

## **E-Hearing- Pros and Cons**

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### **Introction**

What is E-Hearing? An e-hearing is defined as a paperless hearing, the procedure of the court take place in a digital format. In such kind of hearing Advocates are not required to carry heavy books for the purpose of announcing the judgment. The decision is announced on the computer/laptop screens. A court which is Electronic Court means a location in which matters of law are adjudicated, in the presence of designated Judges with a well-built technological infrastructure out there. A computerized court and E-Courts however are different from each other. In the case of e-court, everything is done in an "online atmosphere" with the use of Internet and other Information and Communication Technology, whereas a computerized court is a court having computers and basic software and hardware.

E-Hearing or E-Court is an application can be used to process lawsuits, payment of court fees, simple claims, court summons, notices, rejoinders and replies, trials, electronic remedies and reading decisions and other legal services determined by the Supreme Court. With the new rules, the electronic or E-Litigation system is not applied only in case filing, payment of fees and party summons, but is applicable in the answers exchange, replies, evidences, rejoinders, delivery of decisions electronically and interventions. If we walk around further, the issuing of the rules in relation to E-Court isn't only about satisfying the standard of uncomplicated, speedy and cheap at cost justice, but to fulfill the requirements of the business society both at international and national levels as well. The lawyer no longer has to travel all the way to the court to file a case.

There may be a change in the idea and system of Court administration. Advocates may no longer come to the Courts to argue cases and to conduct a hearing, judges might not any longer sit in the courts. This system is not very old it's still on the way to get its

way concreted into the institution.

### **Need of Video Conferencing I.E., E-Hearing**

Almost 25 million cases are pending in the courts from trial to the Supreme Court, Indian judicial procedure being a multi-step procedure is extremely slow. Filing of the related documents, examination of the witnesses, cross-examinations, etc. are involved in the litigation process which is a long-drawn-out procedure to obtain a verdict from the court. Witnesses statement recording is one of the most mind-numbing tasks in a court proceeding. There can be many reasons for those a witness might not come to the court such as in the case he is living in another city also when is he reluctant to come due to the issues like safety of him and his family. For the ends of justice Indian judiciary has come up with a solution which the incorporation of the technology.

Due to the recent epidemic of “COVID-19” (Corona virus) worldwide which includes India, to stop or control the virus transmissions it becomes necessary to take preventive measures to ensure physical and social distancing. In this regard Indian courts from top to bottom have takes steps to prevent lawyers from appearing personally, court staff, litigants, para legal personnel and the print and electronic media in courts countrywide and to guarantee the continuous dispensation of justice.

### **Provisions and Judgment’s Recommending and Governing The Video Conferencing for The Purpose Of E-Hearing:**

The use of technology found judicial acknowledgment by the Supreme Court in a case **State of Maharashtra v Praful Desai**<sup>1</sup>. The Court held in it’s decision that the word „evidence includes electronic evidence too so video conferencing may be a medium to record evidence. It also observed that technological developments have opened up the option of virtual courts similar in nature to physical courts. The Court held:

“Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if

he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of each other. Recording of such evidence would be as per “procedure established by law”.<sup>2</sup>

In exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make such orders as are necessary for doing complete justice, which means that using technology for the ends of justice can be said to be a good medium and E-Hearing or video conferencing can be ordered and governed by the Hon<sup>’</sup>ble Supreme Court by exercising power given under abovementioned Article of the Constitution.

In October of 2014, Kerala High Court mad an announcement that two E-Courts have to be established in the country.

It was highly required at the Trial court level, due to the large pendency of the cases out there. The steps were taken to put into operation computerization the Trial Court level. National Informatics Centre did the same and also the enthusiasm exhibited by judges like Justice Yatindra Singh , Justice G. C. Bharuka, , and Justice MadanLokur.

Supreme Court on recently took up for hearing the suo moto case titled “*In Re Guidelines for Court Functioning through Video Conferencing During Covid-19 Pandemic*”<sup>3</sup> and guidelines were framed to work via video conferencing during this pendamic COVID-19. The guidelines are issue by SC by exercising it’s powers under article 142 of the Constitution cited here:

- *“All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of*

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<sup>1</sup>(2003)4 SCC 601

<sup>2</sup> *ibid.*

*courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful.”*

- *“The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies”*
- *“Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies”*  
*“The concerned courts shall maintain a helpline to ensure that any complaint in regard to the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance in regard to it shall be entertained thereafter”*
- *“The District Courts in each State shall adopt the mode of Video Conferencing prescribed by the concerned High Court”*
- *“The Court shall duly notify and make available the facilities for video conferencing for such litigants who do not have the means or access to video conferencing facilities. If necessary, in appropriate cases courts may appoint an amicus-curiae and make video conferencing facilities available to such an advocate.”*
- *“Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial stage or at the appellate stage. In no case shall evidence be*

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<sup>3</sup> *In Re Guidelines for Court Functioning through Video Conferencing During Covid-19 Pandemic(suo motu case)dated06.04.2020*

*recorded without the mutual consent of both the parties by video conferencing. If it is necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court."*

- *"The presiding officer shall have the power to restrict entry of persons into the court room or the points from which the arguments are addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless such party is suffering from any infectious illness. However, where the number of litigants are many the presiding officer shall have the power to restrict the numbers. The presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number."<sup>4</sup>*

## **Advantages and Disadvantages:**

### **A. Here are some Advantages of the system:**

#### **(i) Efficiency Improvement:**

This is the fact that courts and judicial system is facing the burden of the cases and it keeps on increasing. So this system needs something which works as boon for it. That is the reason that VC i.e., video Conferencing has made such a huge difference. To cut out long transportations this technology is definitely the one where there is no need of long waits of dates and time when the police will do the transportation.

The result of use of the technology can be that courts can hear more cases in limited time. It's a way for the inmates to pursue probation, parole or other solutions to get on with timely and easily.

**(ii) Money and Time Saving:**

When people don't have to travel and don't have to present papers or documents this definitely saves their money also the time. Sometimes Judiciary and police forces have to pay out from their own pocket for the purpose of transportation of important figures in trials, Individuals on the other hands belong to various backgrounds and may not be able to bear the expenses. Though there are provisions for their financial aids but that is also efforts time taking. Video conferencing setups are generally a one-time investment that pays off in spades.

More important than this is that it saves the time of people, advocates and courts. Court rooms become more efficient because cases move faster.

**(iii) Safety and Security:**

It is the duty of the police to transport prisoners safely to the destinations which is not that easy. It is always risky and life endangering for the witnesses, prisoners and police to travel from one place to another in relation to a case going on.

**(iv) Testify of Witness from far Location:**

Witnesses always worry for their security while witnessing for a judicial case which makes them turn back from their statements sometimes, justice can not be done that way.

**(v) Eco friendly:**

When a hearing is conducted through the electronic medium it does not save only time or money in fact gives space to the environment such as papers are out of use to an extent, vehicles don't run on the road etc.

**B. Disadvantages:**

**(i) Complicated Process:**

In India technology is not that advance and even if it is people are not that educated about the use of the technology. It is also a difficult process to produce an evidence in digital format.

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<sup>4</sup> *ibid*

**(ii) Lack of experts in Techno-Legal –**

To run the technology India does not have sufficient numbers of experts who can run it. It will only become time taking also failure to the system

**(iii) Cyber Security –**

When enters the technology, enter the dangers which are grave. When anything in the world is on internet or computer it is not private in spite every due care. But hackers have the code of everything. Data of judiciary is too precious to be in the hands of a strangers that too a hacker.

**(iv) Problem of access to Internet:**

To conduct the E-Hearing/E-court/E-Litigation/Video Conferencing it becomes necessary to have a good internet connection. But it is not hidden from every one that every lawyer does not make that money out of his profession or might belong to some remote area to afford a good internet connection and technological setup which will definitely be the violation of right to equality making some people earn whereas other falling down.

**Conclusion:**

Electronic courts are an important part nowadays, after studying about the use of technology into the institution of judiciary we it is clear that it works as convenient so far but no system is solves the problem out hundred percent. There is no doubt that technology will greatly influence future courtroom and litigation practices, but the extent to which change will occur is subject to a reasonable amount of speculation. Setting up the technology into the courts is a great idea with all the benefits abovementioned such as time saving, money saving, mobility issue, security etc. This is the era of advanced mode of working by virtue of which all the industries, organizations have acquired and installed this mode of working with the use of computer networks, so if judiciary does not do it, will definitely leg behind. To do speedy justice it is important to bring E-Litigation.

But together with pros come cons of course but which one has weight is the subject matter of analysis to be done by the experts. Indian judiciary is not yet ready to accept this system entirely as it has already been discussed above what problems can come. Apart from some disadvantages courts are not industries where one production task has to be done it is a place of justice, intellect and socio-legal development which can not be made digital. So digitization will make it a boring task to be fulfilled, let's not our judges and lawyers face that. These are the courts where new generation of lawyers breath into the legal environment and look up to their role models to become one.