



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

### INTRODUCTION

The Indian Constitution was structured and evolved on certain indispensable principles and the constitution makers painstakingly enshrined these beliefs in the Preamble of the Constitution. Justice in all spheres of life is a part of these basic principles on which the constitution finds its very foundation. The Preamble mentions that the sovereign, that is the people of India, solemnly swear-

*“...To secure to all its citizens,*

*JUSTICE, Social, Economic and Political...”*

In times of such uncertainty caused due to the Global Pandemic of COVID-19<sup>2</sup>, the values of the constitution and our determination to uphold them are being put to test. This is an unprecedented catastrophe which knocked over our lives and put a halt on the global “progress”. The judiciary is acclaimed to be the body of justice in the country and the onus to dispense justice, even in such unsettling times, lies in their hands. Quite evidently, the Indian justice system is burdened by the huge number of cases and with the multiple social-distancing norms in place due to COVID-19, the burden is increasing exponentially.

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<sup>1</sup> INDIA CONST. Preamble.

<sup>2</sup> Jamie Ducharme, *World Health Organization Declares COVID-19 a 'Pandemic.' Here's What That Means*, TIME, (Mar. 11, 2020, 12:39 PM), <https://time.com/5791661/who-coronavirus-pandemic-declaration/>.

The Judiciary has promptly enforced measures to reduce its impact, E-Courts being the most prominent of all.<sup>3</sup> E-courts pose multiple infrastructural and accessibility issues which make justice a privilege in the hands of the few advantaged members of society. The essay will be focussing on the implementation of these measures and their various limitations.

## PANDEMIC AND ITS CONSEQUENCES ON THE JUDICIAL SYSTEM

The Indian Judiciary has a hierarchical framework. It consists of multiple levels of judicial and quasi-judicial bodies, with the Supreme Court as the apex body.<sup>4</sup> The outbreak of the pandemic has disrupted the functioning of all courts—from the Supreme Court to the District Courts to various other tribunals. Even the Alternate dispute resolution mechanisms like mediation, conciliation, arbitration, etc. have suffered. With a sudden break in the functioning of all these institutions because of the social distancing norms and the lockdown, the cases, on the already burdened judicial bodies, are being piled up. According to the statistics given by the government, the Supreme Court has 60,628 pending cases as of 1<sup>st</sup> June, 2020.<sup>5</sup> Around, 4.81 million cases are pending in the High Courts and 32.82 million cases are pending in various district courts.<sup>6</sup> These numbers are staggeringly high.

The Pandemic has also consequently led to some serious legal and political issues. The country was facing nationwide protests for the past couple of months before the pandemic. Multiple activists were arrested for sloganeering and booked under sedition. They have been rotting inside the prison, waiting for their cases to be heard.<sup>7</sup> Cases of migrant workers who are attempting to go back to their hometowns also need expeditious hearings and an amicable solution.<sup>8</sup> Domestic violence cases against women are on rise because of the enhanced lockdown in the country.<sup>9</sup> Moreover, many criminal investigations are pending which increases the possibility of destruction

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<sup>3</sup> Bhadra Sinha, *Covid-19 pushes Supreme Court to fast-track reforms, justice delivery could get smoother*, THE PRINT, (May 22, 2020, 11:00 AM), <https://theprint.in/judiciary/covid-pushes-supreme-court-to-fast-track-reforms-justice-delivery-could-get-smoother/426443/>.

<sup>4</sup> Sukumar Dam, *Judiciary in India*, 25 THE INDIAN JOURNAL OF POLITICAL SCIENCE (1964).

<sup>5</sup> Statistics, SUPREME COURT OF INDIA, <https://main.sci.gov.in/statistics>.

<sup>6</sup> E-Court Services, GOVERNMENT OF INDIA, [https://ecourts.gov.in/ecourts\\_home/](https://ecourts.gov.in/ecourts_home/).

<sup>7</sup> PTI, *City court rejects bail plea of student who shouted 'Pakistan Zindabad'*, THE TIMES NOW, (June 11, 2020, 4:55 PM), <https://www.timesnownews.com/india/article/bengaluru-city-court-rejects-bail-plea-of-student-who-shouted-pakistan-zindabad/605088>.

<sup>8</sup> Mihir Desai, *COVID-19 and The Indian Supreme Court*, BLOOMBERG QUINT, (May 28, 2020, 5:33 PM), <https://www.bloombergquint.com/coronavirus-outbreak/covid-19-and-the-indian-supreme-court>.

<sup>9</sup> Aviva Parvez Damania, *Lockdown and rise in Domestic Violence: How to tackle situation if locked with an abuser*, THE INDIAN EXPRESS, (May 17, 2020, 11:05 AM), <https://indianexpress.com/article/lifestyle/life-style/lockdown-rise-of-domestic-violence-how-to-tackle-situation-if-locked-with-abuser-national-commission-for-women-6406268/>.

of relevant evidences, witness tampering, imprisonment of the innocent and having criminals on loose in the society.

These circumstances mandated the need of revamping and restructuring the judiciary in an entirely new layout, to facilitate virtual courts, online filings and online payments. This has posed several problems relating to accessibility, transparency and efficiency that the judiciary is assiduously attempting to resolve.

## **ADOPTION OF VIRTUAL COURTS**

Shifting to E-courts was not an abrupt or unanticipated process. The project was first started in the year 2005 by the judiciary with an aim to incorporate Information and Communication Technology (ICT) in the Indian Judicial process. Renowned author Eckhart Tolle wrote-

*“The greatest achievement of humanity is not its works of art, science, or technology, but the recognition of its own dysfunction.”<sup>10</sup>*

The flaws were recognized and a new system based on - *National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary- 2005*<sup>11</sup> was developed. The vision was to reduce delay in Justice and enhance efficiency and transparency.

The E-committee composed on April 28<sup>th</sup>, 2020 has Honourable Dr Justice DY Chandrachud is its Chairman.<sup>12</sup> The objective earlier was never to entirely switch to the online medium yet the circumstances left the committee with no other choice. Adoption of Virtual Courts did not merely tantamount to switching to video conferencing but the development of multiple other websites, apps, soft wares to facilitate filing, payment, tracking etc. With the rolling out of the Phase-II, following portals were introduced-

### **1. E-FILING**

As the name suggests, the portal was formed for filing cases to various Courts. It requires a basic knowledge of functioning of the computer and cases could be filed by both Litigants and Advocates. Moreover, the portal is linked to the latest version of Case Information

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<sup>10</sup>ECKHART TOLLE, A NEW EARTH: AWAKENING TO YOUR LIFE'S PURPOSE (ed. Penguin, 2006).

<sup>11</sup>E-COURT SERVICES, [https://services.ecourts.gov.in/ecourtindia\\_v6/static/about-us.php](https://services.ecourts.gov.in/ecourtindia_v6/static/about-us.php).

<sup>12</sup>E-Committee, SUPREME COURT OF INDIA, [https://main.sci.gov.in/pdf/ecommittee/30042020\\_025119.pdf](https://main.sci.gov.in/pdf/ecommittee/30042020_025119.pdf).

System, the CIS 3.1. It has led to more efficiency in the process though often the inaccessibility of internet and technology has posed serious issues.<sup>13</sup>

## 2. Information Gathering Portals

Judicial Portal like **National Data Judicial Grid** is a “*is a monitoring tool that can be used to identify, manage and reduce the pendency of cases.*”<sup>14</sup> It provides a centralized access to various data regarding pending cases and classifies cases on the basis of Criminal or Civil cases and time of their pendency. This helps in prioritizing cases and bringing transparency. The **Case Information System (CIS)** was developed by the National Informatics Centre, Pune. All cases are given a unique CNR number through which they could be tracked on CIS. It is available in multiple languages.<sup>15</sup> The **JustIS** mobile app was also developed especially for the Judicial Officers, it has tools for case and court management.<sup>16</sup>

## 3. Virtual Hearings

Video Conferencing (VC) through an app called **Vidyo** was being used to conduct the court proceedings. The E-committee, to facilitate the process, has given permission to the High Courts to choose the medium of VC they feel comfortable in. Zoom was also being used, but was stopped immediately because of advisory released by the MHA, relating to its security and privacy issues.<sup>17</sup> Smaller compoundable cases are being resolved by the computer without any involvement of the judges which saves time and resources.

## 4. NSTEP

The **National Service and Tracking of Electronic Processes** is used by the courts to expedite the process of serving notices and summons. They are done through electronic mediums like mobile apps which are GPS enabled and takes electronic signatures. Postal delays have been minimized and inter-state transfer is made easy.<sup>18</sup>

## 5. E- PAYMENT

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<sup>13</sup>E-COURTS SERVICES,  
[https://ecourts.gov.in/ecourts\\_home/static/manuals/FINAL%20INNOVATIONS%20IN%20PHASE%20II.pdf](https://ecourts.gov.in/ecourts_home/static/manuals/FINAL%20INNOVATIONS%20IN%20PHASE%20II.pdf).

<sup>14</sup> Kshitiz Verma, *e-Courts Project: A Giant Leap by Indian Judiciary*, LNMIIT JAIPUR (2008).

<sup>15</sup>*Supra* Note 13.

<sup>16</sup> *Id.*

<sup>17</sup> Raghav Ohri, *SC mulls inhouse app for videoconferencing*, THE ECONOMIC TIMES, (Apr. 22, 2020, 11:53 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/sc-mulls-inhouse-app-for-videoconferencing/articleshow/75305172.cms?from=mdr>.

<sup>18</sup> *Supra* note 13.

The **E-payment** portal is crucial for the functioning of the judiciary. A platform for safe transaction was required for depositing court fees, payment of damages, compensation, maintenance in case of family disputes, fines etc. It is integrated with State specific vendors like SBI ePay, GRAS, JeGRAS, Himkosh, eGRAS etc to ensure secure payments.<sup>19</sup>

These technologies are not just constrained to the emergency situations but could also facilitate the normal working of judiciary and help reduce the burden of excessive pending cases. Though these processes are highly exclusive because of the accessibility issues.

### **PITFALLS OF USING VIRTUAL COURTS**

We are living in a technological age that is increasingly reliant on computers and the associated Information and Communication Technology (ICT). But who exactly would make up “we”, the privileged few? Not all lawyers, legal administrators, judges, litigants are able perceive, understand or access the perks of technology. The accessibility issues are not only limited to the economically underprivileged but to people living in small towns and villages where the lack of infrastructure prevents people from benefitting from the boon of technology or people living in conflict zones like Kashmir and North-East, where internet access is limited or to the special abled legal professionals.

Virtual courtrooms have been a dream for the third world countries while developed countries like The United States of America adopted Video Conferencing technologies as early as the 1990s<sup>20</sup>. Some states in India started the facility of online courts for the purposes of routine remand of prisoners, cases involving NRIs, however its usage was limited.<sup>21</sup> With the COVID-19 Pandemic forcing us towards a virtual system of justice delivery, we neither had the time nor the resources to prepare for this sudden change. When only 28% populace has access to internet, out of which merely 13.7% in the rural areas<sup>22</sup>, justice for all does not make much sense. Unequal legal representation is also perpetual in our system. Even though the E-committee is making efforts to train judges and lawyers in all courts to use these new facilities, the disparity is glaring. With no money set aside for this in the budget, justice delivery is bound to suffer.

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<sup>19</sup> *Id.*

<sup>20</sup> Fredric I. Lederer, *The Road to the Virtual Courtroom? A Consideration of Today's and Tomorrow's High Technology Courtrooms*, 50 SOUTH CAROLINA LAW REVIEW 800, 815 (1999).

<sup>21</sup> Madan B Lokur, *Social distancing is here to stay, will profoundly change the way justice is delivered*, THE INDIAN EXPRESS (May 8, 2020, 10:29 AM), <https://indianexpress.com/article/opinion/columns/coronavirus-covid-19-courts-social-distancing-lockdown-6399012/lite/>.

<sup>22</sup> TELECOM REGULATORY AUTHORITY OF INDIA, THE INDIAN TELECOM SERVICES PERFORMANCE INDICATORS (Jan. 2020).



It is often argued that technology provides better justice by speeding up trials, increasing efficiency and transparency, as lawyers can smoothly display authorities of a case, provide direct links to the documents, look up any exhibit etc. The judge too can grasp all the data and evidences at his/her own pace and give a more informed verdict because of the increased comprehension. Yet, speedy trial is not the primary objective of our legal system-justice is. The priority should be the legitimacy of evidence. Electronic Evidences often raise two distinct issues which makes their reliability questionable: (1) the danger of digital alteration through undetectable digital skulduggery of audios, videos and pictures; (2) the possibility of electronic auditing, including infiltration and adjustment of the court's electronic records.<sup>23</sup>

Another significant limitation is relating to the ineffective cross-examination during Virtual Trials. In most trials, testimony by witness is a critical component. Instant interruptions in a standard trial will not be possible through Video Conferencing. Physical nearness can serve significant purpose, like gauging outward appearances, postures and motions, especially during questioning, which eventually prompts the revelation of truth. John Henry Wigmore said “*cross-examination is the greatest legal engine ever invented for the discovery of truth*”.<sup>24</sup>

Virtual courtroom brings out the case of open court which inherently leads to bridging the gap between the public and the judiciary. In the case of *Swapnil Tripathi v. Supreme Court of India*<sup>25</sup>, The Supreme Court allowed live streaming of cases, highlighting the importance of transparency and open justice. It quoted that- “*sunlight is the best disinfectant*” meaning live proceedings will make the judicial system more accountable. It reaffirmed the open court principle in *Naresh Sridhar Mirajkar and Ors. v. State of Maharashtra and Ors.*<sup>26</sup> Technology could be used in furtherance of this objective, yet no concrete steps are being taken.

Open Hearing also brings forward the issue of Privacy. Privacy is declared as a Fundamental Right under Right to Life and Liberty guaranteed by the Constitution.<sup>27</sup> The open court principle directly questions the Right to Privacy and the Right to Be Forgotten of an individual. With all the data regarding all civil and criminal matters being stored in the national database, accessible to people, steps must be taken to prevent security breaches and to ensure that private and sensitive information remains hidden.

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<sup>23</sup> *Supra* note 20.

<sup>24</sup> Pramod Kumar Dubey, *Virtual Courts: A sustainable Option*, BAR AND BENCH (Apr. 12, 2020, 10:40 AM), <https://www.google.com/amp/s/www.barandbench.com/amp/story/columns%252Fvirtual-courts-a-sustainable-option>.

<sup>25</sup> *Swapnil Tripathi v. Supreme Court of India*, 2018 (11) SCALE 475.

<sup>26</sup> *Naresh Sridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1.

<sup>27</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

Another critical issue is regarding the choice of cases the courts are hearing. The decision made is nothing short than arbitrary. The Supreme Court declared that amidst the pandemic only “urgent” matter are being adjudicated by the courts. Nowhere, does it mention any definition of “urgent”.<sup>28</sup> Several problematic issues like bail pleas of protesters or intervention in executive orders to ensure and protect Fundamental Rights of the migrant workers, are being overlooked. The E-committee needs to rectify these flaws so that the benefit of Technology is shared by all and justice is done efficiently and transparently.

## SUGGESTIONS

Whilst the arguments related to the drawbacks of E-courts are justified, the Virtual Courts are our closest solution to deliver justice amidst this pandemic. Following are some suggestions to ensure justice and inclusivity during such unprecedented times.

The courtroom does not exist in a vacuum. As mentioned above, it requires the filing of pleadings, sending of summons, presenting of supporting documents etc. An effective management of cases and evidence is required which includes managing the data that requires storage and routing the originals and reprints. Steps must be taken to prevent any evidence tampering and strict actions must be taken against anyone guilty of such misconduct. Since all lawyers and clients do not know how to use computers, the E-committee must organize training programs to equip judges, lawyers, judicial officers, etc. with the basic technological know-how to operate these various soft wares.

Our justice system has never been inclusive of the physically disadvantaged legal fraternity. Even E-courts could be highly exclusionary especially to people who are visually impaired or suffering from hearing impairments. The government must make arrangements to aid those with vision, hearing and mobility issues through processes like use of sign language or braille. In cases like *Harrell v. State*<sup>29</sup> and *United States v. Gigante*<sup>30</sup>, Internet-based Video Conferencing proved crucial.

High technology equipped courtrooms can solve the difficulty of equal accessibility of E-courts. When all the parties are provided with a court that comes with essential technology, as opposed to only a showcase framework for proof or introductions made by the litigants' own gear, the

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<sup>28</sup> Sandhya PR, *Corona is a wake-up call for Indian Courts. They aren't equipped to function in a crisis*, THE PRINT (Mar. 27, 2020, 12:28 PM), <https://theprint.in/opinion/corona-is-a-wake-up-call-for-indian-courts-they-arent-equipped-to-function-in-a-crisis/389224/>.

<sup>29</sup> *Harrell v. State*, 709 So. 2d 1364, 1369 (Fla. 1998).

<sup>30</sup> *United States v. Gigante*, 971 F.Supp. 755, 756 (E.D.N.Y.1997).

technological lop-sidedness can be redressed at large. In addition to providing a high-tech venue, it can then provide a level-playing field.

The primary objective of law is to ensure justice in whichever way possible. While the conventional courts require proximity and public gatherings which now spell danger, mediation, a recent tool in the dispute resolution armoury can be a solution to our problems. It requires only mediator and parties to the case and its essence is a closed-door communication.<sup>31</sup> It can be performed online smoothly and it will prove to be time and cost-effective and can reduce the ever-increasing burden on judiciary.

## CONCLUSION

As we wander in dark to discover what the new ordinary is going to comprise of, we may as well see the silver lining in the cloud of COVID-19. The Pandemic has given the e-courts project, the final nudge that it needed for its implementation.

British Author Arnold Bennett wrote-

***“Any change, even a change for the better is always accompanied by drawbacks and discomforts.”***<sup>32</sup>

The sudden and complete switch to the electronic mode has undoubtedly posed some serious issues relating to inclusivity, justice delivery and privacy and the E-committee after consulting all the stakeholders need to come up with solutions to cater to these problems. Informing the public at the grassroots level about the available facilities to ensure diversity, active participation and accountability in the digital court process is a step forward.

Digitalization of courts is not merely a phase of modernization but a part of democratization. Legal profession has embedded hierarchies; Virtual courts and access to the same platform and resources will make people feel equal and empowered, thus furthering the fundamental rights guaranteed by the constitution. With the E courts, dedicated legal professional can extend services at affordable costs, thus bringing us closer to an equitable judiciary. It could help in cultivating a new judicial culture, that changes the way people perceive justice delivery in India.<sup>33</sup>

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<sup>31</sup> Sriram Panchu, *Mediation in the age of COVID-19*, THE HINDU (June 19, 2020, 12:10 PM), <https://www.thehindu.com/opinion/lead/mediation-in-the-age-of-covid-19/article31863358.ece>.

<sup>32</sup> Arnold Bennett, *The Great Adventure*, (1913).

<sup>33</sup> Kaleeswaram Raj, *Transforming the courts during Pandemic*, THE INDIAN EXPRESS, May 2, 2020, 10:15 AM), <https://www.newindianexpress.com/opinions/2020/may/02/transforming-the-courts-during-pandemic-2138096.html>.





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