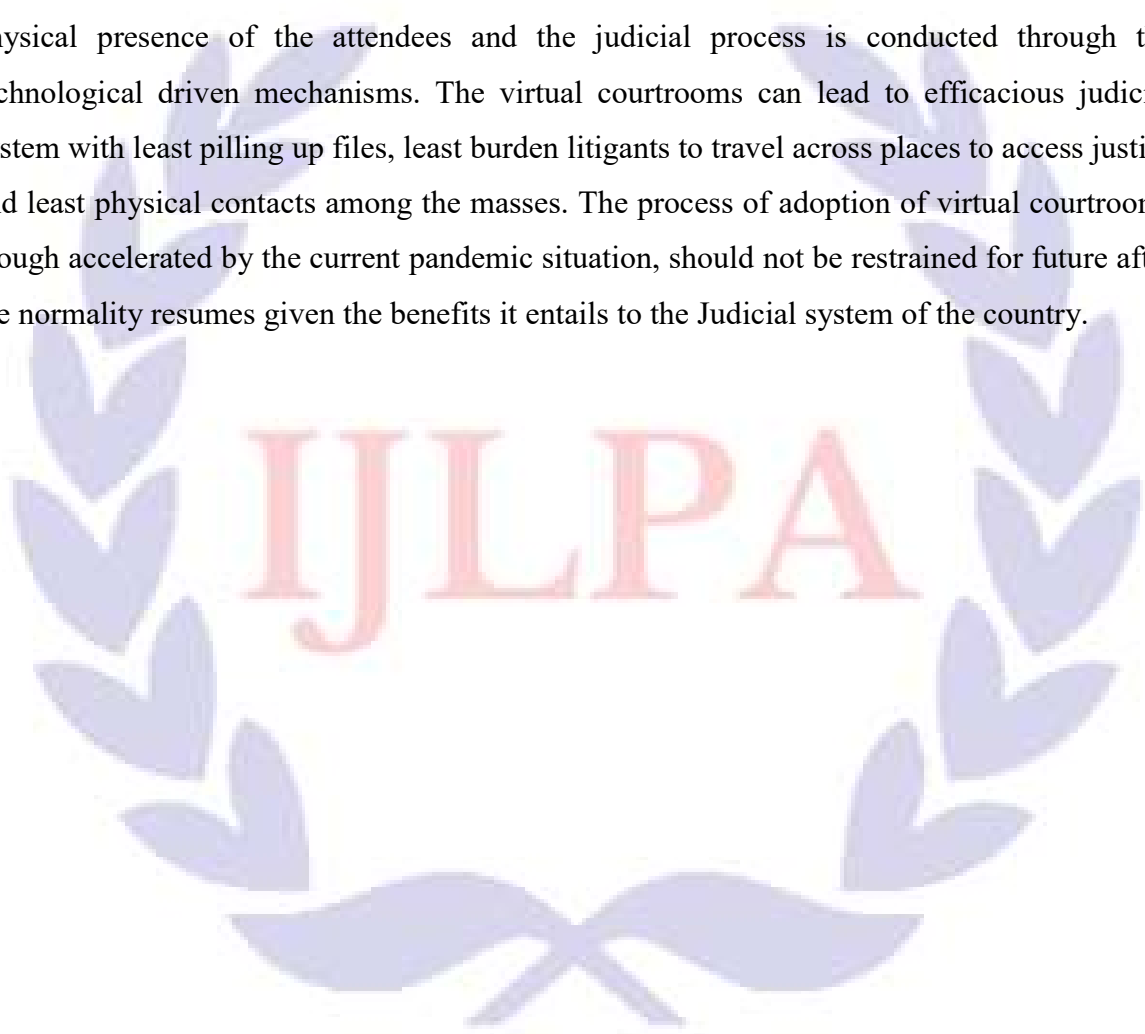
The courts have although floated exhaustive standard operating procedures and training manuals for these purposes but they are yet to be realized by the stakeholders in its entirety.

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<sup>16</sup> Antriksh Singh, *Indore: 1000 lawyers struggle to make ends meet amid Covid-19 Crisis*, TIMES OF INDIA NEWS (July 20, 2020), <https://timesofindia.indiatimes.com/city/indore/indore-1000-lawyers-struggle-to-make-ends-meet-amid-covid-19-crisis/articleshow/77064415.cms>.

## CONCLUSION

Since access to justice is the primary rule embedded in our Constitution and cannot be denied to the general public, the virtual courtroom is best technique available to combat the present impediments posed by Covid-19 outbreak and even for efficacious justice deliver in future. The virtual courtrooms work on the similar lines as of the physical courts, but without the physical presence of the attendees and the judicial process is conducted through the technological driven mechanisms. The virtual courtrooms can lead to efficacious judicial system with least pilling up files, least burden litigants to travel across places to access justice and least physical contacts among the masses. The process of adoption of virtual courtrooms though accelerated by the current pandemic situation, should not be restrained for future after the normality resumes given the benefits it entails to the Judicial system of the country.

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