



Hybrid hearing in Indian Courts 'A chink of ray in administration of judicial reforms' An analytical study

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Abstract

Vide-Conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you that is, in your presence. Video conferencing is a step towards disposal of long pendency of cases in the courts. Thus, it must be initiated from lower to higher court level.

Keywords: Hybrid, hybrid courts, virtual hearing, off-line hearing, online hearing, pro-technology, panacea, standard operating procedure, visualizer, pros & cons, technology illiteracy, hacking and cyber security, access divide, connectivity divide, skill divide

Introduction

The judiciary which is the third pillar of the Constitution and whose fundamental and basic function is to interpret the law and whenever any law or its provision encroaches the fundamental rights of a citizen same is being clarified, set aside by the Courts. The most essential part of judiciary is to provide access to justice to each and every person. For the purpose of providing justice to poor people Article-39(a) of the Constitution of India. has been inserted subsequently which provides that the State shall secure that the operation of the legal system promote justice, on the basis of opportunity and shall also provide free legal aid by suitable legislation or schemes. A catena of judgments have been rendered by the Hon'ble Supreme Court as well as High Courts to secure the justice to poor and needy people.

But, during COVID-19 period the basis theme of the Constitution of India to secure and provide justice to the citizens have been hampered due to compelling circumstances as everything was under dark cloud for safety and medical reasons. In the atmosphere of fear and during lockdown the Supreme Court of India has initiated the process of online hearing of most urgent cases whether they are civil nature or criminal and initiation of online hearing brings a drastic change in traditional functioning of the Courts. During COVID period, Courts have decided number of cases and before COVID period no-one can imagine that Indian Courts can function in a techno friendly atmosphere while adopting online hearing. A new concept has been adopted by the Courts that justice can be delivered without physical presence of the parties as well as counsels and COVID-19 paved the path of virtual hearing.

Online Hearing

The concept of Online Hearing was germinated during the period of COVID-19 when all the services were closed besides the emergency services i.e. medical facilities and functioning of Supreme Courts and High Courts.

It is well said that a dark black night always brings a sunny day. During COVID-19 in the year 2020-21 the whole Cosmo Politian has faced deadly impact of COVID- 19, in which a large number of people have lost their kiths and

kins but the COVID- 19 has also taught a lesson to live in limited sources and also conceptualized the mode of virtual hearing in courts across the country. Before COVID-19 period it was a nightmare that the Indian courts could have function through video conferencing but necessity is the mother of invention and dire consequences of COVID-19 compelled the courts to function through VC mode in most urgent cases which was later on chiseled the path of hybrid mode of courts.

The online hearing in India is a new concept but so far as foreign countries are concerned, they are using much earlier than the India. The UK has also been using the e-court system from 2009. The UK judicial officers stated that this system of online hearing is beneficial since it has improved the judicial system and the movement of prisoners to the court is cut down. The online hearing is cost-effective. These virtual courts deal with both criminal and civil issues. China, our neighbouring country, has had a virtual system of courts since 2015.

The Inter-American Commission on Human Rights has stated as follows regarding guarantees for democracy and the rule of law during the COVID-19 pandemic.

'...access to justice is a fundamental pillar of democracy, the exercise and functioning of which cannot be suspended or limited. This implies that the current emergency cannot be used as a reason to suspend judicial proceedings that guarantee the exercise of rights and freedoms, particularly those that seek to oversee or check the actions of authorities during this time. It is therefore essential that states ensure there are suitable, flexible means available for filing appeals that seek to oversee and keep check on provisions and rulings that are issued during emergency situations. In this regard, all public institutions must be able to oversee and keep check on each of the temporary measures adopted that suspend or restrict rights. States must also adopt measures to protect judicial personnel and ensure judicial services continue to operate.'

(International Commission of Jurists, November 2020)

Off-Line Hearing

The ancient Indian Courts were being run in open Court. The concept of 'Panch Pyare' and Panchayat were also germinated on the theory of justice in open court before the general public. The Britishers had also adopted the same theory of delivering justice in open court and after independence the Indian Judiciary also adopted the same theory and for which specific provisions have been enumerated in Constitution of India, The Civil Procedure Code, 1908 and The Criminal Procedure Code 1973.

Merits of off-Line Hearing

- The benefits of open court is that the Judge can judge the witness whether the witness is tutorial witness or speaking the truth while observing his/her demeanor.
- In open court hearing, the lawyers can share their experience with each other, which definitely helps to improve the professional skills and the litigants can have also conversation with other litigants and with his/her lawyer council.
- In open court, the passing of hard copies of documents and citations of previous judgments can easily be exchanged.

Demerits of Off-Line Hearing

- Open court hearing multiplies the expenses in the form of paper documentation.
- It also causes delay in Justice delivery system because on the date of hearing, rather for examining the witnesses or the final hearing the witnesses or the councils may not be present due to busy in another court and due to other assignments.

It causes difficulty for litigants to attend the proceedings, more particularly, the litigants who reside in far and rural areas.

Hybrid Hearing

The word 'Hybrid' means something that is the product of mixing two or more different things and in 'Hybrid Courts' means the functioning of the court by two modes one by way of Physical Hearing and secondly, by way of Virtual Hearing. A hybrid court is a substitution of virtual hearing where in advocates and litigants have the option to either be physically present before the court or appear virtually.

The word 'Hybrid Hearing' is mixture of Physical hearing and Online Hearing. The legal scenario across the globe has witnessed a revolutionary change. With the parties moving to the court to get justice, the Tech-oriented era demands digitization of the legal field also. This proposition gives birth to the concept of 'Hybrid Hearing'. With our development of technology, the services are being digitalized and the process of digitalization firstly started in banks wherein the details of accounts and transaction were being stored in computer and now the whole transaction of banking system can be operated by a single click by the customers. The Indian railway has also adopted the digitalization of its services. One can remember the long Queue outside the reservation counter before 10 -15 years ago but now with the help of technology same had been gone and tickets can be booked in mobiles. The Indian government has also initiated the services through its E-portal has E- storage, e-notification/ EGazette, E-governance. Almost all the services of government can be

access and used by updating technology. When the whole world is moving faster with technology then the Indian Courts cannot work traditionally and the COVID-19 period brought spring for developing the Indian Courts in VC mode and now in Hybrid mode.

The journey of E-Governance initiatives in court administration started mainly in the mid-1990 and was further enhanced after enactment of the Information Technology Act, 2000 (amended 2008). E-court were launched as a part of the National EGovernance Plan (NeGP) way back in 2006. In the year 2003, the Supreme Court of Indian in The State of Maharashtra & PC Singh v/s Dr. Praful B. Desai & Another case adopted an updating and purposive interpretation of the Criminal Procedure Code and allowed video-conferencing for recording the important evidence of an important witness who is in USA and is unable to come to India to submit his testimony due to old age and poor health in a criminal trial and permitted video-conferencing. The court held that video-conferencing is in conformity with the requirements of Section 273 of the Cr.P.C. and is a procedure established by law mandatory for saving the fundamental rights of an accused under Article 14 and 21 of the Constitution of India.

In the initial stage of VC mode there were piles of problems viz. networking problem, scanning of documents, audio-video quality problem and non-friendly technology but with the passage of time the VC mode has started to sail in smooth functioning.

Recently on 3rd of February 2023 the Chief Justice of India Dr. Justice Dhananjay Y. Chandrachud has innograted 'Virtual High Courts'. In 10 districts of Orissa, the state of Orissa has become the 1st state in India to have virtual High Court and Districts. In the 1st phase the Orissa High Courts has come with 10 virtual High Courts in 10 different Districts namely Balasore, Berhampur at Ganjam, Bhadrak, Bhawanipatna at kalahandi, Bhubaneswar at Khurda, Bolangir, Jeypore at Koraput, Puri, Rourkela at Sundargarh at Sambalpur. Further it has been proposed that one dedicated room in every District Court Premises in Orissa shall be established for the purpose of virtual appearance before the High Courts. The dedicated room would be supplemented with a back office which will facilitate E-filling of cases in High Courts.

The Orissa High Court has also notified a Standard Operating Procedure (SOP) Lawyers and Litigants. The following services will be available through digital modes in these virtual High Courts.

1. Scrutiny of E-filled cases and removal of defects.
2. Numbering of the cases.
3. Listening of cases including mentioning before the High Court in virtual mode. iv- Submission of application and issuance of certified copies of the order and judgments.

The High Court has supplied the following ICT devices to the districts for functioning of the Virtual High Courts:

1. 55 inches television (for appearing before the benches of the High Court).
2. Speakers (for clear audibility).
3. Document Visualizer (for display of the document during hearing of the cases)
4. Stand cameras and microphones (so that the advocates can be clearly visible and audible to the benches). v- Computer, printer and scanners.

(Source of information – LIVELAW)

Albeit, the virtual Courts are Techno friendly and needs of hours but it cannot substitutes the mode of physical hearing as in many cases the physical presence of concerned parties and Officers are required, more particularly at the stage of evidence of witnesses as well as parties the clouds of influencing the parties and witnesses cannot be ruled out. There are many merits and Demerits of hybrid modes which are as under-

Pros

- Virtual hearing is easy and comfort access of Justice
- It is litigant friendly as most of the population is using Android phones therefore they are habitual of technology.
- Affordable- as it reduces the cost of travelling and allied expenses in attending the court proceedings.
- Faster process and convenient process of attendance.
- Lawyers and Litigants can appear before the Court from anywhere while maintaining the Decorum of Court.

Cons

- Lack of infrastructure, Internet facilities in remote and rural areas.
- Application public software are not so secured.
- Complicated procedure: As the parties have to scan the documents and upload the same in prescribed format.
- Digital/Technology illiteracy.
- Not secure in confidential information.
- Hacking and Cyber security.

Challenges & Suggestions

The hybrid mode of court is more important and beneficial in cutting the cost. There may be many questions regarding the place of court. It is not necessary that in a particular place or building a court should function. The provisions law clearly provides that court means a place where a Judge acts upon to perform Judicial work. No wonder E-Judiciary is being hailed as a safer mode of justice administration during COVID-19 crisis with added efforts for its rapid universalization in the country. However, the move is also thronging up a number of challenges that need to be addressed. The digital divide makes access to justice unaffordable and accessible for a vast majority but still there are mainly three-dimensional challenges which have to be sought out. These are as under

1. **Access divide:** Access to equipment and infrastructure.
2. **Connectivity divide:** Access to broadband connection.
3. **Skill divide:** knowledge and skills are required to work on digital platform.

The first dimension i.e. 'Access divide' can be developed by providing adequate equipments and infrastructure from top to bottom stage.

The second dimension i.e. 'Connectivity divide' which can be improved by providing better internet connection facility which works constantly and speedily.

The third dimension i.e. 'Skill divide' on which a lot of work is to be completed the litigants and the lawyers have to be provided basic knowledge and training in order to cope up with technology.

Conclusion

Although there are many Demerits in Hybrid mode of hearing but due to pendency of large number of cases

Hybrid mode of hearing is one of the better options in reducing the pendency. The security and sensitive matters can be controlled by developing a secured software which can be accessed only by the concerned parties. As we are passing through transitional phase and it is not easy to cop-up with but still for advancement of justice, the Hybrid courts are the need of hours.

In the words of Chief Justice of India Dr. Justice Dhananjay Y. Chandrachud

'I want to dissuade people from the idea that Virtual court hearing are some sort of panacea. They will not be able to replace physical Court hearings because COVID-19 descended without warning and we had no other choice'.

In the case of 'All India Association of Jurists & Anr. v/s High Court of Uttarakhand & Ors., National Federation of Societies for Fast Justice & Others v/s Union of India, the Chief Justice of India DYS Chandrachud expressed his anguish towards Chief Justices of High Courts who have started disbanding the infrastructure for virtual hearings. The CJI while promoting access to justice stated 'Whether you are pro-technology or not, all Chief Justices of High Courts need to learn that technology is to be used.'

(Reference: LIVELAW)

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