

## TEST of the Indian Judiciary: Ushering in ICT reforms

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Given the national lockdown and the physical distancing protocol in place, adopting technology has been the best solution for most sectors. With the unveiling of the e-filing system, the Indian judiciary was also swift in addressing the unique challenges the novel coronavirus has posed to the existing system.

Part of CJI's larger vision of an Artificial Intelligence aided judiciary<sup>1</sup>, the e-filing system - which encompasses 24/7 filing of matters, online scrutiny and defect communication of papers, e-payment of court fees, and lastly, digitally verified signatures for all digitally filed papers as a measure to authenticate them whenever necessary, was launched in a webinar on May 15, 2020. While it can be argued that such sudden imposition of technology has its challenges, there is no denying of the fact that this is going to be the way forward. ***CJI Bobde even remarked that e-filing was the way to virtual courts and that there is no going back***<sup>2</sup>. For now, the court has released two accompanying documents 'e-Filing - User Manual'<sup>3</sup> and the 'Step by Step Guide for E-filing for High Courts and District Courts of India'<sup>4</sup> aimed at training advocates and familiarising them with the interface.

While the digitization process has certainly gained impetus due to the current pandemic, we were already witnessing converging trends in virtualization, digitization, and the opportunities and challenges of a data-driven world. The e-filing system is not the first application of AI by the apex court, and certainly won't be the last. ***On the occasion of Constitution Day in 2019, the court launched 'Supreme Court Vidhik Anuvaad Software' short-termed as 'SUVAS' - a machine learning assisted translation tool to translate the court orders or judgment into nine vernacular languages and vice versa***<sup>5</sup> which will surely go a long way in helping advocates who use English as Secondary Language.

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<sup>1</sup> HT Correspondent, *CJI Bobde calls for use of artificial intelligence in the judiciary*, Hindustan Times, Nov 22, 2019, retrieved from <https://www.hindustantimes.com/india-news/bobde-calls-for-ai-use-in-justice-system/story-z9kezUTrcgs6GDZRARIOML.html>.

<sup>2</sup> *E-filing paving way for virtual courts, no going back: CJI*, Outlook India, May 15, 2020, retrieved from <https://www.outlookindia.com/newscroll/efiling-paving-way-for-virtual-courts-no-going-back-cji/1835672>.

<sup>3</sup> User Manual, e-filing procedure, retrieved from <https://efiling.ecourts.gov.in/assets/downloads/efiling-User-manual.pdf>.

<sup>4</sup> A Step by Step Guide for E-Filing, retrieved from [https://efiling.ecourts.gov.in/assets/downloads/Step\\_by\\_step\\_guide\\_for\\_efiling\\_at\\_High\\_Courts\\_and\\_District\\_Courts.pdf](https://efiling.ecourts.gov.in/assets/downloads/Step_by_step_guide_for_efiling_at_High_Courts_and_District_Courts.pdf).

<sup>5</sup> SCI Press Release dated Nov 25, 2019, Retrieved from <https://main.sci.gov.in/pdf/Press/press%20release%20for%20law%20day%20celebratoin.pdf>.

In common law jurisdictions, every citizen has a right of unimpeded access to a court, and thereby, justice. In India, 'access to justice' is a fundamental right under Article 21. Further, the court has identified various components of the right in the case of *Anita Khushwa v. Pushpa Sadan*. In this case, CJI Thakur had declared that the right was inherent not only under Article 21 but under Article 14 too. He further advanced four facets of it: effective adjudicatory mechanism, the mechanism is reasonably accessible in terms of distance, the process of adjudication be speedy and the litigant's access to the process must be affordable.

The beauty of the newly unveiled system is that if implemented effectively, the reach of 'access to justice' can be ascended. The new system has technically brought the courts to one's Personal Computer (PC), drastically reducing the distance. Further, the system uses a **process matrix design** i.e. the design of the e-filing algorithm to optimise the process by obtaining inputs using which the process can produce optimum results with as minimum wastage of resources (time, human) as possible. However, the fine print of the algorithm is yet to be released and its efficiency can be gauged only later.

With the e-filing of papers underway, we might witness increased efficiency in areas of e-discovery and machine-reading to assist with reviewing of material. Use of machine learning software by courts would also push for similar algorithmic assistance being sought by law firms and independent practitioners. This will drastically change the litigation side of the cases and the research methodology currently employed. If trained properly, algorithms can be even used to predict the relevance of individual documents in large volumes of material and assist the lawyers in their research by handing out relevant case laws.

It must be, however, kept in mind that not all advocates and practitioners have access to technology. Hence, as the courts march forward, they must not be left behind. Justice D Y Chandrachud, the Chairman of the SCI's eCommittee, in a webinar noted that the training of the lawyers was a collaborative process between the bar and the bench and that in the initial phase, the Supreme Court will "hold hands"<sup>6</sup> of lawyers and there would be data operators who would assist them.

Justice Chandrachud exclaimed that the underlying values of the digitization process would be to enhance the TEST (Trust, Empathy, Sustainability, and Transparency) values of the court. Today, every citizen has trust in the courts. It is expected that with the new level of transparency brought in by the introduction of technology, it will only rise. Courts are also expected to empathize with litigants, although to what extent, is unclear while the sustainability and transparency of the new system will have to stand the test of time.

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<sup>6</sup> Live Law on Twitter, accessible at <https://twitter.com/LiveLawIndia/status/1264528801880367109?s=20>.

One prima facie challenge that the machine-learning assisted system will face at the outset, apart from the adaptability issue, would be that of efficiency. In the current virtual court system, implemented as a stop gap arrangement, a major issue is with respect to the long waiting time while your case turns up. “No time slot is allotted for individual case which results in a long, patient wait, and therefore, you have to keep hanging on the system till your turn is called out,” Mr Vivekanand Prasad Singh, Advocate, High Court of Judicature at Patna observed. “There are many other shortcomings in the current *ad hoc* system which urgently require correction. Adoption of a particular technology and proper utilisation of the same are two different things.”

We are yet to see how and to what extent would the globally available technologies be applied in the Indian courts. Just use of technology would enable the stakeholders to achieve more in lesser time, present information and communicate with more impact, and would give more control to the presiding officer resolving the issue of “who has control” as was recently raised by Justice Chandrachud<sup>7</sup> in a webinar.

***Recently, the SCI has been of the view that proceedings of cases before the Supreme Court, that are of constitutional and national importance should be broadcasted to the public.*** The Court has read the ability to view live broadcasts of the Supreme Court proceedings into the right of access to justice.<sup>8</sup> The spirit of the judgment can be realised by coupling advanced telecommunications systems with the e-courts that would enable proceedings to even span continents via audio/visual networks. The Courtroom 21 Project<sup>9</sup> of the William and Mary Law School, which has been endorsed by several State Supreme Court Chief Justices and many other prominent jurists in The United States<sup>10</sup>, can be taken as a model to create the required “electronic-architecture” in India’s courts.

Access to justice has been impeded in India because of a multitude of reasons. However, with the introduction of ICT in the courtrooms, we hope to make access to courts more affordable. The more automated the process, often cheaper it becomes. It must also be taken as a caution that technology is no panacea. Going forward, as New-Age Technology continues to disrupt our lives, it will require new skill-sets and will create new opportunities for many, while many will have to upgrade themselves. Strategic planning is critical, now more than ever.

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<sup>7</sup> Live Law on Twitter, accessible at <https://twitter.com/LiveLawIndia/status/1264524900317884417?s=20>.

<sup>8</sup> Swapnil Tripathi v. Supreme Court of India, (2018) 10 SCC 639 (India).

<sup>9</sup> Bret Rawson, *Courtroom 21 Project - Technology White Paper*, accessible at <https://www.exhibitone.com/wp-content/uploads/2016/09/Courtroom-21-Project-Case-Study.pdf>.

<sup>10</sup> Courtroom Information Project under Courtroom 21, accessible at <https://www.vsb.org/cip.html>.