

Future of Virtual Courts in India Post Pandemic: An Analysis

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ABSTRACT

The COVID-19 pandemic has surely caused an economic depression and various other catastrophes (like that to the health sector and industrial sector). A Similar impact has been made to the legal sector of the country. Due to the nation-wide lockdown, The Supreme Court of India, almost every High Court has been temporarily closed. But can this crisis be used as an opportunity?

“When written in Chinese the word ‘crisis’ is composed of two components. One represents danger, and the other represents ‘opportunity’ “

– *John F. Kennedy*

This lockdown period can be used by the Judiciary as an opportunity to have a more developed court system and upgrade the use of technology in the judicial system. One of the ways for releasing some burden off the courts is getting the Virtual Courts operational. This paper enumerates the efforts made by the Supreme Court of India and proposes a road map of how the existing Information and Communication Technology (ICT) can help Indian judiciary to evolve as more technology driven with increased transparency.

Key Words: Indian Judiciary, E-Courts Project, National Judicial Data Grid, Pending Cases, Video Conferencing.

Introduction:

Justice delayed is justice denied.” said the British Prime Minister William E. Gladstone. This statement is very much true for Indian Judiciary. Almost 27 million cases are pending in Indian courts, of which roughly 8.4% are lying for more than ten years (Hindustan Times, 2016) (NJDG, 2018). Indian courts are clogged with enormous backlogs, and cases take very long from start to finish. As on 9th January, 2019, there are more than 29 million cases pending in the lower courts across India, about 5 million cases pending in High Courts.

In order to speed up the disposal of cases, Indian Judiciary has started, on the initiative of the Hon’ble Supreme Court of India, various projects with the help of the Information and Communications Technologies (ICT) in the Judicial Sector.

The COVID-19 pandemic has disrupted the justice delivery system like never before. The compulsions associated with ‘social distancing’ coupled with lockdown directives have led courts and tribunals to shut their premises to the public. At the same time, recognizing that a complete shut-down of the justice-delivery system is undesirable, judicial administrators have turned to

technology to meet the challenges posed by the pandemic. Various judicial and quasi-judicial bodies, led by the Supreme Court, have been conducting hearings online.

However, while these measures are commendable, they are not sufficient. This is because of the following reasons:

- a. The virtual system of functioning has not been adopted by all judicial and quasi-judicial institutions across the country.
- b. Institutions which have adopted this system have only been employing it for select matters i.e. to hear and dispose of urgent/extremely urgent matters.
- c. The current situation is unpredictable. It is impossible to say for how long ‘social distancing’ directives and restrictions on movement will remain in force. It is likely that these preventive measures will be continued for some time even after the present threat has subsided.
- d. In the present circumstances, it is essential that the judicial and quasi-judicial machinery takes steps not only to remain operational but to achieve maximum functionality (as far as may be) at the earliest. The virtual courts system can be of great assistance in achieving this goal.

In this backdrop, the directions passed by the Supreme Court, on 6 April 2020, for the conduct of court proceedings across the country via Video Conferencing (VC), during the period of the outbreak of the COVID-19 pandemic are a welcome step. Broadly, the Supreme Court has directed as under:

- a. All High Courts shall ensure functioning of the judicial system through use of VC technologies and to this end, shall decide the modalities for use of VC technologies after considering relevant factors (such as peculiarities of the judicial system in every state as well as the dynamically developing public health situation).
- b. District Courts in every state shall adopt VC technologies prescribed by the appropriate High Court.
- c. Courts shall make VC facilities available for those litigants who do not have access to these facilities, including by appointment of advocates as “amicus curiae” and making VC facilities available to such advocates (if necessary).
- d. Till such time as the High Courts frame rules in this regard, VC technologies shall primarily be used for hearing arguments, both, at the trial as well as appellate stages. However, evidence shall not be recorded using VC facilities except with the parties’ mutual consent.

The directions shall remain in force till such time as further orders are passed by the Supreme Court.

What are Virtual Courts?

As the name suggests Virtual Courts are courts that use a remote working system with the help of various software and tools. The aim is to eliminate the requirement of human presence in the court so that the adjudication of cases doesn’t get delayed due to the unavailability of the litigant or the client or the court staff. E-courts are kind of a subset to virtual courts, as they refer to the websites, and components used in order to assist the functioning of virtual courts. The websites, mobile applications and various other software used for the computerization of the legal system can be said to be a part of e-courts.

India is moving towards the attainment of a system, where there would be no requirement to visit a court in-person. Well, it’s not wrong to say that we might not have these courts after all. “Virtual Courts” if implemented properly will provide time-bound and effective delivery of justice to the citizens of the country. Let’s see what all has been achieved until now in the judicial system of our

country.

On 26th July 2019, Delhi's first virtual court was launched at the Tis Hazari Court. After that, On 17th August 2019, the Punjab and Haryana High Court introduced the virtual court at Faridabad and the court deals in traffic challan cases of Haryana. This project was launched by the guidance of the e-committee of the Supreme Court of India.

The procedure followed here is simple and convenient. The case comes directly to the Virtual Court which is presided by a Metropolitan Magistrate. Then, a summon is generated and the same is notified to the accused via email or SMS. Then the accused can go to the website and if he pleads guilty, then the fine amount will be displayed. Once the payment of the fine is made, the case will automatically be disposed of. In case the accused wants to contest the traffic challan, then the case will be dealt with by the Regular court, as per the territorial jurisdiction.

The procedure aids to expedite the disposal of cases, especially in cases where the accused earlier had to visit the court even for pleading guilty. This process also helps in reducing the footfall of the court.

E-Courts Project

The project was launched on the basis of the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary-2005" which was submitted by the e-committee of SC of India. The vision behind this plan is to bring technological advancements in the working of Courts. The proposed activities of this project were divided into 2 phases:

Phase-1 of this project, (which started in 2007) the main aim was to initiate the implementation of ICT (Information and Communication Technology) in the judicial system. This was done by providing courts with facilities like computers, working internet connection via LAN (Local Area Network) and required software and hardware (like printers, scanner, etc).

Apart from this, the judges were given laptops with the internet, digital signatures were introduced and district court websites were made functional. Through these websites, citizens could check the status of their case, daily order sheets and final orders too.

Phase-2 was enacted with the help and cooperation of the e-Committee, NIC, the DoJ (Department of Justice), DietY and the Ministry of Finance. The infrastructural model was changed and computerization was done in the offices of DLSA (Delhi Legal Services Authority), NJA (National Judicial Academy), SJA (State Judicial Academy) and Taluka Legal Service Committee.

A common software platform known as CIS (Case Information Software) has also been created, with which all the court data will be uploaded including the past cases. Video conferencing facilities in courts and jails are in their final stages. Mobile applications like eCourt services for District and Taluka courts, JustIS Mobile App for judicial officers have also been made. Phase 2 accomplishments also include websites like e-Filing through which citizens can file their case from home, check real-time case status, make court fee payments via ePay facility.

By the end of Phase 2, there will be discontinuation of manual registers, the introduction of a cloud-based system for all court-related work and digitalization of all cases, whether pending or decided.

Recent Developments

Current Chief Justice of India SA Bobde held a meeting on 15th March 2020, where he discussed the implementation of Video Conferencing in Courts, to avoid any type of gathering in Court. This step was aimed to combat the COVID-19 outbreak, and minimize its impact on the functioning of the judiciary in our country.

In an effort to promote social distancing, and eliminate the requirement of counsels to be present in court, Justice DY Chandrachud who is the chairman of the E-committee of SC announced that e-filing has been made available 24/7, and court proceedings shall take place via video conferencing.

Earlier a complete shutdown of the top courts was considered to be impossible, but the courts have successfully been able to shut down completely for the next few weeks, in order to contain the spread of novel coronavirus.

It is not a fallacious statement if we say that this development and technological up-gradation had not been possible without the upcoming of this crisis. Well, there is a high possibility that the work was under development and in the pipeline, but the adoption of this system of 'virtual court' has received a thrust due to the spread of this monstrous virus. Also, there seems no reasonable explanation to roll back the setting up of online courts, even when the pandemic ends.

Challenges in establishing Virtual Courts in India

Before we talk about the possibility of virtual courts in India, it's better to have an idea about what all can be achieved by the establishment and proper functioning of these virtual courts.

Setting up of virtual courts will result in complete computerization of the court system, and the citizens can take the benefits of facilities like video conferencing, e-filing, etc. A virtual court will enable the usage of e-signatures or digital signatures, and a more litigant-friendly user interface can be established in the judicial system of our country by having a proper database of pending cases, orders, etc.

Now, to achieve all this, it is reasonable to analyze the possibility of such virtual courts in the near future and to predict how 'near' is this near future that we are talking about. All this can be done after we read about the pros and cons of virtual courts.

In the present circumstances, the virtual courts may seem a necessity, however, it goes without saying that at present there are a whole lot of glitches and shortcomings in its execution.

- a. The e-filing process is riddled with endless complications: E-Courts will also prove to be cost-intensive as setting up state of the art e-courts will require the deployment of new-age technology.
- b. Hacking and Cyber Security: On the top of technology, cyber-security will be a huge concern too. The government has initiated remedial steps to address this problem and formulated the Cyber Security Strategy but it is more on the side of prescribed guidelines alone. The practical and actual implementation of the same remains to be seen.
- c. Infrastructure: Challenges can erupt due to insufficient infrastructure and non-availability of electricity and internet connectivity in most of the Talukas/villages.
- d. Electricity connection is a must along with internet connectivity and computers to ensure justice reaches every section equally.
- e. Maintaining e-courts record: The paralegal staff is not well equipped and trained to effectively handle document or record evidence, and make them readily accessible to the litigant, to the council as well as to the court.

Other issues might involve the litigant's lack of confidence in the process due to lack of proximity.

Advantages

A full-fledged system of online courts with proper implementation will help in eliminating the court expenses such as on infrastructure, staff, security, etc. Parties involved in the cases won't be required to come to court in-person, which reduces the travel time and makes the procedure cost-efficient.

Digitization and Computerization of the institutions would also bring accountability and better administration in the working of the judicial system. As we can clearly see that the video conferencing facility introduced to mitigate the spread of COVID-19 in courts, has helped in diverting the courthouse traffic and has moved to footfall to the virtual courts with the help of remote video technology.

One of the biggest advantages which we will have is the flexibility of the court to work 24/7. There is a huge backlog of cases in court, and the delay in justice leads to a lack of faith by the citizens on the judiciary. With this, the procedure will be given a thrust, and adjudication of cases can be done in a time-bound manner.

Disadvantages

Everything has its pros and cons. So is the case with 'virtual courts' in India. It might seem like the best and the possible way to develop and upgrade the legal community of India, and that it has no disadvantages involved. However, that is not the case.

There will be various legal problems related to the applicability and authenticity of the identity of witnesses, evidence produced before the court, etc. Even the confidentiality of court proceedings shall be at risk because, in the end, the whole setup involves the use of technology and various other software and tools that might possess some threats related to security and privacy of data.

Also, another practical problem which is India-specific is that in India, there are 24 High Courts, more than 600 District courts and other subordinate judicial institutions. The cost of setting up and installation of essential features would require a huge amount of investment. To convert the judicial system into a remote-working successful 'virtual' world, technological up-gradation and investment in court are quintessential.

Apart from this, one important aspect which gets unnoticed is that, will speedier justice result in deterioration of the quality of justice? We need to make sure that the speedy delivery of justice doesn't cost us the efficiency and effectiveness of justice. Because to have a more effective justice system, the technology must be accessible to everyone. Setup of Virtual Courts among Different Countries

Courts all over the world are switching towards virtual courts with the help of various technological developments being made. Courts in Texas have also started to hear criminal cases and continue with the judicial proceedings via video conferencing so that the inmates don't have to travel from jail to court.

To analyze and predict the scope of virtual courts in India, we should also observe the development and status of these courts in other countries. This will help us to know what will be the issues brought up by the implementation of internet courts in India, and how can such problems be resolved.

Conclusion and Suggestions

After analyzing everything in a comprehensive manner, we can be assured of the fact that Yes, Every crisis does bring a new opportunity. An opportunity to develop and upgrade ourselves, an opportunity to make ourselves immune to the problems and hindrances which might come in our way in the future. Similar was the case of the future of 'virtual courts' in India. We earlier raised a question that how 'near' is this future.

However, this can be achieved only if we don't forget the hindrances which are in our way and how we can remove them. The reason why India is still not having a full-fledged system of virtual courts is because of various loopholes that exist in the implementation procedure. It was found that various district and subordinate courts were not updating the National Judicial Data Grid(NJDG) which defeats the purpose of having accountability in the working of the judicial system of the country.

Also, at times we separate the court system from our legal community. The legal society of our country includes litigants, law firms, judicial officers, and every staff working in this arena. And for the development and advancement of one institution, it's important for the others also to upgrade themselves.

To address the aforementioned challenges, the first and foremost step is to draw up a policy for encouraging the setting up of e-courts.

It is critical to draw up a well-defined and pre-decided policy framework as it can help in laying a concrete roadmap and direction to the e-courts scheme of India.

Another important step is the need to upgrade the present state of infrastructure. The government needs to identify and develop the infrastructure that would be required to support the e-court project.

One aspect that needs to be focused on is the deployment of a robust security system that provides secure access to case information for appropriate parties. The security of e-courts infrastructure and system is of paramount importance.

Also, a user-friendly e-courts mechanism, which is simple and easily accessible by the common public will encourage litigants to use such facilities in India.

The government must make dedicated efforts in the training of personnel to maintain all the e-data. These include maintaining proper records of e-file minute entries, notification, service, summons, warrants, bail orders, order copies, e-filing etc. for ready references.

Conducting training sessions to familiarize the Judges with the e-courts framework and procedure can give a huge impetus to the successful running of e-courts.

Creating awareness around e-courts through talks and seminars can help bring to light the facilities and the ease that e-courts can facilitate.

As technology is here to stay, therefore, finding mechanisms to make it better will be the step in the right direction.

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