
Hybrid Courts: A New Way to Justice and Accessibility

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अनागतविधानं तु कर्तव्यं शुभमिच्छता ।
आपदाशंकमानेन पुरुषेन विपश्चिता ।।

... Lord Rama

Above – quote is taken from Valmiki Ramayana, which simply translates to “Wise man should foresee tragedy and misfortunes, and take action to prevent and overcome such tragedy and misfortune before it strikes”.

Indian Judicial system although is one of the most robust justice delivery systems of the world, is at present plagued with one of the major issues i.e., accessibility to Courts to all and ever-increasing costs of the proceedings.

This problem further aggravates with the ever-growing population. For instance, in many states like Rajasthan and Uttar Pradesh, there are many matters which fail to reach the Courts. There are times, when the statements and evidences are not recorded merely for the reason that the witnesses fail to reach the Courts on time or try to avoid Court proceedings and cases gets prolonged. This not only results in piling of the matters to be decided, but also swindles the faith over our judicial system.

It was in the year of 2007, that the Government of India, came up with e-Courts Integrated Mission Mode project for the computerization of District and subordinate Courts with the objective of improving access to justice with technology. This project was conceptualised on the basis of the “National Policy and Action Plan for implementation of Information and Communication Technology (ICT) in the Indian Judiciary - 2005”.

As per a report of the Press Information Bureau, there have been total of 10 key focus areas for digitization of the Courts:

Implementation of SMS, Email services, setup of Kiosks, Judicial services center and e-courts website and applications.

Implementation of e-filing system.
Implementation of e-Court Fees.
Setup of e-Sewa Kendra in all Courts.
Implementation of technology enabled process for serving and issuing of summons.
Establishment of National Judicial Data Grid (NJDG).
Enabling Courts to undertake hearing through Virtual conferencing mode.

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Live streaming of Court proceedings.
Upgrading the existing websites of the court to the S3WaaS (Secure Scalable & Sugamya Website As A Service) platform.
Search portal for obtaining judgements and orders free of cost.
The above initiatives have been implemented in three phases:
Phase I and Phase II of the e-Court Mission mode project:

Phase I of the project was a pilot project, with an overall expenditure of ₹ 639.41 Crore, and Phase II of the project had an overall expenditure of ₹ 1668.43 Crore. Both phases together achieved the following milestones:

18,735 District and Subordinate Courts have been digitalized till date.

99.4% of Court Complexes have been connected through WAN.

1272 Jails have been enabled through Virtual Conferencing.

JSC (Judicial Service Centers) have been established in various court complexes, especially High Courts to act as filing counters.

13672 Courts have been enabled with software.

Establishment of the National Judicial data Grid: Data Repository of orders, judgments, and case details of 18,735 District & Subordinate Courts created as an online platform under the e-Courts Project.

Phase III of the e-Court Mission project

Phase III of the project was approved by Union Cabinet chaired by Hon'ble Prime Minister as a central sector scheme spanning four years (2023 onwards) with a budget of Rs. 7210 Crores.

The basic philosophy behind Phase III of the project is "Access and Inclusion".

We need to understand that in modern times, the complete access to justice can only be achieved through inclusion of technology. We need to understand this that our Indian Judicial system, though rigid but is also one of the most flexible judicial systems which quickly adapts to changes. For instance, the Hon'ble High Court of Delhi, recently rolled out e-Inspection service of the Judicial files, which soon is going to be implemented throughout the nation. The Live streaming of the court proceedings, further enhances the transparency in the system and inclusion of the general public in the justice making system.

Justice delivery systems is an indispensable pillar of any civilized society and faith needs to be instilled in the heart of the General Public. One of the reason why people refrain from taking legal recourse is the unnecessary adjournments and delay in disposals of the matters. We also need to understand that lawyers specially in urban areas like Delhi, Mumbai etc., face a major issue of travelling and traffic jams which ultimately delay in final disposal of the matters. Again, this problem can be easily tackled with hybrid hearing process, wherein the Lawyers

as well as Litigants unless it is extremely necessary, can join the proceedings through Virtual Conferencing. This would not only instil the faith of the litigant in the judicial system but would also prove to be cost effective and more efficient than travelling physically to the Courts. With the same view in mind, the Hon'ble Chief Justice of India, gave a direction to all the High Courts to not to deny video conferencing facilities or hybrid mode of hearing to any member of the Bar or Litigant.

But it's not always rainbows and butterflies. The inclusion of technology and hybrid mode of working of the courts do come with its own cost. As on date of writing this article, Indian Courts have above 4 Crore (44704059 to be precise) pending cases. Digitizing the entire records would not only be cumbersome but would also take time.

The condition of the Lawyers and Litigants is not much different. There have been instances, wherein the lawyers specifically those who are not accustomed to technology have been struggling with the e-filing systems as well as online mode of hearing.

Furthermore, there is an acute shortage of skilled staff in the Courts. For instance, in Courts outside Delhi and other metropolitan areas, the Order sheets are not getting uploaded on time leave apart inclusion of the hybrid mode of hearing thereby, making the implementation of the project in these areas a far-fetched dream. Several judicial officers as well as staff at district level are also not comfortable with the e-Courts and hybrid mode of hearing.

The condition of the Lawyers and Litigants is not much different. There have been instances, wherein the lawyers specifically those who are not accustomed to technology have been struggling with the e-filing systems as well as online mode of hearing. There is further a need to provide access to high-speed internet in the court premises for the use of lawyers, litigants and the Court staff to promote hybrid mode of hearing. This can only be achieved through rigorous trainings and a robust feedback and monitoring system. There is another big problem outside the Court premises. India is a land of large landmasses with low to absolutely no internet connectivity. On one hand, if through use of technology we will be able to reach to larger

population, the lack of internet connectivity in these areas would definitely prove to be a barrier to achieve the same. Even the Courts and Tribunals in these areas face this very issue and are unable to implement the project within their premises.

The other drawbacks of the system are realised when the matters reach the evidence stage. The evidences and statements of the parties cannot with the present technology be recorded through video conferencing, because of the question over the reliability of the same, therefore forcing the litigants and the judicial officers to opt for traditional means. There, is further need to bring in amendments to the existing laws to produce of undertrials before using technological means and to empower the jail complexes with internet facilities, which would not only help in speedy disposals but would also aid in curbing unnecessary financial expenses of the state.

Once, we achieve the above technological barriers, the Phase III of the e-Courts mission would definitely achieve its objective of “Access and inclusion”.

Hybrid hearing boon or bane?

For the last one and half years there has been excitement regarding the announcements made by Hon’ble Chief Justice of India regarding entry of new technology into justice delivery systems. There has been insistence for hybrid hearing in all courts. This coupled with E-filing has been hailed as giant leap towards democratisation of Indian Judiciary.

Without basic facilities in courts (especially trial courts) like updated computers with proper software , networking (lack of proper supply too) e-filing has created difficulties and many high courts have responded to remove difficulties or slowed down the process till proper infrastructure is in place.

It is claimed that Hybrid hearing will facilitate lawyers from any where to argue any case in any court. Coupled with live streaming the litigant public can have access to court proceedings. Many concerned persons including advocates, persons who held and are holding posts of judges have a word of caution.

The judicial process is not limited to judges hearing arguments of both sides and delivering judgment alone. We must be bothered about creation of well informed mature bar who has social consciousness as core commitment. Students from colleges enter profession and start practising in courts. The bar has to blossom with specific reference to local needs and local laws for local populations. Young student who enters the court hall has

to learn basic ingredients of court room behaviour. The young advocates will earn the art of presenting a case while watching the seniors. The discussions among bar members on an issue will result in churning of minds. When there is exchange of views ,ideas (often conflicting) discussions and challenges the minds will be razor sharp.

The bar in each court has to carry forward the great traditions. Each generation of lawyers in each court has to ‘grow’ gradually. This does not happen on couple of virtual conferences. Group of lawyers in each age group will have to discuss in court halls ,in court premises, in canteens. While arguing one senior will whisper to young advocate about an earlier unreported case. Then some quick discussion and then new point will emerge. Each area has its local laws. The interpretation of local laws for the relevant cases has to evolve over time. New generation has new ideas, new view point. This has to mingle/merge/ mix with earlier practises and then only better ideas, practises emerge.

The younger generation needs to be told what to do in court and what not to do in front of judge. How to address the court, how to interact, how to behave towards other members of bar. The court premises is a modern gurukul. HYBRID hearing kills the process of learning ,stunts the process of blossoming. Hybrid hearing is like a video game!!

Yes ,the learned lawyers from Delhi, Bombay, Chennai, Prayag Raj, Kolkotta bring in the knowledge when they argue the cases. It is also difficult for each of these knowledgeable, wise persons to travel to small courts and these local lawyers will be at a loss not able hear these wise men/women.

But when Hybrid hearings become order of the day there will be no chance for any local lawyer to become ‘wise’ and attain knowledge through regular day to day grinding. The Hybrid hearing kills the local talents.

Many tend to brush away any small doubt/question about hybrid hearing branding this as fear of local lawyers who have vested interests and control the system and who are worried about losing practise to wise knowledgeable men/women who appear on computer screen.

The talent has to be groomed over a period of time. The social interaction in court premises will guide the bar to be more mature and be socially committed. Good bar produces good judges. Will hybrid hearing help groom and sustain good, sober, knowledgeable, responsible bar.?

***LEARNED PERSONS ACROSS THE COUNTRY
NEED TO PONDER OVER THIS.***