



DIGITALIZATION OF COURTS/VIRTUAL COURTS : A CRITICAL APPRAISAL

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ABSTRACT

Raising incidents of COVID-19 pandemic, resources required for having open courts and managerial inefficiencies in our Indian Judiciary motivated me to write this article. The purpose of this study is to investigate the connection between managerial inefficiencies in relation to the resources used by courts and effective productivity of our courts during this pandemic and beyond. The scope of this study is to know the practical implementation of the virtual courts and to understand the problems that incur so that an effective plan can be made to make virtual courts a new future of Indian Judiciary. This study has focused on the outcome of sudden implementation of virtual courts and the loopholes in its implementation. Using a cross-sectional analysis, this study analysed the amount of pending cases adjudicated speedily with introduction of computers from 1990-2003. The study also analysed the amount of papers used by Indian courts and its impact on our natural resources.

The study found that digitization of courts can be convenient for Judges, Lawyers and the justice seeking individuals. The study also found that digitalisation has the potential to increase the efficiency and accuracy of the whole judicial system along with making it more environmental friendly & cost effective. This study definitely addresses the concerns regarding the functioning of courts in this tough time of COVID-19 pandemic and beyond. It also takes the current situation as a much needed stimulus to address various inefficiencies which have seeped in our system. The study also acknowledges the difficulty in its implementation and the disruption it is capable of bringing if done haphazardly. Further, studies are needed to establish standard procedure for digitization of courts.

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INTRODUCTION

The ongoing COVID-19 pandemic has been an eye-opener. On one hand, it has brought our lives to the stand still whereas on the other hand, it has proven that many activities can be done while staying at home. The concept of ‘work from home’ which is being widely used in other nations, was simply a secondary or exceptional option given to selective employees in a few companies in India. But this pandemic left no option other than adopting this as the primary mode of work for many employers.

However, this scenario seems possible when one has a tech driven job. But what will be the workable mode available when your job requires your physical presence at your work place? This question seemed alien in field of law a couple of years ago. It is only a few years back, wherein the concept of virtual courts came into planning and execution. But as it is said everything comes with a price. The testing of virtual courts started in some courts over the country but has not been adopted fully so far. It was during this pandemic wherein the virtual courts were forced into existence. However, these are restricted to urgent matters only.

Another aspect of this pandemic came down as a mandatory norm of ‘social distancing’. Considering the nature of our field which requires us to be a part of crowded courts/ pathways, regular socializing for work, travelling to different courts, etc., virtual courts not only became the necessity but also the only way to let our justice system run without any hindrance. However, having a field job like this has devastated the lives of many lawyers whose daily bread and butter was depended on open courts.

VIRTUAL COURTS

Before discussing further, let’s first understand- What is a Virtual Court? “Virtual Court is a concept aimed at eliminating presence of litigant or lawyer in the court and adjudication of the case online.”¹ It was the same time last year, while working in country’s one of the Tribunal, we learned about the working of the e-courts and were briefed about its functioning. After listening about this, everything seemed to be possible in just a click.

¹ VIRTUAL COURTS (July 1, 2020, 01.20 PM), <http://vcourts.gov.in/virtualcourt>.

However, the implementation of this was in its early stage when this pandemic struck and we were made accustomed with the virtual court. This pandemic, no matter how much it has devastated the lives of the people, fortunately has the potential to mend and provide much needed jolt to our Indian Judiciary.

PROS AND CONS OF VIRTUAL COURTS

This pandemic does have provided an opportunity to execute digitalisation of our courts. This step can be very encouraging as the virtual courts can lead to paperless courts which can be very advantageous in long run. The following are some facts which can be achieved if we digitalise our courts:

- Hundreds of petitions printed on thousands of paper are discarded after single-use.
- Every year Indian courts use 11 billion sheets of paper.
- Every year, Supreme Court hears 60,000 cases.
- The Supreme Court only allows petitions printed only on one side of paper
- A PIL submitted in 2017 in the apex court stated that 48 million sheets of paper is used by SC in a year.
- Now add to that 1,13,000 cases are heard by high courts in a year and use 813 million sheets of paper.
- Lower courts hear 12.5 million cases in a year and use 10 billion sheets of paper.
- A total of 11 billion sheets of paper are used by Supreme Court, high courts and lower courts in a year.
- One tree makes 8,333 sheets of paper using 10 litres of water
- In totality 1.3 million trees are cut and 109 billion litres of water is used
- If we print both sides then we can save 54 billion litres of water which can provide water to Mumbai for 14 days

- The water saved from Supreme Court alone can meet a day's water requirement of Bengaluru.²

Moreover, it is just not the Supreme Court which practices petitions to be printed only on one side of paper. There are various other courts, Tribunals and other quasi-judicial bodies which function in the same manner. Hence, now we can imagine the huge amount of paper being used and wasted on a daily basis.

Virtual court is just not about modernisation. The main agenda is to make it accessible to everyone. Technologists Eric Schmidt and Jared Cohen wrote: "People will find that being connected virtually makes us feel more equal—with access to the same basic platforms, information and online resources—while significant differences persist in the physical world".³ In simple words, digital platforms offer formal equality in the professional sphere.

Secondly, obstacles like monetary insufficiency, place and economic & social status can be curbed temporarily. British author Richard Susskind,⁴ in his book, anticipated that online courts will be inevitable in the coming future. Now, it seems that the future is here!

Thirdly, virtual courts can be an effective remedy for the delay caused in giving justice. Approximately, one lakh cases were pending before the top court in 1989, which reduced to 27,000 in 2003 after computerisation which was effected in 1990.⁵ By uploading documents ranging from the First Information Report in a local police station to the judgment of the Supreme Court in the website, the legal landscape of the country was radically altered.⁶ We have the basic platform to facilitate the digital revolution in our adjudicatory institutions. However, we can learn from other nations as well. There are various examples in world which can help us in regulating the virtual courts in India. Some of these include- online registry in the New South Wales Supreme Court, the Small Claims Tribunal (SCT) in Dubai, Civil Resolution Tribunal (CRT) in Canada.⁷

² Indian Legal Bureau, *Paperless courts in India: A critical analysis*, INDIA LEGAL (May 25, 2020, 10:30 PM), <https://www.indialegallive.com/constitutional-law-news/courts-news/paperless-courts-in-india-a-critical-analysis-75456>.

³ ERIC SCHMIDT & JARED COHEN, *THE NEW DIGITAL AGE* (2013).

⁴ RICHARD SISSKIND, *ONLINE COURTS AND THE FUTURE OF JUSTICE* (2019).

⁵ Kaleeswaram Raj, *Transforming the courts during pandemic*, THE NEW INDIAN EXPRESS (May 30, 2020, 08:50 PM), <https://www.newindianexpress.com/opinions/2020/may/02/transforming-the-courts-during-pandemic-2138096.html>.

⁶ *Id.*

⁷ *Id.*

The legal profession is hierarchical. Many star lawyers are beyond the reach of the poor or even the ordinary citizens. Judges also enjoy an elevated position, as physically visible in a conventional court hall. Access to justice is a myth for a good part of the population. In the virtual court, everyone, right from the lawyer to the judge, an outsider to the court staff, is in tiny rectangular spaces, reflecting a new way of equality i.e. digital equality, a kind of variety of Article 14 of the Constitution.⁸

But having said earlier about the planning of digitalizing the Organisation I work and after understanding the whole procedure and virtually executing it in my Organization, I got stuck to a question- whether this will be as easy as it sounds for everyone? Considering the age of Judges/ members in the Tribunal, it is not very easy for them to adapt the E-way of working. Also, considering that they have not been accustomed by this way functioning over their years of work/practice.

Moreover, it can be equally challenging for the Advocates and even a layman to file an application in the virtual court without proper training. Apart from this, there are other hurdles such as network issues, multiple hearing of people at the same time, etc. Also, there are likely chances that not everyone is well equipped and aware in using the digital interface. In this way, the basic purpose of the courts- to deliver justice, may be hindered.

CRITICAL ANALYSIS

In a way, during the pandemic, the judiciary finally made come true its own dream which was expressed in the case of *Meters and Instruments Pvt. Ltd. vs. Kanchan Mehta*,⁹ which indicated that certain categories of cases “can be partly or entirely concluded online”.¹⁰ It was also stated that virtual courts can reduce overcrowding in the courts.

It is true that virtual courts can give new outlook to our Indian Judiciary but we can't keep our eyes closed and ignore the other factors related in this transformation. While going through the newspaper, I came across an article titled “Lockdown ₹20k cr legal practice industry”.¹¹ So, if we think that virtual courts are our future and are very convenient than we

⁸ INDIAN CONST. art 14.

⁹ *Meters and Instruments Pvt. Ltd. v. Kanchan Mehta*, MANU/SC/1256/2017.

¹⁰ *Id.*

¹¹ Dhananjay Mahapatra, *Lockdown ₹20k cr legal practice industry*, Times Of India, June 02, 2020, at Page No. 1.

need to think again. Virtual courts are just not about the e-filings or digitalizing the entire court procedure but we also need to look at the lawyers who are dependent on the open courts. There are only a handful of lawyers who can manage this advancement but a large chunk of lawyers, whose daily bread and butter are dependent on open courts, are facing real hardships in finding clients or cases. This news article also highlighted the statement given by Chairman of Bar Council of India wherein he stated that execution of Virtual Courts for a small period through Video conferencing was unavoidable in this situation of pandemic. But physical hearing in courts should start soon as many Lawyers work inter-state and with the onset of this pandemic, they are left helpless and jobless. The chairman further stated, while answering whether there is any contingent plan for the Lawyers, that “Neither BCI nor state bar councils have resources to start any scheme for lawyers. We have been requesting Centre and State Governments to help needy lawyers financially. It is unfortunate that most Governments, be it the Centre or States, have lawyers as cabinet ministers, and yet no one thinks about the plight of Lawyers.”¹²

Apart from the lawyers, even the Judges or Members of the Tribunals are also finding it difficult to deal with this video conferencing. Supreme Court Judge and e-committee chairman Justice Chandrachud, in a webinar said that- "I don't think virtual courts are going to replace open court hearing. I don't think any Judge or expert in technology is going to tell that. I want to disabuse the minds of people who think that virtual courts are some sort of panacea or formula which is a substitute for open court hearing."¹³

Having been a part of video conferencing, the following are the major problems being faced:

- **Improper Implementation:** A sudden action plan involving Video Conferencing has made life complicated not only for the Judges/ Members but also for the lawyers as not everybody is a tech-savy or well acquainted on the professional front.
- **Double work than usual:** The work has become twice for the registry. Though many courts follow e-filing system, but since this system is not fully implemented so to make the record available for the Judges/members, Hundreds of papers are used to take the printout of the records/ application submitted by the lawyers and further, a

¹² *Id.*

¹³Dhananjay Mahapatra, *Virtual courts cannot replace open court hearing: Justice Chandrachud*, TIMES OF INDIA (June 02, 2020, 09:15 PM), <https://timesofindia.indiatimes.com/india/virtual-courts-cannot-replace-open-court-hearing-justice-chandrachud/articleshow/75961020.cms>.

lot of time goes in arranging and tagging the documents properly. So basically, what was already done by the lawyers while filing the applications has to be done again by the registry thereby making this twice the effort.

- **Wastage of office stationary:** Because of the above situation, the stationary is being wasted on a double/ triple rate thereby increasing the expense of Government exchequer.
- **Inefficiency:** Though digitalization sounds very convenient and user friendly, but until it is implemented fully, there would be inefficiency on the part of the Judges as well as the lawyers. There have been instances wherein the lawyers face problem in logging in/out on time during the proceeding. Also, some lawyers do not use proper hearing aid which further causes disturbances due to the background noises in the proceeding.
- **Network issues:** Internet has become one of the essentials these days yet we are not competent enough to compete with other nations in terms of digitalization. The major reason behind this is the speed of internet which at times is too slow to support multiple tasks or incurs a lot of disturbances. This is one of the common problems being faced in many courts as video conferencing can be done with limited people, any increase in the number of person causes disturbances in connection. Also, video conferencing is unable to handle two or more conferences simultaneously.
- **Difficulty of lawyers/ judges:** The sudden shift to virtual courts has led to problems for judges as well lawyers. Some of them are partially acquainted with technology, and in case of judges, they have a support of the IT person but for many of them, this system has made them handicapped. Absence of proper training to both judges and lawyers is creating a real hurdle in the way of making virtual courts work efficiently in India.
- **Wastage of time; less productivity:** Due to all such hindrances being faced during the proceeding, a lot of time is being wasted which in return leads to lesser productivity.

- **Proceedings not smooth:** Due to improper implementation of virtual courts, the proceedings are widely affected. Lawyers are finding it difficult to present their case in the usual manner as in open courts and similarly, Judges finds it difficult due to all the such hindrances as discussed above.

It is not that we cannot cope up and bring digitalization in Indian Judiciary but we need to effectively work and implement it in a fuller sense so that the loopholes are covered properly. E-courts need proper, efficient and fair management with skilled persons. Timely allocation and utilisation of funds should be ensured. By digitalizing the courts properly—case records will be available and accessible to trial courts, high courts and Supreme Court at the same time. It will lead to faster disbursement of cases. And most importantly, Judges and lawyers shall be trained properly to work in the efficiently virtual courts.

CONCLUSION

Beyond the objective of improving access of justice, the concept of virtual courts is an important aspect to reform our Judiciary. To be compatible with this fast paced world, it is very important to bring advancement in every sphere so as to be at par with growing development. This advance feature can take our Judiciary to new heights, if implemented properly. The dream of virtual courts can only be achieved if we have the political will and a plan of action to digitalise the courts, from top to bottom. George Westerman,¹⁴ has rightly said-

“When digital transformation is done right, it’s like a caterpillar turning into a butterfly, but when done wrong, all you have is a really fast caterpillar.”

Right now, we are in the latter situation due to this pandemic. To achieve our objective right, we must act rightly.

¹⁴ George Westerman, *MIT Sloan Initiative on the Digital Economy*.