

Critical Appraisal of Digitalization of Judiciary: Ground Reality

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Abstract

Indian judiciary has a glorious past for a very long time. Judiciary has always maintained people's faith in themselves by giving important decisions when it is in public interest. But it is also not a hidden fact that the number of cases increased and eventually caused an overload of pending cases in the courts. The continuous increase in the number of cases caused concern in the judicial system and therefore various measures were introduced to improve the situation. The outbreak of this pandemic, COVID-19, has shaken the world and almost every nation has tried to prevent the spread of the virus through social distancing. The Indian government has also strictly followed the nationwide lockdown and social distancing. The Indian Judiciary has also prioritized maintaining social distance and therefore recommended working through the digital space. In India, many cases have been discussed online through video conferencing and emails during this pandemic. The transformation of court proceedings from physical courtrooms to virtual courts has helped to reduce time and facilitate access to justice. Digitization of Indian courts is not a new idea, it has been proposed before. But its proper implementation was not possible due to lack of knowledge about technology and other equipment. One of the main obstacles among them is that not all Indians have access to internet services and knowledge of technologies. This paper is an attempt to highlight the importance and concept of digitization of courts in India. In addition, the benefits and barriers to court virtualization are also discussed.

• Introduction

The Government has launched the e Courts Integrated Mission Mode Project in the country for computerization of District and subordinate courts with the objective of improving access to justice using technology. As part of the National e Governance Plan, the project is under implementation since 2007 for ICT development of the Indian Judiciary based on the "National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary". E Courts project is being implemented in association with e-Committee Supreme Court of India and Department of Justice. Phase I of the project was implemented during 2011-2015. Phase II of the project started in 2015 under which 18,735 District & Subordinate courts have been computerized. The detailed break-up of computerization of court complexes has been attached in Annexure-I.

During the Covid pandemic, the Supreme Court of India, under Article 142 of Indian constitution, using its power, praised for the virtual functioning of the courts across the country. While prioritizing public safety and social distancing, courts in India needed to hear the cases with help of technology through virtual court rooms instead of physical court rooms. Digitalization of courts aims in an open online courtroom where everyone that is right from the petitioner to the judge and outsider to the court staff, all are working together in the manner that their work reflects in digital equality and justice.

To begin with the beginning of digital world now a days time has to come to survive ourselves by digital life in connecting with world at large but however there are some effects and defects by way of hurdles in completing the process within short span of time. No doubt it is deserved that paperless function be brought in practice by using internet and digital system but to overcome the difficulties again scholar has to review their opinion with respect to hurdle in performance and administration of justice.

• Significance of study

In modern computer era, we have computerised everything including the medical profession but the Indian judiciary system alone is so far into digital model. Even after the Supreme Court of India had set up a special committee and the committee had given its recommendations during the year 2005 itself and the government also spent during 2011-2015 Rs. 640 crores for Phase I and Rs.1078 crores for

computerisation for creating infra for implementation of e-courting system out of total financial outlay of Rs 1630 crores, allocated money for this. But it had not been fully implemented is the million-dollar questions raised by the public. Whether it is because of self-interest of the Judiciary or the advocates or court administration? In spite of more than 3.20 crores are pending before all Indian Courts for decades together? Failure of our part to digitalisation of the court cases records and procedure so far, the judicial industry is very much affected due to this corona lockdown period. It is a major setback for judiciary since the "justice delayed means justice denied" In order to know about this practical problem, various aspects and angles of this issue must be studied.

- **Objectives of study**

1. To study the concept of digitalization of judiciary in detail.
2. To examine the ground reality of digitalization of judiciary in administration of justice.
3. To suggest suitable recommendations for smooth execution of digitalization of judiciary.

- **Research Methodology**

The nature of the present work is blend of doctrinal and non-doctrinal research. Present research is based on legal propositions, doctrines, juristic opinions and secondary sources of data. The research is based on comprehensive study of both primary as well as secondary sources. The present researcher has interviewed practicing advocates, clients, office personnels etc.

- **Digitalization: Conceptual Clarity of the term**

The e-Court Mission Mode Project (MMP) was conceptualized with a vision to transform the Indian judiciary by making use of technology. The project had been developed, following the report submitted by the e-Committee under Supreme Court on national policy & action plan on implementation of information communication tools in Indian judiciary.

As part of the National e-Governance Plan, the e-Courts Project is under implementation since 2007 for ICT enablement of the Indian Judiciary the Phase II of which has concluded in 2023. Phase III as a Central Sector Scheme spanning four years (2023 onwards) with financial outlay of Rs.7210 crore is rooted in philosophy of "access and inclusion".

E-Court, an integrated MMP, has a clear objective - to re-engineer processes and enhance judicial productivity both qualitatively and quantitatively to make the justice delivery system affordable, accessible, cost effective, transparent and accountable. The scope of the project is to develop, deliver, install and implement automated decision making and decision support system in courts all over the country. The e-Courts project entails ensuring of digital interconnectivity between all courts from the taluka level to the apex court.

Taking the gains of Phase-I and Phase-II to the next level, the e-Courts Phase-III aims to usher in a regime of maximum ease of justice by moving towards digital, online and paperless courts through digitization of the entire court records including legacy records and by bringing in universalization of e-Filing/ e-Payments through saturation of all court complexes with e-Sewa Kendras. It will put in place intelligent smart systems enabling data-based decision making for judges and registries while scheduling or prioritizing cases. The main objective of the Phase-III is to create a unified technology platform for the judiciary, which will provide a seamless and paperless interface between the courts, the litigants and other stakeholders.

- **Ground Reality Of Digitalization Of Judiciary And Hurdles In Its Implementation**

To begin with the beginning of digital world now a days time has to come to survive ourselves by digital life in connecting with world at large but however there are some effects and defects by way of hurdles in completing the process within short span of time. No doubt it is deserved that paperless function be brought in practice by using internet and digital system but to overcome the difficulties again scholar has to review their opinion with respect to hurdle in performance and administration of justice.

1. **Literacy and justice to all :** For population of 125 crores, literacy rate is 70.70% in the year 2023 and that of Maharashtra is 82.30% as per National Family Health Survey in the year 2023. This literacy means the person only can read and write but practically no one cares that whether that person can handle computer with skilled knowledge. In a survey conducted by 78th round of National Sample Survey in the year 2020 -2021, there is digital literacy which is limited only to the extent of handling computers is 40% and remaining 60% of the entire population is digitally illiterate that is they cannot even handle the computers. In Indian courts, near about 1lack cases are filed daily in an average. While thinking on the part of the client who doesn't acquire digital literacy, may face the challenge to file the case from early stage. He will not have the ability to file the case through the portal that is how the case is filed like what is specification in law, under what heading case is going to be filed, under which provision of law and under which court the case is going to be filed, how to get information about the stage and status of the case, how to apply for certified copies and getting that Certified Copies and making payment for all documentation etc. The client who only knows that how to read and write cannot get expertise in this kind of things which actually the Hon'ble Apex Court is optimizing or dreaming of. Again, the client who is totally illiterate he is far away from the word justice.

2. **Infrastructural issues and access to internet :** Filing one type of civil case requires laptop for typing, scanner for scanning the documents of the plaint or a suit and a printer to print the documents etc. If we assume that in a District Court like Sangli, on daily average basis, if 100 cases are filed at court premises online, then for filing one case it takes one hour to file the complete case through e filing system. Then if at Court premises 100 cases are going to be filed at one day, that much of infrastructure that is laptop, printer and scanners should be made available there to file these cases. The internet speed quality and access of internet plays very vital role while filing the cases online. The Apex Court in Anuradha Bhasin v/s Union of India has declared that access to the internet is a fundamental right but if we have lack of infrastructure and lack of good internet speed quality, the fundamental right of access to internet is only good on paper.

3. **Health Issues :** From the perspective of advocates, clerk and clients, they are going to suffer from eyes defect which will lead to them in blindness. For example, when advocates, client or clerks sitting before a screen for a projecting their case, it requires hours of time regularly which does not allow him to move from his chair at least for 4 to 5 hours for completion of his project, that may be called as filing of suit along with list of documents, copies to other side party etc. If computer screen becomes slow, it takes manual time to bring it into proper position for generation of legal papers, it can cause mentally, physically tiredness. Thereby concerned advocates clients and lemon required to attend physician for checkup their body eyes and alternatively they have to make large expenses for maintaining their health which is nothing but pain taking expensive job.

4. **Unemployment :** The Indian youths are facing unemployment day by day and thereby they are forced for their livelihood to attend meagre works like artisan work, plumbing or construction of small size houses under the employment of contractor who provides them Rs.400 to 500 per day. Within that income, they have to maintain their parents, family, rent of houses. And those who are attending agricultural work, the agriculturalists are not paying labour charges more than Rs.300 or so. In industrial zone, for daily - wages based work, youths are being taken for work and they take their daily wages not more than Rs.400. Daily work is not available in an Industry; therefore, they have to move here and there per day for searching work. Now a days, youths are facing irregular employment in India. These are some of the examples quoted above. Bad to the worst, the digital function again made the youth unemployed for the simple reason that the youths are not having the knowledge of computers; they cannot acquire computer knowledge due to lack of finance as well as their family responsibilities. The login system is no doubt the best policy of the government but the defects are to be seen on the other hand too. When in courts, cases were manually filed by the advocates which were much speedy than that of digital system for saving

expenses. for example, if the suit is to be filed, the advocates have to collect information from clients with respect to the documents, there after advocate has to draft the plaint, written statement, affidavits, appeal, revision and various other applications as the case requires, there after these documents are to be typed and get printed then for supply of copies of other side Xerox machine requires. Thereafter, affidavits are to be affirmed before Nazar of the court. Then complete file has to be packed up for presentation in the court. As stated above, the steno, the typist, Xerox machine owner is depending upon advocate's work for their livelihood. But by digital system, all persons noted above are deprived from their livelihood. This question has to be considered seriously for unemployment of above persons and their families.

5. **Exchange of thoughts** : Man is social animal who requires exchange of thoughts daily either from his family members, friends, neighbors and in offices along with their colleagues, for collecting and sending information, orders and curies with one another. From one office to another office, when the concerned persons go, he exchanges thoughts by meeting physically to others but in digital system; this is absent factor which will lead to unhealthy work surrounding. In digital system, person has to sit continuously before screen without exchanging his thoughts to anybody. This type of factors leads into neurological diseases.

6. **Artificial Intelligence** : Now days, it is a common practice being seen that copy paste practices followed generally because books are available where in various kind of formats are provided for filing civil, criminal and revenue cases. The computer holder paste copies of formats in his own computer. Whenever a person approaches them, they take some facts in their knowledge and put it in the copy paste format and supply to the concern persons for filing it either in the Courts or in the concern departments. They do not know what will be long defective effects on filing such type of cases. Surely, they will fail for one reason or other for non-mentioning of laws required facts for success of their case. There is no creativity in their mind that how to apply facts under concerned laws so as to win the case. If they fail in copy pasting, the affected person will lose his property, cause damage and loss of finance and such type of practices do not create any innovation and creativity.

7. **Administrative Difficulties** : In practice of administration of justice, many more difficulties are there in actual completion of work. While presenting a suit, appeal, revision or any other document along with the required other documents, the concern administrative officer has to compare list of documents given and has to verify it step by step and number wise. Unless he goes through list of documents which requires separate computer window and for verification of document again second window is necessary. But here only one window system is available at this stage. Opening of one window, the officer has to sit calm and quite till completion of first work and wait for second which consumes much more time instead of short time. Sometime internet system breakdowns, thereby concern officer has to wait for hours together for resuming the work. This being loss of hours together of judiciary system too.

The system of call out by courts through peon definitely disturbed, for example if a bail application is filed and hearing of bail application is to be taken in the afternoon session of the court at the same day, advocate has to sit before the screen to see his number, leaving all his work at the fate of client which will be great loss to the client as his advocate is not attending another case but simply sitting for one case before the screen. Former practice was that notices and summons in matters were sent through post, bailiff or through police, for giving the knowledge to concern person at his door. But as huge population is not having Android mobiles, they will not be aware of legal notice issued against them in digital world. They remain absent on the day given by Courts which causes great loss in absence of actual information.

8. **Miscellaneous challenges**: At summing up, question arising in practice that is Hacking Of Data, Server Down, Data Corruption, Violation Of Privacy Of Data, Lack Of System Backup, Cyber Security, Increase In Cost Of Filing, Maintaining Evidentiary Value Of Digital Evidence etc are to be considered and then finalized, so as to smooth using of digitalization.

CONCLUSIONS AND SUGGESTIONS

While discussing about the suggestions, at summing up, to tackle the problems discussed above and to survive in this transformation phase, the synchronization between all the concerned department should be there. At this stage, Master Trainers, to train the clients and advocates, have been appointed by the Judiciary for District level places but at ground level like taluka courts, the implementation of this Master Training Program should be implemented in same way. Videos on the website of Supreme Court and High Courts are available to show how e-filing is done. But the videos should be made available in the local languages at the time of e-filing, at even taluka places courts, so, it will be convenient for the clients and advocates at taluka places. E suvidha kendra and e-Filing of cases is free of cost provided from the Legal Aid Services Authority at every district place but if there is end number of filing of cases is happening, that much infrastructure should be made available to do the filing of cases digitally at same time. The campaigning showing benefits of e-filing and digitalization of judiciary should be displayed, published and circulated at every corner.

Also, there must be combination and synchronization of all concerned departments that is Judiciary, Police Department, Jail Department and Advocates along with their clients. If one of the departments fails, the entire connected line fails hence no fruitful gain are gained by this system.

Only e filing system is not enough for the digitalization of judiciary but at the same time proper time management and technical knowledge of hearing of cases is mostly required. While digitalizing the Court rooms, the corruption and lack of transparency in lower courts should be reduced by digitizing records and removing the human element or human error in the record offices. While implementing the idea of digitalization, principles of fairness, transparency and accountability cannot be compromised and Justice should not be delayed. The basic virtue of judiciary and justice system should be borne in the minds while digitizing the judiciary. Basically, and judges and advocates need to learn law as well as technology and Indian judiciary has to maintained its own rule of law over the whole country.

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