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“WILL VIRTUAL COURTS SYSTEM ENSURE JUSTICE AMID PANDEMIC”*

“It is not the strongest or the most intelligent who will survive but those who can best manage change.”

— Leon C. Megginson

‘Change’ is fundamental to human civilisation, due to change humans came out from the well of ignorance and embraced innovation. When world got hit by a pandemic named ‘COVID-19’, it stopped the existing world order and human civilisation was compelled to adopt new approaches in various fields and judicial system (ecosystem) is one of them. Traditionally, we ‘humans’ followed physical appearance in the court of law. But due to COVID-19, social distancing became a reality in the judicial ecosystem too. And it gave rise for a debate whether ‘court’ too can be held electronically? What can be its advantage and lacunas for tilting toward e-courts. Can there be an approach to have a win-win situation for legal ecosystem. Let’s discuss.

Over the last decade, Indians have embraced technology in a greater than ever before. We all have apps installed on our phones that helps us procure various goods and services. Today, in these exceptional circumstances, ‘work from home’ is becoming a new normal for many offices. This gives rise to a question, how can we use technology to ensure speedy disposal of cases? The pendency of cases in various courts in India is astounding. The Economic Survey of 2019-2020 dedicated a chapter to pendency of tax cases and revenue cases.¹ The Survey mistakenly argues for more court infrastructure and judges to solve the problem. On the contrary, the existing infrastructure is grossly under-utilised. There are tribunals such as Income Tax Tribunal that function only half-day most of the time. Judges are not accountable for efficiency and performance. Thousands of Indians cannot afford to go to court as legal costs are high and legal procedures are complicated. The bane of the court system is that lawyers of both sides need to be present physically in court. Cases are often adjourned due to various reasons.²

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¹ Economic Survey 2019-20

² <https://www.thehindu.com/opinion/op-ed/its-time-for-a-virtual-judiciary/article31512221.ece>

In the current scenario, the Supreme Court has passed directions for all courts across the country to extensively use video-conferencing for judicial proceedings saying congregation of lawyers and litigants must be suspended to maintain social distancing amid the coronavirus pandemic.³ The top court, which has restricted its functioning and is conducting hearing through video conferencing since March 25, exercised its plenary power to direct all high courts to frame a mechanism for use of technology during the pandemic. A bench headed by the Chief Justice stressed that “*technology is here to stay*”. As a result, Kerala High Court created history on March 30, 2020 by not only conducting proceedings through video conferencing but also live streaming the proceedings.⁴ One of the evident examples of change with time in the legal system is the landmark judgment of the Supreme Court in *Kesavananda Bharati V. State of Kerala, 1973*⁵ which stated that Parliament could amend any part of the Constitution of India so long as it did not alter the basic structure of the Constitution. Recently, the Supreme Court has passed many judgments recognising the individual's rights and thereby ushering an era of social transformation. For example, Lifting the ban on entry of women (aged 10-50) inside Sabarimala Temple in this Supreme Court held that "Devotion cannot be subjected to gender discrimination" and removed a ban that prevented women between 10 and 50 years of age from entering Kerala's Sabarimala temple, Decriminalisation of Homosexuality under Section 377 of the Indian Penal Code, the Supreme Court unanimously struck down a 150-year-old law that considered adultery to be an offence committed against a married woman by another man. Defined under Section 497 of the IPC, adultery law came under sharp criticism for treating women as possessions rather than human beings. The Supreme Court declared Section 497 as unconstitutional. Adultery is no longer a crime but if it leads to someone committing suicide, the act will be treated as a crime - abetment to suicide. India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. The constitution and hence judiciary need continued review to ensure they don't lose relevance, with the present and are kept in synch with the changing times. The judiciary, in India (and the world over) is making efforts to computerise and hence e-courts and e-judiciary but this will require a rethink and re-packaging of judiciary for maximum benefits from available judicial resources, i.e. judges, jury ... E-courts in India.⁶

“Virtual Court” is a concept aimed at eliminating presence of litigant or lawyer in the court and adjudication of the case online. An e-court or Electronic Court means a location in which matters of law are adjudicated upon, in the presence of qualified Judge(s) and which has a well-developed

³ <https://www.latestlaws.com/latest-news/justice-dy-chandrachud-inaugurates-two-virtual-courts-for-traffic-challans-captured-via-cameras-through-video-conference/>

⁴ <https://www.thehindu.com/opinion/op-ed/accessing-justice-online/article31333630.ece>

⁵ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461

⁶ https://en.wikipedia.org/wiki/Judiciary_of_India

technical infrastructure. An e-court is, however, different from a computerised court. In the case of e-court, everything is done in an “online environment” through the use of Internet and other Information and Communication Technology (ICT), whereas a computerised court is nothing more than a court having computers and basic level hardware and software. The e-courts project is about providing ICT so as to enable courts to make justice delivery system affordable and cost-effective. This would be beneficial for both improving the court processes and rendering citizen-centric services. E-courts are aimed to make legal processes easier and more user friendly. In an e-court, the entire work is executed digitally, wherein, the information that is shared and generated is stored as a database and synched to a particular software. This software can be accessed by litigants, judges and advocates. The primary intention of e-courts is to make the justice delivery system affordable, transparent, speedy and accountable by limiting the paper filings.

It was conceptualised on the basis of the “National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005”⁷ submitted by eCommittee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts.

The project envisages to provide efficient & time-bound citizen centric services delivery as detailed in eCourt Project Litigant’s Charter, to develop, install & implement decision support systems in courts. The eCourts Project, to automate the processes to provide transparency in accessibility of information to its stakeholders, to enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.

WHAT INDIA CAN ACHIEVE BY ESTABLISHING E-COURTS IN LEGAL ECOSYSTEM

Our court procedures are tardy and unintelligible to common people. The establishment of Electronic Courts in India is bringing in a justice serving mechanism that is transparent, efficient, affordable, time saving, protects the interests of witnesses, reduces the backlog of pending cases and most importantly reduces the number of unscrupulous activities. Entire information related to a particular case would be available online. It would be available to the attorneys, parties and the general public through the help of internet. Registered attorneys can file their case document

⁷ National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005

directly from their home or office. They do not have to worry about postage, traffic congestion or messenger services. They can create a docket sheet and update it immediately, when the documents are filed. With the help of internet, the documents of a case can be accessed easily from anywhere at anytime. E-courts would help in the computerization of work flow management in courts. Thus, it would help to create a better court and case management. Video conferencing facilities would be installed in every court complex. Evidence of eyewitness, who are unable to attend the court can be recorded through this method. The information would not be misplaced as all the information regarding the case would be carefully recorded and stored. Data keeping would include maintaining the records of e-file minute entries, bail orders, warrants etc. In many cases, the witnesses are not able to come to the court and make their statement as the other party is too strong and scares them of the consequences. e-Courts can help in dealing with such cases.

WHAT CHALLENGES INDIA WILL FACE IN THE IMPLEMENTATION OF E-COURTS

E-courts in India is an endless and complicating process. The process of e-filing a document is a difficult process. All the evidence cannot be produced in a digital format. Lack of techno legal expertise is the main reason for the poor status of e-courts in India. With the absence of techno legal expertise, electronic courts cannot be established in India. The country requires more techno legal e-court centres so that the project of e-court can achieve success. The project of e-court involves a lot of expenditure. It involves the use of a lot of computers and infrastructures. In the long run, e-courts may face the issue of lack of funds. Hackers are getting stronger with every passing day. The possibility of e-Courts getting hacked in such a case can not be denied.

HOW INDIA CAN ACHIEVE AN EFFICIENT JUDICIAL ECOSYSTEM

It is critical to draw up a well-defined and pre-decided framework as it can help in laying a concrete roadmap and direction to the e-courts scheme of India. Another solution to address e-court related challenges would be to upgrade the present state of infrastructure. At present, India has one of the world's largest number of under trial prisoners and roughly around 4.2 lakh prisoners⁸ awaits trial. This reminds us of a quote by Martin Luther King "*Injustice anywhere is a threat to justice everywhere.*" The present judicial infrastructure does not support establishing the e-court project. The government needs to identify and develop the infrastructure consisting of judges, technologists, skill developers to draw up a blueprint for institutionalising online access to justice that would be required to support the e-court project. One aspect that needs to be focussed on is the deployment of a robust security system that provides secure access to case information

⁸ https://en.wikipedia.org/wiki/Prisons_in_India

for appropriate parties. The security of e-courts infrastructure and system is of paramount importance. Also, user friendly e-courts mechanism, which is simple and easily accessible by the common public will encourage litigants to use such facilities in India. The government must also make dedicated efforts in the training of personnel to maintain all the e-data. Also, conducting training sessions to familiarise the Judges with the e-courts framework and procedure can give a huge impetus to the successful running of e-courts. Moreover, for providing the last mile connectivity and delivering justice to everyone the Legal Services Authority can play a huge role. By setting up a system to file a complaint online with the help of local panchayats, municipalities or any well intentioned NGO to ensure accountability and effective implementation. Which will improve our justice system with many other facilities too like mediation, arbitration and quick settlement etc.

THE WAY FORWARD

In India, a significant amount of time is spent in resolving disputes which has been the real bane of the Indian judicial system. The e-courts project, if implemented, would go a long way in saving costs and time for the litigants. The digitisation of courts including e-filing must be standardised across the country. The filling of cases in Supreme Court is set to undergo a radical change with introduction of the new e-filing module in the near future. The module will provide personalised information to every advocate-on-Record of cases which have been filled by them, their own cause-list of cases, details of pleadings filed by them and pleadings filed by others in cases in which they are appear. The service will be available round the clock which would mean that a lawyer can file a case anytime of the day and any day irrespective of whether the registry is working or not.⁹ The present government is taking active steps to establish e-courts all over India. All these government efforts will result in providing quick and cost effective solutions to the litigants. The judicial system in India with the help of e-courts can overcome the challenges and make the service delivery mechanism transparent and cost efficient. Further, the e-court project also requires the executive and the judiciary to reaffirm their resolve to support a speedy, efficient and quality justice delivery in the country. It is also important to discuss steps required to surmount the various challenges facing the justice system.

⁹ <https://www.hindustantimes.com/india-news/virtual-courts-not-a-substitute-to-physical-courts-justice-dy-chandrachud/story-8YrTg4dmP2IKzFJMnDrdqK.html>