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VIRTUAL COURTS- A Silver lining?

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“This is an inflection point for the legal profession in India. Till now, the mindset was one of resistance to change, or at best, incremental change. The disruption occasioned by Covid-19 has put forward challenges that can be best countered with wholesome and wholesale changes – by the adoption of online courts with limited or no oral hearing but based on brief written submissions.”

– C.S. Vaidyanathan, Senior Advocate, Supreme Court of India

ABSTRACT

*In the years after independence, there is no greater institution that has stood up as the representative of the people’s interest, better than the judiciary. From landmark cases like *Hussainara Khatoun vs State of Bihar*¹ to the recent decriminalisation of homosexuality, the judiciary has stayed as the protector of individuals interests against society, and as such, the COVID pandemic has resulted in a lockdown that has curtailed the people’s access to the judiciary. However, like a phoenix rising from the ashes, the judiciary has turned the situation on its head, utilising the momentum of the lockdown to give impetus to its long-standing need to streamline and digitise the judicial process. In this paper, we analyse the true extent of this dream, and we look at the challenges that it brings. We also do a comparative study to identify the difference between*

¹ (1979) 3 SCR 532

an e-court and a virtual court, and how the Indian judiciary is coming on as a world leader in the digitisation of the court process. However, there remain many challenges, from issues of data privacy to security concerns regarding hackers that India must successfully vanquish before we can truly affect the change that a virtual courts system has the potential for. This paper shall look into a brief background of various digitisation initiatives, look at current narratives regarding digitisation and will look at whether the pandemic can provide the unique set of circumstances necessary to galvanise the Indian bureaucracy and legal system to work together for producing a world first. We shall also look into the pros and cons of adopting such a system and attempt to give suggestions about bettering the system wherever possible.



INTRODUCTION

It is often said that every problem is both an opportunity as well as a crisis. It would be remiss on the part of this essay to not give due credit to the prevailing pandemic in that it has provided an important impetus to the raging debate about the lack of digitalisation prevalent in the Indian judiciary. Over the years, the problem of the judiciary not making the best use of its time by upgrading to faster and better infrastructure to provide better ‘services’ has been highlighted many times. Most notably, Senior Advocate Indira Sawhney filed an SLP in the Supreme Court wherein the increasing need to digitise the Supreme Court was highlighted by providing a comparison of other countries wherein such systems have not only increased the access to justice but have also made the entire procedure easier by reducing the need for a ‘physical’ transfer of people, files and applications.

Throughout the COVID pandemic, the Supreme Court of India employed the process of video conferencing hearing in lieu of the restricted access to a various judicial forum to help hear and dispose of urgent matters. While at first, it was thought to be a temporary stoppage, it is now common knowledge that the prevailing circumstances may continue for almost a year! In the meantime, the Supreme Court issued various circulars including the recent SOP (*Standard Operating Procedure*) and instructions for Learned Advocate/party-in-person for e-Filing, Listing, Mentioning, and Video Conferencing Hearing.² The idea behind these momentous initiatives was to ease the process of the judiciary and while doing so, promote ‘*Social Distancing*’. The same was done by many other countries including the US, UK, Canada, Australia, South Africa, etc. Although it may appear to be a coerced adaptation on the part of the judiciary, these steps are maybe more permanent than we think.

In this paper, we will debate upon the issue of whether Virtual courts are feasible as a replacement or whether they will merely act as auxiliaries to the current judicial system.

The advancement in technology and innovation paves the way for the concept of virtual courts where the requirement of physical space is no longer *necessary* for the adjudication of the case. It also seems that by adopting such a process the SC is moving towards the future of the judiciary, which is at par with digitisation initiatives in other parts of the world. However, the question remains, will the *judicial services* be benefitted if simply run online with the aid of new infrastructure?

² *Standard Operating Procedure for Ld. Advocate/Party-in-person for e-Filing, Mentioning, Listing and Video Conferencing Hearing*, The Supreme Court of India, (Sep. 19, 2020), https://main.sci.gov.in/pdf/LU/04072020_153040.pdf

INDIAN LEGAL SYSTEM AND DIGITISATION

In the last decade, we have witnessed a sudden shift in the Indian legal system from a heavy reliance placed upon paperwork to incorporating technology at every stage to ease the process. India Judiciary has been working on the project to computerise some of its processes since 1990.³ Finally, the Supreme Court E-Committee in 2005 was formed to implement the ICT (Information and Communication Technology) in the Indian Judiciary model under the guidance and chairmanship of Dr Justice G.C. Bharuka with the primary aim to improve the backlog of cases.⁴ This system utilises the technology to support mostly all operations of the judiciary such as uses of electronic evidences, storing and recording judicial data through National Judicial Data Grid, protection of the recorded data, case filing operating system, RFID (Radio-Frequency Identification) based file tracking, video conferencing and an e-library which is searchable. This project certainly provides the basic infrastructure upon which the current e-judicial system stands. In the Accomplishment report (2019) of Phase II of the e-Courts as many as 3388 court complexes and 16,755 courtrooms in the High Courts (*hereinafter referred to as HCs*) and Lower Courts (*hereinafter referred to as LCs*) across India had already been computerised under this initiative. Furthermore, video conferencing (*hereinafter referred to as VC*) equipment had been successfully installed in over 3240 court

³ E-Committee Supreme Court of India, 'National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary'(P-04), (Sep. 20, 2020) <https://main.sci.gov.in/pdf/ecommittee/action-plan-ecourt.pdf>

⁴Bhardwaj, R., *The Indian Judicial System: Transition from Print to Digital, Legal Information Management*, (2013) 13(3), 203-208. (Sep. 17, 2020) <https://doi.org/10.1017/S1472669613000443>

complexes and 1272 jails.⁵ More importantly, there have been a number of successive subsidiary e-Judiciary projects to supplement the infrastructure initially created⁶: 1. eCCMS Web 1.0 (Web-based Court Cases Monitoring System) which attempts to provide information about cases that are pending and helps officials to track the progress/details of cases, make and update ‘*cause lists*’⁷ in advance, maintain a complete record of cases, generate a number of MIS reports. 2. E-Litigation which was conceptualised to replace the electronic filing system to make the process easier. 3. E-Courts National portal which provides for information regarding case status, daily cause-list, cases filed, and cases registered under CIS (Case Information System), etc⁸. The success of these projects can be reflected in the recent overnight notification during the pandemic, which encompasses the trust of the judges in the existing *e-structure* of the Judiciary.

Besides, certain legislations have also been amended over the period of time to take into consideration the evidentiary and beneficiary value of the technology. The Evidence Act, 1872 has been transformed to embrace new technologies and advance communications systems; its amended section 3 defining the term ‘Evidence’ also includes electronic records. Another notable instance includes the changes made to section 17 of the Evidence Act, where the definition of ‘admission’ has been modified, to now include statements made in oral, documentary, or electronic forms, suggesting any inference to any relevant fact

⁵ Anuradha Mukherjee, Amita Katragadda, Ayushi Singhal and Shubhankar Jain, ‘From the Gravel to the click: COVID 19 poised to be the inflexion point for Online Courts in India’, LEXOLOGY, 2020, <https://www.lexology.com/library/detail.aspx?g=f9951779-4da4-4d06-86b9-857ebb119432>

⁶ ‘E-Courts Mission Mode Projects’ (2020) National Judicial Academy.: http://www.nja.nic.in/Concluded_Programmes/2016-17/P-997_PPTs/1.eCourts%2.pdf

⁷ Cause list definition and meaning, Collins English Dictionary (2020). <https://www.collinsdictionary.com/dictionary/english/cause-list>

⁸ Anil Kumar Sharma, ‘Evaluation Study of eCourts Integrated Mission Mode Project’, NCAER (2020) <https://doj.gov.in/sites/default/files/Report-of-Evaluation-eCourts.pdf> (Accessed: 1 November 2020).

at issue.⁹A new Section, S.22-A has been inserted in the act to provide for the relevancy of oral evidence with respect to the contents of electronic records, and Sections 65-A and 65-B which have been added to the Second Schedule of Information Technology Act, 2000 expressing the requirement of contents of electronic records to be proved in accordance with these sections. In consonance with the intentions conveyed in the amendments brought in the Evidence Act, Section 273 of the Criminal Procedure Code¹⁰ has also been interpreted to allow the recording of evidence through VC, the SC has held that ‘*evidence to be taken in presence of the accused*’ contemplates a *constructive presence and not actual presence*. This means the Magistrate has the authority to examine the witnesses through internet platforms, where in cases if such steps are not taken, it will result in an inordinate delay in providing justice.¹¹ In another case¹², Hon’ble Apex Court considered the interview transcripts from the Zee News, Aaj Tak and the Haryana news of Punjab Today television channel as digital evidence and admissible. These amendments widening the scope of the term ‘*evidence*’ has made the job of the court simple, and as a result ‘*electronic evidence*’ includes emails¹³, cell phone recordings¹⁴, Telephone calls¹⁵, etc. Additionally, in order to take precautions regarding the nature of this type of evidence various safeguards have also been taken by the courts to record evidence via an audio-video link, in the case of Amitabh Bagchi Vs. Ena Bagchi¹⁶ it was observed that the courts must

⁹ The Evidence Act, 1872, Section 17 (<http://legislative.gov.in/sites/default/files/A1872-01.pdf>)

¹⁰ The Code of Criminal Procedure, 1973 Section 273 (<http://legislative.gov.in/sites/default/files/A1974-02.pdf>)

¹¹ State of Maharashtra v. Dr. Praful B.Desai, (2003) 2 ALT (CrL.) 118 (SC), (India)

¹² Bodala Murali Krishna v. Smt. Bodala Prathima, (2007) 2 ALD 72, (India)

¹³ Abdul Rahaman Kunji v. The State of West Bengal, (2015) 1 Cal LT 318, (India)

¹⁴ In State of NCT of Delhi v. Navjot Sandhu @ Afsan Guru: (2005) 11 SCC 600, (India)

¹⁵ Jagdeo Singh v. The State and Ors, [MANU/DE/0376/2015], (India)

¹⁶ Y. Srinivasa Rao, *Recent trends in recording and admissibility of electronic evidence*, (Sep.22, 2020), <https://www.latestlaws.com/wp-content/uploads/2017/04/Electronic-Evidence.pdf>

certify that the witness is in possession of an affidavit or undertaking, verified by a Judge or Magistrate or Notary *certifying* the identity of the person. Furthermore, it is to be ensured that the oath has been administered before recording his evidence as per the Oaths Act, 1969. It is pertinent to note that certain guidelines have been created to ensure that the witness is examined only during Indian Courts working hours, confirm that copies to the document to be proved must be provided well in advance to the witness, court or commissioner must record any remark showcasing hesitations of the witness, and note down any objections raised during the completion of this process, the questionnaire for the depositions of the witness either in narrative form or question-answer form must be signed in the presence of a Magistrate or Notary, ascertain whether the witness is alone at the time of the VC, and in case of perjury the court has the authority to take cognisance of not only the witness giving evidence but also the person/persons who induced the witness to give such evidence and any other conditions, as deemed fit by the court to ensure smooth recording of evidence.

FRAMEWORK FOR THE CREATION OF A VIRTUAL COURT

First, we must ask ourselves what exactly constitutes a ‘*Virtual Court*’? This is especially relevant considering that in other countries virtual court can mean one of many things (Ex. In some countries it means live streaming of proceedings while in others it means merely filing cases online). This became clarified by the Supreme Court in the recent directive passed on April 6th 2020 where a tranche of guidelines was released to smoothly facilitate the functioning of the Indian Judicial system through the use technologies like VC. Here it is pertinent to note that the SC clearly advocated for speedy adoption of modern technologies that will enable the courts to enhance its ability to effectively administer justice. It was noted that improvements and advancements in digital technology have made

it faster and easier to connect people across vast distances allowing the court processes to take place in a wide variety of settings and situations without compromising on the *quality* of services rendered.¹⁷ In this order, the Supreme Court by taking recourse to Article 142 of the Constitution¹⁸ directed:

- The SC and all HCs to adopt measures through the use of VC to ensure robust functioning of the judicial system.
- Every HC is territorially empowered and authorised to determine procedure and methods consistent with the state of the regional judicial system.
- The concerned courts shall maintain a helpline for the complaints regarding the quality and audibility of the feed which shall be communicated immediately either during the proceeding or immediately after its conclusion, but no grievance will be entertained later.
- The LCs in each state shall adopt the mode of VC as advocated by the respective HC.
- The SC and HC shall mandatorily ensure the provision of VC infrastructure to litigants who are unable to access it for themselves. In exceptional cases, the courts are empowered to appoint an *amicus-curiae* to assist the litigants where necessary.
- In High Courts, video conferencing will be mainly utilised for hearing arguments either at the trial stage or at the appellate stage, until appropriate rules are framed.
- No evidence shall be recorded without the mutual consent of the parties via video conferencing.

¹⁷The Supreme Court of India, (2020)

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

¹⁸India Const. art.142. <http://legislative.gov.in/sites/default/files/COI-updated.pdf>

We can therefore see that for the purposes of the current discussion, the Supreme Court seeks to completely eradicate the requirement of being present in person for the various proceedings through the help of various tools and software. As such, we can understand them to be a subset within the existing judicial structure and a new addition to the old court's initiative.

Surprisingly the first '*virtual court*' in India was started long before the current pandemic forced our hand. In 2019, the Punjab and Haryana started an online hearing in the case of traffic challans since it was highly likely that most offences would simply be compounded and were not sensitive, thus forming the perfect testing ground for such a system¹⁹. The procedure created was surprisingly simple in that each case came straight to the Virtual Court, which was presided over Magistrate. A *summon* was automatically generated, and the accused was intimated of the same via the usage of automated electronic means such as SMS/Email. The procedure created was such that if the accused pleads guilty to the offence mentioned, then the penalty payable will be automatically displayed. Once the payment of the fine has been received, the system automatically disposes of the case. However, if the offence is challenged by the accused, the case will be remanded to the regular courts wherein it would be dealt as per the courts.

It was noticed that not only did this procedure expedite the court procedure, it also assisted in reducing the number of people visiting court premises, as people were required to be present in person, even to plead guilty.

¹⁹ Manvir Saini. (2020) '*First virtual court launched in Faridabad*' The Times of India. <https://timesofindia.indiatimes.com/city/faridabad/first-virtual-court-launched-in-faridabad/articleshow/70717808.cms> (Accessed: 1 November 2020).

The Supreme Court in circulars issued on March 23rd 2020²⁰, May 16th 2020²¹ and July 4th 2020²² established the standard operating procedure in detail to be followed by Hon'ble Virtual Court for video conferencing through the VIDYO platform or any other secured network in case of non-functioning and suggested the High Courts do the same. The Supreme Court has taken significant steps to keep the judiciary system intact in such unprecedented times and at the same time find ways to make it more efficient. The Supreme Court's e-Committee constituted a sub-committee in April 2020 which will draft the model rules of video conferencing²³ for courts after taking suggestions from High Court and then send to all the High Courts for their adoption to ensure uniformity and efficacy among the High Courts. The government of India also assisted the Judiciary in initiating the current framework by already established e-Sewa Kendra at every district courts and High Courts to make the services provided by the e-Committee of the Supreme Court under the e-Courts related project accessible to all. It was posited that the primary audience of this service is a common litigant who wants to be informed on his/her court-related needs. On this platform all the requirements of filing a case via virtual courts will be facilitated for example e-Filing of petition, assist in online purchase of e-Stamp papers/e-Payments, facilitate disposal of traffic challan in virtual courts, explain the method of arranging and holding a video conference court hearing, assist in online

²⁰Supra note 2

²¹Ibid.

²² Ibid.

²³ e-Committee Supreme Court of India, *Information and Communication Technology in Indian Judiciary* (Sep. 20, 2020) <https://ecommitteesci.gov.in/video-conference-hearing-in-district-courts/>

application for certificate copies etc. Another system that will be useful in running the virtual courts is Case Information System 3.0²⁴ which will provide the case details for the High Court and District Judiciary to all stakeholders in the Justice System as well as certain features of the e-Judiciary system for e-Filing, e-Process, and e-Payments. One of the important features of this system is KIOSK, where the case details can be accessed by any individual using CNR number or case number or FIR number or Registration number or party name.

It will be sufficed to say that the Judiciary indeed lacks proper infrastructure, but it is nowhere near the level of inadequacy. The Judicial administration has been disrupted severely, but the Judiciary can still perform and function back to normal with the aid of the above established and currently undergoing projects and even turn out to be more efficient, certainly in the case of the higher-level judiciary.



VIRTUAL COURTS – A POSSIBILITY SOON?

It has at this point been established that through various practical requirements and court *diktats*, the proper functioning of virtual courts envisages a completely paperless and remote system of dispensing justice to parties through the use of systems like Video conferencing, digital signing of documents, e-Filing, etc. Further, it means having an expansion of the purview of the original NJDG (National Judicial Data Grid) by including a database of cases, orders, etc.

²⁴ e-Committee Supreme Court of India, Case management through CIS 3.0 (Sep. 20, 2020) https://doj.gov.in/sites/default/files/CIS%203.0%20final_0.pdf

ADVANTAGES

One of the biggest advantages of a fully functioning system of virtual courts is that it will help in minimising the expenditure on maintaining physical records and copies as well as infrastructure and staff. As mentioned above, such a system will also reduce the requirement for people to be present in person for hearings, ensuring that the '*Cumulative cost of justice*' also goes down.

Introducing this system as a sub-body within the judiciary will also ease the judicial process and make it more accessible for all those involved in the judicial process including judges, lawyers, and clients, as one can provide and avail these services from a wide geographical area without compromising the quality of services. As the authors we believe that the cases wherein frequent adjournments are sought by lawyers due to time commitments in other courts will be lessened as virtual courts will eliminate the need for travel, increasing the amount of productive time a Lawyer/Judge can give during their workday.

It will enable a better management system to function within the courts, with the help of computerisation and other advanced technologies. The court will follow a systematic uniform procedure laid down by the centre with the limited rules introduced by the state judiciary. This will assist in eliminating the possibility of human error in the system, and the litigants need not be required to time restraint themselves to avail supplementary judicial services. Sometimes the eyewitnesses and expert examiners are not comfortable in taking part in the proceedings by appearing in person in the courts due to several reasons, such problems may be reduced via this system which is more convenient, less time consuming, more

accessible and less rigid; Which will ultimately contribute in promoting justice as well.

The adoption of Virtual courts will enable undertrials to safely await the end of their sentencing as it will not necessitate the transfer of undertrials who may be a security risk, from their ‘*holding*’ prison to the court premises. It was but a few years ago when a dreaded gangster was murdered in open court by his rivals who opened fire in the court premises, leading to the death of the accused and two policemen²⁵. The adoption of VC technologies will reduce such instances and make the Indian judicial process much more secure

Furthermore, this system when fully operational will have the effect of increasing the transparency of the proceedings as the Indian judiciary has sought to embody the adage “*Justice should not only be done but should also be seen to be done*”. It will also reduce the long waiting times for matters to be ‘listed’, allowing proceedings to be short and crisp, giving an opportunity for the judiciary to work on improving the long backlog of cases and eventually upholding the principle of speedy trial as established in the case of *Hussainara Khatoon vs the State of Bihar*²⁶.

²⁵ *Man who fired from AK-47 in Jharkhand’s Hazaribagh court arrested (2015)*
<https://indianexpress.com/article/cities/delhi/man-who-fired-from-ak-47-in-jharkhands-hazaribagh-court-arrested/>

²⁶ *Hussainara Khatoon v. Home Secretary, State of Bihar, 1979 SCR (3) 532*

CONCERNS RAISED AGAINST THE ADOPTION OF VIRTUAL COURTS IN THE JUDICIARY

While it seems hard to quantify any demerits to taking the court procedure online, we must consider the following points; there exist many ancillary issues that can throw up huge roadblocks and cause much disruption in the proposed system if not dealt with appropriately.

It is a fact that even before the pandemic, the judiciary was heavily utilising advanced technologies to manage the system as a whole. At every level of the judicial system, we could first-hand experience the user-friendly e-interface set up to help ease the process of legal practice. These steps taken by the Judiciary and Government of India was celebrated as achievements and praised not just in India but all over the world. However, some pertinent concerns remain about the current system that is being forced to function before a prototype could even get off the ground. Over the years, certain common problems have been identified that can severally dent the chances of an e-courts system achieving even a modicum of success in India. First and foremost is the problem of security. It is only recently²⁷, in the Indo – China border dispute that we have discovered the extent of State-sponsored intrusion of Indian digital systems by a hacker from China and Pakistan. It is not an overstatement to state that a concerted effort by malicious actors could seriously dent the effectiveness of an e-courts system, that plans to shift the entirety of the procedure online. From the filing of cases to providing live streams of judgements this ambitious project seriously needs to

²⁷ Himani Sheth 'China-backed hackers plan cyber-attack on Indian government agencies, companies' (2020) <https://www.thehindubusinessline.com/news/world/china-backed-hackers-planning-a-cyber-attack-on-indian-government-agencies-companies-report/article31869780.ece>

look into whether such a system can be effectively safeguarded against the nefarious of those who would seek to unfairly profit from disrupting standard procedure. A prime example is how the Supreme Court gave the recently merged ‘Vodafone-Idea’ a breather in the payment of tax, which immediately led to a jump in share prices of the company. While this case was not live-streamed, it forms the perfect opportunity for people who seek to profit from the result of such momentous judgements.

Furthermore, after this first hurdle, we must also address the issue of how a large majority of the judges occupying positions in the higher echelons of the Indian judiciary are notoriously ‘*un-tech savvy*’. The lack of familiarisation with technology is a major hurdle that has plagued attempts by the bureaucracy to modernise its age-old systems.

However, this point does not even begin to encompass the problem of access to the judiciary of the poor who will now be forced to adapt themselves to the new system especially when they are illiterate and cannot afford good lawyers. The infamous line from *Jolly LLB* accurately reflects a problem of digital illiteracy facing the Indian masses when the judge scolded the lawyer by saying “‘*Prosecution*’ ko ‘*Prostitution*’ likh rakha hai aapne, ‘*Appeal*’ ko ‘*Apple* (You have incorrectly spelt Prosecution as Prostitution and Appeal as Apple)’”²⁸ⁱ

It would not be incorrect to posit that despite all the hurdles and problems enumerated above, the current circumstances requiring a hitherto unheard level of social distancing have given a massive thrust to the Virtualisation of the Judicial Process. It can very well be argued that the progress made has been the result of PHASE I and PHASE II of the E courts initiative by the Govt. of India,

²⁸ ‘Jolly LLB’: 15 witty punch lines that will make you smile (2020).<https://www.news18.com/news/india/jolly-llb-15-witty-punch-lines-that-will-make-you-smile-596837.html>

which began over a decade ago. Furthermore, the current Pandemic is only going to require the creation of infrastructure and processes that continue long after the pandemic ends, making it at the very least a successful addition to our judicial infrastructure, even when the current pandemic ends.

It will be impossible to ignore the various legal problems associated with the importance of maintaining the privacy of a person. It has in the past been opined that only in sensitive cases such as those involving a person's identity, issues of national importance, all the other cases may be shifted online. The question of a person's identity and data being misused is another question that we are yet to seek an answer to.

Another practical consideration that has hitherto gone unnoticed is how the country has more than 600 district courts in addition to the high courts. Effectively digitising these courts is only half the problem since the Government will also have to create district Sewa Kendra's, for providing video conferencing abilities to those who cannot afford it for themselves. While that problem is solved, we further need to look into whether increasing the speed of the process can lead to any deterioration in the quality of justice for those who are most disadvantaged in society since their hitherto exclusion from the judicial system will have ended, and the inclusion of a large mass of litigants may further burden an already overburdened judicial system in India

SETUP OF VIRTUAL COURTS AMONG DIFFERENT COUNTRIES

Any proper discussion of the Indian experiment with Virtual Courts would be incomplete without considering and taking into account the system prevalent in other countries of the world. While it is true that with the incidence of the

pandemic, courts all over the world are being forced to adapt to virtual courts, many countries have already adopted such a system with varying degrees of success. For the purpose of this comparison, we are limiting ourselves to the USA, China and UK, although other countries like South Africa and Russia have also adopted similar systems, the lack of data documenting the extent of their implementation forces this limitation upon us.

VIRTUAL COURTS IN THE UNITED KINGDOM

The UK has started using video technology in courts in 1999²⁹, but the progress in the matter had been really slow until the Covid-19 showed up & became the pandemic. The UK has three separate legal jurisdictions distinct in a hierarchy from their counterparts, England and Wales, Scotland, and Northern Ireland. It is pertinent to note here that the highest court of appeal in all these legal jurisdictions is the Supreme Court of UK in which all the final appeal for the whole UK lies. As a result of the COVID crisis, in each jurisdiction of the UK, the process has been completely replaced by a virtual courtroom through the platforms of Zoom, Skype, or the Kinly Cloud Video Platform. The UK Supreme Court held its first remote hearing on March 24th, and since then every hearing has been a virtual hearing. While this system has been in operation much before the current pandemic, even the UK struggled with expanding its system to meet with the demands of shifting the entire judicial process online, although earlier initiated technological reforms in the Judiciary did provide significant help to react to the situation speedily, but this system still has a lot to offer.

²⁹Jamie Young, *A Virtual Day in Court* (Design Thinking & Virtual Courts), 2011
<https://www.thersa.org/globalassets/pdfs/reports/a-virtual-day-in-court.pdf>

VIRTUAL COURTS IN THE UNITED STATES OF AMERICA

On March 31st 2020, pursuant to the CARES (Coronavirus Aid, Relief, and Economic Security Act) national emergency Act the Judicial Conference of the United States has temporarily approved the use of Video and teleconferencing in the courts³⁰. The US National Centre for State Courts along with the Joint Technology Committee has produced a blueprint to govern remote court hearings in the state and local courts. Texas became the first state which conducted their first virtual jury trial nationally amid the pandemic. All these states were facing different challenges and were in need of different levels of support. The system was mainly set up to govern cases which are appropriate for virtual hearings and certain types of criminal proceedings. Also, provisions were laid down in detail to conduct such proceedings in public forums, so the public has access to the hearing³¹.

VIRTUAL COURTS IN THE PEOPLE’S REPUBLIC OF CHINA³²

The SPC (Supreme People’s Court) is the apex court in China, which was the first to formally propose the idea of a ‘Smart Court’ in early 2015. As a result of the pioneering work on the project, China’s first prototype run of this initiative of virtual courts began in late 2017 in the prefecture of Hangzhou which eliminated the formalities of ‘*regular*’ courts in favour of online filing and depositions along

³⁰Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic (2020).<https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>.

³¹ Jordan Singer ‘Judicial Conference of the United States’ – The Interdependent Third Branch (2020).
<https://interdependentcourts.com/tag/judicial-conference-of-the-united-states/>

³²Sehgal, D. (2020) Future of Virtual Courts in India after COVID-19 crisis - iPleaders.
<https://blog.iplayers.in/future-virtual-courts-india-covid-19-crisis/>

with innovative procedural rules. However, it was a voluntary virtual proceeding, if a defendant chose to opt-out from such proceedings, then they will be conducted conventionally offline. According to recent reports, the SPC wishes to utilise the unique opportunities presented by the onset of COVID, by pushing information technology in litigation work. Activities such as case filing, mediation, evidence exchange, court hearing, sentencing, and document delivery in Chinese courts are made available online³³.

CONCLUSION

After analysing the various aspects of India's plans of creating a system of virtual courts, we can see that the current pandemic has brought many opportunities with it. Any instance to develop further and build upon our age-old systems does come with the problems of change, which includes teething problems like basic technical problems or unfamiliarity/inexperience with the system or personal bias. However, it is only fair that we give this system a chance because this is indeed the 'future'! Despite the naysayers who oppose the accelerated adoption of virtual courts, we must note that there were significant oppositions to the creation of tribunals in the 1990s, however as we look back more than two decades later, we can conclude that this was indeed a step in the right direction.

The Supreme Court's e-Committee is still working on making this system as efficient and feasible as possible by looking into the possibility of live streaming of these video conferencing to reinstate the principle of Open Courts in virtual

³³ Guodong Du, Meng Nu 'China Establishes Three Internet Courts to Try Internet-Related Cases Online: Inside China's Internet Courts' <https://www.chinajusticeobserver.com/insights/china-establishes-three-internet-courts-to-try-internet-related-cases-online.html>

court proceedings, interlinking of law libraries throughout the country making the system as whole more accessible and improving CIS 3.0 to make it more efficient and accurate. Perfection demands patience and the same is needed presently by the Indian Judiciary system from us, i.e. to not jump to a conclusion without giving it a proper time to function.

The Indian Supreme Court has emerged as a global leader in terms of the number of cases heard via video conferencing during the lockdown period starting from March 23rd 2020. During this time, 617 benches in the top court have taken up 6991 cases for hearing out of which 293 benches were sat in virtual courts.³⁴In this period, the Supreme Court has delivered 670 judgments which are way higher than the United Kingdom's Supreme Court and the US Supreme Court, which has pronounced only 15 and 12 judgments respectively. This is one such instance to show that the Indian Judiciary is at par with their foreign counterparts, if not better.

The COVID has caused a sudden push in the technological shift for the judiciary, which will be beneficial for all the stakeholders in the justice system. It is common knowledge that the use of technology will ensure speedy redressal of cases as any person can join the virtual court at any given place. How many times we have heard in courts that the case was dismissed or adjourned because of the physical unavailability of the learned counsel. This system will help the clients as well as, especially NRI's who have to especially come to India for the court

³⁴Outlook India, *SC emerges as global leader in hearing cases via video conferencing during lockdown* (Sep.23, 2020) <https://www.outlookindia.com/newscroll/sc-emerges-as-global-leader-in-hearing-cases-via-video-conferencing-during-lockdown/1870490>

hearings. The courts will now have more time at hand, giving them the luxury to dispose of pending cases which was impossible to think before.

Despite possessing some significant complications, the model is indeed useful and definitely bodes well for the long-term development of the Judiciary system in India. It can be arranged by the Judiciary and the Government that once this situation ended, the model is incepted in the judiciary to work on easily-resolved civil proceedings with relatively small amount of money until the model attends all its deficiencies and become more desirable to be implemented in other types of proceedings. There is no denying the fact that transferring the courts to the virtual realm has substantial perks and all we have to do is grab it. After having looked into the many advantages and the many pitfalls of the adoption of such a system, we can conclude that there is no major ‘*disadvantage*’ of adopting a system of virtual courts because all the problems can be adequately remedied and addressed. With the advent of large scale fibre optics in Tier 2 and Tier 3 cities, the accessibility of Internet will only further improve into the rural hinterlands of India, and we are uniquely positioned socio-economically, to make use of this, by improving our judicial infrastructure to cater to all those people who earlier were not a part of the formal justice system. It is our view therefore that the adoption of such a system is not only advantageous but rather a matter of paramount importance, because going forwards, we will need to keep the judiciary strong to resist any further transgressions by the executive or legislature, into the rights and liabilities guaranteed to citizens under the Indian constitution.

This pilot version of the future courts set up all over the world as a consequence to Covid-19 will be the silver lining we all are hoping for!



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