



## WILL VIRTUAL COURTS SYSTEM ENSURE JUSTICE AMID PANDEMIC?\*

### INTRODUCTION

While people were making their resolution plans for the year 2020, a virus was on its way to cancel those, and slowly, it conquered not only countries but the whole world, as a result of which whole world is now shut down, people are understanding the meaning of quarantine and “social distancing”, this epidemic resulted into restlessness, deaths of millions, panic, chaos around the world.

During this “Covid-19 era” all sectors are affected, to maintain “social distancing”, and judiciary is one of those, when Covid-19 came into the “spot light” of India, the Hon’ble supreme court on date 23 march 2020 ordered for the enactment of limitation act, 1963. The Act provides for the period of limitation for institution of various suits, applications, petitions etc. in India.<sup>1</sup> Being the biggest democratic country, it’s impossible to cease the proceedings for a long time, therefore on april 6 2020, directions were passed by the apex court for the conduct of court proceedings across the country through video conferencing (VC), the supreme court has directed as under:

- 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).
- District Courts in every state shall adopt VC technologies prescribed by the appropriate High Court.

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\*Khushi Raj Singh, 1st year Law Student, DNLU Jabalpur,

<sup>1</sup> nandini khaitan, raj panchmatia, aseem chaturvedi, shivank diddi and nikhilesh rao, “COVID-19: is the indian judiciary battle ready?”, khaitan &co., 2 april 2020

- 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).
- 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.
- Similarly Telangana and Bombay high courts issued special directions for conduct of hearings via VC in their respective states on 7 and 8 april respectively<sup>2</sup>

But the question is “will virtual courts ensure justice around this pandemic?”

## EMERGENCE OF VIRTUAL COURTS

It was the need of the hour for judiciary to restrict its boundaries and to restart its proceedings, therefore the Supreme Court has invoked its extraordinary constitutional powers under Article 142 to step away from the convention of open court hearings. Talking about Article 142 of the Indian Constitution which:

1. Allows the Supreme Court to pass any order necessary to do “complete justice” in any case
2. Supplements the powers already conferred upon the supreme court under the constitution to guarantee that justice is done and in doing so the court is not restrained by lack of jurisdiction or authority of law.

So to maintain “social distancing” it was the “need of the hour” or “the matter of duty” to invoke the article 142 .

## EFFICIENT JUDICIARY

Talking about Indian judiciary which is staggered with number of cases, and requires huge amount of cost and “eternity” to solve those, virtual courts can be the “boon” amid corona, not only will a virtual judiciary result in substantial savings in costs but will also lead to speedy disposal of cases. The productivity of lawyers will increase substantially as visits to courts and long waiting hours will be more an exception than a rule. If this practice is extended to other

<sup>2</sup> [Kingshuk Banerjee and Preeti Sahai](#), “India: Virtual Courts In India”, vidhi legal policy, 14 May 2020

civil cases, efficiency will double, even treble, in judicial functioning.<sup>3</sup> And also there is a chance that the “corruption”, which our judiciary is the most famous for can get eroded, as there will be no longer be familiarity between lawyers and judges in a city.

## SOME CRITICS

As a coin has two sides likewise this new initiative has been criticized by some quarters that the system does not adhere to the concept of “open courts”<sup>4</sup>, open court principle requires that the court proceedings presumptively be open and accessible to the public at large. This criticism regarding virtual courts has been given in a large number of accounts due to which recently on 31 may 2020 the Madurai Bench of Madras high court resumed its open court functioning, following which, guidelines have been issued to advocates and court staff to follow, in view of the COVID-19 pandemic, wearing masks has been made compulsory, according to the notification issued by the court, the open court proceedings will be held from 10:30 am to 1:30 pm and hearing of cases by video conferencing will be held at the request of the counsel from 2:30 pm to 4:45 pm, cases to be listed for hearing in the open court will be decided by the judges concerned and the cause list hosted on the website. The seating arrangement in court halls will be in compliance with physical distancing norms and regulated by the court. Advocates have been asked not to wear coats/gowns/robes/ and instead wear plain white shirts and white pants/black pants/white salwar kameez/white sari with plain white neckband. Apart from physical filing, the procedure of e-mail filing will continue till further orders.<sup>5</sup>

Coming back to critics lawyers have complained that they are facing varied problems from sending a pdf file of their applications to convincing the judge of the urgency of the matter and address their arguments through video link. According to the data, 538 matters were taken on board by the top court during this period, besides 297 connected matters.<sup>6</sup> And as mentioned earlier that “virtual courts system” will go against the notion of “open courts”, in Naresh shridhar Mirajkar and ors. V. State of Maharashtra and ors. , the supreme court affirmed the open court principle :

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<sup>3</sup> R.anand, v. ranganathan, “it’s time for virtual judiciary”, the hindu, may 06 2020

<sup>4</sup> “top court says “virtual courts system” will ensure justice amid pandemic, press trust of India, may03 2020, <https://www.ndtv.com/india-news/coronavirus-supreme-court-says-virtual-courts-system-will-ensure-justice-amid-pandemic-2222336>

<sup>5</sup> “high court bench to resume staggered open court functioning from tomorrow”, the hindu, may 31 2020, <https://www.thehindu.com/news/cities/Madurai/high-court-bench-to-resume-staggered-open-court-functioning-from-tomorrow/article31714151.ece>

<sup>6</sup> “top court says “virtual courts system” will ensure justice amid pandemic”, press trust of India, may 03 2020

“public trial in open court is undoubtedly essential for the healthy objective and fair administration of justice. Trial held subject to the public scrutiny & gaze naturally acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice”.<sup>7</sup>

## **MATTER OF DUTY**

So after learning about how effective is virtual judiciary and what are its critics; it is important to know about that whether virtual courts ensure justice amid “pandemic”, here “pandemic” is the main and the most important term because this word can change the entire meaning of the sentence as this word talks about the condition the state is in; supreme court judge and e-committee chairman justice DY Chandrachud said “virtual courts cannot replace open court hearings as it constitutes the spine of judicial system but emphasized that pandemic warranted reliance on technology would continue to play major role in speeding up justice dispensation” he further added “the judiciary had no choice but to resort to virtual”<sup>8</sup>, so to conclude about what he said is that virtual courts system was the “matter of duty”.

## **CONCLUSION**

After learning about virtual courts, how a virtual courts can be efficient, and some critics. Now comes the most important answer to the question “will virtual courts ensure justice amid pandemic?”, which was the core question or topic of the whole essay, I would like to answer this question by asking two questions: 1. Are virtual courts better than the “actual” or “physical” courts? Answer is No, after reading about critics which raised certain issues such as “open court system” and “technical glitches” virtual courts are not that better than the “actual courts”, because there will be the lack of communication among plaintiff, defendant, lawyer, judge which will become one of its drawback, and after all madras high court resumed its open court functioning after taking all these critics into consideration. Now comes the second question: “is virtual court a better choice than an “actual court” amid COVID-19?” answer to this is ‘yes’, because this pandemic promotes “social distancing”, so in order to maintain that there is no other choice but to avoid social gathering be it in schools, universities, offices, or even courts, but courts can’t be shut down for so long, so “virtual court system” was a better option to resume its proceedings along with maintaining social distancing, although it do has

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<sup>7</sup> Pramod kumar dubey, “virtual courts: a sustainable option?”, outlook the news scroll, april 12 2020

<sup>8</sup> Dhananjay mahapatra, “virtual courts cannot replace open court hearing: justice chandrachud”, outlook the news scroll, may 25 2020

some drawbacks but “there need to be something rather than nothing”, and as justice DY Chandrachud said that taking the initiative of opening a platform of virtual courts was a matter of duty, although it is not at par of excellence compared to the “actual courts”, and also the Apex court cited that many developed countries like the USA, UK, France have already transitioned to virtual courts systems, and India is ahead of them in output.

So to conclude, opening virtual courts was an essential step taken by the government, not only it will promote “social distancing”, but will increase the efficiency of the courts in terms of their proceedings and will save costs amid pandemic, talking about justice, virtual courts may not be able to fulfill that duty due to certain technical glitches, but “health is more important”, so virtual courts can ensure justice if it tries its best, but one has to look at the other important term that is “pandemic” , this is the word which changes the whole sense of the sentence, so “virtual courts is an essential step to ensure justice amid pandemic”, and “it can ensure justice amid pandemic.”

