

A Summary of JALDI Consultation on Virtual Courts

(Held on April 25, 2020)

Session 1:

Panelists: Justice Madan Lokur, Justice B.D. Ahmed, Justice Gautam S. Patel, Mr. Mukul Rohatgi, Prof. Subhashis Banerjee, Dr. Karnika Seth, Dr. Sushant Sinha, Mr. Anand Rajan

On institutionalizing judicial innovation

- a. **Customize tech tools for the judiciary** – Multiple discussions featured on the ongoing use of Zoom, WebEx and other video conferencing tools which are workable for normal online calls and conferences in the corporate sector. However, the needs of the judiciary and court proceedings are unique and require software which facilitates all processes of a case hearing. For instance, aiding an arguing counsel is challenging in the current tools. Additionally, rapid *e-transfer* or sharing of files/records while the hearing is ongoing, is also not a viable option. These are two examples of how the existing tech tools fail in actually recreating the trappings of a physical courtroom. Consequently, it was concluded nearly unanimously, no elaborate trial, or a full-fledged appeal could be heard or argued over the current medium of VC.
- b. **Consistency and standardization of tools and practices** – Supreme Court using X software, HCs use Y, etc. The disparity in software is problematic. According to the technical experts, standardization for almost 19,000 courtrooms would require *sizing* which is the process of precisely identifying the total bandwidth and capacity needed. There was agreement on the need for designing judiciary specific tool(s), which are currently unavailable, but can be engineered. It was also recommended that the sizing process and systems' designs should be up for public scrutiny and ensure inclusivity.
- c. **On models of implementation** – The conversation explored how the eCourts project had examined involving the private sector (by creating a *special purpose vehicle* for the same project). However, it was deemed implausible. In comparison, we were also given a suggestion on a possible model to ensure judicial oversight and optimizing innovation. The *enterprise* model would solicit the best talent to design tech tools *in-house*, which, in turn, would ensure the necessary customization and control of the judiciary over the end products. Lastly, it was also recommended to use open source software in order to limit licensing costs affiliated to software developed by the private sector.

On modifying the implementation authority

- a. **On the creation of a dedicated organisation** – Acknowledging the need for a dedicated staff and institution working solely towards the eCourts project, it was discussed how despite the sanctioning of funds by the SC's E-Committee (for hiring a dedicated staff of programmers and

ancillary professionals), most High Courts and district courts have failed to recruit such specialists. As such, any such organisation will need the buy-in from all tiers of the judiciary.

- b. On the retention of control by the Judiciary** – Ultimately, the judiciary should be the one calling the shots; however, the judiciary must harness the skillset of talented professionals, coders, and engineers to construct the requisite technological interventions. It was also emphasised that while High Courts are constitutionally mandated with the administration of their respective district courts, the Supreme Court must take the lead position, guiding this drive towards the establishment of virtual courts.

On the need for legislation(s) governing virtual courts

- a. Amend existing laws** – Some legislations have already been modified to facilitate integration of the use of technology within courts. Furthermore, jurisprudence has also legitimized the process of integrating ICT into India courts. However, more laws will need specific tweaks if we are considering an eventual transition towards virtual court rooms.
- b. Enact specific legislation to govern virtual courts** – In addition to amending the necessary existing laws, an overarching legislation must also be enacted to sanction virtual courts. Currently, there are procedures which do not find the required backing of law (for instance, converting a judicial residence into courtrooms). The specific law will need to address the numerous issues emerging from the gradual use of technologies, and establishment of virtual courts. The Supreme Court can only effectuate guidelines. More substantive mandate must come from the legislature.

On the model of virtual courts in India

- a. Adopting a hybrid model** – The panelists also emphasised the need to supplement the existing systems and not discard physical court rooms. The idea of virtual courts must focus on easing access to justice (especially for geographically far-flung regions), rather than upending the existing courtrooms. A hybrid ecosystem must be established which makes e-facilities available to individuals seeking its usage, but not imposing its adoption uniformly across the board.

Session 2:

Panelists: Justice K. Kannan, Ms. Madhavi Divan, Mr. Jamshed Mistry, Ms. Sudebi Thakurata

On defining ‘virtual courts’ with clarity

- a. Infusion of tech versus online courtrooms** – Virtual courts can include the adoption of tech solutions at different stages of a litigation (irrespective of the nature of cases) to cumulatively formulate a virtual ecosystem. This is what we must focus on as it proposes tech adoption instead of an overhaul of physical courtrooms.
- b. Gradual adoption** – Multiple panelists indicated the need to stagger the adoption process. The current pandemic has compelled an increase in the use of video conferencing but eventually, even after the courts reopen, we must adhere to lack of crowding, and ensure paperless courtrooms. There are numerous aspects of automation which must effectively be implemented only in a phased manner.

On sensitization and facilitating adoption

- a. **Adopting a design thinking approach** – If we are targeting adoption of technology, it is imperative to answer, “to what end”. In addition to *feasibility* and *viability* of any technology (or any intervention), its *desirability* must also be evaluated. This evaluation involves answering the “means to an end question” and determining the main driving forces behind such changes. If we can identify precise answers to these qualitative questions, it is plausible to design an adoption framework which is inclusive and adaptable.
- b. **Adoption is hindered due to the threat of radical change** – VUCA (volatile, unpredictable, complex and ambiguous) is an accurate manner of describing the current events in the world. In these increasingly uncertain times, add the notion of radical technological changes can throw people off balance. Human nature is driven by familiarity. This must also be the underlying tenet for any tech intervention driving change. The threat of radical change must instead be portrayed as a staggered transition.

On what can virtual courts accomplish

- a. **Mechanical cases** – Numerous case types (especially the computational disputes) are largely mechanical. There is limited or no use of advocacy of arguments, except for delaying proceedings. In such cases, it is imperative to find more mechanized models for dispute resolution (example of the online courts for disposing traffic *chalaans*).
- b. **Promote online dispute resolution** – ODR forums can prove to be extremely useful in making virtual courts and online case hearings more common place. It is imperative for the judiciary to embrace the fact that courtrooms are not the only viable institution for dispute resolution.
- c. **Virtual courts must not replace actual courts** – The physical courtrooms bring a certain paraphernalia and environment which is awe-inspiring. For an advocate, the face-to-face physical interaction is crucial to being persuasive. While arguments can be compelling even in an online interaction, it inevitably dilutes the experience and ambience of advocacy which are intangibles aiding in delivering persuasive arguments.

On legal education and judicial training improving adoption

- a. **Need for necessary modifications to law school curricula** – It is imperative to use the younger generation of lawyers (and potential lawyers) to become the vanguard of the transition to virtual courts. This will require legal education to acclimatize law students with the use of technology in advocacy and other forms of legal practice. Similarly, younger judges entering the judiciary must be familiarized with the use of technology (which must be an active endeavour, not limited to a few video conferencing sessions). This will require substantial revisions to the existing curricula of law schools and judicial academies.
- b. **Education and training must be inclusive** – It is pertinent to acknowledge the economic disparity in the composition of student cohorts in law schools and recruited judges in judicial academies. In our enthusiasm to drive technology, we must ensure adequate access to the basic infrastructure and hardware for all these students and trainees, to ensure adoption in an inclusive manner.

Key Recommendations

Vidhi's JALDI group has come out with a strategy paper for virtual courts in India. There are four key action points arising from the strategy paper. We make the following recommendations for the judiciary.

Immediate action points

Establishing a Steering Committee – As it emerged both from the online consultation, as well as from our strategy paper, establishing a body with relevant experts to steer the process of integrating the right solutions at the right scale for the present is essential. This *steering committee* will include a permanent workforce dedicatedly working on this project and will work under the oversight of the judiciary.

Engaging with existing ODR platforms – Invite existing ODR platforms to showcase their ability to cater to the judiciary's immediate requirements during the current crisis. Such platforms already have customised frameworks to resolve disputes and include the likes of CODR, Sama, PreSolv, CADRe, CrekODR etc. Co-opting these facilities will afford the judiciary access to more suitable technological infrastructure to keep its operations running, as it works towards the long-term prospect of building internal capacity for an end-to-end virtual courts.

Resolution adopting a principles' framework – Pass a full court resolution or an eCommittee resolution, adopting principles to guide the onboarding of such platforms. Framework given under Annexure A, of the JALDI *strategy paper*, may be used for developing these guiding tenets.

Long-term action points

Legislative framework – To ensure permanence and clarity about the role of the *steering committee*, as well as providing statutory mandate to the overall project of establishing virtual courts, it is imperative that a legislative framework be developed and enacted.

Utilisation of existing eCourts project's funds – Utilise funds granted under Phase II of the eCourts Mission Mode Project, to set up the required physical infrastructure and bandwidth to enable an efficient use of the platforms. Currently, only Rs. 716.42 crores have been utilised from the Rs. 955.82 crores that were granted. Additionally, even the XIV Finance Commission has urged the state governments to sanction money for the scanning and digitisation of records.

Develop a tech adoption network – Develop a network to enable the reach of technological tools to the various District Courts. Inspiration can be drawn from the *Navya Network*, which uses technology to bring cancer expertise to oncologists and cancer patients in India. *Navya Network* is funded by the TATA Memorial Services and works in collaboration with the National Cancer Grid. ECHO platform is another philanthropy funded platform which could be used to train judges and lawyers in new technology tools and procedures being adopted.

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