

# GENERAL ESSAY 2020

## Virtual Courts: Need or Virtue

The spread of Coronavirus and the nationwide lockdown has prompted the Supreme Court and various High Courts to conduct judicial proceedings online.

The Supreme Court has detailed the measures to ensure continuity of administration of justice during the COVID-19 pandemic. IT infrastructure is being installed to aid the proceedings that will take place in the virtual presence of the clients and their legal representatives.

While the need of the hour requires such steps to be taken, it is imperative that free and fair administration of justice is not disrupted.

Open Court principle was the original and historic norm with proven advantages.

The Open Court principle carries presumption that the public (including media) has free and fair access to court proceedings. With its foundation in freedom of speech and expression and freedom of the press, the principle protects a wide scope of activities enabling the public to attend court hearings as a spectator, reporter or partaker.

The Open Court principle finds its origins in the much-revered 1215 Magna Carta. The specifically relevant portion is clause 40, which translates to

“To no one will we sell, to no one will we refuse or delay, right or justice...”

This term envisages not only the right of litigants to have their case resolved by Court, but also the right of the public to attend legal proceedings. This clause has laid the foundation stone for many subsequent constitutional provisions that articulate for open courts.

As one of the core principles of natural justice, ‘Open Court’ is 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.

It preserves the rights to freedom of speech, expression and press provided under Article 19 of the Constitution of India. It is only in

“special and limited cases as prescribed by law” or under the Court’s authority to regulate its own proceedings that these central tenets of justice can be deviated from, only to the minimum extent required.

There are , however, challenges to conducting proceedings online

### 1. Accessibility to Justice

Presumably, many would argue that online proceedings or virtual courts would grant wider access to justice as enshrined under Article 39A of the Constitution, because of the reach of internet in general. This would only be true if each and every person involved, ie the litigants, their advocates, judges, court staff, media and other persons from the public are given the means to engage and understand the proceedings.

There’s also a yawning gap in connectivity between states depending on their network infrastructure and relative affluence. While Delhi and Mumbai assert about 2.20 crore and 1.5 crore Internet connections respectively, the complete North-East region has only about 4.3 lakh connections.

All in all, this data clearly highlights that while metropolitan cities like Mumbai and Delhi, which have continuous access to internet, might have persons who would be able to avail of virtual court services, there is vast majority of citizens who would continue to suffer due to lack of basic infrastructure. It is pertinent to mention that there are still High Courts across the country that face shortage of IT infrastructure. Inclusive growth demands that all social groups have equal access to the services provided by the State.

Additionally, we cannot lose sight of the fact that to make such drastic technological advancements, there has to be exhaustive digital literacy and training of all judicial officers, advocates, and other court staff including those in charge of filing and presenting files before the appropriate court. It is too far-fetched to imagine that every person involved in the justice system at all levels will be able to learn by themselves and adopt to the new medium within days or weeks.

### Demeanor of witnesses and false evidence

Undisputedly, there is a significant difference between audio-video and in-court testimony, as the latter offers greater opportunity for the court to evaluate the witness by way of his testimony along with their demeanor.

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.

Another issue that arises in recording testimonies and conducting evidence through video conferencing is that the litigant or the witness testifies from an environment they find most comfortable, either their home or office. Such scenarios lack the necessary tension that comes with appearances in the Courtroom, with the ceremonies such as taking the oath in physical presence of a judicial officer. In such circumstances, there are all the chances that in such proceedings, the parties testifying may feel free perhaps excessively so to testify falsely.

The threat of identity theft by either party or even by a third party until now, as standard practice, litigants typically identify themselves before their counsel prior to filing anything before the courts and the counsels are required to identify their clients. In addition, hearings are still held in court before a judge, so it is more difficult to steal another's identity.

This concern increases when more activity is conducted online, without human supervision. The implementation of remote hearings begs the question of the lack of confidence litigants may have in the system and how many litigants would be agreeable to divulge such information on an online platform.

Predominantly committed for using personal or financial information for personal gain, there has been a fast rise in the number of Identity theft cases across the globe. The documents and information of a case are sensitive. In many cases, this information would be subject to protection if collected by other actors in other contexts. Therefore, protection of litigants, lawyers and judges from such illegal acts which are facilitated by the internet are of utmost importance.

From the reaction to this pandemic, it is clear that the future of the Indian legal system will see many changes, most significantly, the

adoption of virtual courts for conducting proceedings. Beyond the praise for such quick adoption of virtual courts by the Apex Court and few High Courts, video conferencing raises some serious and complex concerns

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