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Adoption of Virtual Courts in India

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Introduction

The former Chief Justice of India, Justice Sharad Bobde in his address at the launch of Supreme Court Vidhik Anuvaad Software (SUVAS)[1] on the National Constitution Day, 2019, stated, “While technology has enabled us to go paperless in many courts and go digital, if not all the way then substantially, in many courts, we now have the benefit of

modern artificial intelligence tools that will assist in improving the efficiency of our justice system through sophisticated and contextual automation of existing repetitive non-judicial tasks and functions to reduce pendency, expedite judicial adjudication and create more time for Judges to resolve complex cases.” The unprecedented outbreak of COVID-19 Pandemic has largely affected the functioning of our courts across India and only very urgent matters are being heard through videoconference facilities after the lockdown. The Supreme Court of India had issued guidelines in order to direct the courts at all levels to frame mechanism for using online videoconferencing till the normalisation of the situation.[2] While High Courts and many District Courts continue to hear cases online, some lawyers find it difficult to argue complex cases with volumes of files through videoconferencing. Moreover, there is need for standardisation and consistency in deployment of software tools and practices in embracing virtual courts in India[3]. It is being debated whether free and open source based products (such as used in e-courts project) would be suitable or should customised enterprise-based model be adopted involving private players for virtual courts?

After the successful launch of the e-courts project, the e-courts filing software is available for use in 21 High Courts and 18,000 District Courts of India[4]. However, despite funds sanctioned, most High Courts had not recruited required trained personnel for e-courts project. So far only in few High Courts such as the Delhi High Court, there are functional e-courts where pleadings are digitised and accessible by lawyers and Judges through the use of computers. Fortunately, online dispute resolution (ODR) and dispute resolution has been adopted by many countries including India and holds promising future for virtual courts in India. Centre for Online Dispute Resolution (CODR), Sama, Presolv360, Centre for Alternative Dispute

Resolution Excellence (CADRE) and Crek ODR are few popular ODR platforms. Likewise, automation, artificial intelligence and robots have begun deciding traffic challan cases not just in USA but also in India.

National Informatics Centre has been involved in the computerisation of courts since 1990 and continues to do so to bring speedy access to justice to all litigants across India. In the present day, where the number of internet users have increased to 59% in India[5], the proposition of having “virtual courts” is considered to be more feasible than ever before. Therefore, institutionalising of the technology in the court process is the need of the hour.[6]

I. E-Courts Mission Mode Project

The e-Courts Mission Mode Project has brought a remarkable change in the litigation landscape of India. E-courts website features numerous litigant-centric services like finding the case status, electronic cause lists, and easy access to daily orders in PDF formats. [7] From a data gathering perspective, arguably the e-courts project’s greatest achievement has been the creation of the National Judicial Data Grid (NJDG).[8] The e-filing manual provides for complete process on how records at courts could be digitised and filed.[9] In August 2018, three applications were launched which included e-Filing, e-Pay and NSTEP (National Service and Tracking of Electronic Processes). E-court filing facility also enables a litigant to pay court fees online. Moreover, the National Service and Tracking of Electronic Processes provides transmission of processes to different court complexes and also to mobile application of the Court Officer. The process involves enabling of Global Positioning System (GPS) in order to provide the photograph and signatures of the appropriate person after the service is provided. For giving the information to the litigants regarding the status of their case, there also exists facility via e-mails or text messages.[10]

II. Embracing virtual courts

In the backdrop situation of worldwide pandemic, the shift to virtual court was a real challenge. A committee of seven Supreme Court Judges[11] led by Justice N.V. Ramana decided not to revert to the concept of physical hearing and follow the system of virtual courts as it eliminates the risk due to physical presence of the litigants and lawyers in the process of adjudication.[12]

In the year 2019, the Delhi District Courts established its first e-court, that initially dealt with the matters related to the traffic challans online. Justice Chandrachud urged Chairpersons of e-Committees of various High Courts to build such Information and Communications Technology (ICT) capacities and create virtual courts for other petty violations.[13] In April 2020, the High Court of Telangana passed directions for conduct of hearings through videoconferencing in the State till the time of pandemic. Moreover, the Bombay High Court issued special directions in connection with live streaming of matters listed for hearing in April 2020 before Justice G.S. Patel. Prior to this the Kerala High Court had live streamed its hearing for general public through Zoom App.[14] Therefore, both need and pace at which virtual courts have been adopted in India has been phenomenal and a major milestone toward adoption of technology in access to justice delivery in India.[15]

III. Adoption of virtual courts in other countries

During the pandemic, countries such as UK, China, Canada, Singapore and Netherlands have actively adopted virtual courts. Whereas, the Supreme Court of USA has been hearing the arguments through telephone conference and lower courts, like the United States District Court for the Eastern District of New York have issued a number of administrative orders regarding the administration of justice. One such order empowers Judges to conduct proceedings by telephone or

videoconferencing where practicable.[16] In United Kingdom the Ministry of Justice[17] and Judiciary[18] has allowed using of remote hearing methods such as videoconferencing. However, in order to make the hearing public and to safeguard the principle of open justice, the media persons have been allowed remote access.[19] Moreover, the UK Coronavirus Act, 2020, enables the use of video and video enabled courts for conducting proceedings with all parties at remote locations given the emergency situation.[20]

The Supreme Court of China ordered the courts of all level to operate through online platform amidst Coronavirus Pandemic. Courts at all levels to guide litigants to file cases or mediate disputes online, empowering Judges to make full use of online systems for litigation, including those for case filing and ruling delivery, to ensure litigants and their lawyers get adequate legal services and protection. In many provinces and cities, the Supreme People's Court has been promoting "mobile micro court" usage on the WeChat social media site to help courts hold internet trials.[21] Also, the Supreme Court has made process quite convenient by allowing litigants to materials through the internet or by post, adding that people can dial 12368, a litigation service hotline, to follow their lawsuits or ask for legal services.[22]

In Ontario, the Supreme Court has extended the video and telephonic conferencing from urgent matters to all the matters. E-filings are being permitted using electronic signatures. Moreover, members of the media and public can gain access to the proceedings by e-mailing their requests to the court staff.[23]

The Supreme Court of Singapore, too, has issued guidelines for using audio and videoconferencing for hearing matters using Zoom.[24] It has introduced the COVID-19 (Temporary Measures) Act, 2020, that allow court proceedings to be conducted using remote communication technology such as teleconference, videoconference,

and e-mail so that physical attendance in the courtroom can be minimised or dispensed with.[25]

In Netherlands, all disputes before a Single Judicial Judge are heard at a teleconference and all appeals and demands are electronically heard (via videoconferencing or telephone) before a trialogue.[26]

Similarly, in China, court-annexed ODR which enables dispute resolution through alternative dispute resolution (ADR) methods has great potential to resolve COVID-19 related disputes efficiently without burdening traditional courts.[27]

IV. Rise in the online dispute resolution in India

The online dispute resolution is defined by the United Nations Commission on International Trade Law Working Group as “a mechanism for resolving disputes accelerated through the use of electronic means of communications and other information and communication technology”.[28] ODR is conspicuous, fast, easily accessible and cost-effective. Online dispute resolution is considered as ADR and it includes mediation, negotiation or arbitration but is restricted to civil cases where both parties have given their mutual consent. Out of these, ODR mediations are 70% preferred, it has proven as the most effective mode for dispute resolution.[29] There are few ODR platforms that have made the process quite convenient as well as efficient.

CADRE (Centre for Alternative Dispute Resolution Excellence) is a website-based manifesto for ODR in which one party addresses the platform and then contact the other party. When both the parties agree, an arbitrator is appointed, the parties in the dispute do not come in contact face to face but through electronic means such as video calls. The details regarding the meeting are sent to both parties through e-mails or WhatsApp. The result of the meeting which is lawfully binding comes out within 20-25 days of time. Moreover, this

particular platform has been engaged in resolving tenant and rental contract dispute for NestAway an online rental start-up.[30]

Another popular ODR platform is Sama that provides for the convenient approach to high-quality ADR service providers and assists the public to resolve disputes online. Sama is being used by ICICI Bank as an ODR platform to resolve around 10,000 disputes with values rising up to INR 20 lakhs. [31]

The Centre for Online Dispute Resolution (CODR) is an institution that handles cases online end-to-end. The decision is made unbiased and confidentiality is maintained.[32]

Agami is a non-profit ODR platform that aims to create a better system of law and justice by providing time stamping and convenient dispute resolution method[33].

V. Key issues and suggestions

The pandemic situation disrupted normal life and separated the employees from their offices, and virtual courts became access to justice lifeline.[34] Since the open courts stopped working, the courts have been hearing only urgent matters through videoconferencing. [35] While some policymakers, find virtual court hearings convenient others find it cumbersome, particularly those who are not so technologically savvy or where volumes of files are required in a case. On the other hand, it is easy for litigants to have their cases heard even if they are in far-flung areas but in district level, required technology and tools may not be adequate or not available.[36] Some part of the public believes that open courts are irreplaceable since the fundamental principle in the administration of justice is that courts must be open to the public.[37]

There are also other challenges to adoption of virtual courts. Judiciary and our courts have access to a lot of sensitive data, a debate

emerges on use of a private party to digitise such data and its safety. [38] Secondly, it is pertinent to adopt a standardised software tool or platform for virtual courts across India.[39] Thirdly, if virtual courts have become order of the day, extant laws such as the Information Technology Act, 2000[40] and the Evidence Act, 1872[41] may need to be amended along with that the Practice Manuals of Supreme Court, High Courts and the District Courts.[42]

ODR forum concept can accelerate adoption of virtual courts in India, particularly in petty claim matters such as traffic challans where AI-based software can decide cases. ODR forums will increase the chances in making virtual courts and online hearings more viable and efficient. It will help reduce the backlog of cases before various courts in India.

Finally, there is an urgent need to deploy more ICT at district level and increase training in use of these technologies.

While adoption of virtual courts has been quite rapid during the pandemic, its further growth requires addressing these key issues. Adoption of standardised tools, deployment of required technology, training are some of the pressing challenges. Adoption of virtual courts is favourable in many respects, such as elimination of location constraints, reduction in the outstation travel by the counsel concerned, minimisation in investment for court infrastructure. However, if virtual courts are not just a temporary measure as during the Covid Pandemic, a separate law to deal with the same will also need to be enacted and amending existing laws will become necessary. Also, it will be essential to cull our rules for filing electronic evidence for adoption by various courts in India and aligning it with e-filing project.[43] There is also an urgent need for technology deployment at district court level and training its personnel so that both virtual/hybrid courts can function.

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[1] SUVAS provides appropriate real-time access to case status, display board, daily orders and judgments to the litigants and lawyers.

[2] Available at <https://vidhilegalpolicy.in/2020/05/01/virtual-courts-in-india-a-strategy-paper/> (accessed in July 2020) wherein the author expressed her views in a panel discussion on the subject organised by Vidhi.

[3] Available at <https://vidhilegalpolicy.in/2020/05/01/virtual-courts-in-india-a-strategy-paper/> (accessed in July 2020) wherein the author expressed her views in a panel discussion on the subject organised by Vidhi.

[4] E-filing software was launched in 2018 by Chief Justice of India when the Chairman of e-Committee of Supreme Court of India, was Justice Madan B. Lokur.

[5] Available at <https://www.statista.com/statistics/617136/digital-population-worldwide/> (accessed in July 2020).

[6] Available at <https://vidhilegalpolicy.in/2020/05/01/virtual-courts-in-india-a-strategy-paper/> (accessed in July 2020) wherein the author expressed her views in a panel discussion on the subject organised by Vidhi.

[7]Available at <<https://doj.gov.in/sites/default/files/Report-of-Evaluation-eCourts.pdf>> (accessed in July 2020).

[8]Available at <<https://njdg.ecourts.gov.in/njdgnew/index.php>> (accessed in July 2020).

[9]Available at <https://ecourts.gov.in/ecourts_home/static/manuals/efiling-User-manual.pdf>
<https://www.iasparliament.com/uploads/downloads/Current_Affairs_M. (accessed in July 2020).

[10]Available at <<https://vidhilegalpolicy.in/2020/05/01/virtual-courts-in-india-a-strategy-paper/>> (accessed in July 2020) wherein the author expressed her views in a panel discussion on the subject organised by Vidhi.

[11]The other Members of the Committee are Justices Arun Mishra, R.F. Nariman, U.U. Lalit, A.M. Khanwilkar, D.Y. Chandrachud and L. Nageswara Rao.

[12]Available at <<https://www.thehindu.com/news/national/sc-to-continue-virtual-court-system/article31828053.ece>> (accessed in July 2020).

[13]Available at <<https://www.barandbench.com/news/use-of-technology-must-be-institutionalised-even-after-lockdown-justice-chandrachud-in-video-conference-with-hc-judges-manning-e-committees>> (accessed in July 2020).

[14]Available at <<https://www.lexology.com/library/detail.aspx?g=5e264a78-7b02-499e-9fb3-ee2aa9fa13fa>> (accessed in July 2020).

[15]Available at <<https://www.legalexecutiveinstitute.com/virtual-courts>> (accessed in July 2020).

[16]Available at <<https://www.nortonrosefulbright.com/en-nl/knowledge/publications/bbfeb594/covid-19-and-the-global->

approach-to-further-court-proceedings-hearings> (accessed in July 2017).

[17]Available at <<https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>> (accessed in July 2020).

[18]Available at <<https://www.judiciary.uk/announcements/review-of-court-arrangements-due-to-covid-19-message-from-the-lord-chief-justice/>> (accessed in July 2020).

[19]Refer to Point 3. Available at <<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51y-video-or-audio-hearings-during-coronavirus-pandemic>> (accessed in July 2020).

[20]Available at <<https://www.gov.uk/government/publications/coronavirus-bill-summary-of-impacts/coronavirus-bill-summary-of-impacts>> (accessed in July 2020).

[21]Available at <<https://www.jurist.org/commentary/2020/05/sayrakakkar-court-functioning-covid19/>> (accessed in July 2020).

[22]Available at <http://english.court.gov.cn/2020-02/13/content_37533572.htm> (accessed in July 2020).

[23]Notice for Matters to be Heard in the Ontario Superior Court of Justice During the COVID-19 Emergency. Available at <<https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/notices-no-longer-in-effect/covid-19-suspension-crim/>> (accessed in July 2020).

[24]Available at <<https://www.supremecourt.gov.sg/docs/default-source/default-document-library/2020-03-27—guide-to-telephone-conferencing-and-video-conferencing.pdf>> (accessed in July 2020).

[25]Refer to the COVID-19 (Temporary Measures) Act, 2020. Available at <<https://sso.agc.gov.sg/Act/COVID19TMA2020>> (accessed in July

2020).

[26]Available at <<https://www.jurist.org/commentary/2020/05/sayrakakkar-court-functioning-covid19/>> (accessed in July 2020).

[27]Available at <<https://theprint.in/opinion/indian-courts-prepare-different-kind-covid-crisis/410164/>> (accessed in July 2020).

[28]Available at <https://www.uncitral.org/pdf/english/texts/odr/V1700382_English_Tech> (accessed in July 2020).

[29]Available at <<https://www.mondaq.com/india/arbitration-dispute-resolution/935022/online-dispute-resolution-odr-a-positive-contrivance-to-justice-post-covid-19>> (accessed in July 2020).

[30]Information available at <<https://www.cadreworks.org/cadre-continuum>> (accessed in July 2020).

[31]Available at <<https://www.sama.live/about-us.php>> (accessed in July 2020).

[32]Available at <<https://resolveoncord.com/index.html>> (accessed in July 2020).

[33]Available at <<https://agami.in/about/>> (accessed in July 2020).

[34]Available at <<https://www.globenewswire.com/news-release/2020/09/04/2089138/0/en/Global-Web-and-Video-Conferencing-SaaS-Industry.html>> (accessed in July 2020).

[35]Available at <<https://www.ndtv.com/india-news/coronavirus-supreme-court-says-virtual-courts-system-will-ensure-justice-amid-pandemic>> (accessed in July 2020).

[36]Available at <<https://www.indialegallive.com/top-news-of-the-day/news/virtual-courts-can-it-replace-open-court-hearings/>> (accessed in July 2020).

[37] Available at <<http://www.lawstreetindia.com/experts/columnlist>> (accessed in July 2020).

[38] Adoption of Virtual Courts in India — A Strategy Paper by Vidhi, April 2020, available at <https://vidhilegalpolicy.in/wp-content/uploads/2020/07/20200501__Strategy-Paper-for-Virtual-Courts-in-India_Vidhi-1.pdf> (accessed in July 2020).

[39] Available at <<https://vidhilegalpolicy.in/2020/05/01/virtual-courts-in-india-a-strategy-paper/>> (accessed in July 2020) wherein the author expressed her views in a panel discussion on the subject organised by Vidhi.

[40] Information Technology Act, 2000.

[41] Evidence Act, 1872.

[42] Author's suggestions made during Webinar on Virtual Courts in India-JALDI (Justice, Access and Lowering Delays in *India*) Project of Vidhi Centre for Legal Policy.

[43] Suggestion made by the author during Webinar on Virtual Courts in India-JALDI (Justice, Access and Lowering Delays in *India*) Project of Vidhi Centre for Legal Policy.

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