

“Virtual court: A Problem or a Solution?”

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Abstract:

Virtual court is a fairly new concept for the Indian Legal System. It came into limelight predominantly because of the hardships caused by the ongoing pandemic. The Delhi High Court and Supreme Court of India, were the first to conduct virtual proceedings of cases in order to eradicate the delay in proceedings even during the pandemic. After the report of Parliament Standing Committee on Personnel, Public grievances, Law and Justice, on 11th September, 2020, stating that Virtual Courts should continue even after the pandemic ends, it raised a lot of questions in the mind of Litigants, as well as the common citizens of this country. This article primarily aims at foreseeing the future and the possible hardships that could possibly arise due to this suggested system of case hearings, and how it can affect especially the less privileged class of people living in India those who are in pursuit to seek justice.

Keywords: Virtual Court, Justice, Court Proceedings.

Introduction:

The author intends to start this article by quoting an infamous line by Rebecca Solnit, “Change is the measure of time”. Change is indeed needed for a progressive society to adapt and overcome new barriers which are created due to the forever changing society.

It will not be absurd for any person who has taken an experience of Indian Justice delivery system, to say that, the system is indeed slow and hassle filled. This fact becomes more evident in the light of the ongoing pandemic, which has made the Indian Legal system even less accessible to the less privileged people living in India. In the amidst of the pandemic, various judicial and legal pronouncement throughout various tribunals, High courts, and Supreme Court of India shifted to the online mode of hearing, in order to meet the hardships posed by the pandemic. The department-related Standing Committee on Personnel, Public grievances, Law and Justice on 11th September, 2020, suggested that, virtual court proceedings should be allowed to continue even after we came out of the ongoing pandemic, and that necessary changes in law should be made to facilitate this.

Functioning of a Virtual Court:

In case of a virtual court, the entire court proceedings for a particular case takes place through online mode, mostly through the medium of video conferencing. The benches hearing these cases sit in courtrooms, while lawyers make their arguments and submissions, through video conferencing links from their homes or offices.¹ The concept of virtual court and how its

¹ The Hindu on “SC to continue virtual court system” on 15th June, 2020
<<https://www.thehindu.com/news/national/sc-to-continue-virtual-court-system/article31828053.ece>>

proceedings take place came into the limelight of general public specifically when it was aired live by the Gujarat High Court on You Tube application in the last week of October, 2020.

The Objective behind setting up Virtual Courts:

It is an intricate concept, with a vision to eradicate the presence of litigants in a Court of Law, and adjudication of cases online. It aims at providing fair amount of opportunities to injured or ill representatives, witnesses and any other participant to attend the hearing online which will make the process more accessible to every person seeking justice in a Court of Law. Even though the concept not only seems fragile, but it also seems to not answer certain indispensable questions, which needs to be clarified.

Challenges of conducting Virtual Court Proceedings:

First and foremost, Article 145(2) of the Constitution of India provides that no judgement shall be delivered by the Supreme Court other than in open court. Further, it provides for, that no report shall be created underneath Article 143 different that in accordance with an opinion, conjointly delivered in open court.. Apart from this, Section 327 of the Criminal Procedure Code and Section 153-B of Civil Procedure Code also mandates open court hearings in all criminal and civil cases.

It is very clear that India is a country of people belonging to distinct financial capabilities and regions. The first challenge that is expected to arise is the lack of accessibility to proper and stable Internet connection to Litigants. This will lead to unpredicted suffering to common citizens as well, who want to seek justice. Such sufferings will amount even more towards litigants and common people seeking justice in lower-level courts, such as district court and tribunals, as because such courts are situated in rural areas where internet connectivity and access to electronic devices is extremely poor and inconsistent. Especially, women in rural areas are still the victim of partiality and undue pressure from their family members. They are under educated and mostly dependent. In such circumstances, it is really tough for them to get legal assistance on any problem they face independently even by the medium of open courts. It does not make any sense to believe that, they will be able to get virtual legal assistance in such circumstances seamlessly. It is unfortunate to believe the fact that, in places where most of the people who cannot even afford an adequate lifestyle for their family, the government believes that they will be able to seek justice through Virtual courts. In view of this the department of Personnel, Public grievances and Law and Justice recommends that the Ministry of Communication should fast track of the National broadband mission, with the aim of providing reliable, consistent connectivity infrastructure to all districts and lower courts in India.² But the fact here cannot be denied that, its indeed a slow process and it cannot be implemented at all places with the same accuracy.

² Yash Aggarwal on “Challenges in setting up Virtual and Online Courts in India” for The Leaflet on October 23rd 2020 <<https://www.theleaflet.in/challenges-in-setting-up-virtual-and-online-courts-in-india/#>>

A Case which contradicts the decision of setting up Virtual court is, *Naresh Shridhar Mijrajkar and Ors. V. State of Maharashtra*³, within which the supreme court explicit that, “Public trial in open court is doubtless essential for the healthy, objective and honest 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 fairness, perspicacity, and non-partisanship of the administration of justice””. Ironically, the decision to continue virtual courts even after the pandemic ends, is contradicted by this statement by the Supreme Court. Litigants who have practiced in open courts throughout their career may not be able to perform with the same effectiveness in Virtual Courts, like they used to do in Open courts. This directly hampers the fate of common citizens seeking justice in the court of law.

Recently, in 2018, the Supreme Court while hearing the case of *Swapnil Tripathi v. Supreme Court of India*⁴, on the issue of live streaming of its proceeding held that the access to justice can never be complete without the litigant being able to see, hear and understand the court proceedings first hand. The court also acknowledged that the principle of open hearings would have to be adhered when Rules for live streaming of court proceedings are made. The court also agreed that our legal system subscribes to the concept of universally accepted principle of open court hearings and that live streaming is an important facet of responsive judiciary which accepts acknowledges to the concerns of those who seek justice.

An undermined limitation was pointed out by the Bar representatives that, virtual courts favour tech-savvy advocates, deprived lawyers of an opportunity to present their cases and alter course arguments based on the changing dynamics of a case during hearings. An advocate gets to grasp the mood of the judges and stands a stronger probability at convincing them throughout physical hearings. However, online hearings create a psychological pressure on both the advocates as well as the judges. Evidence recorded by means of video conferencing may distort non-verbal cues such as facial expression, postures and gestures.⁵ In addition to this, advocates especially in lower level courts may find it difficult to learn new technological methods which not their area of expertise anyway. It may put an extra stress on their minds and can also affect their performance directly or indirectly.

Although various initiatives are aimed to be taken by the E-Committee of supreme court headed by Hon’ble Justice D.Y Chandrachud, putting special emphasis on setting up E-Sewa Kendras in all court complexes, which is a one-step centre for obtaining various services offered by the District Courts. The E-Sewa kendra is aimed to function as one-step centre for accessing all e-courts and initially, they may roll out several services for the litigants, including handling inquiries about case status, next date of hearing and other details, e-filing of petitions right from scanning of hardcopies, appending e-signatures, uploading them into

³ 1967 AIR, 1 1996 SCR (3) 744

⁴ [(2018) 10 SCC 628]

⁵ Neelam Pandey and Bhadra Sinha on “Let Virtual courts continue after pandemic, they are safer and faster” on 11th September, 2020 for The Print <<https://theprint.in/judiciary/let-virtual-courts-continue-after-pandemic-they-are-safer-faster-parliamentary-panel-says/500442/>>

CIS and generation of filing number. Another major question that arises in this context, is about the use of third- party software and the issue of data privacy and security. With information security and threat of hacking being a significant concern amid increasing dependency on technology and web, the Parliamentary commission on Law and Justice in its report on eleventh Sept, 2020 noted that “third-party code poses a significant risk per se code risk the maximum amount as code programmes and applications square measure liable to hacking and manipulation.

Another major concern is that, virtual courts can be more exploited by co-orperates, legal tycoons and wealthy law firms than ordinary advocates. Hence, even if Supreme court wants and wishes to start virtual courts in India on a permanent basis, it out to have begun by percolating technical training to the lower judiciary i.e, to taluka courts and district courts at the bottom. The confidence of the common people needs to be earned and gained from the grass root level. If they feel satisfied, then, for upper level would come easily. Thereafter, no one would ever hesitate to welcome, settle for and act as per requirements of a good judgement method before the virtual court system. Nonetheless, it is much easier to write such things rather than actually implementing at the ground level. A properly structured pre tested plan is required to carry out such a complicated process at such a large scale.⁶ However, this process is initiated only a few months back, and it will take quite a few years to complete the project, and there is no certain surety about its effectiveness and will, common people, as well as advocates at all regions, be able to adapt to it with the same level.

Conclusion:

India is a kind of country where population is very high and capable professionals in the field of Law and Justice are substantially lower. This directly puts a humongous amount of pressure on our Judiciary. Various civil as well as criminal cases are pending in our country for decades now. The fact remains that despite of all these problems, advocates and common people are totally habituated of the open court system, where physical appearance of all the people associated with a particular case is utmost necessary for the hearings. If the virtual court system outstrips the open court system completely in India, it is bound to create certain problems. It is not possible for a diverse, over populated and developing country like India to adapt to any such unexpected and unprecedented change in such a large scale, and that too in such a short period of time. This system if implemented in a full-fledged manner, will put an unwanted pressure on the legal professionals as well as common people in a struggle to seek justice. Putting an undue pressure on the minds of advocates will hamper their performance to a large extent. This problem will be predominant in rural areas than metropolitan cities. Therefore, it is advisable that this system shouldn't be implemented in a full-fledged manner. It can only be implemented after a considerable amount of technological advancement especially in rural areas, and advocates or litigants should be given proper training as to how to adapt to this new system. Apart from this, open court system should be compulsory for

⁶Kashyap Joshi on “Is it now Virtual court v. Open court?” on 5th June, 2020 for Bar and Bench <<https://www.barandbench.com/amp/story/columns%2Fis-it-now-virtual-courts-v-open-court-system>>

certain complex matters especially of criminal nature. A balanced system having both the virtual and the open court system will be best suited for India, and it should be ensured that every citizen of our country should not be in a position of disadvantage by any means to seek justice in the Court of Law.