

Virtual Courts: An obvious solution ignored for too long.

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In law, unlike science, the obvious conclusion doesn't always seem to hold. This is many a time bizarre and frustrating for anyone with scientific temper who makes the mistake of trying to understand how our legal system works.

One such example is that of the decision in many Courts and Tribunals being implemented, or contemplated, to go back to physical hearing only while doing away entirely with virtual Courts i.e., adopting status quo that existed prior to covid-19. Forget about reasons like the third wave, speaking purely on merits, doing away with Virtual courts is a bad idea in the author's opinion.

To any lawyer who has been through the Indian legal system: the incredible waste of time in Courts waiting for a case to reach, spending the first decade asking only for adjournments for a senior, listlessly spending hours in the courtroom shifting in your seats and messaging on the mobile, gossiping in the corridors for want of anything better to do, being half-alive zombies during the day and waking up to life after Court hours, daily tiring commute to and from home to office and Court, these are part and parcel of everyday life for years if not decades. This need not be the case.

While knowing the innards of the legal system is indeed important, it need not be this inefficient. But this waste of time in is justified as being part of the "system" and understanding it. This rite of passage of self-inflicted torture is tolerated to be part of an opaque system wherein at best a chosen handful, often with existing legal lineage, could end up possibly reaping the rewards of this effort. Most others give up litigation after a while to join the corporate world, many leave the profession altogether.

A virtual Court allowing a lawyer to appear wherever situated and to switch on whenever their case reaches is an obvious improvement to current inefficiencies. Counter arguments such as it is not good for the profession especially junior lawyers miss the point entirely that most of the time spent in physical Court is in large part wasted. What you can argue in person, you can argue over video - the physical cues, gestures and handwaving etc may be useful signals but really, they do not change the facts or legal principles of a case. If they do, something else is broken in the "system".

That it is tough to pore over voluminous material in a virtual hearing is another argument, one which does not hold water on closer inspection. In most cases hard copy of paper books is filed and referred to in virtual hearing, so this is a non-issue. Even if only softcopies were referred, while it may take some adjustment and practise especially on the part of Judges, there is no blocking factor here to achieve this other than changing habits to use electronic devices more. Millions of people who use Kindle™ or write code for a living would agree. Further, even minor technology improvements such as using wide screen, anti-glare monitors for Judges would make significant impact.

That the interaction in person with peers and seniors are an important way of understanding knowledge and gaining wisdom maybe true but we learn in Courts mainly by observing arguments which can be done in virtual Courts too. The pre- & post-discussions in chambers and offices whether it can be replaced by using tools like Slack™ is not the subject of this article at all which is about virtual Courts and not offices.

Yes, there is a sense of camaraderie missing, an uneasy void felt when it comes to virtual proceedings. This may very well ring true to many of us, but perhaps it is only a reflection of our anxiety and fear to the process of social change felt mainly by current & older generations much like when TV or mobiles first appeared. While we must always ensure there is adherence to certain basic principles of equity

and decency, to try and stave off technological progress isn't merely incorrect but counter-productive in the long run.

Virtual courts are an idea whose time had come a long time ago. The inertia of the existing legal system unfortunately did not acknowledge its full potential until corona made it an absolute necessity. This opportunity should not be passed upon and the Courts and legal fraternity must embrace it with full vigour. A hybrid system to satisfy those who still want physical hearing can be evolved so that we have the best of both worlds. But let us not do away with virtual Courts.

There is no doubt a lot of moving parts which need to be understood and streamlined in virtual courts and maybe codified. This includes technology upgrades that are required, streamlining filing appeals and documents, making it easy to read voluminous papers, authenticating lawyers/parties appearing etc. But it is not rocket science rather it is more about mundane issues such as internet connection upgrades, using PDFs, digital signatures and so on, all of which are solvable by technology and a matter of process and procedure. After all it took more than hundred years for the legal system to evolve in its current form, surely a couple of years can be spent on ironing out the kinks with virtual systems.

What happened with film distribution ignoring advent of technology must serve as an ominous warning to us in the legal fraternity. Barely a decade ago there was huge hue and cry and protests about releasing in OTT even if it were a few weeks post release in theatres ignoring the obvious trend of where things were heading. Now, releasing in OTT is the norm not the exception. Similarly, we in the legal fraternity cannot ignore the pressing call for simplifying how Courts work, with virtual courts being only one such step, for if the current inefficient systems are continued the next generation of advocates avoid litigation practice worsening its quality.