



## VIRTUAL COURTS DURING THE COVID-19 PANDEMIC: A CRITICAL EXPOSITION

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“Fiat Justitia Ruat Caelum”  
- Lord Mansfield<sup>1</sup>

### ABSTRACT

The Covid-19 pandemic has had a profound effect on the Judicial System. In March 2020, a nation-wide lockdown was imposed in India and the Courts had to cease regular ‘physical’ hearings. However, this lockdown period has been used as an opportunity to deploy technology of Virtual Courts to ensure continuous administration of justice. The advantages of these Courts are that they use a remote working system with the help of various software’s and the Internet to adjudicate cases and there is limited requirement of actual human presence in the court premises thereby ensuring that working of the Courts doesn’t stop due to Covid-19 lockdown related restrictions. This system of Virtual Courts has its own pros and cons. A coordinated effort needs to be undertaken so that the various problems and disadvantages of this system are removed, and that a properly functioning system of ‘Virtual Courts’ is established with requisite digital infrastructure to ensure administration of justice and maintenance of rule of law. In this paper an attempt has been made to undertake an analysis of the Concept of Virtual Courts

and Pros and Cons of these Courts. Though the Paper is predominantly focused on the recent developments regarding Virtual Courts in an Indian Context, reference has been made to trends in a few foreign jurisdictions as well.

**KEYWORDS:** Virtual Courts, Covid-19, Pros, Cons, Judiciary, Physical, Internet, Advantages, Disadvantages, Infrastructure.

### Introduction

The Covid-19 pandemic has been caused by spread of an infectious disease amongst humans caused by the Corona Virus. Covid-19 has been identified as a “public health emergency” by World Health Organization<sup>2</sup> and it has made a profound effect on Human life. Since it spreads from human contact, Nation-wide Lockdowns were declared by Governments across the world. The administration of justice through ‘Conventional Courts’ (where actual physical presence of litigants, advocates, and judges is required, evidence and documents are submitted physically, witnesses give their testimony on oath and decision is pronounced in open court) was severely affected. Thus, a new generation of Virtual Courts have emerged which allow continued access to justice remotely/digitally by eliminating requirement of physical proceedings in court premises. While initially these Courts were considered to be *pro tempore* measure, with passage of time, a realization has dawned upon us that they might be the new normal and are here to stay.<sup>3</sup>

<sup>1</sup> Fiat Justitia Ruat Caelum, available at: <https://rudrajyotinathray.com/2017/04/19/fiat-justitia-ruat-caelum/> (last visited on March 6, 2021).

<sup>2</sup> Corona Virus 2019 W.H.O., available at: <https://www.who.int/emergencies/diseases/novel->

[coronavirus-2019/events-as-they-happen](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen) (last visited on March 1, 2021).

<sup>3</sup> D. Bharuka, “Hybrid Hearing System”, *Live Law*, February 18, 2021, available at: <https://www.livelaw.in/columns/court-case-hearing->



### Virtual Courts Explained

There are multiple definitions of the term 'Court'. In India, Civil Procedure Code (CPC), 1908<sup>4</sup>, the Criminal Procedural Code (CrPC), 1973<sup>5</sup> and the General Clauses Act, 1897<sup>6</sup> don't contain any definition of the term 'Court'. As per the legal glossary of the Legislative Department, Ministry of Law and Justice, 'Court' is a place where justice is administered. Thus, there are two key elements in this term (Court) namely:

- Court is a Legal entity comprising one or more judges.
- It deals with the administration of Justice. Thus, one can argue that Court is more of a Service than a place.<sup>7</sup>

Globally, the Courts can be broadly divided into 4 categories:

- **Conventional Courts:** These are traditional courts which require physical presence of judges, litigants and legal professionals.
- **Online Court:** In these Courts only the only the judicial officer (The Judge) is physically present in the court. Such courts are digitalized in nature.
- **E-court/Electronic Court:** It is a Court whereby matters of law are adjudicated upon, in the presence of qualified Judge(s) with a well-developed technical infrastructure.<sup>8</sup>

physical-hearing-virtual-court-video-conferencing-hybrid-hearing-170014 (last visited on March 1, 2021).

<sup>4</sup> The Code of Civil Procedure, 1908 (Act No. 5 of 1908).

<sup>5</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

<sup>6</sup> The General Clauses Act, 1897 (Act No. 10 of 1897).

<sup>7</sup> Yash Aggarwal, "Challenges in setting up Virtual Courts", *The Leaflet*, October 23, 2020, available at: <https://www.theleaflet.in/challenges-in-setting-up->

- **Virtual Courts:** In these Courts there is no physical presence of either the judge or a legal professional/advocate. Internet and sometimes even the digital frameworks and tools such as Artificial Intelligence are deployed in such courts.<sup>9</sup>

There are different standards globally w.r.t. Virtual Courts. However, as India lacks sufficient technological penetration and is still undergoing the process of Digital Development, there is a lack of clarity as to the distinction between Online Courts and Virtual Courts. Therefore, these terms are used interchangeably. As per the Ministry of Electronic and Information Technology, Virtual Courts are a facility in which the "*Plaint and other documents such as vakalatnama, written submissions are filed electronically; Court fees are paid electronically; Evidence is submitted digitally; arguments are heard over videoconferencing; witnesses give their testimony remotely over videoconferencing and Judge decides the case online either presiding from the physical Courtroom or from some other place. A copy of the Order or the Judgement is made available on the website of the Court or through some electronic means.*"<sup>10</sup> Therefore, in India virtual courts are synchronous judicial forums where the advocates, judges, witnesses and litigants are all required to be

virtual-and-online-courts-in-india (last visited on March 5, 2021).

<sup>8</sup> Discussions Drishti IAS, available at: <https://www.drishtiiias.com/loksabha-rajyasabha-discussions/the-big-picture-virtual-courts-and-way-forward> (last visited on March 6, 2021).

<sup>9</sup> *Id.* at 7.

<sup>10</sup> Virtual Courts, available at: <https://vcourts.gov.in/virtualcourt/> (last visited on March 6, 2021).



present or available at the time of the hearing and where the Court Proceedings are conducted over Video Conferencing. On 6<sup>th</sup> April 2020, The Hon'ble Supreme Court of India issued guidelines by invoking Article 142 of the Constitution in *Re: Guidelines for Court Functioning Through Video Conferencing During COVID-19 Pandemic*<sup>11</sup> regarding measures to be taken by courts to reduce the physical presence of all litigants within court premises by adapting social distancing guidelines during the Covid-19 lockdown. Thus, legal sanctity has been provided to virtual courts in India. The High Courts were given the discretion of adopting such a technology suited to their own needs in view of the evolving pandemic scenario in different states. Model Rules were drafted and circulated amongst all the High Court's whereas the District or Lower Courts were to adopt such rules as prescribed by their Parent High Courts and they are required to provide video conferencing facilities as well to litigants lacking these resources.

### Pros and Advantages of Virtual Courts

The Virtual Courts system has been widely praised as it has allowed continuation of Judicial Process during a Global Pandemic. Although the system is far from perfect, yet it still has several benefits which have led to demands to continue it even after the Covid-19 Pandemic ends. According to a Report of the Parliamentary Standing Committee on

Law and Justice, the Virtual Courts expedite processes and procedures and they are an improvement over conventional courts as they are more affordable, citizen friendly and offer greater access to justice.<sup>12</sup> Accordingly, some of the Pros or Advantages of the Virtual Courts are as follows<sup>13</sup>: -

#### i. Continuous Administration of Justice

The biggest advantage of the system of Virtual Courts is that they have ensured that the Administration of Justice continues in some form in spite of the deadly Covid-19 pandemic. Because of the Virtual System, the Supreme Court has functioned much more than the usual minimum 190 days of sittings in a year.

Digitization and Computerization brought about by Virtual Courts have helped in discharging justice similar to the working of traditional courts in spite of the lockdown restrictions. In absence of these Courts, the entire Legal system would have been brought to a grinding halt, which would have adversely affected the rule of law in the society.<sup>14</sup>

#### ii. Reduction of Pending Cases

Pending Court Cases in India are on a Rise and this has burdened the traditional courts. The Supreme Court has observed that one Virtual Court can hear as many as 40 matters in a single day and therefore these courts can

<sup>11</sup> Re: Guidelines for Court Functioning Through Video Conferencing During COVID-19 Pandemic, (2020) 6 SCC 686.

<sup>12</sup> Virtual Courts after Covid 19 is over, *available at*: <https://www.ndtv.com/india-news/continue-virtual-courts-even-after-covid-19-is-over-parliament-panel-2293802> (last visited on March 5, 2021).

<sup>13</sup> R. Kumari, "Pros and Cons of Virtual Courts", *Mondaq*, May 21, 2020, *available at*:

<https://www.mondaq.com/india/operational-impacts-and-strategy/938322/covid-19-urges-courts-in-india-to-go-online-pros-and-cons-of-court-hearings-via-video-conference> (last visited on March 6, 2021).

<sup>14</sup> D. Sehgal, "Virtual Courts during Covid crisis", *Ipleaders*, April 14, 2021, *available at*: <https://blog.ipleaders.in/future-virtual-courts-india-covid-19-crisis/> (last visited on March 6, 2021).



greatly help in reducing the backlog of Pending cases which will be an effective remedy for delayed justice.<sup>15</sup>

### iii. Cost Reduction

A full-fledged system of Virtual courts with proper digital infrastructure will help in eliminating the expenses. The expenditure on establishment and upkeep of physical infrastructure, staff and security in Court Complexes will be reduced and parties involved in the cases would not be required to appear in person, which will reduce the travelling expenses and make the procedure time and cost-efficient.

### iv. Increased Flexibility

Virtual Courts have the potential to provide the Courts to work 24/7 to dispose urgent cases. Thus, the huge backlog of cases in court can be cleared and the adjudication of cases can be done in a time-bound manner. The Bar Council of India has appreciated the idea of conducting Virtual Hearings by the Supreme Court and High Courts for extraordinary/urgent matters.<sup>16</sup>

### v. Balance between Virtual Courts and the Open Courts Principle

According to the Supreme Court there is no inconsistency between the Virtual Courts and the Open Courts system. The Supreme Court recently observed that the aim of both the system of adjudication through the open

court system and the court system being conducted via video conferencing is delivery of justice. Finally, the Court stated that Open Court hearings cannot be claimed as a matter of absolute right and process of adjudication itself does not demand an Open Court. Thus, in the present era in which technology has penetrated our lives greatly, Virtual Courts are not at all antithetical to the open court system in any manner.<sup>17</sup>

### vi. Practical use beyond the Pandemic

Even beyond the current Covid-19 Pandemic there is a dire need for the judicial fraternity to remain accessible to the ordinary citizenry. Thus, the Virtual Courts could serve to a vital purpose to connect the Litigants and the Judicial Institutions in the post-Covid-19 pandemic as well. It has been proposed that Virtual Courts and Video Conferencing should be made optional in all courts across the country for all kinds of matters even after the Pandemic ends.<sup>18</sup> It has been argued that virtual courts would grant wider access to justice as enshrined under Article 39A<sup>19</sup> of the Constitution of India, because of the reach of internet in general to the people.

### vii. Environmental Benefits

The use of Digital Technologies to file and submit documents such as Plaints, Vakalatnama, Written submissions electronically and payment of Court fees online through Virtual Courts will help to

<sup>15</sup> Virtual Court can hear 40 cases, *available at*: [https://www.business-standard.com/article/pti-stories/one-virtual-court-can-hear-40-cases-through-video-conferencing-in-day-sc-120051801018\\_1.html](https://www.business-standard.com/article/pti-stories/one-virtual-court-can-hear-40-cases-through-video-conferencing-in-day-sc-120051801018_1.html) (last visited on March 7, 2021).

<sup>16</sup> *Id.* at 13.

<sup>17</sup> A. Saxena, "Virtual Courts not antithetical to Open Courts", *Live Law*, May 4, 2020, *available at*: [https://www.livelaw.in/top-stories/virtual-courts-not-](https://www.livelaw.in/top-stories/virtual-courts-not-antithetical-to-open-court-system-supreme-court-defends-virtual-hearing-system-read-note-156179)

*antithetical-to-open-court-system-supreme-court-defends-virtual-hearing-system-read-note-156179* (last visited on March 6, 2021).

<sup>18</sup> Virtual Courts after Pandemic, *available at*: <https://theprint.in/judiciary/let-virtual-courts-continue-after-pandemic-they-are-safer-faster-parliamentary-panel-says/500442/> (last visited on March 6, 2021).

<sup>19</sup> The Constitution of India, art. 39A.



save natural resources and aid in reducing the carbon footprint, thus increasing environmental sustainability.

### Cons and Challenges of Virtual Courts

The working of Virtual Courts has raised some serious concerns and these Courts suffer from quite a few structural defects, especially as the Common Law based adversarial system which incorporates cross-examination is transferred from physical to digital arena, that too when a majority of the citizens do not even have Internet Access. Many Legal experts have raised concerns regarding the Virtual Courts, especially as their proceedings are not transparent/open for public viewing. Virtual Courts facility is accessible only by the judges and the respective Legal counsels representing the Litigants. In the past, the Bar Council of India has remarked that litigants were unable to get justice through virtual courts and legal profession is getting hijacked by a few individuals/firms having high-level connections.<sup>20</sup> Some of the main cons/challenges with respect to the functioning of Virtual Courts are as follows:

#### i. Virtual Courts are against the Open Court Principle<sup>21</sup>

- The Open Court principle is vital for a Transparent Judicial System and is based upon rules of Natural Justice. It has its origin in the *Magna Carta*, under which not only the litigants have a right to have their case resolved by Court, but the general public

have a right to attend the legal proceedings as well. Accordingly, the public (including media) has a right to freely and fairly access the court proceedings. At its foundation lies the belief that wide scope of activities enabling the public to attend court hearings as a spectator, reporter or partaker must be preserved.

- The Hon'ble Supreme Court of India in *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Ors*<sup>22</sup> judgment has affirmed the importance of the Open Court principle by stating that "*Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and 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.*"
- This principle has been encapsulated by several legal provisions for instance Article 145(4) of the Constitution<sup>23</sup>, Section 327 of the CrPC, 1973<sup>24</sup>; and Section 153B of the CPC, 1908<sup>25</sup>. The principle preserves the Fundamental Rights to freedom of speech and expression provided under Article 19 of the Constitution of India<sup>26</sup>. It is only in "special and limited cases as prescribed by law" or under the Court's authority to regulate its own proceedings that this vital principle can be deviated to a minimum

<sup>20</sup> Justice not possible via Virtual Courts, *available at*: <https://www.tribuneindia.com/news/nation/justice-not-possible-via-virtual-courts-bci-88362> (last visited on March 6, 2021).

<sup>21</sup> Pramod Dubey, "Are Virtual Courts a Sustainable Option", *Bar and Bench*, April 12, 2020, *available at*: <https://www.barandbench.com/columns/virtual-courts-a-sustainable-option> (last visited on March 6, 2021).

<sup>22</sup> *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Ors*, 1 1966 SCR (3) 744.

<sup>23</sup> The Constitution of India, art. 145.

<sup>24</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 327.

<sup>25</sup> The Code of Civil Procedure, 1908 (Act No. 5 of 1908), s. 153B.

<sup>26</sup> The Constitution of India, art. 19.



extent. The Supreme Court and the High Courts in India are adjudicating on matters of public importance by dispensing with the requirement to enable public access to the Court proceedings, and by not following the Open Courts Principle. This has led to many legal experts expressing concerns about the future of Virtual Courts in India as the functioning of such courts is seemingly in conflict with the Open Courts Principle.

ii. **Difficulty in Accessibility to Justice**<sup>27</sup>

- Article 39A<sup>28</sup> of the Constitution of India promotes Equal justice and free legal aid. The present Socio-Economic Reality of India means that it is impossible for many/several persons involved in the smooth administration of the Virtual Courts Process i.e., the litigants, their advocates, judges, court staff, media and the general public to engage and understand the court proceedings as they lack sufficient means. Statistics from 2017 suggest that nearly 72% of the population does not have any access to internet in India. Even amongst existing connections, there is widespread disparity between urban and rural areas, and between different states depending on their network infrastructure and relative affluence. Thus, in absence of continuous access to internet, there are only a few persons who would be able to avail the Virtual Court services and there is a vast majority of citizens who would suffer an assault on their Constitutional Right to access justice.
- Even at the High Court level there is a shortage of IT infrastructure. Further, India presently lacks ability to undertake drastic technological advancements within Virtual Courts system, and thus in future measures

promoting exhaustive digital literacy and training of all judicial officers, advocates, and other court staff including those in charge of filing and presenting files before the appropriate court should be taken.

- Subsequently, it is too far-fetched to presume that various individuals involved in the justice system at all levels will be able to understand and adopt to the new virtual medium within weeks or months. Thus, in order to prevent a large proportion of our citizenry from being excluded from the process of justice delivery owing to factors beyond their control, and to protect the functioning of technologically lagging lower courts, it is quite clear that the Virtual Courts system cannot continue in its present form.

**Issues with respect to Witnesses and Evidence**<sup>29</sup>

- The Virtual Courts processes face serious issues/challenges in the context of Evidence/Witness Procedures. There is a significant difference between a Virtual and a Physical testimony, especially as the latter offers a far greater opportunity for the court to evaluate the witness by way of his/her testimony along with their demeanor. Thus, Physical presence can serve vital functions particularly during cross-examination, which ultimately leads to the discovery of truth and can be used to impeach the credibility of the witness. In the words of John Henry Wigmore, an Expert on Evidence Law “*Cross-examination is the greatest legal engine ever invented for the discovery of truth*”. Thus, an inability to undertake cross-examination properly inadvertently increases the risk of error while adjudicating a case.<sup>30</sup>

<sup>27</sup> *Id.* at 21.

<sup>28</sup> The Constitution of India, art. 39A.

<sup>29</sup> *Id.* at 21.

<sup>30</sup> *Ibid.*



- On the other hand, Evidence recorded by means of video conferencing may distort non-verbal cues such as facial expressions, reactions, postures, and gestures through deficiencies such as delayed streaming, buffering and latency problems. Even when the process goes on perfectly there is a possibility of defects. Thus, in a properly functioning live stream the facial expressions of a person may be overemphasized while leaving vital gestures fully or partially obscured or out of view.

- Further, Testimonies and Evidence Recorded or Collected through video conferencing in Virtual Courts have an element of Casualness and are informal. There is lack of complying with traditional legal procedures such as Oath Taking in presence of an actual judicial officer and this increases chances of false testification. Section 159 of Indian Evidence Act, 1872<sup>31</sup> permits a witness to refresh his memory during the time of examination with permission of Court, by referring to any writing made by himself. But Virtual Courts can lead to a situation where a witness is answering questions during his cross-examination with relevant material placed before him which will defeat the entire purpose of such examination.

**iv. Defeating the objective of punishment under Criminal law**

There are a number of theories of punishment such as the Deterrent, Retributive, Protective, Expiatory and Rehabilitative theories. Under Criminal Law, the punishment plays a pivotal role in imposing criminal sanction. At the same time according to the Communicative theory of punishment propounded by Professor Antony Duff, there is another

crucial element in imposing criminal sanctions, which is the Communication of the Consequences of the Crime (through a degree of censure and condemnation to the offender and the public at large). This adds to the deterrent effect of punishment and prevents people from committing the crime. It is submitted that the same requires an Open Court, and the task becomes impossible in virtual courts, thus defeating the very objective of punishment under Criminal Law.<sup>32</sup>

**v. Cybersecurity and Confidentially Issues/Challenges**

- In Conventional Courts, the Litigants identify themselves before their Counsel prior to filing anything before the Courts and at the same time the counsels are required to identify their clients. Further, as hearings are held in Court before a judge in-person and physically it quite difficult to steal another person's identity. However, if the Process is conducted online, through Virtual Courts, there is a serious concern of identity theft, especially in absence of Secure and Protected Digital Infrastructure. Thus, there is a lack of confidence amongst the litigants in the system and many litigants would not prefer to divulge sensitive information/documents on an online platform. This is especially true at a time, when the identity theft cases for using personal or financial information have been on a rise across the world.

- Even the confidentiality of court proceedings is at risk because the Virtual Process involves the use of vulnerable technology. For instance, various third-party platforms pose a security hazard as they are prone to hacking and misuse. Therefore, as these Virtual

<sup>31</sup> The Indian Evidence Act, 1872 (Act No.1 of 1872), s. 159.

<sup>32</sup> *Id.* at 21.



Courts lack suitable protection of litigants, lawyers and judges from such illegal acts which are facilitated by the internet, there is a need to undertake several changes in this aspect, especially if as a reaction to the Covid-19 pandemic the adoption of Virtual Courts is to be sustained.<sup>33</sup>

#### vi. Technological Constraints and Glitches

The Present system of Virtual Courts in India, especially in context of Video Conferencing and e-filing faces technical glitches in absence of proper software. For instance, the file size upload limit is very low on the Supreme Court Website (5MB for petition and 2MB for additional documents) making it difficult for the Advocates to upload case files.<sup>34</sup> Limited links have been issued for hearings and many of them remained inactive even after several attempts. Further poor-quality audio/video, frequent loss of connection, disruptions and high latency affects judicial assessment as well.

#### vii. Degree of Comfort

It is quite clear that all individuals including the Advocates are not comfortable and well versed with the new mechanisms under Virtual Courts. This is especially true in Rural areas given the digital divide vis a vis Urban Areas. Thus, there is a need to undertake adequate training programs especially in context of District and Lower Courts practitioners. It has been proposed that the Bar Council of India should introduce a computer course module in the syllabus of

the law programs so that upcoming law graduates are aware of these aspects as a part of their college education and training.

#### viii. Large Scale Investment over a long time<sup>35</sup>

With a population of 1.3 billion people, and the presence of a large number of judicial institutions, there is a need of huge investment in setting up and installation/upgradation of essential features for the functioning of the Virtual Courts in India. Technological upgradation and investment are quintessential and absolutely vital. Obviously in India this process cannot be done in a flash and would require careful execution with a well-defined time-frame.

#### ix. Quantitative v. Qualitative Justice<sup>36</sup>

A significant issue is that while the Virtual Courts may impart speedy justice, this might result in deterioration of the quality of justice. While these courts hear large number of cases, they can't match conventional court processes just yet.

Thus, it is imperative that speedy delivery of justice doesn't cost the citizens efficacy/effectiveness of justice.

#### Development and working of Virtual Courts in India

The development of Virtual Courts in India has been accelerated due to Covid-19 Pandemic. But there have been some other developments as well in this area. Some of these are: -

<sup>33</sup> *Supra* note 21.

<sup>34</sup> E-Filing Practices, *available at*: <https://main.sci.gov.in/efiling> (last visited on March 9, 2021).

<sup>35</sup> Y Singh and A. Sah, "Virtual Courts Prospects and Challenges", *Legal Service India*, *available at*:

<http://www.legalserviceindia.com/legal/article-4530-virtual-courts-prospects-and-challenges.html> (last visited on March 6, 2021).

<sup>36</sup> *Ibid*.



### a. The E-Courts project

The E-Courts project was launched under the “National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary-2005”.

The project is divided into 2 phases:<sup>37</sup>

- **Phase-1:** Started in 2007 and was aimed at initiating implementation of ICT in the judicial system.
- The Courts were provided with facilities such as computers, Local Area Network Internet Connection, printers, scanners, etc. digital signatures were introduced and district court websites were made functional, which allowed the citizens could check case status etc.
- **Phase-2:** Computerization/digitalization was undertaken at National Judicial Academy, State Judicial Academies and Taluka Legal Service Committees.
- Further, the Case Information Software, Video conferencing facilities in courts, Mobile applications for eCourt services, e-Filing, e-Payments were set up and a cloud-based system for court work was introduced.

### b. Pre and Post Covid-19 Developments/ Recent trends regarding Virtual Courts in India

Even prior to Covid-19 Pandemic, Virtual Courts existed in India. On 26<sup>th</sup> July 2019, the first virtual court in Delhi was launched at the

<sup>37</sup> E-Courts Services, available at: [https://services.ecourts.gov.in/ecourtindia\\_v6/static/about-us.php](https://services.ecourts.gov.in/ecourtindia_v6/static/about-us.php) (last visited on March 9, 2021).

<sup>38</sup> VIDYO, available at: <https://districts.ecourts.gov.in/vidyo-mobile-app-video-conferencing-system> (last visited on March 10, 2021).

<sup>39</sup> Supreme Court Hearings Video Conference, available at:

Tis Hazari Court. On 17<sup>th</sup> August 2019, the Punjab and Haryana High Court had introduced a Virtual Court at Faridabad for dealing with Traffic Challan Cases. The Covid-19 Pandemic associated lockdown has resulted in significant developments regarding the Virtual Courts system. On 15<sup>th</sup> March 2020, Hon’ble C.J.I. S.A. Bobde held a meeting on implementation of Video conferencing so as to avoid physical gatherings in Court premises. Justice D.Y. Chandrachud (Chairman of the E-committee of SC) announced 24/7 availability of Video Conferencing and e-filing facility, thereby preventing a complete shutdown of the Court. The Supreme Court used the video conferencing app ‘VIDYO’<sup>38</sup>. It didn’t stop for even a single day since the Nation-wide lockdown as imposed in March 2020. Till 31<sup>st</sup> December 2021, 1,998 Benches held 43,713 hearings through video conferencing.<sup>39</sup> In February 2021, Allahabad High Court inaugurated a Virtual Traffic Court, Interoperable Criminal Justice System and integrated Civil Court Data with Land Records.<sup>40</sup> In future Virtual Courts Technology will radically transform the process of administration of justice with use of disruptive technology such as Artificial Intelligence. However, there are significant challenges to be addressed before Virtual Courts can be truly reliable.

### c. Virtual Courts Beyond the Covid-19 Pandemic in India

<https://www.barandbench.com/news/litigation/supreme-court-held-43713-hearings-through-video-conference-in-2020> (last visited on March 10, 2021).

<sup>40</sup> Allahabad HC Virtual Court, available at: <https://www.livelaw.in/news-updates/allahabad-high-court-virtual-court-traffic-interoperable-criminal-justice-system-integrated-civil-court-data-with-land-records-170274> (last visited on March 10, 2021).



The establishment of Virtual Courts has enabled citizens to take benefit of facilities such as video conferencing, e-filing, digital signatures, and a litigant-friendly user interface by establishing a proper database of pending cases, orders, etc.<sup>41</sup> Meanwhile, the Courts across India have started resuming physical hearing in a phased manner, which has evoked mixed reactions as many lawyers are in favor of continuing with virtual hearing even after the end of pandemic, while the others want Court to revert back to full-scale physical mode. The Court devised a pilot scheme to hear cases in the hybrid mode on experimental basis from 15<sup>th</sup> March 2021. Accordingly, final hearing and regular matters listed on Tuesdays, Wednesdays and Thursdays were heard in hybrid mode while other matters listed on Mondays and Fridays were heard virtually. Thus, by adoption of hybrid mode, Supreme Court has recognized the right of parties to appear in court through virtual means.<sup>42</sup> Later, the both the Supreme Court<sup>43</sup> and the High Courts<sup>44</sup> had to revert back to Virtual Hearings After 50% of its staff tested positive for Covid-19. Previously, the Parliamentary Standing Committee on Law and Justice in its September 2020 report recommended that Virtual Courts should be continued for identified categories of cases with the consent of all parties, even after Covid-19 pandemic is over. It suggested that

virtual proceedings can be extended permanently to various Appellate Tribunals. The report underlined the importance of "digital justice" which is cheap, fast and addresses locational and economic handicaps.<sup>45</sup>

### Virtual Courts in Foreign Jurisdictions

Following the Covid-19 pandemic there has been a trend towards adoption of Virtual Courts. Their development abroad has been discussed as follows: -

- a) **United States:** Following the pandemic, the U.S. has seen a proliferation of Virtual Courts. Virtual Hearings are being used to administer justice while maintaining social distancing. Courts hearing criminal cases virtually have conducted judicial proceedings via video conferencing so that inmates don't have to travel from jail to court.<sup>46</sup>
- b) **United Kingdom:** Online Courts have existed in UK since 2009. The use of virtual courts has led to a speedy justice system, improved quality of services and reduced costs. Virtual Courts have been hearing both criminal and civil cases via video conferencing. Under *Coronavirus Act, 2020* Government has undertaken live online broadcast of the proceedings to the public.<sup>47</sup>
- c) **China:** In 2015, the Supreme People's Court of China had proposed the idea of 'Smart

<sup>41</sup> *Id.* at 14.

<sup>42</sup> Hybrid Hearing in SC, *available at*: <https://www.livemint.com/news/india/supreme-court-to-commence-hybrid-physical-hearing-of-cases-from-15-march-11615020888548.html> (last visited on March 10, 2021).

<sup>43</sup> Supreme Court reverts to Virtual Mode, *available at*: <https://economictimes.indiatimes.com/news/india/supreme-court-goes-back-to-working-only-in-virtual-mode-as-covid-cases-soar/articleshow/82035740.cms?from=mdr> (last visited on April 18, 2021).

<sup>44</sup> High Courts revert to Virtual Mode. *available at*: <https://www.barandbench.com/news/covid-19-surge-high-courts-revert-to-virtual-mode-after-brief-tryst-with-physical-hearings> (last visited on April 18, 2021).

<sup>45</sup> 103rd Report on Virtual Courts, *available at*: <https://d2r2ijn7njrktv.cloudfront.net/IL/uploads/2020/09/11150617/103-Report-on-Virtual-Courts.pdf> (last visited on March 10, 2021).

<sup>46</sup> US Virtual Courts, *available at*: <https://www.legalexecutiveinstitute.com/virtual-courts/> (last visited on March 10, 2021).

<sup>47</sup> *Id.* at 14.



Court'. In 2017, Internet Courts were established in a few cities which use Artificial Intelligence (AI) technology and don't require physical presence of parties.<sup>48</sup> During Covid-19 pandemic, Online Litigation services have increased in China through Virtual Courts.

- d) **Australia:** Virtual Courts in Australia have proved to be quite effective amidst the Covid-19 pandemic. The Federal Court of Australia, has promoted measures such as Electronic Court File System and Digital hearings, which has made judicial processes more efficient.<sup>49</sup>

#### Judicial Precedents in relation to Virtual Courts

Some leading judicial precedents regarding the Virtual Courts are as follows:

- a. **Swapnil Tripathi v. Supreme Court of India<sup>50</sup>:** The Supreme Court acknowledged the principle of open court hearings, while discussing the issue of live streaming of its proceedings. It remarked that access to justice can never be complete without litigant being able observe the judicial proceedings.
- b. **Krishna Veni Nagam v. Harish Nagam<sup>51</sup>:** The Supreme Court in a Transfer Petition allowed the parties to a matrimonial dispute case to participate in the Court proceedings through video conferencing (and thereby dispensing with the requirement to appear in person) as both parties were not located within the jurisdiction of the same court, and the litigants would otherwise face inconvenience.

- c. **Santhini v. Vijaya Venketesh<sup>52</sup>:** The Supreme Court overruled the decision in **Veni Nagam's case** by not allowing use of video conferencing in a transfer petition. However, in his dissenting opinion, Justice Chandrachud emphasized benefits of video conferencing technology to facilitate judicial process and remarked that its non-application will result in denial of justice.

- d. **M/s Meters and Instruments v. Kanchan Mehta<sup>53</sup>:** The Supreme Court observed that use of modern technology needs to be considered for paperless courts, reducing overcrowding. and categorizing certain cases such as Traffic Challans and Cheque Dishonors which can be adjudicated "online".

- e. **State of Maharashtra v. Dr. Praful Desai<sup>54</sup>:** The Supreme Court held that under Section 273 of CrPC 1973<sup>55</sup>, 'presence' cannot be interpreted to only mean actual presence of a person in a Court. Thus, evidence can be recorded without the person being physically present in court where the parties are located remotely, or where confidentiality is to be maintained.

- f. **Ashwini Kumar Upadhyay v. Union of India<sup>56</sup>:** In a Virtual Hearing, Supreme Court observed that for efficacious disposal of cases requiring recording of evidence of witnesses, robust video conferencing facilities and infrastructure upgradation is necessary.

<sup>48</sup> Ibid.

<sup>49</sup> Virtual Civil Trials, *available at*: <https://www.loc.gov/law/help/virtual-civil-trials/virtual-civil-trials.pdf> (last visited on March 10, 2021).

<sup>50</sup> Swapnil Tripathi v. Supreme Court of India, (2018) 10 SCC 628.

<sup>51</sup> Krishna Veni Nagam v. Harish Nagam, (2017) 4 SCC 150.

<sup>52</sup> Santhini v. Vijaya Venketesh, (2018) 1 SCC 62.

<sup>53</sup> M/s Meters and Instruments v. Kanchan Mehta, Criminal Appeal No.1731 of 2017.

<sup>54</sup> State of Maharashtra v. Dr. Praful Desai, (2003) 4 SCC 601.

<sup>55</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 273.

<sup>56</sup> Ashwini Kumar Upadhyay v. Union of India, WP(C) No.699/16.



- g. **Tamil Nadu Medical Officers Association v. Union of India**<sup>57</sup>: Supreme Court held a landmark Virtual Constitution Bench hearing through Video Conferencing System regarding reservation to in-service candidates in post-graduate medical degree courses.
- h. **Richmond Newspapers Inc. v. Virginia**<sup>58</sup>: The U.S. Supreme Court observed the long history of open trials reflects the widespread acknowledgment that public trials have a significant community value.
- i. **Scott v. Scott**<sup>59</sup>: The House of Lords held that Courts have no power to hear cases *in camera* even by consent of the parties, except in those special cases whereby a hearing in open court would defeat the ends of justice.
- j. **R. v. Secy. of State for Foreign and Commonwealth Affairs**<sup>60</sup>: The House of Lords held that there is a link between open justice and principles of democratic accountability, freedom of expression and rule of law.

limitations. There is added challenge of Cyber Crimes and lack of awareness amongst legal professionals especially at Lower Court Levels. Nonetheless, even after Pandemic ends, the structure of Virtual Courts shouldn't be completely rolled back. It is suggested that a Hybrid mode should be utilized to ensure that all stakeholders are able to access justice.

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### Conclusion

Countries across the World including India have adopted the new fora for administration of Justice during the Covid-19 pandemic in the form of Virtual Courts. These Courts use modern technology such as Internet Video Conferencing to ensure that Cases are heard without physical presence of parties, thus preventing the spread of the Corona Virus. However, the system has its own pros and cons. Although Virtual Courts have ensured access to cheap and efficient justice remotely, yet there are concerns that they lack transparency, and will deny the ordinary masses access to justice, due to technological

<sup>57</sup> Tamil Nadu Medical Officers Association v. Union of India, 2020 SCC OnLine SC 699.

<sup>58</sup> Richmond Newspapers Inc. v. Virginia, 448 US 555 (1980).

<sup>59</sup> Scott v. Scott, [1913] AC 417.

<sup>60</sup> A. Prasad, "Virtual Courts - Can They Replace Open Court hearings", *Law Street India*, June 19, 2020, available at: <http://www.lawstreetindia.com/experts/column?sid=410>. (last visited on March 7, 2021).