

# ACCESS TO JUSTICE THROUGH VIRTUAL COURTS IN CURRENT INDIAN SCENARIO

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## ABSTRACT

A relatively recent idea in the Indian legal system is the virtual court. Mostly as a result of the difficulties brought on by the continuing epidemic, it gained attention. The Delhi High Court and the Supreme Court of India were the first to hold virtual hearings for cases in an effort to end the pandemic-related delays in the legal system. After the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice stated in its report dated September 11, 2020 that Virtual Courts should continue even after the pandemic is over, it raised many concerns in the minds of litigants as well as the general population of this nation.

This essay examines the system of virtual courts that has recently been implemented as a result of the COVID-19 outbreak. The author has specifically attempted to explain the recent changes made to the nation's judicial system. The directions issued by the Supreme Court, as well as the adjustments and innovations adopted by individual courts in reaction to the epidemic, have all been studied by the author. It focuses on the difficulties that the courts are now experiencing as a result of the movement in work culture towards the virtual format.

These difficulties include making the technology used in virtual courts accessible to the judges, litigants, interested parties, and other parties concerned. In order to assist us better comprehend the concerns highlighted, the document also makes reference to a few past Supreme Court rulings and precedents. Also, some information is provided on the current state of the virtual court system globally and the likelihood that it will remain in use in the future. The study concludes with a brief conclusion and a few suggestions that, if implemented, may strengthen and improve the system of virtual courts.

**Keywords:** - Virtual Courts, Digital Justice, Proceeding, National Judicial Data Grid, Efficacy

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

– **John F. Kennedy**

## **INTRODUCTION**

The British developed a system of law and justice in India that was modelled after the English Common Law system, which established courts and a hierarchical structure while promoting access to justice for all. By creating laws and outlining the fundamental ideas of justice, he helped the judicial system. Despite the fact that India has been independent for more than 70 years, many of the country's current laws, particularly the criminal justice system, nevertheless have British roots. Although the legislation has undergone a number of changes, including deletions, additions, and limitations, the fundamental structure of India's criminal justice system is still British. The British left behind a system of delivering justice that could be improved upon and adjusted to meet India's demands. Saying that India's legal system is underdeveloped is inaccurate and misleading.

The Indian Judiciary has started a number of projects with the use of Information and Communication Technology (ICT) in the judicial sector at the initiative of the Hon'ble Supreme Court of India to speed up the resolution of cases. Judiciary officials have resorted to technology to address the issues brought on by the pandemic because they understand that a total closure of the justice delivery system during the time of the epidemic is unacceptable. The lockdown orders and the requirements of "social separation" have forced courts and tribunals to seal their doors to the public. It is crucial that measures be made in the midst of the epidemic to ensure that the free and impartial administration of justice is not hindered.

## **LITERATURE REVIEW:**

**Krati Sharma, Could Virtual Courts in India Allow Legal Access Even After the Pandemic? LAW OCTOPUS**

The Apex Court was divided based on geographic access in this article, which also discusses the hearings in India's virtual courts. It also talks about just the goals and strategies of the E-Court Project. Finally, it discusses the drawbacks of virtual courts and offers solutions to get over them.

**Jyoti Rattan and Vijay Rattan, The Covid-19 Crisis – the New Challenges Before the Indian Justice and Court Administration System, IACA JOURNAL**

This paper examines the state of India's judicial system prior to the Covid-19 issue and how the courts dealt with it. The problems and difficulties the e-judiciary encountered during the pandemic are also highlighted.

**Papiya Golder, Future of Virtual Courts in India Post Pandemic: An Analysis, IJRAR**

Virtual courts are discussed in this research article. It offers a review of the E-Court Project and recent changes including virtual courtroom hearings during the pandemic. It also emphasises the difficulties encountered in creating e-courts in India as well as its benefits and drawbacks.

**103rd Report on Functioning of Virtual Courts/ Court Proceedings Through Video Conferencing (Interim Report), PARLIAMENT OF INDIA – RAJYA SABHA**

This article addresses the important question, "Is Court a Place or a Service?" and presents a history of virtual courts in India. It clarifies the characteristics between virtual courts, online courts, and online conflict resolution in addition to how they differ from open courts. It also shows how the internet and technology have helped the legal systems of many nations to continue functioning. Finally, it analyses the future and the benefits and drawbacks of virtual courts.

**VIRTUAL COURTS**

When there was a sharp rise in cross-border online transactions and a need for a system to address disputes resulting from those transactions, the need for such Virtual Dispute Resolution (VDR) was first realised. Virtual Dispute Resolution (VDR) platforms can typically be created to be procedurally agnostic. Thanks to the ability to create hybrid processes that combine online and offline components, the same technology platform can be used by various judicial offices, including ombudsmen, complaint boards, mediation and arbitration centres, and the courts themselves.

The combination of Alternative Dispute Resolution (ADR) mechanisms to resolve disputes through Virtual Dispute Resolution (VDR) platforms has emerged as a particularly alluring option for the judiciary, particularly in light of the explosion of online marketplaces for all manner of services and goods. E-Bay, the well-known and top online marketplace, was one of the first companies to test using the Internet to settle unusual consumer issues related to transactions made on its site. Such conflicts frequently include parties who are geographically separated, and the amount of money at issue might range from a little sum to a sizable sum. Since then, given the inherent limits of traditional court to deal with business issues quickly, VDR has been more popular in many countries throughout the world.

The Judiciary, as a system, demands strict control over any data that is accessed and stored in place of any court procedure and has little patience for privacy and security violations of any type. In light of the reality of its users and the viability of technological solutions, the judiciary must decide whether to move forward with the vision of virtual courts. The fact that the concept has been adopted slowly by the judiciary may be due to these distinctions between VDR and virtual courts. For instance, despite severe reservations about the security features or suitability of these private programmes for the Court, the Judiciary has been forced to use VIDYO, Zoom, Webex, etc. to conduct virtual hearings.

The necessity for a digital platform for the court to fulfill its own demands instead than being pushed to adapt to current solutions for other uses was one of the key points that came up during the consultation session. The remainder of this essay will concentrate on potential approaches to the judiciary's goal of operating virtual courts. Before assessing the technology capabilities of the Indian judiciary, it begins by providing a quick summary of the relevant

foreign experience, particularly since the COVID-19. In **Hussainara Khatoon v. Home Secretary, State of Bihar**<sup>1</sup> in 1979, the Supreme Court declared for the first time that an individual's fundamental right to a speedy trial was guaranteed by Article 21 of the Indian Constitution. The Court chose to change with the times because it recognised that it could not postpone justice indefinitely. India's whole legal system was compelled to adjust to the changing circumstances. It took some time for the system to adjust and comprehend the necessity to create a new system in order to continue providing justice despite the Plague. The digital era began with the turn of the millennium, and the Courts have sometimes and unusually given in to these developments in technology.

## PROCEEDING

In a virtual court, all court procedures for a given case are conducted online, typically using video conferencing as the primary medium. The judges hearing these cases are seated in courtrooms while the attorneys present their cases and arguments via video conference lines from their residences or workplaces. In the final week of October 2020, the Gujarat High Court broadcast live hearings via a You Tube application, bringing the idea of a virtual court and how it operates into the spotlight of the general public. It is a complex idea that aims to do away with in-person courtroom litigation and replace it with online case adjudication. It intends to provide an equal number of opportunities for witnesses, representatives who are ill or injured, and other participants to attend the hearing online, making the procedure more accessible to everyone looking for justice in a court of law.

First and foremost, Article 145(2) of the Indian Constitution states that the Supreme Court may only issue judgments in open court. Furthermore, it stipulates that no report under Article 143 may be made unless it is in compliance with an opinion that was also presented in open court. In addition, open court hearings are required in all criminal and civil matters under Sections 327 of the Criminal Process Code and 153-B of the Civil Procedure Act. It is obvious that there are people in India from various regions and financial backgrounds. The absence of a sufficient and reliable Internet connection for litigants is anticipated to be the first difficulty. Additionally, this will cause unanticipated suffering for regular citizens who want to pursue justice. Due to the fact that lower-level courts like district courts and tribunals are located in

rural locations with extremely bad internet connectivity and intermittent access to electronic devices, such sufferings would be felt considerably more by litigants and ordinary people seeking justice there.

As a result, the Ministry of Communication should expedite the National Broadband Mission in order to provide dependable, consistent connectivity infrastructure to all districts and lower courts in India. This recommendation comes from the Department of Personnel, Public Grievances, and Law and Justice. But, it is undeniable that this is a long procedure, and it cannot be carried out everywhere with equal accuracy. **Naresh Shridhar Mijrajkar and ors. Vs. State of Maharashtra**<sup>2</sup> is a case that goes against the decision to create a virtual court since the Supreme Court explicitly said that

*"Public trial in open court is surely vital for the healthy, objective, and honest administration of justice."*<sup>3</sup>

A trial that is open to the public's inspection and gaze naturally serves as a check against judicial caprice or whimsy and is a potent tool for inspiring public faith in the fairness, discretion, and impartiality of the administration of justice.

In a case involving live broadcasting of court proceedings, **Swapnil Tripathi v. Supreme Court of India**<sup>4</sup>, the Supreme Court of India recently ruled that access to justice cannot be fully achieved until the petitioner can see, hear, and comprehend the court proceedings in person. The court also agreed that when rules for live streaming of court proceedings are adopted, the concept of open hearings must be followed. The court also recognised that live broadcasting is a crucial component of a responsive judiciary that embraces the concerns of individuals seeking justice and that our legal system adheres to the idea of the widely acknowledged practice of open court sessions. The Bar representatives drew attention to an unjustified restriction that virtual courts favour tech-savvy attorneys and deprive lawyers of the opportunity to present their cases and change their views depending on the evolving circumstances of a case during hearings. An advocate gains insight into the judges' attitudes and has a better chance of persuading them during in-person sessions. Online hearings, however, put psychological strain on both the judges and the attorneys. Evidence obtained by

video conferencing may be distorted if non-verbal clues like posture, gesture, and facial expression are captured.

The National Judicial Data Grid (NJDG), an online platform developed as part of the e-Courts Initiative, is a database of orders, judgments, and case information from 18,735 District & Subordinate Courts and High Courts. Now, NJDG is in the trial and testing stage of making Supreme Court data accessible to the general public.

The Central Government has no direct role to play in the decision regarding the e-filing of cases and documents in the Courts since it is an administrative subject that strictly lies under the scope and jurisdiction of the Judiciary. Nevertheless, the Department of Justice has mandated the use of electronic filing in all commercial court cases for all Central & State Government Departments, including Public Sector Undertakings (PSUs). Also, the Supreme Court's e-Committee has instructed all High Courts to require electronic filing.

The Department of Justice has asked the Department of Legal Affairs (DoLA) to recommend using electronic filing in all government lawsuits to all Central Ministries/Departments. As a result, a communication has been sent by the Department of Legal Affairs to all Ministries and Departments of the Government of India as well as all Law Officers for electronic filing in regards to litigation brought by the Ministries and Departments concerned, including Autonomous Bodies, Subordinate Offices, Attached Offices, and PSUs under their administrative control, on behalf of the Union of India. Model regulations for E-filing of cases have been developed by the Supreme Court of India and sent to the High Courts in order to facilitate a seamless procedure. 19 High Courts have so far adopted the E-filing regulations. The E-Sewa Kendras have been established with funds that have been released to help attorneys and litigants who require any sort of assistance, from information to facilitation to e-filing, with their demands. 619 E-Sewa Kendras have been operationalized fewer than 25 High Courts as of October 31, 2022. NJDG functions as a monitoring tool to locate, handle, and shorten the duration of cases. It aids in minimising case pendency and delays in case disposition by offering timely comments for policy choices. Also, it makes it easier to monitor court performance and systemic bottlenecks, making it a useful tool for resource management. NJDG can be utilised for efficient case management and court administration to lighten the burden.

## DIGITAL JUSTICE

Digital tools have a huge impact on development and human rights. End-to-end encryption enables secure global communications, and they benefit individuals by facilitating greater access to knowledge and information. Nevertheless, promoting and defending digital rights – which should be at the heart of nations' strategy for a sustainable digital transformation – needs to support not only technological advancement but also the impact of new means of data analysis and communication. There is also a need for loss prevention. There is no doubt that the deployment of virtual courts in India faces several difficulties. Nevertheless, it is important that the legal community and judicial system are not swayed by these issues. Instead, there should be discussions and measures identified, evaluated and implemented. After all, maintaining the status quo is a solution to the more important problem of the administration of justice despite current global circumstances, and the lessons learned from the first solution can pave the way for a better, more straightforward and more elegant justice system for India. Several difficulties and the absence of a unified legal framework have emerged as a recurrent theme in examining the current situation. Many of the issues and challenges to the status quo have their roots in the absence of a central law. A new law that applies to all courts could therefore address several important aspects of India's virtual courts. Continuity across multiple platforms would have multiple advantages. The enforcement of a single law across the country will ensure the ability to establish a consistent platform. It is possible to assess and forecast that the operation of physical courts is not likely, at least for the upcoming few months, due to the unpredictable nature of the Pandemic and the constantly deteriorating conditions. The Courts will attempt to operate virtually as a precautionary measure for as long as possible and viable, even when things start to return to normal. It is important that a more long-term solution be developed in the few months that the judiciary is expected to operate remotely. As a result, real courts will continue to operate alongside virtual courts with electronic filing and VC (video conferencing) capabilities. It is thus advised that a steering group be created to help the judiciary choose viable answers to both its short-term and long-term demands. For judicial access to be practical and effective, such committees must take all relevant factors into account, including the adoption of strategies, changes to the law, technological advancements, etc.



## **EFFICACY**

The advantage of virtual courts is that they speed up lengthy and difficult processes and procedures. Results from virtual courts can be obtained more quickly and with less expense. Moreover, virtual courts shorten wait times and transit times to the courts. Having set apart times will result in even more disciplined time management.

The Rajya Sabha Committee's 103rd Report on the "Functioning of Virtual Courts" outlined the interpretation of virtual courts as a place of justice delivery where the complaint and other documents are filed electronically, evidence and court fees are submitted digitally, legal arguments are heard over video-calling, witnesses give their testimony remotely over videoconferencing, and the judge decides the dispute virtually by presiding from the courtroom or any other location.

While discussing the benefits and disadvantages of virtual courts, two key goals need to be kept in mind. As said above, physical or social distance should not impair citizens' rights, and every course of action should be taken to ensure that all people have access to justice. As a result, technology has to be considered as a tool to improve access to justice. The second point is that technology should be seen as a tool rather than a rule. By adopting this mindset, we can improve the boundaries of virtual courts and make them more inclusive. This switch's primary function, namely to maintain access to justice, is vital. Administrative actions during the epidemic are astronomically expensive, and courts must always uphold the nation's values of the rule of law. This emphasizes even more how important it is in these times to have a functioning judiciary.

## **ADVANTAGES OF VIRTUAL COURTROOMS**

There are several benefits to using virtual courts, including:

1. The cost-effective feature of the interface is the main justification for adoption. Both the advocates and the witnesses frequently have difficulty with the geographic locations. In the

- past, advocates utilised this distance dishonestly to advance the hearing dates, lengthening case timelines and impeding swift trials. Geographical barriers are greatly reduced when video conferencing is used. This further protects people's safety throughout the epidemic.
2. Paper-based systems must be more restricted due to rising environmental concerns. The Supreme Court has supported this need by repeatedly altering the filing rules. The courts can access and amend files more easily thanks to the e-databases. Instead of taking the court personnel days to complete, the filing processes may now be finished with the touch of a mouse. Also, this promotes data interchange across courts and speeds up the trial process.
  3. The criminal justice system cannot be stopped since doing so would severely impair one of the most fundamental and human rights of the citizenry. The criminal justice system's fundamental components—bail, parole, and sentence determinations—affect persons' rights to life and liberty when they are not given prompt attention.

To some extent, the migration to virtual courts has brought justice to the predicament of the prisoners. Last but not least, the laws of the nation are also highly compatible with this technological revolution in the way that justice is delivered. For instance, special electronic evidence and its admission in court are covered under sections 65A and 65B of the Indian Evidence Act. In the **State of Maharashtra v. Praful B. Desai**<sup>5</sup> case, the Supreme Court widened the application of these parts and emphasised the advancement of technology and the necessity of integrating video conferencing into the judicial system.

### **CHALLENGES VIRTUAL COURTROOMS POSE**

The key to growth is being critical of the circumstances; therefore the issues and difficulties that may arise on this path to digitalization also call for consideration. First off, The Telecom Regulatory Authority of India (TRAI) presents a highly confusing state of things in its report. According to the report, internet use increased from 828 million in 2014 to 4640 million in 2018, indicating that the nation's digital footprint has been growing. On the one hand, the rural population suffers with even the most basic internet connections, which further widens the gap between them and the metropolitan population, which is growing every day. The issue of digital literacy is one issue related to this gap. Not all lawyers and advocates consider themselves to be tech-savvy. Even though they may have legitimate claims, people from underdeveloped

regions may not have access to this online legal system. Second, and on a similar note, is the issue of the nation's unequal technical infrastructure. People in metropolitan areas like Mumbai and Delhi have quite distinct networks and connections than those in the northeastern regions or the country's far northern boundaries. There isn't much of an internet presence in these areas. Finally, it is impossible to overlook the negative aspects of technology. Cyber hacks are on the rise, and cybercrimes are becoming more prevalent worldwide. In opposition to this, it appears challenging to create effective procedures for a complex organisation like the judiciary.

## **POST SCRIPT**

Virtual courts are a fantastic instrument for successfully delivering justice since access to justice is a fundamental principle that is enshrined (Settle) in our constitution and cannot be denied to the common people. This is as a result of the COVID-19 outbreak's current and foreseeable limitations. Technology-driven processes are used to carry out judicial proceedings in virtual courts, which operate just like real courts. There is no requirement for human participation in these settings. A more effective judicial system with less paperwork and less travel time for litigants might be achieved by using virtual courts.

Nonetheless, there are still several problems and difficulties that must be overcome. The greatest barrier to the courts adopting technology in the future will be the HR department issue. Lack of familiarity with the Registrar's Office and the data management standard is the first obstacle to the Court Registry implementing change. In India, where numerous cutting-edge technologies have been deployed and the majority of the present fundamental activities of courts are automated, Virtual-Courts projects have considerably improved court workflow and records management. Yet, it should be remembered that standards, procedures, technology, and strategy are the key obstacles to the deployment of Virtual-Courts.

After all, every crisis ushers in a fresh chance when everything is taken into consideration in such a comprehensive and exhaustive manner. Here is your opportunity to become a better version of yourself and to fortify your defenses against potential difficulties. The same holds true for the online judicial process. A comprehensive system of virtual courts has yet to be developed for a number of reasons, including the failure to maintain the National Judicial Data

Grid (NJDG) that jeopardises the aim of accountability in the nation's legal system. At the same time, we frequently deny access to the legal community's members, including litigants, judges, and all other staff members. This is so that the creation and improvement of the other system can be facilitated by upgrading the first system.

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