

Feasibility of E-courts and the Way Forward

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Introduction

The COVID-19 pandemic has created disruptions in the way things are done across sectors, the judiciary being impacted by it with respect to the conduct of hearings. With social distancing here to stay until a vaccine or a drug that can cure it is found, the courts are showing more acceptability to adopting digital solutions to hear and dispose of cases, at least in those matters which are urgent in nature.¹ It is noteworthy to mention that the government is of the same view.² An e-court does not simply mean having a court conducting hearings through videoconferencing. It includes using electronic means right from the filing stage to file the plaint right up to delivering the judgment online by uploading a digitally signed copy of it. The pandemic, while it has caused significant loss to life and the economy, provides the judiciary with a golden opportunity to transition into a judiciary that utilizes technology to the benefit of litigants, advocates, the government, and also itself.

History of E-courts in India

The e-courts program started after the “National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005” was submitted by the e-Committee of the Supreme Court of India, with a view to having a pan-India e-courts system for having all information pertaining to courts and their cases and the way they are managed.³ The said e-committee was constituted on the recommendation of the Supreme Court by the Ministry of Law and Justice, Government of India.⁴

The program envisaged to provide efficient and timely delivery of litigant services, automate processes to provide transparency and accountability and make information accessible to all stakeholders by installing the requisite networks and systems, thereby enhancing judicial

¹ Sonam Mhatre & Shambhawi Sinha, *Video Conferencing – A Step Towards The E-Future For The Legal Fraternity?*, MONDAQ (Jun. 9, 2020), <https://www.mondaq.com/india/operational-impacts-and-strategy/949886/video-conferencing-a-step-towards-the-e-future-for-the-legal-fraternity>.

² Abraham Thomas, *Must adapt to e-courts, says Law Minister Ravi Shankar Prasad*, HINDUSTAN TIMES (May 30, 2020), <https://www.hindustantimes.com/india-news/must-adapt-to-e-courts-prasad/story-xIxPf7zQRQ0ZvB33KT18tL.html>.

³ *E-Courts: About Us*, ECOURT INDIA SERVICES (2016), https://ecourts.gov.in/ecourts_home/static/about-us.php.

⁴ *Id.*

productivity both quantitatively and qualitatively.⁵ The data obtained from such systems can be analysed and interpreted to make the justice delivery system affordable, accessible, cost-effective, predictable, reliable, and transparent.⁶

Phase- I of the program was completed on March 30, 2015, with basic measures such as the installation of hardware and internet connectivity with a Case Information System (CIS) being made available across all the District Level Courts of India. Training sessions were conducted to make the staff familiar with the working of the systems and websites for each court were also developed.⁷

Phase II of the program, which is currently underway, aims to increase the hardware available and also include new-age internet innovations such as Cloud Computing, Videoconferencing, and Data Analytics through the National Judicial Data Grid (NJDG).⁸ Further, the scope of the e-courts was increased beyond the Courts alone to include institutions like Legal Services Authorities, Jails, and Court Libraries.⁹

Changes due to the COVID-19 Pandemic

A positive development in the COVID-19 pandemic is that the courts have taken the initiative on their own and have been proactive in adopting technology to implement hearing urgent matters through videoconferencing. Exercising its powers under Article 142 of the Constitution, the Supreme Court had issued guidelines to conduct hearings through videoconferencing on March 23, 2020, itself.¹⁰ By issuing these guidelines *suo motu*, the Hon'ble Court had demonstrated its awareness about the need of the hour and had proactively taken necessary measures to mitigate the effects of the pandemic.

The order had specified guidelines for conducting hearings through videoconferencing and had left it to the High Courts to determine the manner in which evidence would be recorded in matters before it. It is noteworthy to mention that soon after receiving these guidelines, the High Courts also acted swiftly in issuing guidelines for conducting hearings.¹¹

⁵ Thomas, *supra* note 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Re: Guidelines For Court Functioning Through Video Conferencing During Covid-19 Pandemic, (2020) SCC OnLine 355 (India).

¹¹ Mhatre, *supra* note 1.

However, like any disruption, the changes came with teething issues like internet connectivity, finding suitable technology solutions for video conferencing, and ensuring that all stakeholders can be included in the process. Unfortunately, there are many courts that do not have these facilities to implement video conferencing solutions so it may not be immediately possible to restore the functioning of the courts in the manner and extent it was in the pre-COVID situation.¹²

Concerns and the Road Ahead

While the initiative taken by the courts is commendable, there is more that needs to be done to ensure that any case can be instituted, heard and disposed of virtually without requiring physical presence of parties or documents. These impediments include infrastructural issues not only with the courts, such as the availability of requisite hardware and network capabilities to conduct digitized court hearings at each and every court in India but also the availability of resources such as laptops and stable internet connections with many lawyers, especially in the subordinate judiciary.¹³

Furthermore, there is a lack of a uniform, national law prescribing what cases or stages of a case can be conducted online and the manner in which each stage of a case is to be conducted online. Additionally, there are broader concerns such as the ease of public access to a court hearing when the proceedings are conducted online. It is a settled principle that “Justice must not only be done but also appear to have been done.” Therefore, a well thought-out and comprehensive law would help instil confidence in the virtual court system and help avoid arbitrariness. It may also be practical to have different procedures based on the nature of the case as it would be difficult to have a one-size-fits-all approach for the multitude of disputes across subject matters.¹⁴

¹² LiveLaw News Network, *Strengthen the E-Courts System by Addressing the Connectivity Issues and Training Lawyers: AG and Other Law Officers to Law Minister*, LIVELAW (May 10, 2020), <https://www.livelaw.in/strengthen-the-e-courts-system-by-addressing-the-connectivity-issues-and-training-lawyers:-ag-and-other-law-officers-to-law-minister-156551>.

¹³ Shruti Mahajan, *Continuing Virtual Hearings after lockdown "impractical", 90% lawyers, judges unaware of technology: BCI Chairman writes to the CJI*, BAR AND BENCH (Apr. 28, 2020), <https://www.barandbench.com/news/continuing-virtual-hearings-after-lockdown-impractical-90-lawyers-judges-unaware-of-technology-bci-chairman-writes-to-the-cji>.

¹⁴ Swathi Sukumar, *Video Conferencing after COVID-19: The need for case-specific parameters*, BAR AND BENCH (Apr. 8, 2020), <https://www.barandbench.com/columns/video-conferencing-after-covid-19-the-need-for-case-specific-parameters>.

Along with digitization come issues pertaining to confidentiality and data security. This can be the case especially in hearings of a sensitive nature that are required by law to be kept confidential (eg. matrimonial disputes, national security matters, etc).¹⁵

Also, there are concerns about adducing and recording evidence online, without physically presenting it to the judge. There is also the concern of analysing the demeanour of the witness to ensure the witness is not under duress or being tutored when being cross-examined remotely.

Though there are concerns with regard to the e-courts as mentioned above, these are not stumbling roadblocks towards a digitized court system. A possible way of determining what is the best way to conduct the proceedings of a case remotely is to have different methods tested on a pilot basis. The best method can be implemented on a national level.

The benefits of having a uniform e-courts system are many. Firstly, there would be an increase in transparency and ensuring accountability by improving access to information. Further, public access to the courts would be made much easier, thereby keeping the required checks and balances that are required in any democracy. There would be a significant improvement in the access to justice at least at the appeal stage by eliminating the need for the litigant to travel to the courts of appeal. Also, the working of courts through video conferencing makes them immune to outside conditions such as the weather, even in adverse conditions such as the present.

Furthermore, by harnessing the power of technology, data analytics and artificial intelligence can be used for the further development of the system. The data generated by the system would be available at the touch of a button and when analysed, would help various stakeholders such as the judges, lawyers and litigants to identify shortcomings and find solutions for the same.

Conclusion

Therefore, it is clear that adopting an e-courts system at a national level is the way forward. Adopting a digitized court system would ensure greater transparency, accountability which would help keep a check on the custodian of rights. Further, access to justice would improve as the costs for a litigant, such as, going to and from courts, printing etc would significantly

¹⁵ Risha Kumari, *COVID-19 Urges Courts In India To Go Online: Pros And Cons Of Court Hearings Via Video Conference*, MONDAQ (May 21, 2020), <https://www.mondaq.com/india/operational-impacts-and-strategy/938322/covid-19-urges-courts-in-india-to-go-online-pros-and-cons-of-court-hearings-via-video-conference>.

reduce. Also, filing an appeal would be made easier as the litigant would not be required to be physically present at the appellate court.

While there are technical, legal, and operational issues with respect to its implementation, seeing the positive initiatives taken by the courts, one can be reasonably sure that the judiciary is ready to adapt to the evolving situation. It is imperative that all stakeholders come together and give the move to digitize the courts and push and ensure that this opportunity in the form of a crisis is not wasted.