

ANALYZING THE PARLIAMENTARY STANDING COMMITTEE'S INTERIM REPORT ON FUNCTIONING OF VIRTUAL COURTS/COURT PROCEEDINGS THROUGH VIDEO CONFERENCING

The global pandemic has truly transformed the conventional modes of justice dispensation. With strict social distancing measures being imposed in almost all jurisdictions, physical courts and tribunals have largely been unable to discharge their duties. Unarguably, physical courts are presently going through some testing times - a phase of 'trials' and tribulations, if you may, and hence the mantle of doing justice has inevitably been passed on to virtual courts (VCs). While this transition from physical to virtual hearings has been smooth for countries with developed IT ecosystems, India, in particular, has had to face considerable hurdles due to its extreme economic diversity and gargantuan geography. That being said, the implementation of VCs in India's higher judiciary i.e. High Courts and the Supreme Court, has mostly been successful and is therefore indicative of great promise.

Taking cognizance of the same, on September 11, 2020, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (**Committee**) after taking inputs from key stakeholders and best practices across the globe presented its interim report on "Functioning of Virtual Courts/Court Proceedings Through Video Conferencing" (**Report**) to the Hon'ble Chairman of Rajya Sabha.¹

In this Insight, we attempt to distil the key findings and recommendations of the Committee as per the said Report.

COMMITTEE'S ANALYSIS

In its Report, the Committee raised the following concerns around VCs:

- **Existence of Digital Divide:** Digital divide essentially encompasses three kinds of divides (a) *access divide* i.e. lack of access to equipment and infrastructure (b) *connectivity divide* i.e. lack of access to broadband connectivity and (c) *skill*

divide i.e. lack of knowledge and skills required to use digital platforms.

- **Violation of the 'open court' principle²:** As proceedings of VC are neither open to general public via live streaming nor recorded, they raise substantial transparency concerns. In fact, the importance of the open court principle and live streaming of hearings has already been recognized by the Supreme Court.³
- **Data Privacy and Security Concerns:** VCs can involve potential cyber security risks such as a likely compromise of data integrity, privacy through the unauthorized use of discussions and also court proceedings. Further, third party software applications presently being used for facilitating VCs possess major security risks.
- **Infrastructural Constraints:** Higher courts themselves lack infrastructure to enable all sitting judges to hold VCs. Lower courts often do not possess the basic infrastructure and face exceptional difficulties in transitioning from physical courtrooms to VC.
- **Slow progress of e-Courts Integrated Missions mode project:** The e-Courts Integrated Mission mode project, which was launched in 2004 and is presently in its second phase, did not progress sufficiently. According to the data provided by the e-Committee of Supreme Court to the Department of Justice, 14443 court rooms still required Video Conferencing facilities and as many as 2992 sites were yet to get WAN⁴ connectivity. Further, even the progress with respect to digitization of case files and initiation of e-filing procedure was not up to the mark.
- **Effect on advocacy:** VCs deprive the advocates of an opportunity to argue curtail advocacy which changes with the changing dynamics during a

¹ Simultaneously i.e. on 11 September 2020, the said Report was also forwarded to the Hon'ble Speaker of Lok Sabha

² As embodied in Article 145(4) of the *Constitution of India*; Section 327 of the *Code of Criminal Procedure, 1973*; Section 153B of the *Code of Civil Procedure, 1908*.

³ See *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Ors*, 1966 SCR (3) 744; *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639

⁴ Wide Area Network

hearing. Additionally, advocates also fail to grasp the body language of the judge so as to convince them accordingly. Further, physical presence serves important expressive functions, particularly during cross-examination. Evidence recorded by means of video conferencing may fail in taking into account non-verbal cues such as facial expressions, postures, and gestures.

Despite the aforementioned shortcomings, the Committee still found that the pros of VCs heavily outperformed its cons. As elucidated by the Report, the following were the major benefits of the VC system:

- **Speedy Disposal and Better Docket Management:** With there being more than 30 million cases pending in different courts across the country, VCs result in expeditious disposal and also in better management of the case docket. VCs also reduce commute and waiting time at the courts. Further, the problem of frequent adjournments would also be avoided as there would be no excuse for the litigants and lawyers to not attend the court.
- **Increasing access to justice i.e. Distributive Justice:** VCs can increase access to justice by addressing locational and economic handicaps. Distributive Justice requires that court services should be accessible to all and that the service should be affordable for by all. Further, VCs allow an advocate to argue in any court in any part of the nation. Additionally, VCs also enable vulnerable witnesses, children, women and differently abled to participate from a safer/convenient environment.
- **Proportionate Justice:** VCs can better promote the principle of Proportionate Justice. 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.

KEY RECOMMENDATIONS

Having observed as above, the Report, inter alia, made the following key recommendations:

Continuation and expansion of VCs into the future

- VCs should function in all the Courts even during non-pandemic time, with the consent of all parties for certain categories of cases like appeals etc. and final hearings where online virtual hearing would be sufficient. Transfer of certain cases from regular courts to VCs will reduce the pendency of cases.
- Further, VCs can be extended permanently to various appellate tribunals such as TDSAT⁵, IPAB⁶, NCLAT⁷ etc, located across the country which do not require personal appearances of the parties/advocates. Permanent VCs can also be established for hearing matters relating to administrative and other tribunals at the time of final hearing.
- A full-fledged VC should be piloted. This would enable the systems to be tested/refined and further assist the judiciary in identifying the cases best suited to VCs. Petty cases should possibly be the first set of cases that may be disposed easily and quickly.
- VCs may also be extended to cover arbitration hearings, conciliation and summary trials. If national and international arbitrations are allowed to be conducted through VCs, there will be hardly any requirement for real time travel to distant locations.

Infrastructural Changes

- Increasing broadband access across the populace by timely implementation of National Broadband Mission by The Ministry of Communications.
- Improving the quality of courtroom technology to overcome the negative impact on advocacy. Further, a study of courtroom design should be

⁵ Telecom Disputes Settlement and Appellate Tribunal

⁷ National Company Law Appellate Tribunal

⁶ Intellectual Property Appellate Board

commissioned and customized software/hardware to facilitate VC should be developed.

- A centralized Video conferencing infrastructure should soon be developed, and WAN connectivity ought to be improved.
- Ministry of Law and Justice and Ministry of Electronics and Information Technology should address the data privacy and data security concerns while developing an indigenous new platform for India's judicial system. The said system could leverage block chain technology to improve reliability of evidence and security of transactions and also case files.
- With respect to the progress of e-Courts Integrated Mission, the Department of Justice should take stock of the situation and take appropriate remedial measures to ensure completion within prescribed timelines.

Training and Social Concerns

- Conducting training and awareness programmes in all court complexes across the country. Introduction of a computer course as one of the subjects to train future lawyers on digital platforms. Bar Council of India should advise state bar councils to conduct training for lawyers.
- To ensure open justice and an adherence to the policy of open court, the judiciary should consider broadcasting VC hearings of certain specified categories of cases.

PPP

- Since transition to VCs require high initial investment, feasibility of financing methods such as PPP⁸ model may be examined along with involvement of private agencies/service providers for providing assistance to people facing difficulty with technology and help them connect with

courts by bringing the VC equipment to their doorstep.

TAKEAWAYS

Reports of Department-related Standing Committees have only persuasive value and are considered as mere 'advice' of the Committee.⁹ Further, the present Report is only an interim report made by the Committee to bring forth the issues being currently faced by the Indian judicial system. While we await the Committee's conclusive recommendations as per its final report, it seems that the Report has taken a holistic approach towards facilitating VCs and at the same time bring substantial judicial reforms.

Considering the fact that India has unsuccessfully battled similar ghosts for really long now, it remains to be seen whether VCs would really be able to reduce the backlog of cases and bring about 'Distributive' and 'Proportional' justice or not.

However, it is important to note that the digital divide that the Report elaborates upon is real, as is the concern of the effect of VCs on advocacy. One cannot divorce the socio-economic and cultural element from the solution. We have to recognize harsh realities that despite being a country that has produced leading individuals and corporates in the Information Technology sector, there is a gaping chasm that needs to be bridged in a cost effective and uncomplicated fashion that enables real access. Also, the human factor needs to be given weightage because law and its interpretation, justice and its delivery, are not found in lines of code but in fact in between the lines, more often than not. Until technology bridges that gap, a hybrid solution as suggested may well be a stepping-stone to a new era.

⁸ Public Private Partnership

⁹ See Rule 277 of Rules of Procedure and Conduct of Business in the Council of States.



**ECONOMIC
LAWS
PRACTICE**
ADVOCATES & SOLICITORS

MUMBAI

9th Floor, Mafatlal Centre
Vidhan Bhavan Marg
Nariman Point, Mumbai 400 021
T: +91 22 6636 7000

NEW DELHI

801 A, 8th Floor, Konnectus Tower, Bhavbhuti Marg
Opp. Ajmeri Gate Railway Station, Nr. Minto Bridge
New Delhi 110 001
T: +91 11 4152 8400

AHMEDABAD

801, 8th Floor, Abhijeet III
Mithakali Six Road, Ellisbridge
Ahmedabad 380 006
T: +91 79 6605 4480/8

PUNE

202, 2nd Floor, Vascon Eco Tower
Baner Pashan Road
Pune 411 045
T: +91 20 4912 7400

BENGALURU

6th Floor, Rockline Centre
54, Richmond Road
Bengaluru 560 025
T: +91 80 4168 5530/1

CHENNAI

No 18, BBC Homes, Flat-7 Block A
South Boag Road
Chennai 600 017
T: +91 44 4210 4863

 elplaw.in

 insights@elp-in.com

 [/elplaw.in](https://www.facebook.com/elplaw.in)

 [/ELPIndia](https://twitter.com/ELPIndia)

 [/company/economic-law-practice](https://www.linkedin.com/company/economic-law-practice)

DISCLAIMER:

The information contained in this document is intended for informational purposes only and does not constitute legal opinion or advice. This document is not intended to address the circumstances of any particular individual or corporate body. Readers should not act on the information provided herein without appropriate professional advice after a thorough examination of the facts and circumstances of a particular situation. There can be no assurance that the judicial/quasi judicial authorities may not take a position contrary to the views mentioned herein.

© Economic Laws Practice 2020