



**NLUO CPAJ  
E-NEWSLETTER**

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# **ÆQUITAS**

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**Volume 3  
March 2022**



**Centre for Poverty &  
Access to Justice**



# ADAPTING DIGITAL TRANSFORMATION IN THE JUSTICE DELIVERY SYSTEM: AN ANALYSIS TO UNDERSTAND ITS EFFECT IN ACCESS TO JUSTICE

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Image credit: The Leaflet

Digitalization is a reality in today's world. We discover a vast range of diverse activities that are subject to digital transformation in nearly every aspect of social life. The Internet and social media platforms have transformed the way we get information, socialise, shop, and express ourselves.[1] It is not a surprise that there are innumerable and often acrimonious arguments regarding this pervasive digitization trend. Its relevance for the sustainability of wealth and prosperity is emphasised by political and economic leaders throughout the world. Since, the last one and a half year the whole world is suffering from a global pandemic due to the spread of a virus known as coronavirus. People all around the world suffered heavy losses as the virus was on surge and all workplaces and organisations had to shut down in order to decrease the spread of this disease. What helped ease this situation was the concept of virtual working or in simpler terms working from home with the use of various online platforms like Zoom, Google Meet and many more. Due to increasing number of cases by each day, it only became necessary to ensure social distancing in courts. However, the number of cases were not decreasing, when it became essential to adopt means to ensure distancing while delivering justice alongside. This is when, the Hon'ble Supreme Court decided to take the judicial system online. The three judge bench, exercising the power under Article 142 of the Constitution of India, issued the instructions for court functioning through video conferencing during COVID-19 pandemic.



The Chief Justice of India, Sir Sharad Arvind Bobde stated that there is no going back from this and that in future also the judicial system will have a mixture of both e-courts as well as physical courts. With this growing pandemic, the virtual court hearings are increasing and will be here for some time. The virtual court has certain advantages, it saves time and leads to speedy disposals of cases.[2] There are certain disadvantages as well but those can be improved with time.

## INTRODUCTION OF AI (ARTIFICIAL INTELLIGENCE) IN JUSTICE SYSTEM AND CONCEPT OF E-COURTS

It was in 2016, when the news came out that the world's first robot lawyer named ROSS was hired by a United States Law firm, named Baker Hostetler.[3] The robot ROSS is built upon Watson, IBM's cognitive computer, which can answer various research questions that are asked to him by lawyers, by way of gathering evidences, drawing inferences, and give evidence based answers.[4] In India, in November 2019, a Gurugram-based start-up Staqu launched its video analytics platform, "JARVIS ( Joint AI Research for Video Instances and Streams)", in the state of Uttar Pradesh, which has proven to be very useful as it mines CCTV camera footage to offer a string of services such as abuse, intrusion, and pick-pocketing detection, as well as crowd analysis.[5]

The use of e-courts rapidly acquired light and fame with the advent of the covid-19 pandemic. But this is not the first time when virtual courts were used in India. In the case of Krishna Veni Nagam v. Harish Nigam[6], Krishna and Harish married in 2008 in Hyderabad and were blessed with a daughter in 2009. The petitioner (wife) suffered injury on her spinal cord due to the fact that she was ill-treated and subjected to mental and physical cruelty at her in-laws' house in Jabalpur and therefore, left her matrimonial home along with her daughter in 2012. The respondent (husband) filed a divorce petition in Jabalpur while the wife and the daughter were in Hyderabad.

The wife filed a transfer petition for she felt a threat on her and her child. Here, both the parties were allowed to have hearing through video conferencing. While allowing the above there were certain hardships faced by the court and the litigants in the view of which the Hon'ble Supreme Court mentioned that it is appropriate to use video conferencing where both the parties have difficulty in reaching to a decision regarding the jurisdiction due to the lack of a convenient place. However, later on this case was overruled in a different case named Santhini v. Vijaya Venketesh[7] by the Supreme Court, where Justice Dipak Mishra and Justice AK Khanwilkar stated that, video conferencing cannot be allowed in cases of transfer of petition. However, Justice DY Chandrachud was in favour of e-courts. He mentioned that making the personal and physical presence as a mandatory requirement while excluding the online technology will eventually result in denial of justice. It was stated by the Supreme Court Judge, Justice D.Y. Chandrachud that, during lockdown, around 12 lakh cases were disposed of with the help of video-conferencing.[8]



## ADVANTAGES OF VIRTUAL COURTS AND AI IN JUSTICE DELIVERY SYSTEM

In the 1980s, one great advancement that took place was the use of video links between court rooms. At that time, there were many limitations like, limited bandwidth, primitive compression techniques and also the quality was not so great. [9] Faults like, loss in connection, high latency used to happen as a result of which the participants seemed more or less like puppet like characters.[10] Today the world has the most sophisticated and compact systems like Skype, Zoom, etc. that can be accessed through various devices like that of tablets, phones, laptops, etc.[11] One of the many advantages that the e-court system has is that it facilitates access to justice in remote areas and also apart from this the cost incurred on arranging and conducting a virtual court hearing is very less as compared to that of a physical hearing. This can be stated by the fact that e-courts lead to a reduction in carbon footprint and substantially reduces the attempt of employment of tardy practices by parties.[12] Another major advantage is that if implemented for long then e-courts can progressively reduce the case load that is currently hanging over the head of the courts.[13] In some situations, the witnesses of a particular case might get afraid of the court's atmosphere and hence would not be able to give their statements. Therefore, video conferencing can be ground-breaking if it can record a witnesses' statement.[14] Online dispute resolution system is a very affordable way of accessing justice and in many ways safer also. It reduces all sought of geographical as well as security barriers that come normally in the way of justice.[15]

## DISADVANTAGES OF VIRTUAL COURTS AND AI IN JUSTICE DELIVERY SYSTEM

Although there are many fascinating and efficient merits that the digitalisation in the justice delivery system offers but, however there are certain risk factors that come along with it also. Unless a government regulated application is used, there always remains a risk factor of information leak and threat to confidentiality, if any third party application is used. For example, in May 2020, it was reported that the data of over 5 lakh users of the video conferencing application named ZOOM got stolen and was sold on dark web, which is an encrypted network of websites you won't find through a simple google search. Another major difficulty that may arise is that of the lawyer or the advocate being not able to develop rapport with the parties. Also there exists problems in reading body language of those involved in the case. Although this method is more cost effective, but the sole requirement of this is the availability of internet. But in remote and rural areas there are many families who aren't in the financial capacity to afford devices and internet. So, unless some arrangements are made for those in need, this will be considered a major drawback. Other disadvantages include absence of human insight and empathy, technical glitches for example in some cases the advocates had reported that their screen had went black and they were confused whether their session has ended or not.

## ACCESS TO JUSTICE : THE EFFECT AND THE FUTURE OF VIRTUAL COURTS

In India, on May 18, came a very heartening news where the Chief Justice of India, Sir S.A. Bobde, declared that these e-courts or the virtual courts are here to stay and there is no way back.



This way the wheels of a future with both virtual as well as physical courts were set in motion. Online justice or justice in way of virtual courts is something where the advocates and the lawyers will be able to access justice from the vicinity of their homes and even from the remotest parts of India. The biggest problem that could arise is that of the poor people not getting the chance to come online but there are ways which can easily solve this issue. Under the e-filing system, the cases can be filed anytime and from any place as it is available 24/7.

It can be said without a doubt that online justice system widened the scope of acquiring justice. The motive that law should be accessible to everyone and at all points of time has been perfectly served on a silver platter with the help of the concept of e-courts or the virtual justice delivery system. The virtual court has certain advantages, it saves time and leads to speedy disposals of cases. There are certain disadvantages as well but those can be improved with time. The transition of the judicial system to e-justice or (digital justice) improves efficiency, productivity, responsibility, authenticity, and trustworthiness while also promoting public participation and engagement.

## CONCLUSION

“By 2030, and possibly much sooner, our courts around the world will have been transformed by technologies that have not yet been invented”. This statement though cannot be proved as of this time but considering the amount of investment both monetary and psychological being directed towards the technology and the artificial intelligence, this is the most likely outcome that we can observe. Thus, the e-way of Justice system is although a road less travelled in India, but that does not strike

out the possibility of it happening on a large scale in very less time in the near future, for the benefits that it entails, by far outweighs the drawbacks.

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## WAS JUSTICE JEOPARDISED?

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### ABOUT THIS ARTICLE

- Comparative view of how the world outside was dealing with issues such as digital courts and vulnerability the developments in the digital court infrastructure.
- Addressing the digital divide taking in view the stakeholders affected from remote locations and the financial divide.

### INTRODUCTION

The entire world suffered the unprecedented disruption which was caused due to emergence of COVID-19. The attention of National and International media was largely focused upon the healthcare system. Amid the chaos, the media did not provide the required attention to the nation's justice delivery system. Indian courts remained shut down for the public at the beginning of the lockdown to follow the Covid-19 norms. The situation was such that the courts could not function traditionally, and bringing the Justice delivery system to a halt was not feasible. So, the courts

started functioning via videoconferencing. However, there was much disruption, be it technological or procedural. High courts of Kerala, Telangana, and Bombay were the first to conduct live streaming of the hearings.

### VIRTUAL HEARING: INDIA AND WORLD

The courts all around the world took some major steps in order to conduct a hearing of the matters. The Supreme Court of India was conducting a hearing of the important cases by video conferencing as well as the court also suspended the limitation periods. The Supreme Court of the United State also conducted the hearings via telephonic conversation during the month of May. The US supreme court also provided the recordings of those sessions to various media houses. Australian High court from January 2020 started to accept documents through online mode. The court made the Use of Electronic Signatures and provided various other services by online/telephonic means. On the other hand, the United Kingdom family court also conducted the proceedings via video conferencing apps such as Skype.[1]

### TECHNOLOGICAL SHIFT OR DIGITAL DIVIDE?

Access to Justice is a fundamental right that is enshrined in the International Human Rights law as well as in our constitution. The 103rd Parliamentary standing committee (PSC) stated that digital Justice is cheaper and faster.[2] This entire statement seems to be self-contradictory as this committee in the same report observed that internet connection is scarce for many people. If we look at the statistics[3], the internet penetration rate was about 45% in India, which means less than half of 1.37 billion[4] people have access to the internet connection. In the era of virtual courts, which is affordable and faster, according to the committee, what purpose will it serve if it is not accessible?

Despite drastic technological advancement, arguably, the term 'access of justice' seems to be farfetched. In India, the courts started the online hearing in March 2020. Nevertheless, these advancements were accompanied by network disruptions and undesired problems. Few Advocates complained that they could not present their case effectively, and few said the poor were denied access to the judiciary. [5]



Some practitioners reside in remote areas of the country, where internet connectivity is a prevalent issue. Since video conferencing requires a stable and High-speed internet connection, it becomes unsustainable for the vast majority of the people to access Justice. Only About 50 percent of the Advocates[6] who practice in district courts have a stable internet connection, and the rest does not even have a reliable and decent device for the purpose. More than half of the Indian population do not have access to a decent internet connection, especially those who are living in rural areas. This is concerning because due to the present situation, it becomes impossible for the people who are residing in a remote area to have access to Justice[7].

Pre-supposition of the fact that virtual courts will act as a bridge between the Advocates and the people who want their rights to be enforced overlooks the fact that the Justice is inaccessible not because, as mentioned by PSC, traveling to the National Capital is expensive but because of the procedural system of the justice system which is a quagmire at its best. The lethargic trial courts are itself a deterrence for a normal working class of the nation. Indeed, some of the proceedings got easier, like appearing in front of the judge, but there is still the major part of the litigation that revolves around the admission of the evidence and cross-examination. Cross-examination is one of the major legal tools that help in the discovery of truth, but the latency of the internet connection present in the area might act as prejudice against either of the parties. For example, during video conferencing, facial cues and non-verbal expressions, which play a major part while deciding the case, might go unnoticed. There are regalia of these problems that can just be done right in the physical courts. Leave access to Justice, all these issues if augmented, might cause the pronouncement of wrong verdicts.

Question that arises in response to the Idea that the virtual courts will be cheaper, is 'For whom!' This is a major concern here for the litigants or the courts. An Advocate represents the client, and a substantial number of the advocates who live in the rural areas were technologically unsound.

Respective bar councils previously piloted some sensitizing programs. They introduced technical courses, but there are still many advocates who are technologically illiterate and economically incapable[8] of affording the latest technology. However, either of these does not change that Advocates still charge money to represent a client. The virtual courts might be cheaper for the functioning of the courts, but how will it affect the litigants because, in litigation, the major part of the expenditure is spent for hiring the advocates, not for traveling expenses as mentioned by PSC.

## **CONCLUSION**

The concept of open courts was imperilled at the beginning of the lockdown. It was rather arbitrary on behalf of the courts to identify some matters as urgent by keeping aside the others. The situation was unforeseen, and even COVID 19 was identified as a disaster[9] but can these reasons be used to justify the situation where a significant amount of people were not able to access the courts.

The courts did keep up the work despite technological imbalances. However, the authorities should retrospect in the matter that Justice was inaccessible to the nation's economically disadvantaged groups, who did not have access to the modern IT infrastructure.

The introduction of virtual courts was an attack on the procedures of a rather impure procedural justice system, where verdicts largely depends upon how well the procedures were being followed. Lastly, the relevant authorities should set up a probing committee to determine whether the poor strata of the society were ignored in this absolute mayhem. Moreover, if having a stable internet connection means having access to Justice, then it does render the phrase "Accessible Justice" into an oxymoron.

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## ACCESS TO VIRTUAL COURTS (RURAL PERSPECTIVE)

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### ABOUT THIS ARTICLE

- This article explores the accessibility of virtual courts from a rural perspective.
- It discusses the challenges of existing weak structures of Institutions.
- Addressing problems such as resources being poorly distributed.
- Previous load of cases and the added status quo of pandemic putting a heavy burden on justice delivery.
- Moving forward whilst strengthening the infrastructural barriers & etc.

### INTRODUCTION

The COVID 19 pandemic which shook the world with its severity affected everyone around the globe in various ways. The turmoil created by it had a widespread impact in various spheres of life like social, political, economic, psychological, legal, etc. The world was put at halt and almost all activities were discontinued during the first wave of COVID 19 by placing strict lockdowns for better implementation of social distancing norms. India too, could not remain aloof from this adversity. To defeat the confusion, disarray, and fear generated by the pandemic, an online mode of access involving almost all services was relied upon. All activities, including official, domestic, legal, manufacturing, education, etc. were attempted to be restored through the virtual medium until the world could go back to the pre-pandemic stage. Amidst this shifting of platform of work, the Indian

Judiciary too took upon itself to switch to its virtual version for the delivery of its services in a seamless manner to avoid pendency of cases, infringement of the citizen's rights and for guarding the law and order even in difficult times as the need of the hour demanded. The virtual courts served its purpose of catering to the needs inflicted by the difficulties of contemporary times, by providing remote accessibility, a safe and secure health environment, cost-effectiveness, cutting across geographical barriers of the parties, etc. However, the well-intentioned initiative could not materialize well on ground levels, especially for rural areas. The dearth of equitable accessibility of virtual courts in rural areas is one of the drawbacks inherent in the virtual delivery of the justice system, where poor connectivity iterated even by Chief Justice of India N.V Ramana [1], unavailability of internet services, lack of digital literacy, and operability on the part of rural litigants and their advocates create a digital divide thereby infringing their fundamental right to equal access to courts for judicial relief. The vision of introducing virtual courts without amending the basic infrastructure required for its establishment would be fatal, in a country where just 31% of the rural population use the internet as per current statistics (2020).[2] Therefore, this article intends to underscore the barriers incurred by rural people while accessing virtual courts, their feasibility in the rural context, and propose suggestions on improving upon the same to provide a better setup for the vision of virtual courts to reach out to the remotest of rural India.



## BACKGROUND OF THE ISSUE

The proposition for a digitized judicial system is nothing new for India. The National Informatics Centre (NCC) through its specific task-driven applications and software namely COURTIS, a court information's system enabling case information computerization, and JUDIS, provided the complete text of cases,[3]

laying the foundations of a virtual court system or digitization of judicial set up officially. Also, in recent times, with its 103rd interim report on the functionalities of Virtual Courts and Digitization of Justice Delivery in Parliament, the Parliamentary Standing Committee (PSC) yet again highlighted this proposition.[4] But, it was only when the world was hit by the disastrous pandemic that it, including India, swiftly adapted to the virtual model of operation and running of courts. The pandemic paradoxically paved the way for the much-needed virtual reform of the Indian judicial setup to mitigate its burden of pending cases. Also, for improving its standards in the international arena by equipping itself with such resources and for better and easy access to courts while maintaining all the health and safety protocols as mandated for the fight against COVID-19.

The virtual courts functions as a great alternative for the delivery of judicial services in the darkest of phases brought in by the pandemic, but along with it, it also posed relevant questions for its continuation or for adopting it as a full-fledged system in the future. Among the many drawbacks of this virtual access to courts, one of them is the rural people's access to virtual courts, which is the focus of this blog. This is an issue from which India cannot turn its back, whose rural population constitutes 65.074% of its total population[5],

forming a considerable majority whose opinions and difficulties should ideally weigh more than the minor urban-dwelling populations, all the more in a parliamentary form of democratic government. Rural India's plight is well known to all, that even after several years of independence, the rural infrastructure is not up to the mark and is devoid of basic services for leading a quality life. The government has no doubt poured money into developing rural areas but the ground realities reflect a different picture. Marred by corruption, politics, lack of awareness and knowledge has led to the backwardness of rural India, making it many a time, out of focus for the policymakers, due to the ease of exploiting and abandoning the rural dwellers from their deserving rights and needs. As for the case of setting up virtual courts in rural areas of India, the government needs to avoid many pitfalls to provide them access to justice apart from creating an appropriate infrastructure supporting the virtual set-up, which is difficult to achieve fully even in urban areas leaving aside top metropolitan cities. In the light of such stark realities, the vision of virtual courts in rural areas seems like a far cry. Once, the government follows a practical framework on making this vision a reality in rural areas, it would be able to grant the basic right of all Indians to access the courts and access to justice, be it in physical or virtual court. It would cover the vast expanse of India, irrespective of caste, class, creed, religion, race, gender, status, truly upholding the constitutional values and ideals, but the path is full of challenges and roadblocks.

## ROADBLOCKS

While virtual courts seem to be highly convenient given there is marginally less amount of resources required, along with



it being highly time saving and efficient, giving access to courts on electronic sources, it still has several disadvantages, especially considering the rural backdrop in India.

The rural population of India as of 2020 was determined to be 65.074%.[6] This is substantially high percentage when we compare it to the global average of 43.85%.[7]

These are the areas where there is extreme lack of resources. Such resources often include accessibility to internet. Rural areas of India where focus is more on survival rather than indulging in digital facilities, virtual courts proved to be disadvantageous to majority of the population.

It is important to note that the lack of connectivity and internet services is not the only issue in rural areas. Even if connectivity issues were to be side lined, the literacy rate of rural areas is so poor that such services, even if provided, would not be availed efficiently by the citizens. People do not understand how to make use of these services provided, hence creating a huge digital divide. Moreover, the absolute dearth of skilled manpower who could operate electronic paraphernalia viz computers, phones, laptops etc. along with maintaining the internet services provided also make the situation grim. This usually happens because the skilled people from rural areas are gradually shifting to urban backdrops in search of employment and better opportunities, hence widening the digital gap between these two areas.

Another issue that these areas face is the lack of electricity. India is not completely power sufficient as of now. There are still some areas where electricity is not present. 2.4% of the Indian households, majorly from states like Rajasthan, Madhya Pradesh, Bihar and Uttar Pradesh still remain unelectrified.[8]

Frequent power cuts are common even in urban areas. As such, virtual courts might pose certain technical difficulties.

The accessibility of courts ensures the accessibility of justice as well. However, due to the aforementioned concerns, virtual courts might not be in consonance with everyone. The government needs to take several measures before completely opting for a digital mode.

### WAY FORWARD

The issues with continuing virtual courts are several, especially in respect of the rural areas, as aforementioned. It appears that the best recourse for complete virtual court proceedings to be adopted is to work on all these issues simultaneously rather than work on them one by one. A holistic approach is needed to make virtual courts accessible to all. Some of the basic measures that can be currently taken for this are:

- 1) Promoting literacy
- 2) Promoting digitally skilled taskforce
- 3) Investing in infrastructure development
- 4) Making electricity accessible to all
- 5) Making internet connections available to all [9]

These measures cannot be taken in a single shot. A lot of planning and ground level work would be required to work on all these issues simultaneously.

The government needs to necessarily invest in infrastructural development and promotion of literacy to create a population that not only has the resources to access justice via virtual courts, but is also technically skilled enough to explore such online resources. We believe that sensitization regarding virtual courts is extremely necessary to make the rural population aware of the existence of such online procedures.

Additionally, the government can also appoint certain fixed number of people for every rural center who would have the responsibility of providing the rural people with resources like computers and active internet connections along with guiding them for the various court procedures. We believe that such a measure would not only be instrumental in sensitizing the rural population regarding virtual courts but would also make them familiar with the online procedures gradually. This would help in the long run as more and more people would be able to access justice at the convenience of having just a phone or laptop.

Moreover, the appointment of such digitally skilled personnel would generate employment opportunities for the rural areas. It might also help limit migration of people to the cities in search of better opportunities and lifestyle.

Apart from that, the government must also work for providing active internet connections even in remote areas. It can be started with few common centers that can be accessed by the nearby rural areas, and then gradually spreading the internet connections.

While it might take time to take sufficient measures, it is important to note that if the aforementioned issues are resolved gradually and efficiently, we can definitely expect operational virtual courts even in remotest of the rural areas.

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## ABOUT CENTRE FOR POVERTY AND ACCESS TO JUSTICE



The Centre for Poverty and Access to Justice was established in the year 2020 with the aim of minimising and mitigating the obstacles faced by the socially and economically disadvantaged people in accessing justice. The objective of the Centre is to promote community and traditional justice systems that are relatively easily accessible to vulnerable groups, and to make them more compliant with Human Rights. The Centre aims at studying the barriers to access to justice with emphasis on the groups disadvantaged due to inequality in their economic status, discrimination and lack of legal awareness; and overcoming the barriers through State, Civil Society and policy Intervention.

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