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# Importance of Videoconferencing in Judicial System

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## 1. INTRODUCTION

Courts throughout India are employing video conferencing to conduct some of their work in light of the nationwide lockdown and the implementation of social distancing. This is motivated by the necessity to guarantee that citizens maintain access to justice and to prevent a stalemate in the legal system. This epidemic has brought to light deficiencies in the ability and preparedness of courts to go online in these kinds of circumstances. Additionally, it has given the judiciary a chance to expedite the process of digitization and, to the greatest extent feasible, provide a structure for working online.

When combined with other initiatives like electronic filing and improved cause-list administration, enabling video and audio technologies in court sessions has the potential to drastically change how the public obtains justice through the legal system. Video technology can be a great addition to paper submissions, even though they cannot be entirely eliminated in court hearings. By making it possible to record and preserve witness and party depositions as well as attorney arguments, it may contribute to the humanization of the processes. When cases are appealed, these can be worthless.

Many people who live far from courts and feel more at ease conducting business in Indian languages may find it easier to participate if video is made available. The potential for these technologies at scale has been further expanded by the availability of transcription technology.

Legal aid, alternative dispute resolution procedures, and conflict resolution are the three areas of the court system where video conferencing can be utilized.

When it comes to educating citizens about their rights, providing them with information about conflict resolution choices, and, if they qualify, offering them legal assistance, video and audio technologies can be extremely helpful. Cost and distance are major obstacles to getting legal help, and they keep many people

from resolving their conflicts in a reasonable manner. Consider the case of migrant workers who wish to file a complaint against their employer but are not conversant in the local tongue.

Given these opportunities to enhance access to justice, the video conferencing system that will be utilized must be developed with end users in mind and incorporate the necessary checks and balances to ensure citizen safety and data security. Witness vulnerabilities and due process issues should be considered in the technology and architecture of the video conferencing platform. Other jurisdictions that have been actively utilizing this technology over time have a lot to teach us. As always, the key to achieving these results is having institutional processes in place and implementing them effectively.

This study aims to develop a framework for the implementation of video conferencing and gives an overview of its current state. the future of virtual courts. This paper's first portion explains the present state of video conferencing in different tribunals and courts throughout India. The second part provides a summary of further digital procedures that should go hand in hand with video conferencing in order for it to be successful. The third segment explains the conditions necessary for video conferencing to be successful. The architecture of a virtual court should be described in the fourth part similar. The fifth section highlights the issues with due process that need to be considered. The implementation and expansion of virtual courts raise concerns about privacy and openness, which are highlighted in the sixth section. The specifications for the hardware and software needed to implement virtual courts are covered in the seventh part. An overview of global virtual court experiences is given in the eighth section. In light of the Indian context, the ninth section provides an overview of the deployment of virtual courts. The future of virtual courts in India is outlined in the tenth section. The eleventh section outlines a framework for the regulations that ought to be put into place in order to establish virtual courts.

### **1.1 Review of Literature**

- The article "Cross-Examination Earlier or Later: When Is It Enough to Satisfy Crawford?" by Christopher B. examines the ramifications of the *Crawford v. Washington* (2004) ruling, which created the Sixth Amendment right to question witnesses. It looks at whether cross-examination satisfies the constitutional standards for a fair trial at any point throughout the trial. In order to protect a defendant's rights, the article addresses the nature of testimonial hearsay, the timing of cross-examination, and how courts weigh these considerations. Additionally, case law and

practical difficulties in using Crawford in actual trials are reviewed. The article adds to the continuing discussions about the Confrontation Clause's application and extent.

- Penelope Gibbs' *Defendants on Video: A Revolution in Access or Conveyor Belt Justice?* analyzes the criminal justice system's use of video technology critically, with special attention to how it affects defendants' rights and access to justice. The literature review probably covers the possible advantages, such improved accessibility and efficiency, as well as the disadvantages, like worries about equity and the possibility of "conveyor belt justice." It examines academic viewpoints regarding the possibility for undermining the adversarial process as well as the efficacy of video proceedings in enhancing access to justice for underrepresented groups. The analysis draws attention to current discussions over how to strike a balance between protecting defendants' rights and advancing technology.
- Emma Graham-Harrison's *Lockdowns Around the World Bring Rise in Domestic abuse* examines how the COVID-19 outbreak caused an increase in domestic abuse cases worldwide. The study of the literature looks at a number of research that connect isolation, economic stress, and lockdown procedures to a rise in domestic abuse instances. It draws attention to how the pandemic made preexisting vulnerabilities worse, particularly for women and other marginalized groups. The assessment uses data from many nations to demonstrate how government actions, such travel restrictions and inadequate support services, made the situation worse. Calls for improved protection mechanisms and long-term legislative changes to combat domestic abuse are also covered.
- "The Modernization of E-Judiciary in India" by Dr. K.V. Sreenivasan explores how technology has been incorporated into the Indian legal system, namely the use of electronic tools for case administration, virtual hearings, and digital records. In order to increase effectiveness and accessibility, the literature study emphasizes a number of efforts, including the e-Courts project and the National Judicial Data Grid. It talks about the difficulties, such as data security issues, digital literacy gaps, and infrastructure deficiencies. While stressing the need for a balanced approach to promote fairness and inclusivity in the judicial system, the assessment also discusses how e-judiciary may improve transparency and decrease case backlogs.
- *Videoconference and Remote Interpreting in Criminal Proceedings* by Sabine Barun and Judith L. Taylor explores the function of these technologies in contemporary criminal

proceedings. The benefits of these technologies, including improved accessibility, lower prices, and the ability to overcome logistical obstacles in cross-border situations, are covered in the literature review. It also draws attention to issues with the precision and caliber of distant interpretation, the possibility of fewer rights for defendants, and possible difficulties in maintaining equity. The review assesses international practices, addressing the ethical and legal ramifications of their use while providing insights into how these tools are incorporated into criminal processes.

- The advantages, issues, and future directions of Daniel DeVoe and Sarita Frattarol's videoconference in the courtroom examines the expanding use of videoconferencing in court cases, particularly in the wake of the COVID-19 pandemic. Benefits like enhanced efficiency, lower costs, and better access to justice for people who are vulnerable or live far away are examined in the literature study. However, it also addresses issues including the risk of technological inequity, difficulties in maintaining the integrity of testimony, and the possibility of impaired due process. In addition to suggesting methods for its responsible use in future court systems, the evaluation highlights the necessity of a balanced approach to videoconferencing integration, with appropriate protections to defend justice and legal rights.
- Virtual Cross-Examination: The Art of Impeaching by John G. Douglas Hearsay investigates how cross-examinations in virtual environments are developing, especially in relation to hearsay evidence impeachment. The literature study looks at how cross-examination dynamics are impacted by the move to virtual hearings, which was sped up by the COVID-19 outbreak. This is particularly true when it comes to contesting testimonial hearsay. It talks about the benefits, such increased efficiency and accessibility, but it also raises questions about how well virtual cross-examination handles witness demeanor and trustworthiness. The analysis looks at procedural and legal issues, emphasizing how crucial it is to modify conventional cross-examination methods for the online setting while maintaining due process and fairness.

## **1.2 Statement of Problem**

It appears from limited study that Indian courts had to quickly adjust to the COVID-19 pandemic, using video conferencing to maintain the legal system in the face of social isolation and lockdowns. This change created possibility to make legal procedures more accessible, especially for people who live in

remote locations or have language problems. However, it has also exposed serious weaknesses in the court system's capacity to manage online cases. The important issues include fairness, security, and how well technology may assist the legal system without jeopardizing crucial elements like witness testimony or due process.

### **1.3 Hypothesis**

Video conferencing in court proceedings will enhance access to justice in India, particularly for underserved communities.

### **1.4 Research Objective**

This study looks at how video conferencing can change India's legal system by facilitating better access to justice, especially for underserved and isolated areas. In order to ensure due process, security, and fairness, the study attempts to determine the technological, infrastructural, and legislative prerequisites required for the effective deployment of virtual courts. In order to establish a more effective, inclusive, and transparent legal system, the study also aims to investigate the opportunities and difficulties of combining video conferencing with other digital technologies, like electronic filing.

### **1.5 Research Question**

1. How can video conferencing technology be effectively integrated into India's judicial system to improve access to justice, particularly for marginalized and remote communities?
2. What technological, infrastructural, and regulatory frameworks are required to ensure the successful implementation of virtual courts in India?
3. What are the potential challenges and opportunities in integrating video conferencing with other digital tools, such as electronic filing, to enhance the efficiency and transparency of the judicial process?
4. How can the integrity of legal proceedings, including witness testimony and due process, be maintained in virtual court settings?

### **1.6 Research Methodology**

This study will employ secondary sources of data, such as a survey of scholarly works, official documents, and legal periodicals. It will review official legal documents, research case studies from India and other nations, and look at information from technology reports and court websites.

### **1.7 Scope**

The focus of this research is on the incorporation of video conferencing technology within the Indian judicial system, examining its ability to improve access to justice, especially for marginalized groups and individuals in remote locations. It will assess current frameworks, obstacles, and possibilities, providing an in-depth analysis of how virtual courts can enhance judicial efficiency, lower costs, and uphold fairness. The study will also investigate supplementary digital tools such as electronic filing and case management systems that are essential for successful implementation. Furthermore, the research will look into best practices from other nations, the technological requirements, and the regulatory frameworks governing video conferencing in legal proceedings, offering insights on how to effectively integrate these technologies into the legal landscape of India.

### **1.8 Limitation**

1. Absence of Primary Data: Because the study is based on secondary research, it will not collect first-hand information from judges, court users, or legal experts.
2. Case Study Scope: Although the study will incorporate case studies from around the world, it might not include all jurisdictions that have virtual courts in place, which could restrict the variety of insights that can be compared.
3. Technological Variability: Given the speed at which technology is developing, it's possible that some of the reports or data utilized in this study will soon become out of date, particularly in light of new developments in digital court technologies or evolving legal requirements.
4. Focus on Virtual Hearings: The study does not cover more general digitization efforts in the legal system, such as e-court systems or AI-based legal research tools, and instead concentrates on video conferencing as a component of virtual hearings.

## **2. CURRENT STATUS**

### **2.1 Action-Oriented Procedure**

The use of video conferencing in court has been made possible by a number of Supreme Court and lower court rulings as well as specific procedural changes. The time it takes for witnesses to travel or for inmates awaiting trial to be brought to court has been shortened by the introduction of a video conferencing system for different case scenarios. Several judicial levels now use video conferencing to reduce litigation time and expense. Over the past ten years, the Supreme Court's e-committee and the government

have introduced a number of programs that have increased the use of video conferencing in courts and prisons nationwide.

In criminal trials there is heavy use of video conferencing. Video conferencing is frequently used by judges to hear bail applications, remand cases, as well as the accused's examination, particularly when it is too risky or onerous to transport the defendant from the prison to the courtroom.

This wasn't always the case, though. There was uncertainty over the application of audio-visual equipment during a criminal trial that the Supreme Court decided to settle court in the matter of Dr. Praful B. Desai v. State of Maharashtra.<sup>1</sup> As the court examined the matter of the "presence of accused" in the court as required by according to Section 273 of the 1973 Criminal Procedure Code (Cr.P.C.), the phrase "Presence" refers to more than just being physically there. Thus, the court permitted the recording of evidence during a criminal trial using video conferencing when it is inconvenient to question the witness or the accused in court. Certain provisions of the Cr.P.C. were modified in 2008 to permit the usage of electrical audio-video methods. Additionally, courts have permitted virtual conferences for a significant portion of the trial in delicate subjects for the sake of timeliness and fairness.

For example, the Madras High Court permitted the use of video conferencing for a significant portion of a well-known counterfeit case in order to save the government money, personnel, and energy costs, as well as to ensure the inmates' safety.<sup>2</sup>

## **2.2 Improving Video Conferencing in the Courts**

The Supreme Court issued a number of orders to address the situation following the historic coronavirus outbreak. Until the High Court creates suitable regulations, the Supreme Court has extended the use of video conferencing to hearing arguments at the trial and appellate stages in addition to recording evidence, given the need to preserve social distance, prevent large gatherings, and avoid the current nationwide lockdown. According to these rules, courts must switch to video conferencing technology in accordance with the protocols established by the relevant high courts. Additionally, courts must have a helpdesk to handle concerns about the feed's audibility quality

Recently, a few high courts have released norms and regulations regarding video conferencing. Before the lockdown, the Tamil Nadu and Tripura High Courts published guidelines for video

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<sup>1</sup> State of Maharashtra v. Dr. Praful B. Desai, 2003 1 SCC 49, para 19.

<sup>2</sup> Supreme Court of India. 2020. Circular, 23 March.

conferences. Numerous additional states have released policies and guidelines to control video conferences. In general, these rules offer the potential for video conferencing to be used in court to examine witnesses, hearings for arguments, remands, and bail requests, etc.

In general, the guidelines specify the necessary technical support to perform the video conference proceedings, the necessary preparations for the video conference, etc. Nevertheless, it remains to be seen if courts that have previously issued recommendations regarding the use of video conferencing would issue any new rules in response to the Supreme Court's directive. Given the nationwide lockdown, it would be crucial to expand video conferencing capabilities to additional stages while adhering to the Supreme Court's comprehensive guidelines.<sup>3</sup>

### **2.3 Mode of Video Conferencing used by Courts**

Examining the platforms being utilized for these reasons is crucial, even though different states are moving toward the usage of video conferencing tools. Skype, for example, was one of the platforms used for video conferencing. Skype video conferencing has been permitted by some high courts. In the past, specific e-court rooms with video conferencing equipment have also been established with assistance from outside specialists. For example, in Delhi's Karkardooma area, the Centre for Development of Advanced Computing has created technology for specialized e-court rooms that feature video conferencing and other technological tools.

The CISCO WEBEX platform has been used by the Delhi High Court for video conferences. The VIDYO platform has recently been used by the Supreme Court e-committee to conduct a number of video conferences. All Supreme Court hearings are currently being handled through the VIDYO platform. According to a recent Delhi High Court directive, different district officers in Delhi's trial courts will now have access to the VIDYO platform and will receive their own login ID. More thought needs to be given to the precautions that must be taken when utilizing third-party video conferencing solutions in terms of data security and privacy.

## **3. RELATED PROCESSES**

### **3.1 E-Filing**

The capacity to electronically file pleadings and other case-related papers is known as e-filing. The registry or the relevant court may

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<sup>3</sup> Whitepaper Series On Next Generation Justice Platform Paper 3. Bengaluru, p. 8, (2019).

view these records. In accordance with the Supreme Court e-committee 36's e-filing handbook, Aadhar cards or digital tokens can be used for online court fee payments and e-signatures. Viewing his profile allows the registered user to see all of the documents he has submitted and to keep track of whether they have been approved, rejected, or evaluated.

For video conferences of cases to occur in a virtual courtroom, e-filing is necessary. E-filing is now only accessible in four high courts in Madhya Pradesh<sup>37</sup>, Punjab and Haryana, Delhi, and Bombay, and is utilized at the National Company Law Tribunal<sup>(39)</sup>, National Green Tribunal<sup>(38)</sup>, and Appellate Tribunal for Income Tax. Electronically filed documents are simpler to store and access more easily than paper records, aside from the fact that the work required for physical filing. Judges can then access these materials at any time. court employees and parties involved. There is a great deal of room to improve the current e-filing system by expanding its use to additional courts, creating a more user-friendly platform that allows other parties to access and share papers, automating the process of manually checking submitted documents, etc.<sup>4</sup>

### **3.2 Electronic Evidence Management**

The Indian Evidence Act of 1872's Section 3 has been modified to permit the use of electronic evidence in court. Evidence that has been electronically recorded, such as on hard drives, digital photos, audio and video recordings, etc., is referred to as electronic evidence.

According to the rules of evidence, electronic evidence management is the process of centrally storing case-related digital evidence that judges and parties can access. This indicates that all of the evidence in a case is conveniently accessible through digital storage on a platform.<sup>5</sup> The use of various devices, such as CDs, pen drives, etc., is eliminated with such a management tool. Digital photos, audio-video recordings, e-documents, and transcriptions of oral testimony and declarations will all be accessible in a single digital folder. Although the eCourts Mission Mode Project Phase II does not address the administration of electronic evidence, it does envision video conferencing capabilities for all district courts and prisons. An electronic evidence management function is crucial for a virtual court to realize its full potential.

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<sup>4</sup> The Salem Advocate Bar Association, Tamil nadu v. Union of India (2003) 1 SCC 49.

<sup>5</sup> Whitepaper Series On Next Generation Justice Platform Paper 3. Bengaluru, p. 8, *supra* note 2.

### **3.3 Document and Case Management**

For a virtual court to operate efficiently, a mechanism for easy storage, retrieval, and documentation is required. In the appellate process, this would be extremely practical. These days, the complete set of court/tribunal documents must be included with the appeal when it is filed. It would save a great deal of time and money if all of the pleadings and papers submitted to the court or tribunal below were accessible online and the appellate court could access them using the proper, distinct docket numbers.

Although it hasn't been done yet, the eCourts Mission Mode Project Phase II emphasizes the necessity of digitizing records and making it easy to obtain pertinent papers.

To comprehend how cases go and to ensure that pertinent case data and the papers required for each step of the case are accessible in digital format, case management is essential. Case management is limited to delivering basic case and hearing information under the existing system. To prevent such hearings from being prolonged, case management hearings that establish the timeline for managing the case through its phases until the judgment is delivered can also be digitalized.

### **3.4 Listing Practices**

Enhancing listing procedures can significantly aid judges in handling their caseload and provide litigants and attorneys with greater assurance. Cases ought to be listed according to the judge's workload, the nature of the case, and the topic of the situation. For a virtual court to operate well, it's critical to have two court causelists: one that enumerates cases scheduled for a general hearing in a physical courtroom, while the latter will be used for sessions conducted virtually. where a time slot should be assigned to each side.<sup>6</sup>

To avoid interfering with the in-person proceedings or giving one priority over the other, the courts should then hold the hearings in the virtual court within the allotted time. Algorithms that can evaluate the court's requirements and workload in order to maximize the utilization of court resources can be used to optimize listing procedures. A virtual court's effectiveness depends critically on the efficient scheduling of its cases.

In virtual hearings, judges must be careful to avoid pass-overs and adjournments. To save the court time, it can be recommended

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<sup>6</sup> ECOMMITTEE SUPREME COURT OF INDIA. 2016. ECOMMITTEE NEWSLETTER. P. 16, AVAILABLE ONLINE AT, t <https://doj.gov.in/sites/default/files/eCommittee%20Newsletter%20-%20April%202016.pdf>.

that mutually agreed-upon adjournment requests be circulated at least three days prior to the hearing, following the Supreme Court's current practice.<sup>7</sup>

#### **4. FACTORS AND CIRCUMSTANCES TO BE CONSIDERED FOR A VIRTUAL COURT**

##### ***4.1 Factors to be Considered Before Implementing Video Conferencing***

###### ***a. Scarce resources***

There is not enough bandwidth or infrastructure available at this time in technology to allow all courts to hold proceedings virtually. The availability of a fast internet connection as well as top-notch technology and software determine how well video conferences work. The Mission Mode of eCourts Every district court complex now has one courtroom with the required video conferencing equipment thanks to Project Phase II. Therefore, it is crucial to begin using video conferencing for specific case types or phases. This strategy has the advantage of using fewer resources and providing a chance to assess the initial rollout in order to make adjustments when the deployment is more extensive.

Stable and reliable internet infrastructure that can manage large data volumes and an uninterrupted power supply are necessary for the efficient operation of virtual courts. Building trust in the system requires the infrastructure to be dependable. It's possible that not all attorneys' own smartphones or laptops.

It is essential to set up specific hearing rooms or work areas with computers and internet connection on court property (such as libraries and bar rooms) in order to support digital access. Additionally, there should be a facility for help desks or helplines that litigants and attorneys can use to get support.<sup>8</sup>

###### ***b. Digital illiteracy***

At least 30% of Indians are illiterate, and the percentage is around three times higher for digital illiteracy than for illiteracy. Providing digital literacy skills in rural areas is the goal of the National Digital Literacy Mission<sup>50</sup>, however this goal is still far from being

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<sup>7</sup> Twentieth Century Fox Film Corporation v. NRI Film Production Associates (P) Ltd, (2003) AID 2003 Kant 148.

<sup>8</sup> DANIEL DEVOE SARITA FRATTAROL, 'VIDEOCONFERENCING IN THE COURTROOM: BENEFITS, CONCERNS, AND HOW TO MOVE FORWARD' SOCIAL LAW, BOSTON., <http://sociallaw.com/docs/default-source/judge-william-g.- young/judging-in-the-american-legal-system/04devoe-sarita-paper.pdf>.

accomplished.

Given the significance of ensuring that everyone has access to justice, this becomes crucial in the discussion of digital process accessibility. Making sure that litigants' access to justice is not impeded by digital illiteracy is crucial when establishing virtual courts. Plans for helping those who lack computer literacy must be included when virtual courts are implemented.

### **c. Consent of parties**

For a hearing to be held in a virtual court, the parties' consent is required. To make a virtual courtroom possible, due process and the right to seek justice should not be compromised. More thought must be given to how courts might take the initiative to encourage litigants and attorneys to make use of technology.<sup>9</sup> Video conferencing can be used based on the following, keeping in mind the previously mentioned factors:

- *Nature of the case*

Depending on how straightforward or delicate the situation is, video conferencing may be a better option in some situations. For instance, in order to safeguard the child's interests in instances under the Protection of Children from Sexual Offence, 2012, the law itself recommends using video conferencing to record the child's evidence.<sup>51</sup> The courts may think about employing video conferencing in some other situations, such as ex-parte cases, where the case is rather straightforward. This is further explained in Section 10 of this paper, which deals with the future. When social separation must be maintained, PILs and other cases involving many parties should be heard virtually.<sup>10</sup>

- *Specific circumstances or stages*

When a witness must testify remotely during the evidence stage of a case, for example, the high courts have the authority to mandate the use of video conferencing equipment. When the attorney is not in the courtroom, they can also use the video conference option. This is further explained in Section 10 of this paper, which deals with the future.

- *Urgent cases*

Only urgent cases should be considered in a virtual court in

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<sup>9</sup> Mahendra Chawla v. Union of India W P, (2016) (Criminal) No 156 of 2016.

<sup>10</sup> Whitepaper Series On Next Generation Justice Platform Paper 3. Bengaluru, p. 8, *supra* note 2.

an emergency where regular court operations must be curtailed or halted. “Urgent” should be interpreted as cases that need to be addressed right now. For such crises or pandemics, several nations have comprehensive rules and procedures.

In civil proceedings, urgency can be understood as the potential for irreversible harm or unquantifiable loss, or as the imminence of a property loss threat. An application explaining why the matter qualifies as an urgent case should be submitted to the appropriate court. Preference should be given to the cases whose hearings were initially planned during the emergency. Cases involving child custody, child care, and restraining orders to safeguard vulnerable populations may be considered urgent in family court proceedings. It is important to note that the number of reported cases of domestic violence has increased amid the lockdown of nations brought on by the COVID-19 epidemic.<sup>11</sup>

- *Cases before certain tribunals and quasi-judicial bodies*

Regarding the application of the law and the type of evidence, cases heard by specific tribunals and quasi-judicial organizations on topics like auto accidents and consumer complaints may be rather straightforward. By switching to a virtual court setup, these tribunals can save time. Such a structure can also be advantageous for tribunals with circuit benches that travel between states. Attorneys and litigants are not required to wait for the bench to reach their state. Online filing is available, as are preliminary hearings and hearings for temporary relief.

## 5. DUE PROCESS CONCERNS

### 5.1 Vulnerable Witnesses

Vulnerable witnesses' testimonies via video conference must be carefully considered and executed with the appropriate security measures in place. It can be necessary to make certain accommodations when using video conferencing. to document the statements of witnesses who are at risk, such as children, people with those who struggle with language and need an interpreter, those who cognitive difficulties or mental illnesses, those who require urgent medical therapy, as well as those whose physical safety is in jeopardy.

A witness's physical safety in a certain court or area cannot be

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<sup>11</sup> EMMA - GRAHAM HARRISON, 'LOCKDOWNS AROUND THE WORLD BRING RISE IN DOMESTIC VIOLENCE' (2020).

Video conferencing from a secure location can provide protection when properly addressed. protect such a witness against coercion and give them a safe space in which to testify.<sup>12</sup>

Anonymous testimony, a screen, a curtain, or a two-way mirror to protect the witness during testimony can all help to guarantee this. These would be an expansion of the witness protection procedures presently covered by the Witness Protection Scheme, 2018, which include holding in-camera trials, using a pseudonym to mask the witness's identity, and anonymizing the witness's images and voice.<sup>13</sup>

The proper accommodations are made for them, video conferencing might offer a more secure setting for these witnesses. Some witnesses may find the use of video conferencing for their questioning and cross-examination strange, alienating, and may make someone who is already at risk anxious and limit their ability to dialogue. This could be the case in India if the individual is not familiar with video conferencing or computers. They need to be helped to assist students in comprehending the examination and cross-examination procedures so that they can respond to inquiries as best they can and confront what might frequently be a very forceful cross-examination. This ought to be done in a secure setting prior to the testimony.

## **5.2 Fair Trial Guarantees For Criminal Trials**

Because criminal trials put a person in conflict with the government, they call for a distinct set of protections. A clear indication of how much the state values individual rights and liberties is shown by the way it handles a criminal defendant. The following guarantees of a fair trial should be kept in mind when using video conferencing:

### *a. Right to counsel*

A person who is arrested cannot be refused the opportunity to consult with and be defended by a lawyer, according to Article 22(1) of the Indian Constitution. Practitioner of their choosing. According to the Supreme Court, the right to access Legal aid is available to speak with and be defended by a lawyer when A person who has been arrested for a crime is initially shown in front of a magistrate. When someone is initially brought before a court on suspicion of committing a crime that is punishable by law, it is their responsibility to let him know that he has the right to legal

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<sup>12</sup> *Id.*

<sup>13</sup> Penelope Gibbs, 'Defendants on Video-Conveyor Belt Justice or a Revolution in Access?', *P. 24.*

advice and representation. practitioner, and if he lacks the funds to hire the attorney of his choosing, that One would be given to him at the state's expense.

Judges must make sure the defendant has legal representation even when remand sessions are held via video conference. ought to possess a copy of the application for remand. If the attorney is not there, The judge must ask why, make arrangements for the attorney to get notice, and if Make the required arrangements for a new attorney. In an online court, the site of the A defence attorney located apart from the defendant could avert important consultation that would often occur in a courtroom. It is essential to make it possible for the defendant and his lawyer to speak in secret. The defendant ought to be able to indicate to their attorney that they require a private discussion. In order to protect confidentiality and attorney-client privilege, the judge ought to allow such a discussion over a secret channel. The section on the construction of an ideal virtual court provides a detailed explanation of the method underlying this.<sup>14</sup>

#### *b. Cross-examination and challenging of evidence*

The Indian Evidence Act of 1872 permits cross-examination of witnesses in Section 138. The defendant can contest the validity and worth of the prosecution's evidence and learn where it came from thanks to the right to cross-examination. It serves as a testing tool to examine the witness's veracity, memory, and perception in addition to the meaning of their claims. Hearsay cannot be subjected to cross-examination, which is why it is not regarded as admissible evidence unless there are special circumstances.<sup>15</sup>

Successful trial attorneys have mastered the art of cross-examination. An effective cross-examination consists of "questions" that are actually assertions of fact rather than actual questions. These assertions are based on facts that the lawyer already knows and will support with independent evidence if the witness evades, lies, or waffles.

Cross-examination involves more than just the witness's statements. It has a physical component that includes the

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<sup>14</sup> Smt C. Surekha Naga Durga v. State of Andhra Pradesh and Ors., (2017) Criminal Revision Case No. 923 of 2017.

<sup>15</sup> JOHN G. DOUGLASS, 'VIRTUAL CROSS-EXAMINATION: THE ART OF IMPEACHING HEARSAY', P. 154-5.

witness's confidence, mannerisms, and whether or not they are hesitant when speaking. The judge will find it challenging to observe these aspects via a video conference. A virtual cross-examination finds it challenging to portray shifty eyes, rambling speech, or the startled blush of the inexperienced liar caught in the act.<sup>16</sup>

Therefore, it is crucial that cross-examination resemble a physical cross-examination as much as possible in order to guarantee the validity of testimony given via video conference. A party should be able to ask for a physical cross-examination with justification if they are unsure of this. The court must provide a well-reasoned ruling if a party demands in-person cross-examination rather than video conference. Convenience and prosecutorial expediency alone should not be grounds for rejecting such a request.

### *c. Presumption of innocence*

The presumption of innocence notion protects against punishment prior to conviction and embodies freedom from arbitrary imprisonment. More significantly, it stops the state from effectively using its enormous resources to harm an unconvicted accused person more severely than they may harm society. The layout and design of courtrooms and open courts convey a degree of impartiality, transparency, and public accessibility, as well as a certain amount of dignity. On the other hand, the prison setting from which an undertrial inmate appears via video conference is a confined and constricting area. When the defendant appears on a screen in court, securely imprisoned within the boundaries of state control, care must be taken to guarantee that the presumption of innocence is unaffected. The defendant must be treated with dignity in a virtual court setting to avoid being viewed negatively, which could undermine his presumption of innocence.<sup>17</sup>

## **6. IMPLEMENTATION**

A plan for the effective implementation of video conferencing in the Indian judiciary should strike a balance between the demands of the pandemic right now and the circumstances surrounding the imminence of normalcy. We advise using the strategy and approximate timeframes listed in Table 3 for video conferencing

<sup>16</sup> CHRISTOPHER B. MUELLER, 'CROSS-EXAMINATION EARLIER OR LATER: WHEN IS IT ENOUGH TO SATISFY CRAWFORD?', REGENT U. L. REV. 19: 319-363. P. 321-22 (2007).

<sup>17</sup> Abdul Karim Telgi and Ors. v. State 2008 Cri.L.J. 532 (Madras High Court).

adoption.

1. Prior to investing in new infrastructure, make sure that the existing physical infrastructure is being used as efficiently as possible. Courts already have video conferencing capabilities, as mentioned in this paper's second part. The following are some issues that the judiciary's leadership ought to address in this situation: To what extent do they use them? What are the issues limiting their use if their utilization is lower than expected? Are they technical and physical factors? Do they have behavioral components? Do they result from current laws and/or regulations? Setting up a strong statistics system and carrying out thorough evaluation studies are necessary to provide answers to these problems. Before making further investments in the infrastructure needed to create a secure and reliable system, such investigations are necessary.
2. Using the lessons learned from the aforementioned study, create regulations that allow for greater use of video conferencing while maintaining data privacy. The draft regulations ought to be made available to the public, comments are requested, and changes are made.<sup>18</sup>
3. Video conferencing needs to be extended on a pilot basis, for instance in three court complexes: one in the metro area, one in a tier 2 location, and one in a rural area. The pilot project must operate for six months, during which its operation should be assessed and its findings made public.
4. improving technology capabilities, integrating with document management, e-filing, and the justice platform, and enabling privacy and data security measures.

## **7. THE WAY FORWARD**

It is obvious that the Indian judiciary has recognized the value of video conferencing over time in protecting vulnerable persons and facilitating access to justice. The judiciary must keep up the pace on digitalization that began during this time, even though the COVID-19-related lockout compelled certain courts to move to online sessions. When planning the path to virtual courts, the following factors should be taken into account:

### ***7.1 Video Conferencing as the Default Mode for Hearings in Select Situations***

#### *a. Outstation witnesses*

One of the biggest obstacles facing the Indian legal system is

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<sup>18</sup> DR. K.V. SREENIVASAN, MODERNISATION OF E- JUDICIARY IN INDIA (2021).

getting witnesses to take depositions. Video conferencing ought to be the standard in cases when witnesses live in a city or town other than the one where they must appear for deposition.<sup>19</sup>

*b. POCSO Cases*

Video conferencing is strongly recommended due to the delicate nature of POCSO cases and the requirement to shield the victim from the suspected offender. This would be a logical addition to the existing provisions for holding in-camera proceedings.

*c. Heinous crimes against women*

Women must be permitted to testify remotely via video conferencing tools because to the social stigma associated with reporting crimes against women and the unwillingness of women to come forward with a case against their alleged offenders. It requires more debate, though, whether this applies to all crimes against women or just the most serious ones.<sup>20</sup>

*d. Consumer courts*

In cases where customers file complaints against suppliers of products and services, video conferencing capabilities will significantly contribute to the balance of market forces.

*e. Commercial courts*

It would not be difficult for the parties and attorneys to appear in business courts by video conference. Additionally, pre-trial conferences and case management procedures that allow for concentrated hearings over a constrained time frame by planning hearings in advance are mandated for commercial courts. Commercial courts are perfect for increasing the use of video conferencing facilities because of all these aspects.

*f. Tribunals*

Both technical and judicial members of many tribunal benches are insufficient.<sup>123</sup> Circuit benches in certain tribunals travel between several sites. One way to use these limited resources across benches is by video conferencing; for example, a technical member based in Chennai can regularly

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<sup>19</sup> Rojer Mathew v. South Indian Bank Civil Appeal No. 8588 of 2019.

<sup>20</sup> Dame Hazel Genn, 'Online Courts and the Future of Justice', p. 6.

participate in meetings in Delhi.<sup>21</sup>

### **7.2 Parties to be Allowed to Request Hearings through Video Conferencing**

Parties and witnesses may be able to ask the presiding officer to participate via video conference in addition to making it the default option for hearings in specific situations. In the interest of prompt justice and in accordance with established norms, the judge or presiding officer should have the authority to accept or refuse such applications.

### **7.3 Usage by Legal Aid Authorities**

State Legal Services Authorities started offering hotlines to support and counsel women and children who are victims of domestic abuse during the lockdown. Legal services agencies can contact people in remote locations to provide them with access to justice through virtual courts. Following the lockout, these authorities ought to inquire about the need for legal aid from potentially impacted groups, such as stranded employees, jobless individuals, etc.

### **7.4 Ensuring Citizen Centricity**

Improving individual citizens' access to justice is at the core of any judicial reform initiative. Virtual courts should be created with the convenience and use of all citizens in the nation in mind, not simply for the benefit of the legal system, attorneys, police, and other organizations.

## **CONCLUSION**

This research aims to identify the primary issues with videoconferencing in court proceedings is the goal of this study. The literature revealed two aspects of issues that could have an impact on procedural justice and the validity of court cases. The first speaks about elements that could prevent videoconferencing from being implemented effectively. The second is specifically about videoconferencing. Every dimension was categorized by us. We categorized access, procedural, normative, and technology and infrastructure issues under the first dimension. We categorized courtroom participation, communication, connection and interaction, access to counsel, privacy, public trial, courtroom symbolic and ritual features, and the right to be physically present as concerns in the second dimension of videoconferencing.

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<sup>21</sup> 'Guidelines for Indian Government Websites' available online at, <https://web.guidelines.gov.in/tools-andresources#accessibility>.

Notwithstanding these reservations, the pandemic has already altered court procedure hearings, and videoconferencing is probably going to be integrated into legal systems (CHIODO, 2021). It is also impossible to ignore the advantages of time and money savings since they increase access and raise the caliber of the evidence gathered. The authors state that as we are living in a new era, hearings and trials need to be rethought (ROSSNER; TAIT; MCCURDY, 2021). It is essential to determine whether the current arrangements in the courtroom and its surroundings are still essential in the contemporary judicial system in order to reshape the proceedings in a virtual setting (MULCAHY, 2008).

In addition to helping judicial decision-makers create better virtual hearings, this research helps build and organize knowledge of e-Justice studies in videoconferencing legal procedures by summarizing the key issues. Since so many intricate and varied topics were covered, it was not feasible to go into additional detail about every element. We recommend that future studies examine the references with a legal perspective, which we did not do here. Additionally, we recommend expanding the scope of the literature study by incorporating additional databases into the search.

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