



## IMPORTANCE OF VIRTUAL COURTS IN INDIA

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In India, there is adversary form of dispute resolution in the Courts of law. It necessitates submission of dispute by one party and written or oral submissions, arguments based on evidence, etc. by the other party wherein the Judge is to determine and adjudicate the dispute. There have been Civil, Revenue, Taxation, and Criminal Courts functioning throughout the country even in the British and pre-British era. The first High Court was established at Calcutta in the year 1860. The Civil/ Revenue Courts at the time of British rule were functioning through Mofussil/ Diwani courts and Sadar Nizamat Adalat whereas the Criminal Courts were functioning through Sadar Fouzdari Adalat. This Court system continued in the present form in independent India since then but COVID-19 forced immediate initiation of virtual Courts. Hon'ble Supreme Court started to function through video conferencing by 7th of April, 2020 and later, nearly all the High Courts and the District Courts adopted the same practice.

The Civil litigation in the country is generally regulated by the parent Code of Civil Procedure 1908 (hereinafter 'CPC'). Section 9 of CPC provides suits of civil

nature. Sections 15 to 20 of CPC describes jurisdiction of Civil Courts with reference to the nature of issues. The civil case commences from filing of plaint<sup>1</sup> along with applications and documents according to the procedure. The other party is provided opportunity to submit written statement within ninety days of serving of summons<sup>2</sup>. There are provisions relating to joinder and non-joinder of parties<sup>3</sup>, amendment of plaint<sup>4</sup>, rejection of plaint<sup>5</sup>, set-off and counter claim<sup>6</sup>, and various other technical issues. The filing of written statement is followed by date for examination of witnesses, exhibiting the documents, appointment of Commissioner, etc. These necessitate physical presence of various class of persons viz. the clients, officers of revenue department and other stakeholders in order to substantiate the dispute in the light of evidence on record. Similarly, the Code of Criminal Procedure 1973 (hereinafter 'CRPC') provides procedure in criminal cases for prosecution of offences provided in the Indian Penal Code 1860. The Indian Evidence Act 1860 (hereinafter 'Evidence Act') supplements the procedure for admission<sup>7</sup> of documents, admission of statements<sup>8</sup> (oral/ documentary), classification of documents (public/ private), examination of witnesses<sup>9</sup>, etc. in civil as well as criminal cases. These require physical presence of accused in the place of occurrence for the purpose of recovery<sup>10</sup> of weapons/ other tools, recording of statements

<sup>1</sup> Order 7 Rule 1 of CPC provides contents of plaint and the pleadings that form a necessary part of it.

<sup>2</sup> Order 8 Rule 1 of CPC provides for filing a written statement.

<sup>3</sup> Order 1 Rule 9 of CPC.

<sup>4</sup> Order 6 Rule 17 of CPC.

<sup>5</sup> Order 7 Rule 16 of CPC.

<sup>6</sup> Order 8 Rule 6 of CPC.

<sup>7</sup> Section 17 of Evidence Act defines Admission.

<sup>8</sup> Section 6 of Evidence Act provides for *res gestae* which excludes the rule to hearsay evidence on the basis of immediate statement after occurrence.

<sup>9</sup> Section 138 to 145 of Evidence Act provides provisions relating to examination of witnesses.

<sup>10</sup> Section 27 of Evidence Act provides for recovery.



by the police<sup>11</sup> and the Magistrate<sup>12</sup>, preparation of case diary/ police report<sup>13</sup> and the physical presence<sup>14</sup> for examinations in the Court of Law.

There are more than three crore litigations pending in the Hon'ble Supreme Court. Similarly, there are about sixty five thousand pending litigations in the Hon'ble High Court of Chhattisgarh. The difficulties associated with the virtual Courts are:

1. ease of access to internet;
2. feasibility of operation of device during the Court proceedings;
3. access to devices like 4G mobile, high quality microphones, speakers, camera, sound proof ambience during the Court proceedings, etc.;
4. the manner of presentation to the Court requires proper delivery of arguments which means to ensure same effect of arguments in comparison to the physical hearing of the case;
5. the case laws must be provided either prior to the date of hearing of the case or must be separately delivered to the Court for perusal.
6. it does not permit sharing of official records for perusal by either party during the proceedings of Court or the perusal of documents from the file of plaintiff/appellant;
7. it restricts the Advocates, who are not party to the case from being proceeded in the Court or from assisting their juniors whenever they may require them;

However, the benefits of virtual Courts may superimpose its difficulties. The benefits are:

1. it is a boon in the pathetic condition of COVID-19;
2. it enables access to and participation in the Court proceedings even when the Advocates are outside the territorial limits of the functioning of concerned Court;
3. it has reduced expenses of time and money;
4. it may, subject to permission of Court, enable access to the Court proceedings to the clients at their place of residence;
5. it has contributed in protection of the environment.

The Universal Declaration of Human Rights 1948 states in its para 8:

"Every one has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law".

In Brij Mohan Lal v. Union of India and Ors.<sup>15</sup> this Court declared that Article 21 guarantees to the citizens the rights to expeditious and fair trial. The Court observed:

"137. Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39-A of the Constitution recognises the right of citizens to equal justice and free legal aid. To put it simply, it is the constitutional duty of the Government to provide the citizens of the country with such judicial infrastructure and means of access to justice so that every person is able to receive an expeditious,

<sup>11</sup> Section 161 and 162 of Evidence Act provides authority to the police to record statements.

<sup>12</sup> Section 164 of Evidence Act provides provisions relating to recording of statements by magistrate who may not have jurisdiction in the case.

<sup>13</sup> Section 173 of CRPC provides provisions for police report.

<sup>14</sup> Chapter X of Evidence Act provides provisions relating to Examination of Witnesses.

<sup>15</sup> (2012) 6 SCC 502



inexpensive and fair trial”.<sup>16</sup> Similarly, in *Tamilnad Mercantile Bank Shareholders Welfare Association v. S.C. Sekar and Others*<sup>17</sup>, this Court declared that an aggrieved person cannot be left without the remedy and that access to justice is a human right and in certain situations even a fundamental right.

It is worthy to note that the proceedings of the Hon’ble Supreme Court<sup>18</sup> of Canada are operated through teleconferencing from all the provinces throughout the country, similarly, one of the associate (who has been assigned the same duty) of Hon’ble Supreme Court of United Kingdom testifies the practice of telecommunication in the Court. In the same line, the judgment in *Gregg v. Georgia*<sup>19</sup> is evident of the perusal of ‘transcripts’ during the trial in the proceedings before the Hon’ble Supreme Court of United States. There are cases wherein the appearance of witness or the litigant residing within India or abroad has been permitted through video conferencing by the Hon’ble Supreme Court of India<sup>20</sup>. Therefore, in light of the above, it could definitely be said that the operation of Court rooms through video conferencing in the contemporary era is proper utilisation of the technological advancements and the need of the hour.

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<sup>16</sup> *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 521 at 526, para 24.

<sup>17</sup> (2009) 2 SCC 784.

<sup>18</sup> The Canadian Judicial System, available at: [https://decisions.scc-csc.ca/scc-csc/scc-csc/en/nav\\_date.do](https://decisions.scc-csc.ca/scc-csc/scc-csc/en/nav_date.do) (last visited 31.05.2021).

<sup>19</sup> 428 U.S. 153 (1976).

<sup>20</sup> *Sujoy Mitra v. Union of India*, (2015) 16 SCC 615, the guidelines for video graphic testimony of the witness have been provided *State of Maharashtra v. Praful B. Desai*, (2003) 4 SCC 601.