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Digitalization of Courts in India: A Critical Appraisal

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ABSTRACT

Judiciary in India has a glorified past since a very long time. The judiciary has always preserved the faith of people in itself by delivering landmark judgements as and when required in the public interest. But it is also not a hidden fact that the backlog of cases has grown and ultimately led to the over burdening of the cases pending before the courts. This constant increase in the number of cases has been a cause of concern for the judiciary and therefore, various steps are being taking to cope up with this situation. The outbreak of this pandemic COVID-19 has shaken the world and almost every nation has tried to prevent the spread of this virus by following social distancing. The Indian government, too, has strictly followed the nationwide lockdown and social distancing. The Indian judiciary also has given priority to maintain social distancing and therefore, it has suggested to work through digital mode. Many cases in India has been heard online amidst this pandemic through video conferencing and e-filing of cases. This transformation of working of courts from physical court rooms to virtual courts has helped in reducing the time and more access to justice easily. The digitization of courts in India is not a new idea, it has been suggested earlier too. But the proper implementation of it was not possible due to lack of knowledge of technology and other facilities. One of the main hurdles among these is that not every person in India are having the internet facilities and knowledge of the technologies.

This paper is an attempt to highlight the meaning and concept of digitalization of courts in India. Further, it will also discuss the benefits and hurdles in the way of making the courts virtual.

I. INTRODUCTION

The outbreak of covid-19 from the Chinese city of Wuhan, to almost the whole world, hardly needs any introduction. Although China has become almost free from the deadly effects of this virus, but the rest of the world and even developed nations like the USA, UK are still

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suffering with its adverse effects and so is the case in India. The outbreak of this pandemic has shattered every nation's economy and everyday lives. Therefore, this virus has affected badly every institution and individual's life. The Judicial system of all these affected countries are being prioritized to maintain public safety first. Similar is the case in India. The Indian judicial system is emphasizing on maintain social distancing to curb the effects of the virus and for that the main focus of the courts in hearing the cases shifted from physical court rooms to the digitalization of courts to carry out its day to day functioning even during this lockdown, in spite of the fact that there is low technical literacy in India. The role of judiciary has always been imparting justice to the society and being the guardian of the Protector of fundamental rights of every citizen of the nation and therefore, during this unfortunate time, the courts in India can't sit ideally and wait for everything to get back to normal again as this virus is expected to live with us for a long time.

During this lockdown, the Supreme Court of India, by using its power under Article 142 of the Indian Constitution has laid down the guidelines for the court's functioning across the country. It is the fact that this virus is going to be with us for longer time, therefore, the courts can't sit ideally and wait for everything to get back to normal. Prioritizing public safety and social distancing, the courts in India needs to hear cases not in a physical court room but by the aid of technology, through virtual court rooms. But what remains the hurdle on the digital highway remains unanswered and needs to be mitigated. Digitalization of the courts is not merely about modernization. The point is its democratization. It means, in an open online court room, everyone, right from the petitioner to the judge, an outsider to the court staff, is in tiny rectangular spaces, reflecting the new digital equality- another variety of Article 14 of the constitution.³ The problem in India, however, is that many people in India are untouched of the privilege of using internet facilities. But the digitalization of courts lies in the fact that everyone will get quicker access to justice and these should be the welcoming measures by the courts. But the difficulties with which they are and have been implemented, shows that judiciary needs to modernize itself first, the lawyers and judges must not only have knowledge of law but also well versed themselves with the new technical advancements. Even post lockdown, the first priority of the courts should be on the modernization of courtrooms and staffs with technology.

³By Kaleeswaram Raj 'Transforming the courts during pandemic' available at <https://www.newindianexpress.com/opinions/2020/may/02/transforming-the-courts-during-pandemic-2138096.html>

II. NEED OF DIGITALIZATION OF COURTS

The outbreak of Covid-19 has shaken almost all the countries in the world and thus it has caught hold of the whole world right now. To cope up with the present situation, the government of India suggested for complete lockdown of the whole nation except for essential services. On The judiciary has heard many cases through video conferencing and adopted e-filing of the cases. Thus, it shows that legal curriculum of the country needs to change and we have to think out of the box other than the conventional rule of hearing cases in physical court rooms. By using video conferencing and telepresence technologies effectively, a paperless as well as crowd less court can indeed become a reality.⁴ With the reduction in the use of paper, India will also contribute more in combating global warming and help in the reduction of carbon footprint of the country. Therefore, we can bring change to our future legal curriculum and create opportunities for everyone. The rule of law will be upheld in the true sense when the justice delivery system will become more efficient, people friendly and quick legal redresser of cases.⁵ This is why a measure like video conferencing is such a necessity even in the normal times. The Supreme Court recognized this in *Swapnil Tripathi Vs. Supreme Court of India*⁶, where it held that the entire judiciary- starting with the Supreme court itself should move towards live streaming of proceedings in the interest of public.⁷ In this case, further, Khanwilkar J. held that live streaming of the court proceedings is the need of the hour but it was first necessary to have a proper and balanced framework to put this concept into action.

Thus, this may be the best time to bring the live streaming of cases via video conferencing. And due to the necessity of maintaining social distancing, the Supreme court bench of Chief Justice Bobde, Justice Chandrachud and Justice LN Rao issued a direction in order to streamline the functioning of courts via video conferencing during lockdown. Many High courts and other subordinate courts have heard a lot of cases through virtual courts. If planned properly, the technological shift can reduce the burden of cases and save the invaluable time of the courts. Thus, all it can be said that digitalization can actually act as an effective remedy for law's delays. E- courts need proper, efficient and fair management. E-

⁴Available at <https://www.newindianexpress.com/nation/2020/may/16/coronavirus-has-forced-courts-to-rethink-on-how-to-function-cji-bobde-2143889.html>.

⁵By Kaleeswaram Raj 'Transforming the courts during pandemic' available at <https://www.newindianexpress.com/opinions/2020/may/02/transforming-the-courts-during-pandemic-2138096.html>.

⁶ WP (civil) No 1232 of 2017

⁷ By Kartik Dabas 'Digitalisation of Indian courts,Mitigating the hurdles amid outbreak of covid-19' at <https://www.livelaw.in/columns/digitalisation-of-indian-courts-mitigating-the-hurdles-amid-outbreak-of-covid-19-with-post-lockdown-approach-156047>.

registries should be statutorily designed. A digital court has to be vibrant and participative. For that, we need to be more aware about the latest technologies.⁸

III. HURDLES IN THE DIGITALIZATION OF COURTS IN INDIA

The digital India initiative aims to provide internet access to remote parts of the country through a wireless network and therefore, digital India has become a national priority. Digital power in the hands of citizens is the first step towards the empowerment of them. Things have been made easier by bringing transparency in the process. Every institution and industry has been focused on its digitalization. Therefore, the legal framework in the country also needs to well versed itself to the modern technologies so that the present generation lawyers and judges must have the knowledge of law as well as technology. One of the biggest challenges that will be faced in implementation of this would be proper management of time in calling out the cases. Both the parties need to join the virtual courts at a fixed and pre-determined time.

The recent order by the CJI to make the judicial system online is truly a proud moment for the Indian judiciary as it has been continuing its duty of imparting justice its citizens. But this happy moment would remain longer only when it would have been implemented effectively. When the courts in India went live, a number of litigants and lawyers complained of the inconvenience as they were not fully aware of the changes being made. Considering the fact that change is not always easy but is necessary, the Supreme Court enabled the litigants to appear through Vidyio App for which it provided link.⁹ Similarly, many High Courts in the country used their own systems to make the court proceedings virtual.

Covid-19 threat has forced Indian courts to rely on digitization and use of technology, but it will take years for the courts to transition to the next level use of Artificial Intelligence as envisaged by the Chief Justice of India SA Bobde. Recently, in the news, he also said that “technology is here to stay” which means that the temporary and short term emergency measures which are taken today will take the justice system on a new road of development in the coming years.¹⁰ The long dependency of court works on paper will also be reduced and this will lead India to the contributor in carbon foot printing too. As also stated by Justice Chandrachud, that technology should be used for inclusive justice. He also mentioned that

⁸Available at <https://www.newindianexpress.com/nation/2020/may/16/coronavirus-has-forced-courts-to-rethink-on-how-to-function-cji-bobde-2143889.html>.

⁹ By Kartik Dabas ‘Digitalisation of Indian courts, Mitigating the hurdles amid outbreak of covid-19’ at <https://www.livelaw.in/columns/digitalisation-of-indian-courts-mitigating-the-hurdles-amid-outbreak-of-covid-19-with-post-lockdown-approach-156047>.

¹⁰ Ibid.

virtual courts can never be a substitute for open courts in India. The main reason behind this is that a large section of the people still do not have access to technology and the internet and so, it is important to ensure that this technological divide does not become a means of exclusion. Therefore, the current situation can be made into an opportunity to bring in the fundamental transformation to our judicial system so as to reduce the use of paper and well verse itself with the technology so that everyone could get easy and accessible justice.

IV. CONCLUSION

In the light of the covid-19 pandemic, every individual and institution needs to change its conventional way of work and therefore, utilize the facilities of internet effectively to ensure vital functioning amidst this lockdown. As far as the functioning of judicial system is concerned, an effort for complete digitization of the courts is being echoed throughout the country. The use of technology to hear cases by the courts in India is a welcoming step and it should be implemented effectively for imparting justice more easily and effectively and to save time. However, the virtual courts should ensure that the basic virtues of conventional judiciary remains the same. The principles of fairness, transparency and accountability cannot be compromised. The idea of digitization of the courts will surely cultivate a new judicial culture in the lives of legal professionals.

The temporary idea of digitization of courts today should in the long time take the place of regular physical courts. It will surely help India to reduce the much use of paper for court works and thus, we can contribute more in reducing the use of paper. But the only e-filing system alone is not enough, we must have also proper time management and technical knowledge of hearing the cases. The technological shift from the physical courts will also help in eliminating the conundrum of being physically present in the court premises and waiting for their case to be heard. Also, by digitization of courts, the problem of corruption and lack of transparency in the lower courts could be reduced by digitization of records and removal of human element in the records. Therefore, it may be concluded that the change in the pattern of courts in India and making them to become digital is not an easy change, but it must be adopted to reduce time, to save paper and to ensure fairness, reasonableness and access to quick justice to everyone. The future lawyers and judges needs to learn law as well as technology. The Indian judiciary still, preserves the rule of law and thus, holds public faith in itself.
