

IMPACT OF CORONAVIRUS ON THE DEVELOPMENT OF VIRTUAL COURTS IN INDIA

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INTRODUCTION

The E-committee is a body constituted by the Government of India in furtherance of a proposal received by the Supreme Court in India in the year 2004 in order to provide a guide map for the use of Information Technology and Administrative reforms in the working of the judiciary. Further, the E-committee was formed to provide assistance in formulating a national policy on computerization of the Indian judiciary. The expenses in connection with the functioning of the E-committee and all people associated to it, i.e. Chairman, members, supporting staff, is met from the budget sanctioned to the Supreme Court of India. Justice D.Y. Chandrachud is the Chairman of the e-committee.

E-Courts was a project that was conceptualized by the E-committee in 2005 based on the “National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary” which had the vision to transform the judiciary. The project aims at providing efficient and time-bound citizen centric services delivery as detailed in eCourt Project Litigant’s Charter; 1) to develop, install & implement decision support systems in courts; 2) to automate the processes to provide transparency in accessibility of information to its stakeholders; and 3) to enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent. One of the critical requirements noticed in the National Policy 2005 was, “...uniformity in the use of software at various court complexes shall render the functioning of the judicial system more coherent and in synchronization.” This was based on the status reports received from the high courts and the district courts that the application software so far developed for Indian courts need to be made and “developed at the whims and fancies of the local developers on the platforms and data base management tools of their choice

and convenience". The e-Courts project in India thus took wing at a national level and implementation began.

PHASE I AND PHASE II COMING INTO EFFECT

The project was implemented in two phases. Phase-I of the e-Courts Project began in 2007 when a large number of Court Complexes, Computer Server Rooms and Judicial Service Centres were readied for computerization of the District Courts. They also launched websites for such courts for convenience and a Change Management exercise was undertaken in order to make the Judicial and Court Staff acquainted with the computerization as well as the system known as Case Information System. Data entries for all pending cases was initiated and reached an advanced stage of completion.

Phase-II received its approval of the Hon'ble Chief Justice of India on 8th January, 2014. This Phase envisaged Court Complexes to be connected with Jails and Desktops based Video Conferencing. Recording of evidences of sensitive cases began and gradually extended to other kind of cases. Judicial Knowledge Management System including Integrated Library Management System and use of Digital Libraries was also provided. Apart from this, Phase-II laid emphasis on the websites being made user-friendly as they were to be Complaint Accessible and to the extent possible, the information will be available in the local languages. The applications for mobile phones, SMS and emails are extensively used as platforms for dissemination of information.

After years of hard work and efforts put into place, on 7th August, 2013, the Hon'ble Chief Justice of India launched the e-Courts National Portal. More than 2852 Districts and Taluka Court Complexes have secured their presence on the NJDG portal ecourts.gov.in and are providing Case Status, Cause lists online with many of them also uploading orders/judgments. The Online Analytical Processing, and Business Intelligence Tools helps in the summation of multiple databases into tables with summarized reports for preparation of informative management system and dashboards for effective Court and Case Management. Moreover, the Judicial Management Information System is helpful with the litigation and adjudication pattern

analysis which also understand the influence of various governing factors relating to law, amendments, jurisdiction, recruitment, etc.

RECENT DEVELOPMENTS AND IMPLEMENTATION

With the rapid accumulation and relatively slow disposal rate of cases in India, there is a visible burden on the judiciary to keep judicial records at one place and further, maintain them. Earlier, courts had to maintain all the records in physical manner and it was not easy for them to keep a physical record of large data and moreover, it was also a task to retrieve them. Moreover, there is information that can be shared between various courts which makes the whole process more unified and facilitates a smooth experience.

In order to understand how the new e-Courts system is different and beneficial, we must understand the working of the traditional system of judicial courts. This included the physical carrying of case files and evidences to courtroom at each hearing or for review; no provisions of sharing case information online; required documents and evidences pertaining to a case to be submitted manually in court, cases could not proceed in courts due to non-availability of witness/accuse which led to delays. However, with the e-Courts project coming into place, the following are its brief features are –

- i) Digitization of Case Files - The case files are then scanned & digitized and uploaded in encrypted form on centralized storage server so that authorized person can access the case files through the software interface. This takes place in the scanning room which is placed within the court premises.
- ii) Paperless Depositions - The proceedings of court are completely paperless. The deposition is typed by steno on computer and the draft deposition is visible to the Judge and to the lawyers on their screen. Once this draft is approved, it is signed by the judge and if uploaded as part of the case file.
- iii) Video Conferencing – Producing witness/accused in every court proceeding involves a lot of resources, cost as well as manpower. Using video conferencing, an person can give his/her deposition from any place and is not required to be physically present in court.

- iv) Recording of Court Proceedings – Court proceedings are recorded and are kept in an encrypted form on the server. The user/judge can access these recordings from the software interface which helps him to recall the progress of the case.
- v) Live Court Proceedings – Live proceedings can be seen by authorized person. If any concerned person wishes to view a live recording, they are required to fill a registration form after which access can be given.
- vi) Evidences Capture/Storage – The images from police, hospital reports, etc can be uploaded. There is a visualizer to view & capture evidences and indexed with the in court case records.
- vii) Digitization of Records and Data Sharing – Not only are all records kept safe but people involved in the investigation and the trial procedure of any case can remotely upload or view documents pertaining to the case.

A virtual court is a unique contribution of the e-Courts Project. A pilot virtual court was launched in August 2018 in Delhi for traffic offences and it has been a great success. Virtual courts have been successfully tried out in Delhi, Haryana, Maharashtra and Tamil Nadu. A virtual court is a simple programme through which a person can find out if a challan has been issued to him or her through a search facility. If a challan has been issued, the details are available online and the person may plead guilty or not guilty. On a guilty plea, the minimum fine is imposed and on a not-guilty plea, the case is electronically transferred to the traffic court for trial. At the end of the day, a judge reviews the cases and disposes of them electronically depending on the option exercised.

There have been recent developments in the form of Mobile applications like eCourt services for District and Taluka courts, JustIS Mobile App for judicial officers have also been made. Phase 2 accomplishments also include websites like e-Filing through which citizens can file their case from home, check real-time case status, make court fee payments via ePay facility.

The Policy and Action Plan Document for Phase-II of the e-Courts Project of January 2014, already contemplated video conferencing and recording facility for courts and jails for more than just remand matters. It was expected to be used for recording evidence in sensitive cases and to be gradually extended to cover as many kinds of cases as viable. The Objectives

Accomplishment Report (2019) of Phase II of the e-Courts Project states that as many as 3,388 court complexes and 16,755 court rooms across India have already been computerised. Video-conferencing equipment has been provided to 3,240 court complexes and 1,272 jails. Way back in 2015, evidence of Dera Sacha Sauda sect chief Gurmeet Ram Rahim Singh was recorded via video conferencing.

However, one of the biggest drawbacks our country faces is that conducting court proceedings would not be feasible if it were to have a pan-India application due to the lack of technical infrastructure. The need of the day is not only use of technology, but also its uniform application across the judiciary. The E-Committee has, since its constitution, played a dynamic role towards ICT enablement of the Indian judiciary. Possibly, this is the most opportune time when further efforts can be made to ensure that the fruits of those efforts are available to each and every litigant uniformly across the country.

There are three thumb rules which can be employed at this stage for e-Courts:

- i) In eCourts, the focus should be on ‘Courts’ and not ‘e’. It is necessary that the technological reforms should treat the judiciary as a holistic entity. Fragmented success over use of technology in different courts is unlikely to yield the desired results for the litigant.
- ii) There is a difference between computerization and e-Courts. We are past the stage of computerisation in the Indian courts. e-Courts however must look at the needs of the litigants and introduce systems that can precisely meet those needs. It is the difference between being computer-centric and litigant-centric. The time has come for opting the latter so that purpose for the which the journey was embarked can be achieved.
- iii) Focus ought to be on transforming the process through standardizing. It is highly desirable that ICT-based applications with uniform look and feel and most important, functionality, are adopted for the entire judiciary.

At this point of time, one can expect the E-Committee to be spearheading the path of technological upliftment of the Indian judiciary. After all, it was with that objective that this committee was constituted at the first place.

E-COURT IN THE TIMES OF CORONAVIRUS

The coronavirus outbreak has already had an impact on the conduct of legal business around the world. The impact of this pandemic can also be witnessed in most of the Indian States, which has eventually led to the complete lockdown throughout the nation to curb the spread of this menace. Courts are an essential service for civil society. In the wake of the Covid-19 pandemic, courts across the country have gone into an urgent-only, online-only mode with electronic filings, email mentions and, in exceptional cases, online hearings via video conferencing/ video calling facilities.

The concept of Video Conferencing was introduced to the judiciary via the e-Courts project. Former Justice Deepak Gupta advised young lawyers to watch court proceedings and observe senior lawyers to learn the craft of the court in his farewell ceremony which was the first farewell ceremony of a justice being held via video conferencing. But such was the need of the hour. With the ongoing covid-19 situation at hand, not only the government but the judiciary too has witnessed changes in its functioning for the convenience and the need of the hour. The present crisis has thrown in several challenges to the Indian judiciary. Justice delivery for ALL must go on and everything else – possibility, processes and convenience – is incidental and consequential. It is upon the justice delivery system – courts, judges, lawyers, registry – to ensure that they update themselves to meet the challenge. In unprecedented times like these, it is not possible to have court proceedings in a physical set-up but it is important to provide a justice system for people, regardless. Thus, comes in picture the idea of video-conferencing of court proceedings and it is commendable how courts have been able to adapt to this new technology in a short span of time.

Supreme Court and the High Courts have been accepting urgent matter for hearing via video-conferencing which was already approved and introduced in 2014 as part of Phase – II of the e-Courts project. The Supreme Court, in view of the Coronavirus outbreak, it is order dated April 6, 2020, gave a leeway to all High Courts to adopt measure required to ensure the functioning of the judicial system through the use of video-conferencing. Different courts across the country have been using different applications. Karnataka High Court even developed its own in-house video-conferencing facility while courts like Delhi High Court are using WebEx.

With the lockdown in place, the functioning of the court is not as per usual and the justice system has lately not been able to function to its maximum output. In terms of technology Justice Chandrachud recently said that while by and large the hearings were smooth, there were some technical glitches. However, the same was only natural, the Judge said, given that this technology was resorted to now only on account of the pandemic. Further he was quoted saying “We want to increase functionality and may even return to open court, but we do not want to throw out the baby with the bathwater... The long-term goal of the e-courts project is to ensure that all courts in India are capable, where and when necessary.” Being the e-committee Chairman, Justice Chandrachud also highlighted that in terms of technology, the two major developments that have been brought in are e-filing and, of course, virtual hearings. He also indicated that now technology is being developed to facilitate e-filing more smoothly and uniformly, developing modalities and guidelines for live streaming. Justice Chandrachud noted that it takes time and effort to re-wire our brains to new ways of doing things. He acknowledged that even he is not accustomed to digital files but members of the judiciary as well as the advocates practice can also gain digital awareness with some assistance. "Technology should be used for inclusive justice", Justice Chandrachud said, pointing out that the data suggests that a large section of the people still do not have access to technology and the internet. Therefore, it is important to ensure that this "technological divide does not become a means of exclusion."

Recently, Arnab Goswami moved the Apex Court seeking to quash multiple FIR's lodged against him for his Anti-Sonia Statement. During the hearing, the court observed that journalistic freedom lies at the core of freedom of speech and expression, a bench of Justices DY Chandrachud and MR Shah granted protection to Goswami from any coercive action for three more weeks from today and said that he can approach the competent court for quashing of the FIR. While pronouncing the verdict via video-conferencing, it was further observed, that the right of journalist under Article 19 (1) (a) is at a higher level and that India's freedom of press stays as long as journalists can speak truth to power, but this freedom is not absolute.

The Lucknow Bench comprising of Justices' PK Jaiswal and KS Pawar of the Allahabad High Court was to hear a plea for setting up a commission to assess the impact of coronavirus-triggered lockdown on the Indian economy via video conferencing. The bench, however, pointed out that with the COVID-19 crisis still continuing, no relief as claimed in the PIL can

be granted and the appropriate course for the petitioner was to either withdraw the PIL or argue it on its maintainability.

The CJI spoke during an online demo of Supreme Court e-filing module on 15th May, said the system is the first step in the entire process of e-courts and has brought Registry to the chambers of the advocates. "The pandemic has forced to rethink on how to function and what is essential in judicial process. Real threat came in March and I am happy that the Supreme Court was one of the first institutions to announce that it will not be open in a usual way and function in a restricted manner. This period has provided a compulsory training to prepare for a new working environment. There is no looking back. We will have to change the mindset regarding the way we look at Court proceedings. We are rolling out the module with the suggestions of and for the Bar," the CJI said. E-filing is one a significant step towards digitalization. Justice Chandrachud who was part of the online demo said that the response of the judiciary will determine and redefine how we will function tomorrow in a new working environment. "In using technology our motto in the e-committee is simple: efficiency, transparency and access to every user of justicing services. We are also conscious of the fact that not every lawyer has the access of the technology. Hence our solution must factor this to ensure that we continue to be an inclusive institution and reach out to those do not have the access to technology, in particular the junior members of the bar," Justice Chandrachud said.

The Videoconferencing Guidelines issued by the High Court of Delhi state that "Videoconferencing facilities provide courts in Delhi with the capacity to receive evidence and submissions from witnesses or persons involved in court proceedings in circumstances where it would be expensive, inconvenient or otherwise not desirable for a person to attend a court in person. An overriding factor is that the use of videoconferencing in any particular case must be consistent with furthering the interests of justice and should cause minimal disadvantage to the parties. However, it is for the court to decide whether evidence should be recorded by videoconferencing."

As of now, some high court judges in Delhi and Punjab and Haryana have completely dispensed with paper — everything is on a soft copy, through e-Filing and scanned documents. Lawyers and judges have made necessary adjustments to the new regime and the cases are conveniently heard and decided in "paperless courts". A few other high courts initiated similar

steps, but have yet to institutionalise “paperless courts”. Online courts have not caught on in the absence of any compelling need to do so. The lockdown has provided that opportunity, which should be seized. The present ongoing “experiment” has, however, indicated that the major problem with online courts is unfamiliarity with the medium of communication.

Very recently, on 29th May, 2020, Union Law Minister, Ravi Shanker Prasad said the world would not be the same post-Covid and asked lawyers to adapt to effectively use the digital and physical court processes as India’s future lies in digital technology. He further went on to say that with the help of technology and the e-courts project in place, over 16,000 courts have been digitised. He added the second phase of e-filing of cases has been launched in the Supreme Court. Prasad said trial courts have been able to conduct e-trials through virtual examination of witnesses and recording of evidence in nearly 200,000 cases. He spoke about future technologies and challenges they could pose for lawyers. “Artificial intelligence [AI] will play a crucial role in the coming times. You [lawyers] need to coordinate with new ideas of technology to accelerate the justice delivery system. But the human mind will continue to play its role as AI cannot cross-examine. That only a lawyer can do.”

CONCLUSION

It can be concluded that post lockdown and Covid-19 pandemic, justice delivery will certainly undergo a transformation where lawyers, litigants, judges and other members will need to adapt to a new normal. Social Distancing is here to exist perpetually in the near future and keeping the country’s vast population in mind, there are profound changes to be administered for a smooth functioning of the judiciary. Paperless methods can also reduce overcrowding in the courts, the judgment said. It is estimated that cases filed annually in the courts in India contain about 11 billion sheets, which ecologically means destruction of lakhs of trees. Open courts will remain as also open justice, but some definitions will change with a more aggressive use of technology, not only in conventional but also online and virtual courts. By introducing, in a phased manner, filing and appearance via videoconferencing at all levels of the judicial system, from trial courts to the Supreme Court, as also in various tribunals, the costs associated with physical distance from a court may be greatly reduced. We need to move beyond e-filing and uploading of orders online, to making courts accessible, affordable and visits reduced, for

lawyer and litigant alike. This would also provide opportunities for younger members of the Bar. A category of matters \could also be explored. Several countries and courts have made adjustments not only for the period of the pandemic or lockdown, but also for the future. In order for this change to take place uniformly and across the nation, it is important for the Bar Councils and Bar Associations to stretch every nerve to educate the district and taluka lawyers on the advantages of accepting and getting familiar with technology. E-courts need proper, efficient and fair management. E-registries should be statutorily designed. Those will have to function in accordance with the rules specially promulgated. Timely allocation and utilisation of funds should be ensured.

All things considered; the balance of convenience will lie in the immediate adoption of electronic functioning by the court system. In the short run, this may be an effective answer to the extended Covid-19 challenges. In the long term, we are hopeful that this would be the right answer for many a malaise of the Indian legal system. As far as the legal fraternity is concerned, that includes law firms, judicial officers, litigants, and other staff members also need to move towards development and advancement in terms of adapting the new technology.

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