

Moving Towards Virtual Courts

What is the issue?

- Amidst the national lockdown, the Supreme Court and several other courts have been holding virtual proceedings.
- This has triggered a rethink on the nature of judicial processes and judicial administration.

What are the concerns raised by the Bar Association?

- The Supreme Court Bar Association (SCBA) has written to the CJI and other judges.
- They called for earliest restoration of the open court hearings, subject of course to the lockdown ending.
- They cited the earlier judgments on the importance of open court hearings.
- The SCBA has requested that the use of video conferencing should be limited to the duration of the current crisis.
- They spelt that this should not become the “new normal” or go on to replace open court hearings.
- The SCBA also has a specific request that proceedings held virtually may also be streamed live.
- This will ensure that access is not just limited to the lawyers concerned, but is also available to the litigants and the public.

How would live streaming help?

- Advocates appearing in a particular case are now barred from sharing the passwords given to them to join the proceedings through video conference.
- It is theoretically possible for the parties to join their lawyers during the hearing.
- But in practice, they may be unable to travel to their offices.
- Media access is also limited.
- These issues can be resolved through live-streaming.

What is the higher judiciary's opinion?

- A three-judge Bench headed by the CJI, in a recent order, laid down broad norms for courts using video-conferencing.
- It also ratified the validity of virtual judicial proceedings.

- Present Chief Justice of India S.A. Bobde emphasised that virtual courts are open courts too.
- So, one cannot describe them as closed or in camera proceedings.
- He said that the correct way of framing the difference was to call them virtual courts as distinct from “courts in congregation”.

What is the way forward?

- Two aspects are not in dispute:
 1. the vital necessity to keep the courts open even during a national lockdown so that access to justice is not denied to anyone
 2. the need to maintain physical distancing
- It must be understood that virtual hearings are no different from open court conversations, provided access is not limited.
- The court administration should thus readily address the concerns raised by the SCBA with regards to the shortcomings.
- In the longer term, the changes could become the general practice, signalling a move away from the idea of open courts.
- As technology use is stepped up, courts should consider other steps that will speed up the judicial process and reduce courtroom crowding.
- In the lower courts, evidence could be recorded, with the consent of parties, by virtual means.
- In the higher courts, a system based on advance submission of written briefs and allocation of time slots for oral arguments can be put in place.
- It may even lead to more concise judgements.
- The opportunity offered by the lockdown to improve the judicial process must thus be utilised well.

Source: The Hindu