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THE COURTS OF THE FUTURE: PART II HYBRID COURTS & CHALLENGES

Abhilash Malhotra[1*] And Dr. Arunanshu Dubey[2]

[1]Ph.D, scholar GLA University, Mathura.*
[2]Dr. Arunanshu Dubey, Assistant Professor at Institute of Legal Studies & Research, GLA University, Mathura, U.P.

Corresponding Author:

Abstract

This paper examines the evolving landscape of judicial adjudication in the digital era, with a primary focus on hybrid courts as a pivotal transitional model in the digital court ecosystem. Analogous to learning a physical skill, such as riding a bicycle, this research argues that merely planning digital transformation on paper is insufficient — practical implementation is indispensable for achieving a fully digital case life cycle. The study outlines key stages of judicial process digitisation, including e-filing, case registration and allocation, digital briefs for judicial officers and advocates, digital records management, evidence recording, appellate record sharing, and electronic service of process. Special emphasis is placed on hybrid courts, where traditional in-person hearings integrate with virtual proceedings, highlighting both their potential to enhance access to justice and operational efficiency as well as the inherent challenges of implementation. These challenges include technical infrastructure gaps, procedural complexities, cybersecurity concerns, digital divide issues, and normative adjustments required for fair and effective digital justice delivery. By synthesising theoretical insights and practical considerations, the paper offers a framework for understanding how judiciary systems can transition towards fully digital operations while addressing technological, procedural, and policy challenges intrinsic to hybrid court models.

Keywords: *Digital courts, E- Justice, Hybrid Courts*

INTRODUCTION

A question which resonates in mind is, can we learn riding a bicycle by just planning it on paper or we need to practice riding it! This analogy also applies to the digital court eco-system towards which the transition in judiciary has already begun. The core issue is how the life cycle of a case can be made completely digital. To understand with clarity, life cycle of a case can be broadly divided in following categories:

A. e-filing
B. Registration and Allocation
C. e-Brief case of Judges and Advocates
D. Hybrid Courts
E. Recording of Evidence
F. Digital Records Rooms
G. e- Trial Courts Record sharing with Appellate court
H. Digital Service of Process

A. e-filing platform

The reforms which are required in respect of the e-filing and the challenges ahead are already discussed by us in our previously published paper.

B. Registration and Allocation of Case

A journey of litigation begins with the registration of a case in the judicial system. Once a case is registered it needs to be marked before the concerned court or bench which has jurisdiction to deal with the subject matter. Depending upon the volume of work there may be more than one court which may be looking after similar kind of cases. For example, there are multiple courts assigned with jurisdiction to deal with cheque bounce cases in one district, more than one commercial court or more than one court dealing with IPR cases in IPR division. However, there are two areas of concern which needs to be highlighted in respect of allocation of cases:

i. Random Allocation

Allocation of cases comes with a challenge of forum shopping or bench hunting. The issue of forum shopping had been highlighted in various judgments by the Apex court. These terms are not alien to any judicial system. When the cases are marked manually the chances of bias or favour cannot be ruled out. Random and automatic allocation of cases is one of the prerequisites in world bank ease of doing business norms for contract enforcements. The relevant extract of requirement as published on the website of world bank is reproduced below:

"Court automation

Doing Business measures court automation in connection with the availability of electronic filing of the initial summons, electronic service of process and electronic payment of court fees. Doing Business tests only whether these features are in place, not whether the majority of court users uses them. For all these features the court of reference is the one that would have jurisdiction to hear the Doing Business standardized case.

Doing Business also explores two dimensions that are closely intertwined with court automation and, ultimately, with judicial transparency. The first relates to how cases are assigned to judges within the competent court. A credible system for random assignment of cases minimizes the chances for corruption. While almost all economies (162) provide for the random assignment of cases, only 57 have a fully automated process.

The second relates to whether judgments rendered in commercial cases at all levels are made publicly available. The publication of judgments contributes to transparency and predictability, allowing litigants to rely on existing case law and judges to consistently build on it. Access to the results of commercial cases benefits companies that invest in a particular jurisdiction, clarifying the scope of their rights and duties. Making judgments available does not necessarily require substantial resources, but it does require internal organization. Case decisions must be accessible and efficiently cataloged so that they can be easily searched."

To eliminate the element of human bias at the stage of allocation of cases to courts the concept of random allocation has been introduced. U.S. Agency for International Development in their report also observed that a credible system for random assignment of cases minimizes the chances for corruption.

As per ease of doing business norms the world bank emphasises on the random allocation of cases to ensure transparency. The case information system developed by the e-Committee under the e-Courts project also provides the feature of random and automatic allocation of cases in addition to individual and bulk allocation.

ii. Challenges

As per the information available on website of the eCommittee the random and automatic allocation of cases have been introduced in respect of the commercial cases. The other jurisdictions like bail roaster allocation, civil cases etc also needs to be brought in this domain. While filing a case in court a litigant should be provided an option to choose "Not before this Judge." While choosing this option a litigant need to assign reason like relative of a judge, before promotion the judge passed judgment on original side and now cannot sit on appeal in appellate jurisdiction etc.

iii. Bunching of similar cases using AI

Judiciary in India is facing huge pendency of cases. One of the methods which has been advocated for long for reducing the pendency of cases is the bunching of cases of similar nature or involving same issues before same bench. This will ensure saving of time in hearing of cases by different benches and avoiding conflict of decision by courts on a given law point. An endeavour in this regard was initiated in the Punjab and Haryana High Court where large number of similar cases were bunched together so that disposal of one case can lead to disposal of many cases.

C. e-brief case lawyers and litigants

We have already discussed that e-filing had been implemented at district court as well as in the High Courts across the country. E-filing relates to first stage in the digital life cycle of a case, wherein a party e-files and registers his case in the court.

A litigant or an Advocate e-files a case using his/her user account. In user account they are only able to see and refer the pleadings or documents which have been uploaded by them only. Reply, written statement, documents etc e-filed by the opposite party are not available to the other party. Non access to such documents e-filed by the opposite party punctures the digital life cycle of a case and constraints a litigant/advocate to resort for obtaining paper certified copy of document filed by the opposite party. As a natural result of this process, part of the record of a case remains available in digital form and other part becomes available in paper form.

In the United States, the federal courts' case filing processes are managed by the Case Management (CM)/Electronic Case Files (ECF) system, through which court staff and attorneys open cases and file documents over the internet. Case information and related documents are electronically available to case participants at virtually the same moment a filing is completed. Nearly instantaneous email notification of any activity in a case maximizes the time available for participants to respond.

There is an urgent need to develop a mechanism wherein the complete digital record of a cases is accessible to both the parties. This will not only help in obviating the need of paper-based regime, but will also solve the storage space related issues faced by most of the advocates. In such scenario an advocate or litigant is not required to print and store the physical files in their offices. This will help the new comers in the profession who start practicing by sharing chambers and struggle to store record.

A wonderful endeavour in this regard had been already taken in this regard by the e-Committee, Supreme Court of India. The Digital Courts Application for Judges is already provided to the courts. This application is made for judiciary and provide easy access all the e-filed data in case. The cases are listed in a court in the form of a cause list and the most comfortable interface for the judge will be able to access these cases in cause list form. The e-Committee being cognizant for the aforesaid nuances has come up with a Digital Courts application. This application can be accessed through an internet browser.

A judge can view the pleading, applications, documents etc e-filed by both the parties through this digital court's application for conduiting the paperless proceedings.

A similar platform also needs to be provided to the Advocates/litigants where they can also see the pleadings/documents filed by the parties in case.

One more functionality which needs to be evolved in this platform is to make the e-file dynamic. Let us understand this with an illustration. A civil suit is e-filed. The opposite party appears and files written statement. The stage of admission denial of documents and or marking exhibits during the evidence has arrived. The court need to exhibit and make endorsement on a document. In such scenarios a facility should be provided to the court to make endorsement in the digital file, failing which the court shall be constrained to call for the physical file and the objective of complete paperless lifecycle of a case will suffer.

D. Hybrid Courts

Access to Justice for all is the pristine objective which the judiciary on this planet thrives to achieve. In past the Legal Services Authority has done wonderful work in providing free legal aid, compensation, and legal assistance to weak and marginalised sections of society. Another giant leap in this direction is the concept of hybrid courts. Let us understand the importance of this concept by way of some illustrations:

A. The city has suffered a lock down, but the judiciary is working in hybrid manner.

B. An Advocate or litigant has some mental health patient, ill persons or dependent family members at home and unable to appear physically before court. He/she can continue practice and appear before the hybrid court through video conferencing,

C. A female advocate gets married in some other city/state or is not able to come to court due to pregnancy or some other health related reasons. She can continue to appear in her cases through video conferencing.

D. An old aged Advocate or litigant is not able to appear before the court due to his poor health. Video conferencing will keep him/her free from all travelling hassles.

E. An Advocate or litigant from far remote corner of the country can appear and practice before the supreme court or any High court.

F. NRI's who are settled abroad can appear and track their cases in hybrid court seamlessly without any hassle.

G. Government servants, doctors or experts can depose before the court from the comforts of their offices, saving precious working hours.

In the case of **Sarvesh Vs The Registrar General, High Court of Punjab and Haryana** the Hon'ble Supreme Court of India mandated that:

"d. No High Court shall deny access to video conferencing facilities or hearing through the hybrid mode to any member of the Bar or litigant desirous of availing of such a facility;
e. The links available for accessing video conferencing/hybrid hearings shall be made available in the daily cause-list of each court and there shall be no requirement of making prior applications. No High Court shall impose an age requirement or any other arbitrary criteria for availing of virtual/hybrid hearings."
The courts in Delhi have worked as a role model for hybrid court eco-system. Though all the courts in Delhi are working in hybrid model but in some jurisdictions the concept of Digital courts has been evolved by taking the hybrid court model to next level:

a. Digital court for Negotiable Instrument Act
b. Digital Traffic Courts
c. Digital Commercial courts

Theses courts are completely paperless in nature. The lifecycle of a case is completely digital. The parties and advocates appear online, argue online and the evidence is also recorded online. The facility to pay fine is also made available online.
Digital Traffic courts in Delhi are the pathbreaking model and their functioning is widely covered by leading media. In some of the traffic offences the driver and owner both are made accused. Both are required to appear before the court for disposal of traffic challan. Absence of any one of them can delay the disposal of challan. Driver of commercial vehicles are usually on move and it was very difficult to ensure their physical appearance. As the drivers get held up in the court due to court proceedings, the transport companies used to suffer loss as vehicle stands idle or they must hire someone else to drive. This problem stands completely address by the digital traffic courts. The owners and the driver can appear from anywhere in the country through video conferencing and make the payment of fine online. This has not only helped in saving the man hours but also brought in the ease of appearance due to hybrid digital model of the court.
Any technology implemented in courts needs to go hand in hand with the process reengineering of rules. The process reengineering in respect of updating the rules to augment the hybrid court eco- system is already mooted and implemented by the e-Committee, Supreme Court of India by proposing the model rules for video conferencing for courts, model rules for e-filing and model rules live streaming and recording of court proceedings. The rules have been adopted and notified by majority of the High Courts as per the December 2023 newsletter published by the e-Committee Supreme court of India.

i. Hybrid Court Configuration

So far, we have understood the concept of the hybrid court and the advantages it brings along with it. What is important here is to understand as to how the hybrid court infrastructure can be created efficiently in various jurisdictions. In other words what is the ICT infrastructure which needs to be created for successful functioning of hybrid court model. In this regard guidance can be taken from the matter of **Anil Kumar Hejelay ors vs Hon'ble High Court of Delhi** wherein the High court of Delhi is monitoring the implementation of the Hybrid court model in the district courts of Delhi. In order dated 06.02.2024 the court emphasised on the ICT equipment which needs to be installed in the court. The said list is reproduced below:
"Proposed AV and IT the Court Room Infrastructure at Court Room:

S.No.	ICT Equipment as per court order	Suggested Quantity by Author	Suggestions by Author
1.	A PC for Judge	1	
2.	42"/55" display unit for viewing the hybrid session by the Lawyer and witness. 42" Display for 1 Smaller Court rooms and 55" for Bigger Court Rooms.	2	First TV screen to give VC view to judge and second TV screen to give VC view to Advocates or Litigants present in court.
3.	24" or higher Display for Hon. Judges Desk for Viewing the Conference participants/feed from the Document Visualizer /content shared by far end user	1	Preferable e-Ink screen to read comfortably for long duration. Touch screen, Pen with annotation facility.
4.	5 Nos of Gooseneck Mic for Hon Judges Side and Advocate side	5	Some Mics may be kepy wirded and some wireless.
5.	Ceiling Speakers 6-channel amplifier	1	
6.	Document Visualizer on Readers table	1	The feed from document visualiser shall be shared on video conferencing.
7.	On Premise Meetings platform like Zoom/Blue Jeans/, Webex, People Link, Microsoft Teams, etc.	1	

	The Platform should have Inbuilt capability for Recording. It should be possible to record the court proceedings on local storage/Server at each court/central location		
8.	4 nos. of Optical Zoom Cameras with to capture live feed. Who will capture the Judge, Advocates, Witness and Convict.	4	
9.	Touch Panel Control to be placed on Readers Desk for controlling the Camera Views, Audio Visualizer feed, Readers PC Feed etc. in the courtroom. It will also be used to Start/Pause/Stop Recordings as well.	1	
10.	Cable connectivity with points to connect all the equipment proposed		
11.	Digital Signal Processor 12x8 with AEC Video Codec with desired inputs or add-ons satup for connecting 4 Cameras, Document Visualizer. The Codec with or without mixture capable of Sending Combined video feed of Hon Judge Camera, Advocate Camera, Document Visualizer and PC or any combination as required during the Court proceeding.		It should be generic and link based Video Conferencing. IP based VC configuration can be avoided. Any generic configuration Multi Viewer can be used.
12.	Court room access switch with 20 or above Gigabit Ethemet Ports to cater to Current and future requirements	1	
13.	12 U Rack will be placed in the courtroom for Video, Audio components and Switch.		
14.	Judge Chamber: Our proposed solution will have a PC or Laptop having Inbuilt camera, speaker and microphone configured with On-Premises meetings platforms:	1	
15.	IP Telephone for voice communication		
16.	Cable connectivity with points to connect all the equipment proposed		

Though the technical configuration for Hybrid Court prescribed by the High court in **Anil Kumar Hejelay case** is quite comprehensive, however some additional configuration may also be looked into to achieve state of art hybrid court technology:

a.	Touch Panel	To control the VC screens and proceedings from this panel.
b.	NAS Storage with Server and Retrieving software	To centrally store the Digitized files, video and audio recordings made by court.
c.	Network	The LAN Network of the court also required to be augmented depending upon the number of courts and requirements.
d.	Disaster recovery Back up	It may be implemented on cloud storage or on premises DR at some remote site in non- seismic geographically stable area.

ii. Challenges

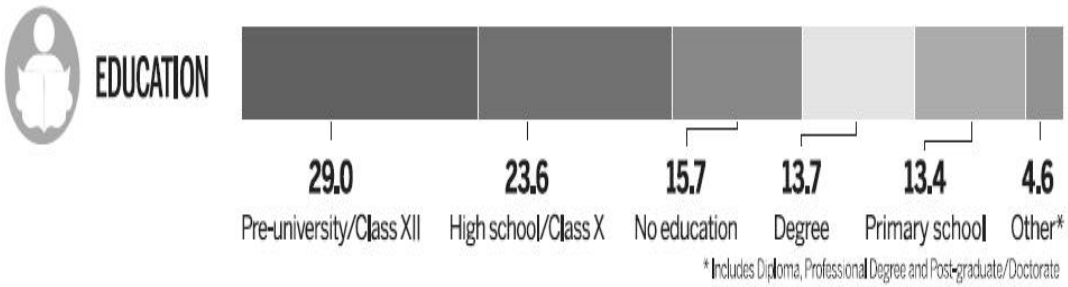
a. Remote Points

The success of hybrid court will strongly depend upon the cluster of video conferencing remote points which needs to be created in government offices, prisons, and police stations etc. In the absence of efficient video conferencing facility at the end of participant, the courts are likely to struggle in connecting with person at the remote end. Creation of these remote points with a nodal officer will ensure that rules are properly followed while conducting court proceedings and the remote point remains free from an kind of threat, coercion or inducement. In furtherance to this a notification is already issued under section 266 and 308 of the Bharatiya Nagarik Suraksha Sanhita,2023 specifying the "Designated Place" for the purposes of video conferencing.

b. Digital Divide

Though on one hand this digital eco-system may be boon for many stakeholders, but on other hand there may be a large section of stakeholders who will face issue in accessing technology due to varied reasons like: Lack of ICT infra, Illiteracy, inertia to learn technology etc. In the age of information technology, digital divide can be understood in terms of inequalities linked to access to information technology. Those that have access to information and benefit through digital economy become the "haves" and those who are excluded become the "have-nots." This gap between the information haves and have-nots is commonly referred to as the digital divide. According to Access to Justice

Survey, 45.8% of the litigants belonged to the rural areas and 90% of the total litigants had an annual income of less than 3 lakh Indian rupees. The report also highlighted only 29 percent of the litigants were having educations level up to pre university/XIII. The data clearly reflected that due to rural background of low educational background the litigants are going to face hassles in accessing judicial system through ICT and there will be digital divide. A screen shot from the said report showing the educational profile of the litigants in courts:



(Screenshot of Access to Justice Survey 2025-2016 by Daksh)

Individuals with disabilities may require specific accommodations to access and use technology effectively. In India, about 60 million people are differently abled where 75% of people with disabilities come from rural areas. The Centre for Internet and Society along with Forrester Research in one of their studies found that, approximately one in four (25%) computer users have a visual difficulty or impairment; nearly one in four (24%) computer users have a dexterity difficulty or impairment; one in five (20%) computer users have a hearing difficulty or impairment; and about 16% of computer users have a cognitive difficulty or impairment.

It will relevant to quote the observation made in the book published by Daksh Centre for Excellence for law and Technology, IIT Delhi edited by Mr. Nomesh Bhojkumar Bolia and Mr. Surya Prakash BS who have vast experience in this domain.

"Access to justice in India is a hydra-headed challenge that is unlikely to be solved with a single service, however remarkable. One billion Indians fall within the ambit of free legal aid and only a tiny fraction avail of it owing to lack of awareness, trust, and ease of use. These one billion speak 19,500 dialects and encounter a wide range of issues such as property, entitlements, employment, and family.

The department of justice's Nyaya Bindu programme, which connects individuals with pro bono lawyers can partner with CSOs and community justice networks.

The Telelaw program by the Department 0f Justice, which allows marginalised people to connect with panel lawyers at the pre-litigation stage."

Virtual courts in India can improve access to justice for individuals with disabilities or mobility issues. Physical courtrooms may not always be accessible to individuals with disabilities, which can create barriers to their participation in the legal process. Virtual courts, on the other hand, can be designed to accommodate different accessibility needs, such as providing captioning for individuals with hearing impairments or allowing for remote sign language interpretation. This was highlighted in the case of the *National Association of the Deaf* v. *Union of India*, where the Supreme Court of India emphasized the importance of ensuring equal access to justice for individuals with disabilities and recognized virtual courts as a viable means to achieve this goal.

This is a judicial system which recognizes registration of a Public Interest Litigation merely on receipt of a post card. A question that looms large is whether the thrust of ICT in judicial system can be allowed to become a barrier in access to justice for all? Do e-Sewa Kendra will be able to fill this vacuum and provide a complete hassle-free solution? This is the cardinal questions which we need to ponder and deliberate.

The concept of e-Sewa will be a big booster in ensuring smooth and seamless conduct of proceedings by the Hybrid courts. Any litigant or advocate may join their court hearings from the hybrid court workstations provided in the e-Sewa Kendra. The courts in Delhi have taken an initiative in creating workstations in e-Sewa Kendra but the journey pan India is quite long. These Kendra provided facilities like free e-filing, scanning of files, creation of user accounts, case status and provide workstations to join virtual hearings. As per December, Newsletter of the e-Committee total 880 e-Sewa Kendra have been created in District courts and 27 e-Sewa Kendra in High Court across the country.

There is also an emerging need to revamp the curriculum in law schools, by incorporating the rapid and transformative changes occurring in the digital space, into our legal education. For this, it is crucial to incorporate an ICT perspective in the learning experience of our students, which can be achieved by creating platforms that permit greater interaction between law students and professional from other domains.

At a minimum, there should be one person within every team which uses advanced technologies with the expertise required to support colleagues in the use of advanced technological solutions. Enabling meaningful support and proper assessment will require substantial investment in continuing professional development and the development of leadership skills.

E. Recording of evidence through video conferencing

Can a witness depose in court from a remote location? Do it is necessary to appear in person before the court for giving testimony? The answer to these issues is resolved by the Model Video conferencing Rules promulgated by the e-

Committee, Supreme Court of India. These rules have been already adopted and notified by majority of the states in India.
Rule 8 of said model rules details out the procedure to be followed by the court to record the evidence through video conferencing. The Digital Traffic Courts, Digital Negotiable Instrument Act courts and commercial courts in Delhi are working on the same principle and are recording the evidence online. The relevant extract of model rules is reproduced below
"8.8 The Court shall obtain the signature of the person being examined on the transcript once the examination is concluded. The signed transcript will form part of the record of the judicial proceedings. The signature on the transcript of the person being examined shall be obtained in either of the following ways:
8.8.1 If digital signatures are available at both the concerned Court Point and Remote Point, the soft copy of the transcript digitally signed by the presiding Judge at the Court Point shall be sent by the official e-mail to the Remote Point where a print out of the same will be taken and signed by the person being examined. A scanned copy of the transcript digitally signed by the Coordinator at the Remote Point would be transmitted by official email of the Court Point. The hard copy of the signed transcript will be dispatched after the testimony is over, preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post.
8.8.2 If digital signatures are not available, the printout of the transcript shall be signed by the presiding Judge and the representative of the parties, if any, at the Court Point and shall be sent in non-editable scanned format to the official email account of the Remote Point, where a printout of the same will be taken and signed by the person examined and countersigned by the Coordinator at the Remote Point. A non-editable scanned format of the transcript so signed shall be sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the same will be taken and shall be made a part of the judicial record. The hard copy would also be dispatched preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post."

i. Challenges
A person in rural area or an illiterate person will not be able to understand the nuances of video conferencing and online recording of evidence. Whole of the ecosystem may look alien to him. Therefore, the e-Sewa Kendra need to play an active role in facilitating the recording of evidence through video conferencing. These centres not only need to facilitate recording of evidence but also need to acclimatize and give orientation to a person who is coming to give deposition.
The other challenge is the creation of record of transcript at multiple ends and maintaining its chain of custody. Simultaneously, the email record is also required to be preserved. The process involved in online recording of testimony clearly shows that there is a serious need of revisiting the legal position in respect of signing of testimony by the witness.

ii. Position in U.S.A.
In the State of Vermont, USA the rules for criminal procedure prescribes the methodology of recording the evidence through video conferencing and no such requirement for signature by witness is stipulated. The relevant extract is reproduced below:
"Rule 26.2 - Testimony by Video Conference
(f) Manner of Taking Video Conference Testimony. The witness providing video conference testimony must be visible to the court, the defendant, counsels, jury, and others physically present in the courtroom.
(1) The witness appearing remotely must be in a courtroom, government office, law office, or other suitable place conducive to the taking of testimony as approved by the court.

(2) A video conference technician is the only person allowed in the presence of the remote witness unless the court, in its discretion, determines that another person may be present. Any person present with the witness must be identified for the record, and issues associated with their presence addressed, prior to the taking of the testimony.
(3) The court and the witness must be able to see and hear each other simultaneously and communicate with each other during the proceeding.
(4) The defendant, counsel from both sides, and the witness must be able to see and hear each other simultaneously and communicate with each other during the proceeding.
(5) A defendant who is represented by counsel must be able to consult privately with defense counsel during the proceeding.
(6) Direct examination and cross-examination of the witness will proceed in the same manner as permitted at trial.
(7) A verbatim record of the testimony must be taken in the same manner as for other testimony."

iii. Position in England
It will also relevant at this juncture to highlight the procedure followed in England in respect of recording of evidence through video conferencing. The Para 29.1 PRACTICE DIRECTION 32-Evidence of Civil Procedure Rules mandates the following procedure:
Para 29.1 Guidance on the use of video conferencing in the civil courts is set out at Annex 3 to this practice direction.
A list of the sites which are available for video conferencing can be found on HM Courts and Tribunals Service website.

ANNEX 3
VIDEO CONFERENCING GUIDANCE

This guidance is for the use of video conferencing (VCF) in civil proceedings. It is in part based, with permission, upon the protocol of the Federal Court of Australia. It is intended to provide a guide to all persons involved in the use of VCF, although it does not attempt to cover all the practical questions which might arise.

Video conferencing generally

1. The guidance covers the use of VCF equipment both (a) in a courtroom, whether via equipment which is permanently placed there or via a mobile unit, and (b) in a separate studio or conference room. In either case, the location at which the judge sits is referred to as the 'local site'. The other site or sites to and from which transmission is made are referred to as 'the remote site' and in any particular case any such site may be another courtroom. The guidance applies to cases where VCF is used for the taking of evidence and also to its use for other parts of any legal proceedings (for example, interim applications, case management conferences, pre-trial reviews).

2. VCF may be a convenient way of dealing with any part of proceedings: it can involve considerable savings in time and cost. Its use for the taking of evidence from overseas witnesses will, in particular, be likely to achieve a material saving of costs, and such savings may also be achieved by its use for taking domestic evidence. It is, however, inevitably not as ideal as having the witness physically present in court. Its convenience should not therefore be allowed to dictate its use. A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving but as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In particular, it needs to be recognised that the degree of control a court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.

3. When used for the taking of evidence, the objective should be to make the VCF session as close as possible to the usual practice in a trial court where evidence is taken in open court. To gain the maximum benefit, several differences have to be taken into account. Some matters, which are taken for granted when evidence is taken in the conventional way, take on a different dimension when it is taken by VCF: for example, the administration of the oath, ensuring that the witness understands who is at the local site and what their various roles are, the raising of any objections to the evidence and the use of documents.

15. In cases in which the VCF is to be used for the taking of evidence, the VCF arranging party must arrange for recording equipment to be provided by the court which made the VCF direction so that the evidence can be recorded. An associate will normally be present to operate the recording equipment when the local site is a courtroom. The VCF arranging party should take steps to ensure that an associate is present to do likewise when it is a studio or conference room. The equipment should be set up and tested before the VCF transmission. It will often be a valuable safeguard for the VCF arranging party also to arrange for the provision of recording equipment at the remote site. This will provide a useful back-up if there is any reduction in sound quality during the transmission. A direction from the court for the making of such a back-up recording must, however, be obtained first. This is because the proceedings are court proceedings and, save as directed by the court, no other recording of them must be made. The court will direct what is to happen to the back-up recording.

16. Some countries may require that any oath or affirmation to be taken by a witness accord with local custom rather than the usual form of oath or affirmation used in England and Wales. The VCF arranging party must make all appropriate prior inquiries and put in place all arrangements necessary to enable the oath or affirmation to be taken in accordance with any local custom. That party must be in a position to inform the court what those inquiries were, what their outcome was and what arrangements have been made. If the oath or affirmation can be administered in the manner normal in England and Wales, the VCF arranging party must arrange in advance to have the appropriate holy book at the remote site. The associate will normally administer the oath.

18. Additional documents are sometimes quite properly introduced during the course of a witness's evidence. To cater for this, the VCF arranging party should ensure that equipment is available to enable documents to be transmitted between sites during the course of the VCF transmission. Consideration should be given to whether to use a document camera. If it is decided to use one, arrangements for its use will need to be established in advance. The panel operator will need to know the number and size of documents or objects if their images are to be sent by document camera. In many cases, a simpler and sufficient alternative will be to ensure that there are fax transmission and reception facilities at the participating sites.

The hearing

19. The procedure for conducting the transmission will be determined by the judge. He will determine who is to control the cameras. In cases where the VCF is being used for an application in the course of the proceedings, the judge will ordinarily not enter the local site until both sites are on line. Similarly, at the conclusion of the hearing, he will ordinarily leave the local site while both sites are still on line. The following paragraphs apply primarily to cases where the VCF is being used for the taking of the evidence of a witness at a remote site. In all cases, the judge will need to decide whether court dress is appropriate when using VCF facilities. It might be appropriate when transmitting from courtroom to courtroom. It might not be when a commercial facility is being used.

20. At the beginning of the transmission, the judge will probably wish to introduce himself and the advocates to the witness. He will probably want to know who is at the remote site and will invite the witness to introduce himself and anyone else who is with him. He may wish to give directions as to the seating arrangements at the remote site so that those present are visible at the local site during the taking of the evidence. He will probably wish to explain to the witness the method of taking the oath or of affirming, the manner in which the evidence will be taken, and who will be conducting the examination and cross-examination. He will probably also wish to inform the witness of the matters referred to in paragraphs 6 and 7 above (co-ordination of picture with sound, and picture quality).

21. The examination of the witness at the remote site should follow as closely as possible the practice adopted when a witness is in the courtroom. During examination, cross-examination and re-examination, the witness must be able to see the legal representative asking the question and also any other person (whether another legal representative or the judge) making any statements in regard to the witness's evidence. It will in practice be most convenient if everyone remains seated throughout the transmission.
A bare perusal of aforesaid rules shows that there is no requirement for signing of the testimony by any of the witness. It is the court which must record the testimony and certify the same.

iv. Position in India
Section 142 of the Bharatiya Sakshya Adhiniyam, 2023 deals with the examination of witnesses. This section does not mandate that the testimony needs to be signed by a witness.
Oder X Rule 13 of Code of Civil Procedure, 1908 mandates that the substance of examination shall be reduced to writing by the Judge, and shall form part of the record. There is no requirement of signatures of person examined.
Section 308 of Bharatiya Nagarik Suraksha Sanhita, 2023 though includes the provision for recording of evidence through audio video electronic means, but does not mandate anything about signing of testimony by the witness.
Section 309 (2) BNSS mandates that in summons cases and inquiries the memorandum of the substance of evidence needs to be signed by magistrate and there is no requirement of signature by the witness.
Section 310 (4) BNSS which deals with warrant trial cases and section 311 (3) BNSS also mandates that it is only the presiding judge who needs to sign the evidence recorded in the court.
The most important provision which clears the air about this issue is Section 313 of BNSS, 2023. The said provision is reproduced below:
"Section 313 Procedure in regard to such evidence when completed.
(1) As the evidence of each witness taken under section 310 or section 311 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his advocate, if he appears by an advocate, and shall, if necessary, be corrected.
(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.
(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands."
The aforesaid provision makes it amply clear that there is no requirement of signatures of witness on the evidence recorded in the court. In view of the latest legal position the model rules for video conferencing needs to be revisited as the requirement of signing of testimony by a witness not only makes the process cumbersome, but also brings into picture the needs for taking printouts and maintaining the paper record of the proceedings. This process breaks the digital lifecycle of a case and needs to be revisited.

F. Digital Records Rooms
In classical court system the court file is maintained in physical form. Upon decision of a case the paper file is consigned to record room after proper indexation. The court deciding the case makes an entry (*Goshwra* Number: Unique identifier) in physical register and sends the file to record room. Record room upon receipt of file/record makes an entry in register and physically stores the case. The retrieval of the case is primarily dependent upon the *goshwara* number. In the absence of *goshwara* number it becomes difficult to retrieve the file.
Digital life cycle of a case starts from e-filing, hybrid hearing and digital capturing of proceedings including evidence. It eliminates all possibilities of creation of physical record. When a case is disposed of the court will be having following digital data available with it:
a. Digital order sheets and judgements
b. Digital pleadings and documents
c. Meta data of case like party names, address, witness information etc.
d. Some physical paper documents seized or filed on record as per directions of the court.
So far as the consignment of category (d) paper record to record room is concerned it can be very well covered under the classical methodology.
In respect of category (a) to (c) the challenge which needs to be deciphered is whether the consignment to record room is only for the purposes of storage, retrieval or we need something more from this digital data! Answer is yes. This data is required for issuance of e-True copy, sharing with appellate courts and for data mining to generate various kind of reports to understand trends. To achieve this objective there is a need to have a robust data management system (DMS). The DMS will store the case with various meta data tags, which will help not only in retrieving the information but will also help in generating multiple report using the data tags. For example: In how many cases conviction was pronounced from year 2000 to 2025. Then further filtering of this data by seeking report: In how many cases against women conviction is pronounced from 2000 to 2025 etc.
Digital record room will also help in providing the digital certified copies of record. In many states in India the facility of online e-True Copy is already launched. Having a robust digital record room will help the courts in achieving this objective seamlessly.

i. Challenge

The rules in India currently cater to the concept of paper file-based record room and the concept of digital record room is yet to be introduced. There is an urgent need to deliberate on the issue of process reengineering to amend rules for creating a digital record room. With advent of technology some of the High Courts have initiated steps for creation of data centre and disaster recovery back up centres, to store and retrieve the data, but there is an urgent need to streamline the rules in this regard to remove the possibility of any legal vacuum.

In United States of America the Public Access to Court Electronic Records (PACER) service provides electronic public access to federal court records. PACER provides the public with instantaneous access to more than 1 billion documents filed at all federal courts. Similarly, there is one more platform where the through the Freedom of Information Act (FOIA) and Executive Order 13526, public may request access to records.

In United Kingdom the Digital Case System (DCS) is used to manage, prepare and present information on cases in the Crown court. DCS is used by the HM Courts and Tribunal Service, the judiciary and professional court users, including defence solicitors and barristers. With DCS you can share information with court staff, the judge and the prosecution or defence, and collaborate on documents and the bundle.

In USA, United Kingdom, India and in various other countries the National archives are already working on this technology. They have hosted the archives on their website which are retrieved using various search parameters. We can be guided by such case studies for seamless implementation of Digital Record Room in judiciary.

G. e- Trial Courts Record sharing with Appellate court

A case upon disposal by the court of original jurisdiction remains in judicial system as any one of the parties may prefer appeal against the same. It is also settled that an appeal is a continuation of the proceedings of the original court. To decide appeal the appellate courts need to access the Trial Court record. Such record needs to be made available to the appellate court in digital form. In addition, the meta data of the original proceedings also needs to be made available on the e-filing portal to obviate any need of re-entering the data. Such a mechanism will ensure the digital life cycle during the appellate proceedings and vertical integration of system.

As per para 1.21. of Case Information System Manual for CIS 3.0 version, when appeal is filed in an appellate court, the data regarding the Trial court can now be fetched under CIS 3.0 by the appellate court. By this option the second time data entry of the same case in the appellate court comes to an end.

H. Digital Service of Process

Proviso to Section 64 (2) of Bharatiya Nagarik Surakhsa Sanhita, 2023 mandates that summons bearing the image of Court's seal may also be served by electronic communication in such form and in such manner, as the State Government may, by rules, provide.

Similarly, Order V Rule 9 (3) CPC, 1908 mandates that the services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court.

The service of process by electronic modes is recognised both in criminal as well as civil procedure codes. The case information system implemented by the e-Committee Supreme Court of India provides a mechanism for generation of electronic process. As per para 7.4 of CIS 3.0 Manual the feature of auto generation of summons is a path breaking option available under CIS 3.0. Once the summons is auto generated, they are uploaded and published through CIS. The digital summons/ process can be shared through the N-STEP – (National Service and Tracking of Electronic Processes) to the bailiffs for execution and service. Bailiff will capture photo, signature and geographical coordinate while effecting service and upload the service report which is accessible by the court. A web portal to monitor the tracking of process is also launched. Currently the facility of Nstep is available in civil jurisdiction in the courts. But there is an urgent need to bring the criminal justice system on a similar platform wherein the summons/warrants digitally generated by the court may be served electronically upon stakeholders.

Conclusion

The concept of hybrid court shall not be made limited to the hybrid hearings only. That will be a myopic opinion. A hybrid court system shall be seen as an eco- system wherein a case completes its lifecycle completely in a paperless manner providing fruit of digitalisation for appellate proceedings as well as ancillary services like e-True copy and e-Inspection etc.

Simultaneously, While implementing the technology and artificial intelligence in judicial system it is also necessary to ensure that a digital divide is not created and the stakeholders does not suffer from the access to justice. A nationwide assessment may also be necessary to asses the impact of technology on access to justice. A word of caution in this regard is quoted in the words of Laurene Veale is reproduced as follows:

“It seems that the aim to cut spending has taken precedent over the principles of access to justice and the right to a fair hearing. Without clear and up-to-date data it is impossible to know whether video conferencing is undermining the effectiveness and fairness of the courts, but there are clear indicators that suggest so. Even the economic benefits of video conferencing, which is the main motivation behind its introduction, are questionable: the government’s 2009 pilot found that it was more expensive than traditional courts, even without taking account of the costs of secondary impacts

search as rescheduled hearings, increase guilty pleas and harsher sentencing. Nationwide assessment is urgently needed before the government further extends the use of virtual courts."

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