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E-Courts Project and reforms in Judiciary

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In today's world of advancing technology, maximum fields, from a local level to national level are trying to adopt paper to paperless approach, then why not judiciary? Indian Judiciary is a guardian of the Constitution and also a protector of individuals' fundamental rights. To provide fair and impartial justice to its people, the judiciary has to adapt to technological changes. With the rise of the coronavirus pandemic, the Supreme Court passed directions to all courts in the country to make extensive use of video conferencing for judicial proceedings. The virtual court is a notion that eliminates the presence of litigants or lawyers in the court and provides a platform for adjudication of cases online. The E-courts Mission Mode Project was conceptualized with a vision to transform the Indian Judiciary with the use of technology mainly artificial intelligence. For this, there is a need to be set up electronic infrastructure and other prerequisites. Changing times call for some more reforms in the judiciary. These changes must be brought on an urgent basis as justice delayed is justice compromised.

Keywords: digital technology, virtual hearing, e-courts, judiciary, fundamental rights.

INTRODUCTION

“There is no better test of the excellence of a government than the efficiency of its judicial system”

- Lord Bryce¹

¹ James Bryce, *Modern Democracies* (Vol 2, New York Macmillan 1921)

The judicial system is the principal instrumentality in providing justice considering the rights pledged in the Constitution. Judiciary is the guardian of the Constitution and an independent body in protecting the fundamental rights of the citizens of India. The average citizen has greater trust and confidence in the judiciary.² In the light of the national lockdown, the Indian courts too were under a lockdown thus severely restricting the citizen's access to justice for this period. As we have a popular saying in the judiciary, "Justice delayed is justice denied". Therefore, on one hand, the pandemic necessitating social distancing and the other the need to keep access to the judiciary open, the Supreme Court allowed for virtual hearings. To maintain the Rule of Law along with good governance, speedy justice becomes a prerequisite. Technology is growing and as they say, desperate times call for desperate actions, the judiciary also needs to update with technology to provide free and unhindered justice to citizens of India. Virtual Court is a concept aimed at hearing the adjudication of cases online through video conferencing in the presence of the qualified judge and litigants or lawyers instead of being physically present in court. These virtual hearings have come as a blessing as it has made it easy for anyone in the country to access the Supreme Court because virtual hearings overcome the geographical constraints of accessing the Supreme Court where it is located in a permanent fixed location. Here comes the overwhelming initiative of the Government of India known as the E-Courts Project for ensuring timely justice delivery. A three-judge bench³ headed by the Chief Justice of India, laid down broad norms for courts using video conferencing and ratified the validity of virtual judicial proceedings are as valid as normal proceedings. In lower courts, evidence could be recorded with the consent of parties by virtual means.⁴ Whereas, in higher courts, a system based on advance submission of the written brief, and allocation of time slots for oral arguments can be put in place.

E-COURTS MISSION MODE PROJECT

² *Ibid*

³ Editorial, 'Virtual, yet open: on nationwide lockdown' (*The Hindu*, 28 April 2020)

<<https://www.thehindu.com/opinion/editorial/virtual-yet-open/article31448593.ece>> accessed 01 October 2021

⁴ *Ibid*

E-courts⁵ is a pan India mission mode project. It is funded and monitored by the Ministry of Justice, Department of Law and Justice, and Government of India for all the District courts of the country. As submitted by the e-committee of the Supreme Court of India, the idea of the e-courts project is based on the “National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Judiciary-2005”.⁶ Supreme Court envisions to transform the Indian Judiciary by ICT enablement of Courts. It is the need of the hour to use digital technologies in the Indian judiciary to keep up with the promise of justice delivery in time. The project is aimed at providing designated services to litigants, lawyers, and Judiciary through universal computerization of district and subordinate courts, and also enhancing the electronic infrastructure of the High Courts and the Supreme Court. According to data released by the Supreme Court in the June 2020 newsletter⁷ of the e-committee “around 3.27 crore cases are pending before Indian courts, of which 85,000 have been pending for over 30 years”. It is important to fast-track justice delivery and to build people’s trust in the judiciary by following the due process of law.

OBJECTIVES

The vision for the implementation of the e-courts mission mode project is based on the following objectives⁸

- Use of technology for efficient, time-bound, and citizen-centric service delivery to avoid piling up of cases every year.
- To develop, install & implement all the decision support systems in courts for ease of judicial hearing and proceedings.
- To provide accessibility of information to all the stakeholders including lawyers, litigants, and the judiciary itself, so they can leverage ICT for improving justice delivery to the people of India.

⁵ ‘E-Courts : About Us’ (*E-Court Services*) <https://services.ecourts.gov.in/ecourtindia_v6/static/about-us.php> accessed 15 October 2021

⁶ *Ibid*

⁷ Tanmay Singh & Krishnesh Bapat, ‘The promise and perils of digital justice delivery’ (*The Hindu*, 10 June 2021) <<https://www.thehindu.com/opinion/op-ed/the-promise-and-perils-of-digital-justice-delivery/article34773168.ece>> accessed 12 June 2021

⁸ *Ibid*

- Automate all the processes to enhance transparency in the accessibility of information and improve judicial productivity in terms of quality as well as quantity and also to ensure justice is delivered with system affordability, accessibility, cost-effectiveness, predictability, transparency, and reliability with the import of digital technology.

E-COMMITTEE

E-committee⁹ was established in 2004 by the Government of India. This body is being constituted to furnish a guide map on utilization of Information Technology in the judiciary and also for administrative reforms needed. The e-committee was set up following a proposal received from the Supreme Court of India to assist in the formulation of a National Policy to make the Indian Judiciary computerized overall, and also to provide guidance related to changes in communication technology and management. The sitting chairman of the e-committee is Dr. Justice Dhananjay Y Chandrachud, Judge of the Supreme Court of India. Every expenditure including the salary and allowance, etc of the Chairperson, Members as well as the supporting staff is sanctioned and managed under the budget of the apex court.¹⁰

SALIENT FEATURES OF E-COURTS PROJECT

PHASE-I

Phase I of the e-courts project was started in 2007. The objective of phase I implementation was to ensure the computerization of the District Courts including a large number of Judicial Service Centres, Court Complexes, and Computer Server Rooms. The District and Taluka Court complexes were computerized with the installation of hardware, Case Information Software (CIS), and LAN to provide basic case-related services to lawyers as well as litigants. As a part of this, more District Courts launched their websites for the convenience of various stakeholders. Under this phase, Judicial Officers and Court Staff were trained to make use of computers through Change Management exercises, and there was a successful implementation of the Case Information system (CIS). Phase I implementation successfully ended on 30th March 2015,

⁹ 'About e-Committee' (E-Committee, Supreme Court of India) <<https://ecommitteesci.gov.in/>> accessed 20 October 2021

¹⁰ *Ibid*

PHASE-II

The document Phase II Policy and Action Plan got sanctioned by the Government of India on 4th August 2015, after the approval of Hon'ble Chief Justice of India in 2014. Phase II covered courts with additional hardware with (1+3)system per Courtroom, newly established Courts with (2+6)system per courtroom after uncovering Courts of Phase I. It made High Courts in respective jurisdiction, an Implementing Agency of the project. It also made provision for computerization of District and Taluka Legal Services Authority, also of National as well as State Judicial Academies for smooth delivery of training and services. Phase II adopted the Core-Periphery model of Case Information Software and the remaining Court complexes are provisioned to be connected with screen-based Video conferencing and Jails to try under-trial prisoners. Also recording evidence in sensitive cases was allowed. Phase II emphasizes more on service delivery to litigants, lawyers, and the judiciary itself. It provided digital libraries, SMS, email services, etc. Phases I and II¹¹ mainly dealt with the digitization of the judiciary including e-filing, tracking of cases online, also uploading judgments online. It also provides for Mobile Services App named as E-courts App.¹²

PHASE-III

Draft vision document for Phase III ¹³of the e-Courts project related to two central facets – access and inclusion. Phase III continues with its commitment to making court processes digital and plans to improve the Information Communication and Technology (ICT) infrastructure of the judiciary. The vision document also envisages a huge volume of data collection, data sharing, and data storage exercises, which could provide insights for future policymaking.¹⁴ The draft document proposes a 360-degree approach for the collection of data, wherein each person's profile will be integrated with government agencies in a unified database. The draft also put forths an ecosystem approach for the delivery of justice, through which it suggests a seamless exchange of information between various branches of the State,

¹¹ About us (n 5)

¹² *Ibid*

¹³ 'e-Committee Supreme Court of India calls for comments suggestions and inputs on the draft vision document for its 3rd phase of eCourts project' (*Ministry of Law & Justice*, 4 April 2021)

<<https://pib.gov.in/PressReleasePage.aspx?PRID=1709477>> accessed 20 October 2021

¹⁴ *Ibid*

namely the judiciary, the police, and the prison systems through the Interoperable Criminal Justice System (ICJS). Phase III of the eCourts Project enables access to lawyers and litigants irrespective of geographical distances, is efficient and equitable for every individual seeking justice. It enshrines the idea of efficient resource utilization and the use of advanced technologies for a positive impact on surroundings. This is the draft released in the public domain for analysis and suggestions, which is yet to be approved.¹⁵

BENEFITS OF E-COURTS

- E-courts made justice delivery transparent, accountable, and speedy.
- E-courts will not only enable easier access to courts but all increased access to justice
- This project will help in better court management, given the current situation in India of a low judge: population ratio.
- A more efficient e-court system will enable the judiciary to use its scarce resources more constructively
- The e-court system would provide better case management as well due to the generation of a large and easy-to-use database. At this point, with the implementation of the e-courts project, we have a real-time database ¹⁶ of more than 19 crore cases of various Courts and more than 15 crore orders/judgments in digitized form.
- This larger database could help provide useful insights into policymaking.
- This mission mode project could help rectify the long delays and difficulties for ordinary litigants.
- With the help of the internet, the documents of a case can be accessed easily from anywhere at any time.
- Evidence of eyewitnesses, who are unable to attend the court can be recorded through virtual hearings in the court.
- During pandemic times, virtual hearings helped in continued access to the judiciary.¹⁷

CONCERNS OVER E-COURTS

¹⁵ *Ibid*

¹⁶ 'eCourts Achievements' (*doj.gov.in*) <<https://doj.gov.in/nationalmissions/ecourts-achievements>> accessed 1 November 2021

¹⁷ *Ibid*

- The lack of techno-legal expertise in the country makes the e-courts project a complicating process.
- This project involves a lot of expenditure and may face the issue of fund requirements.
- Another issue is hacking in cyberspace, which needs to focus on the deployment of robust data security architecture at first.
- The creation of a 360-degree data profile as mentioned in draft III of the e-courts project poses a threat of targeted surveillance by the government.
- Given the digital divide in India¹⁸, as reported by the World Economic Forum “ there is 82% population with no access to the internet, 1.2% population with fixed broadband, 5.5% population with mobile broadband and 12% households with a personal computer.” There is a regional divide “with internet penetration of 12.81% in rural India and 54.43% in urban India” along with a gender divide concerning access to the internet.¹⁹
- Lack of utilization of funds is a year marked important drawback of the e-courts project. This data ²⁰ “Amount disbursed to High Court till Dec 2017 is Rs 800 crore and out of which amount spent on digitizing courts so far is only Rs 240 crore. 23 out of 24 High courts have spent less than 50 % of funds released to them. Nearly 16000 courts across the country, have been computerized so far with software compatibility and interoperability” implies not-so digital judiciary.
- The larger real-time data collection, usage, and storage of digitized data is a concern to the privacy of individuals, given the absence of data protection regime law in India. It needs to abide by privacy standards set in *Puttaswamy v. Union of India*(2017)²¹ by the Supreme Court of India.²²

ACCESSIBLE AND AFFORDABLE JUDICIAL SYSTEM

¹⁸ Sushma Modi & Ronika Postaria, ‘How COVID-19 deepens the digital education divide in India’ (*World Economic Forum*, 5 October 2020) <<https://www.weforum.org/agenda/2020/10/how-covid-19-deepens-the-digital-education-divide-in-india/>> accessed 15 October 2021

¹⁹ *Ibid*

²⁰ ‘Department Of Justice: Year End Review-2020’ (*Government of India*) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1684945>> accessed 17 October 2021

²¹ *Justice KS Puttaswamy (Retd) v Union Of India* Writ Petition (Civil) No 494/2012

²² *Ibid*

Recently, the Vice President of India²³ hoists apprehension while speaking about the entire judicial system being made more accessible, affordable, and understandable for the common man. He said that “inordinate delay, cost of legal processes and inaccessibility are impeding the effective delivery of justice to the common man”. The average citizen has greater trust and confidence in the judiciary. The preamble of India ensures securing justice namely social, economic, and political justice to its citizens. And judiciary plays an important role in dispensing justice to individuals. The Supreme Court of India is the guardian of the Indian Constitution and upholds confidence in the judiciary. An impartial and independent judiciary is needed for the sustenance of constitutionalism and hence democracy. Democracy itself is integrally connected to the rule of law wherein fundamental rights of people can be protected if the judiciary can uphold the constitution in letter and spirit.²⁴

REFORMS NEEDED IN JUDICIARY

Problems	Reforms
<ul style="list-style-type: none"> • Pendency ²⁵: Nearly 3.5 crore cases are pending in the Indian judiciary, out of which nearly 87% are pending in district and subordinate courts. 	<ul style="list-style-type: none"> • Need to strengthen from Nyayalaya, NALSA, Lok Adalats, Create Alternative Dispute Resolution systems, Evening Courts, etc.
<ul style="list-style-type: none"> • Quality : The quality of judges is low which can be reflected in judgments, particularly in subordinate & district courts. This paints to the 	<ul style="list-style-type: none"> • All India Judicial service may increase the quality of judges, and help in establishing a better judicial system.

²³ 'Press Release' (Government of India, 27 February 2021)

<<https://pib.gov.in/PressReleasePage.aspx?PRID=1701311>> accessed 10 October 2021

²⁴ *Ibid*

²⁵ 'Economic Survey recommends Investment in Well-Functioning Legal System, given its Potential Economic and Social Multiplier Effect' (Government of India, 4 July 2019)

<<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1577016>> accessed 10 October 2021

<p>quality of Legal Education in the country.</p>	
<ul style="list-style-type: none"> • Appointment: In the collegium system, there is a delay in recommendations for the higher judiciary. 	<ul style="list-style-type: none"> • The system of the United Kingdom can be adopted, a set of criteria will be transparent, & all the judges. who feel they can fulfill the criteria can apply and based on scrutiny decision will be made.
<ul style="list-style-type: none"> • Vacancy²⁶: Judge to population ratio is not very appreciable. Around 42% vacancy in high courts and 21% in lower courts. 	<ul style="list-style-type: none"> • Streamlining the recruitment process and avoiding unnecessary delays in appointments. Promote awareness on free legal aid
<ul style="list-style-type: none"> • Post-retirement: Judges are seen to be appointed to Rajya Sabha's seat after retirement, etc. This shows the judgment of the judiciary might be in favor of the government at the time of service. 	<ul style="list-style-type: none"> • We can have a cooling period of 2years after retirement, so there are no immediate postings of judges of the retirement.
<ul style="list-style-type: none"> • Court Infrastructure and Management: Lack of basic infrastructure like 	<ul style="list-style-type: none"> • Economic survey 2019²⁷ talked about Indian Court and Tribunal Services (ICTS) to provide

²⁶ 'Pendency and Vacancies in the Judiciary' (PRS Legislative Research, 2021) <<https://prsindia.org/policy/vital-stats/pendency-and-vacancies-in-the-judiciary>> accessed 24 October 2021

²⁷ *Ibid*

<p>courtrooms, toilets, etc. Even e-courts require technical infrastructure, so spending is a problem</p>	<p>administrative support to the supreme court.</p>
<ul style="list-style-type: none"> • Technology: Pandemic times call for use of technology in the judiciary 	<ul style="list-style-type: none"> • There is a need for techno-legal experts for e-courts, national judicial data grid, use of artificial intelligence, as mentioned in Economic Survey 2019²⁸

WAY FORWARD

Digital Technology can play a huge role in the faster delivery of justice. But as we say, “justice hurried is justice buried”, there needs to be an effective delivery of justice, within a reasonable time frame, and even-handedly to its citizens. With the advance of technology, data privacy has become a new oil. Lack of proper ICT infrastructure can be a threat to an individual's privacy which is a fundamental right guaranteed by the Constitution of India. It must be noted that technology is only a means, not an end in itself, hence its use needs to be mandated and updated accordingly and within the constitutional framework. As per World Bank’s Ease of Doing Business Report²⁹, “2018 and 2019 shows that the time taken to decide a case has remained static at 1,445 days”. The timely disposal of cases is vital for the sustenance of rule of law.³⁰ The urgent and conscious consideration of Judicial reforms for the efficacious and expeditious justice delivery can improve India’s standing in the reports of the World Bank and other such organizations in the light of judicial processes overview.

²⁸ *Ibid*

²⁹ ‘Doing Business 2018’ (*The World Bank*, 31 October 2017) <<https://www.doingbusiness.org/en/reports/global-reports>> accessed 24 October 2021

³⁰ *Ibid*