

Virtual Courts: A Pathway towards the Right to Access Justice in India

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Abstract:

As we know in virtual courts, various procedures such as electronic filing of complaints and documents, online payment of court fees, submission of digital evidence, and conducting arguments via video conferencing are carried out in real-time, necessitating the presence or availability of all participants during hearings. Conversely, online courts feature asynchronous hearings, allowing participants to present evidence and arguments without the requirement of synchronous presence. To provide legal legitimacy to virtual courts and video conferencing, the Supreme Court issued an order on April 6, 2020, invoking Article 142 of the Constitution. This directive extended to all High Courts, granting them the authority to adopt technological solutions in accordance with their respective needs and the evolving pandemic circumstances across different states. Model rules were formulated and circulated among all High Courts, while District or lower courts were instructed to adhere to rules prescribed by their overseeing High Courts. In this research paper, virtual courts and their role in ensuring proper access to justice in the wake of post-pandemic developments has been analysed, evaluated and assessed accordingly. Moreover with respect to the efficacy of virtual courts as well as the problems encountered in the administration of justice digitally, the implications of these developments have also been explored with a view towards the future of these institutions in our country.

Keywords: Virtual Courts, Digital Courts, Pandemic, Digital Technology, Access to Justice

Introduction:

Today India is making strides towards a future where physical presence in court may become obsolete. Virtual Courts hold the potential to deliver justice promptly and efficiently to the populace if implemented effectively. Let's evaluate the advancements in our judicial system thus far. The inauguration of Delhi's inaugural virtual court at Tis Hazari Court on July 26, 2019, marked a significant milestone. Following suit, on August 17, 2019, the Punjab and Haryana High Court established a virtual court in Faridabad to handle traffic challan cases in Haryana, with guidance from the e-committee of the Supreme Court of India. The

operational process of Virtual Courts is straightforward and user-friendly. Cases are directly allocated to a Virtual Court presided over by a Metropolitan Magistrate. Subsequently, a summons is issued and conveyed to the accused via email or SMS. Should the accused plead guilty, the fine is presented on the website, and upon payment, the case is promptly closed. However, if the accused opts to contest the traffic violation, the case is transferred to the Regular Court within the appropriate territorial jurisdiction. This streamlined approach expedites case resolution, particularly for matters where the accused would previously have had to personally appear in court even for a guilty plea. Moreover, it significantly reduces the physical presence required at court premises.

A History of Virtual Courts:

Virtual courtroom procedures had been adopted in Indian courts well before the global COVID-19 pandemic, and various significant cases highlight their utilisation. One such instance is the case of Krishna Veni Nigam v. Harish Nagam, involving a transfer petition to relocate a case initiated under Section 13 of the Hindu Marriage Act, 1955. As the parties were not geographically situated within the jurisdiction of the same court, a two-judge bench suggested resolving the matrimonial dispute through video conferencing.

Initially, the Supreme Court endorsed the use of video conferencing when physical attendance posed challenges due to geographical constraints. They also ruled that video conferencing could be employed upon request by either or both parties. However, in the subsequent case of Santhini v. Vijai Venkatesh, the Supreme Court of India reversed this decision. Chief Justice Dipak Mishra and Justice A. K. Khanwilkar opined against directing the use of video conferencing in transfer petitions, while Justice D. Y. Chandrachud advocated for virtual proceedings. In another notable case, M/S Meters and Instruments v. Kanchan Mehta, the Apex Court underscored the importance of technology in transitioning towards paperless courts and minimising courtroom congestion. They particularly emphasised considering virtual proceedings for specific case types, such as traffic violations and matters related to Section 138 of the Negotiable Instruments Act, 1881.

Virtual Courts: An Assessment

It is a well-known fact that after the implementing a comprehensive online court system holds the potential for significant cost savings by eliminating expenses associated with physical infrastructure, personnel, security, and other related court expenditures. This would be achieved through the facilitation of remote participation for involved parties, reducing the necessity for in-person court appearances and ultimately

enhancing cost-effectiveness. Furthermore, the digitization and computerization of judicial institutions would lead to increased accountability and efficiency in the administration of justice. A notable example of this is the successful integration of video conferencing during the COVID-19 pandemic, which effectively diverted courthouse traffic and enabled virtual court proceedings through remote video technology. An important advantage of an online court system is its ability to operate around the clock. Given the existing backlog of cases, delayed justice has undermined public trust in the judiciary. However, this modernization effort would expedite the judicial process, facilitating the timely resolution of cases and thereby reinstating confidence in the judicial system.

The goal of virtual justice is to provide reliable and consistent connectivity infrastructure to all districts and lower courts across India. Additionally, the committee proposed that the judiciary explore solutions such as mobile video conferencing facilities to facilitate meaningful participation from individuals residing in remote areas. By embracing these measures, it is anticipated that access to justice will be improved for all citizens, irrespective of their geographical location or technological constraints.

Challenges:

Virtual courts in India, while offering numerous advantages, also pose certain challenges. Despite their potential to modernise and improve the Indian legal system, they raise concerns regarding the authentication of witnesses and evidence presented in court. There is a notable issue surrounding the preservation of confidentiality during proceedings, as reliance on technology and various software may introduce security and privacy risks.

Moreover, India faces the practical challenge of having numerous judicial institutions, including 24 High Courts and over 600 District courts. The implementation of virtual courts would necessitate significant financial investment and technological upgrades to ensure seamless remote operations. Additionally, it's crucial to consider the potential impact of expedited justice on the overall quality of judicial outcomes. Efficiency should not compromise the effectiveness of the justice system, and efforts must be made to ensure technology is accessible to all, maintaining fairness and efficacy in legal proceedings.

The adoption of virtual courts extends beyond India, with many countries worldwide leveraging technological advancements in their legal systems. For instance, courts in Texas are utilising video conferencing for criminal hearings, reducing the need for inmate transportation from jail to court. To better understand the potential of virtual courts in India, it's imperative to examine their progress and status in other

nations. This comparative analysis will help anticipate challenges associated with internet-based courts in India and explore effective strategies to address them.

Introducing the concept of virtual courts in India requires a careful examination of their potential benefits and the essential elements necessary for their successful establishment. Virtual courts offer the opportunity to computerise the entire judicial system, providing citizens with the advantages of video conferencing and electronic filing services. Embracing virtual courts will also enable the use of e-signatures or digital signatures, fostering a more user-friendly interface within the legal system by maintaining a comprehensive database of pending cases and orders. To bring this vision to fruition, it is crucial to assess the feasibility of implementing virtual courts in the near future and determine the timeline for their potential realisation. This assessment must involve a thorough examination of the advantages and disadvantages associated with virtual courts.

While virtual courts may appear indispensable given current circumstances, they are not without challenges. E-filing processes, for example, entail numerous complexities, and establishing state-of-the-art e-courts with advanced technology can be financially demanding. Cybersecurity is a significant concern, as virtual courts are vulnerable to hacking. Although the government has taken steps to address this issue through the Cyber Security Strategy, the practical implementation and effectiveness of these measures remain uncertain. Moreover, inadequate infrastructure and limited access to electricity and internet connectivity in various Talukas and villages could pose operational challenges for virtual courts. Ensuring equal access to justice for all segments of society requires the provision of electricity, internet connectivity, and computers. Additionally, maintaining records within the e-court system presents challenges, as paralegal staff may lack sufficient equipment and training to handle documents and evidence effectively, thus impeding accessibility for litigants, legal counsel, and the court.

Beyond these technical issues, the distance and lack of physical proximity in virtual proceedings may impact litigants' confidence in the process. While virtual courts hold considerable potential, their successful implementation necessitates careful consideration of the challenges they entail. Addressing technological complexities, cybersecurity concerns, infrastructure limitations, and providing adequate training is essential to make virtual courts a viable and effective component of India's judicial system.

Virtual Courts: A Pathway towards Digital Justice

In the present judicial scenario in India, virtual courts present numerous advantages, notably in expediting lengthy and complex legal procedures, leading to swifter and more cost-efficient outcomes. They also significantly reduce waiting and travel times, enabling better time management through scheduled sessions. The "Functioning of Virtual Courts," as outlined in the 103rd Report by the Rajya Sabha Committee, depicts these courts as platforms for dispensing justice, where complaints and documents are filed electronically, evidence and court fees are submitted digitally, legal arguments are conducted via video conferencing, witnesses provide remote testimonies through video calls, and judges resolve disputes virtually from any location. When considering the merits and demerits of virtual courts, it's crucial to uphold two fundamental objectives. Firstly, the rights of citizens should not be hindered by physical or social barriers, and every effort should be made to ensure equal access to justice. Thus, technology should be embraced as a tool to enhance access to justice. Secondly, technology should be seen as an enabler rather than a rigid requirement. Embracing this mindset will make virtual courts more inclusive and adaptable. The primary aim of this paradigm shift is to uphold access to justice, particularly during times of heightened administrative challenges like epidemics, where upholding the rule of law is paramount. A well-functioning judiciary becomes even more indispensable in such circumstances.

Digital tools have a profound impact on development and human rights, with one crucial tool being end-to-end encryption, enabling secure global communications and enhancing individuals' access to knowledge and information. However, for a sustainable digital transformation, prioritising the promotion and protection of digital rights is essential. This involves supporting technological advancements while considering the implications of new data analysis and communication methods and ensuring data loss prevention.

The Supreme Court's response to the pandemic is commendable, swiftly adopting the Virtual Court (VC) system and conducting over 15,000 virtual hearings in just 100 days. Despite its success, ongoing improvement is necessary to address technical issues and ensure smooth functioning. Despite challenges during the sudden lockdown, the court effectively utilised technology for hearings. Nevertheless, the implementation of virtual courts in India encounters several challenges. It is crucial for the legal community and judicial system to engage in constructive discussions to identify, evaluate, and implement effective measures, rather than being swayed by difficulties. Valuable lessons from existing solutions can pave the way for an improved, streamlined, and more efficient justice system for India.

A significant issue in assessing the current situation is the lack of a unified legal framework, leading to recurrent difficulties. Introducing a new law applicable to all courts could resolve significant aspects of India's virtual courts, establishing uniformity across platforms throughout the country and offering multiple

advantages. Given the unpredictability of the pandemic's trajectory, physical courts may not operate in the foreseeable future. Therefore, virtual court operations with electronic filing and video conferencing capabilities will continue as a precautionary measure.

Urgent attention is required to establish a standardised, secure, and efficient virtual setup, adapting to the evolving demands of justice institutions in India. To effectively tackle short-term and long-term demands, establishing a steering group is advisable. This committee should consider all relevant factors, including adopting strategies, implementing changes to the law, and leveraging technological advancements to ensure practical and effective judicial access. By doing so, India can develop a successful and efficient judicial system that harnesses the potential of digital tools.

Conclusion:

Thus we can point out that in the discourse surrounding globalisation and digitalization, the significance of virtual courts in our society cannot be overstated. To ensure our nation remains competitive on the global stage, embracing modern technology is imperative to prevent lagging behind. Upon thorough examination, it becomes apparent that every crisis presents opportunities for advancement and resilience against future challenges. The notion of 'internet courts' in India is increasingly feasible, potentially materialising within the next decade with the resolution of current hurdles. While physical courts remain crucial for transparency and public engagement, there is still considerable room for progress in digitalization. Today engaging legal technology startups can play a pivotal role in modernising India's judicial system. However, the report underscores the necessity for improved audio/video quality, connectivity, and integration of nonverbal cues to enhance the virtual courtroom experience. The Committee advocates for the study of courtroom design and the development of customised software and hardware tailored to the specific requirements of the Indian judiciary. Transitioning to online judicial services is a multifaceted endeavour, given the complexities inherent in case hearings. As technology becomes increasingly integral to our daily lives, optimising its utilisation is paramount for societal progress in our country.

References

1. Parliament of India , 103rd Report on Functioning of Virtual Courts and Proceedings through Video Conferencing. New Delhi
2. E-committee, Information and Communication Technology in Indian Judiciary, Supreme Court of India. <https://ecommitteesci.gov.in>.

3. Handika, Sandhy et. al.,. "Virtual Court Policy for Criminal Justice on Corona Virus Disease Pandemic." *Substantive Justice International Journal of Law*. Vol. 3, No. 1, 2020, pp. 82-92.
4. Khatana, Rajesh, & Gurjar, Sunita . "A Study of Digital Law System and its Importance in India." *International Journal for Social Studies.*, Vol. 6, No. 8, 2020, pp. 15-20.
5. Khorakiwala, Rahela. "The Majesty and Dignity of Courts: Changes in Court Dynamics with the Onset of the COVID-19 Pandemic in India." *Socio-Legal Review*. Vol. 18, 2022.
6. Mahibha, G., & Balasubramanian, P. "A Critical Analysis of the Significance of the e-Courts Information Systems in Indian Courts." *Legal Information Management*, Vol. 20, No.1, 2020, pp. 48-52.
7. Rattan, Jyoti, & Rattan, Vijay. "Role of Information and Communication Technologies in the Metamorphosis of Justice Administration in India: A legal Study." *Indian Journal of Public Administration*. Vol. 69, No. 1, 2023, pp. 75-82.
8. Shukla, Vanshika. "Pathways to Justice: Expanding Access for Everyone." *Asian Law & Public Policy Review*, Vol. 8, 2023, pp. 90-102.