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Justice online: Pandemic gives India's judiciary an opportunity it shouldn't miss

India must use the current situation to push for use of technology to improve procedural and substantive aspects of the legal process.



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The judgment of the Supreme Court states that it is “open to explore the possibility of live streaming”.
(Illustration by C R Sasikumar)

Written by Anil Harish

The [COVID-19 pandemic](#) has affected the health and wealth of many people in India. It has had a great impact on law. It has caused us to change our mindset and adopt something which was prohibited in the past. Just two months ago, if a person was to go to court and take a photograph or even more heretical, undertake an audit or video recording, he would be thrown out and would likely be thrown in jail.

In August 2016, there was a news report of a young woman in Bengaluru who had come to the court in connection with a matter. She took a photo on her cell phone,

intending to send it to her sister. A judge saw her and immediately had her cell phone confiscated and threatened to initiate contempt proceedings. Her father came to the court and apologised. Fortunately for her, the contempt proceedings were not initiated. This is one end of the spectrum — a ban on photography and recording.



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Open

This matter of recording and filming has been a subject of great debate and discussion in many countries. It appears that photography was permitted in courts in the US till about 1925. Thereafter, restrictions were introduced. Committees were constituted and rules framed towards prohibiting or restraining photography. But in some cases, exceptions were made, such as in the trial of O J Simpson, which was telecast.

However, the US Supreme Court, since as far back as 1955, has been recording oral arguments made before it, which are available to the public online. The oral arguments have also been transcribed and put up on the same website. They are available soon after the arguments have taken place. Other countries too have been concerned with this issue.

Coming back to India, the matter of Swapnil Tripathi is very relevant. Tripathi, a student of National Law University Jodhpur, was interning in Delhi. He had worked on a particular matter and wanted to accompany his senior to the Supreme Court. However, on Mondays and Thursdays, interns were not allowed in the Court on account of a large number of matters being taken up and the fact that the Court gets completely filled up. Tripathi, was very upset that he was not permitted to go to the Court office and with the consent of his senior, filed a writ petition praying that at

least live streaming should be allowed. The matter was taken up along with other matters involving similar issues.

The judgment of the Supreme Court states that it is “open to explore the possibility of live streaming”. Many conditions were provided for — the filming would be done on cameras of the Court, the copyright would belong to it, that live streaming could be heard only in a separate Court room, in the press room and in the office of the Attorney General and Solicitor General.

Article 145(4) of the Constitution states that all orders have to be pronounced in open court. The Constitution itself does not state that hearings have to take place in open Court. However, Section 153B of the Civil Procedure Code and Section 327 of the Criminal Procedure Code do state that hearings should generally be accessible to the public. So, although the Supreme Court has accepted, in principle, the concept of filming in order to make the proceedings accessible, this was at first a somewhat hesitant step. The judgment said that it (the Court) was “open to explore the possibility of live streaming”. It did not direct live streaming or even a recording, to be done on a regular basis, or permanently.

Then the pandemic struck. On March 16, Chief Justice Sharad Bobde took the bold decision that justice was not to be kept on hold and virtual courts had to begin functioning. The Bombay High Court was quick off the mark to hear a matter by video-conferencing. Thereafter, the Supreme Court and other courts have heard several matters. Now it appears that the technology and the Apps being used are different from what were used on the first day and that there have been glitches. It also appears that while the first few matters could be heard by anyone who logged on, now access is restricted and only the parties concerned are admitted into the virtual hearings.

To have virtual courts is, therefore, no longer the question. The questions now are: Under what circumstances should there be a virtual hearing, in what kind of cases, in what manner should these be conducted, and in what other ways can technology be effectively used.

The dignity of the court must be maintained and the ultimate touchstone on which such steps should be tested, is whether the cause of justice is served. Virtual courts cannot be a substitute for actual live courts. However, in certain circumstances they can supplement or step in to fill the gap. We must recognise that technology has led the way and we must use this in the best manner possible.

Article 130 of the Constitution of India states that the Chief Justice of the Supreme Court may, with the consent of the President of India, cause benches of the Supreme Court to be set up in different places. But, we have not had benches of the Supreme Court outside Delhi in all these years. Perhaps, now is the time to give life to this provision. An option should be available to a litigant who is not from Delhi and does not wish to travel, particularly in these times, and wishes to be heard through video.

Such a litigant's application may be accepted subject to conditions such as — additional court fee, the lawyer will appear from a court room or a chamber of commerce or a designated centre, an officer of the court would be present in the court room, the opposing lawyer could be in Delhi, appearing before the Judge, or could be arguing from a designated room in any court or centre, a definite date and time should be fixed for such a hearing, and that hearings should be accessible to all.

Once the lockdown is lifted, it is possible that this urgency will come to an end and we will get back to the situation as it existed before. But, we must use this opportunity to implement the technology available for improving the procedural and the substantive aspects of the legal process. To paraphrase [Winston Churchill](#), “Never let a good crisis go to waste!”

(The writer is partner at D M Harish & Co)



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