

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

The Renaissance of Virtual Courts: Towards the Digital Age

RICHA JAIN¹ AND SARTHAK CHAUDHARY²

ABSTRACT

As the whole world is struggling through this delirium state of nature due to COVID-19, our justice system has been unflagging towards its zealous duty of delivering justice. In a very short span, it has adapted to all the uncertain norms to fulfil the tall order of running virtual courts. As coronavirus flooded and lockdown extended, a hint of vicissitude was extremely necessary for the probable future. We are residing in a digital era where the scantiest needs are fulfilled with the help of technology and tech-savvy people.

Though the idea of merging technology with the administration of justice was decided way back in 2005, it is because of the pandemic that its immediate need has been felt. With the realization that pandemic is here to stay, virtual courts have been a topic of recent discussions. Since virtual courts seem to provide an alternative to our physical courts, there are some other appalling issues that need to be confronted.

As we will see further, we encounter the harsh reality that the majority of the population lives in an underprivileged section of society. Working from home has come with grave difficulties for many advocates and judges and they are simply helpless under the garb of preposterous inequality.

Though these artificial setups have provided a new way to seek justice, it is extremely important to confront some issues and questions regarding the constitution and other procedural laws in the country.

This piece serves as a repository of information regarding virtual courts in India. From its history to its current position. The article also takes cognizance of the various suggestions, recommendations and solutions to address the concerns regarding virtual courts. It is an endeavour to understand, analyse and review the relevance of virtual courts, paving way for further contribution in this unfathomed field of research.

Keywords: *Virtual Courts, Digitization, Justice, COVID-19, Indian Judiciary.*

¹ Author is a student at Dr. Ram Manohar Lohiya National Law University, India.

² Author is a student at Dr. Ram Manohar Lohiya National Law University, India.

I. A SPECTRUM OF JUSTICE: INTRODUCTION

“But today our very survival depends on our ability to stay awake, to adjust to new ideas, to remain vigilant, and to face the challenge of change” - Martin Luther King Jr.

With the arrival of the global pandemic and shutting down of doors of the judiciary, virtual courts and concomitance with technology seem to be the only escapism. The Indian judiciary infamous for its lagging and dithering administration of justice once again stands at the cliff of determining the future of justice in our country. Virtual courts which are in their stage of infancy in India can be defined as, *“An e-court or electronic or virtual courts means a location in which matters of law are adjudicated upon, in the presence of qualified judges(s) and which has a well-developed technical infrastructure. It is a concept aimed at eliminating the presence of litigants or lawyers in the court and adjudication of the case online³”*.

Churchill once said, *“Never let a good crisis go to waste”*, the Indian judiciary today has in its hand the opportunity of turning this apocalypse into *‘a technological revolution’*. Though the question of existence of the virtual courts has become redundant, there are some implications that restrict the use of virtual courts in their totality.

It is important to discuss and deliberate a matter of such extreme importance for courts to intervene in matters of public importance, considering the extreme callousness that the government has displayed in handling covid-19 crisis.

This article is an attempt to provide an overview of the existence, development and future of virtual courts in India. The article starts with providing a historical perspective tracking its history from being a mere idea to actual reality. The next part of the article discusses the validity of virtual courts from the perspective of our constitution and other laws in the country. Followed by challenges and suggestions which can make the whole system more efficient and effective.

II. FROM GAVELS TO MICS: A HISTORICAL PERSPECTIVE

The development of E-courts in India can be traced back to 2005. Chief Justice M C Lahoti put forward the prospect of establishing *‘the e-committee’* of the *‘Supreme court of India’*. Envisaging the need to equipping the Indian Judiciary with modern-day technology and considering the lackadaisical nature of the Judiciary in our country this committee was set up to tackle some appalling issues. The primary objective of this committee was to prepare the

³ E-Committee, Supreme Court of India, VIRTUAL COURTS, (last visited Apr. 10, 2020) <https://ecommitteesci.gov.in/service/virtual-courts/>

Indian judiciary for “*the digital age, to adapt and apply technologies and communication tools making the justice delivery system more efficient*”⁴, Apart from assessing ourselves with the technology, the underlying reason for constructing E-courts was the better deliverance of justice to everyone in our country and smoothening the chucked muscles of ‘*Indian judiciary*’.

The e-committee of the supreme court of India submitted a report, “***National Policy and Action Plan for implementation of Information and communication technology in Indian Judiciary***”⁵ which provided a configuration of the e-courts project in India. The e-court project has been characterized into two phases. *Phase-I* was to bring high courts and district or subordinate courts under the purview of computerization. *Phase-II* of this project was implemented to form a grid of all the courts in the country with the ‘*National Judicial Data Grid*’ and bringing more efficiency in the management system and lubricating the e-filing & e-payment.

“*In 2019 Delhi and Punjab & High court introduced their virtual court at Tis Hazari court and Faridabad initiating the legacy of virtual courts in India*”⁶. In September 2020, the “*Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice*” set forth its report on “**Functioning of the virtual courts' proceedings through video conferencing**”. This report suggested that such courts can be used for remand matters and other ‘not-so-important’ issues like traffic challans or other trivial offenses. The explicit reason for setting up such courts was to “reduce the pendency of cases” but with the arrival of the notorious virus and shutting down of judiciary these virtual courts became the only places of seeking justice, even hearing of significant matters could only take place through these artificial set-ups. Though it took a pandemic to realize the importance of virtual courts and the role of technology. Some major lacunae are confronting the Indian Judiciary in continuing with this new normal.

III. ASSESSING THE CONSTITUTIONALITY OF ‘THE MUTATED SYSTEM’

“*I want to dissuade people from the idea that virtual court hearings are some sort of a panacea.*”

– Justice DY Chandrachud

⁴E-Committee, Supreme Court of India, Vision and Objectives, (last updated May 13, 2021) <https://ecommitteesci.gov.in/about-department/vision-objectives/>

⁵ E-Committee, Supreme Court of India, *National Policy and Action Plan for Implementation of Information and Communication Technology in The Indian Judiciary*, (Aug. 1, 2005), <https://main.sci.gov.in/pdf/ecommittee/action-plan-ecourt.pdf>

⁶ DIGANTH RAJ SEHGAL, *FUTURE OF VIRTUAL COURTS IN INDIA AFTER COVID-19 CRISIS*, IP LEADERS BLOG, (APR. 14, 2020) [HTTPS://BLOG.IPLEADERS.IN/FUTURE-VIRTUAL-COURTS-INDIA-COVID-19-CRISIS/](https://blog.ipleaders.in/future-virtual-courts-india-covid-19-crisis/)

The appalling crisis of the pandemic has changed our lifestyles in unimaginable ways. One such wrecking can be felt in the ‘*administration of justice*’ in India. In 2020, the apex court extracting the power from “*Article 142 of the constitution*” and proposed the “***Guidelines for Court Functioning through Video Conferencing During Covid-19 Pandemic***⁷” through which the highest court of the land directed the use of “*Adopting with new technology*” and seeping into the new normal. Though the importance and pertinence of virtual court in these extraordinary circumstances cannot be emphasized enough, it would be foolish to not question the constitutionality of these artificial set-ups. Since adopting technology and letting go of our archaic laws and regulations cannot be a justification for breaching the morality and provisions of our constitution and other laws in the country.

“*Article 39A of the constitution*” which states that, “*The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid*”,⁸ considering the lack of Internet facilities in our country and the despotic tendencies of our beloved rulers who bestow with themselves the power to impose internet shutdown which can be justified by the data which has made India the “*Internet shutdown*” capital of the world, this may not be the best way out to provide “*Doorstep justice*” to people taking into account the prevailing circumstances. “*Article 145 (4) of the constitution*” mandates that, “*No judgement shall be delivered by the supreme court save in open court, and no report shall be made under Article 143 save in accordance with an opinion also delivered in open*”⁹. “*This provision of the constitution is being jeopardized taking into account the temporary use of virtual courts*¹⁰”. This conformity can be also be availed from “*Section 327 and Section 158B of the Code of Criminal Procedure which mandates that criminal courts need to be open courts to which public have access besides exception of rape cases and others*¹¹”.

However, if we take into picture the relevance of “*Evidence*” the validity of virtual courts can be maintained by the precedent of “*State of Maharashtra v. Praful Desai*” in which the court said, “*Evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video-conferencing*¹²”.

⁷ In Re: Guidelines for Court Functioning Through Video Conferencing During Covid-19 Pandemic SUO MOTU WRIT (CIVIL) NO.5/2020 (India)

⁸ INDIA CONST. Art. 39A

⁹ INDIA CONST. art. 145

¹⁰ Deveshi Madan and Shubhangi Agarwal, *Enigma of Virtual Courts in India: A Conundrum*, Constitutional Law Society NLUO, (last visited 10 Nov. 2020), <https://clsnluo.com/2020/10/20/enigma-of-virtual-courts-in-india-a-conundrum/>

¹¹ Ibid.

¹² State of Maharashtra v. Praful Desai, (2003) 4 SCC 601

At the same time, realising the convoluted fact that cross-examination of the witnesses may not be as reliable as in the physical set-up of the court this may be more so in the case of vulnerable witnesses such as children and physically disabled which may lead to changes in extrapolating the decision of the respective case.

Transparency is the hallmark of a democracy, at a time when the concept of “Open courts” is losing its importance, maintaining ambiguity regarding court proceedings defeats the purpose of “Article 19 of the constitution”. In 1966, the Supreme court in the case of “*Naresh Shridhar Mirajkar v. State of Maharashtra*¹³”, held that, “*Public confidence in the administration of justice is of such great significance that there can be no two opinions on the board proposition that in discharging their functions as judicial tribunals, courts must generally hear causes in open and must permit public admission to the courtroom*¹⁴”.

It is the same case the apex court reiterated that “*openness is a principal component of the legitimacy of the judicial process and why the parties and the public at large abide by the decisions of courts*¹⁵”.

The question of live streaming of court proceeding has been a hot potato for a long time, it was in “*Swapnil Tripathi v. Supreme Court of India*¹⁶” that the issues of transparency were raised, in which the apex court had liberally stated that “*proceedings of cases which are of national importance and have an impact on the public at large should be live broadcasted*¹⁷”, considering the same the court put forward the idea that “*live streaming of courtroom proceedings is an extension of the principle of open courts*”.

IV. THE SETTING UP OF VIRTUAL COURTS: CHALLENGES AND SUGGESTIONS

As we witnessed a sudden shift to an era of virtual world encompassing artificial intelligence and novice technologies filled in a plethora of apps and gadgets, we realized that we were not ready for this change. Our justice system wasn't left behind, and the digitization of courts soon became an alternative-cum-reality. Evidently, this system met with many hindrances which we will be evaluating further as well as what measures can be taken to make e-courts more efficient.

¹³ Naresh Shridhar Mirajkar vs. State of Maharashtra, AIR 1967 SC 744

¹⁴ THE HINDU, *Return to open court after lockdown, lawyers urge CJI*, (last updated Apr. 26, 2020) <https://www.thehindu.com/news/national/return-to-open-court-after-lockdown-lawyers-urge-cji/article31434847.ece>

¹⁵ Pramod Kumar Dubey, *Virtual Courts: A sustainable option?*, Bar and Bench, (Apr. 12,2020) <https://www.barandbench.com/columns/virtual-courts-a-sustainable-option>

¹⁶ Swapnil Tripathi v. Supreme court of India, 2018 (10) SCC 628

¹⁷ VAIBHAVI BATRA, *SWAPNIL TRIPATHI VS SUPREME COURT OF INDIA*, E-JUSTICE INDIA, (OCT. 8, 2020) <HTTPS://WWW.EJUSTICEINDIA.COM/SWAPNIL-TRIPATHI-VS-SUPREME-COURT-OF-INDIA/>

Before delving into these issues, a question of immense importance arises- *“Is court a place or a service?”* As per Indian laws and acts, there exists no proper definition of the term ‘Court’. However, as per the legal glossary of *“the Legislative Department and Ministry of Law and Justice”*, *“Court is a place where justice is administered”*.

It is clear that the definition of courts varies across jurisdictions but they all have two elements in common: *“The court is a government entity having judge(s) and that it deals with the administration of justice thus making it clear that Court is more of a service than a place”*.¹⁸

In virtual courts documents of both the parties are filed electronically; submission of evidence is digital; witness testimony and arguments are heard over videoconferencing, and judges adjudicate online and a copy of judgement is made available on the website of the respective court.

“During the pre-COVID period, the Virtual Court set up was primarily used for conducting remand matters to prevent movement of prisoners between Courts and jails”.¹⁹

“In current scenario, the higher courts are handling ‘urgent’ matters while the lower courts are managing only ‘remand’ matters virtually”.²⁰ In this course many challenges and profound difficulties have come to the surface:

(A) An Unequal Digital Division

A major chunk of advocates and litigants lack basic equipment and infrastructure as well as high-speed internet connectivity especially those living in rural and remote areas. The success of virtual courts depends upon the idea that everyone has equal access to properly functioning equipment and has basic digital literacy.

As per certain data which flooded during 2017-20 internet usage has expanded manifold across the country but as per *“TRAI data”* *“the internet density of India stands at 52 percent, 66 percent population in India resides in rural areas of which only 27 percent has internet access, and only 25 percent Indian have access to smartphones.”*²¹ More than 50 percent of the lawyers do not have access to any laptop or computer then it seems a fool’s paradise to assume that

¹⁸ Department-related parliamentary standing committee on personnel, public grievances, law and justice, *One hundred-third report on functioning of virtual courts/ court proceedings through video conferencing (Interim Report)*, Page10 (1.9), 2020

¹⁹ 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>

²⁰ Yashvi Singh, *Virtual Courts: Challenges and Opportunities*, Legal Service India, <http://www.legalserviceindia.com/legal/article-3613-virtual-courts-challenges-and-opportunities.html>

²¹ Telecom Regulatory Authority of India, *The Indian Telecom Services Performance Indicators April – June, 2020*, https://traai.gov.in/sites/default/files/Report_09112020_0.pdf

everyone can participate in virtual courtroom discussions.

Even if the availability of a device and the skill required for its usage is somehow fulfilled, the room again fades due to a connectivity divide. It is high time that *'the ministry of communication stepped up to ensure timely implementation of the national broadband mission'* especially in the rural areas. Thus, in this already shackled state of mind of many advocates, a VC becomes a costly affair and that too in a country where the majority of the population delve into an underprivileged society.

(B) Privacy Risks and Data Security

The biggest complicated issue of privacy intrusion and data security is still lying untouched. All the virtual hearings take place via third-party applications such as *"Zoom, Cisco, Video"* etc. Cybersecurity and hacking of such confidential meetings become a left-hand's play for unethical hackers. In an instance, the courts of *the United States* had to face Zoom bombing of unwanted intrusion by hackers during a video-conferencing.

When a client goes to a court physically, he is assured of his data confidentiality but due to visible concerns of data piracy during online hearings, a client loses his trust in the highest courts of justices. This reasoning somewhere nullifies the very idea of the justice system and its integrity.

Third-party software and platforms are not only highly un-viable options but also possess major security risks such as hacking and data manipulation. According to the PCS committee's report, a bar member recommends that: *"Blockchain technology should be leveraged to improve the reliability of evidence and security of transactions and to fortify digital security of case files"*.²² An operational and standardized system of verification needs to be in place. A probable idea could be to develop India's own fortified and trusted software which will be used only for such highly esteemed purposes.

(C) Weak Infrastructure

Courts do not have proper infrastructure. The hardware and software provided by the court have a very low configuration in bandwidth. Connectivity issues arise which hampers the entire judicial proceedings. In the current state, neither the Courts nor the Counsel appearing for the parties have any option for secured transmission of documents. *"According to the Ministry of Electronics and Information Technology and NIC"*: *"A Centralised Video Conferencing*

²² Department-related parliamentary standing committee on personnel, public grievances, law and justice, *One hundred-third report on functioning of virtual courts/ court proceedings through video conferencing (Interim Report, Page 14 (2.9) (2.13) (2.14), 2020.*

*Infrastructure will be installed which would be going down right up to the District and Subordinate Court level which can be based on **cloud computing** so that disruptions do not take place”.*

The supreme court is pushing for an e-filing system, which will change the filing processes for lawyers radically. With this, they will be able to file matters from the comfort of their homes. Although the paralegal staff is now over-burdened as they have to take a print-out of each case bundle, scrutinize them, identify mistakes, and re-print the corrected copies. We need a system where we can engage more literate manpower into scrutinizing such documents online with the help of AI and suffice the needs of courtroom proceedings in time.

(D) Psychological and Medical Problems

In video conferences, a person is required to stare at the screen for an extended period of hours which can cause severe headaches, weakened eyesight, and ultimately frustration. It is a severe issue because ultimately it leads to a lack of proper judgement. It required more concentration to process the facial expressions, social cues, and body language of the other person.²³

Advocate KM Riyaz Ahamed believes that *“An advocate gets to understand the mood of the judges and stands a better chance at convincing them during physical hearings. However, online hearing creates a psychological pressure on both the advocates as well as the judges”*.²⁴

When working from home, the noise of traffic and other unpleasant sounds disturbs the whole decorum. In one instance a judge had to shout several times to his associate to ask him to mute his mic. In another instance an advocate who was trapped in a cat’s filter during a court’s virtual proceeding, was embarrassing for him as he did not know how to remove that filter. These factors hamper the integrity of the justice system.

Now to address this issue, proper training and awareness programs have to be installed. Now, these programs can have various purposes:

- i. To make advocates familiar with technology and to assess them with new platforms.

²³ Brennan Centre for Justice, The Impact of Video Proceedings on Fairness and Access to Justice in Court, (September 10, 2020), <https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court>

²⁴ Jegadeeswari Pandian, *Virtual reality: Pros and cons of running online courts*, The new Indian Express, (Aug. 16, 2020) <https://www.newindianexpress.com/states/tamil-nadu/2020/aug/16/virtual-reality-pros-and-cons-of-running-online-courts-2183977.html>

- ii. It is a good time for all the young associates and law students to learn about e-filing, virtual hearings, and the use of technology.
- iii. The establishment of open court hearings virtually will enhance public trust in our judiciary.

V. A HYBRID SYSTEM: THE WAY FORWARD

A major concern floods in the context of criminal trials, peculiarly the serious offences concerning viral witnesses. From the perspective of the criminal justice system, it is not at “*all prudent to record the testimony of a viral witness through videoconferencing. Particularly in the cases of child abuse, sexual offence and the cases against the human body, the end result is subject to manipulation*”.²⁵ Testimonies and witnesses could be coerced to give wrongful statements. This obstructs fair and equitable justice for all.

A 2010 study by a university at Illinois found that online bail hearings undermine access to counsel and the bail amount of hearings virtually as compared to the hearings in person were 51 percent higher.²⁶

“*Defendants may face enormous pressure, not just to appear virtually, but to plead guilty rather than wait for delayed court proceedings and/or risk exposure to COVID while incarcerated*”. “*The constitutional concern regarding coercion and the policy concern regarding unfairness should be addressed through vigorous judicial oversight*”.²⁷

So, is it not at all viable to have virtual courtrooms? Well definitely no. In a holistic perspective, if this system is installed where it is appropriately fit, it will make the judiciary a much better functioning mechanism in India. For instance, civil cases related to domestic law, torts, property law, or disputes where there is no witness testimony, and no trials, a setting like this will eventually help out many stakeholders involved. The elderly involved will get justice from their homes, a lot of time and money would be saved, the working class would have to worry less about going to court and getting late, a lot of paperwork would be shortened, and fear of catching coronavirus would be reduced.

In matters such as ‘*taxation and company law*’, jurisdiction based on geography makes no sense. All judges should be empowered to take these cases wherever they originate via

²⁵ Jyotsna Yagnik, *Virtual Courts and Future of Indian Courts*, Adamas University, (May 28, 2020) <https://adamasuniversity.ac.in/virtual-courts-and-future-of-indian-courts/>

²⁶ Shari Seidman Diamond and Locke E. Bowman, *Efficiency and Cost: The Impact of Video-conferenced Hearings on Bail Decisions*, Vol. 100, No. 3, THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY, (2010)

²⁷ Deniz Ariturk, William E. Crozier & Brandon L. Garrett, *Virtual Criminal Courts*, The University of Chicago Law Review Online, (Nov. 16, 2020), <https://lawreviewblog.uchicago.edu/2020/11/16/covid-ariturk/>

electronic mediums. This will primarily facilitate better utilization of manpower and infrastructure. Malpractices, as well as work load, would be limited. *“Not only will a virtual court result in substantial savings in costs but will also lead to speedy disposal of cases”*.²⁸

VI. CONCLUSION

“The pendency of cases in various courts of India is still staggering. The harsh reality is that the existing infrastructure is grossly under-utilized”.²⁹ The bane of the court structure is that advocates on both sides of the case have to be present physically and due to their unavailability cases are often adjourned.

Although in India we lack proper IT infrastructure, we can say from our positive thinking that COVID-19 has provided an opportunity for our justice systems to finally enter into a digital world and transform itself to adapt to the much-needed changes required. It is only the human fallacies that keep us from having an impeccable online justice system. Availability of:

- i. High-speed internet bandwidth across the nation,
- ii. Robust and fortified IT infrastructure,
- iii. India trusted development of online software and testing,
- iv. Awareness programs and workshops for training,
- v. Stakeholder consultation, and
- vi. Digital literacy

are some of the basic components into kick-starting the digital era of Indian Courtrooms.

If we take into consideration the current circumstances prevailing in India, a major chunk of our population either does not have internet access or they are not digitally literate. On one hand, these extraordinary circumstances have compelled us to adopt technology, there some appalling issues which need to be confronted and accounted for.

“Covid-19 infection arrived with the suddenness of an ambush and the ferocity of a fire as it spread across the human communities across the globe. It distinguished itself with deviant behaviour, unpredictable symptoms, total camouflage.” - SCI.

‘The PCS Committee’ is of the view that: *“With the advent of Information technology, there is not a single facet of human life that is left untouched by it. ICT has also transformed the legal*

²⁸ R. Anand and V. Ranganathan, *It's time for a virtual judiciary*, THE HINDU, (May 6, 2020), <https://www.thehindu.com/opinion/op-ed/its-time-for-a-virtual-judiciary/>

²⁹ Yashvi Singh, *Virtual Courts: Challenges and Opportunities*, Legal Service India, <http://www.legalserviceindia.com/legal/article-3613-virtual-courts-challenges-and-opportunities.html>

*landscape in India and the Indian judiciary has come a long way from a paper-based era to the one dominated by digital technology and is now moving towards cloud-based technology.*³⁰

Technology will emerge as a major enhancer in the subsequent years and advocates will be forced to sign up with technological skills in conjunction with their specific legal expertise, so they must keep up with the times. The virtual court system is in need of modernization and its implementation is urgently required. Since “*technology is here to stay*”..

³⁰ Department-related parliamentary standing committee on personnel, public grievances, law and justice, *One hundred-third report on functioning of virtual courts/ court proceedings through video conferencing (Interim Report, Page 14 (2.13), 2020.*