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VIRTUAL COURT: RECEPTION & POSSIBILITIES IN BANGLADESH

Virtual court background-when and where started

Introduction

"Virtual court," as the name suggests, is a court of law created on a video live sharing platform between police custody suits and a magistrate courts together with Judge being held with all the E-documents where all the relevant parties have access. The virtual court is not be confused with Cyber court as it only deals with e-commerce and internet-related crimes only and whereas Virtual court deals with all sorts of cases just as any other normal cases, but the court is held "virtually."

The main goal for using Virtual Court is to save time at an affordable cost and in an easily accessible way but in the most effective way to provide the same Justice as in the actual court. But it is still limited to small cases and Issues like bailing or traffic cases in Countries like India and Bangladesh.

The virtual court has its own advantages with its unique infrastructure; its objective is to set up a decision that will support the decision in the court, which will help to increase the judicial productivity most effectively and efficiently. But at the same time, it has some disadvantages, like the risk of weak cybersecurity, which may lead to hacking of information.

History

According to Bowcott.O (2018), the first Virtual court case was held in 2018, which was appealed by Owen Yarnold, director of a property development company against HMRC Imposed files. The judged for the case was presented in The London tribunal, and the lawyers

representing the party handed out the evidence as E-document from Belfast, Ireland. (Bowcott, 0. 2018).

Despite the first case being held in 2018, the first step in creating the “virtual court” was actually started by the Michigan state, the U.S. on 2002 but it was still inactive and was only held as a project and was still on hold in 2003 and was successful years later because of the state battling for fund of \$2 million for the project. (National law journal-US, 2002).

Then on The Daily Star, Dr. Murshed. Md. M (2020) mentioned that in 2005 India started its road to E-Judiciary through which the E-committee of the Supreme Court on India executed ICT in the Indian Judiciary. The plan for the execution had 3 phases where phase 1 and 2 was all about the initiation and coordination of ICT in the system, and finally, phase 3 was all about the handling of Judicial process on the activities. Unlike the Michigan state of the U.S. for asking for funds, India managed to save Rs. 340 crore by using FOSS (Free and open-source software). (Dr. Murshed. Md. M, 2020)

Recently during 2019, Faridabad, India, started using virtual court aiming to reduce the appearance of a litigant on the court through video conferencing. The virtual court was only to be used for “Traffic Challan Cases” for the state only. (Saina. M, 2019)

The gain of Popularity in 2020

On the rise of safety issues for the public because of the Covid-19 pandemic all around the Globe, many countries took steps to launch “Virtual Court Hearings” so that the law of Justice can still continue without even going to the court physically.

As Virtual court is gaining more and more popularity because of the pandemic for Covid-19 on 2020, Australia, Canada, India, and the U.K., etc. were among the first countries who started "virtual Court." Dr. Murshed. Md. M (2020) of the Daily star stated that on March 24th In UK, England and Wales took the first step of conducting virtual court, but it was only limited for

Civil Courts. For now, England and Wales are still hearing cases on virtual courts and only do physical hearing matters in case of technical issues or not being possible at all. (Dr. Murshed. Md. M, 2020)

Next in U.K, Scotland started testing virtual court in unique way which is not done by any other country in the world. The Virtual Court is held on a live video platform on a laptop or P.C but for the Jury; Cinema theatres are being used for them to make a “Virtual Jury”. (Barrie. D, 2020). According to The Northern Scot news, Whitfield. A. (2020) reported that Scotland’s first official Virtual Court hearing was held on 12th May, 2020 at the Sheriffs Court in the cathedral city of Scotland; Iverness.

In The UAE, Dubai started its Virtual hearing from April 19th. According to Shouk. A. A. (2020) of The UAE Gulf News, he reported that Tarish Eid Al Mansouri, director general of Dubai Courts confirmed that even though criminal cases are suspended for the time being on Virtual Court, it still covers services like Marriage registration, divorce cases, family guidance which are done through e-mail and virtual hearing is only for labor, commercial, civil, personal status matters and criminal cases are suspended for the time being. (Shouk. A. A.,2020)

Slowly as many countries around the Globe announced lockdown of their respective country because of the pandemic, Australia was one of the first, which started Virtual Court back in March, 2020. (Zanker. M and Galbraith. F. 2020). The Michigan lawyers weekly (2020) mentioned that In the U.S., the Michigan state was the first of the state to launch Virtual courts in April, 2020. And it was recorded that from April to July 21st, the state hit the mark of 500,000 hours of the virtual court hearing of countless different cases. (Michigan Lawyers Weekly, 2020).

On the European side of the world, Ireland was one of the countries which had no method or procedures for the online process of Judiciary. According to Hallisy. M (2020) on Ireland Chief

Justice Frank Clarke and court presidents issued a process to start a remote access hearing and did tests for two weeks. And after that procedure, they issued a new term, and Ireland stated its first-ever Virtual court case hearing on April 20th, 2020. (Hallisy. M, 2020)

According to Tay.S (2020), on Singapore, virtual court implementation began in April, and Chief Justice Sundaresh Menon of Singapore assured they will be enhancing virtual court even after the pandemic is over. But they started their journey of online court since 2017, and till now, over 30,000 cases have been filed online. (Tay.S, 2020)

Even Nigeria had to start going Online in this crisis, and they had their first Virtual court hearing on May 4th, 2020, at the High Court of Lagos, Nigeria. And its first-ever online Case was the sentence of death Mr. Olalekan Hameed for a Murder charge. (Tech Next, 2020).

In a less development country, Kenya is also starting to enter E-Judiciary but they are yet to take their First official virtual court case. Wangui. J (2020). Reported in the “The Daily Nation News” that, Nelson Havi who is the president of law society of Kenya confirmed that it is high time for Kenya to enter E-Judiciary and slowly they are warming up to Virtual Court sessions. (Wangui. J, 2020)

Next, on May 6th, 2020, in India, the Delhi High Court took steps to provide Justice in this pandemic and pronounced its first judgment (Dr. Murshed. Md. M, 2020). Then on June 1st the Supreme Court of India held its first-ever hearing. And even though Virtual court was initiated in India for the emergency of the pandemic, many Judges and lawyers wanted to continue Virtual court even when the current situation turns out normal. (Vaid. D, 2020)

Following the current situation, Bangladesh has also started using virtual court from May-12, 2020, in this pandemic coronavirus situation. Its first virtual hearing was instructed to stop Killing of Dolphins in the Halda River, which was issued by the High court Division.

Furthermore, it was instructed that the virtual court would be held for cases related to the Bail of individuals. (Dr. Murshed. Md. M, 2020)

During this situation in Bangladesh, a special committee for children's rights was able to take a grant from the Chief Justice of Bangladesh to also allow Virtual hearing at the Children's court to reduce the chance of getting infected Covid-19 to the children. (Sattar. Md. D, and Choyon. Md. K. I, 2020)

HISTORY OF VIRTUAL COURT IN BANGLADESH

Virtual court system is the state where technology is used to give justice without physical appearance. Because of the Covid-19 pandemic situation grows highly in Bangladesh virtual court was established. Since March 26th 2020, all courts and tribunal activities have been closed due to Coronavirus pandemic. Then Supreme Court took a historic decision to continue the court activities for emergency hearing and requested government for legal solution. Then Government and the Ministry of Law introduced the historical ordinance titled " The usage of Information and Technology in Court Ordinance 2020". According to section 3 of this ordinance any court can continue its activities after ensuring the virtual presence of justice seeking group through any virtual communication medium. On may 10 Virtual Court got directives to rite proceedings in the Appellate Division, High Court Division, the subordinate courts and tribunals from Supreme Court. "In its first virtual hearing over a writ petition high court division ordered a rule to stop the killing of dolphins in Halda river." (Rahman, 2020)

From May 10th to May 28th there were held virtual hearings for about 33,247 cases where 20938 people were granted bail through virtual court. On average, in every working day 4056 bail petitions have disposed and 2655 bails have granted. Initially it took huge efforts to set up apps, virtual courts procedure, train staffs, accomodate lawers and judges to complete judicial

process through virtual court system. These activities marked an new journey towards a sustainable e-judiciary system.

“The virtual presence, an antithesis to secrecy to judicial proceeding, is not oblivious to the constitutional principle of public trial (Article 35) as well as, somewhat, incognizant to the procedural principle of “open court having public access” (Section 352 of CrPC) construing to mandatory requirement of taking evidence (Section 353 of CrPC) and pronouncing judgment (Section 366 of CrPC) in the open courts while Rule 4 of Order 18 and Rule 1 of Order 20 of the CPC require with the same. The provision initiated in section 5 apparently appears to have imposed the power to issue “Practice Direction” upon all SC judges is oblivious to the contemplation in Chapter 3B rule 1-4 of Supreme Court of Bangladesh (High Court Division) Rules, 1973, as the later, empowers, even without calling full court meeting, the honorable Chief Justice to issue “Practice Direction”.

The Ordinance, as extends the accessibility of the procedure outlined in CrPC and CPC requires the physical presence of the concerned in criminal matters like complaint filing, investigation, issuance of process, petition on surrender, CS/report hearing, cognizance taking as well as civil matters like pleadings filing, ADR, framing of issues, arguments or pleadings filing etc. E-swearing virtual affidavits, e-service of processes, digital signature or e-signature of the concerned in the digital space may rear up a hope for the successful virtual proceedings.” (Lawyers Club Bangladesh, 2020)

“The expenditure for surrounding digital infrastructures like one laptop/desktop with webcam, one scanner, one printer, Wi-Fi, necessary for setting up virtual court needs the government help initiating strategic development programmes by the relevant stakeholders like Ministry of Information and Communication Technology etc. Not all virtual courts like Chawki Adalat are having the required infrastructures and therefore, will avail the advantages of the same until

they are likely embedded with accordingly. Again improper infrastructural technologies causing causal interruption in the video connectivity or any like other difficulties will be impossible to conclude the virtual hearing smoothly. Its success would depend upon ensuring digital technological support making short-term, mid-term, and long-term action plans.

The central surveyor initiated in association with UNDP avails the access of the software like “My Court” and “My Order” facilitating e-filing and disposal by virtue of video conferencing like Zoom or Microsoft Teams etc. using the devices like smart phone or desktop. Unfortunately most legal counsels, having no access skill to device connectivity, do the odds like miss e-filing, several filing on the same matter, attachment of invisible documents abruptly obstruct the smooth success to virtual proceedings. To train them in holding virtual hearings and disposing of cases on digital platforms, initiative should come immediately.

The post payment of court fees facilitated by “Practice Direction” within 72 hours of regular court opening is obsolete to the manual procedure of payment as arranged by the Court Fees Act along with the Supreme Court Circular. With the initiation of an e-payment system, by virtue of, online services like Credit Card, Bkash, Nagad will certainly make the payment system easy and smooth and ensure the actual virtual compliance. The “Urgent cases”, though left to the subjective satisfaction of the judge concerned, by virtue of the guidance accrued to the preamble of the Ordinance along with directions thereby made, may amplify the virtual idea to include the matters of “Shown Arrest”, “Remand”, “Bailment” within the virtual proceedings.

“The person responsible shall be dealt with in accordance with law” not being crystal indication to punitive provision may exasperate the undertaking given as to the truth of the statements and the genuineness of any document. A chance of recording virtual proceedings or absence of any agreement with the software provider may cause the privacy concern. (Deb, 2020)

“This is a timely and welcome move by the Supreme Court with a modest attempt to digitalize our judiciary in the context of crisis and critical circumstances.” (Lawyers Club Bangladesh, 2020)

Overall, the establishment of Virtual court system in Bangladesh is very appreciating. In other countries the virtual court system is available. Like in US the virtual court system established in the year 2019. And UNICEF assisted Virtual Juvenile Court.

UNDP and ICT Division are working to develop the website called “privacy by design “, which main focus is to give security to National server, network and management the information system.

So, at last we can say that for the unpleasant situation created in Bangladesh due to Covid-19 we have to accept e-judiciary, which is mainly Virtual Court System. And we can face problems, as it’s a new thing in Bangladesh, but with better technology, better training, better cyber security better privacy of the Correspondent we can overcome the problems and can feel the betterment of virtual court system.

Reception

The litigants have without any doubt accepted this system widely and appreciate it massively. The defendants have now been able to try their case and mitigate it soon. For instance, in a meeting hold by the Lawyers and Jurists Foundation, president of the AB bank limited expressed how he is satisfied with the virtual court's proceedings. They are more than happy how judiciary system is helping them even during a pandemic. Yet, he didn't forget to point out confidentiality is a major concern for them, as there is information that should be limited only to the judge. Data breach can affect their business activities to a large extent. He also pointed out the Court system has slowed even more than the pre-pandemic physical courts.

On the contrary, the judges and lawyers have mixed feelings. While some of the lawyers have openly boycotted the virtual system, other thinks it is only good for emergency situations and should not be continued after the pandemic ends. However, some of the more modern judges has pointed out that this system can only be effective if more and more judges, and lawyers are trained for it. They have also pointed out, this might be the time we look at how the judicial system is backwards in terms of technology and adaptability, and the government should act first to make it up to date. (TBS Report, 2020)

A Supreme Court lawyer pointed out this backwardness in a more vivid manner. He said training is the main resistance in proper use of virtual courts. They didn't get time for preparation, or training and don't know how to case a file with the court virtually.

A Deputy Attorney General, on the other hand put all the blame on the lawyers. He said it is the lawyers' inability to adapt, and inertia to learning which is causing problems in the systems growth. He said a simple mobile phone is enough to scan documents and send it to the court. He even expressed that the virtual court if implemented properly can be better and faster than the traditional one.

Another Justice pointed out that the video platform often comes up with many limitations, and they need a proper software for virtual courts.

A Barrister also expressed his disappointment that the virtual court do not support anticipatory bail has not been included in the proceedings of the virtual court.

The situation on the rural districts, however, are worse. Many of the lawyers do not even have smartphones to join the court. An Advocate was frustrated due to this, he says that lawyers have to go to computer shops to join the court while risking virus contamination.

A judge from the Chittagong division was very much optimistic about virtual courts. He says the judicial system shall also enjoy digitization like every other sectors. According to him, the police and doctors are to blame for the delays in the system. They are major witnesses, but do not co-operate accordingly. The Court publishes every hearing dates and orders on the website, so that unwanted, unclear situation doesn't arise. The Judge believes in this way with e-judiciary, 90% corruption can be avoided. (Dhaka Tribune, 2020)

Overall, the Judges, and civil litigators awaiting trial are satisfied with the virtual courts, and supports its establishment. The Lawyers are divided on their views. Some say its an excellent decision, while some are furious of the virtual court and wants to go back to the physical ones as soon as possible.

Challenges of Virtual Court in Bangladesh:

- When government introduced e-justice system, it was widely viewed as a necessary step to keep the justice system flowing during lockdown. But the whole system has become more complicated for lawyers and judges as they're not technologically advanced, especially senior lawyers and judges. In bdnews24.com one lawyer shared his experience about the virtual court. He said that, when he logged in to an online court

hearing, he was confused about the whole process, which was really embarrassing for him. Other lawyers also dealing with similar issues. Most of them aren't trained and don't have technological knowledge to deal with virtual court system. According to HM Masum, office secretary of Dhaka Ainjibi Samity, most of the lawyers aren't trained on the online court proceedings.

- Internet connectivity has become another challenge for lawyers and judges. According to Advocate Kayum Khan Kaiser, general secretary of Barisal District Ainjibi Samity, internet speed is very slow to continue the virtual court activities. Some lawyers accused that, because of slow internet connection, it took long time to continue the hearing. To take part in an online hearing, lawyer must register on a website by using his phone number and email id. Then they get an SMS to create a password so that they can take part in court proceeding by logging into specific website. But many lawyers said that, they didn't get any message to create that password. Many lawyers think that, Virtual Court system is more complicated than traditional court system.
- Another challenge is confidentiality. There is a high chance that, confidential information may disclose during virtual court proceedings. Any litigants may record the virtual court proceedings by using their personal devices and make it viral by uploading on social site. Another problem is absence of special agreement between video conferencing software provider company and court authority. Are the general terms and conditions provided by software company sufficient to protect the sanctity of the court proceedings? These terms and conditions may be changed at any time.
- Virtual Court contains sensitive personal and government information, that's why Data Security has become another challenge for Virtual Court. Virtual Court fall under the category of Critical Information Infrastructure. Did our Judicial authority declare

Virtual Court as Critical Information Infrastructure under section 15 of the Digital Security Act 2018? According to section 6 of Digital Security Policy 2020 and sections 5 and 9 of Digital Security Act 2018 Digital Security Agency will create a national Cyber Emergency Response Team to ensure the cybersecurity of a Critical Information Infrastructure with technical support. Did our Judicial authority collaborated with the CERT to ensure cybersecurity?

- Most of the documents submitted online don't carry the correct information, which has become another trouble for virtual court. Most of the lawyers are not capable of utilizing the software properly and this has been a hindrance in bail hearings. Many of the lawyers don't have computers with webcams and they continue their virtual court proceedings by their smart phone. It is really hard to represent documents and continue hearing simultaneously. That's why many lawyers think that Virtual Court is more time-consuming comparing to traditional court system.
- Another challenge for Virtual Court is the "human" aspect. Courtroom requires a human interaction. A lawyer can't give reassurance to his nervous clients over the telephone. In traditional courtroom, a lawyer can give moral support to his client in hard situation, but in Virtual Court it's not possible to provide moral support to his clients.
- Evidence and fact representation in Virtual Court is more complicated and time consuming than traditional courtroom because of slow internet connection and faulty tech accessories like microphone and webcam. Recently, in Delhi, faulty microphones disrupted the Supreme Court's virtual hearing for nearly an hour.

Recommendation

It is clear as the light of day that the Judicial System requires a heavy investment. While the whole country was running towards digitization on the pre-pandemic era, the Judicial System stayed behind on its hundreds of years old system. Obviously, any new system like the Virtual court will take some time to adjust and be efficient, also effective. We can't expect to have a fully equipped ideal system just yet. Moreover, Bangladesh being a developing country the challenges are more ill-fated than most others.

Still, there are some ways we believe we can improvise the virtual court, and may be in the not so distant future it might be a better alternative than the physical court.

- **Mobile Support Center:** Since, many of our recommendation will require for people to come in contact with other people for a limited time, we think a mobile support center built at every unions are essential. People providing the service from these centers shall be equipped with protective gears.
- **Training:** Our lawyer, judges, support groups, certification witnesses like police and doctors none are ready to blend in this new way of courts. So, the foremost work at hand is to make them understand every ins and outs of the system. More importantly, give mental training to improve their mindset on the virtual courts. Many of the senior lawyers have preconceived notion that they are adamant to changing.

In these cases, the union and association leaders should come forward to control their allies, and direct them to the right path.

- **Specialized Platform:** 3rd party software like Zoom, or Meet, or even Teams will always be a threat to the virtual judiciary system. The threat is not limited to just data security and confidentiality, but also it doesn't come with enough features to facilitate every function of the court, including but not limited to entrance of media, and other

personnel in the sessions to make it go in line with the law of open court, control of mic, camera and other access limited to the judge. It may even support a VR experience so that judges can feel the litigators more closely.

- **Use of drones for delivery and monitoring:** Many a times a judge might need to examine the evidence themselves to understand the situation and make a judgement. In those cases, drones might be used to deliver those to the judge. If a judge feels that a party is deceiving the court with the excuse of technology, a drone can be deployed to keep an eye and know the truth.
- **Internet Coverage:** Now, it is not something the Government can do by themselves in an instance. The coverage has been growing through the telecom companies, and broadband companies expanding for their own gain. However, to motivate them to do so in a speedier manner, Government can declare conditional subsidies.
- **Modernized State Facilities:** It's a shame that state facilities like Jails, Medicals, Labs, Police Stations etc. do not have proper infrastructure to participate in virtual courts and present everything clearly. This needs utmost attention from the Government.

Finally, if all of these are met, most of the current challenges will be solved. However, it doesn't guarantee that new problems won't arise, but this will be a start. New problems and challenges can be solved as they arrive, and we won't face a sudden blow like now.

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