

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

---

Volume 2 | Issue 1

2020

---

© 2020 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at [editor.ijlsi@gmail.com](mailto:editor.ijlsi@gmail.com).

---

# Virtual Courts: Lets Espy Future of Judiciary

---

MS. KAJAL<sup>1</sup> AND DR. BHAVNA BATRA<sup>2</sup>

*“We are stuck with technology, when what we really want is just stuff that works.”*

— *Douglas Adams, The Salmon of Doubt*

## ABSTRACT

*This pandemic has changed a lot of things including our perspective of dealing with things, given us a lot of opportunities to discover our working sphere and increase our reach in terms of technology and judicial system. A virtual courtroom is one which need not exist physically but electronically. Using technology, a courtroom can be constituted without demanding parties to devote a prosperity on additional support. Outside information is accumulated, organized and brought into the courtroom for presentation. Once presented, various interpretational theories are argued to the fact finder who then evaluates the data according to settled rules (determined by the Judge through research, analysis and interpretation) and determines a verdict. That verdict, often with collateral concerns is then transmitted throughout the legal system as necessary. The courtroom is thus the epitome of a complex system of information exchange and management. Ultimately, because lawyers and judges deal endlessly with 'data', technology courtrooms exist and virtual courts are possible. We are living in a technological era, which is increasingly reliant on computers and related information technology. The legal system is evolving but most of the nation's lawyers, judges, legal administrators, and support personnel are still facing hindrances in adopting this virtual facet of the justice. We are on the path to the virtual courtroom. The virtual courtroom is unlikely to replace our traditional courts and tribunals in the near future, but even those traditional places of law and judgment will see increasing amounts of virtual evidence and adjudication but one thing is very much possible and that is proportionate amount of both physical court and virtual court can exist simultaneously. However, nothing could ever replace the real essence of litigation which is through physical presence of the litigants and judicial officers in the courtroom.*

## I. INTRODUCTION

The Covid-19 or Coronavirus pandemic has wreaked havoc in the lives of people all over the

---

<sup>1</sup> Author is a student at Amity law school, Amity University, Noida, India.

<sup>2</sup> Author is an assistant professor at Amity law school, Amity University, Noida

world as well as handcuffed India exceedingly, the first case of coronavirus was reported on 30<sup>th</sup> of January, 2020 in India and has kept on proliferating with passage of time. To vanquish this pandemic, government declared complete nationwide lockdown and as a result of which all services actually hibernated or came down to dormant condition. With no time, we found ourselves locked within our premises and far away from practicing our routine activities. Though, the abovementioned quote was written by Douglas Adams in the year 2002, but the literal meaning of the same could be felt amidst ongoing difficult times. However amongst all, one of the fundamental service is to get justice and deliver justice, addressing the matter and to secure a relief from the judicial system, which seems far away from the reach of aggrieved people.. The judicial system acquainted with the idea of using technology, to showcase its potential to battle against the ongoing pandemic and not to bring the judicial system to stagnant position, a bench headed by Hon'ble Chief Justice of India S A Bobde, exercised its plenary powers enshrined under Article 142 of Constitution of India<sup>3</sup>, directed all High Courts to frame the guidelines for usage of technology during the current crisis, and he further issued the guidelines to curb the spread of Coronavirus (Covid-19) in the court premises<sup>4</sup>.

Now, the question which arises with inclusion of technology in judicial system is whether the Virtual Courts are a way ahead or a way through to just tackle the hardships we all are going through. It is definitely going to change the mechanism of Countries and communities in a way of conducting their lives and businesses hence forth.

### **Inception of E- Courts:**

E-Governance is the key to access all the doors of future with great productivity, enhanced transparency and accountability. Technology has made our life easy, through which we can accomplish the goal with minimum manpower and efficiency.

Former President of India, Late APJ Abdul Kalam, who himself was a technocrat once famously said that:

*“Technology is definitely an essential element of change in all spheres of life. The human element involved also is an important factor. If technology is properly used, it can bring about tremendous changes for the betterment of life. Any change we contemplate is for speedy justice delivery mechanism keeping in focus the quality, transparency and public accountability”.*

In the wake of increasing need of modernization of the judicial system, held a joint conference on 18<sup>th</sup> September 2004, whereby it was agreed among other thing that the central government

---

<sup>3</sup> The Constitution of India,1950

<sup>4</sup> Read more at: [https://main.sci.gov.in/pdf/cir/23032020\\_153213.pdf](https://main.sci.gov.in/pdf/cir/23032020_153213.pdf)

would take the lead in ensuring the computerization of all the courts, particularly the subordinate court. The said objective was sought to be achieved by facilitating the use of technology such as Video Conferencing and digital signatures at court, creating a data base of the pending cases for generating the live statistics, preparing the strategic use of communication and communication use of technology based plan to clear arrears and securing the availability of information in a manner that was litigant friendly. For this purpose, E-committee was set up and Hon'ble Supreme Court of India to overlook this development vide order dated 28<sup>th</sup> December 2004 issued by the ministry of law and justice.

The objective of the E-Courts project<sup>5</sup> was to provide designated services to litigants, attorneys and the law lords by universal digitalization of Courts in the country and by enhancement of ICT enablement of the justice system.

### **Exigency of Today's Time:**

“Justice can be equally done without robes or congregation”, said Hon'ble Chief Justice of India while resorting to the virtual platform, further, ordered to conduct the proceedings through video conferencing, which bought a deep sense of relief for the litigants to get a relief they were litigating for, and also paved a path for judicial workers and court staff to explore the virtual facet of the system.

During the current pandemic, it is very important to practice the concept of virtual Courts, which were in existence much before their coeval popularity. One of the first instance in which evidence was endorsed to be recorded through Video Conferencing by the Hon'ble Supreme Court was in the year 2002, in a celebrated case of *State of Maharashtra vs. Dr. Praful Desai*<sup>6</sup>, which turned out to be a big achievement for the judicial system.

## **II. SALUTARY EFFECT OF VIRTUAL COURTS:**

The scope of video conferencing is vast and constitutive in the process of delivering justice, it not only eliminates the wastage of time but also save the manpower.

### **Justice at Doorsteps**

The concept of virtual courts serve the justice at doorsteps in this system the judges are sitting in their chambers and the practitioners at their workplace, into and out of an electronic device all the litigating parties are connected with each other. The electronic system, which is provided

---

<sup>5</sup> Read more at: [http://www.wbja.nic.in/wbja\\_adm/files/Brief%20on%20e-courts%20Project.pdf](http://www.wbja.nic.in/wbja_adm/files/Brief%20on%20e-courts%20Project.pdf)

<sup>6</sup> (2003) 4 SCC 601

to the judges have a split screen in which they are able to read the file and can see the arguing counsel simultaneously.

It is a boost in delivering the justice at great pace, especially in cases of bails and criminal trials where people are languished in the prison, and at the same time help the corporate houses to fathom their disputes and add value to their work.

In the words of his lordship Chief Justice Bobde, “*e-filing is the first step in moving towards the e-Courts system*”. Through E- Filing, filing a case in Apex Court has become much easier for the people residing outside the Capital as they can now easily get their matter addressed and have a chance of getting relief without wasting extra penny in the transit and wasting their time.

### **An Edge to the New Brigade of Lawyers**

The concept of video conferencing gave an edge to the new brigade of lawyers, who all are proficient with technology. It not just made easier for them to argue the matter but it also allowed them to have their space at the bar and state their point without a senior acquiring better opportunities because of their face value.

The concept of virtual courts comes with message of innovative India. This concept is not just providing a solution in current pandemic but also serving as aegis to the lawyers who are starting young in this profession and does not have a great manpower at their workplace who could succor them in miscellaneous work related to a case. Video conferencing reduced their extra labor in this time of social distancing.

Understanding the concept from other side of the bar i.e. Bench, the judges who are quite in support of the virtual world, is finding this practice a horse of long race because it is providing them more power of not letting the litigants take an extra time, speak without their turn and arguing over a piece which they are not required to do so.

### **Detrimental Effect of Virtual Courts:**

After looking at all bright side of virtual courts, we have to consider the odd factors of the virtual facet, evaluating the advancement of technology in India, we could still find ourselves stuck in grey area. So, the thought of making this virtual court system as a permanent practice is still a far-fetched dream.

### **Scanty Disperse of Internet**

The first and foremost issue which will come as a hindrance is the poor connectivity of internet. For people who resides in metropolitan city, it is easy to label it as a good norm to follow but

if we walk a little far we would be able to witness the real issue, where people are still not able to get a proper connection which is required to conduct the proceedings smoothly and efficiently. According to the Statistics, 66% of the population resides in villages and among them only 27% have excess to the internet and 23.5% have excess to smart phones, which makes it quite difficult to practice the virtual court system in a country like India.

### **III. PAUCITY OF IT KNOWLEDGE**

The legal fraternity is proudly shining bright with many senior people with great knowledge of law and supreme oratory skills but they are not very well equipped with technology. Many legal officers are still not able to catch up with technology and its nuances. The court staff are unavailable to cope up with the jump made to paperless working, and shifting the base to the online platform.

Recently, Chairman of Bar Council of India M. K. Mishra wrote a letter<sup>7</sup> to Hon'ble Chief Justice Bobde addressing the issue and stating that hon'ble judges, and 90% of the litigants throughout the country are not well versed with technology, may be some of them could able to gain an understanding of it after proper training and maybe some of them would still find it a cumbersome task even after training.

The real IT infrastructure of the Lower Level Courts is something which is not ready for the Virtual world. The Virtual Courts needs a strong operation of computerized technology and internet connection, to make it work at all level of judiciary we still have to cover a long way and then make it a success. To connect the people through internet with good desktop system should be the basic task to initiate the first step towards good virtual system and then making people efficient enough to operate it in all subordinate courts.

### **IV. DEMEANOR OF THE WITNESS**

It is very well established that demeanor of the witness plays a pivotal role in deciding the authenticity of the evidence. It is not possible to observe the demeanor of the witness through video conferencing which is a biggest drawback in virtual practice, procedural law in India requires many statements to be made in the presence of magistrate to ensure it is made without duress. The criminal cases solely depends on the testimony of the witnesses and if we could not get the best out of it, then it would be of no good use. The right way of getting the interrogation done is in person only, which is clearly not possible through video conferencing.

---

<sup>7</sup> Read more at: [https://images.assettype.com/barandbench/2020-05/12755852-729d-4ad4-8f66-11e58aae704b/Letter\\_to\\_Chief\\_Justice\\_of\\_India\\_BCID\\_1399\\_2020.pdf](https://images.assettype.com/barandbench/2020-05/12755852-729d-4ad4-8f66-11e58aae704b/Letter_to_Chief_Justice_of_India_BCID_1399_2020.pdf)

The collection of the evidence will lose its essence as through video conferencing. The Herding of Evidence in the trial matters holds utmost importance in showing the crystal clear picture of the case. The collection of evidence has to be done in the presence of the Magistrate and both the parties, which in case of video conferencing is not a piece of cake and forgery of the documents will be an accustomed thing.

## **V. HINDRANCE TO THE OPEN COURT SYSTEM**

Another aspect which require a major concern is the access of information to the public fora that is to follow the rule of Open Court System, the principle laid down in *Naresh Shridhar Mirajkar v. State of Maharashtra*<sup>8</sup>, which had held that Article 19 of the Constitution included the right of journalists to publish reports of court proceedings. The access of video conferencing is limited to the judicial officer, Practitioners and litigants as of now, which lead to the violation of the principle laid down by the Supreme Court, which is not practicable approach in a regular life.

## **VI. BARRICADE IN LEARNING OF COURT CRAFTS**

The last thing but one of the most important is learning, which is only possible after observing Senior Counsels argue in front of judge which they embodied after years of experience and the Courtroom crafts practiced by them. The Court room craft is something which cannot be taught be any book or university, it comes from the observation and practicing your skills in the court room, which will be definitely vanished in the era of video conferencing. The Court Crafts could only be learned in the open court while watching proficient people speaking with their best knowledge.

## **VII. CONCLUSION**

Nobody knows what the future hold in its arm but for the sake of driving judicial system to new milestone, losing the essence of litigation is not something which would be appreciated by any of the judicial worker. The real essence of litigation will be lost by adopting the virtual world. The Legal fraternity is not ready to practice the virtual court yet, may be in future some of judicial workers could able to earn the knowledge after proper training and may be some of them would still find it hard even with training to make themselves self-sufficient in this regard. In the opinion of author, the virtual court is something which would definitely come in the real world as a regular practice but after proper development of the IT infrastructure and training of the judicial workers and court staffs in India. Even though one can only hope that this is a

---

<sup>8</sup> 1966 3 S.C.R 744

brief phase and once normalcy is resumed and social distancing mandate relaxed, things will be back to as they were. In the end, the author would like to appreciate the judicial system to showcase their best efforts in defeating the ill-effects of the pandemic and shaking hands with the technology to serve the best on the plate in terms of law enforcements. It was very well enunciated by hon'ble justice D Y Chandrachud, at webinar<sup>9</sup> organized by Nyaya Forum, that the future of courts will going to a good blend between the usage of technology where it will perfectly fitted but open court system will always be there as they are the backbone of any judicial system.

\*\*\*\*\*

---

<sup>9</sup> Watch full webinar at: <https://www.youtube.com/watch?v=15nxZwNJsBM>