

A Comparative Analysis of Virtual Court System in India and International Countries

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Introduction

In the present circumstances, the virtual courts may seem a necessity, however, it goes without saying that at present there are a whole lot of glitches and shortcomings in its execution. The e-filing process is riddled with endless complications. e-Courts will also prove to be cost-intensive as setting up state of the art e-courts will require the deployment of new age technology. The present chapter deals with the comparison of virtual court system with international countries.

Objectives and scope of the study

1. To study the VC system in India and international countries will have a confident influence on the administration of justice, dropping the time and cost related with traditional court proceedings.
2. To analyse the VC system in India and international countries will face challenges related to privacy and security, which will need to be addressed for the system to be successful.

Virtual court system in other countries

Virtual Courts in Africa

The incorporation of technology in the legal ecosystem has rather remained unchanged over the last century to jurisdictions that have embraced technology adoption. Up until the COVID 19 pandemic, the speed of change has been unparalleled, pushing courts from hopeful murmurs of being virtual in a decade's time, to courts functioning virtually within two weeks. It is notable that the after-effect of the current pandemic on the legal landscape is its impact on the courts. Virtual Courts focus on eliminating the presence of litigants and physical adjudication of cases in courts. It's adoption is incorporated with artificial intelligence techniques into the various stages of judicial proceedings. i. Virtual Courts Models Provision of virtual courts in each country is dependent on the gap in the judicial system that needs to be filled; hence the reason for different virtual court models adoption.

- Testifying under CCTV. South Africa for example, acknowledged provision of this model back in 1996 , to allow vulnerable witnesses to testify via CCTV either on the prosecutor's application or the court's initiative.
- The Namibian Criminal Procedures Act allows children below 14 years of age to present recorded video footage statements for cross examination without direct interaction with the children.
- Live video call conferencing is the most adopted model. Testimonies are secured remotely during court proceedings without witnesses or the accused having to be physically present. Proceedings and more trials are concluded faster and quality of justice is improved.

Legislation on Virtual Courts

There has been a constitutional divide on adoption of virtual courts for judicial proceedings. For most countries, adoption had to be a quick action without proper legislation. Out of 25 Countries with virtual courts in Africa, only 12 have comprehensive legislation, while 13 are operating without.

Nigeria

In Nigeria, for instance, suits were filed by Lagos and Ekiti State governments questioning the constitutionality of virtual hearings. They challenged the audiovisual or video-conference platforms used in aid of hearing and determination of cases.

The Supreme Court, however, ruled that Virtual Courts sittings were constitutional. This was preceded by an argument that the virtual courts still upheld Section 36 (3) & (4) of the Nigerian Constitution, which state that Courts or tribunals, in determining the civil rights and criminal liability of a person, conduct their proceedings and pronounce its decisions in public. This was argued not just to be restricted to formal courtroom settings.

Kenya

Kenya recently gazetted the Electronic Case Management Practice Directions, 2020 which outline practice directions on Virtual court's proceedings. The directive clearly outlines the operation of virtual courts in Kenya; from provision of the legislation, technology used in the judicial proceedings, registration of electronic transactions, e-filing requirements, payment receipt and electronic discovery, and inspection of documents In 2019, Ghana's Judicial service started a paperless Electronic Case Management System (ECMS) , as part of it's e-justice transform project. This later became the foundation for the enactment of virtual courts in 2020 as a way to enact justice amidst the COVID 19 pandemic.

Gambia

Gambia's judiciary partnered with the United Nations Development Program to deliver justice to its citizens. In this partnership, the chief justice established an Interagency Task Force (IATF) to review legislative and constitutional impediments for establishing Virtual Courts. Two virtual courts for civil and criminal cases were approved for establishment and Practice Directives issued. Following consultations on the legislative and Constitutionality of the Virtual Courts, the Chief Justice approved the establishment of 2 Virtual High Courts for civil and criminal cases and issued Practice Directives.

Zimbabwe

Zimbabwe drafted the Judicial Laws(Ease of Settling Commercial and Other Disputes) Amendment Bill in August, 2016 which is aimed at speeding up settlement of disputes, particularly disputes of commercial nature. This Bill is intended to enable the provisions made by rules of courts to allow for virtual sittings. It further allows rules to be made for matters such as electronic authentication of documents, electronic access to records filed with the Registrar of the High Court and electronic service of proceedings in court.

Rwanda

Rwanda's judiciary has the best clearly outlined Integrated Electronic Case Management System. The Online Cases Division clearly outlines the purpose of the Integrated Electronic Case Management System, benefits, account creation, case filing and follow up, a selfservice user manual and video recording on how to access the system. Access to these online services is outlined on Rwanda's Judiciary website.

England & Wales

Since 2016 the English Court Administration Service has been working to improve digital and technology services across the courts and tribunal system through the HMCTS Reform Programme. Several judicial processes already operate completely or partially online, dealing with civil, criminal, family, and administrative disputes. Among others: - Online Civil Money Claim (OCMC) (under £10,000) - Traffic Penalty Tribunal - Social Security Tribunal operates online for appeals over state benefits that have not been granted to citizens by the Government Department The OCMC is already operative, but at the same time, we can consider it as a pilot OC, because they tested new upgrades, like: - Opt-out of telephone mediation. - Online directions by legal advisers. - Judges can decide on the documents - Bulk litigants They have published: A short-term strategy, (The Ministry of Justice Digital Strategy 2025) which is seeking to make the administration of justice a more flexible, data-driven, and user-driven organization. A Long-term program (HMCTS Reform Programme) aims to modernize the justice system to make it more straightforward, accessible, and efficient.

Estonia

Estonia has digitized almost every aspect of judicial dispute resolution (will be fully paperless by 2023, except for criminal procedures, until 2026). The court does not always create a paper file, all court hearings must be audio-recorded, participation in the proceedings via video conference is increasingly used, the evidence submitted to the court and presented in the courtroom is digital, and the court, in some occasions, creates a complete digital file (in the future will be mandatory). There is no active special strategy for the preparation of online justice because Estonia has already mostly digitalized court proceedings. However, they are new strategies that include parts for improving the existing systems and implementing new applications, among others: speechrecognition software for transcribing the Courts Proceedings (CP) , the introduction of AI, a data-based CP plan, etc.

China

China has a well-developed system of online courts for: - Civil and administrative litigation cases - Cases to which the fast-track sentencing procedures apply. - Enforcement cases. They have an operative API that allows the online management of the whole proceedings' phases, from filing to enforcement. (it can be accessed through the WeChat App). Since 2014, there have been many pilot projects across China. There is a nationwide strategy that promotes the building of a whole system of online justice, but the implementation has seen many pilot projects start over the past 7-8 years, which have led today to a more unified system of online court.

In 2021, the Chinese Supreme People's Court published rules aimed at:

1. Promoting and regulating Online litigation activities.
2. Improving online litigation rules.
3. Protecting the rights of the parties, and ensuring the fair and efficient

Ireland

Ireland Partially yes, the Small Claims Courts Procedure can be initiated online. That is designed to handle consumer or business claims inexpensively without involving a solicitor. Where possible, the Registrar will negotiate a settlement. The process can be initiated online, claimants create an identity within the platform and can monitor progress and communicate through the platform. But, is not completely online, if there is opposition, the court hearing would be on site. They are two strategies from the Courts Service of Ireland: - "Supporting Access to Justice in a modern digital Ireland: Long Term Strategic Vision 2030" - "Strategic Plan 2021-2023" The strategies provide for the movement online of the whole system of justice but do not expressly identify negotiation and mediation – probably since these are not integrated into the existing court system, although they are part of civil procedure.

Israel

Currently, a pilot test is underway with academics, it consists of a tribunal working exclusively via videoconference and writing. This test aims to determine whether access to justice is improving and whether the rights of those being prosecuted are being upheld. The Administration of the Courts and the Ministry of Justice have been working to develop ODR in courts and tribunals since early 2020. There is no ongoing program project to date, but there are several areas for which ODR proceedings and videoconferences are being developed. This process will likely take several years to roll out. However, at this time, no strategy or official task has been published.

Italy

The PNRR (National Resilience and Reaction Plan) envisages a set of actions dedicated to the digitalization of justice, however, the objectives do not cover the development of online courts, but establish a basis for this objective. Current goals include: - Digitization of paper documents creating a digital case file; - Creation of a free and accessible database of all civil decisions.

Poland

There is a proceeding fully paperless for issuing an order for payment when the claimant pursues a pecuniary claim, through an online platform "EPU" (Elektroniczne Postępowanie Upominawcze – Electronic Writ Procedure). We can't say that Poland has an OC court operative, but, instead, they have an online court procedure operative.

Latvia

The project E-Case is introduced partially starting from December 1, 2021, to digitalize dispute resolution in courts and in pre-trial stage in criminal and administrative offence proceedings. Transition period until December 2023 when the legal proceedings shall be in digital format. During the transition period, paper and electronic files are used. The previous Court Information System platform is used in parallel until full functionality of the E-Case will be reached. In criminal and administrative offence proceedings, the principle of a joint file is introduced starting from the application to the police until the final court judgment. In respect of the civil litigation the following digital formats are currently used: - The enforcement of obligations through the warning procedure is completely remote. - Option to submit statements of claim via online forms from E-Case. - Electronic filings by e-mail and communication between the parties and the court. - Remote court hearings, remote questioning of witnesses and experts, use of video conferences. - Audio recording of all hearings. The new project to introduce ODR was started in September 2021 administered by OECD and the Ministry of Justice to introduce ODR and relevant platforms in addition to the ECase.

The Guidelines approved by the Cabinet of Ministers, include this section: "Further digitalization of the investigation and court proceedings". According to these guidelines, the plan is to digitalize current processes as much as possible. In addition to that, starting from 1 December 2023, all case materials will be available exclusively in electronic format (there will be no hard copies).

Lithuania

The civil and administrative cases are fully digitalized, you can submit case material, get access to the material submitted, receive various notices and services of documents, pay the respective sums, listen to audio recordings of the court hearings, and connect to the remote hearings. Regarding criminal cases, they have an electronic service portal for pre-trial investigations, however, as the criminal cases enter the court stage, are no longer administrated via platforms. They have an Online Arbitration Court for commercial disputes. There is no official published strategy for the preparation of OJ, however, the Strategic Action Plan of the Ministry of Justice prepared for 2022-2024 envisages the development of the Consumer Rights Information System with new advanced online services – out-of-court (alternative) resolution of consumer disputes concerning contracts concluded in cyberspace with sellers and service providers.

Portugal

The order for payment procedure, when used by professionals, is fully electronic and with its own app. We can't say that Portugal has an OC court operative, but, instead, they have an online court procedure operative. The Portuguese procedural law already states that the process is electronic. In the Portuguese legal system, civil proceedings in the judicial courts are submitted and processed through CITIUS (online platform), among other functionalities, allowing professionals to deliver procedural documents and receive notifications. There is an Online Arbitration Court for industrial property disputes.

The new Justice + Next 2023 is a new modernization plan of the justice system, composed of 4 pillars: efficiency, innovation, proximity, and humanization, and includes 140 measures. Among others: - Development of a pilot project for a Virtual Court of Peace. (non-judicial court) - Creation of common platforms for nonjudicial courts -

Development of a proof of concept for the “Court of the future” under the “Digital Only” paradigm. - Development of a Pilot System for modeling and decision support in the context of jurisprudence in Family Minors. - Increase automatic transcription capacity in the Courts.

Spain

There isn't an online court or an online procedure in operation in Spain in the form of an online platform for judicial dispute resolution that offers judges, lawyers and users a variety of tools to make it easy to follow a procedure in a predominantly paperless way. However electronic communications through LEXNET (the electronic judicial office) and videoconferences for judicial hearings are available depending on the circumstances. The general objective of Justicia 2030 is to transform the Public Justice Service to make it more accessible, efficient and to contribute to the common effort for cohesion and sustainability. Part of the strategy is the approval of three bills that envisages relevant changes to the justice system: extending the obligation to communicate with the courts online, and the mandatory use of ADR (with the possibility to use online tools) before beginning certain types of procedures, set the regulation for using videoconference for trials, reduce the use of paper, etc.

The Netherlands

There is an operative OC for asylum and detention cases since 2017. In other cases, there is the possibility of digitally requesting an attachment order, you can appeal fully online with regards to taxes, litigate online in immigration cases, among others. There is an online justice platform where citizens, as well as justice professionals can access justice. With effect from 1 January 2023, the Supreme Court will start mandatory digital litigation in all cases of which the criminal division of the Supreme Court hears as a cassation judge. Between 2014 and 2018, there was a pilot online court for the digitalization of civil and administrative law (KEI, Kwaliteit en Innovatie Rechtspraak) At the moment, no such strategy is published for the entire justice system. There is the ‘digitalization strategy’ for the government in general. For civil and administrative law there is a plan which is a follow-up from the KEI program, they mostly focus on digital accessibility for users, and digital exchange of documents for staff members, with the option of doing everything on paper.

Ukraine

There isn't any Online Court. They have an Electronic Court Subsystem to submit procedural documents, but the majority of lawyers and state authorities didn't use it because it is not convenient, reliable, and beneficial (in terms of money and procedural guarantees). However, the introduction of remote work of courts in the conditions of martial law currently requires a wider use of electronic document circulation and access to court cases in electronic form, which was already foreseen in recent years during the development of EUIJS modules, but was used a low percentage of. There is a legal act Decree from the President of Ukraine About the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023” that contemplates the development of electronic justice taking into account world standards in the field of information technology, its integration into the national infrastructure of electronic government by: - Introduction of the possibility of online consideration of certain categories of cases regardless of the location of the parties and the court and other electronic judicial services; 13 Online Courts Comparative Study people. Currently, to optimize the document flow in courts and create prefaces for greater protection of the rights of individuals to access to courts, they exist officials online services to help the individuals. - Introduction of modern electronic record keeping in the court, electronic case management, electronic communications with the court, the judge's office, and the office of the participant in the process.

Comparison with traditional court system

The system of law and justice traces its origin to the origin of society. Since the time man has lived in a society, a system of providing justice and punishing crimes has also co-existed. However, the growth and evolution of human outpaced the growth and evolution of the justice system he lived by. The justice system did evolve, slowly conforming to the needs and expectations of the society it governed, but by the time the justice system began to cater to the needs of the society, the society had already evolved. This cycle of slow evolution continued for a few millennia and eventually, the protectors of justice, be it the Courts, the Kings, or the Juries, began to realize the importance of flexibility in the justice delivery system and began to adapt to the changing world, allowing society to enjoy rights and justice which could keep up with its own evolution. The European legal and justice systems were especially efficient in adapting to the ever-evolving society. The English and French legal systems have particularly influenced the legal systems of the Modern World. The English Common Law System allowed the judges to evolve their own law rather than being bound to follow a legislation written decades back, which may or may not have been able to deliver justice to the evolved

society. In India, the modern legal system is a direct product of the British Rule. The British laid down a system of law and justice in India, similar to the English Common Law system, established Courts and hierarchy in the justice delivery system and promoted access to justice.

The British left behind a system of justice delivery that could be further evolved and tweaked to suit the needs of India. They facilitated the justice system by drafting laws and laying down the necessary principles of justice. However, post- Independence justice system has been slow to evolve in India. Over 70 years have passed since India gained Independence but, a large segment of laws applicable in India continue to be British in origin, the Criminal Justice System in particular, remains British in essence. It would be wrong and misleading to state that the justice system in India has not evolved. It is conceded that there have been amendments to the law, several provisions have been omitted, amended, added, and limited, however, at its core, the criminal justice system of India remains British. Even the basic procedures of Civil law are British with minor changes by way of omissions, amendments, additions, and limitations. It is reiterated that any statement which suggests that the Indian Justice System has not evolved at all would be grossly false. Indian judges have had various important contributions to jurisprudence.

Principles like the 'Doctrine of Absolute Liability'¹, Separation of Powers, and the evolution of the Administrative Law in India are products of the ingenuity of the Indian Judges. A major flaw in the Indian judicial system has, however, been in respect to procedure. As stated above, the procedural law in India continues to be British in spirit. This has severely impeded the ability of the Indian Justice system to evolve and adapt to the changing and ever developing Indian society. At the outset of the COVID-19 Pandemic and the ensuing nation- wide lockdown in March 2020, the Courts were still functioning, to a large extent, in much the same way as they did twenty years back. While systems such as filing and access to orders and records had begun to become accessible through online modes, the existing framework was clunky, unresponsive, and unpolished. The access to justice, a bedrock of the Indian Justice System, was not fulfilled through this existing framework and the "if you know, you know" nature of the laws and legal system of India continued over to these basic facilities. After the lockdown was announced and the physical functioning of the Courts was put to a halt in March 2020, the Courts were initially suspended altogether. The Supreme Court in the 1979 case of *Hussainara Khatoon v Home Secretary, State of Bihar*², for the first time, held that an individual had a fundamental right to a speedy trial under Article 21 of the Indian Constitution. The Court understood that it could not delay justice for a long time and decided to adapt to the changing and challenging times. The entire legal system of India was forced to adapt to the new reality. It took its time to adapt and understand the need for evolving a new system to continue the justice delivery mechanism despite the

Pandemic. The Supreme Court also recognized, in the case of *All India Judges' Association v. Union of India*³, that there is a Constitutional obligation of the Court to ensure that the backlog of cases is decreased, and efforts are made to increase the disposal of cases. The Courts which are already over-burdened with empty rosters and heavy boards were faced with an unprecedented challenge and the evolution, which is still underway, leaves much to be desired. The courtroom is the centre of a complex system of information exchange and management. Ultimately, because lawyers and judges deal continuously with 'data', high technology courtrooms exist, and virtual courtrooms are possible.⁴ The Courts drew inspiration from Arbitrations and other Alternate Dispute Resolution forums which had already been functioning virtually over the past few years. The Court also drew inspiration from the rare instances of recording of statements that had been held through video conferencing in exceptional cases over the past thirty years. The Singapore Supreme Court was another source of inspiration which had set up a 'virtual courtroom' as far back as 1999.

VIRTUAL COURTS: A NEW REALITY

"The Judicial system is by far the most important and significant instrument in preserving democracy and the rule of law." -- PN Bhagwati

While the Courts and judicial fora in India have begun to function virtually as a result of the COVID-19 Pandemic, it is not the maiden attempt for the Indian Justice System to hold proceedings virtually. The new millennium ushered in a digital era and the Courts have succumbed to these technological advancements in rare and exceptional circumstances. The ruling of the Hon'ble Supreme Court of India in *Basavaraj R. Patil and Others vs State of Karnataka and Others*⁶ where the Court noted that in exceptional cases, where the physical presence of a party is not possible due to bona fide reasons, the Court could rely on alternative methods of obtaining statement. The acceptability of electronic evidence in the judicial system was reinforced by the inclusion of S. 65A and S. 65B in the Indian Evidence Act 1872, which laid down the provision of admissibility of electronic evidence. The concept of video conferencing was further developed by the Hon'ble Supreme Court in *State of Maharashtra vs. Dr. Praful B. Desai*⁷ wherein, the Court gave guidelines for

recording of evidence by video conferencing, thus opening up various avenues for increasing the access to justice that transcends territorial boundaries.⁸ In fact, the Praful B. Desai judgement and the guidelines devised therein, continue to be relevant even after seventeen years and act as the skeleton for the guidelines issued by various Courts for conducting hearings through video conferencing during the lockdown. In respect to the ‘Virtual Courts’ during the COVID-19 Pandemic, the Courts have reluctantly begun to evolve to suit the needs and necessities of these unprecedented and inconceivable times. The

various Courts and fora have initiated the process of holding hearings through video conferencing in urgent matters.

This generally entails the advocates/ parties-in person submitting an application before their respective Court explaining the urgency and need for hearing despite the lockdown. If the Court is satisfied with the reasons behind the urgency, a date of hearing is allotted on the same day or the next day, and the proceedings usually take place via video conferencing mode within a week of acceptance. It has been observed by members of the Bar and Bench alike, that, the proceedings through video conferencing are more efficient and the process of the Court is quicker online. This is in part due to the lack of distractions that is usually side-track proceedings in the physical courts. Further, fixed timings and the role of the control room in managing participants in the video conferencing further aids the process of conducting the proceedings seamlessly and without getting side-tracked. In fact, the success of the hearings through video conferencing has inspired the Courts to allow public hearings to happen virtually with the parties and any other desirous person being allowed to view the proceedings after obtaining access to the virtual court as per the guidelines of their respective courts. The various courts in India are handling through a variety of platforms and processes. The different platforms being used by the Courts include Vidyio, a platform that has been developed by NIC; Cisco WebEx; Blue Jeans by Verizon and many other such platforms.⁹¹⁰ Along with this, the Courts have different protocols for access to these virtual courts. While some Courts have stipulated that the link will be shared by the appropriate officials prior to the hearing itself, others have provided fixed links on their respective websites. These different protocols have been adopted as per the capabilities and functionality of the different platforms being used and the procedure, therefore, differs for every Court. While these platforms differ across different courts, the video conferencing has proved to be an effective and efficient mode for dispensing justice even during these tough times.

The judicial system is already in shambles with the heavy boards and empty rosters and while these cases are a mere fraction of the entire pending litigation in India, every case that is heard, disposed, or dismissed during the Lockdown will help reduce the burden on the Indian Judiciary. The Courts will face an increased burden in respect of the pending matters that have been adjourned due to the lockdown and suspended functioning along with the additional fresh litigation that has arisen over the course of 4 months of lockdown. The lockdown has led to an increase in civil disputes, especially, vis-à-vis contractual obligations. Such a massive backlog of cases along with the anticipated influx of matters has forced the Judiciary to adapt and evolve.

The proceedings and hearings are just one aspect of the justice system. The access to justice also means that there is ease in filing the matters, applications, evidence, and any other relevant documents. In view of this requirement, the Government of India in conjunction with the judiciary had already implemented portals for e-filing. However, as mentioned above, these portals are problematic and not user friendly. Therefore, while the new portals are under development, the filings in urgent matters is facilitated over mail. While the solution is working, the system of filing through mail is a band-aid at best. It is not tenable in the long haul and will not be able to support the load of regular court functioning. The new portals that are being developed are in hope to provide a user-friendly, easy to use interface that can support the heavy load of the regular courts.

The COVID-19 Pandemic has shown the way in which the justice system could evolve. The Courts are learning new lessons every day and fires are being put out by the Court officials as they rise. These lessons can be applied in the development of the new system of virtual courts. Justice D.Y. Chandrachud, a force of change and growth in the Supreme Court of India, has stated several times since the lockdown began, that the virtual courts are not meant to replace the ordinary, physical courts. The virtual courts are only meant to aid the dispensation of justice without endangering any of the stakeholders in the justice system- the judges, advocates, officials and staff, interns and most importantly, the people of India. However, it would be wrong to assume that the courts will remain physical even the distant future. While the Courts do not seem to be moving towards a digital and virtual presence permanently, at least not in the foreseeable future, the developments in the justice system due to the pandemic will bear fruit even in the era of physical courts. The development of a new unified portal for the e-filing, and access to orders and decrees, will inevitably improve the access to justice and reduce the burden on the Court Registry. Even after physical filing

commences, e-filing shall over time become the preferred means of filing of matters, applications, affidavits, and evidence due to the faster and more transparent response system. This will also help the parties become *aatmanirbhar* to a certain extent since a simplified user interface will allow the party to obtain orders and decreed without having to request their counsel.

Lessons learned from other jurisdictions

It is important to note that the concept of virtual courts is still developing. While the COVID-19 Pandemic continues to prevent physical courts, the judicial system will be compelled to continue advancing Virtual Courts and it could help ushering in a new era of access to justice in India. The procedures which have been limited to exceptional and rare cases could be more frequently even after the physical courts begin functioning again to facilitate faster disposal and greater access to justice. However, there are certain challenges in the system of virtual courts that needs to be addressed immediately and conclusively.

The primary challenge to the principle of virtual courts is a distinct lack of legislation to govern functioning of the courts online. The different courts are functioning based on separate guidelines that have been made operational by the Supreme Court for its functioning and High Courts within their jurisdiction. While these guidelines solve the problem temporarily, there is a need for either appropriate amendments to the existing legal framework governing the judiciary in India, or appropriate legislation to govern this new system of functioning of courts through video conferencing. This would allow a streamlined procedure and a uniform system to function pan-India, thereby increasing ease of access to justice and reducing ambiguity and confusion. The lack of uniformity in something as important as the video conferencing platform used by different courts is appalling. It must be noted that while the different video conferencing systems operate in a similar manner and have similar user interface, they may create burden on those advocates and parties that are not technologically gifted. Another major challenge for the justice system of India is in developing a system of virtual courts that lacks ambiguity. Vagueness leads to misunderstanding and results in impeding the access to justice. The current portals for different courts in India are in need for a dire overhaul. The overhaul needs to be more than an aesthetic improvement since the system requires a ground-up rebuild to suit the needs of the new reality. The present system leaves much to the imagination and there is no clarity. Lawyers and advocates that have been practicing for decades have faced difficulty in gaining access to these portals due to the improper maintenance of database. The system of ambiguity, bugs and scabrous user interface must be improved. The authorities behind this overhaul and development must also realize that internet is the information super-highway. Therefore, the new portal must fit into the theme of this super-highway, seamless, fast, and unblemished rather than acting like a Gurugram road in the rains, full of potholes and clogs.

Another aspect of uniformity in the legal framework arises from the judiciary and its conduct during the Pandemic. The lack of a fixed, specialized body aimed at the proper implementation of e- courts that can think, plan, and implement techniques to implement technology into the functioning of the courts has been a glaring lapse of the Indian Justice System. In the present times, the temporary solution has been the appointment of an e-committee led by Judges with nominal representation of the registry, for token purposes. The distinct lack of professionals, experts, and representatives from the fields of technology, management, system architecture etc. have led to the chronic problem of inadequacy in the implementation of e-courts. This lends a sense of opacity to the entire system and it feels somewhat non-negotiable and fixed for the various stakeholders.

The technological illiteracy in India is another challenge that needs to be tackled to make the system of virtual courts viable in India. At present, many of the advocates practicing across India have matters wherein urgent relief is required but, the technological handicap has prevented them from approaching the Court and seeking urgent disposal. To add to the woes of such advocates, the lack of uniformity in the systems and protocols applicable in different courts diminishes the confidence and the willingness of such advocates in adapting to these changing times. It is essential to translate the rights to equality, inclusion, and non- discrimination, enshrined in the Constitution, into the virtual and digital world as well.

Another major impediment to the functioning of courts virtually is access to adequate and proper internet connectivity. As per the TRAI reports¹³, as of December 2019, there are approximately 1.17 billion internet users in India. However, this includes a vast spectrum of internet users with connectivity and speed ranging from 2G to high-speed Fibre-optics. Even though there is access to high-speed internet connectivity as a result of popularisation of Reliance Jio which had a domino effect resulting in a greater and more wide-spread access to Internet, it cannot be ignored that the limited mobile data is still the primary source of internet for many people in India. Advocates getting

disconnected abruptly, disturbances and delay in transmission, and unclear transmission have been major issues that have been observed during proceedings through video conferencing. In a profession that relies on clarity of the spoken word, such predicaments are especially problematic since the poor transmission could end up being a matter of life or death for many clients. The lack of adequate internet facilities, which will ensure seamless and unimpeded transmission of voice and video during a virtual hearing is not guaranteed to all persons. This severely restricts access to justice through virtual courts.

A major challenge to this new reality and the concept of virtual courts lies in the unwillingness of the legal fraternity to take up the mantle and adapting to the new reality. The judges have been dismissive towards hearings held virtually. Many lawyers have reported that the judges simply adjourn the matter without giving adequate opportunity to be heard. This poses an immediate and grave concern in the dispensation of justice in India. The adage “why fix something that isn’t broken” seems to be engrained in the Indian justice system. Many judges rationalise that the physical courts are bound to open at some point of time and then, advocates can present their case in the traditional manner. The judges are reluctant in adapting to technology and have, therefore, been dismissive of such hearings. Further, the technological illiteracy of the Bench should also be taken into consideration, which has prevented them from welcoming this change and evolution unequivocally.

However, every coin has two sides. On one side, there is the reluctant Bench, and on the other, an apprehensive Bar. The lawyers have also shown apprehension and distrust towards the virtual courts. The lawyers who lack access to proper access to internet connectivity form a large part of the Bar, especially in the lower courts. Furthermore, many lawyers who rely on the might of their voice to get a favourable order cannot fathom a system where bare logic and law will be considered. Other lawyers are unwilling to adapt to the proceedings being held through video conferencing and even though there are matters which merit urgent disposal, lawyers are not taking up the charge and embracing the virtual court. Like the Bench, these lawyers are also prey to the adage of “why fix something that isn’t broken” and hoping for the restoration of normalcy rather than evolving. Hence, the apprehensive and dismissive Bar and Bench pose a grave challenge to the new reality of virtual courts.

One more challenge that must be addressed is that there is a significant difference between online proceedings and in-court testimony, because the latter provides the court with a greater opportunity to evaluate the witness based on the witness and his behaviour. Physical presence can play an important expressive function, especially in cross-examination, which will eventually lead to the discovery of the truth. Evidence recorded through a video conference may distort non-verbal cues, such as facial expressions, postures, and gestures.

A major red flag to online courts presents itself in the form of threat to privacy and data. Mainly dedicated to the use of personal or financial information for personal gain, the number of global identity theft cases is increasing rapidly. The documents and information of any given case are sensitive in nature. Generally, if this information is collected by other actors for a different context, it is subject to protection or confidentiality. Therefore, it is vital to protect litigants, lawyers and judges from such illegal actions facilitated using internet for conducting legal proceedings.

Solving the Virtual Court Crisis

It is beyond any shred of doubt that there are several challenges to the implementation of virtual courts in India. However, it is pertinent that the legal fraternity and justice system are not bogged down by these challenges and rather, discourse takes place, solutions are identified, assessed, and implemented. After all, the status quo is also a solution to the larger challenge of dispensing justice despite the prevailing global conditions, and the lessons learnt from the first solution could pave way for a better, simplified and more elegant justice system for India. A recurring theme in the analysis of the various challenges and the status quo has been the lack of a uniform legal framework. The lack of a Central Legislation has been the root cause for several correlated problems and challenges in the status quo. Therefore, many of the key aspects of virtual courts in India could be addressed by a new legislation that encompasses all courts.

The uniformity across the different forums will have multiple advantages. The applicability of the same law across the country will ensure that a uniform platform can be created. Uniformity will ensure that the technologically challenged members of the Bar and the Bench will be able to adapt to the changing justice system with greater ease since they will no longer need to learn different platforms that differ in use and access. In Canada, videoconferencing technology has been used to receive witness testimony in civil trials for over a decade¹⁶. Further, a simplified user interface will help the parties access the system to get orders and court notifications without the need to contact the counsel. While the court orders and status can still be checked by anyone with the key information, the platform is not identical for different courts, thus making it difficult to find the relevant information. The unpredictability of the

Pandemic and ever-deteriorating conditions can be used to evaluate and predict that the functioning of physical courts is not likely, at least for the next few months. Even after the situation begins to normalize, the Courts will try to function virtually, as a preventative measure, for as long as practicable and feasible. In the few months that the judiciary is predicted to function virtually, it is pertinent that a more permanent solution is evolved. Therefore, virtual courts with electronic filing and VC (video conferencing) functions will have to continue to exist with physical courts. Therefore, it is recommended that a steering committee be established to assist the judiciary in determining sustainable solutions to its immediate and long-term needs. Such committees must consider the adoption of strategies, legislative amendments, technical infrastructure, etc. as a whole, which is essential to make judicial access feasible and efficient.¹⁷ Another recurring theme in the analysis pertains to the technological literacy of the members of the Bar and Bench. If the issue of technological literacy is solved, a lot of the other issues and concerns will be addressed as well. As stated above, the uniformity of platform will help the technologically challenged members of the legal fraternity. Further, training sessions to introduce and familiarize the advocates and judges with the new system will help in improving their technological competence and comfort in the use of the tools offered through the virtual court and therefore, relieve the apprehensions and distrust of the members of the legal fraternity on both sides of the Court. As the lawyers and judges become familiar with the use of online tools for traditionally offline procedures, the burden on the justice system will reduce, the judicial process and dispensation of justice will become faster and efficient. Significant investment in infrastructure is essential to ensure that virtual courts have the necessary foundation to be operational in practice.¹⁸ In the long term, virtual courts can be made a rule by introduction in a phased manner like in UK, rather than a direct shift. Over time, with the implementation of conducive and pragmatic solutions and application of the various lessons learnt during this unprecedented time, the Courts shall be able to devise a well-oiled machinery and