

REPORT NO.

103



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PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

ONE HUNDRED-THIRD REPORT

ON

FUNCTIONING OF VIRTUAL COURTS/ COURT
PROCEEDINGS THROUGH VIDEO CONFERENCING (INTERIM REPORT)

(Presented to Hon'ble Chairman, Rajya Sabha on 11th September, 2020)

(Forwarded to Hon'ble Speaker, Lok Sabha on 11th September, 2020)

(Laid on the Table of Rajya Sabha on 18th September, 2020)

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Rajya Sabha Secretariat, New Delhi
September, 2020 / Bhadra 1942 (Saka)

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COMPOSITION OF THE COMMITTEE (2019-20)

1. Shri Bhupender Yadav — *Chairman*

RAJYA SABHA

2. Shri Naresh Gujral
3. Shri Sukhendu Sekhar Ray
4. Shri Shiv Pratap Shukla
5. Shri Vivek K. Tankha
6. Shri P. Wilson
7. *Shri Abhay Bharadwaj
8. *Shri Rajendra Gehlot
9. *Shri K. R. Suresh Reddy
10. *Shri Deepender Singh Hooda

LOK SABHA

11. Shri Pradan Baruah
12. Shri Pradeep Kumar Chaudhary
13. Shri Vinod LakhamschiChavda
14. Shri MohanbhaiSanjibhaiDelkar
15. Shri P. P. Mohammed Faizal
16. Shri Jasbir Singh Gill
17. Shri Chowdhury Mohan Jatua
18. Shri Suresh Kumar Kashyap
19. Shri Mohammad Akbar Lone
20. Shri Jyotirmay Singh Mahato
21. Shri B. Manickam Tagore
22. Shri Malook Nagar
23. Shri Chirag Paswan
24. Shri Suresh Pujari
25. Shri A. Raja
26. Shri Omprakash Bhupalsinh *alias* Pawan Rajenimbalkar
27. Shri Upendra Singh Rawat
28. Shrimati Sandhya Ray
29. Shri Kuldeep Rai Sharma
30. Shri Mahendra Singh Solanky
31. *Vacant*

SECRETARIAT

Dr. P.P.K. Ramacharyulu, Secretary
Shri Pradeep Chaturvedi, Joint Secretary
Shri Mahesh Tiwari, Director
Shri Ashok Kumar Sahoo, Director
Shri Goutam Kumar, Deputy Secretary
Shri Anurag Ranjan, Under Secretary
Ms. I. V. Rajya Laxmi, Assistant Committee Officer

*Nominated w.e.f. 23rd July, 2020

INTRODUCTION

I, Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorized by the Committee on its behalf, do hereby present the One Hundred-third Report on the Subject 'Functioning of the Virtual Courts/ Courts Proceedings through Video Conferencing' (Interim Report).

2. The Committee had taken up the subject 'Functioning of the Virtual Courts/ Court Proceedings through Video Conferencing' after the COVID-19 pandemic. The Committee had a detailed discussion on the subject with all probable stakeholders. After discussion, it has decided to present an Interim Report on the subject so as to highlight the issues in the present situation. The Committee will deliberate further on this issue and will present its Final Report at later stage after complete deliberations on the subject.

3. The Committee heard the Secretary, Department of Justice and Secretary-General, Supreme Court of India in its meeting held on 27th July, 2020 on the subject. The Committee then heard the Chairman, Bar Council of India, President, Delhi High Court Bar Association and Chairman, All Delhi District Court Bar Association in its meeting held on 6th August, 2020. The Committee thereafter heard the views of the Secretaries, Department of Legal Affairs and Department of Justice along with the representative of Supreme Court of India on the subject in its meeting held on 24th August, 2020.

4. While considering the Subject, the Committee took note of the following documents/information placed before it:-

- (i) Background notes, power point presentations of Department of Justice;
- (ii) Replies furnished by Department of Justice, Department of Legal Affairs and the Bar to the questionnaires furnished by the Secretariat;
- (iii) 'Online Court and the Future of Justice' by Richard Susskind
- (iv) National Policy and Action Plan on implementation of ICT in the Indian Judiciary
- (v) Evaluation study of e Courts Integrated MMP by NCAER
- (vi) Brief Notes on e Courts project published on the website of Ministry of Law and Justice
- (vii) Supreme Court guidelines on videoconferencing, e Committee Newsletter Apr 2016
- (viii) Research papers published by Daksh, Jane Donoghue, Thomson Reuters, Edward. H. Freeman, Jamie Young, Chitranjali Negi, Blake Candler.
- (ix) Report of the Sub-Committee headed by Hon'ble Ms. Justice G. Rohini on National Framework of Court Excellence.
- (x) News articles, editorials and material from the internet.

5. The Committee wishes to place on record its gratitude to the representatives of the concerned Ministries/ Departments, Supreme Court of India and others for furnishing necessary information/ documents and rendering valuable assistance to the Committee in its deliberations.

6. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

7. The Committee considered and adopted the Report in its meeting held on the 8th September, 2020

New Delhi
8th September, 2020

BHUPENDER YADAV
Chairman,
Department-related Parliamentary Standing
Committee on Personnel Public Grievances
Law and Justice

ACRONYMS

BSNL	Bharat Sanchar Nigam Limited
CIS	Case Information Software
CrPC	Criminal Procedure Code
DG sets	Diesel Generator Sets
EUR	Euro
HCL	Hindustan Computers Limited
ICT	Information and Communication Technology
IPAB	Intellectual Property Appellate Board
NCLAT	National Company Law Appellate Tribunal
NIC	National Informatics Centre
NJDG	National Judicial Data Grid
PPP	Public Private Partnership
SDG	Sustainable Development Goals
SWAN	State Wide Area Network
TCS	Tata Consultancy Services
TDSAT	Telecom Disputes Settlement and Appellate Tribunal
UN	United Nations
UPS	Uninterrupted Power Supply
US	United States
USD	United States Dollar
UYAP	Ulusal Yargi Agi Bilisim Sistemi
VC	Video Conferencing
WAN	Wide Area Network
Wifi	Wireless fidelity

REPORT
CHAPTER-I
VIRTUAL COURTS

1.1 World over, the COVID-19 pandemic has forced Courts to get creative to continue to execute their duties. Courts had to explore ways and means to become less dependent on physical appearances and more receptive to online options. Virtual Courts have now become the primary or the only means for dispensation of justice.

History of Virtual Courts

1.2 One of the earliest references to Virtual Courts can be found in the works of Professor Frederick I Lederer who is currently the Director, Centre for Legal and Court Technology, United states. He wrote in 1997-

'The Courtroom is a place of adjudication, but it is also an information hub. Outside information is assembled, sorted and brought into the Courtroom for presentation. Once presented, various theories of interpretation are argued to the fact finder who then analyses the data according to prescribed rules (determined by the judge through research, analysis and interpretation) and determines a verdict and result. The Courtroom is thus 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.'

1.3 Lederer, as far back as in 1997, with an impressive degree of foresight, predicted how digital technologies transform the legal landscape in future. Given the pace and the degree of digital incursion into almost all facets of human activity, it is clear that technology will become an omnipresent feature of the Courtroom.

The Great Debate

1.4 Any discussion on Virtual Courts revolves around a central question- Is Court a place or a Service? The advocates of Virtual Courts argue that Court is a Service and not a place. A bird's eye view of various definitions of 'Court' helps resolve the debate.

1.5 As far as India is concerned, neither the Civil and Criminal Procedural Codes nor the General Clauses Act embodies the definition of the term 'Court'. However, as per the legal glossary of the Legislative Department, Ministry of Law and Justice, 'Court' is a place where justice is administered. Further, Section 3 of the Evidence Act, defines 'Court' as follows: 'Court includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence. In Section 20 of the Indian Penal Code, 'Court of Justice' is defined as a judge, who is empowered by law to act judicially alone, or a body of judges which is empowered by law to act judicially as a body, when such judge or body of judges is acting judicially.'

1.6 The US Federal Judiciary defines 'Court' as a Government entity authorized to resolve legal disputes. Black's Law dictionary defines 'Court' as governmental body consisting of one or more judges who sit to adjudicate disputes or as a place where justice is judicially administered.

1.7 From the above, it is clear that although the definition of Court varies across jurisdictions, they all seem to have two elements in common-That Court is a Government entity comprising one or more judges and that Court deals with the administration of Justice thus making it clear that Court is more of a Service than a place.

How are Virtual Courts different from regular Courts?

1.8 In Virtual Courts, Plaint and other documents are filed electronically, arguments are heard over videoconferencing/teleconferencing, evidence is submitted digitally, judges decide cases online either presiding from the physical Courtroom or sitting in some other place. Thus, Virtual Courts transform the documentation, evidential and procedural mechanisms and conduct hearings online from start to finish.

Virtual Courts, Online Courts, Online Dispute Resolution- THE DIFFERENCE:

1.9 The Committee has observed that the terms Virtual Court, Online Court, and Online Dispute Resolution are being used interchangeably. Richard Susskind in his famous book titled 'Online Courts and the Future of Justice' has explained the differences among these terms clearly.

1.10 In **Virtual Courts**, Plaint and other documents such as valaklatnama, written submissions are filed electronically; Court fees are paid electronically; Evidence is submitted digitally; arguments are heard over videoconferencing; witnesses give their testimony remotely over videoconferencing and Judge decides the case online either presiding from the physical Courtroom or from some other place. A copy of the Order/Judgement is made available on the website of the Court or through some electronic means.

1.11 **Online Courts** constitute an advancement over Virtual Courts. The only difference between Virtual Courts and Online Courts being that in the former hearing is synchronous and the latter involves asynchronous form of interaction. This means that, in Virtual Court hearings, the Judge, advocates, litigants and witnesses need to be available at the time of hearing for a case to progress. In contrast, in Online Courts, the participants need not be present simultaneously; arguments, evidence are presented to the Judge without the parties being together at the same time.

1.12 **Online Dispute Resolution** refers to the use of online platforms for the resolution of disputes between parties through Alternative Dispute Resolution Mechanisms.

International experience

1.13 Virtual Courts are not a new phenomenon. Many countries have adjudicated cases ranging from low value civil disputes to complicated criminal cases Virtually without advocates, litigants and witnesses having to set foot physically in the Courtroom.

United States

1.14 In United States, many State Courts have either installed webcast equipment or have Virtual Courtrooms. Mc Glothin Court room, set up by The Centre for Legal and Court Technology at the College of William and Mary Law School in Virginia is the world's most technologically advanced trial and appellate Courtroom.

Singapore

1.15 The Singapore Supreme Court has successfully set up a Virtual Courtroom known as "The Technology Court", which has a Local Area Network (LAN) with an Internet connection and which allows the use of imaging, multimedia and video conferencing. It also

has a Litigation Support System for Presentation (LSSP), a Computer Based Recording Transcription System (CBRT), a sophisticated audio visual system (AVS) which allows various types of audio and video information to be presented with ease and a video conferencing to allow foreign witnesses to give evidence in any proceedings. The Supreme Court Infokiosk System (SCIS) which has touch sensitive screen and allows a user to obtain information on hearing schedules, the location of counter services in the Supreme Court and to call up a multimedia floor directory of the Supreme Court complex.

Turkey

1.16 Turkey has a national e-judiciary system called UYAP. UYAP, which won the UN's Public Service Award in 2012, has significantly increased the effectiveness and accessibility of the judicial system in Turkey, by providing faster, more transparent and more cost efficient judicial services than ever before. UYAP links together all judicial institutions in Turkey and it provides the possibility for the whole judicial process to be carried out through an electronic document flow. The system currently has 1.9 million users, and it has resulted in annual savings of approximately 100 million USD, as well as significant environmental benefits, as it allows for a virtually paperless working environment. UYAP is complemented by an advanced video-conferencing service, which allows for testimony and hearings to be carried out at distance, without having to transfer prisoners and detainees to Court.

Canada

1.17 In Canada, videoconferencing technology has been used to receive witness testimony in civil trials for over a decade. The Ontario Rules of Civil Procedure allow for witnesses in civil trials to testify remotely using videoconference technology.

Italy

1.18 Italy has an "On-line Civil Trial" facility which covers all civil cases throughout the country. The system allows for an entirely electronic processing of cases, which significantly reduces the time and expenses related to accessing the Court. It integrates several high-security features, including a two-stage authentication, digital signature, and certified emails. The system has 6 million daily users and it has resulted in annual savings of 55 million EUR.

Virtual Courts and India

1.19 The unpredictable lockdown caused by the corona virus pandemic has brought forth a crisis which affected human lives and also crippled the functioning of Indian Judiciary. In order to adjudicate urgent matters and to enable the judicial system to discharge its constitutional mandate of providing access to justice at all times, the Supreme Court of India has rolled out Virtual Court hearings.

1.20 During the pre-COVID period, the VC set up was primarily used for conducting remand matters to prevent movement of prisoners between Courts and jails. Such VC facilities have been operationalized between 3240 Court complexes and corresponding 1272 prisons.

1.21 Legal sanctity was given to videoconferencing by the Supreme Court by an overarching order invoking Article 142 of the Constitution of India passed on 6th April 2020 which covered all the High Courts in the country. Consistent with the peculiarities of the judicial system in every state and in view of the dynamic health situation, the High Courts were left with the discretion of adopting technology after customisation to suit their purpose. Model rules on Video Conferencing have been circulated and the High Courts are in the

process of adopting them. The District Courts were to adopt the mode of video conferencing prescribed by the concerned High Court.

CHAPTER-II

CHALLENGES OF VIRTUAL COURTS

2.1 The Committee held a series of meetings with the Secretaries of Department of Justice and Department of Legal Affairs and Secretary General of the Hon'ble Supreme Court and representatives of the Bar Council of India, Delhi High Court Bar Association and Delhi District Courts Bar Association on 'Virtual Courts' during which it heard both pros and cons of virtualization of Court proceedings.

2.2 During the course of deliberations, the Committee was apprised as to how certain initial hiccups plagued Virtual Court hearings. The representatives of the Bar spoke at length on the shortcomings of Virtual Courts and why Virtual Courts can never be a complete and adequate substitute for regular Courts. The observations and recommendations of the Committee in this regard are as follows:

Digital divide

2.3 The representatives of the Bar brought to the notice of the Committee that a large number of advocates and litigants especially those living in rural and remote areas lack basic infrastructure and high speed internet connection required for virtual hearing of cases and that this digital divide makes access to justice unaffordable and inaccessible for a vast majority.

2.4 While bringing the difficulties being experienced by advocates to the notice of the Committee, a representative of the Bar said,

'As far as e Courts and Virtual Courts are concerned, I can say with certainty and with an element of responsibility that in India, almost 50 percent lawyers, particularly in District Courts, do not have any laptop or computer facility. How can we assume and presume that they would participate in these Virtual Courts and e Courts? So, infrastructure is a big issue in the functioning of Virtual Courts '

2.5 In the opinion of the Committee, digital divide has three dimensions-namely, access divide (access to equipment and infrastructure), connectivity divide (access to broadband connectivity) and skill divide (knowledge and skills required to use digital platforms).

2.6 While responding to a query raised by a Member of the Committee on the status of functioning of Mofussil Courts during the lockdown period and whether e filing is being done in Mofussil Courts, the Secretary, Department of Justice spoke about digital divide as below:

'There is a digital divide right now. About 560 million people have internet facility in the Country. So, there is a section of population which does not have this internet facility. As compared to urban areas, in the case of rural areas, the problem of digital divide is there. Therefore, there is exclusion and people are yet to take it in a big way.'

2.7 Department of Justice in its written replies to the Committee submitted that E-Seva kendras have been established in all the High Courts and in one District Court in each state as a part of a pilot project to provide assistance to lawyers and litigants ranging from information to facilitation and e filing. The Committee is highly appreciative of this initiative and believes that E-Seva Kendras will go a long way in bridging the 'access divide' and hopes that such facilitation centres be set up in all Court complexes across the country at the earliest. The Committee recommends that the feasibility of involving private agencies/service providers who can help people who

are not tech savvy in connecting with Courts by taking VC equipment to their door steps on payment may be explored.

2.8 Speaking about Connectivity divide, Secretary Department of Justice said,

‘There is a problem in terms of internet penetration, especially in remote areas and therefore, the District and Subordinate Courts are perhaps more badly affected’.

2.9 As regards connectivity divide, the Committee recommends the Ministry of communications to step up efforts to ensure timely implementation of National Broadband mission which envisages broadband access to all so that the services provided by indigenous communication satellites are fully harnessed and the goal of Universal broadband access is achieved.

2.10 The Committee is of the opinion that the Judiciary may also consider such innovative solutions as launching mobile videoconferencing facilities for the benefit of advocates and people living in remote areas.

Technological competence

2.11 The Committee was apprised that majority of advocates are not well conversant with the use of information and communication technology so as to effectively use them to present their cases on a Virtual platform and that there is a concern that virtual Courts unfairly benefit tech savvy advocates and law firms which have access to stable internet connection and high quality videoconferencing facilities.

2.12 Speaking on digital divide, the Secretary, Department of Justice said,

‘In urban areas, you have big time law firms; you also have very well-to-do advocates. As compared to urban areas, in the case of rural areas, the problem of digital divide is there.’

2.13 The Committee is of the view that with the advent of Information technology, there is not a single facet of human life that is left untouched by it. ICT has also transformed the legal landscape in India and the Indian judiciary has come a long way from a paper-based era to the one dominated by digital technology and is now moving towards cloud based technology. The Committee believes that in coming times, technology will emerge as a game changer and advocates would be required to use technological skills in combination with their specialized legal knowledge and therefore, they should keep up with the changing times.

2.14 Elaborating upon the initiatives taken to train advocates the Secretary, Department of Justice said,

‘a training course was taken up by which first 25 master trainers were trained in each of the High Courts. These master trainers, in turn, trained 461 master trainers in the districts. These 461 master trainers have been given charge of all the districts’.

2.15 To address ‘skill divide’, the third facet of digital exclusion as mentioned previously, the Committee recommends that training and awareness programmes should be conducted in all Court complexes across the country including Subordinate Courts in order to acquaint advocates with the technology and to enable them to

acquire skills required for handling digital platforms so that advocates operate digital platforms themselves.

2.16 A representative of the Bar opined that this unprecedented crisis should be turned into an opportunity and said,

‘It is a good time to learn and to make all the young lawyers and the Law students to learn something about e filings, Virtual hearings and the use of technology. So, this is the time to make them learn and also to teach them.’

2.17 The Committee also recommends that the Bar Council of India may introduce computer course as one of the subjects in three year/five year courses to enable the students to get trained in handling computers and get adapted to the online systems while they pursue the Law Course. This will help educate and equip budding lawyers with knowledge and skills required for handling digital platforms.

Poor Digital connectivity

2.18 In view of the pandemic, Courts are hearing cases online. Standard Operating Procedure has been put in place for e-filing, mentioning, listing and hearing of matters through videoconferencing/teleconferencing mode. The advocate /party is required to file the petition preferably through e filing mode. Upon completion of all formalities, the advocate/party is required to specify as to whether he would like to link to the Hon’ble Bench through Desktop/laptop or would like to avail the facility for video conferencing in the Court premises. Web links for joining the Virtual Court hearing will be provided to the advocate and litigant.

2.19 The Committee was informed that one of the biggest hurdles being faced during virtual hearings is that of poor digital connectivity. The representatives of the Bar briefed the Committee as to how technical glitches are plaguing Virtual Court hearings, especially during peak hours when many people log into the videoconferencing system, how it often crashes. The committee also learnt that broadband connectivity is woefully poor and is insufficient for Virtual Court proceedings.

2.20 The Committee understands how poor quality audio/video, frequent loss of connection, disruptions and high latency affects judicial assessment of demeanour, emotions and other nonverbal cues and the changing communication dynamics which are also important variables in deciding a case. The Committee is of the view that improving the quality of Courtroom technology is a necessary pre condition for virtualization of Court proceedings. The Committee also recommends that a study of Courtroom design be commissioned and customized software and hardware to facilitate Virtual Court hearings be developed to suit the needs of Indian judiciary.

2.21 The Committee notes that frequent disconnections and disruptions occurring during videoconferencing are not always due to technical glitches on the Court’s end but also due to some connectivity issues on the other side. Speaking on the same, the Secretary General of the Supreme Court said,

‘For tele-connectivity, we must have robust internet connectivity on both sides to connect. In Supreme Court, we have 100 Mbps dedicated leased line. It requires only 2Mbps of connectivity for video connectivity and we have 98 Mbps in spare to connect the Hon’ble Bench with the server. But, what about the other side? The lawyer side does not have that robust connectivity. We are constantly requesting the lawyers to enhance their systems. For example, they can have 4G

dongles with them. In Delhi, particularly, we are told that most of the chambers of lawyers are located in the basements. So, Wifi connectivity is a problem.

'We are requesting advocates not to connect to the VC on their mobile phones because the bandwidths are sometimes consumed by other mobile applications like Whatsapp or Facebook. If any other notification comes while you are connecting to the Bench, that would break the connectivity. So, if both the ends have better connectivity, that will facilitate better video conferencing. We have got some representations from advocates and Bar Associations stating that some of the lawyers do not even have the connectivity, so, we facilitated them by establishing seven centres across Delhi. In every District Court complex, we have a dedicated VC Center for connecting to the Supreme Court VC to facilitate the lawyers. They may go to any center near their residence and they will be facilitated.'

2.22 Describing how obsolete infrastructure is hampering hearings, a Member said,

'Courts don't have proper infrastructure. Both hardware and software for conducting VC, the server and the bandwidth provided to the Courts have a very low configuration. Due to this, connectivity problem arises which leads to video blurring and voice quality deterioration. So, it thereby prejudices the entire judicial process.'

2.23 Speaking about technical glitches the Secretary, Department of Justice said,

'On the issue of videoconferencing facility, it is true that the video link is already about six years old. It has become outdated and the number of licenses that we have is a limited number, which we are not able to scale up. We have already taken it up through the Ministry of Electronics and Information Technology and NIC to come up with a Centralised Video Conferencing Infrastructure which would be going down right up to the District and Subordinate Court level which can be based on cloud computing so that disruptions do not take place'.

2.24 The Committee recommends the Department of Justice to step up efforts to provide WAN connectivity and superior quality videoconferencing facilities to all Court complexes across the country under Phase II of e Courts project more ambitiously within the prescribed timeline. The Committee recommends that Government may explore the feasibility of roping in the private sector to eliminate the technical glitches and improve service quality, if need be. The Committee appreciates the proposal to establish a centralized Video conferencing infrastructure and hopes that the proposal will be materialized soon.

2.25 Speaking on the importance of uninterrupted power supply, a Member opined

'While conducting the proceedings, if power supply at one end gets disturbed, whole proceedings get vitiated.'

2.26 The Committee recommends that Judiciary may consider promoting harnessing of renewable energy in all Court complexes as it entails twin benefits of uninterrupted power supply and positive ecological impact.

Open Court principle

2.27 The representatives of the Bar expressed concern over the opaqueness of Virtual Court hearings as said that Virtual Courts threaten the constitutionality of Court proceedings

and undermine the importance of Rule of law which forms a part of the Basic structure of the Constitution.

2.28 Briefing the Committee as to how Virtual Court hearings go against the spirit of Open Court principle, a representative of the Bar said,

'First, this is by itself antithetical to the concept of open Courts. Open Court system is what has been emphasized by not just our legislature but even the Judiciary, in their own orders and in their pronouncements, has emphasized on an open Court system. But in a Virtual Court, the very fact that process which is being adopted is itself antithetical to that concept because there is a limited access.'

2.29 The Committee was informed that virtual hearings are not in consonance with the concept of open Court encapsulated in the *Constitution of India* under Article 145(4); Section 327 of the *Code of Criminal Procedure, 1973*; and Section 153B of the *Code of Civil Procedure, 1908*.

2.30 Emphasising on the need of making hearings transparent, a member of the Committee remarked,

'There is Canada High Court Judgement which talks about openness and transparency. It says that public should know even if there is videoconferencing. Even in England, they have amended the Law recently. In the amendment, they have said that public should have access.'

2.31 Speaking on the necessity of live streaming of Court proceedings, a Member opined,

'I think we are one of the few democratic countries where the Court proceedings are not recorded. I think, now the time has come for the Parliament to insist that Court proceedings must be recorded because as we are accountable, Judiciary must also be held accountable'

2.32 The Hon'ble Supreme Court has reaffirmed the importance of open Court principle on multiple occasions and further observed that live streaming of Court hearings is an extension of Open Court principle. In *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Ors*, the Hon'ble Supreme Court stated,

"... Public trial in open Court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice."

2.33 The Committee also notes that in 2018, the Supreme Court had, in *Swapnil Tripathi vs. Supreme Court of India*, espoused the benefits of adopting technology in the judicial system, particularly live streaming of Court proceedings: Highlighting the potential "tangible and intangible benefits" to stakeholders, especially litigants, the Court had observed that

*“technology could epitomize transparency, good governance and accountability, and more importantly, open the vista of the Court rooms, transcending the four walls of the rooms to accommodate a large number of viewers to witness the live Court proceedings.”*In the same judgment, the Supreme Court also recognized that live streaming of Court proceedings had been implemented in other jurisdictions globally.

2.34 The Committee further notes that in *Indira Jai Singh vs. Secretary General of Supreme Court & Ors (2018)* has inter alia observed that : (i) It is important to re-emphasise the significance of live streaming as an extension of principle of open justice and open Courts; (ii) The process of live streaming should be subjected to carefully structured guidelines;(iii) Initially, a pilot project may be conducted for about three months by live streaming only cases of national and constitutional importance which can be expanded in due course with availability of infrastructure. Department of Justice has informed that the e Committee of the Supreme Court has set up a Committee of 5 Judges to oversee and assist e-Committee of the Supreme Court in preparing guidelines for live streaming of cases to make justice delivery mechanism more transparent. The guidelines would cover all facets including technologies to be deployed, safeguards and proceedings. The report of the Committee is awaited.

2.35 The Committee is happy to note that in a first, the Madras High Court allowed live relay of Contempt proceedings initiated against lawyers to be viewed by advocates outside the Court campus on 1st October, 2015. And recently, the Calcutta High Court permitted live streaming of hearing in a case involving Parsi community saying that the proceedings would have ramifications for the entire community across the country in February 2020.

2.36 Also, more recently, the High Court of Gujarat, while hearing a petition seeking public access to Virtual Court hearings observed,

*“the right to know and receive information is one of the facets of Article 19(1)(a) of the Constitution and for which reason, the public is entitled to witness the Court proceedings involving the issue having an impact on the public at large or a section of the public, as the case may be.”*The Bench observed: *“To observe the requirement of an open Court proceedings, the members of the public should be allowed to view the Court hearings conducted through the video conferencing, except the proceedings ordered for the reasons recorded in writing to be conducted in-camera.”*

2.37 Following that, the High Court of Gujarat constituted a Committee of two High Court Judges for the purpose of working out the modalities to facilitate the people at large including the media to watch the virtual hearing.

2.38 The Committee notes that world over, Court proceedings are recorded in some form or the other. The apex Court has time and again emphasized the significance of live streaming of Court proceedings in promoting openness and transparency which in turn reinforce public faith in judicial system. The Committee agrees with the observation made by the apex Court that live streaming Court proceedings, especially cases of constitutional and national importance having an impact on public at large or a section of the public will promote transparency and openness. The litigant need not

come to the Court to watch the proceedings and thus will reduce crowding inside the court. The Judiciary may also consider broadcasting virtual hearings of certain specified categories of cases to further the principle of open justice and open Court.

Data privacy and Data security

2.39 There are concerns that Virtual Courts will compromise privacy of data as well as confidentiality of discussions and Court proceedings. For instance, Courts in the United States had to deal with Zoom bombing, an unwanted intrusion by hackers and internet trolls into a video conference call, while conducting Court proceedings through videoconferencing using Zoom which is a third party software application. Currently, third-party software applications such as Vidyo, Cisco and Jitsi are being used in India for conducting Court hearings through videoconferencing.

2.40 Expressing concern over third party software applications, a representative of the Bar said,

‘When Virtual videoconferencing and Virtual hearing started, one of the software platforms was basically rejected by all on the ground that it is insecure. We are talking of insecure systems, those systems which the presiding officers are using.’

2.41 The Committee thinks that third-party software is not only an unviable option but poses a major security risk as such software programs and applications are prone to hacking and manipulation. The Committee recommends the Ministry of Law and Justice and Ministry of Electronics and Information Technology to address data privacy and data security concerns while developing a new platform for India’s judicial system.

2.42 Speaking on the need of having a secure indigenous electronic document exchange system, a Member opined as follows:

‘As Courts are moving towards VC, the need for Electronic Document Management System intensifies. Currently, neither the Courts nor the Counsel appearing for the parties have any option for secured transmission of documents’

2.43 The Committee recommends that Block chain technology should be leveraged to improve reliability of evidence and security of transactions and to fortify digital security of case files. Proper standardized systems of authentication need to be put in place. Online systems should be underpinned by proper procedural safeguards.

Indigenous Hardware and Software

2.44 The Committee is of the view that India can become a role model for the world in the arena of legal and Courtroom technology given our remarkable achievements in IT and IT enabled services sector. Technologies must be built and incorporated in the Court systems in such a manner that fundamental legal principles such as participatory justice, fairness, impartiality and access to justice are not compromised.

2.45 While expressing concern over technical glitches a Member said,

'NIC should develop an efficient system which can be accessed across the Country, especially, a customised application which is efficiently and cheap for videoconferencing.'

2.46 The Committee is of the opinion that antiquated working practices may well be jettisoned for better outcomes. Technology should be employed so as to effect changes that are both incremental and transformational. Besides streamlining and optimizing inefficient manual processes through a host of small refinements, innovative technologies like machine learning, artificial intelligence and block chain technology may be employed to bring about a transformational change.

2.47 While suggesting certain reform measures to bring about improvement in the existing Virtual Courts system, a Member said,

'India is known as the home of software. The Whole World looks to us. We have companies like TCS, Infosys, HCL, Wipro and so many other companies.'

2.48 The Committee recommends that Ministry of Electronics and Information Technology may be approached by the Administrative Ministry to develop indigenous Software applications to handle Virtual Court hearings. The Committee also recommends to rope in Private IT companies, if need be, to develop Artificial intelligence systems capable of supporting bulk documentation, remote location of parties and sophisticated use of graphics.

2.49 The Committee believes that Legal technology Start ups engaged in innovative solutions can play a crucial role in harnessing the unlimited potential of technology to connect stakeholders in the justice delivery system and in finding solutions that are affordable and efficient and therefore recommends the Government to promote them.

Infrastructural Constraints and need for a revised policy

2.50 The Calcutta High Court Bar Association in its written replies to the Committee apprised how infrastructural deficiencies are crippling Virtual Court hearings. The Bar Association stated,

'There are 38 Judges in the Calcutta High Court but there is not sufficient infrastructure to enable all Hon'ble Judges to undertake virtual hearings. For example, on 03.08.2020 only 8 Hon'ble Judges were able to take up matters virtually both in Division Bench as well as singly.'

2.51 Expressing concern about the poor state of judicial infrastructure in the Country, a member of the Committee said,

'You are talking about the Supreme Court and the High Courts. Go to the lower level of District Courts and Mofussil Courts. Judges don't have connection. There is no Wifi facility. So, Videoconferencing is practically a nonstarter in District Courts.'

2.52 The above two observations are strengthened by the findings of National Council of Applied Economic Research which has made the following observation in its Report entitled 'Evaluation study of e-Courts Integrated Mission Mode Project'

‘Court complexes in remote locations suffer due to low connectivity. One main important condition for the success of the project is uninterrupted connectivity. Internet as well as electrical connectivity needs to be improved.’

2.53 The Committee is constrained to note that District and Subordinate Courts lack basic infrastructure and are experiencing difficulties in adapting to Virtual Court system. The Committee understands that transition from physical Courtrooms to Virtual Courtrooms requires massive investment as basic infrastructure required to support digitized Court hearings such as electronic case files, equipment to project documents and images, audio and video, tools to record hearings, videoconferencing and reliable WiFi needs to be put in place. Since transition to Virtual Courts requires high initial investment, the Committee desires that feasibility of new financing approaches such as PPP model may be examined. The committee also feels that since the stake holders are advocates, the Bar council of India should advise the respective state bar councils to conduct crash classes to equip the advocates for handling Online/Virtual Courts. The Bar Council of India should also address the problems of advocates hailing from the weaker sections relating to acquisition of necessary infrastructure to support online Virtual Courts in view of the transition having taken place suddenly.

Tardy progress of e Courts Integrated Mission mode project

2.54 Indian Judiciary has been faced with a huge number of pending cases. Preservation and orderly arrangement of records and their retrieval in manual mode has become extremely difficult. To solve such serious problems and to make the judicial system efficient, efforts to computerize some of its processes have been going on since 1990s. However, the need was felt to make the programme of ICT enablement of the Indian Judiciary mission-critical. Consequently, the e- Committee was formed in 2004 to draw up an action plan for ICT enablement of the Judiciary with the Patron-in-Chief-cum-Adhoc Chairman as the Chief Justice of India.

2.55 The e Courts Integrated Mission mode project is a Pan India e governance project being implemented in High Courts and district/subordinate Courts of the country. The project has been conceptualized on the basis of National policy and Action plan for implementation of Information and Communication Technology in the Indian Judiciary by the e Committee of the Supreme Court. The project is monitored and funded by the Department of Justice and implemented by National Informatics Centre (NIC).

2.56 e-Courts project has been initiated with the objective of providing services to all key stakeholders including the Judiciary, the District and Subordinate Courts and Citizens/lawyers/litigants through ICT enablement of all District and Subordinate Courts in the country by providing Computer Hardware, Local Area Network, WAN/broadband Connectivity and installation of Case Information software at each Court complex and making the justice delivery system more affordable, accessible, cost effective, transparent and accountable. The first phase of the project was implemented during 2007-2015 and the second phase was launched in 2015 and is currently going on.

2.57 Various activities taken up under phase- I and being taken up under phase II of e-Courts project are listed below:

S.No.	Component	Brief description
1	Hardware for Courts	Each Court complex has been equipped with the required hardware such as desktops, printers, servers and scanners. Computerisation of 14249 District and Subordinate Courts with 4 computers provided per Court.
2	Hardware to judicial officers	Laptops, printers, provided to 14309 judicial officers to enhance the capacity of all judicial officers. UPS and DG sets have been provided to create necessary power back up to desktops and servers.
3	Software	Case Information software (CIS) has been developed and made available for deployment at all computerized Courts. CIS automates the case management lifecycle and all major processes such as case filing, scrutiny, registration, allocation and Court diary/proceedings. Cause lists, case status, certified copies of orders and copy of judgements can be viewed/downloaded with the help of CIS. Entry of data regarding past cases has been initiated and data in respect of over 72 million cases is available online
4	Creation of a computer room/Site preparation and setting up of Judicial Service Centres	A dedicated area for housing the servers and related ICT equipment has been set up at each Court complex. Judicial Service Centres (Citizen-service interface counter) have been established at all computerised Courts which serves as a single window for filing petitions and applications by litigants/lawyers as also obtaining information on ongoing cases and copies of orders and judgements etc..
5	Change Management and Training	ICT training has been imparted to judicial officers and Court staff to make them familiar with and proficient in the use of ICT tools. 14000 Judicial Officers trained in the use of UBUNTU-Linux OS and 4000 Court staff trained in CIS software. Technical manpower has been deployed at all District Courts, High Courts, High Court Benches and Supreme Court under the project to provide 'trouble shooting' support, necessary maintenance and training support at the Court Complex and assist in the transition from a manual case management system towards an ICT enabled one.
6	Process Re-engineering	Process Re- engineering Committees set up in all High Courts to review existing rules, processes, procedures and forms.
7	Video Conferencing	VC be rolled out in 500 locations across the country.
8	Service Delivery	The e-Courts portal has become operational; provides online services such as case registration, cause list, case status, daily orders, and final judgements.

S.No.	Component	Brief description
9	National Judicial Data Grid	NJDG is intended to be the national data warehouse for case data for all district and subordinate Courts across the country. Litigants can access case status information in respect of pending and decided cases and orders/judgements pertaining to district and subordinate Courts.
10	Communication, Connectivity and Local Area Network	Installation of Local Area Network, provision of internet. All Court Complexes are connected under the State Wide Area Network and also provide last mile connectivity from SWAN's point of presence to the Court complexes.
11	Digital Signature	Digital Signature certificates have been provided to all judicial officers to enable them to sign the judgement or any electronic official documents digitally when required.

2.58 Department of Justice in its written replies to the Committee stated that the following additional areas are proposed to be covered under Phase II of *e-Courts* project:

- Dedicated central video conferencing infrastructure for Courts.
- Additional video conferencing equipment for Courts, jails
- Video conferencing facility for advocates.
- Strengthening the existing e-Filing infrastructure.
- e-Payments.
- Scanning and digitization of case records.
- Live streaming of virtual hearings
- More Helplines and *e-Sewa Kendras*
- Improved power backup facilities
- Greater emphasis on awareness creation and training of advocates to get used to *e Court* services.

2.59 The Committee is happy note the progress made so far because taking all paper work of Courts to an online platform is a huge task in itself. However, the Committee is constrained to state that this progress is not sufficient and the gaps are glaring.

2.60 According to the data provided by the *e-Committee* of Supreme Court to the Department of Justice, the number of functional Court rooms provided with Video Conferencing is 3477 and number functional Court rooms which would still require this facility is 14443.

2.61 While expressing concern over the state of infrastructure in the Judiciary, a Member said,

'We are connecting the whole world and yet we cannot connect our Courts. This is something that does not make sense at all.'

2.62 Statistics seem to corroborate the above observation, as per the data provided by the Department of Justice as many as 2992 sites are yet to get WAN connectivity.

Status of WAN Connectivity as on 21st August, 2020:

Total sites to be connected	2992
Commissioned as on date	2882
TNF(technically not feasible) sites	58
Work in progress by BSNL	21
Sites still to be connected	31

2.63 Digitization of case files is also progressing at snail's pace. The position with regards to the High Courts and District Courts is as under:

S.No	High Court	Status of Scanning in High Court		Status of Scanning in District Court	
		Disposed of cases.	Pending cases.	Disposed of cases.	Pending cases
1	Allahabad	At Allahabad: More than 26.27 lac files containing more than 16 Cr pages and at Lucknow: more than 6.88 lac decided case files containing more than 3.67 Cr have been scanned/ digitised till date.	As estimated at Allahabad = more than 36 lac decided case files and as estimated at Lucknow= more than 23 lac decided case files.	Not Started	Not started
2	Andhra Pradesh	The High Court of Andhra Pradesh at Amaravati has been established from 01-01-2019. The Scanning & Digitization of Judicial and Administrative records is yet to be commenced.		Not Started	Not started
3	Bombay	Software is under development by the vendor	Software is under development by the vendor	Software modifications pending Scanning Count - Mumbai 3237891 and Washim-3112937	Software is under development by the vendor
4	Calcutta	1,22,62,298 pages have been scanned.	Not started	Not Started	Not started
5	Chhattisgarh	Started at High Court of Chhattisgarh	Not Started	Not Started	Not started

S.No	High Court	Status of Scanning in High Court		Status of Scanning in District Court	
		Disposed of cases.	Pending cases.	Disposed of cases.	Pending cases
6	Delhi	Total number of scanned pages (pending & disposed of cases) is 17,65,50,901.	Presently, all the fresh filings (other than e-filings) are scanned at the time of filing. Pending cases are continuously being scanned. All the pending cases to be listed before e-Courts are scanned on priority basis preferably 2-3 days before the date of hearing.	43278 (Approx)	4633 (Approx)
7	Guwahati (Assam)	Scanning of disposed of cases is going on	Not started	Scanning of disposed of cases are going on.	Not started
8	Gujarat	Scanning initiated for Disposed as well pending cases. Scrutiny and porting to DMS is underway.	Scanning initiated for Disposed as well pending cases. Scrutiny and porting to DMS is underway.	Started on pilot basis for 10 lac pages	Not started
9	Himachal Pradesh	Approximately 95,421 cases are uploaded to DMS(Dspace)	Scanning of Pending cases not started yet.	Not Started	Not started
10	Jammu & Kashmir	Data not provided	Data not provided	Data not provided.	
11	Jharkhand	In Progress (481139 case files till 31st March 2020 have been scanned)	In Progress (308116 case files till 31st March 2020 have been scanned)	Not Started	Not started
12	Karnataka	Number of pages scanned till date 8440481	Number of pages scanned from 2011 to 2018- 63291	Pages pending and disposed 259592	

S.No	High Court	Status of Scanning in High Court		Status of Scanning in District Court	
		Disposed of cases.	Pending cases.	Disposed of cases.	Pending cases
13	Kerala	Pre-scanning activities commenced from 20.05.2020. As on 09.06.2020, 9627 files verified for scanning (417753 pages)	Not started	Not Started	Not started
14	Madhya Pradesh	38.63 Lakh files comprising of 15.02 Crore pages	Digitization/Scanning under progress	11 Crore pages completed at 25 Districts	Starting Shortly
15	Madras	Data not provided	Data not provided	Not Started	Not started
16	Manipur	11,14,537	Data not provided	Not Started	Not started
17	Meghalaya	Data not provided	Data not provided		
18	Orissa	Yes, it is ongoing for disposed of cases.	No	Not Started	Not started
19	Patna	1,65,02,486	40,194	Not Started	Not started
20	Punjab & Haryana	20,78,116	4,40,300	3,08,068 P	Not started
				4,43,862 H	Not started
				80900 C	Not started
21	Rajasthan	Scanning and digitization work of record disposed till the year 2015 is in progress. More than 20% work has been done.	Scanning work started only for Disposed Cases, work not started for Pending Cases	Not Started	Not started
22	Sikkim	completed till 2017	not completed	completed till 2018	not completed
23	Telangana	2,35,242 Cases comprising of 1,41,67,125 Pages	1,48,794 Cases comprising of 1,27,08,650 Pages	Not Started	Not started
24	Tripura	Not started	Not started	Not Started	Not started
25	Uttarakhand	Till 2015	Not started	Not Started	Not started

2.64 As far as e Filing is concerned, in about half of the states e Filing is still in the trial stage.

Status of Implementation of e-Filing is as under:

S.No	High Court	e-Filing	
		High Court	District Court
1	Allahabad	Yes	Yes
2	Andhra Pradesh	Yes	Testing
3	Bombay	HC CIS	Yes
4	Calcutta	Testing	Testing
5	Chhattisgarh	Yes	Yes
6	Delhi	Yes	Yes
7	Guwahati (Arunachal Pradesh)	Testing	Testing
8	Guwahati (Assam)	Testing	Testing
9	Guwahati (Mizoram)	Testing	Testing
10	Guwahati (Nagaland)	Testing	Testing
11	Gujarat	Testing	Testing
12	Himachal Pradesh	Yes	Yes
13	Jammu & Kashmir	Testing	Testing
14	Jharkhand	Yes	Yes
15	Karnataka	Testing	Yes
16	Kerala	Yes	Yes
17	Madhya Pradesh	Yes	Yes
18	Madras	Yes	Yes
19	Manipur	Testing	Testing
20	Meghalaya	Testing	Testing
21	Orissa	Yes	Yes
22	Patna	Testing	Testing
23	Punjab & Haryana	Yes	Yes
24	Rajasthan	Yes	Yes
25	Sikkim	Yes	Yes
26	Telangana	Testing	Testing
27	Tripura	Testing	Testing
28	Uttarakhand	Testing	Testing

The real benefit of Virtual Courts will percolate down only when there is sufficient infrastructure in place.

2.65 The Committee is unhappy to note that e Courts Integrated Mission mode project is progressing at a tortoise's pace. Without proper infrastructure in place, Virtual hearing of cases is an impossible proposition. Moreover, the Committee feels that the benefits of Virtual Courts will percolate down only when all Court Complexes are fully ICT enabled. The Committee strongly recommends the Department of Justice to take stock of the situation, introspect, identify the bottlenecks and take necessary remedial measures to ensure that the targets are achieved more ambitiously in prescribed timeframe.

2.66 The Committee notes that the Apex Court, High Courts and Subordinate Courts are at different stages of ICT enablement. Moreover, the world has seen staggering technological changes in the last decade. The Committee feels that there is a need to revise the National policy and Action plan for implementation of ICT in the Indian Judiciary was brought out in 2005. Therefore, the Committee recommends that the policy needs to be evaluated and revised in the light of transformation of legal landscape in the last fifteen years and a drive towards digital justice.

CHAPTER-III

BENEFITS OF VIRTUAL COURTS AND WAY FORWARD

3.1 Despite shortcomings, Virtual Courts have infinite benefits to offer for all the stakeholders involved. Moving to a largely virtual system has long term benefits for the judiciary, advocates and the public at large.

Management of Docket explosion

3.2 The Committee notes that India has been experiencing Docket explosion and Courts are staring at an avalanche of cases. At present, more than 30 million cases are pending in different Courts across the country. The problem of huge arrears of pending cases has been retarding the efficiency of justice dispensation system and the rights of citizens to timely delivery of Justice.

3.3 In spite of various attempts such as reforms in Procedural Laws, tribunalisation, adoption of Alternative Dispute Resolution mechanism, establishment of Fast Track Courts and constitution of Courts under different statutes, the reduction of arrears in Courts and ensuring timely Justice to the litigant public continue to be a major challenge to the Indian Judiciary.

3.4 The Committee believes that ‘Justice delayed is Justice denied’ but ‘Justice hurried is also Justice buried’. The Committee is of the view that Virtual Courts is a mechanism that will strike a balance between these two extremes and extends expeditious Justice to the litigant public without compromising quality. The Committee feels that transfer of certain categories of cases from regular Court establishments to Virtual Courts will reduce the pendency of cases which has been clogging the wheels of Justice for decades.

3.5 To continue with the functioning of Virtual Courts in all the Courts even during non pandemic time, the Committee feels that the present system should be allowed to continue on an experimental basis with the consent of all parties for certain categories of cases like Appeals etc and final hearings where physical presence of the parties/counsel is not required and online virtual hearing alone is sufficient. The expenditure involved in the establishment of a large number of Tribunals /Courts can be cut down sizeably. This will also reduce the crowd in the court and cut down other litigation costs and overheads.

3.6 The Committee is also of the opinion that Virtual Courts can be extended permanently to various Appellate Tribunals like TDSAT, IPAB, NCLAT etc., located across the country which do not require personal appearances of the parties/advocates. Permanent Virtual Courts can also be established for hearing matters relating to Administrative and other Tribunals at the time of final hearing. This will cut down the cost and increase the efficiency in disposal of the cases without being unnecessarily being adjourned. The Committee is also of the opinion that necessary Amendments may be brought in laws to legalise Virtual Courts and its proceedings without being unnecessarily challenged before Courts.

Promotes Docket Inclusion

3.7 The Committee notes that still in some parts of the country a substantial number of people have limited access to Justice and are unable to approach Courts due to locational or economic handicaps.

3.8 The Committee notes that India's Courts are organised based on pecuniary thresholds when it comes to civil matters and gravity thresholds (how grave the crime is) when it comes to criminal matters. This means, that more often than not, there is only one principal District Court for a whole district. In large states, some districts can be as large as some countries. Parties have to travel quite far to ensure that they can access the Court premises. Further, not just parties, their lawyers also must travel far to access Courts. On the appellate side of most High Courts, parties, and counsel, travel all the way from the districts to attend hearings.

3.9 The Committee believes that Virtual Courts can better promote the principle of Distributive Justice. Distributive Justice requires that Court services should be accessible to all and that the service should be affordable by all. No member of the general public should be disadvantaged by locational or economic handicaps or otherwise. The Committee is of the opinion that Digital Justice is cheaper and faster. People living in remote and far flung areas can also take part in Court proceedings through videoconferencing without having to spend a fortune to set foot in the Courtroom.

Access to Justice

3.10 The Committee notes that Goal 16 of the Sustainable Development Goals framework is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building accountable institutions at all levels. Target 16.3 *'Promote the rule of law at the national and international levels and ensure equal access to justice for all'* is to be achieved by 2030. The Committee hopes that Virtual Courts will help India accelerate progress towards achieving its SDG target 16.3 by 2030.

3.11 Access to Justice is a Fundamental Right. Virtual Court system can increase access to justice by addressing locational and economic handicaps. For instance, people from remote and far flung areas can access the Supreme Court through a competent lawyer without having to spend a fortune in travelling all the way to the National Capital time and again.

3.12 Videoconferencing facilitates a lawyer to argue in any Court in any part of India. Cases can be heard from several Courts in a single day. A lawyer can argue in one Court in the morning, and be present for a case in another Court later in the day. This is not possible with physical Court hearings. Thus, both advocates and litigants have wider choice and this will result in substantial reduction of costs associated with litigation in appellate Courts which may otherwise require instructing a local lawyer. Litigants need not leave their work to attend Court as they can access proceedings from their home or office. Virtual proceedings also mitigate significant logistical costs incurred in the transportation of prisoners between jail and Court.

3.13 Virtual Courts also enable vulnerable witnesses to provide testimony from a safer environment. Also, Virtual hearings are more convenient and less traumatic for children, women and victims of abuse and the differently abled who cannot easily attend physical hearings in Courtrooms.

3.14 The Committee also feels that at present, there is an enormous gulf between knowing one's rights and being able to enforce them. Only well resourced

individuals/organizations are able to deploy lawyers and fight for justice. Virtual Courts have the potential to bridge the gap between people 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. In the opinion of the Committee, Virtual Courts deliver ‘Enforceable Justice’.

Speedy Justice

3.15 The Committee notes that one of the principal benefits of Virtual Courts is that they expedite processes and procedures which would otherwise be protracted and laborious. Virtual Courts can deliver results faster and with fewer resources. Virtual Courts also reduce commute time to the Courts and wait time at the Courts. Dedicated time slots will in still more disciplined time management.

3.16 Virtual Courts helps in concise, pointed and focused arguing by lawyers making the system faster. Drawing a comparison between Virtual Court hearings and regular Court hearings, the Secretary, Department of Justice said,

‘Videoconferencing has led to a change in style and approach before the Court. Now, you have to go in for very concise oral arguments. You don’t have time to carry on arguments for a very long time. There is also a change in the manner in which you handle witnesses and adversaries. That also has changed quite a bit as compared to an open Court where the entire spirit and ethos are a little different.’

3.17 Also, the problem of truncated hearings interspersed by frequent adjournments can be avoided as there can be no excuse for litigants and lawyers not being able to attend Court. Repeated adjournment of cases, truncated hearings are resulting in rescheduling Court process and disrupting the progress of the case.

3.18 The Committee is of the opinion that introduction of Virtual Courts would result in an improvement over traditional Courts as they are more affordable, citizen friendly and offers greater access to justice. They yield substantial savings in costs for both individual litigants and Courts. Traditional Courts, by and large, are accessible to very few people and even then only at disproportionate expense and effort, Virtual Courts can help overcome these injustices.

Proportionate Justice

3.19 The Committee feels that the Court system is already bogged down by arrears. The Committee notes that at present there is no mechanism to segregate simple cases which can be disposed of within shortest possible time as compared to complex cases involving cumbersome procedures and number of witnesses. Petty cases which constitute a major chunk of the caseload need to be separated from complex ones.

3.20 In the opinion of the Committee, Virtual Courts can better promote the principle of Proportionate Justice. The principle of Proportionate Justice requires that the expense, speed, complexity and the extent of combativeness of any case should be proportionate to the substance and scale of that case. The Committee feels that there should be some mechanism to segregate simple cases from complex ones .In simple

terms, one should not use a sledge hammer to crack a nut. Petty cases should be dealt with swiftly in a reasonable timeframe. Such cases should not require cumbersome procedures.

Pilot project and the way forward

3.21 The representatives of the Bar contended that Virtual Courts do injustice to the art of advocacy as they deprive the advocates of an opportunity to argue and put forth one's case and change the course of arguments based on the changing dynamics of a case during the hearing. Most lawyers find it difficult to present their case efficiently and effectively via videoconferencing.

3.22 They further submitted that an advocate gets to understand the mood of the judges and stands a better chance at convincing them during physical hearings. However, online hearing creates a psychological pressure on both the advocates as well as the judges. Physical presence can serve important expressive functions, particularly during cross-examination, which ultimately leads to the discovery of truth. Evidence recorded by means of video conferencing may distort non-verbal cues such as facial expressions, postures, and gestures. For instance, delayed streaming may come in the way of detecting facial reactions. Even in a live stream that is working perfectly, merely the face of a person may overemphasize facial expression while leaving gestures partially obscured or out of view entirely.

3.23 The Coordination and cooperation between the briefing counsel and the arguing counsel is completely lost in virtual hearings which actually works to the detriment of the litigant besides leading to lengthier arguments. Moreover, cases which require intensive and elaborate hearing on facts and points of law cannot be effectively heard and disposed of by Virtual Courts. An inability to cross-examine properly inadvertently increases the risk of error. A representative of the Bar said,

'....That integrity portion or that element of honesty and transparency is totally lost. I do not know who all are sitting next to the witness or to the opposite side. My screen is basically limited to his camera and whatever his webcam can see is all that I can see. I really do not know whether he is under duress; he is under coercion or he is being tutored'

3.24 They further opined that holding of trials through videoconferencing would have several pitfalls and could be a tool for misuse in the hands of unscrupulous litigants. The whole purpose of judicial tools such as cross examination would be defeated. The trial through videoconferencing would encourage witness tutoring and prompting. It would be extremely tough to confront witnesses over Video conferencing.

3.25 Speaking on the shortcomings of Virtual Court hearings, a representative of the Bar said,

'In some cases, there are hundreds of documents which are filed and referring to those documents is very difficult. The Judge, who is hearing the matter, sometimes has a hard copy of the file before him. In many cases, they don't have it. They simply have the pleadings before them. They don't have the documents before them. They don't have the evidence recorded in the

matter before them. So, how do we address a matter before the Virtual Court? In the absence of complete pleadings, complete documents and evidence before the Judge, how can we argue? It is not a system which is working genuinely and realistically. There is a lot of scope for improvement’.

3.26 The Committee is of the view that digital transformation of the Judiciary has important implications for clearing the significant backlog of cases which the judiciary is burdened with. Technology may, in fact, be a catalyst for simplifying processes and making manual processes redundant. It will make justice accessible and affordable to a large section of the population and help in overcoming physical and logistical barriers which prevent many litigants from seeking justice.

3.27 Virtualized proceedings overcome distance, logistics, delays and costs that currently bedevil the Court systems world over. Recently, Justice Chandrachud stated that Virtual Courts launched to settle Traffic Challan cases collected 101.74 crores till date, all that without the parties having to assemble in the traditional brick and mortar Courtroom. Despite infrastructure bottlenecks, over 15 lakh hearings were conducted over videoconferencing during the lockdown period.

3.28 The Committee fully understands that Virtual Courts have their own shortcomings, however they constitute an advancement over the existing system, and therefore, on the overall, they are worth embracing. These current shortcomings might be overcome through existing and emerging technologies. Periodical interaction of bar and bench with the technical persons by establishing committees in each Courts/Tribunal will help sort out the grievances relating to Virtual Courts and other issues then and there.

3.29 The Committee is of the opinion that a full fledged Virtual Court should be piloted in the first instance. This allows the system to be tested in practice which can then refined in the light of the feedback received from different stakeholders. It also enables the judiciary to identify the type of cases best suited to Virtual Courts.

3.30 The Committee also recommends Ministry of Electronics and Information Technology to employ globally tried and tested tools such as Immersive tele presence technology, augmented reality systems to make virtual hearings more lifelike and engaging.

Integration of Virtual Courts into the Legal Ecosystem.

3.31 Information and Communication technologies have impacted every facet of human life. Global legal systems are increasingly embracing evolving technologies to keep pace with the information society. It is time, the Court room which is often regarded as the last bastion of antiquated working practices opens its doors to latest technology. Multiple factors such as constantly increasing case load, huge pendency of cases, resource constraints, need to improve access to justice, need to improve efficiency and effectiveness of Court proceedings, increasing demand for transparency and accountability and greater expectations on the ability to access information and transact with the Court remotely make a case for Virtual Courts in India.

3.32 In 19th Century, Justice Benjamin Cardoso said, “New times demand new measures and new men” in the field of law or elsewhere. This statement is very much relevant to the current situation. The Committee is of the considered opinion that

traditional Courtrooms may well remain necessary for our future, but they are certainly not sufficient. There is a need to integrate Virtual Courts into the country's legal ecosystem.

3.33 To begin with, Judiciary may identify categories of cases that can be tried by Virtual Courts. Department of Justice in its written replies to the Committee submitted that the following cases may be tried in the Virtual Court-Offences under Motor Vehicles Act (Traffic Challan cases), Petty offences where summons can be issued under Section 206 of CrPC., Cases registered under Section 138 of Negotiable Instruments Act, Motor Accident Claim Petition cases. The Committee is of the view that all such matters where personal presence may be dispensed with, can be transferred from regular Court establishments to Virtual Courts. The Committee believes that Virtual adjudication will bring massive benefits across the system.

3.34 In respect of complex cases such as those involving interpretation of Law, facts, examination of a large number of witnesses and so forth, a hybrid model may be adopted wherein manual processes such as filing of plaint, vakalatnama, issuing of summons etc.. may be automated and digitized and the hearing may be held in a physical Courtroom.

3.35 Since integration of Virtual courts into the legal ecosystem will have a significant impact on all stakeholders, the Committee feels that Members of Bar Associations and Bar councils must also be involved in evolving a consensual process. This would avoid unnecessary opposition and irritants.

3.36 The facility of Virtual Courts extended to lawyers should also be considered for extension to private litigants who appear in person or have to travel to High Courts from different states and cities and places. This would go a long way in strengthening public confidence and improving perception about the reachability of the judicial system.

3.37 The concept of Virtual Courts has gained immense ground during COVID-19 Pandemic times. It is and will remain the new reality and the new normal. The Committee, therefore, recommends that the concept of Virtual Courts may well be extended to cover arbitration hearings, conciliation and Summary trials. For instance, if national and international arbitrations are allowed to be conducted through Virtual Courts , there will be hardly any requirement for real time travel to distant locations. The Committee believes that this move will unlock the Courts and also mitigate the inconvenience of attending Courts as long distance travels can be dispensed with and proceedings become less expensive as well.

RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE - AT A GLANCE

CHAPTER-II

CHALLENGES OF VIRTUAL COURTS

1. Department of Justice in its written replies to the Committee submitted that *E-Seva* kendras have been established in all the High Courts and in one District Court in each state as a part of a pilot project to provide assistance to lawyers and litigants ranging from information to facilitation and e filing. The Committee is highly appreciative of this initiative and believes that *E-Seva* Kendras will go a long way in bridging the ‘access divide’ and hopes that such facilitation centres be set up in all Court complexes across the country at the earliest. The Committee recommends that the feasibility of involving private agencies/service providers who can help people who are not tech savvy in connecting with Courts by taking VC equipment to their door steps on payment may be explored. (Para 2.7)
2. As regards connectivity divide, the Committee recommends the Ministry of communications to step up efforts to ensure timely implementation of National Broadband mission which envisages broadband access to all so that the services provided by indigenous communication satellites are fully harnessed and the goal of Universal broadband access is achieved. (Para 2.9)
3. The Committee is of the opinion that the Judiciary may also consider such innovative solutions as launching mobile videoconferencing facilities for the benefit of advocates and people living in remote areas. (Para 2.10)
4. The Committee is of the view that with the advent of Information technology, there is not a single facet of human life that is left untouched by it. ICT has also transformed the legal landscape in India and the Indian judiciary has come a long way from a paper-based era to the one dominated by digital technology and is now moving towards cloud based technology. The Committee believes that in coming times, technology will emerge as a game changer and advocates would be required to use technological skills in combination with their specialized legal knowledge and therefore, they should keep up with the changing times. (Para 2.13)
5. To address ‘skill divide’, the third facet of digital exclusion as mentioned previously, the Committee recommends that training and awareness programmes should be conducted in all Court complexes across the country including Subordinate Courts in order to acquaint advocates with the technology and to enable them to acquire skills required for handling digital platforms so that advocates operate digital platforms themselves. (Para 2.15)
6. The Committee also recommends that the Bar Council of India may introduce computer course as one of the subjects in three year/five year courses to enable the students to get trained in handling computers and get adapted to the online systems while they pursue the Law Course. This will help educate and equip budding lawyers with knowledge and skills required for handling digital platforms. (Para 2.17)

7. The Committee understands how poor quality audio/video, frequent loss of connection, disruptions and high latency affects judicial assessment of demeanour, emotions and other nonverbal cues and the changing communication dynamics which are also important variables in deciding a case. The Committee is of the view that improving the quality of Courtroom technology is a necessary pre condition for virtualization of Court proceedings. The Committee also recommends that a study of Courtroom design be commissioned and customized software and hardware to facilitate Virtual Court hearings be developed to suit the needs of Indian judiciary. (Para2.20)
8. The Committee recommends the Department of Justice to step up efforts to provide WAN connectivity and superior quality videoconferencing facilities to all Court complexes across the country under Phase II of e Courts project more ambitiously within the prescribed timeline. The Committee recommends that Government may explore the feasibility of roping in the private sector to eliminate the technical glitches and improve service quality, if need be. The Committee appreciates the proposal to establish a centralized Video conferencing infrastructure and hopes that the proposal will be materialized soon. (Para2.24)
9. The Committee recommends that Judiciary may consider promoting harnessing of renewable energy in all Court complexes as it entails twin benefits of uninterrupted power supply and positive ecological impact. (Para2.26)
10. The Committee notes that world over, Court proceedings are recorded in some form or the other. The apex Court has time and again emphasized the significance of live streaming of Court proceedings in promoting openness and transparency which in turn reinforce public faith in judicial system. The Committee agrees with the observation made by the apex Court that live streaming Court proceedings, especially cases of constitutional and national importance having an impact on public at large or a section of the public will promote transparency and openness. The litigant need not come to the Court to watch the proceedings and thus will reduce crowding inside the court. The Judiciary may also consider broadcasting virtual hearings of certain specified categories of cases to further the principle of open justice and open Court. (Para2.38)
11. The Committee thinks that third-party software is not only an unviable option but poses a major security risk as such software programs and applications are prone to hacking and manipulation. The Committee recommends the Ministry of Law and Justice and Ministry of Electronics and Information Technology to address data privacy and data security concerns while developing a new platform for India's judicial system. (Para2.41)
12. The Committee recommends that Block chain technology should be leveraged to improve reliability of evidence and security of transactions and to fortify digital security of case files. Proper standardized systems of authentication need to be put in place. Online systems should be underpinned by proper procedural safeguards. (Para2.43)

13. **The Committee recommends that Ministry of Electronics and Information Technology may be approached by the Administrative Ministry to develop indigenous Software applications to handle Virtual Court hearings. The Committee also recommends to rope in Private IT companies, if need be, to develop Artificial intelligence systems capable of supporting bulk documentation, remote location of parties and sophisticated use of graphics. (Para2.48)**
14. **The Committee believes that Legal technology Start ups engaged in innovative solutions can play a crucial role in harnessing the unlimited potential of technology to connect stakeholders in the justice delivery system and in finding solutions that are affordable and efficient and therefore recommends the Government to promote them. (Para2.49)**
15. **The Committee is constrained to note that District and Subordinate Courts lack basic infrastructure and are experiencing difficulties in adapting to Virtual Court system. The Committee understands that transition from physical Courtrooms to Virtual Courtrooms requires massive investment as basic infrastructure required to support digitized Court hearings such as electronic case files, equipment to project documents and images, audio and video, tools to record hearings, videoconferencing and reliable WiFi needs to be put in place. Since transition to Virtual Courts requires high initial investment, the Committee desires that feasibility of new financing approaches such as PPP model may be examined. The committee also feels that since the stake holders are advocates, the Bar council of India should advise the respective state bar councils to conduct crash classes to equip the advocates for handling Online/Virtual Courts. The Bar Council of India should also address the problems of advocates hailing from the weaker sections relating to acquisition of necessary infrastructure to support online Virtual Courts in view of the transition having taken place suddenly. (Para2.53)**
16. **The Committee is unhappy to note that e Courts Integrated Mission mode project is progressing at a tortoise's pace. Without proper infrastructure in place, Virtual hearing of cases is an impossible proposition. Moreover, the Committee feels that the benefits of Virtual Courts will percolate down only when all Court Complexes are fully ICT enabled. The Committee strongly recommends the Department of Justice to take stock of the situation, introspect, identify the bottlenecks and take necessary remedial measures to ensure that the targets are achieved more ambitiously in prescribed timeframe. (Para2.65)**
17. **The Committee notes that the Apex Court, High Courts and Subordinate Courts are at different stages of ICT enablement. Moreover, the world has seen staggering technological changes in the last decade. The Committee feels that there is a need to revise the National policy and Action plan for implementation of ICT in the Indian Judiciary was brought out in 2005. Therefore, the Committee recommends that the policy needs to be evaluated and revised in the light of transformation of legal landscape in the last fifteen years and a drive towards digital justice. (Para2.66)**
18. **The Committee believes that 'Justice delayed is Justice denied' but 'Justice hurried is also Justice buried'. The Committee is of the view that Virtual Courts is a mechanism that will strike a balance between these two extremes and extends expeditious Justice to the litigant public without compromising quality. The**

Committee feels that transfer of certain categories of cases from regular Court establishments to Virtual Courts will reduce the pendency of cases which has been clogging the wheels of Justice for decades. (Para3.4)

19. To continue with the functioning of Virtual Courts in all the Courts even during non pandemic time, the Committee feels that the present system should be allowed to continue on an experimental basis with the consent of all parties for certain categories of cases like Appeals etc and final hearings where physical presence of the parties/counsels is not required and online virtual hearing alone is sufficient. The expenditure involved in the establishment of a large number of Tribunals /Courts can be cut down sizeably. This will also reduce the crowd in the court and cut down other litigation costs and overheads. (Para3.5)
20. The Committee is also of the opinion that Virtual Courts can be extended permanently to various Appellate Tribunals like TDSAT, IPAB, NCLAT etc., located across the country which do not require personal appearances of the parties/advocates. Permanent Virtual Courts can also be established for hearing matters relating to Administrative and other Tribunals at the time of final hearing. This will cut down the cost and increase the efficiency in disposal of the cases without being unnecessarily being adjourned. The Committee is also of the opinion that necessary Amendments may be brought in laws to legalise Virtual Courts and its proceedings without being unnecessarily challenged before Courts. (Para3.6)
21. The Committee believes that Virtual Courts can better promote the principle of Distributive Justice. Distributive Justice requires that Court services should be accessible to all and that the service should be affordable by all. No member of the general public should be disadvantaged by locational or economic handicaps or otherwise. The Committee is of the opinion that Digital Justice is cheaper and faster. People living in remote and far flung areas can also take part in Court proceedings through videoconferencing without having to spend a fortune to set foot in the Courtroom. (Para3.9)
22. The Committee also feels that at present, there is an enormous gulf between knowing one's rights and being able to enforce them. Only well resourced individuals/organizations are able to deploy lawyers and fight for justice. Virtual Courts have the potential to bridge the gap between people 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. In the opinion of the Committee, Virtual Courts deliver 'Enforceable Justice'. (Para3.14)
23. The Committee is of the opinion that introduction of Virtual Courts would result in an improvement over traditional Courts as they are more affordable, citizen friendly and offers greater access to justice. They yield substantial savings in costs for both individual litigants and Courts. Traditional Courts, by and large, are accessible to very few people and even then only at disproportionate expense and effort, Virtual Courts can help overcome these injustices. (Para3.18)

24. **In the opinion of the Committee, Virtual Courts can better promote the principle of Proportionate Justice. The principle of Proportionate Justice requires that the expense, speed, complexity and the extent of combativeness of any case should be proportionate to the substance and scale of that case. The Committee feels that there should be some mechanism to segregate simple cases from complex ones .In simple terms, one should not use a sledge hammer to crack a nut. Petty cases should be dealt with swiftly in a reasonable timeframe. Such cases should not require cumbersome procedures. (Para3.20)**
25. **The Committee is of the view that digital transformation of the Judiciary has important implications for clearing the significant backlog of cases which the judiciary is burdened with. Technology may, in fact, be a catalyst for simplifying processes and making manual processes redundant. It will make justice accessible and affordable to a large section of the population and help in overcoming physical and logistical barriers which prevent many litigants from seeking justice. (Para3.26)**
26. **The Committee fully understands that Virtual Courts have their own shortcomings, however they constitute an advancement over the existing system, and therefore, on the overall, they are worth embracing. These current shortcomings might be overcome through existing and emerging technologies. Periodical interaction of bar and bench with the technical persons by establishing committees in each Courts/Tribunal will help sort out the grievances relating to Virtual Courts and other issues then and there. (Para3.28)**
27. **The Committee is of the opinion that a full fledged Virtual Court should be piloted in the first instance. This allows the system to be tested in practice which can then refined in the light of the feedback received from different stakeholders. It also enables the judiciary to identify the type of cases best suited to Virtual Courts. (Para3.29)**
28. **The Committee also recommends Ministry of Electronics and Information Technology to employ globally tried and tested tools such as Immersive tele presence technology, augmented reality systems to make virtual hearings more lifelike and engaging. (Para3.30)**
29. **In 19th Century, Justice Benjamin Cardoso said, “New times demand new measures and new men” in the field of law or elsewhere. This statement is very much relevant to the current situation. The Committee is of the considered opinion that traditional Courtrooms may well remain necessary for our future, but they are certainly not sufficient. There is a need to integrate Virtual Courts into the country’s legal ecosystem. (Para3.32)**
30. **To begin with, Judiciary may identify categories of cases that can be tried by Virtual Courts. Department of Justice in its written replies to the Committee submitted that the following cases may be tried in the Virtual Court-Offences under Motor Vehicles Act (Traffic Challan cases), Petty offences where summons can be issued under Section 206 of CrPC., Cases registered under Section 138 of Negotiable Instruments Act, Motor Accident Claim Petition cases. The Committee is of the view that all such matters where personal presence may be dispensed with,**

can be transferred from regular Court establishments to Virtual Courts. The Committee believes that Virtual adjudication will bring massive benefits across the system. (Para3.33)

31. In respect of complex cases such as those involving interpretation of Law, facts, examination of a large number of witnesses and so forth, a hybrid model may be adopted wherein manual processes such as filing of plaint, vakalatnama, issuing of summons etc.. may be automated and digitized and the hearing may be held in a physical Courtroom. (Para3.34)
32. Since integration of Virtual courts into the legal ecosystem will have a significant impact on all stakeholders, the Committee feels that Members of Bar Associations and Bar councils must also be involved in evolving a consensual process. This would avoid unnecessary opposition and irritants. (Para3.35)
33. The facility of Virtual Courts extended to lawyers should also be considered for extension to private litigants who appear in person or have to travel to High Courts from different states and cities and places. This would go a long way in strengthening public confidence and improving perception about the reachability of the judicial system. (Para3.36)
34. The concept of Virtual Courts has gained immense ground during COVID-19 Pandemic times. It is and will remain the new reality and the new normal. The Committee, therefore, recommends that the concept of Virtual Courts may well be extended to cover arbitration hearings, conciliation and Summary trials. For instance, if national and international arbitrations are allowed to be conducted through Virtual Courts, there will be hardly any requirement for real time travel to distant locations. The Committee believes that this move will unlock the Courts and also mitigate the inconvenience of attending Courts as long distance travels can be dispensed with and proceedings become less expensive as well. (Para3.37)

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