



## COVID-19 AND JUSTICE DELIVERY SYSTEM: CHALLENGES AND WAY FORWARD

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### **ABSTRACT-**

*This paper attempts to bring to the forefront the need to adopt an online model for the courts in India for a better functioning of judicial system and increased efficiency in providing justice to the people. Given the current period of COVID-19, this is the best time to bring changes in our judicial system. The paper talks about the justice delivery system which is currently active in our country as well as in other nations around the world and then systematically argues the need to have online courts and other services, like- online evidence filing, interrogations, etc. After talking about these new justice delivery systems and also explaining why India needs them in the longer run too (even after this lockdown is over) the paper puts forward the various challenges that needs to be overcome to bring about these changes. Overcoming the challenges is the way forward.*

*The paper concludes with some suggestions of software and techniques which are being used by Courts of law all around the world during these times to take care of their cases efficiently and gives reason as to why India should also adopt these new technologies and bring the Indian Judicial System within the*

*easy reach of all its citizens in a fast and timely manner.*

### **I. INTRODUCTION**

The pandemic of COVID-19 has grappled the world since the start of this year. With the first 'known' case of COVID-19 being reported at the WHO China Country Office on 31<sup>st</sup> December, 2019<sup>1</sup> the month of July marks about 7 months since the beginning of this disease. In India, the first phase of the nationwide lockdown was from 25<sup>th</sup> March 2020 to 14<sup>th</sup> April 2020. These lockdowns were an attempt to slowdown the spread of this disease and prevent it from spreading further.

However, the rise in Coronavirus cases sees no bounds right now and it has affected the lives of millions of people in India as well as abroad. Employment, shopping, education, sports, tourism are just few sectors that have been affected gravely.

And along with these sectors one other sector that has been affected is the Court-system of India. The Court at all levels-District Courts, State High Courts as well as the Supreme Court of India have been implementing new ways of communication to bridge the gap between people and justice. The Supreme Court Bench on 6-4-2020<sup>2</sup> comprising of Chief Justice of India S.A. Bobde, Justice D.Y. Chandrachud and Justice L. Nageshwara Rao, passed directions in a suo motu case pertaining to issuing of guidelines for the functioning of courts via videoconferencing during the COVID-19 lockdown and further stated the need for

<sup>1</sup> Rolling updates on coronavirus disease (COVID-19), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen> (last visited 28<sup>th</sup> July, 2020).

<sup>2</sup> In re, Guidelines for Court functioning through videoconferencing during COVID-19 pandemic, 2020 SCC OnLine SC 355.



applying tech-friendly and viable options lasting the tenure of the lockdown and for the future. On June 1<sup>st</sup>, 2020 an entire bench of the Supreme Court conducted its first-ever paperless hearing. The judges and the advocates communicated via video communication.<sup>3</sup>

In India, the first move to make the SC proceedings paperless was initiated by former Chief Justice of India Justice J. S. Khehar who, in 2017, started the use of large-screened computers which were placed before the Judges in the first 5 courts. But the other Judges were at odds with the sudden decision to go paperless; they had worked with case files and physical pages all their lives and to go through with this change they had to change their whole functioning, something they did not see useful back then. Most Judges shared the view. Soon, the huge computers were folded and used as tabletops. Later, these were removed from courtrooms to storerooms.<sup>4</sup> But this mentality has changed in the Indian Judiciary of the current times. This time this system of online court hearings and filings has found support from various eminent jurists, young and old, and among them is even Hon'ble Justice Mr. Sharad Arvind Bobde, the Chief Justice of India, who has said that, "...there is no looking back...", and that the way forward will be a combination of virtual courts and

physical courts, "...the new and the old regime."<sup>5</sup>

The road to justice in India is long and its often riddled with potholes. It takes people years and sometimes generations to even obtain a hearing date for their cases. And this has been the scenario since many years, even in the pre-Coronavirus era. Therefore, the changes that the Court-system of India desperately needs it can bring about in this COVID-19 era, with many calling this an opportunity that India shouldn't miss. The dignity of the Courts of India and the status that our Courts of justice have gained is something that our nation wears as a medal of Honour. Hence, even in this new era the changes should be such that there should be inclusive justice and justice for all, and the dignity of the Courts should not be sacrificed in the process. Virtual courts are not a substitute for real courts, as has been said various times by the learned Judge Mr. D. Y. Chandrachud.<sup>6</sup> It must be used to supplement and fill in the gaps where our old ways of working are lacking. Technology has led the way and has been leading the way in many other sectors for some time now, and we must use it in the best manner possible for our Judicial systems too.

This paper is an attempt to bring to the front the various underlying challenges involved in the use of technology in our

<sup>3</sup> Bhadra Sinha, *No paper files, all case records on laptops — Supreme Court holds first paperless proceedings*, <https://theprint.in/judiciary/no-paper-files-all-case-records-on-laptops-supreme-court-holds-first-paperless-proceedings/433505/> (last visited 28<sup>th</sup> July, 2020).

<sup>4</sup> Dhananjay Mahapatra, *In a first, virtual court goes completely paperless in SC*, <https://timesofindia.indiatimes.com/india/in-a-first-virtual-court-goes-completely-paperless-in->

[sc/articleshow/76146213.cms](https://www.supremoamicus.org/sc/articleshow/76146213.cms) (last visited 28<sup>th</sup> July, 2020).

<sup>5</sup> Dharvi Vaid, *How coronavirus is propelling the rise of online courts in India*, <https://www.dw.com/en/how-coronavirus-is-propelling-the-rise-of-online-courts-in-india/a-53774109> (last visited 28<sup>th</sup> July, 2020).

<sup>6</sup> NALSAR University of Law, <https://www.youtube.com/watch?v=15nxZwNJsBM>.



Courts and in the ‘digitisation’ of our age-old Judicial System. The world of online courts could and should be unrolled on a global scale, said Richard Susskind, "Godfather of Legal Tech", in his new book *Online Courts and the Future of Justice*.<sup>7</sup> The challenges that have been present in our system are now being brought to the surface and with each new challenge and hurdle that is being solved, the closer we are getting to a more accessible and user-friendly way of justice.

The paper starts off by reasoning why there is a need for a successful implementation of justice delivery systems in India and why we as a nation need to provide new ways of access to justice to the citizens. This is followed by an analysis of the various challenges that we need to face to bring about these changes, and ends with a perspective for the implementation of the required changes in our system and how we should plan our way forward.

The researcher has used an analytical approach to understand the various challenges in front of the judicial system of our country in order to successfully implement the various Justice delivery systems in the time of COVID-19. The data primarily relied on for this purpose is secondary data, however, personal observation has helped the researcher in comprehending the realities presented by the secondary data.

## **II. THE JUSTICE DELIVERY SYSTEM IN INDIA RIGHT NOW**

<sup>7</sup> Richard Susskind, *Online Courts and the Future of Justice* (2019).

<sup>8</sup> Paras Joshi, Kochhar & Co., *India: Functioning of Courts in India and Abroad during Covid-19*

*“Till now, the mindset was one of resistance to change, or at best, incremental change. The disruption occasioned by COVID-19 has put forward challenges that can be best countered with wholesome and wholesale changes – by the adoption of online courts with limited or no oral hearing but based on brief written submissions. This is an inflection point for the legal profession in India.”*

**-CS Vaidyanathan, Senior Advocate, Supreme Court of India**

No one in the world was prepared for a pandemic, let alone the subcontinent of India. There were no emergency plans in case a pandemic took place, no guidelines and no emergency evacuation plan. Hence, it would be safe to assume that our Justice Delivery system was neither educated about it and nor was it prepared.

To minimise disruption, Courts all around the world have embraced technology as the ship that will help them cross this sea of tumultuous times. The changes include mandatory electronic filing, restricting hearings to only critical cases and conducting the hearings through video conferencing. Although this necessitates the creation of a specialized advisory focused on guiding businesses in navigating the various challenges that will come up- both in the long term, and the short term-these proactive steps taken by Courts, both in India and abroad, have made it comparatively easier to effectively strategize and manage Litigation.<sup>8</sup>

One of the major and correct steps taken by the Supreme Court and the High

*Pandemic*, <https://www.mondaq.com/india/litigation-contracts-and-force-majeure/918068/functioning-of-courts-in-india-and-abroad-during-covid-19-pandemic> (last visited 28<sup>th</sup> July, 2020).



Courts in India was the passing of various orders on the judicial side as well as the administrative side to minimise the impact of this lockdown on the litigants and their lawyers. The Supreme Court of India vide its powers under Article 141 and 142 of the Constitution of India extended the limitation for filing petitions/applications/suits/appeals/all other proceedings before all Courts, Tribunals and authorities across the country w.e.f. 15th March, 2020 till further orders.<sup>9</sup> Similar preventive measures were taken by the High Courts all over the country to provide much needed relief to the people.<sup>10</sup>

However, these changes need to be made long-term in order for us keep reaping the fruits of its benefit even after this lockdown period is over. India should now take notice of the rapid migration to online platforms that has been sweeping the world and bring in electronic filing of cases, applications and pleadings with a synopsis of arguments, law and precedents relied upon as a parallel measure. Even the trials courts can explore the concept of having evidence filed electronically and remote cross-examination through video calls.

We all have to move forward from the question: “Do we need virtual courts?” to “Under what circumstances should we undertake a virtual hearing, in what kind of cases and in what manner should they be conducted.”

### **III. THE ISSUE OF ONLINE COURTS**

<sup>9</sup> *id.*

<sup>10</sup> *id.*

<sup>11</sup> *Coronavirus Act, 2020, UK Public General Acts, Table of Contents,*

*“Remote working is a tried and tested model for arbitrations, and courts can adopt it very easily. Article 141/ 142 can be used for this to be effected in a timely manner. Hiccups are only a mindset problem.”*

**-Retired Justice  
BN Srikrishna, Supreme Court of India**

The Coronavirus Act, 2020<sup>11</sup> passed in the United Kingdom amends the provisions of various statutes to facilitate the regular operation of its courts by participating through video or audio conference through a combination of Skype for Business, Justice Video Service and BT Meet Me. It has also provided for public participation through live links.

Not only the U.K. but other nations like Singapore have also made some changes in their proceedings. The Singapore Supreme Court, High Court and Family Courts have adopted video conferencing or telephone conferencing through the ZOOM platform for hearings, counselling and mediation.<sup>12</sup> Courts in the United States of America, Canada and Australia too are bracing themselves to conduct matters in a similar manner. And India should go down the same path for good.

<https://www.legislation.gov.uk/ukpga/2020/7/content>

<sup>12</sup> *Supreme Court of Singapore, www.supremecourt.gov.sg.*



## AROUND THE WORLD

▶ Canada's apex court has a webcast system in place where hearings can be watched live. **Everything is archived for public access**

▶ Canada's federal court started a pilot project of webcast last year on **"interesting and important cases" streamed through the Zoom app**

▶ The US Supreme Court does not permit video recording or photography of its proceedings. **It releases audio transcripts of the oral arguments on the same day**

▶ UK live-streams **cases in its SC**

▶ Brazil, South Africa, Australia, New Zealand permit **live-streaming/recording of court proceedings**



question is-no, they do not. To bring about changes in the judicial system the most important and beneficial path is the setting up of virtual courts.<sup>14</sup> Already used for vulnerable witnesses to give evidence or for preliminary hearings in criminal cases, this is a conventional courtroom set-up in which participation—by lawyers, parties, or witnesses—is via some kind of video link.

The Indian Government established its E-Committee in the December of 2004. This committee was tasked to oversee the steady adoption of electronic infrastructure and techniques by courts across India. Even the Policy Action Plan Document for Phase-II of the e-Courts Project (of January 2014) had contemplated recording facility for courts as well as jails and video conferencing for cases.<sup>15</sup> According to the Objectives Accomplishment Report of 2019 as many as 3,388 court complexes and 16,755 court rooms across India have already been computerised and equipment for videoconferencing has been provided to more than 3,000 court complexes and 1,200 jails.<sup>16</sup>

Currently, it is Hon'ble Justice D.Y. Chandrachud who is Chairman of the E-Committee. With the changing times the wind of change has even reached his ears and

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Legal technologists ask whether court is a service or a place; whether people and organizations in dispute really need to congregate in physical courtrooms to settle their differences. And the answer to their

<sup>13</sup> V R Kamalanathan, *WHAT JUDICIARY NEEDS TO MAKE ONLINE SHIFT*, <https://timesofindia.indiatimes.com/india/what-judiciary-needs-to-make-online-shift/articleshow/76084603.cms> (last visited 28th July, 2020).

<sup>14</sup> Richard Susskind, *Tomorrow's Lawyers*, 99–100 (2013).

<sup>15</sup> *Objectives Accomplishment Report*, 2019, PDF format only, <https://www.google.com/url?sa=t&rc%20t=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi31suWl-3qAhUCzDgGHfgICW4QFjABegQIAxAB&url=http>

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<sup>16</sup> [ecourts.gov.in, https://www.google.com/url?sa=t&rc%20t=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi31suWl-3qAhUCzDgGHfgICW4QFjAAegQIBBAB&url=http%3A%2F%2Fecourts.gov.in%2Fecourts\\_home%2Fstatic%2Fmanuals%2FObjective%2520Accomplishment%2520Report-2019.pdf&usg=AOvVaw1iuKiEjt1Ksfhwc4BqOf1X](https://www.google.com/url?sa=t&rc%20t=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi31suWl-3qAhUCzDgGHfgICW4QFjAAegQIBBAB&url=http%3A%2F%2Fecourts.gov.in%2Fecourts_home%2Fstatic%2Fmanuals%2FObjective%2520Accomplishment%2520Report-2019.pdf&usg=AOvVaw1iuKiEjt1Ksfhwc4BqOf1X).

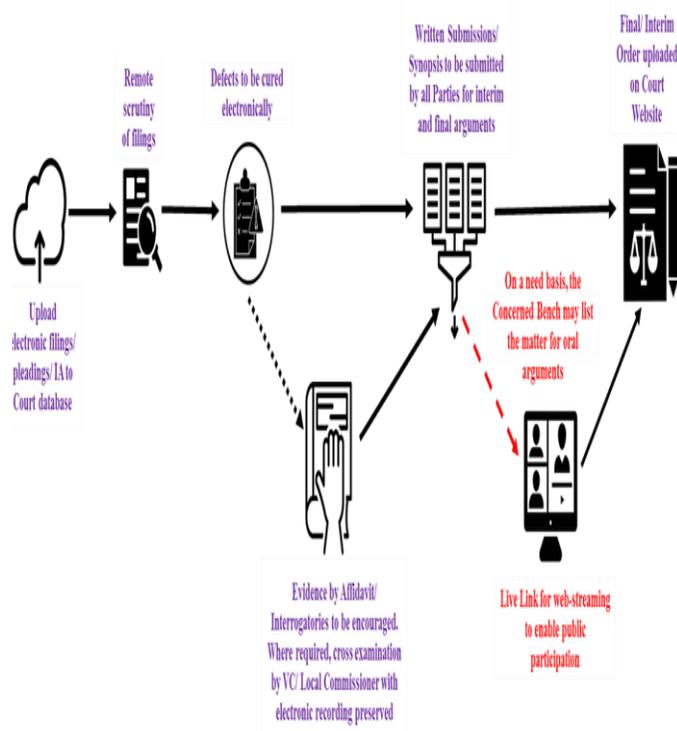


changes have been made to the E-Courts system in India:

- SOP for digitisation
- SOP for E-filings
- Rules for livestreaming
- ICJS Platform, connected to the various e-Courts
- Interlinking of law libraries across the country

These were the first changes that were taken up by the Committee and there are many more which the Committee is still debating upon.

In a recent online webinar, where Justice Chandrachud was talking about online courts and their viability,<sup>17</sup> he beautifully summarised the values underlying digitisation by the acronym **T.E.S.T.** which he devised himself. It stands for,”  
**T-** Trust; **E-** Empathy; **S-**Sustainability; **T-** Transparency.”



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**IV. WHY WE NEED NEW JUSTICE PROVIDING METHODS**

*“This tragedy will teach us that Less is More.”*

**-Sanjay Jain, Additional Solicitor General, Supreme Court of India**

Richard Susskind, the world's most cited author on the future of legal services, and also an English legal theorist, announced in a 2000 book that computers will soon be doing the kind of work that lawyers do.<sup>19</sup> He asserted then that: "there is nothing inherent in the process of legal reasoning or in the nature of law that constitutes a theoretical or practical obstacle to the development of rule-

<sup>17</sup> *supra* note 6.

<sup>18</sup> Cyril Amarchand Mangaldas, *Gavel To Click: Covid-19 Poised To Be Inflection Point For Online Courts In India*, [https://www.bloomberglaw.com/opinion/gavel-to-](https://www.bloomberglaw.com/opinion/gavel-to-click-covid-19-poised-to-be-inflection-point-for-online-courts-in-india)

*click-covid-19-poised-to-be-inflection-point-for-online-courts-in-india (last visited 28th July, 2020).*  
<sup>19</sup> Richard Susskind, *TRANSFORMING THE LAW: ESSAYS ON TECHNOLOGY, JUSTICE AND THE LEGAL MARKETPLACE* (2000).



based expert systems in law of restricted scope."<sup>20</sup> In his book he even forecast that information and the Internet would "fundamentally, irreversibly and comprehensively change legal practice, the administration of justice and the way in which non-lawyers handle their legal and quasi-legal affairs."<sup>21</sup> Technology has always been seen as the saviour of human workload and something to rely on in times of disaster and calamity. He also predicted that by 2015 the main way in which legal services would be delivered across the world will be through access to online legal service as opposed to consultation with human lawyers.<sup>22</sup> And even though we may have been about 5 years late, this pandemic has brought us closer to this reality of dependence on the internet for basic legal services.

There seems nonetheless some room to argue that the most creative legal work would be difficult for a computer to emulate. But assuming that much sophisticated legal analysis is beyond the competence of computers does not mean that most lawyers do that sort of thing most of the time. In a paper titled 'The Electronic Lawyer' by Richard L. Marcus of UC Hastings College of the Law, he argues that in today's society there is full reason to believe that most lawyers spend most of their time doing legal analysis which is more of the "fill in the blanks" variety; such activity if done by a computer increases the frequency as well as the quality of the work.

On top of that, Indians have also embraced technology over the last decade in

unprecedented ways. All of us have apps like Flipkart, Amazon, Facebook, Zomato on our mobile phones or tablets and maybe even on our smart televisions. Facebook, the social media giant and owner of Facebook, WhatsApp and Instagram, recently invested Rs 43,574 crore for a 9.99% stake in Reliance Industry's Jio Platform,<sup>23</sup> subsequent to which Jio Platforms' equity valuation rose to Rs 4.36 lakh crore. Jio is the leading network provider in India and this investment by a social media giant in their company is a clear sign of the things to come.

If the Courts move to online hearings and pleadings then the productivity of lawyers will increase substantially as visits to courts and long waiting hours will be more of an exception than a rule. Efficiency in the Judicial functioning may double or even triple with modifications in the system. Also, if all judges in the Supreme Court, High Court and trial courts follow suit, then the judiciary will be saving 10 billion sheets of paper and thousands of trees from being felled for the purpose every year.<sup>24</sup>

One feature of this change may also be the empowering of all judges to handle any case, wherever those judges may be located. This would lead to malpractices being limited as there will no longer be familiarity between lawyers and judges who often get acquainted when belonging to the same city which further leads to swaying of a judge's decision based on that acquaintanceship. Also, massive costs, time and risks are also involved in bringing the accused, witnesses, reports etc. to the courts and shifting to the

<sup>20</sup> *id.* at 213.

<sup>21</sup> *id.* at viii-ix.

<sup>22</sup> *id.* at 29.

<sup>23</sup> Facebook Newsroom, <https://about.fb.com/news/2020/04/facebook-invests-in-jio/>.

<sup>24</sup> *supra* note 4.



online medium would cut costs significantly in this sector. This is a revolution that would enable even the law agencies to manage the case proceedings in an electronic format, which would topple the paper-centric judicial scenario; and this is the best time to bring about this significant change. The geographical jurisdiction of courts does not matter in cases of taxation and company law. Hence, moving to electronic hearings for even these cases would ease off a significant amount of burden on our courts. These cases are significant in number with 3,75,306 income tax appeals pending before our Honourable High courts and the Supreme Court in 2014-15, which increased to 4,78,801 in 2018-19, as stated by Minister of State and Finance, Anurag Thakur, in the Lok Sabha during the presentation of the Union Budget for 2020.<sup>25</sup>

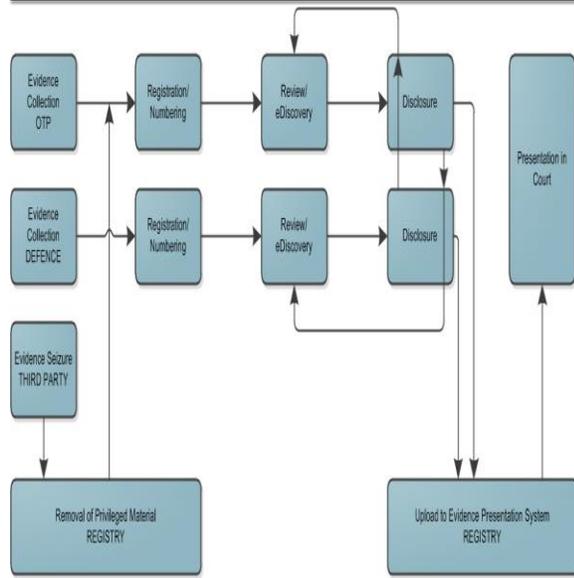
Susan Acland-Hood, Chief Executive of Her Majesty's Courts & Tribunals Service in the UK, has said: 'Our processes don't need to be as old as our principles.' And this quote couldn't match more with the situation in India right now. India is on the cusp of a technological revolution. Our system which had largely evolved during the pen and paper-based record keeping times requires a rejig to eliminate activities and exceptions that do not add value in this new age of computerization. Availability of online case level data across hundreds of case types makes it possible to undertake this exercise with minimal efforts.<sup>26</sup>

The International Criminal Court based in Hague was the place where the Allied powers came together in Nuremberg to prosecute the Nazi leaders at the conclusion of the Second World War. The court managers had to organise a huge volume of documentary evidence and present it in the Court. It included translations, organising of evidence in categories and much more; and presenting the evidence to finally complete the trials took more than one year<sup>27</sup>. The challenges facing the courts and court staff in the future are equally staggering, if not more staggering. The existence of big data, including the contents of mobile devices and tablet computers, along with social media applications presents court managers with a new dimension of challenges. New online procedures if developed by national courts will help in tackling the evidence and the documents. Electronic evidence can take a number of forms: a letter, written in manuscript and scanned as a .tiff or .pdf image; or it could be a document that was born digital, printed and then scanned. E-filings and online storage of these data will help in easy search and a faster delivery of justice.

<sup>25</sup> *Over 4.78 lakh income tax appeals pending at end of March 2019*, <https://economictimes.indiatimes.com/news/economy/policy/over-4-78-lakh-income-tax-appeals-pending-at-end-of-march-2019/articleshow/74441985.cms?from=mdr> (last visited 28th July, 2020).

<sup>26</sup> Dushyant Mahadik, *Analysis of Causes for Pendency in High Courts and Subordinate Courts in Maharashtra*, 118547/2018/NM.

<sup>27</sup> *Electronic Courts And The Challenges In Managing Evidence: A View From Inside The International Criminal Court* by Mark Dillon and David Beresford, URN:NBN:NL:UI:10-1-115615.



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“There cannot be divergent views about the fact that justice cannot be spoon-fed. Justice delivery, even at the door-steps of the stakeholders, requires the stakeholders of the ecosystem to diligently discharge their role and duties, prescribed and required in the scheme of things. The judiciary of the Indian Republic is known and acknowledged as one of the most robust and progressive judicial institutions around the world, supporting and serving a democratic order. The advantages of the Virtual Court System, especially in terms of time, energy and money saved by the litigants and counsels in ensuring their presence before a court are innumerable and

could be game-changers too.”<sup>29</sup> This was one of the statements that was released by the Supreme Court of India on their views on the virtual Court system. And they are absolutely correct.

In India, the cost and inefficiency of dealing with records has crept up slowly over time and become extremely unwieldy, inefficient and cumbersome. Over 4 million cases are pending in India's 21 High Courts and an astounding 26.3 million cases are pending in subordinate Courts across the country.<sup>30</sup> Only 14.7 Judges are available per million people to take care of this vast number of cases. With further growth in the number of cases bound to take place in the coming months owing to the crimes happening even in this lockdown period, with domestic violence crimes<sup>31</sup> being just one of the crimes on the rise, the burden on our judicial system is going to increase manifold.

Under TIFAC’s targeted programme: TECHNOLOGY VISION 2020 “Synergizing Science & Technology with Judicial Processes” an MoU was signed between TIFAC (DST, Govt. of India), CDAC Noida and Gujarat & Delhi High Courts. This MoU was to develop a state-of-the-art tamperproof & secured case recording & retrieval system. While this is just a small

<sup>28</sup> The Evidence Management Work-flow at the International Criminal Court, Mark Dillon and David Beresford, *Electronic Courts And The Challenges In Managing Evidence: A View From Inside The International Criminal Court*, URN:NBN:NL:UI:10-1-115615.

<sup>29</sup> Note on Open Court Hearings released by the Supreme Court of India on 2<sup>nd</sup> May, 2020, PDF format only, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj3rqG1n-bqAhUA6nMBHXP-A74QFjAGegQICRAB&url=https%3A%2F%2Fima>

[ges.assettype.com%2Fbarandbench%2F2020-05%2F06c7b93c-c27a-4702-9b16-5a47841aa88f%2FNote\\_on\\_Open\\_Court\\_Hearing.pdf&usg=AOvVaw2Rv1rcisVIKE2g3\\_zs1muv](https://www.supremoamicus.org/assettype.com%2Fbarandbench%2F2020-05%2F06c7b93c-c27a-4702-9b16-5a47841aa88f%2FNote_on_Open_Court_Hearing.pdf&usg=AOvVaw2Rv1rcisVIKE2g3_zs1muv).

<sup>30</sup> NJDG (National Judicial Data Grid), [njdg.ecourts.gov.in](http://njdg.ecourts.gov.in).

<sup>31</sup> Sumant Sen, Vignesh Radhakrishnan, Naresh Singaravelu, *Data | Domestic violence complaints at a 10-year high during COVID-19 lockdown*, <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece> (last visited 28th July, 2020).



beginning the effects that it can have are far reaching. The overall impact of establishment of E-Courts will result in quick disposal of cases, ease in record maintenance, more reliability on the evidence recorded as physical evidence is more prone to being lost or tampered with, and also this would bring more transparency in the functioning of the District Courts of our country.<sup>32</sup> Other benefits include:

- Reduction in paper work. More ease of record maintenance;
- Sharing of information online between various Courts;
- Playback of live proceedings for court audience;
- Use of digital signature & encryption for integrity of documents;
- Tool for Education & Training of judicial officers and courtroom personnel online itself. No need to travel;
- Doctors need not cancel appointments for critical/emergency patients;
- Court, Hospitals, FSL, Jail can simultaneously share their presentations/documents and other information online in a secured mode;
- Remote parties can depose through Video;
- Conferencing facility using ISDN and Broadband links in E-Courts;
- The documents of high secrecy which cannot be moved out of the department but needs to be shared with other agencies can be directly presented and discussed upon;
- Doctors can depose and give expert opinion in much more relaxed and conducive environment;
- Travel and other related cost will be saved.

<sup>32</sup> Rishi Prakash, T. Mohanty, Ramji Gupta & Vinay Jain, *ICT in Indian Court: Challenges & Solution*,

## V. CHALLENGES IN THE WAY

*“What’s true of all the evils in the world is true of plague as well. It helps men to rise above themselves.”*

**-Albert Camus,**

### The Plague

A few pressing issues need to be addressed by the Government and the Judiciary before the shifting to the digital courts takes place. President of the Supreme Court Bar Association, Senior Advocate Mr. Dushyant Dave in an interview stated that the current technological challenges are a hindrance in accessibility to justice: "Our judicial system is thoroughly ill-equipped to have a computer revolution in the foreseeable future. If India really wants to be one of the fastest growing economies of the world, we should have thought about all this long ago. We have not even thought about it until COVID-19 struck...I think we have missed the bus in more than one way," he said.<sup>33</sup> However, not all is lost. If some drastic changes are brought in the system then India can soon be at par with even the most developed nations in terms judicial system.

First and foremost a glitch-free, seamless technology and dependable network infrastructure needs to be built. And this project would also have to include the installation of free internet in Courts.

There can be instances when online hearings may take more time than the in-person hearings. Lag time in the audio facilities or the video facilities, people coming late online and talking over each

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<sup>33</sup> *supra* note 5.



other: these are just some of the challenges that a judge may have to face while hearing the cases. This challenge needs to be faced head-on rather than being run away from and now is the perfect time to do it. Internet penetration and increase in the use of smart phones has revolutionised our communication. As on 31<sup>st</sup> March 2018, India had a total of 1,206.22 million telecom subscribers and 493.96 million internet users.<sup>34</sup> Technology can enhance public access, ensure transparency and pave the way for active citizen involvement in the functioning of state institutions. Courts must take the aid of technology and the internet to enhance the principle of open courts by moving beyond physical accessibility to virtual accessibility.<sup>35</sup>

Second, lawyers and court staff need to be trained and be acquainted with the new technologies and the up-and-coming video-calling platforms. Often, lawyers are not looking at their screens but down at their files, their outlines and notes, or simply out the window, and cannot see that the judge is hollering "Stop! Stop!" because an objection has been made and the audio stays with the witness rather than obeying the judge. These are some more challenges that we need to be prepared for.

In the 17<sup>th</sup> Judicial Circuit of Florida, Judge Dennis Bailey very recently wrote a letter to lawyers. And as shameful as it was, the letter pointed out instances of irresponsibility, obscenity, and a lack of

decorum amongst the lawyers. She wrote: "One male lawyer appeared shirtless and one female attorney appeared still in bed, still under the covers... Many lawyers appeared in casual shirts and blouses, with no concern for ill-grooming, in bedrooms with the master bed in the background... And putting on a beach cover-up won't cover up you're poolside in a bathing suit."

"The lawyers and their clients need to keep in mind that these ZOOM hearings are just that: hearings. They are not casual phone conversations... So, please, if you don't mind, let's treat court hearings as court hearings."<sup>36</sup>

India has its own set of economic problems and poverty and expecting complete court-decorum each and every time is not possible. What could however be done is the issuing of a set of rules and guidelines which are levelled-down keeping in mind the various challenges that citizens in the lowest strata of the society and living in the remotest areas of the country may face. And once they become the norm, then bringing in new gradual changes. This process will be gradual and would take years, but its benefits will be far reaching.

During the Bloody Sunday Inquiry in Northern Ireland at the International Criminal Court a virtual replica of the city of Derry was created to allow users to view the city as it was thirty years earlier. Using touch-screen a witness could trace his/her movements which were then saved. However, many elderly witnesses could not understand the

<sup>34</sup> Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January-March 2018, PDF format only, [https://traai.gov.in/sites/default/files/PIReport27062018\\_0.pdf](https://traai.gov.in/sites/default/files/PIReport27062018_0.pdf).

<sup>35</sup> Swapnil Tripathi v Supreme Court of India, (2018) 10 SCC 628 (India).

<sup>36</sup> Letter from Judge Dennis Bailey, Judge at the 17<sup>th</sup> Judicial Circuit of Florida, <https://www.westonbar.org/so/61N5VoOJe?fbclid=IwAR3gBGUaUfpC8qs0612nMrw-lSDgZkDFiOiCcKGXBjd3SDS8PisCrslHN6c#/main> (last visited 28th July, 2020).



working of the machine and found it confusing and complex, and in the end the court reverted back to relying on the hard-copy maps of the city. For the remainder of the proceedings, the virtual reality model was rarely used.<sup>37</sup> Thus, in order to show the people that this system is going to be a success, and the investment would lead to smoother functioning, the E-court system must also prove that it would add significantly more value to our judicial system than the perceived difficulty of its use.

Also, there is an economic aspect to this too-allotment of sufficient funds.

In Ireland a planning document made by the Courts Service for the Department of Public Expenditure and Reform was made available to the journalists which told of how a 10-year programme dedicated to the digitalisation of online courts could eventually cut the cost of running cases by more than 20 per cent. However, that same report talked of an investment of 112 Million Euros for the project, equalling more than 960 Crore Indian Rupees.<sup>38</sup>

Dickens once called legal papers as 'mountains of costly nonsense'<sup>39</sup>. And today cost is one of the most pressing issues when talking about our traditional Courtroom methods.

The Indian E-Courts project is more costly and requires a far larger sum of money than Ireland owing to the greater number of Courts here than there at every level.

However, the problems in the implementation of this project have slowed it down tremendously. The E-Courts project of India, conceptualized as early as in the year 2005, has been delayed at its every stage with nearly all identifiable stakeholders being responsible for it. There have been delays in obtaining approvals, budgetary sanctions, in sourcing material from vendors, and in the delivery of services. At the planning stage itself policymakers had difficulties in accurately forecasting problem areas which further had an effect on the coordination of planned activities across the stakeholder groups.

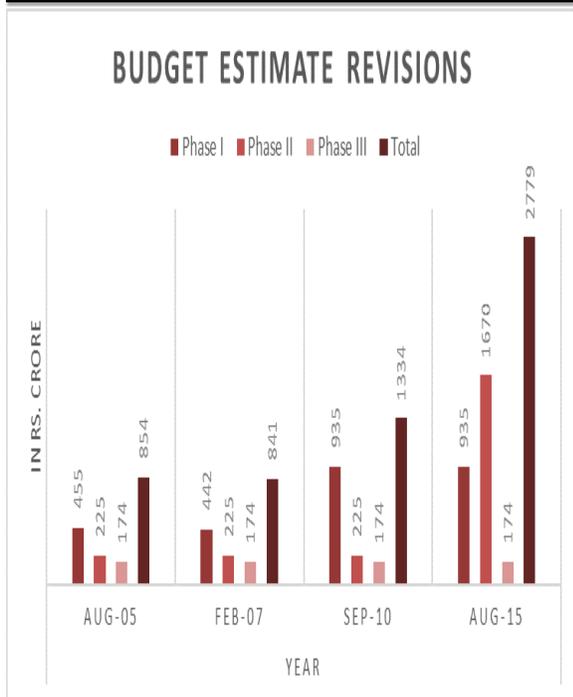
Budgeting has also been a concern. Funds for the E-Courts project have been allocated in the Eleventh (2007-2012) and Twelfth Five Year Plans (2012-2017) for Rs. 740.60 crores and Rs. 1670 crores<sup>40</sup> respectively. This amount of the budget for the E-Courts project, however, had to be repeatedly and drastically revised indicating that policy-makers have failed to reasonably estimate the cost of this project.

<sup>37</sup> *Independent report: Report of the Bloody Sunday Inquiry*, <https://www.gov.uk/government/publications/report-of-the-bloody-sunday-inquiry>.

<sup>38</sup> *Budget 2020, Government of Ireland*, <http://budget.gov.ie/Budgets/2020/2020.aspx>.

<sup>39</sup> Charles Dickens, *Bleak House*, 14, (1996).

<sup>40</sup> Action Plan Document: Phase II (n 28), 5, [courts.gov.in](http://courts.gov.in).



A lack of coordination, cohesion and effective communication between different ministries regarding important budgetary particulars during the implementation of the project has led to the project being delayed in every phase and not meeting the deadline at any point of time. Case in point, for the Financial Year 2013-14, three different official documents reported the budget estimates and the revisions very differently.<sup>41</sup>

Document	Budget Estimate (Rs. Crores)	Revised Estimate (Rs. Crores)	Amount Spent (Rs. Crores)
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<sup>41</sup> Shalini Seetharam and Sumathi Chandrashekar., *ECOURTS IN INDIA: FROM POLICY FORMULATION TO IMPLEMENTATION*.

<sup>42</sup> Rajya Sabha Secretariat, *Seventy Fifth Report: Demands for Grants (2015-2016) of the Ministry of Law and Justice*, PDF format only, <https://emsnmp.files.wordpress.com/2015/05/demand-s-for-grants-2015-2016-of-the-ministry-of-law-and-justice-click-here-open-file.pdf>.

75th report for Demands for Grants (2015-2016) of the Ministry of Law and Justice <sup>42</sup>	118	77.58	38.73
Law Ministry document <sup>43</sup>	108	74.58	38.90
Grant No. 64 (Ministry of Law and Justice note) <sup>44</sup>	108	77.58	38.89

Bringing about more coordination and cohesion while implementing these changes would help our judicial system in the longer run. This is because court officials have noted that computerisation of judicial activities, specifically the automatic consolidation of data on the server and storage on database, has led to an observable reduction in stationery and communication costs in a majority of courts.<sup>45</sup> The NCAER study noted that over 45% of lawyers have

<sup>43</sup> PDF format only, <http://www.lawmin.nic.in/OB2014-15-e.pdf>.

<sup>44</sup> Demand No. 64, Notes on Demands for Grants, 2014-2015, Ministry of Law and Justice, PDF format only, <http://indiabudget.nic.in/ub2014-15/eb/sbe64.pdf>.

<sup>45</sup> Shalini Seetharam, Sumathi Chandrashekar., *ECOURTS IN INDIA: FROM POLICY*



also observed cost savings after the introduction of computerisation and more than 40% of litigants said that computerisation promoted cost-effective justice.<sup>46</sup>

The change can be made gradually after providing the aforesaid infrastructure facilities for both the bar and bench.

## **VI. THE WAY FORWARD**

*“Vision without execution is hallucination.”*

– **Thomas Edison**

In *Scott v. Scott*<sup>47</sup>, Bentham had observed, “In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity.”

In *Naresh Shridhar Mirajkar and Ors. Vs. State of Maharashtra and Ors.*<sup>48</sup> the Court had observed that the right of access to justice falls under Article 21 of the Constitution; and the concept of justice, which too falls under Article 21, would be meaningful and useful only if the public gets access to Court proceedings, especially the live Court proceedings, in matters having an impact on the public at large or on a specific community. Additionally, the key takeaways that emerged from this case were:

- i. Open courts serve as an instrument of inspiring public confidence in the administration of justice;
- ii. Open courts act as a check on the judiciary;
- iii. Publicity of the judicial process is the soul of justice;
- iv. Open justice must yield to the paramount objective of administration of justice; and
- v. Open courts are essential for the objective and fair administration of justice.

Our legal system subscribes to the principle of open justice. Open justice includes real time access to courtroom proceedings to every member of the society. The principle underlying ‘open justice’ was formulated by Lord Chief Justice Hewart: “Justice should not only be done but should manifestly and undoubtedly be seen to be done.”<sup>49</sup>

The Court in *R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* even drew a link between open justice and democratic values by saying that, “...the principle of open justice represents an element of democratic accountability, and the vigorous manifestation of the principle of freedom of expression. Ultimately it supports the rule of law itself.”<sup>50</sup>

In the case of *Santhini v Vijaya Venketesh*<sup>51</sup> Justice D Y Chandrachud said, “Technology must also be seen as a way of bringing services into remote areas to deal with problems associated with the justice

*FORMULATION TO IMPLEMENTATION*, NCAER report (n 61), 74.

<sup>46</sup> *id.*, 109.

<sup>47</sup> (1911) All. E.R. 1, 30 (India).

<sup>48</sup> (1966) 3 S.C.R 744 (India).

<sup>49</sup> King’s Bench, Division Court in *R v Sussex* (1923), All ER Rep 233.

<sup>50</sup> Court of Appeal, England and Wales in *R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs*, (2010) 3 WLR 554.

<sup>51</sup> (2018) 1 SCC 1.



delivery system. With the increasing cost of travelling and other expenses, videoconferencing can provide a cost-effective and efficient alternative. Solutions based on modern technology allow the court to enhance the quality and effectiveness of the administration of justice. The use of technology can maximise efficiency and develop innovative methods for delivering legal services. Technology-based solutions must be adopted to facilitate access to justice...Repeated adjournments break the back of the litigant. We must embrace technology and not retard its application to make the administration of justice efficient.”.

## VII. CONCLUSION

In *Life Insurance Corporation of India v Prof. Manubhai D. Shah*<sup>52</sup>, the Apex Court of our country examined and dwelt on the significance of disseminating information in a democracy: “...The print media, the radio and the tiny screen play the role of public educators, vital to the growth of a healthy democracy...It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular consumption is a must and any

attempt to deny the same must be frowned upon.”

Technology is playing a central role in the transformation of the legal profession. Today a variety of new systems are emerging which are systematizing and even changing the way that lawyers work. One key category of the systems is the ‘document assembly systems’—built using tools like ContractExpress and Exari. These generate high-quality documents after interactive consultations with users and ease off tremendous workload for the lawyers.

Online deal rooms and case rooms are also coming up. These are Internet-based platforms where documents relating to deals and disputes can easily be stored and retrieved. Intelligent search systems can now outperform junior lawyers and paralegals in reviewing large sets of documents and selecting the most relevant out of them,<sup>53</sup> while Big Data techniques are underpinning systems that are better than expert litigators in predicting the results of court decisions, from patent disputes to the US Supreme Court hearings.<sup>54</sup>

Online Dispute Resolution (ODR) is a technology which was welcomed by the Master of the Rolls, the top civil judge in England and Wales as ‘an exciting milestone in the history of our civil justice system’.<sup>5556</sup>

<sup>52</sup> (1992) 3 SCC 637 (India).

<sup>53</sup> Maura Grossman and Gordon Cormack, *Technology-Assisted Review in E-Discovery Can be More Effective and More Efficient Than Exhaustive Manual Review*, *Richmond Journal of Law and Technology*, 17: 3, 1–48 (2001).

<sup>54</sup> Daniel Katz, Michael Bommarito, and Josh Blackman., *Predicting the Behavior of the Supreme Court of the United States: A General Approach*.

<sup>55</sup> Richard Susskind, *Online disputes: is it time to end the “day in court”?*, <https://www.thetimes.co.uk/article/online-disputes-is-it-time-to-end-the-day-in-court-6rpxjbt0x8> (last visited 28th July, 2020).

<sup>56</sup> Civil Justice Council, *Online Dispute Resolution*, PDF format only, <https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>.



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In this system the process of resolving a dispute-from quarrels amongst citizens to conflicts between individuals and the state-is conducted across the Internet. ‘E-adjudication’ is one of various ODR techniques which is used to sort out a staggering 60 million disagreements that arise amongst traders each year amongst eBay users; this number is more than three times the total number of lawsuits filed in the entire US court system.<sup>5758</sup> A widely available platform for ODR is Modria, and another is Cybersettle-a web-based ‘e-negotiation’ system that handled over 200,000 personal-injury and insurance claims of a combined value of almost \$2 billion.<sup>59</sup> India can go ahead with these methods and bring about a long-lasting change to our judicial system.

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<sup>57</sup> John Ramseyer and Eric Rasmusen, *Comparative Litigation Rates*, *The Harvard John M. Olin Discussion Paper Series*, Discussion Paper No. 681.

<sup>58</sup> PDF format only, <https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf> .

<sup>59</sup> Richard Susskind, Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (2015).