

Virtual Hearing by Judiciary, Tribunal and Regulator*

Introduction¹

World over, the COVID-19 pandemic has forced Courts to get creative to continue to execute their duties. Courts had to explore ways and means to become less dependent on physical appearances and more receptive to online options. Virtual Courts have now become the primary or the only means for dispensation of justice.

One of the earliest references to Virtual Courts can be found in the works of Professor Frederick I Lederer who is currently the Director, Centre for Legal and Court Technology, United states. He wrote in 1997-

'The Courtroom is a place of adjudication, but it is also an information hub. Outside information is assembled, sorted and brought into the Courtroom for presentation. Once presented, various theories of interpretation are argued to the fact finder who then analyses the data according to prescribed rules (determined by the judge through research, analysis and interpretation) and determines a verdict and result. The Courtroom is thus the centre of a complex system of information exchange and management. Ultimately because lawyers and judges deal continuously with 'data', high technology Courtrooms exist and Virtual Courtrooms are possible.'

Lederer, as far back as in 1997, with an impressive degree of foresight, predicted how digital technologies transform the legal landscape in future. Given the pace and the degree of digital incursion into almost all facets of human activity, it is clear that technology will become an omnipresent feature of the Courtroom.

Virtual Courts vis-vis-Regular Courts¹

In Virtual Courts, Plaint and other documents are filed electronically, arguments are heard over videoconferencing/teleconferencing, evidence is submitted digitally, judges decide cases online either presiding from the physical Courtroom or sitting in some other place. Thus, Virtual Courts transform the documentation, evidential and procedural mechanisms and conduct hearings online from start to finish.

* Chittaranjan Pal, Assistant Director, The ICSI.

Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

1. Chapter-I (Virtual Courts) of One Hundred-Third Report of the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on Functioning of Virtual Courts / Court Proceedings Through Video Conferencing (Interim Report)<https://districts.ecourts.gov.in/sites/default/files/pdf_upload-381310.pdf>accessed 30 November 2020

Supreme Court Order on Video Conferencing during Covid-19 Pandemic

Hon'ble Supreme Court of India in Suo Motu Writ (Civil) No. 5/2020 in RE : Guidelines for Court Functioning Through Video Conferencing during Covid-19 Pandemic vide its Order Dated 6th April 2020 in para 6 direct that:

"Therefore, in exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make such orders as are necessary for doing complete justice, we direct that:

- i. All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful.***
- ii. The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies.***
- iii. Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies.***
- iv. The concerned courts shall maintain a helpline to ensure that any complaint in regard to the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance in regard to it shall be entertained thereafter.***
- v. The District Courts in each State shall adopt the mode of Video Conferencing prescribed by the concerned High Court.***
- vi. The Court shall duly notify and make available the facilities for video conferencing for such litigants who do not have the means or access to video conferencing facilities. If necessary, in appropriate cases courts may appoint an amicus-curiae and make video 5 conferencing facilities available to such an advocate.***
- vii. Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial stage or at the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video conferencing. If it is necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court.***
- viii. The presiding officer shall have the power to restrict entry of persons into the court room or the points from which the arguments are addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless such party is suffering from any infectious illness. However, where the number of litigants are many the presiding officer shall have the power to restrict the numbers. The presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number."***

Video Conference Hearings in the Delhi High Court

The Hon'ble Delhi High Court notified the Video Conferencing Rules 2020 ("Rules") on 1st June 2020. Video Conferencing Rules 2020 apply to proceedings conducted via Video Conferencing ("VC") by the Delhi High Court and the Courts as well as Tribunals over which it has jurisdiction.

According to the Rule 3 of High Court of Delhi Rules for Video Conferencing for Courts 2020, the General Principles Governing Video Conferencing are as under

- (i) Video conferencing facilities may be used at all stages of judicial proceedings and proceedings conducted by the Court.
- (ii) All proceedings conducted by a Court via video conferencing shall be judicial proceedings and all the courtesies and protocols applicable to a physical Court shall apply to these virtual proceedings. The protocol provided in Schedule I shall be adhered to for proceedings conducted by way of video conferencing.
- (iii) All relevant statutory provisions applicable to judicial proceedings including provisions of the CPC, CrPC, Contempt of Courts Act, 1971, Indian Evidence Act, 1872 (Evidence Act), and Information Technology Act, 2000 (IT Act), shall apply to proceedings conducted by video conferencing.
- (iv) Subject to maintaining independence, impartiality and credibility of judicial proceedings, and subject to such directions as the High Court may issue, Courts may adopt such technological advances as may become available from time to time.
- (v) The Rules as applicable to a Court shall mutatis mutandis apply to a Commissioner appointed by the Court to record evidence and to an inquiry officer conducting an inquiry.
- (vi) There shall be no unauthorised recording of the proceedings by any person or entity.
- (vii) "Required Person" defined in Rule 2(xii) shall provide identity proof as recognised by the Government of India/State Government/Union Territory to the Court point coordinator via personal email. In case of identity proof not being readily available the person concerned shall furnish the following personal details: name, parentage and permanent address, as also, temporary address if any.

Hearing through Virtual Mode by NCLAT

National Company Law Appellate Tribunal issued the Revised Standard Operating Procedure for Ld. Advocate/ Authorised Representative/Party-in-Person for mentioning the matter for hearing through virtual mode.

As directed, the following is the revised Standard Operating Procedure for hearing of cases through virtual mode (Cisco Webex Meeting Platform) from 04.08.2020 till further orders.

1. The mentioning application shall be submitted only by e-mail at the email address registrar-nclat@nic.in. If the mentioning application is allowed, the Learned Advocate / Authorized Representative / Party-in-Person shall file the Appeal / Interlocutory application in hard copy as per procedure prescribed under NCLAT Rules. After curing all the defects, the case would be listed in the cause list to be published on the NCLAT website (www.nclat.nic.in). The court fee shall be paid through Bharat Kosh (<https://bharatkosh.gov.in>).

2. The mentioning application must inter-alia clearly contain the case-details (Diary No., date of filing, cause title, appeal details etc.) and contact details of the Learned Advocate/Authorised Representative/ Party-in-Person such as e-mail ID, mobile number with alternate number(s), full company/office address with PIN Code.
3. The parties shall not be permitted to rely upon any document other than the documents duly filed along with the Appeal/Interlocutory application in conformity with the NCLAT Rules.
4. The mentioning application must contain a separate paragraph giving consent for taking up the matter through virtual mode.
5. In the mentioning application, the Learned Advocate/Authorised Representative/ Party-in-Person must specify as to how he/she would link to the Hon'ble Bench in video-conferencing mode, i.e. whether through desktop/laptop/mobile phone. In this regard, parties may kindly use desktop/laptop/tablet computers that will provide stable and smooth connectivity for video-conference. It may be noted that the speed of link should be more than 2 Mbps. It has been observed that signal drop/incoming call on mobile phones can delink such devices from an ongoing video-conference disrupting such VC and such devices may be avoided as far as possible.
6. Link to enable the Ld. Advocate/Representative/Party-in-Person to join the Video Conference shall be sent to the email provided in the mentioning application. Please note that a maximum of three appearance links will be provided per party (AOR, Junior Lawyer, Sr. Advocate / Arguing Counsel) and that it should not be shared with anyone.
7. The standard protocol about one person speaking at a time in VC shall be followed. All the parties shall be given chance, in turns, to present their case by the Hon'ble Bench. Any attempt to jump in during the presentation by another party may disrupt the proceedings. It may also invite 'muting' of the microphone of the disrupting party. In case a person wants to make a point she/he may raise her/his hand to invite the attention of the Hon'ble Bench. She/he can start speaking only after she/he has been allowed to do so. Cross talking or discussion could be done only after the mic has been put in 'mute' mode.
8. The directions of the Hon'ble Bench should be strictly followed at all times in VC to enable smooth hearing.
9. All decorum regarding dress of presenters and in verbal presentations should be maintained.
10. Any recording and use in any manner of the proceedings of the hearing through VC is strictly prohibited. Infringement may invite stringent action against the erring party.

National Company Law Appellate Tribunal also issued instructions for joining video conferencing.

Virtual Hearings by Competition Commission of India (CCI)

Competition Commission of India on 06.10.2020 issued Standard Operating Procedure (SOP) for Virtual Hearings.

According to the Standard Operating Procedure, Authorized Representatives (Advocates/ Chartered Accountants/ Company Secretaries/ Cost Accountants) / Parties/ Parties-in-Person shall follow the following protocol for hearings through virtual mode:

1. For conducting hearings through Video Conferencing (VC), a URL would be sent through email in advance to one concerned authorized representative of each party, who, in turn, would circulate the same to the party to whom it is representing and the other authorized representative(s) / senior counsel and their juniors, as per the protocol detailed hereinafter.
2. Authorized Representatives/ Parties, who wish to join virtual hearings, must sign an undertaking (as per the format indicated at S. No. 13) of this SOP and send a scanned copy thereof through e-mail to atdregistry@cci.gov.in at the earliest, preferably a day before the hearing date.
3. Only three logins (two for Authorized Representatives and one for the Party or its employee) per Party are allowed. In case a party engages a senior counsel, two additional logins will be allowed i.e. one for senior counsel and another for his/ her junior, respectively.
4. The Parties and their Authorized Representatives are expected to conduct in a decorous manner at all times during virtual hearings.
5. The Parties and their Authorized Representatives are strictly prohibited from recording the virtual proceedings in any manner whatsoever. Any such action shall be viewed seriously and appropriate action, as per law, would be initiated against such Parties / Authorized Representatives.
6. The Parties / Authorized Representatives desirous of availing VC infrastructure available at CCI premises, would contact the ATD Registry (at atdregistry@cci.gov.in) well in advance.
7. Any List of Dates / Note of Arguments / Convenience Compilation has to be filed seven days in advance after serving copies thereof upon the other Parties.
8. The Parties/ Authorized Representatives shall not share/ disclose/ disseminate the link shared with them for the purposes of VC with any other person. Also, only the Parties-in-Person and / or Authorized Representatives shall remain present during the virtual hearings and no other person shall be allowed to attend the same.

Further CCI also issued General Instructions in the Standard Operating Procedure.

Conclusions

Virtual Courts/Tribunals has immense potential to provide a new dimension to the justice delivery system in India and can help in promotion of legal health in the country. Virtual Courts/Tribunals have infinite benefits to offer for all the stakeholders involved. Moving to a largely virtual system has long term benefits for the judiciary, Tribunal, Regulators, Professionals and the public at large. For the development of virtual system, there is a need for a deep percolation of technology in the society and the expanding use of Internet and digital tools.

Source :

- https://main.sci.gov.in/supremecourt/2020/10853/10853_2020_0_1_21588_Judgement_06-Apr-2020.pdf
- https://nclat.nic.in/wp-content/uploads/2020/08/Cisco_final.pdf
- https://www.cci.gov.in/sites/default/files/whats_newdocument/SOP.pdf
- http://delhihighcourt.nic.in/writereaddata/upload/Notification/NotificationFile_ULDC4UVQWZ9.PDF
- <https://niti.gov.in/sites/default/files/2020-10/Draft-ODR-Report-NITI-Aayog-Committee.pdf>
