

THE MAJESTY AND DIGNITY OF COURTS: CHANGES IN COURT DYNAMICS WITH THE ONSET OF THE COVID-19 PANDEMIC IN INDIA

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The procedures and practices of courts were brought to a sudden halt with the onset of the Covid-19 pandemic. This led to the promulgation of virtual courts where previously known traditions of the courts changed in many ways. The dress code was watered down and the understanding of the majesty and dignity of courts had to be re-established. This paper documents the seismic changes that occurred in virtual courts and how the courts had to keep redefining what contempt meant in the context of virtual courts. It is argued that majesty and theatrics affect the dispensation of justice, so when it is slightly ‘lowered’ – as was during the pandemic – the seriousness of the justice process is also scrutinised. The question remains as to whether timing, manner, and presentation are still relevant in times of Covid-19. The paper begins with a theoretical explanation of the majesty and dignity of courts in the pre-pandemic era. The next two sections illustrate the theatre of the court, pre-Covid-19 and during Covid-19. The following section is an ethnographic account of the redefining of majesty and dignity in virtual courts. The conclusion discusses the effect of the pandemic on the re-imagining of the spatial dynamics of courts in India.

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I. INTRODUCTION

Existing ideas of courts, their spatial dynamics, the strict adherence to the dress code, and the ban on any form of photography and visualisation of courts are intrinsically linked to the majesty and dignity of courts. These processes have often limited the physical access to justice.¹ These procedures and practices were brought to a sudden halt with the onset of the Covid-19 pandemic. Almost overnight, the court systems were forced to adapt to digital platforms to remain accessible, even if in a very limited form. During my fieldwork (pre-pandemic), there was a lot of resistance to the live telecasting of court proceedings and/or video recordings.² However, with no other option during the pandemic, judges started conducting what they were permitted to define as urgent hearings through video conferencing. The dress code and dignity of the court remained in focus at this time too. As the pandemic continued and brought wave after wave, the judicial system had to continuously expand the scope of virtual courts. During this time, the courts witnessed various seismic changes to their procedures, processes, and authority.

In this paper, I focus on the changes in courts that affected their existing understanding of majesty and dignity, and how courts had to keep redefining what contempt meant for virtual courts. Instances of this were seen in the way courts dealt with lawyers appearing from cars to lawyers appearing in vests and smoking hookahs on screen during live court proceedings. While in the Bombay High Court some judges appeared in white shirts without the band and gown, arguing lawyers were also not in full dress code.³ On the other hand, in the western state of Rajasthan, a lawyer appeared wearing a vest during a video conference before the High Court. The judge was displeased by the lawyer's appearance and adjourned the matter.⁴ At this point, the judge requested the Bar Association to urge all lawyers to appear in uniform even through video conferences. In the Bombay High Court, fuelled by some audio disruptions, a circular was issued cautioning that, "Though virtual,

¹ Linda Mulcahy, 'Architects of Justice: The Politics of Courtroom Design' (2007) 16 (3) Social and Legal Studies 383; Rahela Khorakiwala, *From the Colonial to the Contemporary: Images, Iconography, Memories and Performances of Law in India's High Courts* (Oxford Hart Publishers 2019).

² Khorakiwala (n 1).

³ Observation based on an open-source video conference hearing held.

⁴ 'COVID-19: Advocate Appears in his Vest on Video Conference before Rajasthan HC; Bar Association Asked to Inform All to Appear in Uniform' (*Bar and Bench*, 10 April 2020) <<https://www.barandbench.com/news/litigation/advocate-appears-in-his-baniyan-on-video-conference-before-raj-hc-bar-association-asked-to-inform-all-to-appear-in-uniform>> accessed 1 July 2021.

this is nonetheless a court hearing, and therefore appropriate court conduct is required.”⁵

Mithi Mukherjee indicates that independence did not mark a break from the colonial past that India had inherited; in fact, the Indian state continued to evolve under the “shadows of empire”.⁶ This is applicable within the judicial system that the British introduced in 1862 and continued through the establishment of the colonial courts, beginning with the Calcutta High Court in 1872.⁷ Certain colonial practices are more pronounced in the erstwhile colonial High Courts of India when compared to post-colonial courts.⁸ The notions of majesty and dignity that have been carried forward continue to reshape themselves in the post-colonial context. The most recent adaptation has been through the perpetuation of these ideas in virtual courts. Majesty and dignity have been redefined but continue to play a significant role in the administration of justice during the pandemic.

What then does this mean for the future of courts and their ‘majesty’ and ‘dignity’? In such times should the courts still seek to implement traditional practices of a strict dress code? While the idea of any video device in court had not yet been warmed up to, it has now become a reality to deal with the current crisis. Are the courts adapting or will they go back to traditional court procedures once normalcy returns? In such unprecedented times, merely accessing the courts has become important and therefore a lawyer not wearing the band and gown in the Bombay High Court was not considered to be puncturing the majesty of the court. However, the wearing of the vest was unacceptable to another judge. Where then is the line drawn? It can be argued that the majesty and theatrics affect the dispensation of justice, so when it is slightly lowered— as is the case in the current pandemic – the seriousness of the justice process is also scrutinised. The question remains as to whether timing, manner, and presentation are still relevant in times of Covid-19.

As news keeps trickling in on the various challenges the court faces, and how it reacts to the same, I argue how a life-changing event might have a long-lasting effect on the way courts render access to justice.

⁵ ‘Video Conferencing Blues Amid COVID-19 Lockdown: Raj HC Defers Bail Pleas Finding it not Feasible to Hear “So Many Counsel Simultaneously”’ (*Bar and Bench*, 15 April 2020) <<https://www.barandbench.com/news/litigation/video-conferencing-blues-amid-covid-19-lockdown-raj-hc-defers-bail-pleas-finding-it-not-feasible-to-hear-so-many-counsel-simultaneously>> accessed 1 July 2021.

⁶ Mithi Mukherjee, *India in the Shadows of Empire: A Legal and Political History (1774 – 1950)* (Oxford University Press 2019).

⁷ The Calcutta High Court was established by statute in 1862, but the court building began construction in 1864 and was completed in 1872.

⁸ Khorakiwala (n 1).

The paper begins with a theoretical explanation of the majesty and dignity of courts in the pre-pandemic era. This section highlights how courts are designed, and the inherent contradictions of inequality that are built into court structures. The following two sections describe the theatre of the court, at first in pre-Covid-19 times, followed by a description of the same theatre of the court during Covid-19. These two sections detail daily court proceedings and rituals, and contrast how this has changed from a physical court setting to a virtual court setting. This leads to the next section, which is an ethnographic account of the redefining of majesty and dignity in virtual courts. The paper ends with the conclusion that discusses the effect of the Covid-19 pandemic on the re-imagining of the spatial dynamics of courts.

II. THE THEATRE OF THE COURT: A THEORETICAL UNDERSTANDING OF THE MAJESTY AND DIGNITY OF COURTS

In my recently published book,⁹ I argue that certain colonial practices continue to be followed in contemporary times in the erstwhile colonial courts of India, leading to issues of access to justice. My research, based on my ethnographic fieldwork, navigates through the High Courts located in the cities of Kolkata, Mumbai, and Chennai. I make my observations through various registers, some of which include, but are not limited to, the architecture of these court spaces, the spatial ritualisation followed in these courts, the prescribed dress code for court proceedings and the ban on imaging through photography, video recording, live telecasting and sketching of court proceedings. I examine these aspects through the visual culture of courts and the judicial iconography that is displayed through these practices. The importance given to the maintenance of the majesty and dignity of the court was of great relevance. In this context, contempt of court has been directly linked to the lowering of the authority and majesty of the court. On contempt, the Supreme Court of India has held, “This jurisdiction may also be exercised when the act complained of *adversely affects the majesty of law or dignity of the Courts*. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law.”¹⁰

A recurrent emotion when entering large court structures is that there is a sense of awe towards the space, the process, and the people.¹¹ As Peter Goodrich argues, the ‘visual metaphor’ is important in the scheme of justice wherein justice is something that must be visible, which captures the “symbolic

⁹ Khorakiwala (n 1).

¹⁰ *Prodip Kumar Biswas v Subrata Das*, (2004) 4 SCC 573.

¹¹ I observed this during my ethnographic fieldwork in the first three colonial High Courts of India as documented in my book. See Khorakiwala (n 1).

presence of law as a façade.”¹² As Goodrich explains, a day in court can be a very frustrating experience in terms of the confusion, ambiguity, and panic that the process creates and, “...if justice is seen to be done it is so seen by outsiders to the process.”¹³

Goodrich argues this on different registers when he describes the didactic nature of courts, along with the language used, acoustic difficulties faced by people in court, and the imposition of a dress code without meaning. The important attributes of justice that contribute to the symbolic façade of law include the study of the architecture of courts and courtrooms, use of the internal space in courtrooms, seating arrangements for the different court actors, the dress worn by the participants of the court process, and the props used in the process of justice, that is, the mace, the black gown and white band. The common thread amongst these attributes is the images of justice they create for the law within the space of a court structure. Reading the literature on iconographical and iconological symbolism allows the courts to be understood in terms of the influence that the surroundings have on them.¹⁴ In round tables on law and semiotics, Goodrich recognised and denotes categorically that,

Discursive restrictions upon forms of address, time and tone of speech, narrative content and forms of reference combine to create a powerfully oriented genre of legal paraphrase in which *symbolic recognition of the authority of the court* is the overriding message conveyed or, more properly, announced by the law (*emphasis added*).¹⁵

Here, the idea of the ‘symbolic recognition’ of the authority of the court is important. The symbols that generate the authority may range from the architecture of the court to the dress and seating arrangements used in the court process. They all talk directly to the maintenance of the majesty and dignity of the courts.

In terms of the architecture of court buildings itself, certain specific aspects are seen across court structures. Courts are usually built above the ground level, to create an imposing effect on the people that walk the streets along the courts. Windows in court buildings are generally tall and narrow, and in

¹² Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (Weidenfeld and Nicolson 1990) 188.

¹³ *ibid.*

¹⁴ See Erwin Panofsky, ‘Iconography and Iconology: An Introduction to the Study of Renaissance Art’ in Erwin Panofsky (ed), *Meaning in the Visual Arts* (University of Chicago Press 1982) 26-54; Roberta Kevelson, ‘Introduction to the First Round Table on Law and Semiotics’ in Roberta Kevelson (ed), *Law and Semiotics* (Plenum Press 1987) 1-24.

¹⁵ Peter Goodrich, ‘Modalities of Annunciation: An Introduction to Courtroom Speech’ in Roberta Kevelson (ed), *Law and Semiotics* (Plenum Press 1988) 143.

most cases, inaccessible.¹⁶ Although the entrance to a court will be inviting, in all likelihood entry will be limited to the members of the judiciary who are at the top of the legal hierarchy. With the elevated entrance, access only becomes more restrictive and imposing. Goodrich summarises, in one sentence, the feeling of a person thus walking to the court, that, “the threshold to the court building will be marked and physical access to the seats of justice will involve both a visual and conceptual ascension from the quotidian street to the ritualized space.”¹⁷

The visual field of law is also manifested in terms of the image that exists both of a court and inside the court and a courtroom.¹⁸ Linda Mulcahy elaborates on the concept of images of justice when she states that the courtroom space can be looked at as a relationship with our ideals of justice. She argues that the judicial space is not ‘neutral’ and “understanding the factors which determine the internal design of the courtroom are crucial to a broader and more nuanced understanding of state-sanctioned adjudication.”¹⁹ In her description of the courtroom space, jury boxes, witness boxes, barricades, and additional spaces provided to different court actors contribute to the legitimacy that court proceedings derive. This legitimacy is not restricted only to the actual process of a trial but is influenced by all these allocations of place in a courtroom. It is then relevant to question if there is any direct relationship between the space provided in a witness box or the distance placed between a judge and an arguing lawyer.

Mulcahy’s emphasis is on the ‘spatial dynamics’ that influence the confidence the public has in the court system.²⁰ She debates that the way a courtroom is designed influences the kind of judgment delivered.²¹ Therefore, a judgment delivered in a particular court space would differ from one that does not have the key ingredients of a visual nature that specifically upholds the majesty and dignity of the court. In pursuance of this, Mulcahy argues that “the shape of a courtroom, the configuration of walls and barriers, the height of partitions within it, the positioning of tables, and even the choice of

¹⁶ ibid.

¹⁷ ibid 149.

¹⁸ Katherine Fischer-Taylor, *In the Theater of Criminal Justice: The Palais de Justice in Second Empire Paris* (Princeton 1993); Peter Goodrich ‘The Foolosophy of Justice and the Enigma of Law’ (2012) 24 *Yale Journal of Law and the Humanities* 141; Piyel Haldar, ‘The Function of the Ornament in Quintilian, Alberti, and Court Architecture’ in Costas Douzinas and Lynda Nead (eds), *Law and the Image: The Authority of the Art and the Aesthetics of Law* (Chicago Press 1999); Martin Jay, ‘Must Justice be Blind: The Challenges of Images to the Law’ in Martin Jay (ed), *Refractions of Violence* (Routledge 2003) 87-102; Linda Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law* (Routledge 2011); Judith Resnik and Dennis Curtis, *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (Yale 2011).

¹⁹ Mulcahy (n 18).

²⁰ Mulcahy (n 1).

²¹ ibid.

materials are crucial to a broader and more nuanced understanding of judge-craft.²² This contrasts with the idea that the courtroom space is neutral. The courtroom space is a contested space, and several factors influence the production of justice in its precincts. The presence of a particular visual adaptation of the court space certainly influences the relationship between the process of and access to adjudication. Katherine Fischer-Tayloris states that in legal systems, performance is all that matters and therefore the courtroom is like a stage where space, vision, and acoustics are all critical to the relationship formed with the given space – thus making these aspects important parts of the judicial iconography of courts.²³

In the construction of a courtroom, an elevated platform is a symbol of hierarchy; a partition between court actors signals inequality and a form of undefined segregation, and a symbol of the state behind the judges signifies the authority of the state and/or government through which the judge acts.²⁴ Therefore, though courts are public structures, it is often felt that a court space is most restrictive to this very public.

Mulcahy suggests, “courts are supposed to be daunting places in which participants are encouraged to reflect on the gravity of law and legal proceedings” and therefore the building structure furthers this idea.²⁵ Courts across the world have been implementing certain basic criteria in court buildings that are seen as specific legitimising tools, giving the court the majesty and dignity it seeks daily. The most important aspect of this is how the public who attend court perceive the space.²⁶ Mulcahy documents how courts in the United Kingdom were built in favour of judges and lawyers and how they categorically kept the public out.²⁷ She also writes about the changing nature of the role of each of these players, and as their importance grew, how their space increased in courts, creating less and less space for the public. There was often a “tendency to see both litigants and the public as irritants in the trial”²⁸ and therefore courts were built as being large and inviting but in practice were often exclusive and condescending.²⁹ This is seen in courts in India where the main entrances are large and inviting, but inaccessible when approached.³⁰

²² ibid.

²³ Fischer-Taylor (n 18).

²⁴ Mulcahy (n 1).

²⁵ Mulcahy (n 1) 387.

²⁶ Mulcahy (n 1).

²⁷ ibid.

²⁸ In a similar vein, some lawyers in the Calcutta High Court believed that to ease the space problem in the High Court, litigants and the public should be denied entry into the court. See Khorakiwala (n 1).

²⁹ Mulcahy (n 1) 393.

³⁰ The main entrance of the Bombay High Court and Madras High Court is reserved for Judges. Lawyers, litigants and the public enter from the back. See Khorakiwala (n 1).

Another aspect seen across courts is the relation of height with hierarchy and authority. Height elevates the judiciary to a point where they can survey the court process and all the people in that specific court space. The idea of the Panopticon plays out here, where surveillance can be controlled through an aerial hierarchical view.³¹ The hierarchy and panoptical setting allow the judge to visually control the court and thereby all persons' parts in the court process. In this format, the law can maintain control over its image of supremacy amongst the public. While on one hand, the judges – the top of the hierarchy – are provided with panoptical surveillance, on the other hand, the viewing positions of the public are starkly different. Mulcahy notes that while there is often a clear view of the judge, there is a limited view of the proceedings of the court.³²

This differentiation within a courtroom space is not limited to being present inside the courtroom only but extends to spaces outside the courtroom, around the court building, and within the court structure itself. These observations focus on the power dynamics within a court based on the physical aspect of a court structure. This is important to understand as it is able to control not only who can hear in a court, but also what specifically can be heard in that court. This has the effect of changing the relationship that the person shares with the judiciary and the legal system, and in particular, the way they can access justice.³³

III. THE THEATRE OF THE COURT: PRE-COVID-19

A large part of physically going into courts was about maintaining the majesty and dignity of these court spaces. These two terms are used extensively by the Supreme Court of India and various High Courts across the country when they link the concept of contempt of courts to affecting the majesty and dignity of the courts. The Contempt of Courts Act 1971 talks about contempt in terms of anything that lowers the authority of the court. The Act does not directly use the words majesty or dignity.³⁴

Through various judgements, the Supreme Court and High Courts have made references to acts of contempt as those that adversely affect, "...the majesty of law or dignity of the Courts..."³⁵ *Aswini Kumar Ghose v Arabinda Bose* mentions the 'dignity and prestige of this court'.³⁶ *EM Sankaran Namboodiripad v T. Narayanan Nambiar* mentions the 'dignity of the court'

³¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York 1975).

³² Mulcahy (n 1).

³³ *ibid.*

³⁴ Contempt of Courts Act 1971.

³⁵ *Prodip Kumar Biswas v Subrata Das*, (2004) 4 SCC 573.

³⁶ AIR 1953 SC 75.

and ‘majesty of the law’.³⁷ *DC Saxena v CJI* brought these two concepts together and stated that “all acts which bring the court into disrepute or disrespect, or which offend its dignity or its majesty or challenge its authority” will fall under the ambit of contempt of court.³⁸ The act of holding one in contempt, therefore, has at its very core the upholding of the majesty and dignity of the court.

Before the Covid-19 pandemic, a regular day in court involved the mandatory wearing of the black gown and white band, entering the courtroom, bowing before the judge who is seated on a higher pedestal, maintaining court decorum which ranged from not carrying plastic bags in courtrooms (due to the noise created by them) to not being able to read newspapers or sit cross-legged on a courtroom bench.³⁹ Judges also follow their prescribed dress code and are accompanied by a *chopdar*⁴⁰ who walks in before the judge, moves their chair for them to sit, and whose presence is a reminder that the judge is about to arrive or about to leave the court. It is also the cue for all present in court to rise and then bow once the judge enters and leaves. Some of these practices are mandated under various rules and legislations and some of them are practiced as customary tradition. The strict adherence to the dress code is mandated under The Bar Council of India Rules, 1975,⁴¹ and the practices of bowing before judges and judges sitting at a pedestal higher than everyone else in court are part of the customary practices of the court.⁴²

Importantly, courts are public spaces, in that there are no restrictions as to who can enter the court and sit in on proceedings in a courtroom.⁴³ Every person entering the court, including the lawyers, is subject to a search procedure at the entrance of the court after which they are permitted to be present in any courtroom or part of the court. Restrictions are placed on in-camera trials where, based on judicial discretion, certain matters are heard behind closed doors, and no public is permitted.⁴⁴ The Supreme Court of India also has entry restrictions based on security issues where every person entering court

³⁷ (1970) 2 SCC 325, (1971) 1 SCR 697.

³⁸ *D.C. Saxena v Chief Justice of India*, (1996) 5 SCC 216, AIR 1996 SC 2481 [33]; There are several cases in the Supreme Court and the High Courts where the courts have held that contempt involves upholding the majesty and dignity of the courts. For example, see *Surya Prakash Khatri v Madhu Trehan*, 2001 SCC OnLine Del 590, (2001) 59 DRJ 298; *MV Jayarajan, In re* 2011 SCC OnLine Ker 4069.

³⁹ Based on my experiences and observations during my fieldwork in the Calcutta, Bombay and Madras High Courts.

⁴⁰ A *chopdar* is the person who walks with the Judge to and from courtroom and announces the arrival of the Judge in the courtroom.

⁴¹ Advocates Act 1961, s 49.

⁴² These observations are based on my ethnographic research work as detailed in Khorakiwala (n 1).

⁴³ Code of Civil Procedure 1908, s 153-B; Code of Criminal Procedure 1973, s 327.

⁴⁴ Code of Civil Procedure 1908, order XXXII-A rule 2; Code of Criminal Procedure 1973, s 327(2).

requires a pass. While the pass is not that simple to secure, in principle anyone can avail of it and therefore enter and access the Supreme Court as well.

With the onset of the Covid-19 pandemic, these procedures and practices were completely disrupted. As India began imposing a nation-wide lockdown, in the initial days, courts were completely closed.⁴⁵ As time passed, courts slowly started opening for what they defined as urgent hearings. However, when courts opened, they were virtual and no longer physical.

IV. THE THEATRE OF THE COURT: DURING COVID-19

With the onset of lockdowns and the spread of the coronavirus across India, courts were forced to adapt to the changing times. Due to the very nature of the Covid-19 pandemic – the issue of containing the spread of a highly communicable disease, courts, along with several other institutions, had to make themselves available and at the same time, follow Covid-19 protocols. The resolution was to go virtual.

In the initial phase, the process was new for everyone involved and the courts, along with court staff, lawyers, and litigants, were all adjusting to the changing nature of access to courts and dissemination of court orders and judgments. Courts were accessible through online forums where a link to a video conferencing service was provided to the concerned persons. Courts heard very limited matters, and the entire process was digital. Papers were e-filed, and the hearing happened through virtual means. Each court adapted to these methods in its own organic way. The rules and practices on how to access these courts and what qualified as appropriate behaviour changed regularly.

Links to attend court hearings were available to lawyers who had cases listed before the court, and this came with restrictions on the number of people who could attend, largely because online platforms had bandwidth issues if too many people logged in at one time.⁴⁶ In some cases, restrictions included the number of lawyers representing one party to the dispute who could attend court, and the number of litigants per case who could log in. In some courts, lawyers and litigants were permitted entry into court in a staggered manner,

⁴⁵ Abhinav Garg, ‘Coronavirus Lockdown: Delhi High Court, Six Lower Courts Closed till April 4’ (*Times of India*, 24 March 2020) <<https://timesofindia.indiatimes.com/city/delhi/hc-six-lower-courts-closed-till-april-4/articleshow/74783526.cms>> accessed 1 July 2021.

⁴⁶ Aishwarya Iyer, ‘Password Leak Disturbs Andhra Pradesh HC Virtual Hearing in SEC Case; HC to hold open-court hearing following social distancing norms’ (*Bar and Bench*, 30 April 2020) <<https://www.barandbench.com/news/litigation/andhra-pradesh-hc-to-conduct-physical-hearing-on-may-4-asks-advocates-to-not-share-video-conference-details-with-unrelated-persons>> accessed 1 July 2021.

based on their serial number and the case number being heard in court.⁴⁷ The links, while in theory were not private links to attend court, still made the courts inaccessible to anyone else who wanted to enter court, observe proceedings, or generally follow court cases.⁴⁸ Accessibility in terms of space within a courtroom was an issue before the pandemic as well, where physical courtrooms could only accommodate a limited number of people. This inaccessibility continued in virtual form, triggered by different constraints.

While accessing the court became harder, there was confusion as to the dress code to be worn in a virtual court setting. Once courts went virtual, the question quickly arose if the same strict adherence to the dress code was required. Many argued that a virtual court was exactly like a regular court and therefore all practices and procedures followed should be the same.⁴⁹ However, a few days into virtual proceedings, several notifications were released stating that the black gown was not required for virtual court proceedings.⁵⁰ The notification from the Supreme Court was issued following remarks by the then Chief Justice of India who stated that there is a risk that the black gowns can further spread the coronavirus infection.⁵¹ Following the Supreme Court's notification, several other courts and the Bar Council of India issued similar directions and lawyers were not expected to wear the black gown or the white band while attending virtual court proceedings.⁵²

⁴⁷ This is based on my observations of a certain virtual court proceedings that I was able to attend.

⁴⁸ A handful of High courts have made their virtual links public. See Meera Emmanuel, 'Open Justice in Trying Times: Kerala High Court Conducts Virtual Hearings Accessible to Public Amid Coronavirus Lockdown' (*Bar and Bench*, 2 April 2020) <<https://www.barandbench.com/news/litigation/open-justice-in-trying-times-kerala-high-court-conducts-virtual-hearings-accessible-to-public-amid-coronavirus-lockdown>> accessed 1 July 2021.

⁴⁹ Mehal Jain, 'Taking Screenshot Of Virtual Hearing Equivalent To Clicking Photo Of Actual Courtroom Proceeding: Calcutta HC Initiates Contempt Against Advocate [READ UPDATE-Contempt Proceedings Dropped]' (*Livelaw*, 26th August 2020) <<https://www.livelaw.in/top-stories/taking-screenshot-of-virtual-hearing-actual-courtroom-proceeding-calcutta-hc-initiates-contempt-against-advocate-161990>> accessed 2 July 2021; 'Allahabad High Court Asks Advocates to Stick to Formal Dress Code for Virtual Hearings' (*India Legal*, 3 July 2021) <<https://www.indialegallive.com/constitutional-law-news/courts-news/allahabad-high-court-asks-advocates-to-stick-to-formal-dress-code-for-virtual-hearings/>> accessed 3 July 2021.

⁵⁰ Part VI of the Bar Council of India Rules, 1975 states that, "...Wearing of the Advocates' gown shall be optional except when appearing in the Supreme Court or in High Courts..." Therefore, the context of this argument is restricted to the practices before the Supreme Court and various High Courts.

⁵¹ PTI, 'Judges, Lawyers Shouldn't Wear Coat and Gown as it's Easier to Catch Covid-19: CJI Bobde' (*The Print*, 13 May 2020) <<https://theprint.in/india/judges-lawyers-shouldnt-wear-coat-gown-as-its-easier-to-catch-covid-19-cji-bobde/420862/>> accessed 1 July 2021.

⁵² Supreme Court of India, (Circular F. No. 06/Judl./2020, 13 May 2020) <https://main.sci.gov.in/pdf/cir/13052020_115216.pdf>; PTI, 'Lawyers Need not Wear Coats, Gowns During Virtual Hearings: HC' (*Economic Times*, 21 May 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/lawyers-need-not-wear-coats-gowns-during-virtual-hearings-hc/articleshow/75867819.cms?from=mdr>> accessed 1 July 2021; Sanya Talwar, '[COVID-19] "No Coats, Gowns/Robes Required To Be Worn By Lawyers Across India Till Further Orders": BCI [Read Circular]' (*Livelaw*, 14 May 2020) <https://www.livelaw.in/top-stories/13052020_115216>

While the dress code was debated and discussed, other aspects and practices of the court were not deliberated over as much. Certain practices that were treated as inherent to the process of rendering justice, such as judges seated at an elevated position, the *chopdar* always being available for the judge, bowing while entering and exiting the court, were not discussed in the context of a virtual court setting. Therefore, lawyers and litigants would log into the various video conferencing applications that were provided, where the judge was already seated at their desk. The hearing would start per the serial number on the list of cases. Lawyers would turn on their cameras when their serial number was called out. Therefore, traditional, and sometimes colonial, practices that were inherent in some courts gave way to practical aspects of adapting to virtual courts during a pandemic.⁵³ In some instances, conditioned by habit, certain lawyers would appear in virtual court proceedings standing, with the lectern in front of them. This would give them the sense of being physically in court, which allowed for them to present their case using methods they are familiar with.

The spatial dynamics also changed in virtual courts. In the physical courtroom, judges along with their staff were accorded with maximum space, followed by lawyers, the litigants, and then the public. In the virtual setting, the spatial dynamics changed. On video conferencing applications, everyone has equal screen space. In that limited sense, everyone is accorded the same amount of space. Virtual courts have been shaped by technical design choices, which include using features that can mute participants and switch on or off their videos, having the option to virtually raise your hand to speak, and the platforms having a limit on the number of attendees at one time.

In some instances, there is a semblance of a democratic structure creeping in, with equal screen size and less emphasis on the dress code, but the lack of access through bandwidth issues, lack of technical affordability and availability make online courts less accessible than their physical counterparts. Adaptation and change were seen, whether planned or unplanned, in the functioning of the entire judicial system due to the changes brought on by the Covid-19 pandemic. With the earlier architectural structuring no longer available during virtual hearings, the courts are seen to fall back on other forms of performance

covid-19-no-coats-gownsrobes-required-to-be-worn-by-lawyers-across-india-till-further-orders-bci-read-circular-156751> accessed 1July 2021; Circular by Telangana High Court, (ROC. No.394/SO/2020, 20 May 2020) <http://www.manupatrafast.in/covid_19/Telangana/Court/Notice%20regarding%20the%20dress%20code%20of%20the%20advocates.pdf>; Pritam Pal Singh, 'Delhi HC Exempts Advocates from Wearing Gowns, Coats During Virtual Hearings' (*Indian Express*, 25 May 2020) <<https://indianexpress.com/article/cities/delhi/delhi-hc-exempts-advocates-from-wearing-gowns-coats-during-virtual-hearings-6426660/>> accessed 1 July 2021.

⁵³ This observation is made in relation to the Bombay High Court, which is one of the first three colonial High Courts of India. Colonial practices and traditions in the Bombay High Court are more pronounced when compared to the post-colonial courts of India.

to maintain their majesty and dignity. Therefore, whether this made the courts more or less accessible is contentious.

V. MAJESTY AND DIGNITY IN VIRTUAL COURTS

As noted earlier, courts have linked contempt to the majesty and dignity of courts. While most written judgments and orders on contempt relate to contempt in terms of not following the orders of a court, contempt in terms of the majesty and dignity of courts is not documented in the same way. Most of this contempt is witnessed while sitting through court procedures and observing judges' remarks on what they deem as contemptuous behaviour. The definition of contempt under the Act is open-ended and thus gives the freedom to each judge to decide what classifies as contempt in their courtroom.⁵⁴ Therefore, different acts amount to contempt depending on the dynamics of a particular courtroom. From my ethnographic work, I have seen people being warned of contempt for mobile phones ringing in court, to acts of reading a newspaper while seated inside the courtroom, to sitting with legs crossed one over the other. Certain judges make it clear, with notices posted on their courtroom door stating that the use of plastic bags is not permitted (due to the noise they make). In some courtrooms, I have witnessed minute scrutiny of the lawyers' dress code, where people check if the colour of the shirt is pure white or not, if the black gown is falling off the shoulder, or the way the white band is sitting around the neck without a collared shirt (in the case of women).⁵⁵ These observations are based on the prescribed dress code per the Bar Council of India Rules, 1975.⁵⁶

⁵⁴ Contempt of Courts Act 1971, s 2(c):

"criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which— (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

⁵⁵ These observations are based on my ethnographic work as documented in my book. See Khorakiwala (n 1).

⁵⁶ Form of Dresses or Robes to be Worn by Advocates (Rules under s 49(I) (gg) of the Advocates Act 1961):

Advocates appearing in the Supreme Court, High Courts, Subordinate Courts, Tribunals or Authorities shall wear the following as part of their dress, which shall be sober and dignified.

I. Advocates

(a) A black buttoned up coat, chapkan, achkan, black sherwani and white bands with Advocates' Gowns.

(b) A black open breast coat, white shirt, white collar, stiff or soft, and white bands with Advocates' Gowns.

In either case wear long trousers (white, black striped or grey), Dhoti excluding jeans.

Provided further that in courts other than the Supreme Court, High Courts, District Courts, Sessions Courts or City Civil Courts, a black tie may be worn instead of bands.

II. Lady Advocates

With the courts going virtual, the form, nature, and relationship with the majesty and dignity of the court have changed. While courts have relaxed the rules related to the dress code and the traditional procedures of court, this has manifested itself in different ways, with different courts experiencing a varied nature of what would otherwise be held as contempt in the physical court setting.

The Rajasthan High Court bore witness to a lawyer wearing a *banyan* (vest) while appearing before it. The lawyer was appearing in a bail matter and logged into the virtual court hearing wearing only a vest. Justice Sharma of the Rajasthan High Court adjourned the matter on this ground. After this, Justice Sharma asked the High Court Bar Association to remind all lawyers to appear in proper attire before the court.⁵⁷ Another instance involved a senior lawyer smoking a hookah during court proceedings. This was seen in the Rajasthan High Court, wherein the lawyer was holding up case papers to cover his face, but at one point it became visible that he was smoking a hookah while the virtual court proceedings were ongoing. In this case, the judge remarked in a lighter vein saying, “Not at this age” and the virtual court proceedings continued.⁵⁸

The Odisha High Court imposed fines on a lawyer for not wearing the white band around his neck. The court stated that having a dress code like the ones lawyers have to adhere to conveys the solemn and dignified nature of the legal profession. As per the court, “Being an Advocate, he is expected to appear before the Court in a dignified manner with proper dress, even if it is a virtual mode”.⁵⁹ Therefore, the requirements of the dress code were seen to dif-

- (a) Black full sleeve jacket or blouse, white collar stiff or soft, with white bands and Advocates' Gowns. White blouse, with or without collar, with white bands and with a black open breast coat. Or
- (b) Sarees or long skirts (white or black or any mellow or subdued colour without any print or design) or flare (white, black or black striped or grey) or Punjabi dress Churidar Kurta or Salwar-Kurta with or without dupatta (white or black) or traditional dress with black coat and bands...

⁵⁷ ‘COVID-19: Advocate Appears in his Vest on Video Conference before Rajasthan HC; Bar Association Asked to Inform All to Appear in Uniform’ (*Bar and Bench*, 10 April 2020) <<https://www.barandbench.com/news/litigation/advocate-appears-in-his-baniyan-on-video-conference-before-raj-hc-bar-association-asked-to-inform-all-to-appear-in-uniform>> accessed 1 July 2021.

⁵⁸ ‘Senior Advocate Smokes Hookah During Virtual Hearing of Rajasthan HC, Video Goes Viral’ (*India Today*, 13 August 2020) <<https://www.indiatoday.in/india/story/senior-advocate-hookah-virtual-hearing-rajasthan-hc-viral-dhawan-1710734-2020-08-13>> accessed 3 February 2022.

⁵⁹ Debabrata Mohanty, ‘Orissa HC Lawyer Fined Rs 500 for not Wearing Neck Band During Hearing’ (*Hindustan Times*, 21 February 2021) <<https://www.hindustantimes.com/india-news/orissa-hc-lawyer-fined-rs-500-for-not-wearing-neck-band-during-hearing-101613901326721.html>> accessed 1 July 2021.

fer between high courts, even following the Supreme Court notification on the same.⁶⁰

Another instance that went viral on social media involved the Bollywood actress Juhi Chawla. Chawla had filed a suit before the Delhi High Court. On the day of her hearing, and upon receiving the video conference link, Chawla updated the same to her Instagram profile. This made the link to the virtual hearing public. While arguments were ongoing, one person who had entered the virtual proceedings, with his camera off, started singing songs from films of the Bollywood actress. The singing continued for a while before the judge asked the Delhi Cyber Crime Cell to track the person down through their Internet Protocol Address (IP Address) and hold them in contempt. Chawla herself was seated in a car while logging in for the court proceedings.⁶¹

News articles have covered several such incidents across courts. A lawyer before the Supreme Court was found chewing *gutka* (tobacco) and spitting it while appearing in a case,⁶² the Odisha High Court witnessed lawyers appearing before them in moving cars, from their gardens and some eating while arguing before the Bench.⁶³ All these instances were found objectionable by the court. The Gujarat High Court fined a lawyer Rs. 10,000 when he was found smoking and sitting in a car while appearing before the court. The judge took this opportunity to remind everyone that such conduct was unbecoming of a lawyer and that it was required of a lawyer to maintain minimum decorum so that the ‘majesty and dignity of courts’ is maintained.⁶⁴ In the Karnataka High Court, on seeing a lawyer appear from their vehicle, the judge was compelled to state that even in video conferencing all participants were required to maintain minimum decorum.⁶⁵ The Debt Recovery Tribunal in Ahmedabad

⁶⁰ Supreme Court of India (n 52).

⁶¹ ‘Man Sings Songs from Juhi Chawla’s Movies During Hearing on 5G Rollout, Court Orders Contempt Charge’ (*The Print*, 2 June 2021) <<https://scroll.in/latest/996491/man-sings-songs-from-juhi-chawlas-movies-during-hearing-on-5g-rollout-court-orders-contempt-charge>> accessed 1 July 2021.

⁶² Dhananjay Mahapatra, ‘In E-courts, Lawyers in Vests, with Hookas’ (*Times of India*, 14 August 2020) <<https://timesofindia.indiatimes.com/india/in-e-courts-lawyers-in-vests-with-hookahs/articleshow/77535824.cms>> accessed 1 July 2021.

⁶³ ‘No Decorum: Orissa HC Irked by Lawyers Eating during Virtual Hearings, Arguing from Moving Cars’ (*News 18*, 5 September 2020) <<https://www.news18.com/news/india/orissa-high-court-irked-by-lawyers-appearing-for-virtual-hearings-while-eating-from-moving-cars-gardens-2852389.html>> accessed 1 July 2021.

⁶⁴ Satish Jha, ‘Gujarat: Lawyer Fined Rs 10,000 for Smoking During Virtual Court Hearing’ (*Deccan Herald*, 24 September 2020) <<https://www.deccanherald.com/national/west/gujarat-lawyer-fined-rs-10000-for-smoking-during-virtual-court-hearing-892537.html>> accessed 1 July 2021.

⁶⁵ Mustafa Plumber, ‘Advocates do not Address Court on VC Hearing By Sitting in Car Maintain Court Decorum: Karnataka HC’ (*Livelaw*, 16 October 2020) <<https://www.livelaw.in/news-updates/advocates-do-not-address-court-on-vc-hearing-by-sitting-in-car-maintain-court-decorum-karnataka-hc-164560>> accessed 1 July 2021.

took this further by fining a lawyer Rs. 10,000 for addressing it from his car.⁶⁶ In this case, the matter was adjourned for an hour and the lawyer was asked to appear before the court with a more suitable physical background.⁶⁷ There are multiple instances of lawyers attracting the ire of the court for appearing while seated in their cars. Cases have been seen in the Madras High Court, Orissa High Court, and the Delhi High Court.⁶⁸ In the Allahabad High Court, when a lawyer appeared from his car, the judges declined to hear the lawyer and proceeded to direct the Registrar of the court to frame a set of rules for lawyers while they address court.⁶⁹ The judges further added that lawyers were requested to strictly adhere to these rules.

In some cases, the choice of a casual dress code was not always expected to be known to the court. A senior lawyer appearing before the Supreme Court was seen wearing only boxers and a formal shirt when the smart device he was using fell by mistake.⁷⁰ In another case, a lawyer who appeared before the Allahabad High Court wearing a casual t-shirt, lounging on a bed, along with a woman by his side (who had a face pack on), showed no remorse even after being admonished by the High Court. Pursuant to this, the Court asked the Bar Association to be careful about matters related to court decorum and to treat virtual proceedings just like an extended courtroom.⁷¹

I bring these instances together in one frame to see the changing relationship between judges and lawyers in the space of the court. As traced earlier, before the onset of Covid-19 and the restrictions it came with, courts were spaces where decorum was of utmost importance. In certain courts, these

⁶⁶ I refer to the example of the Debt Recovery Tribunal for illustrative purposes. In terms of judicial hierarchy, the Tribunal is not at par with a High Court.

⁶⁷ TNN, ‘Ahmedabad: Debt Recovery Tribunal fines lawyer Rs 10,000 for Addressing it from Car’ (*Times of India*, 4 November 2020) <<https://timesofindia.indiatimes.com/city/ahmedabad/drt-fines-lawyer-rs-10k-for-addressing-it-from-car/articleshow/79027471.cms>> accessed 1 July 2021.

⁶⁸ Sparsh Upadhyay, ‘Representing Case Sitting in Stationed Car In ‘A Casual Manner’ Amounts to Disrespecting Court Proceedings: Madras High Court’ (*Livelaw*, 5 February 2021) <<https://www.livelaw.in/news-updates/representing-case-sitting-in-stationed-car-in-a-casual-manner-amounts-to-disrespecting-court-proceedings-madras-high-court-169410#~:text=To%20this%2C%20the%20Court%20said,High%20Court%20Video%20Conferencing%20Rules.%22>> accessed 1 July 2021.

⁶⁹ Areeb Ahmed, ‘It is Shocking that Counsel Wants to Address the Court While Sitting in a Car: Allahabad High Court Directs Framing of Dos and Don’ts for Lawyers’ (*Bar and Bench*, 5 July 2021) <<https://www.barandbench.com/news/litigation/advocate-appears-from-car-allahabad-high-court-framing-dos-and-donts-for-lawyers>> accessed 3 February 2022.

⁷⁰ Aneesa Mathur, ‘Virtual Hearing Gaffe: Lawyer Caught Attending Court Proceedings in Shorts as Tablet Falls’ (*India Today*, 15 June 2021) <<https://www.indiatoday.in/law/story/virtual-hearing-gaffe-lawyer-caught-attending-court-proceedings-in-shorts-as-tablet-falls-1815267-2021-06-15>> accessed 1 July 2021.

⁷¹ Sparsh Upadhyay, ‘VC Hearing Appearance: “Advocate Lounging On Bed, Lady With Face Pack On Unacceptable”: Allahabad HC Asks Bar Not To Be “Casual”’ (*Livelaw*, 2 July 2021) <<https://www.livelaw.in/news-updates/vc-hearing-appearance-advocate-lounging-bed-lady-face-pack-on-unacceptable-allahabad-high-court-bar-casual-176694>> accessed 2 July 2021.

traditions have been followed from colonial times, through the independence movement, and carried forward in post-colonial times also. In this context, the Covid-19 pandemic can be termed a life-changing event. With this pandemic, courts went virtual. The same lawyers who would otherwise be subject to strict scrutiny had now lowered their guard. None of the instances as noted above would have been acceptable in a physical court setting, and that is something all who enter court are aware of. However, with the change of format, even with several reiterations from the court that the virtual court is equal to a regular court proceeding, there is a change in the way the court is approached. These notions were strongly embedded in court culture and as time progresses, and physical hearings commence again, the court will have to re-assess the promulgation of these practices.

VI. CONCLUSION: COVID-19 AND THE RE-IMAGINING OF RITUAL SPACES

Physical courts, before Covid-19, focussed strongly on the adherence to this theatre of the court as described earlier. With the onset of the pandemic, and the switch to virtual courts, these rules, both written and customary, became blurry. Different courts tackled the issues they faced differently. When lawyers appeared in vests, the dress code became important. When lawyers appeared from vehicles, the dignity of the court became paramount again. When the Supreme Court watered down the provisions of wearing the black gown, that practice trickled down across the High Courts, but there was a difference in approach in some jurisdictions. There was a ban on photography, ambiguity on sketching, and no permission for live streaming of court procedures pre-Covid-19. With the courts going virtual, recording devices, while not officially permitted, can be used and accessed, along with photography of the court – by taking a screenshot of a video conferencing proceeding. Such a situation occurred in the Calcutta High Court. A lawyer took a screenshot of the virtual court proceedings which he later posted on LinkedIn. The High Court initiated a *suo moto* contempt action against the lawyer for this. This was dropped after the lawyer tendered an unconditional apology, along with accepting that his actions were incorrect and that he did not want to lower the dignity or the majesty of the court.⁷²

The rules vary not only from court to court but even from courtroom to courtroom, based on the judge, the court staff, and the dynamics of that space. There is no uniform rule that controls these changing aspects across the courts. It can be argued that the courts do not expect this to be a permanent arrangement and therefore all instances at present are treated as they occur.

⁷² Jain (n 49).

The question remains – can these processes be made permanent? Courts have worked with the idea of letting go of the black gown – will they be able to let it go once physical courts resume permanently? Lower courts in the judicial hierarchy and certain high courts during the summer months are exempt from the requirement of the black gown.⁷³ Is it possible that the pandemic has made a shift and change in these colonial traditions to the extent that they can be altered when courts begin physically again? While it is true that there has been a change in the way certain practices are performed, these practices have not yet completely disappeared. They still exist. Only the form has changed, but the underlying purpose of maintaining the majesty and dignity of the courts remains.

Court proceedings, though limited in access, were held successfully over video conferencing facilities without the *chopdar* walking along with the judge, without everyone bowing before the court, and without the judges sitting on an elevated pedestal. The judicial process continued, in a limited manner, and the dress code, ban on photo or recording devices became secondary to accessing the courts and hearing matters. What then does that tell us about the requirements of these processes and procedures? Is not the majesty and dignity of the court upheld when the court provides access through the roughest of times?

While one form of access was provided by making courts virtual, a whole other aspect of accessing courts was taken away. Access to virtual courts presupposes the existence of high-speed internet connections, devices that can manage the technology of virtual court platforms, and the continuous uninterrupted supply of electricity. Before Covid-19, courts were open spaces where any person could enter and follow any court proceedings. Virtual platforms did not have this option as the number of people who could log in onto one link was limited, there were technical issues, and the link was not publicly available to all. Therefore, when looked at through this lens, court spaces became less accessible.

However, another aspect became more open and democratic. That is, the dropping of the ritual wearing of the black gown, and the change in the spatial hierarchy of the court. In the physical court, space is restricted, and judges sit elevated on a pedestal. In the virtual court, the screen size of all participants is

⁷³ Bar Council of India Rules 1975 under s 49 (I)(gg) of the Advocates Act 1961:

IV. Except in Supreme Court and High Courts during summer wearing of black coat is not mandatory.

In the change brought about in the Dress Rules, there appears to be some confusion in so far as the Sub-Courts are concerned. For removal of any doubt, it is clarified that so far as the courts other than Supreme Court and High Court are concerned during summer while wearing black coat is not mandatory, the advocates may appear in white shirt with black, white striped or gray pant with black tie or band and collar.

equal – judges, lawyers, and litigants. In this sense, the court democratises its space in the virtual.

As discussed, the Covid-19 pandemic has changed certain things permanently. With this change, courts can also consider letting go of certain practices that work to hamper access to justice rather than make the process easier. While virtual courts have its issues of access in terms of technology and usability across sections of society, the aspect of the strict adherence to colonial traditions, the origins of some of which are unknown, can be reconsidered. Before Covid-19, there was a strong emphasis on the majesty and dignity of courts, and the notion of contempt was a crucial part of this. With the onset of Covid-19, the entire notion of this space has changed, and there has been a change in the understanding of what is now cyberspace. In this environment, it is difficult to sustain the idea of majesty and dignity. The core notions of it have changed. Courts are always focussed on securing their authority and controlling their image, but during Covid-19 there has been a loss of control over this decorum, where each court and courtroom dispensed rules that suited the personal choices of the judicial officers. With the eventual shift back to physical courts, it is to be seen whether the changes necessitated by the pandemic are more superficial than first considered. The pandemic provided new ways for courts to police its space and image, trends of which were seen when courts partially re-opened between the different Covid-19 waves.⁷⁴

For an institution to gain relevance and for its processes to be upheld with sanctity over time, there must be a recurrence and repetition of certain procedures and actions. Judith Butler defines this as the ‘theory of performativity’ which allows institutions to perform their duties over time with stability.⁷⁵ This stability was shaken by Covid-19 and the performativity of the court was destabilised. The challenge thus of virtual courts goes beyond holding on to and maintaining the majesty and dignity of these ritualised spaces. It talks to the growing sense of powerlessness in court processes and how contempt is invoked as a tool to protect the judiciary and the courts, so that they can control their own narrative. In re-imagining the daily rituals of court procedures and the spatial dynamics that come with it, the court will also redefine what majesty and dignity means in the face of a pandemic. The direction taken by the courts at this time will create a guide for physical courts when they function alongside the learnings gained from virtual courts.

⁷⁴ There have been anecdotal accounts of judges asking lawyers to remove their masks as they cannot be heard and the insistence of getting people not located in the city to physically appear in the court even with the available option of video conferencing.

⁷⁵ Sarah Salih, ‘On Judith Butler and Performativity’ in Karen Lovass and others (eds), *Sexualities and Communication in Everyday Life: A Reader* (Sage Publications 2016).