

LEGALFOXES LAW TIMES

VIRTUAL COURT: THE FUTURE OF LITIGATION AMIDST CORONAVIRUS PANDEMIC

By Aditya Vermani

“Coronavirus virus will remain a part of our lives. We will have to learn to live with it.”

India is amongst the nations that are giving the Covid-19 virus a tough fight. On 22nd March 2020, the nation was put under ‘Janta Curfew’. Following that, on 25th March 2020, the lockdown was imposed in the whole country bringing everything to a standstill. The Parliament, all courts and tribunals across the country, offices (government and private), malls, shopping complexes, theatres were shut. Only hospitals, chemists, and some grocery stores were allowed to be open. Lockdown kept on extending seeing the rise in Covid-19 cases. Every phase had some easements to it, but none had courts restarting. Maintaining social distancing in courts could have been a difficult task to do seeing the number of lawyers in every courtroom. But, courts had to be accessible to the citizens to prevail justice and for the lawyers who get their bread and butter from courts and tribunals.

On 26th March 2020, under the Hon’ble Chief Justice of India, virtual courts started functioning, making the system of “Access to Justice” available to everyone.¹ Though, the principle of ‘Open Court’ in natural justice, which 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 will be violated, as only a few counsels will be allowed to argue and be present before the judge.² The Supreme Court in Swapnil Tripathi v. Supreme Court of India on the issue of live streaming of its proceeding held that *“access to justice can never be complete without the litigant being able to see, hear and understand the course of proceedings first hand. The Court also acknowledged that the principle of open court hearings would have to be adhered to when Rules for live streaming of court proceedings are made.”*³

The principle of open court allows access to free and fair court proceedings including the media. Open courts were first originated from English Courts. Lord Chief Justice Hewart in his judgment in R v Sussex Justices Ex parte Macarthy said that *“It is not merely of some*

¹ <https://www.indialegalive.com/special/e-walk-of-indian-legal-system-towards-virtual-world-99687>.

² Pramod Kumar Dubey, Virtual Courts: A sustainable option?, Bar and Bench (12th April, 2020 11:44 AM), <https://www.barandbench.com/columns/virtual-courts-a-sustainable-option>.

³ SwapnilTripathi v. Supreme Court of India, [(2018) 10 SCC 628].

importance but is of fundamental importance, that justice should not only be done but should manifestly and undoubtedly be seen to be done.”⁴

Rights to freedom of speech, expression, and press provided under Article 19 of the Constitution of India has also been disabled with the introduction of virtual courts. Apart from this, there were challenges faced in the process of testing. The number of tests conducted was low and at a high price, which was not affordable for everyone. On 08.04.2020, a Supreme Court bench comprising of Justices Ashok Bhushan and Ravindra S. Bhat passed an order directing that “*tests relating to COVID-19 in approved Private Laboratories to be free of cost.*”⁵

ANALYSIS

The urge for the necessity of Justice brought the system of Virtual Court in the Covid-19 pandemic. It was introduced so that the principle of Justice is available to everyone. No one was allowed to enter courts seeing the situation and to maintain social distancing. Therefore, courts started functioning through video conferencing. The system of virtual courts has benefited the courts in terms of costs also, as there are no expenses on maintaining the building, security, and most importantly transportation of parties and prisoners from jails. With some benefits, there are some disadvantages and problems faced also. One of the biggest being the connectivity issue. Some issues are faced by the jails when a witness is examined; lawyers and some by the courts. A power cut is another issue faced by all, which can delay the court proceedings. Poor audio has been another issue. There are problems faced inadmissibility and recording of evidence that is received through audio and video mediums. Verifying the evidence through these mediums is also an issue that is being faced. Issues are also faced in identifying witnesses and individuals. Another issue that is faced by the defense counsel is getting a copy of the brief of the matter that is listed for argument. Some defendant counsels arrange by getting in touch with the other counsel. Some are unable to do it as they cannot find their contact or sometimes the other council doesn't have a copy of the brief with them. In such cases, the counsels have to request for adjournment. The state council faces a similar problem too. When they don't get a copy of the brief in a criminal case, it is difficult to contact the jail authorities for taking the details of the case and the prisoner. This eventually leads to adjournment. These problems faced lead to a delay in delivering Justice.

⁴ R v Sussex Justices; Ex parte Macarthy [1924] 1 KB 256 at 259.

⁵ ShashankDeoSudhi v. Union of India, 2020 SCC OnLine SC 358, order dated 08.04.2020.

CONCLUSION

Coronavirus will remain a part of our lives. Virtual courts are the only way through which courts should continue to function. Justice must be accessible and available to everyone, whenever they want. There should be an online portal set up where the petitioner can upload the brief that is easily available to the other counsel. It will be convenient also as the respondent counsel will not face any problem in getting a copy of the brief. There should be an investment done by courts and lawyers in improving the IT infrastructure and setup. Audio and video quality should be upgraded so that everything is clear during the proceedings. There should be proper coordination between the court staff and lawyers in entering and exiting the virtual courtroom. It is necessary to make that coordination because a lawyer might have his/her cases listed before different benches so that with proper coordination a lawyer can appear in all the cases listed before various benches. Now the unlock phases have started, in cases where a witness needs to record his/her statement or a prisoner has to be examined, then a court should open with only the people who are related to the case. With this, the witness can be identified and his/her statement can also get recorded and attested. The prisoner can also be examined physically in person in front of the court. Though virtual courts have both pros and cons, but it is the only system that is available amidst this pandemic.



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