



20th May 2021

Jail Mail
Release of CHRI's Report *'Disconnected: Videoconferencing and Fair Trial'*

Dear Friends,

We hope you are keeping safe in these difficult times.

With different states under lockdown across the country, the essential service of dispensing justice through courts has once again come to focus. This service needs to find ways of remaining accessible to the public. One of the ways in which courts have been functioning since the beginning of the pandemic last year is through videoconference hearings. While High Courts and the Supreme Court have been able to transition to virtual hearings fairly easily, it has been difficult for the criminal trial courts of the country to do the same, owing to infrastructural inadequacies and the rigours of a trial process. There are also a number of implications that criminal proceedings conducted through video conferencing have on fair trial rights of litigants, especially for prisoners.

Between August 2020 and December 2020, CHRI interviewed 20 lawyers and 10 judicial officers from across the country to document and understand the experiences on the use of videoconference in criminal trials. The result of this qualitative study was recently released in the form of a report titled, [Disconnected: Videoconferencing and Fair Trial Rights](#).

Our findings indicate that several fair trial rights are compromised when criminal proceedings take place through videoconferencing, including:

- the right against arbitrary arrests,
- the right to effective participation in one's own trial,
- the right to effective legal representation,
- the right to confidential communication with legal counsel,
- the right against bias and discrimination especially for vulnerable groups and individuals,
- the right to an open court hearing,
- the right to opt-in and opt-out of a remote hearing and the right to equality of arms.

It was also learnt that **while some participants were completely against the introduction of videoconferencing into the criminal justice system, others suggested a hybrid approach where technical/procedural hearings can take place through videoconferencing while certain key stages must remain to be conducted in person.** Such key stages include: first remand, police custody remand, framing of charge, recording of evidence of key witnesses, final arguments on conviction and sentencing in complex cases. Yet other participants also suggested the possibility of the accused to opt-in/opt-out of a videoconference hearing, upon making an assessment of their individual circumstances.

The report provides detailed, stage-wise suggestions to address the concerns raised by the participants. Certain key suggestions in this regard, including the following:

- Restrict the use of videoconferencing in criminal proceedings to non-vital stages;
- Permit opt-in/opt-out rights for accused to participate in trials through videoconferencing;
- Formulation of specific rules as applicable to criminal trials being conducted through videoconferencing;
- Mandatory provision of a private and secure channel of communication between accused and their counsel throughout the hearing;
- Accused must be able to see and hear everything relevant to the hearing through the device at the prison-end, and the same must be true at the court-end as well;

CHRI has also released a [short video](#) capturing the issues and possible ways forward on the use of videoconferencing in criminal trial proceedings.

In April 2021, the eCommittee of the Supreme Court released the [Draft Vision Document](#) for Phase III of the eCourts Project, and invited suggestions and comments from the public. This document lays down the blueprint for the next stage of the process of digitising Indian courts. Conspicuous by its absence in this vision document is a genuine engagement with fair trial rights which are compromised during a virtual hearing. CHRI hopes that studies like the one

shared today, will enable the eCommittee to deliberate on the concerns, and take corrective action.

Towards this end, we also urge our readers:

As civil society, to write to the Supreme Court eCommittee with comments on the Draft Vision Document, to foreground safeguards to fair trial rights into the design of eCourts.

As judicial officers, to ensure that the fair trial rights of the accused are protected when videoconferencing is inevitable for use.

As criminal defence lawyers, to ensure that if any rights are violated through a videoconferencing hearing, the same must be put on the court record, and challenged.

As prison officers, to ensure that all undertrials are informed of the basics of how the video conference system functions and assist them in raising their grievances, if any. They may display in their prison CHRI's [poster](#) on basic information for prisoners who are produced to court through videoconference systems.

As functionaries of legal services institutions, conduct awareness programmes for prisoners to develop basic understanding of criminal proceedings, and use of video conferencing systems from prison. They may also display inside the prison legal aid clinics CHRI's informative [poster](#).

As the Supreme Court's eCommittee and High Courts, to consider the suggestions in the report and formulate guidelines addressing the fair trial violations during videoconferencing through a consultation with all stakeholders, a wider more diverse set of respondents from the judicial and legal communities, civil society and most importantly accused who are at the center of the criminal justice system.

You can also write to us at chriprisonsprog@gmail.com with comments and suggestions. With best regards and strength for these challenging times,

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