



A Study of Digital Law System and its Importance in India

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Abstract:

COVID-19 has amplified the need to strengthen digital capabilities and has provided the stepping stone to an unprecedented opportunity for change. But such a change cannot be achieved without adopting a radically different approach from that adopted in Phase I and II, while building on its foundations. Given the large, diverse and constantly evolving needs of different users and the constant evolution of technology, administration of justice must not just remain as a sovereign function, but evolve as a service: to mitigate, contain and resolve disputes by the courts and a range of public, private and citizen sector actors. To achieve this, it is critical to adopt an 'ecosystem approach' that supports scale, speed, and sustainability. Rather than focus on developing all the solutions itself, Phase III will curate the right environment and infrastructure for solutions to emerge rapidly from the ecosystem to create a multiplier effect for change. It can achieve greater adoption and impact by leveraging the collective strength of the ecosystem.

Key-Words: CNR, QR Code, ICT, WAN.

Introduction:

CHALLENGES OF VIRTUAL COURTS

The Committee held a series of meetings with the Secretaries of Department of Justice and Department of Legal Affairs and Secretary General of the Hon'ble Supreme Court and representatives of the Bar Council of India, Delhi High Court Bar Association and Delhi District Courts Bar Association on 'Virtual Courts' during which it heard both pros and cons of virtualization of Court proceedings.

During the course of deliberations, the Committee was apprised as to how certain initial hiccups plagued Virtual Court hearings. The representatives of the Bar spoke at length on the shortcomings of Virtual Courts and why Virtual Courts can never be a complete and adequate substitute for regular Courts. The observations and recommendations of the Committee in this regard are as follows:



Digital divide

The representatives of the Bar brought to the notice of the Committee that a large number of advocates and litigants especially those living in rural and remote areas lack basic infrastructure and high speed internet connection required for virtual hearing of cases and that this digital divide makes access to justice unaffordable and inaccessible for a vast majority.

While bringing the difficulties being experienced by advocates to the notice of the Committee, a representative of the Bar said,

‘As far as e Courts and Virtual Courts are concerned, I can say with certainty and with an element of responsibility that in India, almost 50 percent lawyers, particularly in District Courts, do not have any laptop or computer facility. How can we assume and presume that they would participate in these Virtual Courts and e Courts? So, infrastructure is a big issue in the functioning of Virtual Courts ’

In the opinion of the Committee, digital divide has three dimensions-namely, access divide (access to equipment and infrastructure), connectivity divide (access to broadband connectivity) and skill divide (knowledge and skills required to use digital platforms).

While responding to a query raised by a Member of the Committee on the status of functioning of Mofussil Courts during the lockdown period and whether e filing is being done in Mofussil Courts, the Secretary, Department of Justice spoke about digital divide as below:

‘There is a digital divide right now. About 560 million people have internet facility in the Country. So, there is a section of population which does not have this internet facility. As compared to urban areas, in the case of rural areas, the problem of digital divide is there. Therefore, there is exclusion and people are yet to take it in a big way.’

Department of Justice in its written replies to the Committee submitted that E-Seva kendras have been established in all the High Courts and in one District Court in each state as a part of a pilot project to provide assistance to lawyers and litigants ranging from information to facilitation and e filing. The Committee is highly appreciative of this initiative and believes that E-Seva Kendras will go a long way in bridging the ‘access divide’ and hopes that such facilitation centres be set up in all Court complexes across the country at the earliest. The Committee recommends that the feasibility of involving private agencies/service providers who can help people who are not tech savvy in connecting with Courts by taking VC equipment to their doorsteps on payment may be explored.

Speaking about Connectivity divide, Secretary Department of Justice said,



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‘There is a problem in terms of internet penetration, especially in remote areas and therefore, the District and Subordinate Courts are perhaps more badly affected’.

As regards connectivity divide, the Committee recommends the Ministry of communications to step up efforts to ensure timely implementation of National Broadband mission which envisages broadband access to all so that the services provided by indigenous communication satellites are fully harnessed and the goal of Universal broadband access is achieved.

The Committee is of the opinion that the Judiciary may also consider such innovative solutions as launching mobile videoconferencing facilities for the benefit of advocates and people living in remote areas.

Technological competence

The Committee was apprised that majority of advocates are not well conversant with the use of information and communication technology so as to effectively use them to present their cases on a Virtual platform and that there is a concern that virtual Courts unfairly benefit tech savvy advocates and law firms which have access to stable internet connection and high quality videoconferencing facilities.

Speaking on digital divide, the Secretary, Department of Justice said,

‘In urban areas, you have big time law firms; you also have very well-to-do advocates. As compared to urban areas, in the case of rural areas, the problem of digital divide is there.’

The Committee is of the view that with the advent of Information technology, there is not a single facet of human life that is left untouched by it. ICT has also transformed the legal landscape in India and the Indian judiciary has come a long way from a paper-based era to the one dominated by digital technology and is now moving towards cloud based technology. The Committee believes that in coming times, technology will emerge as a game changer and advocates would be required to use technological skills in combination with their specialized legal knowledge and therefore, they should keep up with the changing times.

Elaborating upon the initiatives taken to train advocates the Secretary, Department of Justice said,

‘a training course was taken up by which first 25 master trainers were trained in each of the High Courts. These master trainers, in turn, trained 461 master trainers in the districts. These 461 master trainers have been given charge of all the districts’.



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To address 'skill divide', the third facet of digital exclusion as mentioned previously, the Committee recommends that training and awareness programmes should be conducted in all Court complexes across the country including Subordinate Courts in order to acquaint advocates with the technology and to enable them to acquire skills required for handling digital platforms so that advocates operate digital platforms themselves.

A representative of the Bar opined that this unprecedented crisis should be turned into an opportunity and said,

'It is a good time to learn and to make all the young lawyers and the Law students to learn something about e filings, Virtual hearings and the use of technology. So, this is the time to make them learn and also to teach them.'

The Committee also recommends that the Bar Council of India may introduce computer course as one of the subjects in three year/five year courses to enable the students to get trained in handling computers and get adapted to the online systems while they pursue the Law Course. This will help educate and equip budding lawyers with knowledge and skills required for handling digital platforms.

Poor Digital connectivity

In view of the pandemic, Courts are hearing cases online. Standard Operating Procedure has been put in place for e-filing, mentioning, listing and hearing of matters through videoconferencing/teleconferencing mode. The advocate /party is required to file the petition preferably through e filing mode. Upon completion of all formalities, the advocate/party is required to specify as to whether he would like to link to the Hon'ble Bench through Desktop/laptop or would like to avail the facility for video conferencing in the Court premises. Web links for joining the Virtual Court hearing will be provided to the advocate and litigant.

The Committee was informed that one of the biggest hurdles being faced during virtual hearings is that of poor digital connectivity. The representatives of the Bar briefed the Committee as to how technical glitches are plaguing Virtual Court hearings, especially during peak hours when many people log into the videoconferencing system, how it often crashes. The committee also learnt that broadband connectivity is woefully poor and is insufficient for Virtual Court proceedings.

The Committee understands how poor quality audio/video, frequent loss of connection, disruptions and high latency affects judicial assessment of demeanour, emotions and other nonverbal cues and the changing communication dynamics which are also important variables in deciding a case. The Committee is of the view that improving the quality of Courtroom technology is a necessary pre condition for virtualization of Court proceedings. The Committee also recommends that a study of Courtroom design be commissioned and customized software and hardware to facilitate Virtual Court hearings be developed to suit the needs of Indian judiciary.



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The Committee notes that frequent disconnections and disruptions occurring during videoconferencing are not always due to technical glitches on the Court's end but also due to some connectivity issues on the other side. Speaking on the same, the Secretary General of the Supreme Court said,

‘For tele-connectivity, we must have robust internet connectivity on both sides to connect. In Supreme Court, we have 100 Mbps dedicated leased line. It requires only 2Mbps of connectivity for video connectivity and we have 98 Mbps in spare to connect the Hon'ble Bench with the server. But, what about the other side? The lawyer side does not have that robust connectivity. We are constantly requesting the lawyers to enhance their systems. For example, they can have 4G dongles with them. In Delhi, particularly, we are told that most of the chambers of lawyers are located in the basements. So, Wifi connectivity is a problem’.

‘We are requesting advocates not to connect to the VC on their mobile phones because the bandwidths are sometimes consumed by other mobile applications like Whatsapp or Facebook. If any other notification comes while you are connecting to the Bench, that would break the connectivity. So, if both the ends have better connectivity, that will facilitate better video conferencing. We have got some representations from advocates and Bar Associations stating that some of the lawyers do not even have the connectivity, so, we facilitated them by establishing seven centres across Delhi. In every District Court complex, we have a dedicated VC Center for connecting to the Supreme Court VC to facilitate the lawyers. They may go to any center near their residence and they will be facilitated.’

Describing how obsolete infrastructure is hampering hearings, a Member said,

‘Courts don't have proper infrastructure. Both hardware and software for conducting VC, the server and the bandwidth provided to the Courts have a very low configuration. Due to this, connectivity problem arises which leads to video blurring and voice quality deterioration. So, it thereby prejudices the entire judicial process.’

Speaking about technical glitches the Secretary, Department of Justice said,

‘On the issue of videoconferencing facility, it is true that the video link is already about six years old. It has become outdated and the number of licenses that we have is a limited number, which we are not able to scale up. We have already taken it up through the Ministry of Electronics and Information Technology and NIC to come up with a Centralised Video Conferencing Infrastructure which would be going down right up to the District and Subordinate Court level which can be based on cloud computing so that disruptions do not take place’.

The Committee recommends the Department of Justice to step up efforts to provide WAN connectivity and superior quality videoconferencing facilities to all Court complexes



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across the country under Phase II of the Courts project more ambitiously within the prescribed timeline. The Committee recommends that Government may explore the feasibility of roping in the private sector to eliminate the technical glitches and improve service quality, if need be. The Committee appreciates the proposal to establish a centralized Video conferencing infrastructure and hopes that the proposal will be materialized soon.

Speaking on the importance of uninterrupted power supply, a Member opined

'While conducting the proceedings, if power supply at one end gets disturbed, whole proceedings gets vitiated.'

The Committee recommends that Judiciary may consider promoting harnessing of renewable energy in all Court complexes as it entails twin benefits of uninterrupted power supply and positive ecological impact.

Open Court principle

The representatives of the Bar expressed concern over the opaqueness of Virtual Court hearings as said that Virtual Courts threaten the constitutionality of Court proceedings and undermine the importance of Rule of law which forms a part of the Basic structure of the Constitution.

Briefing the Committee as to how Virtual Court hearings go against the spirit of Open Court principle, a representative of the Bar said,

'First, this is by itself antithetical to the concept of open Courts. Open Court system is what has been emphasized by not just our legislature but even the Judiciary, in their own orders and in their pronouncements, has emphasized on an open Court system. But in a Virtual Court, the very fact that process which is being adopted is itself antithetical to that concept because there is a limited access.'

The Committee was informed that virtual hearings are not in consonance with the concept of open Court encapsulated in the *Constitution of India* under Article 145(4); Section 327 of the *Code of Criminal Procedure, 1973*; and Section 153B of the *Code of Civil Procedure, 1908*.

Emphasising on the need of making hearings transparent, a member of the Committee remarked,



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'There is Canada High Court Judgement which talks about openness and transparency. It says that public should know even if there is videoconferencing. Even in England, they have amended the Law recently. In the amendment, they have said that public should have access.'

Speaking on the necessity of live streaming of Court proceedings, a Member opined,
'I think we are one of the few democratic countries where the Court proceedings are not recorded. I think, now the time has come for the Parliament to insist that Court proceedings must be recorded because as we are accountable, Judiciary must also be held accountable'

The Hon'ble Supreme Court has reaffirmed the importance of open Court principle on multiple occasions and further observed that live streaming of Court hearings is an extension of Open Court principle. In *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Ors*, the Hon'ble Supreme Court stated,

"... Public trial in open Court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice."

The Committee also notes that in 2018, the Supreme Court had, in *Swapnil Tripathi vs. Supreme Court of India*, espoused the benefits of adopting technology in the judicial system, particularly live streaming of Court proceedings: Highlighting the potential "tangible and intangible benefits" to stakeholders, especially litigants, the Court had observed that "*technology could epitomize transparency, good governance and accountability, and more importantly, open the vista of the Court rooms, transcending the four walls of the rooms to accommodate a large number of viewers to witness the live Court proceedings.*" In the same judgment, the Supreme Court also recognized that live streaming of Court proceedings had been implemented in other jurisdictions globally.

The Committee further notes that in *Indira Jai Singh vs. Secretary General of Supreme Court & Ors (2018)* has inter alia observed that : (i) It is important to re-emphasise the significance of live streaming as an extension of principle of open justice and open Courts; (ii) The process of live streaming should be subjected to carefully structured guidelines; (iii) Initially, a pilot project may be conducted for about three months by live streaming only cases of national and constitutional importance which can be expanded in due course with availability of infrastructure. Department of Justice has informed that the e Committee of the Supreme Court has set up a Committee of



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5 Judges to oversee and assist e-Committee of the Supreme Court in preparing guidelines for live streaming of cases to make justice delivery mechanism more transparent. The guidelines would cover all facets including technologies to be deployed, safeguards and proceedings. The report of the Committee is awaited.

The Committee is happy to note that in a first, the Madras High Court allowed live relay of Contempt proceedings initiated against lawyers to be viewed by advocates outside the Court campus on 1st October, 2015. And recently, the Calcutta High Court permitted live streaming of hearing in a case involving Parsi community saying that the proceedings would have ramifications for the entire community across the country in February 2020.

Also, more recently, the High Court of Gujarat, while hearing a petition seeking public access to Virtual Court hearings observed,

*“the right to know and receive information is one of the facets of Article 19(1)(a) of the Constitution and for which reason, the public is entitled to witness the Court proceedings involving the issue having an impact on the public at large or a section of the public, as the case may be.”*The Bench observed: *“To observe the requirement of an open Court proceedings, the members of the public should be allowed to view the Court hearings conducted through the video conferencing, except the proceedings ordered for the reasons recorded in writing to be conducted in-camera.”*

Following that, the High Court of Gujarat constituted a Committee of two High Court Judges for the purpose of working out the modalities to facilitate the people at large including the media to watch the virtual hearing.

The Committee notes that world over, Court proceedings are recorded in some form or the other. The apex Court has time and again emphasized the significance of live streaming of Court proceedings in promoting openness and transparency which in turn reinforce public faith in judicial system. The Committee agrees with the observation made by the apex Court that live streaming Court proceedings, especially cases of constitutional and national importance having an impact on public at large or a section of the public will promote transparency and openness. The litigant need not come to the Court to watch the proceedings and thus will reduce crowding inside the court. The Judiciary may also consider broadcasting virtual hearings of certain specified categories of cases to further the principle of open justice and open Court.



Data privacy and Data security

There are concerns that Virtual Courts will compromise privacy of data as well as confidentiality of discussions and Court proceedings. For instance, Courts in the United States had to deal with Zoom bombing, an unwanted intrusion by hackers and internet trolls into a video conference call, while conducting Court proceedings through videoconferencing using Zoom which is a third party software application. Currently, third-party software applications such as Vidyo, Cisco and Jitsi are being used in India for conducting Court hearings through videoconferencing.

Expressing concern over third party software applications, a representative of the Bar said,

‘When Virtual videoconferencing and Virtual hearing started, one of the software platforms was basically rejected by all on the ground that it is insecure. We are talking of insecure systems, those systems which the presiding officers are using.’

The Committee thinks that third-party software is not only an unviable option but poses a major security risk as such software programs and applications are prone to hacking and manipulation. The Committee recommends the Ministry of Law and Justice and Ministry of Electronics and Information Technology to address data privacy and data security concerns while developing a new platform for India’s judicial system.

Speaking on the need of having a secure indigenous electronic document exchange system, a Member opined as follows:

‘As Courts are moving towards VC, the need for Electronic Document Management System intensifies. Currently, neither the Courts nor the Counsel appearing for the parties have any option for secured transmission of documents’

The Committee recommends that Block chain technology should be leveraged to improve reliability of evidence and security of transactions and to fortify digital security of case files. Proper standardized systems of authentication need to be put in place. Online systems should be underpinned by proper procedural safeguards.

Indigenous Hardware and Software

The Committee is of the view that India can become a role model for the world in the arena of legal and Courtroom technology given our remarkable achievements in IT and IT enabled services sector. Technologies must be built and incorporated in the Court systems in such a manner that fundamental legal principles such as participatory justice, fairness, impartiality and access to justice are not compromised.

While expressing concern over technical glitches a Member said,



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'NIC should develop an efficient system which can be accessed across the Country, especially, a customised application which is efficiently and cheap for videoconferencing.'

The Committee is of the opinion that antiquated working practices may well be jettisoned for better outcomes. Technology should be employed so as to effect changes that are both incremental and transformational. Besides streamlining and optimizing inefficient manual processes through a host of small refinements, innovative technologies like machine learning, artificial intelligence and block chain technology may be employed to bring about a transformational change.

While suggesting certain reform measures to bring about improvement in the existing Virtual Courts system, a Member said,

'India is known as the home of software. The Whole World looks to us. We have companies like TCS, Infosys, HCL, Wipro and so many other companies.'

The Committee recommends that Ministry of Electronics and Information Technology may be approached by the Administrative Ministry to develop indigenous Software applications to handle Virtual Court hearings. The Committee also recommends to rope in Private IT companies, if need be, to develop Artificial intelligence systems capable of supporting bulk documentation, remote location of parties and sophisticated use of graphics.

The Committee believes that Legal technology Startups engaged in innovative solutions can play a crucial role in harnessing the unlimited potential of technology to connect stakeholders in the justice delivery system and in finding solutions that are affordable and efficient and therefore recommends the Government to promote them.

3. Literature Review

In the existing literature on court technology in India, studies related to court technology and COVID-19 crisis are scant. Accessible literature, mostly pertains to the pre-COVID-19 crisis period and covers how the E-courts project and other technology related initiatives of the Government in court functioning were being implemented countrywide at various levels, viz., the Supreme Court, the High Courts and at the Subordinate or District courts, and other court management techniques. Whereas, those, very few, done during the COVID-19 crisis era were mostly limited to how the courts under



various levels of judicial authority were handling the situation by issuing COVID-19 crisis related directions.

In the context of the COVID-19 crisis, some commentators have expressed concern that conducting judicial proceedings on line, a measure adopted by some Indian courts during the pandemic, endangers the principle of “Open Courts.”¹ Others have expressed optimism that the COVID-19 crisis will serve as a catalyst to unleash the potential for technology to improve access to the judicial system, while stressing “the need for a systematic and scientific approach to technology integration in the judiciary.

Remaining commentators did not take up the COVID-19 crisis challenges before the Indian courts, but focussed on other issues. Two commentators indicated that use of technology in the Indian legal system could bring down the pendency of cases. For instance, B. N. Prakash feels that “E-judiciary is a step towards modernization in Indian legal system”, and “computerization in judiciary has become an effective tool to bring down the pendency of cases and to reduce the delay”.² Ujaley also stressed that in the Indian legal system “technology which provides integrated communication systems that includes video conferencing, audio solutions, recording, streaming and content sharing capabilities... is a very useful way for courts to ensure justice is not delayed and cases are closed in a timely manner.” On court management techniques, a study was conducted, commissioned by the Ministry of Law and Justice, Government of India, the aim of which was “to identify various court management techniques that have been adopted by the court managers across various subordinate courts for improving the efficiency of subordinate courts”.³ Aggarwal is of the view that other countries like U.K., U.S., Malaysia, Turkey, China and Dubai, are way ahead in the application of technology in the legal system, whereas, India “is still battling to get advanced with technology to some extent in judicial services”.

4. The Situation in India before the COVID-19 Crisis

In fact, prior to the sudden onset of the COVID-19 crisis in 2019, fortunately, India had already covered a lot of ground in digitization of justice and court administration. Three particularly significant developments had been the E-Courts Project, and the development of Supreme Court and E-Court Services Apps.



4.1 E-Courts Project

Prior to the COVID-19 crisis, the E-courts project was one of the National e-Governance projects implemented in all the District/Subordinate Courts in the country. The main aim of the E-courts was to provide a transparent, accessible and cost-effective justice delivery system to all citizens through the Information and Communication Technology (ICT) and Internet enabled courts. Significantly, the E-courts Project had made digital interconnectivity possible among all courts from the District and Taluka level to the apex court. The E-courts project had been earlier conceptualised under the “National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary –2005” prepared by the e-Committee of the Supreme Court of India.⁷ Approved in 2010, it was saving a lot of time for users besides providing other benefits. As a public convenience, various E-Court services were availed by the concerned citizens through the Judicial Service Centre at a court complex.⁸ So, provision already existed in majority of the courts for e-Service of summons, notices, warrants through e-mail via the internet; e-cause lists were available on the court website, as well as, case status, online filing, and orders and judgments in PDF, plus every important court information was also provided to the litigant, such as working days, holidays, names of judges, and so on, which came in handy at the time of the COVID-19 crisis.

4.2 The Supreme Court App

Another important step towards the digitization of the justice administration system which was already taken prior to the onslaught of the COVID-19 crisis was the introduction of the Supreme Court App. The Chief Justice of India, while explaining the utility of the application, expressed the hope that artificial intelligence fuelled law translation system would facilitate the quality translation and further help in improving the efficiency of the Indian Judicial System. The Supreme Court App was to translate the judgements into nine regional languages. Translation in court matters was a necessity and manual translation in the past used to be a major problem being quite laborious and consumed a lot of time often causing inordinate delays in the judicial process.



This official mobile app of Supreme Court of India, is free to download and also provides useful information on pending and decided cases with a personalized dashboard containing Cause Lists, Case Status, Daily Orders, Judgments, Latest Updates, Office Reports, Circulars and much more. All these can be accessed, downloaded and shared in a user friendly interface.

4.3 E-court Services App

Also much before the COVID-19 crisis made its appearance, in 2017, the E-courts Services mobile application was launched. The E-Court Services App provides information related to cases filed in the Subordinate Courts and most of the High Courts in the country. It can be exclusively used for District Courts or High Court or both. The App provides several useful features to digitally assist the lawyer or the litigant, including the provision of search by CNR — which is a unique number assigned to each case filed in District and Taluka Courts anywhere in India through the Case Information System – so that, simply by entering the CNR, one can get the current status and details of the case. In addition to Case Status, search options include Cause List and Calendar. The litigant or lawyer can save all cases of interest, which are shown under a ‘My Cases’ tab. This facilitates the creation and management of a portfolio of their cases or personal case diary for future use.

Further, the E-Court Services App also provides numerous other services including: Anyone can view entire case history of a lawsuit through this App; Case status, cause list, next date of hearing and so on. There is also a provision for lawyers and litigants to e-pay court fees. The App provides scanning of QR code to access the entire case status. The App is also connected with all 18,000 District and Subordinate Courts and 21 High Courts with more than 3.2 crore (more than 30 million) case statuses available on the App. That such digitization initiatives in the judicial system were being well received is demonstrated by the fact that the App had seen over 17 lakh (1.7 million) downloads within a few months of its launch, recording almost 5,000 downloads a day. Some useful features include that the History of Case Hearings option in the App shows entire history of the case from first date of hearing to current date of hearing. Whereas, the Judgment option shows link of all judgments and orders passed and uploaded in the selected case and judgments can be downloaded using the App.



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