

THE FUTURE OF JUSTICE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The lockdown has generated several webinars on justice delivery, technology and the future. The discussions focus on the way forward in tackling the problem of [social distancing](#) with lawyers and litigants crowding the courts even after the lockdown is lifted.

There are three kinds of courts in our justice delivery system. First, conventional courts located in court complexes where judges, lawyers and litigants are physically present. Second, online courts where the judge is physically present in the courtroom but the lawyer or litigant is not. This is the present arrangement, except that now the courtroom is the residential office of the judge, due to the lockdown. Third, virtual courts where there is no judge, lawyer or litigant and a computer takes a decision based on the inputs of the litigant.

About 15 years ago, Delhi initiated a pilot project with Tihar Jail for dealing with routine remand cases of prisoners. The procedure postulated prisoners being produced in court, not physically but through video conferencing (VC), hence an online court. The pilot project started tentatively with some hiccups but proved to be a success and now several courts have adopted the online process with varying degrees of commitment.

A few intrepid district judges have taken a step forward and recorded the statement of parties in cases of divorce by mutual consent. As of now, several such cases, including those involving NRIs, are dealt with through VC in online courts. Punjab and Haryana judges have gone even further ahead. The online courts record the expert evidence of doctors from PGIMER through VC. This has freed the doctors from time consuming trips to the courts and has resulted in savings of several crores for the exchequer. Similar success stories are available from other district courts, but a determined and concerted effort is necessary to popularise online courts at the district level.

Some high court judges in Delhi and Punjab and Haryana have completely dispensed with paper — everything is on a soft copy, through e-Filing and scanned documents. Lawyers and judges have made necessary adjustments to the new regime and the cases are conveniently heard and decided in “paperless courts”. A few other high courts initiated similar steps, but have yet to institutionalise “paperless courts”.

Online courts have not caught on in the absence of any compelling need to do so. The lockdown has provided that opportunity, which should be seized. The present ongoing “experiment” has, however, indicated that the major problem with online courts is unfamiliarity with the medium of communication. Judges are simply not used to consciously facing a camera generally and in particular while hearing a case.

Similarly, lawyers find it difficult to comfortably argue while seated. Body language, facial expressions, the tone and tenor, both of the judge and the lawyer, make for important signals and clues which cannot be captured in VC. However, these and additional skills can be developed and fine-tuned, but not overnight. Online courts introduce a paradigm that the system is today not fully prepared for, but can certainly get ready for in due course.

Some technical problems in conducting online hearings have also surfaced. The bandwidth is not adequate or stable enough. The picture sometimes breaks or gets frozen and the voice often cracks.

Ironically, in the hearing relating to restoration of 4G in Jammu and Kashmir, the link suddenly snapped. Consultations are also a problem. Lawyers occasionally need to consult their client or the instructing advocate; judges also need to consult each other during a hearing. Attention needs to be paid to these real-time issues otherwise lawyers will harbour misgivings about a fair hearing.

The chairman of the Bar Council of India has voiced a concern that 90 per cent of the lawyers are not computer literate or tech savvy. Law and jurisprudence are not static but mirror societal needs and often shape them. Therefore, the Bar Councils and Bar Associations must stretch every nerve to educate the district and taluka lawyers on the advantages of accepting technology. It's a long haul for sure and the task cannot be completed in a day or so — it might take a year, but a beginning has to be made now.

A virtual court is a unique contribution of the eCourts Project. A pilot virtual court was launched in August 2018 in Delhi for traffic offences and it has been a great success. Virtual courts have been successfully tried out in Delhi, Haryana, Maharashtra and Tamil Nadu. A virtual court is a simple programme through which a person can find out if a challan has been issued to him or her through a search facility. If a challan has been issued, the details are available online and the person may plead guilty or not guilty. On a guilty plea, the minimum fine is imposed and on a not-guilty plea, the case is electronically transferred to the traffic court for trial. At the end of the day, a judge reviews the cases and disposes of them electronically depending on the option exercised. One judge is all it takes to manage the virtual court for Delhi or an entire state. With the launch of virtual courts, the daily footfalls to the courts have drastically reduced and thousands have pleaded guilty and paid the fine electronically.

The virtual court system has the potential of being upscaled and other petty offences attracting a fine such as delayed payments of local taxes or compoundable offences can also be dealt with by virtual courts. This will ease the burden on conventional courts and therefore must be strongly encouraged.

Post lockdown, justice delivery will certainly undergo a transformation and judges, lawyers and litigants will need to adapt to the new normal. Social distancing is here to stay and will bring about profound changes in the way justice is administered and delivered. Open courts will remain as also open justice, but some definitions will change with a more aggressive use of technology, not only in conventional but also online and virtual courts. Several countries and courts have made adjustments not only for the period of the [pandemic](#) or lockdown, but also for the future. We should certainly not be left behind but must also make a roadmap to meet the challenge. As the Boy Scouts say: Be prepared.

The writer retired as a justice of the Supreme Court of India in December 2018

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