



Parliamentary Standing Committee recommends continuation of 'virtual courts' post-pandemic

8 October 2020

In brief

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (Committee), has presented an interim report on the 'Functioning of the virtual courts/ court proceedings through video conferencing' (Report).¹ Comments were invited from various stakeholders, including representatives of the Bar Council of India. The Committee has adopted this Report in its meeting on 8 September 2020 and would deliberate further on this issue to thereafter present its final report at a later stage.

Below is a summary of the key aspects of the Report.

In detail

Concept of virtual courts

In virtual courts, the documents (*viz.* vakalatnama, written submissions) are filed electronically, the court fees is paid electronically, arguments are heard over video conferencing/ teleconferencing, evidence is submitted digitally, witnesses give their testimony remotely over video conferencing, adjudication of cases is online, presiding from the physical courtroom and a copy of the order/ judgement is made available on the website of the court. Thus, virtual courts transform the documentation, evidential/ procedural mechanisms and conduct hearings online from start to finish.

The Report recognises that globally, the COVID-19 pandemic has forced courts to explore ways and means to become less dependent on physical appearances and more receptive to online options and virtual courts have become the primary or the only means for the dispensation of justice. The Supreme Court of India rolled out virtual court hearings to adjudicate urgent matters and enable the judicial system to discharge its constitutional mandate of providing access to justice at all times. Invoking Article 142 of the Constitution of India, 1950 gave legal sanctity to hearings through video conferencing.² The Report discusses the international experience in countries such as the United States, Singapore, Turkey, Canada, etc., and the video conferencing facilities already established in Indian Courts to conduct remand matters, to avoid prisoner movement between courts and jails, etc.

Benefits of virtual courts

The Committee believes that virtual courts increase access to justice, result in speedy and enforceable justice, and promote the principles of proportionate justice and distributive justice. The following are the salient benefits of the virtual courts system acknowledged in the Report:

- Transfer of certain categories of cases from regular court establishments to virtual courts will reduce the pendency of cases.
- It will reduce the expenditure involved in the establishment of Tribunals/ courts and increase efficiency in the disposal of cases without unnecessary adjournments.
- It will reduce crowds in courts and other litigation costs and overheads.

¹ https://www.livelaw.in/pdf_upload/pdf_upload-381310.pdf

² https://main.sci.gov.in/supremecourt/2020/10853/10853_2020_0_1_21588_Judgement_06-Apr-2020.pdf

- Virtual courts will ensure that court services are accessible and affordable to all.
- Digital justice is cheaper and faster, and those living in remote and far-flung areas can participate in court proceedings through video conferencing, without additional costs.
- Video conferencing allows a lawyer to argue in any court in any part of India, as cases can be heard from several courts in a single day. Thus, both advocates and litigants have a wider choice, which will result in substantial reduction of costs associated with litigation in Appellate Courts, which may otherwise require instructing a local lawyer. Even litigants need not leave their work to attend court proceedings, as they can access it from their homes or offices.
- Virtual courts deliver ‘Enforceable Justice’ and have the potential to bridge the gap between those knowing the law and being able to enforce their entitlements, thereby, creating a level playing field between the affluent and the less well off, between those who have always had courts at their disposal and those who have always felt alienated.
- Virtual courts can help segregate simple cases from complex ones to dispose of the former within the shortest possible time unlike complex ones involving cumbersome procedures and several witnesses.

Challenges in virtual courts

The Report discusses the challenges of virtual courts with regard to the digital divide, in three components: (1) access divide – access to equipment and infrastructure; (2) connectivity divide – access to broadband connectivity; and (3) skill divide – knowledge and skills required to use digital platforms.

Many advocates and litigants in rural and remote areas lack the basic infrastructure and high-speed internet connections necessary for a virtual hearing, making the mechanism unaffordable and inaccessible. The Committee also acknowledges how poor audio/ video quality, frequent loss of connection, disruptions and high latency, affects the judicial assessment of demeanour, emotions and other non-verbal cues, and the changing communication dynamics that are important variables in deciding a case.

However, the Committee considers that the advent of information technology has touched every facet of human life. Technology will be the game changer and improving the quality of courtroom technology is a necessary pre-condition for the virtualisation of court proceedings. Advocates would also be required to use technological skills in combination with their specialised legal knowledge and keep up with the changing times.

Recommendations of the Committee

The Committee provides several recommendations to address the challenges, as follows:

Measures to address the ‘digital divide’

- Establishment of E-Seva kendras in all High Courts and in one District Court in each State.
- The timely implementation of the National Broadband mission is necessary, which envisages broadband access to all.
- Set up Wide Area Network connectivity and superior quality video conferencing facilities in all court complexes.
- Launch innovative solutions, such as mobile video conferencing facilities, for advocates and those living in remote areas.
- Promote the harnessing of renewable energy in all court complexes, as it entails the twin benefits of uninterrupted power supply and positive ecological impact.
- Commission a study of courtroom design and customise software and hardware to facilitate virtual court hearings.
- It is also important to address data privacy and data security concerns, while developing a new platform for India’s judicial system.
- Leverage block chain technology to improve the reliability of evidence and the security of transactions and fortify digital security of case files.

- Conduct regular training and awareness programmes in all Court complexes across the country to acquaint advocates with the technology and operate digital platforms.
- The Bar Council of India may introduce a computer course as a subject in the curriculum, to enable students to receive training in handling computers and adapt to online systems.
- The Bar Council of India should advise the respective State Bar Councils to conduct crash classes to equip the advocates in order to handle online/ virtual courts.

Initiatives by the Government

- The National Policy and Action Plan for the implementation of Information and Communication Technology³ in the Indian judiciary (introduced in 2005), needs to be evaluated and revised considering the transformation of the legal landscape in the last 15 years and a drive towards digital justice.
- The Department of Justice to take stock of the progress of implementation of 'e-Courts Integrated Mission mode project', introspect, identify bottlenecks and take necessary remedial measures to ensure that the targets are achieved more ambitiously in the prescribed timeframe.
- The transition to virtual courtrooms requires massive investment. It is necessary to establish the basic infrastructure to support digitised court hearings, such as electronic case files, equipment to project documents and images, audio and video, tools to record hearings, video conferencing and reliable Wi-Fi. Therefore, the Committee has suggested examining the feasibility of new financing approaches such as the Public-Private Partnership model.

Involvement of private agencies

The Committee also recommends exploring the feasibility of involving private agencies or service providers where needed, with regard to the following aspects:

- Helping people who are not tech-savvy to connect with courts by taking video conferencing equipment to their doorsteps on payment.
- Develop artificial intelligence systems capable of supporting bulk documentation, remote location of parties and sophisticated use of graphics.
- Promote legal technology start-ups engaged in innovative solutions, which can play a crucial role in harnessing the unlimited potential of technology to connect stakeholders in the justice delivery system, and to find affordable and efficient solutions.

Virtual courts as a permanent mechanism

To continue with the functioning of virtual courts in all the courts, even beyond the pandemic, the Committee feels that the present system should be allowed to continue, as an experiment, for certain categories of cases and final hearings, where the physical presence of the parties/ counsel is not required and an online virtual hearing alone is sufficient.

The Committee is also of the opinion that virtual courts can be extended permanently to various Appellate Tribunals (e.g. Telecom Disputes Settlement and Appellate Tribunal, Intellectual Property Appellate Board, National Company Law Appellate Tribunal, etc.), Administrative and other Tribunals. Necessary amendments may be introduced in laws to legalise virtual courts and their proceedings. The Committee also recommends that the concept of virtual courts may well be extended to cover arbitration hearings, conciliation proceedings and summary trials.

Way forward

The Report recognises that virtual courts have their shortcomings, such as hindering the art of advocacy, possible dilution of cross-examinations, coordination between briefing and arguing counsel are not seamless, etc. However, they constitute an advancement over the existing system and these shortcomings might be overcome through existing and emerging technologies and the periodic interaction of bar and bench. Therefore, the Report recommends the following measures:

³ <https://main.sci.gov.in/pdf/ecommittee/action-plan-ecourt.pdf>

- Pilot a full-fledged virtual court and test it in practice.
- Identify categories of cases best suited to virtual courts, e.g., Department of Justice has recommended that categories of cases under the Motor Vehicles Act, 1988 and the Negotiable Instruments Act, 1881 petty offences under the Code of Criminal Procedure, 1898 may be tested.
- The Ministry of Electronics and Information Technology to employ globally tried and tested tools to make virtual hearings more lifelike and engaging.

The takeaways

The concept of virtual courts has gained immense ground during the COVID-19 pandemic and has become the new normal. This interim report is timely and contextual and is an exhaustive analysis of the virtual court concept, its international and Indian experience, and the challenges and benefits. The report provides specific recommendations to address the various challenges, including policy aspects and the implementation measures. The Committee believes that 'Justice delayed is Justice denied', but 'Justice hurried is also Justice buried'. The Committee is of the view that the mechanism of virtual courts will strike a balance between these two extremes and extend expeditious justice to the litigant public without compromising quality. This interim report is crucial for continuing the conversation on virtual courts in the Indian judiciary, and the Committee will deliberate further and present its final report at a later stage.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.

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