
DIGITAL ARRESTS AND VIRTUAL COURTS: IS OUR JUSTICE SYSTEM MOVING OR JUST BUFFERING?

Anshuman Singh, Student , B.Sc LLB, National Forensic Sciences University.

Maitry Kumari, Student , B.Sc LLB, National Forensic Sciences University.

ABSTRACT

The digitization of the Indian legal system is happening very fast and it has two sides. On one side there are developed cybercrimes such as "digital arrests" and on the other side the state is moving towards "virtual courts". In this paper, we present the confrontation of the Indian criminal justice system between the use of technology for efficiency and the upholding of justice through fair procedures. The rapid growth in virtual hearings due to the COVID-19 pandemic brings lot of advantages like less expenditure, faster solution to the problem and less harm to the environment but on the other hand it raises critical concerns regarding the "human element" of law. Particularly the issue discussed is the risk of "procedural justice" under the Article 21¹ of the constitution of India being compromised. The work points out that the change to online mode might be a hindrance in a judge's ability to perceive the "demeanor of the witness", which is the basis of criminal trials. In addition, the paper refers to the "digital divide" which is a threat to disadvantaged sections of the society who do not have either the necessary equipment or the sufficient digital skills to be able to handle the complex court portals. The article moves further to the consideration of the impending risk of security breaches in confidential judicial data due to digital storage, points out that in the landmark Puttaswamy case² the State has a "positive obligation" to safeguard the privacy of individuals. At last, the author addresses the Supreme Court e-Committee's initiatives alongside the provisions of the draft of the BharatiyaNagarik Suraksha Sanhita (BNSS).³ The paper ends with a proposition of "Human-Centric Design" and "Security by Design" methodologies that would guarantee technology to be an enabler of justice, not its barrier.

¹The Constitution of India, 1950, art. 21.

²*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

³The BharatiyaNagarik Suraksha Sanhita, 2023 (Act 46 of 2023).

Introduction

Let's start this with an imagination, you're sitting at your dining table when a video call comes in. On the video there is a man in a police uniform telling you that you are under "digital arrest" for money laundering. You get scared. You stay on the call for hours, locked up, as they "investigate" you through the webcam."⁴

This is not a scene from a sci-fi thriller; it's a reality for thousands of Indians who have fallen victim to the latest wave of digital arrest scams.⁵ However, while criminals use "digital arrest" to spread terror, the Indian state is also trying to carry out a large-scale migration of the law system to the cloud. The Indian criminal justice system is gradually digitizing its machinery from e-filing to virtual hearings.

So now, the question is, while we are rushing to make justice more efficient, are we unintentionally making it less human? Is the "due process" losing its soul to the screen?

Court without Walls

For as long as anyone can remember, the Indian legal system has been known for its piles of dusty files and "tareekh pe tareekh". But the pandemic changed everything. The Supreme Court which was considered to be the most prestigious court was suddenly replaced by Zoom calls.

Virtual Courts in India nowadays aren't just a temporary solution. They have dealt with millions of cases, mainly comprising petty crimes such as traffic violations and cheque bouncing.⁶ The advantages are clear:

- **Cost-Cutting:** The parties do not have to travel hundreds of kilometers for a five-minute hearing
- **Speed:** The cases that clogged up the courts physically are now settled with a few clicks.
- **Environmental Impact:** Millions of sheets of paper are being replaced by digital PDFs.

⁴"Understanding Digital Arrest Scams in India," *The Hindu*, Oct. 15, 2024.

⁵*Id.*

⁶Department of Justice, Ministry of Law and Justice, *e-Courts Project Phase II*, (2023).

But as any lawyer knows, a court is not simply a place where orders are passed; it is an arena where a person's statement is tested. And that requires something more than just a good Wi-Fi connection.

Balancing Efficiency and Fairness

In the legal world, there is a distinction between efficiency and procedural justice. When a witness is giving a testimony in a courtroom, the judge is able to see the body language of the witness, hear the slight tremor in the voice and make sure that the witness is not "coached" from behind the curtain. In a virtual setup, "demeanour of the witness" which is a very important factor in criminal trials is very much limited. Can the judge really trust the statement of a witness based on a 720p video feed?

Moreover, the Right to a Fair Trial is a constitutional guarantee under Article 21.⁷ This not is only about the decision but about the process. If a defendant's internet goes down during a critical cross-examination or if the defendant cannot separately consult the lawyer during the hearing since they are connected to the same public link, then trial isn't only delayed it's actually compromised.

Who's Missing in the Digital Race?

The greatest downside of online justice is exclusion. India is a two-faced country: one part that uses quick delivery apps for groceries, and the other which is lost for finding a stable mobile network even for a phone call.

Once we make "e-filing" or "virtual appearance" the new standards, the marginalized communities are those who get unintentionally shut out. For example, the migrant labourer or the farmer in the village does not have a laptop, a high-speed internet plan, or the "digital literacy" to tackle the tricky court portals. To them, a "virtual court" can seem as inaccessible and scary stuff, maybe even more.

⁷*Supra* note 1.

As a report by NITI Aayog on Online Dispute Resolution⁸ highlights, technology must be a facilitator rather than a gatekeeper. If the "online" door is the only open door in option, then it is the people who are most in need of justice that we end up denying it.

The Shift from CrPC to BNSS

The BNSS⁹ which succeeds the Code of Criminal Procedure (CrPC) thoroughly integrates the use of technology at every stage of the legal process. It is not merely a matter of the use of technology for convenience; rather, it is a legislative directive to move forward with the times. Nevertheless, this transition creates a major challenge for the judiciary especially in making sure that these tools are "tamper-proof". To illustrate, the BNSS permits the recording of search and seizure operations through videography which can be used as a tool to keep the police from misconduct but it also poses to the question of how such digital evidence is to be handled or stored.

Procedural Justice vs. Efficiency

In the legal field, it is crucial that efficiency does not come at the expense of fairness. Besides the fact that a trial is a process of making a decision, it is also a truth-seeking ritual.

- The witness's demeanor: A judge in a traditional courtroom setting can pick up on the slight tremor in a witness's voice or notice body language such as folding of arms or avoiding eye contact. However, with just a 720p virtual feed, most of these cues are barely discernible, hence a judge might wrongly disbelieve the witness.
- Right to lawyer: Article 21¹⁰ calls for a fair trial. If, during a hearing, the defendant is publicly visible to all and he/she cannot speak with his or her lawyer confidentially, then the trial is a violation of the fundamental principles of justice.

Protecting Evidence in this Digital Age

⁸NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (2021).

⁹*Supra* note 3.

¹⁰*Supra* note 1.

Going digital with our legal records means making them vulnerable to attacks. Criminal cases rely on highly confidential information confessions, identities of victims, and forensic analyses.

The landmark Justice K.S. Puttaswamy (Retd.) vs. Union of India¹¹ verdict established privacy as a fundamental right. Thus in the case of virtual courts, the government is under a "positive obligation" to safeguard judicial data from being breached. Just one hack in the court database may result in witness threats or the alteration of digital evidence.

Although the newly drafted BharatiyaNagarik Suraksha Sanhita (BNSS)¹², which is going to replace the CrPC, has provisions for the use of technology in investigations and trials, it simultaneously places a huge weight on the system to ensure that the technology used is "tamper-proof".

The Digital Divide: A Constitutional Challenge

Justice should not be something only people with high- speed internet can enjoy. It is said that India is a "two-faced" country as some people are using apps to get groceries while others cannot get a phone call due to the unstable network.

- Marginalized groups: Farmers and migrant workers are examples of people who may not have "digital literacy" or the necessary devices to access online portals.
- The gatekeeper issue: The NITI Aayog report¹³ rightly points out that technology should be a facilitator and not a gatekeeper. If the "online door" becomes the only one open, then we are endangering the access to justice of the most vulnerable people.

Our Approach to Protection

India is not blindly plunging into the digital revolution. The Supreme Court's e-Committee under the leadership of such farsighted personalities as Justice D.Y. Chandrachud has come up with Model Rules for Video Conferencing.¹⁴ These rules suggest:

¹¹Supra note 2.

¹²Supra note 3.

¹³Supra note 8.

¹⁴Supreme Court of India, *Model Rules on Video Conferencing for Courts* (2020).

1. **Court Coordinators:** Personnel in the court and at remote places to be assigned for preventing coaching of witnesses.
2. **e-Sewa Kendras:** Help centres physically present within court premises for those lacking technology to be assisted in accessing their virtual hearings.
3. **Hybrid Models:** The option to physically be present or appear virtually whichever is more suitable to the complexity of the case.

These are important "buffer zones". They acknowledge that technology can be a great amplifier for justice but it cannot replace the "human touch" that is necessary for complicated criminal cases.

Conclusion

As imagined in the beginning, those elements like digital arrest scammers,¹⁵ through their very actions, are basically reminding us of the negative side of being connected, that is, the power to isolate and intimidate someone. On the other side, virtual courts symbolize the positive side of connectivity - the power to unite and settle.

In order to safeguard "Due Process" from getting lost in the digitization of the courts, we need to change our focus from efficiency to access. This simply means:

- **Infrastructure over Apps:** For example, we should equip rural courts with stable internet first before enforcing e-filing on them.
- **Human-Centric Design:** By designing court technology in such a way that it is as user-friendly as WhatsApp, so that even a non-legal professional or a layman could navigate through it without having to be tech-savvy.
- **Security by Design:** Making sure that court systems are developed using strong, encrypted methods that give priority to the privacy of both the accused and the victim.

Justice is not supposed to be a "luxury" that only those fortunate enough to have fast fiber can access. Regardless of whether the place of hearing is a colonial brick building or a browser tab, the principal is always the same, that is "every citizen is entitled to a just hearing".

¹⁵*Supra* note 4.

The gavel may be moving to the screen, but the weight of the law must remain as heavy as ever.

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