

## **E- Hearings in Indian Courts: Issues and Perspectives**

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### **Abstract**

For maintaining public faith and trust in the judicial system the courts must be open for public at the time of hearing. If we are talking about the on line hearing the concept of open court can be achieved by live streaming of the court proceedings. Due to outbreak of COVID-19 pandemic Indian judiciary continued the hearing only in urgent matters. Before the pandemic also Indian judiciary has started the use of ICT in the court proceedings with a view to fight against pendency of cases. It is the need of the hour we should use more and more ICT tools to keep pace with the time. But it is not ripe time to completely switch off to the online hearings. Thus, present research paper discussed worldwide trend to use of technological tools for the speedy trial with special reference to COVID-19.

**Key word:** Virtual Courts, Technology, Pandemic, E-Courts, Online Hearing, Video Conferencing.

### **Introduction**

Nowadays when whole world has become a close-knit family due to transgress of technology in every sphere of life, Courts cannot be left into isolation otherwise the whole system would become redundant. Hence infusion of modern processes by virtue of introduction of ICT (Information and Communication Technology) tools in functioning of Courts is call of day. Almost all European countries, USA, China, Singapore and Australia, in particular, are some of the countries which have been flag bearers in the introduction of technology to the court functioning. The encouraging results of technology infusion are there for all to see. Due to adoption of technological tools in Courts, not only the manual efforts have decreased substantially but also the efficiency of adjudication rate has increased exponentially. So, with passage of time, the indispensability of use of ICT tools in Court functioning is being recognized day after day. In Asia, after China and Singapore, India has been harbinger of change the way Courts function.

Who could have imagined that an influenza like virus Covid-19 would impact the whole world so adversely? No one could anticipate that a tiny virus would bring the whole globe at a standstill, literally stopping every kind of commercial or economic activity and even movement of human race. It is at such times; the technological infusion shows how important it was to embrace the change when everything worked fine. Whatever may be the situation, access to justice delivery

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cannot be undermined or deferred. In a country like India when due to huge population coupled with poor and inadequate infrastructure of Courts when cases are lingering for decades, Covid-19 pandemic has widened the cracks which are already there. Due to outbreak of the pandemic, Courts had to abrogate their normal functioning. Situation has not much changed till now except the fact that some very important steps have been taken by the Apex Court of this country with regard to virtual hearings for not only for urgent matters but also for other prioritized cases relating to senior citizens, children and women. However, despite these measures, idea of timely justice has been thrown into doldrums. The site of Hon'ble Supreme Court shows that in April 2020, the top Court delivered 355 orders. This figure may look impressive but in actual, it is very disturbing considering that in previous two years i.e., in April 2018 and April 2019, the same Court passed 10586 and 12084 orders. This comparison looks disheartening and points out towards problem of delay in already pending cases and by the end of this year, huge institution of cases would give another blow to the already highly burdened system.

However, it cannot be losing sight of the fact that the top Court has issued very timely directions, reviewing and revising the same on real time basis resulting into searching new opportunities by putting more and more reliance on online hearings. This can become reality in the times to come only when the virtual Courts are established by robusting existing infrastructure. In a lecture delivered by Justice D.Y. Chandrachud, Chairman, National Legal Services Authority (NALSA), it was mentioned that between March and August 2020, District courts in India decided more than 12 lakh cases however in penultimate year, these courts had cleared 1234071 cases every month and this average in current year stands only at 367962<sup>1</sup>. There is no doubt that Covid-19 pandemic has derailed the massive efforts being put by Indian judicial system to get rid of pendency. As a result, the current challenges with regard to swift justice in timely manner have become more worrying. No country can thrive without putting a system in place which redresses the grievances of victims in a timely manner. *Justice delayed is justice denied* and no one can tell better than who has suffered. Without feeling pain of victim, the legal process of a country remains on papers, without life and without actual upliftment of needy. It is here the importance of judicial dispensation comes. This is the reason probably our founding fathers had described judiciary as one of the main pillars of democracy. Due to unprecedented events like Covid-19 outbreak, the existing system is paused with very serious questions but time should not be wasted in worrying on the failures but it should be utilized in bracing up for challenges which the time has thrown on us.

### **Objectives of the Study**

The aim of the research paper is to make an analytical study of the incorporation of technology in courtrooms and analyze how it would help the courts to deal with unpredicted situations like COVID -19 and huge number of pending cases. It also analyzes the study of Law and policies for electric courts.

### **Research Methodology**

In legal research, researchers have option to adopt empirical or non-empirical study. Though empirical study is based on original data but non-empirical study also gives good results. Doctrinal

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<sup>1</sup><https://www.theleaflet.in/what-does-data-on-pendency-of-cases-in-indian-courts-tell-us/#> Accessed on 11 December 2020.

research analyzed various laws, issues and data available on official websites, judicial trends and provides best results which help the society as well as lawmakers. Hence present study is based on the principles of doctrinal research. Researcher adopted doctrinal method of study.

### **Literature Review**

In an article on “Virtual Courts and Access to Justice A Step Forward is written by Anjana Regunath”<sup>2</sup>. She briefly discussed the advantages and challenges of virtual courts. She rightly said that it is good to use video conferencing but open courts should not be replaced by virtual courts. In one other article “Mr. Parmod Kumar Dubey” discussed on “Virtual Courts: A Substantial Option?”<sup>3</sup>. He emphasized on the training of all the stake holders and proper infrastructure is necessary for virtual hearings. Ms. Amisha Sah written an article on “Virtual Courts: Prospects and Challenges”<sup>4</sup>. She discussed advantages, challenges, benefits, e- courts project and future of virtual courts. She pointed out in India we have poor electricity, poor internet services and public also not aware about the use of technology. But we should keep pace with advancement of technology for the purpose of courts also.

Sufficient literature is not available on the topic. Thus, present paper discussed various issues relating to use of video conferencing/ virtual hearings in courts.

### **Historical perspective**

Keeping in mind undeniable fact that judicial dispensation system in form of modes is inseparable from information and communication technology, the Supreme Court of India undertook e-Courts project through e-Committee. For this purpose, e- Committee was set up with a view to make action plan in the year 2004.

From advent of year 2016, much stress has been given by different High Courts of country to resort to E-functioning of courts and multiple guidelines have been issued for video conferencing as well as for tele-conferencing. Hon'ble High Court of Punjab and Haryana has been flag-bearer in reforms of functioning of subordinate courts as far as inclusion of technological tools is concerned. To minimize hardship to the doctors, recording of their testimony through video conferencing has been made mandatory. Even recording of far placed witnesses and all formal witnesses has been ordered to be done through video conferencing. These steps have been taken many years before outbreak of Covid-19 pandemic. It not only saves time but also convenient to the litigants, witnesses as well as Court. That is why scope of virtual hearings is increasing day by day. Apart from taking a call to use facility of virtual hearing on its own, the Court can do so if either of the party to a matter requests so.

To spearhead e-Courts project, the Apex Court had constituted e-Committee to propose an Action Plan under stewardship of CJI. National Informatics Centre (NIC) was handed over task to implement the project. As of 14th December, 2020, the e-Courts project has “record 232, 42, 83,034 crore e-transactions with the average e-transaction for 343 days being 67.06 lakhs per day, thereby

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<sup>2</sup> Available at <https://www.latestlaws.com>articles>, visited on July 31, 2021

<sup>3</sup> Available at [www.barandbench.com](http://www.barandbench.com) , visited on July 31, 2021

<sup>4</sup> Available on <https://www.legalservicesindia.com> visited on July 31, 2021.

topping the MMP category<sup>5</sup>.”

The then Chief Justice, Mr. SA Bobde has put much stress on importance of applying artificial intelligence tools in the field of ICT, for proper management of cases by identifying the old cases, the reasons of long pendency<sup>6</sup>.

A Delhi district court launched a web portal in the month of July, 2019 with the support of the E-Committee of the Supreme Court of India so that “residents can make online payment of e-challan [an electronic form of a traffic ticket] issued to them” and “will no longer have to visit the courts to deposit the fine. “The portal allows stakeholders an easy and affordable vehicle of adjudication” and “aims at eliminating the presence of litigant or lawyer in the court and adjudication of the case online.” At present, it focuses on traffic violations but “will soon be widened to include cases under the Negotiable Instruments Act and claims related to motor accidents”<sup>7</sup>.

### **Necessity of Video Conferencing**

The outbreak of Corona Novel Virus (COVID-19) throughout the world has affected every activity going on this planet. The national lockdown, undoubtedly has made everything standstill, however the Supreme Court of India immediately issued guidelines for online hearings so as to fulfil the obligation of judiciary to protect Fundamental Rights of citizens. Though, at slow pace, but the Courts have been ahead of any other department in adopting virtual means. With passage of time since announcement of national lockdown on 23.03.2020, the canvas of online hearings has been increased periodically so as to meet expectations of public. Considering the unhealthy history of heavy backlog, e-Committee of the Supreme Court of India has proposed adopting effective means from time to time so as to make access of justice to every needy. NJDG (National Judicial Data Grid) was launched in November, 2015 with same motto. The data available on its website provides real time figures qua nature of cases pending in different courts of India. This ready to be served data helps the e-Committee of the Supreme Court to formulate and implement the strategies for future. The e-Committee has asked all the High Courts to take old records online and mega project of digitization has been undertaken alongwith simultaneous enhancement of real time update of new records electronically corresponding measures of production of accused in courts through video conferencing have been taken by Indian jails. The digitization of all records have not only helped in availability of space for use the infrastructure for other necessary purposes but also it has eliminated probability of loss of record with passage of time. The benefits are multifold including the economic factor. Though the ICT tools have set the stage for technology revolution in Indian judicial system still the virtual Courts have long way to go. It goes without saying that the start has been very encouraging.

### ***Worldwide Trend of Use of Technological Tools During Covid-19***

The progress in using ICT tools in justice delivery system in each country is commendable. Talking internationally, one of the most essential progress of the e-court proceedings can be marked by the event on the International Forum on Online Courts held in London from 3<sup>rd</sup> to

<sup>5</sup> <https://www.livelaw.in/news-updates/supreme-court-of-india-platinum-award-digital-governance-e-committee-167778>. Accessed on 2 January 2021.

<sup>6</sup> <https://www.indiatoday.in/india/story/artificial-intelligence-court-system-cji-bobde-1636116-2020-01-12>. Accessed on 20 November 2020.

<sup>7</sup> <https://www.loc.gov/law/help/virtual-civil-trials/india.php>. Accessed on 17 December 2020.

4<sup>th</sup> December 2018<sup>8</sup>. It was conducted by the Society for Computers and Law alongwith the HM Courts, Tribunals Service and. Around 300 people from 26 countries participated in the forum. Even India was part of the forum. The forum focused on importance of technological advancements and their implementation in the legal arena. Various countries shared their practices of building efficient e-courts. The forum mainly focused on virtual courts, online submission of legal evidence and argument, passing judgments online, incorporation other technologies.

In the wake of covid-19, some countries are experimenting with technology for the first time, while many are developing and expanding their existing information Technology facilities. Online web platforms have been used by the countries for conducting judicial proceedings. Some African countries like South Africa and Uganda took up judicial proceedings on Zoom. In Canada, the first complete virtual court hearing was held on 09.06.2020 via Zoom and made available to the public on the Supreme Court's website<sup>9</sup>. New Zealand is using Microsoft Teams for conducting the virtual court proceedings. The US Supreme Court started taking up oral arguments through telephones. Its first audio call proceeding was held on 4<sup>th</sup> May 2020 in which the judges participated from their phones. The argument was live-streamed and made available online. By the end of the week, the audio recordings of all the oral arguments taken by the US Supreme Court are made available for the public and the records are maintained at the National Archives and Records Administration<sup>10</sup>. In United Arab Emirates especially Dubai, all the hearings are being taken up through video conferencing on platforms like Microsoft Teams and filing of new cases is also being done virtually<sup>11</sup>.

Similarly, the Courts in United Kingdom have resorted to virtual hearings through telephone or vide conferencing by using platforms like Kinly Cloud Video Platform, Skype and Zoom etc.

### **Indian Position: -**

In one of the earliest cases where inclusion of IT was recognized by the Hon'ble Supreme Court of India is case titled *State of Maharashtra v. Dr. Praful B Desai*<sup>12</sup> in which it was held that video conferencing was a vital tool for collecting evidence in cases where the witness reasonably fails to make an appearance in the court for evidence due to satisfactory reason or due to the circumstances beyond his control. Thereafter giving evidence through video conferencing by the witness was allowed in various cases.

The main takeaways from the forum were:

1. A need to establish and strengthen online plea systems, especially for certain minor offences.
2. Syncing the police computerization and court computerization.
3. Deploying a team with the approval of e-Committee for better implementation

<sup>8</sup> <https://doj.gov.in/sites/default/files/Final%20Tour%20Report%20UK%20V3.pdf>. Accessed on 8 June 2021.

<sup>9</sup> <https://www.scc-csc.ca/judges-juges/spe-dis/rw-2020-06-09-eng.aspx>. Accessed on 12 June 2021.

<sup>10</sup> <https://www.livelaw.in/law-firms/articles/critical-analysis-of-the-virtual-courtrooms-and-the-access-to-justice-during-the-coronavirus-pandemic>. Accessed on 12 June 2021

<sup>11</sup> <https://www.herbertysmithfreehills.com/latest-thinking/covid-19-pressure-points-how-covid-19-has-impacted-courts-and-arbitration-centres>. Accessed on 10 June 2021

<sup>12</sup> *State of Maharashtra v DrPraful B Desai*, para 24. <https://indiankanoon.org/doc/560467/>. Accessed on 10 June 2021

4. Exploring the latest advanced technology like artificial intelligence for database in the e-courts project
5. Providing online assistant to Judges in making to make judgments.

### **Some Concerns**

The necessity to switch over to online hearings has become more relevant during Covid-19 period. “The Parliamentary Standing Committee of the Department of Personnel, Public Grievances and Law and Justice has submitted its 103<sup>rd</sup> report on the digitization of Justice Delivery in Parliament”<sup>13</sup>.

Indian courts adapted to technology and switched online due to pandemic. E- courts seem to have provided the solution for this facet of access to justice. As the COVID-19 curve is flattening in India, expectations of physical hearing in the end of 2021 would re-bound, if we will be able to keep away from third wave of COVID.

The debate on Virtual versus physical hearings is everlasting. On 09.01.2021, a group of 500 lawyers had written a letter to the then CJI seeking resumption of regular physical hearings<sup>14</sup>. but it was rebutted by Sh. Shailesh Gandhi, an ex- IAS officer and CIC of India through a letter written to the chief Justice of India by mentioning that said request of lawyers was in fact a plea against Virtual Hearings<sup>15</sup>. To rest the controversy for the time being, on 12.01.2021, a Bench headed by the then CJI SA Bobde observed that “virtual hearings, though forced by the global pandemic, are “as good as Open Court Hearings”.

Due to COVID-19 pandemic, developing technology and process for Virtual Courts have gained new relevance. On 06.04.2020, by resorting the Article 142 of Indian Constitution, Hon'ble Supreme Court while covering all the High Court's gave legal sanctity to Virtual Courts. A discretion to adopt and customize the process as per technology was given to the High Court's so that the challenges thrown by corona virus could be dealt with more proficiency. Guidelines including standard operation procedures were drafted and circulate amongst all High Courts who have further issued guidelines to their respective lower Courts with regard to functioning of Courts through virtual mode. Due to technological knowledge in rural area people are not feeling comfortable with the Virtual Courts. Connectivity problem is also hindering in the way of virtual courts working.

**Lack of IT outreach and resources:** -Most of them belong to the lower economic class and not many can avail the facilities of IT, especially those living in rural areas. While the facilities of virtual court proceedings have various advantages, not all can access justice through these. The gap between the resources available in the rural areas as compared with those available in the metropolitan cities is too large. Also, people in the rural area lack the basic knowledge and awareness of using such technology. Thus, while video conferencing is an essential alternative right now, it fails

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<sup>13</sup>[https://www.pwc.in/assets/pdfs/services/tax/indirect\\_news\\_alert/2020/pwc\\_news\\_alert\\_8\\_october\\_2020\\_parliamentary\\_standing\\_committee\\_recommends\\_continuation\\_of\\_virtual\\_courts\\_post\\_pandemic.pdf](https://www.pwc.in/assets/pdfs/services/tax/indirect_news_alert/2020/pwc_news_alert_8_october_2020_parliamentary_standing_committee_recommends_continuation_of_virtual_courts_post_pandemic.pdf). Accessed on 28 May 2021

<sup>14</sup> <https://www.newindianexpress.com/nation/2021/jan/14/over-500-lawyers-write-to-cji-seeking-physical-hearing-resumption-in-supreme-court-2250130.html>. Accessed on 30 May 2021.

<sup>15</sup> <https://www.livelaw.in/news-updates/if-courts-adopt-virtual-court-system-it-may-lead-to-a-better-rule-of-law-former-cic-shailesh-gandhi-writes-to-chief-justice-of-india-168525>. Accessed on 30 May 2021.

to reach out to the masses and the poor sections of the society. We are not having full proof security provision relating to data: people hesitate to share personal Information during evidence etc. there are chances of pressuring of witness at the time of video conferencing. Other problem is fake or unauthentic evidence may be produced through video calling.

### **Conclusion and Suggestions:**

As per directions of the e-Committee of Hon'ble Supreme Court of India, the Courts throughout the country have carried out functioning during pandemic primarily through online mode. The experience so far has firmed the belief that virtual hearings can be possible if internet connectivity is provided to the public at large. Further awareness programmes with regard to use of Apps for Court hearings should be run on pilot basis for the ordinary citizens.

The suggestion about live streaming of Court proceedings is welcome one. The Courts, in essence, are public service providers. The live streaming of the proceedings would result in multi-fold benefits. It would not only bring transparency in the functioning and discipline in Court staff including presiding officers but also the untoward incidents which happen due to some litigants or advocates would be minimized drastically. Basically, live streaming would bring fairness in functioning of Courts from every angle.

In current times of huge technological development, theft of data of private individuals is emerging as the most lucrative cybercrime. Big companies are feeding on such retracted data to promote their products. Right of privacy is the fundamental right as has been recognized by Hon'ble Supreme Court in the famous **Aadhar case**. Hence the recommendation of developing indigenous system of software programmes and applications for Indian judicial set up is indeed praiseworthy. It would also prove an important step in direction of goal of *Aatmnirbhar Bharat*. The system should be designed with prime objective to safeguard data of individual litigants.

The use of artificial intelligent (AI) tools should be introduced throughout Courts of India which would help to curtail the time of disposal. Shri SABobde, the former Chief Justice of India has put much emphasis on use of AI technology in Court functioning from the day of assuming the office.

The digitization of existing infrastructure in the Courts is pre-requisite before start of virtual Courts system. As it is less time consuming and less expensive.it should be published among the public. However, it cannot be done in a limited timeframe. For that, the idea of developing infrastructure in PPP model form sounds good.

The timeframes which have been set in e-Courts Integrated Mission Mode Project for realizing development of Court infrastructure in stepwise manner should be monitored continuously so as to tackle the problems arising therein, without any delay.

The recommendation of continuation of virtual hearings, even after current pandemic is over, especially in the Appellate Courts is practical. It would not only save the time of Courts but would also minimize physical movement of advocates as well as parties, saving the time, money as well as energy. Even in the trial Courts, this system should be made optional, obviously with consent of parties, regularly for all times to come.

The data of all the Courts with data of various tribunals, police department, prisons and civil

administration should be interlinked. It would help in saving lot of time. The requisite information which otherwise may take many adjournments to be produced in Court would be available at a click away.

The feedback of different stakeholders, having worked in virtual Court, would help in taking necessary steps for future implementation of ICT tools in justice delivery system. Experiences of European countries, Australia, US, Singapore and China who have been flag bearers in the field of electronic Courts should be taken and evaluated. By considering the conditions of our judicial system and after making appropriate changes, further steps can be taken up for establishment and working of virtual Courts.

The COVID pandemic has affected every activity on this globe but the adversity opens up new avenues. It is high time for Indian Judicial System to start functioning virtually and to make it a habit so that minimum resistance can be faced from every stakeholder by the time, the pandemic is over. Selecting few categories of cases to be exclusively dealt by virtual Courts would be beneficial. Issuing of summons etc. is already digitized even in the system of physical hearings. Along with it, the parties should be given option to litigate virtually even for cases of complex nature. The recommendation to cover arbitration and conciliation hearings and summary trials through virtual Courts should also be implemented. It is reiterated, at the cost of repetition, that dream of running full-fledged virtual Courts in India can only be realized with cumulative efforts from not only the government, the Court staff but also from the public at large. However, it can be possible if internet outreach is expanded to every nook and corner of the country.

There is no doubt that in India virtual Courts have become the call of the day, especially after COVID-19 pandemic outbreak. It has emerged as essential mode of public service and it would continue to be relevant in the future. However, there are some shortcomings with it at different levels of the implementation of the virtual system in the Indian judiciary. Majority of the problems are still to be addressed.

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