

INTERNATIONAL PERSPECTIVES

The Indian Judicial System: Transition from Print to Digital

Abstract: In this, the third of a trilogy of articles for LIM written by Raj Kumar Bhardwaj, the author addresses the move from print to digital legal information within the Indian judicial system. He describes briefly the historical development of the legal system and the enormous backlog of cases that are pending throughout the court structure, before turning attention to the role of ICT in the legal system and the moves under way to create a more efficient electronic administration for the judiciary in India.

Keywords: court administration; legal systems; information technology; India

INTRODUCTION

The court system in India is divided into three stages: (i) Trial and Session Courts (ii) the 21 High Courts at State level and (iii) the Supreme Court. Supreme Court Judgments are binding on the High Courts of various states and the lower judiciary. Overall, the court system in India, whilst maintaining an independent judiciary, has tended to be inefficient and has also suffered from corruption. A very serious backlog of pending cases in the courts has led, at various points, to calls for reform and has invited the greater incorporation of information and communication technology (ICT) to assist with making the necessary improvements throughout the judiciary and across the legal system in India.

BRIEF HISTORY OF THE INDIAN JUDICIAL SYSTEM

The history of law in India has layers of complexity and many influences. Courts did not exist in the early societies of India and the mode of justice was in the form of revenge, which was a private matter. During the Vedic and pre-Mauryan periods (more than 2,000 years ago), kings presided over the law courts and decided cases by relying on law codes or *smritis* (codes of Hindu customary law). The laws of Manu and the writings of Indian jurists refer to the existence of peoples' courts at the village level. At that time codes of conduct for Judges, and procedures for dispensing justice, existed in order to allow of the legal system to function. Justice was dispensed on the basis of norms laid down in the scriptures in the Vedas, Dharma sutras, Vedangas, Purans as well as the customs and usage of communities. (Khanna, 2008). The Mughal period brought with it the domination of Islamic jurisprudence which was laid down by the Quran

and the Muslim law of Shariat. There were mainly three kinds of court in that period: (i) Court of religious law (ii) Court of secular cases (iii) Court for political cases (Khanna, 2008).

During the British period, the power to dispense justice rested with East India Company and later the English common law system was introduced. Under the earlier period, the East India Company had sole responsibility for the judicial system. The company was granted a charter by King George I in 1726 to establish 'Mayor's Courts' in three metropolitan cities – Madras, Bombay and Calcutta—and the functions of the company increased considerably after the victory in the Battle of Plassey in 1757. After that, the courts expanded to other parts of the country. After 1857, the power of the company's territories in India passed to the British Crown. Subsequently the Supreme Courts were established and these courts were transformed to the first High Courts by the Indian High Courts Act passed by the British Parliament in 1862. In the same year the Law Commission, under the chairmanship of Thomas Babington Macaulay, prepared the Indian Penal Code (the main criminal code of India) which was subsequently enacted into force.

Today, in independent India, the Constitution of India is the guiding light in all matters including with the legislature and concerning the judicial system in the country. In India, the union and the states have their own executive and legislative branches. The union territories are governed by the National Government. The law generated by the Union is binding to all the States. India has a bicameral Parliamentary system, whose upper house is the Council of States (Rajya Sabha) and lower house is the House of People (Lok Sabha). (Thanuskodi, 2010). The judiciary remains independent within the country.

The E-Committee, which is mentioned later in this article, and was constituted by Supreme Court of India,

has indicated that at present 2,066 towns have District Courts but in all probability, in some of the towns, the court complexes may be more than one. The number of court complexes is 2,500.¹ India has One Supreme Court and twenty one High Courts. The Union Government has approved an increase in the number of judges over the next five years to reach 37,000 judges to deliver more speedy disposal of pending cases in the lower and higher judiciary². The present strength in terms of numbers of judges is: 25 in the Supreme Court, 626 High Court Judges, 14,275 Judges in the Lower Judiciary³.

BACKLOG OF CASES

Having briefly explained, for the purposes of context, the historical development of the legal system in India, it is now useful to understand some of the difficulties of such a large and complex court system. In 2011 it was reported by the Law Minister, Salmon Khurshid, that there were 57,179 cases pending in the Supreme Court. The Government had approved the establishment of the National Mission for Justice Delivery and Legal Reforms. "The major goals of this body would be to increase access by reducing delays and arrears in the system, enhance accountability through structural changes and by setting performance standards and capacities."⁴ Overall, there are some 30 million cases that are pending in 21 high courts and lower judiciary⁵. This figure is in addition to the number of pending cases in the Supreme Court of India.⁶ Described below are some of the recent improvements that have been made using ICT to begin to improve court efficiency in India.

DEVELOPMENTS IN THE ROLE OF ICT IN INDIA

Malik (2002) stated that the objectives of the ICT models were to offer integrated support to judicial and administrative functions, to form an interconnection of internal and external judicial institutions and develop a medium to monitor and control legal services. In a more recent study, L. Philemon found that there was a considerable disconnect between information and communication technology and the nature of legal services and this was caused by a lack of knowledge about the application of information technology where legal systems were concerned. This was a common scenario, not just in India but in many parts of the legal world. (Philemon, 2007).

In 2009 Mr. C. P. Gurnani, CEO of Tech Mahindra, stated that with information and communication technology, India's case backlog could be reduced to three years. Since then, a new e-justice system has been established and includes the use of video hearings (reducing transportation costs), case filing operation systems, RFID (Radio-frequency identification)-based file tracking and a searchable e-library.

National Action Plan for the Implementation of ICT in the Indian Judiciary

Back in the mid-2000s a proposal was submitted to the Minister of Law and Justice in the Union Government for the creation of an E-Committee to formulate a national policy on computerisation of the Indian Judiciary and to advise the judiciary on technological, communication and management-related changes. The Union Cabinet approved the constitution of an E-Committee under the Chairmanship of Dr. Justice G.C. Bharuka, a retired Judge of the High Court of Karnataka, with three other specialist members. As a result a national policy was prepared, and published, by the E-Committee of the Supreme Court of India in 2005.

The objective of ICT implementation was to enhance judicial productivity both qualitatively and quantitatively as well as make the justice delivery system affordable, accessible, cost effective, transparent and accountable. The project has been divided into three phases

- (i) Initiation of the ICT Implementation in the Judicial System;
- (ii) Coordination of ICT infrastructure for the Judicial System;
- (iii) ICT coverage of the judicial process from filing to execution and all administrative activities.

The E-Committee is the apex body in ICT implementation. A Group of National Advisors were formed which comprise of members from the National Informatics Centre (NIC), Indian Institute of Technology (IIT), Indian Institute of Science (IISc), the Judicial sector as well as the ICT sector.⁷

Developing the ICT infrastructure has primarily involved the following:

- A Network Planning and Feasibility Study;
- Site Preparation;
- A Communication infrastructure;
- ICT Hardware and System Software;
- An infrastructure for E-Committee.

In the process of building the ICT infrastructure in India in recent years at a practical level some 12,840 laptops were supplied to over 9,000 judges with internet connectivity.

E-JUDICIARY IN INDIA

Dr. APJ Abdul Kalam Azad (2007), the former President of India, initiated the e-Judiciary system as a national policy and an action plan for the embedding, and implementation, of ICT within the entirety of India's judiciary. Tere (2008) described an e-judiciary as an electronic representation of the usual (more traditional) judicial system. Such a system supports all operations of the judiciary by utilising technology, such as the recording and storing of legal judicial data. He further defined the

e-judiciary as a digitisation of judicial information in a safe environment in order that legal proceedings could be exchanged between different investigating authorities. It also meant that legal information could be made accessible online to the public.

Dr. Kalam (2010), at the special convocation function of the National University of Advanced Legal Studies (NUALS), emphasised that the Supreme Court should transform the present system into an e-judiciary and proposed action for connecting all the 15,000 courts in the country, from the district courts to the apex courts, through a wide area network. The scope of the project was to develop and implement the relevant ICT technology in 700 courts of Delhi, Mumbai, Chennai and Kolkata and 900 Courts in the 29 capital city courts of the states and union territories (UTs) as well as in 13,000 district, and subordinate, courts (Pandurangan, 2009). These projects have the following objectives:

- a) To assist the judicial administration of the courts in streamlining their daily activities;
- b) To make available the transparency of information to the litigants;
- c) To provide a legal and judicial database to judges;
- d) To reduce the pendency cases in the courts.

ELECTRONIC JUDICIARY PROJECTS

A number of projects have been created as part of the e-Judiciary and these are:

(i) e-Courts Mission Mode Project.

This project is one of the national eGovernance projects that has been implemented in the High Courts and district/subordinate courts. It was based on the National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary submitted in 2005- by the E-Committee of the Supreme Court of India. The scope included the computerisation of 14,249 district and subordinate courts in 3069 court complexes and an ICT upgrade of the Supreme Court (SC) and the High Courts. The estimated expenditure under this project is Rs. 935 Crore and the project is supposed to be completed by 2014. (www.nic.in)

(ii) eCCMS Web 1.0 (Web Based Court Cases Monitoring System):

The Web-based Court Cases Monitoring System (eCCMS Web) – <http://ccmspb.gov.in> - facilitates the monitoring of court cases of any type pending in different courts. It can provide the latest information about any pending case. It assists officers to track cases, prepare cause-lists in advance, maintain a complete history of cases including follow-up action taken.

(iii) e-Litigation

This project was started to help the Law & Judicial Department in India to monitor the court cases that

were being handled by the various government department in Delhi. It offers a facility for the online process of engagement of counsels for court cases. The SMS facility to Government Counsels has been incorporated into the system.

(iv) District Court Information System (DCIS)

The DCIS project has been implemented in 30 District and Sessions Courts, and some other courts, for capturing case-related information from the filing of the case to its consignment. Numerous kinds of reports can be generated such as a case status, cause list, interim orders and judgments. Some of the other systems implemented under the project includes Leave Management Software, the Lower Courts Statistical System (for calculating the quarterly disposal of each court), the Credit Information System (for evaluating the work performance of judicial officers), Salary Accounts and Recruitment System.

(v) Integrated Software for Judicial Functions of High Courts:

This project provides a complete workflow solution for High Court, including filing, refiling, and scrutiny, detailed entry of the case, case grouping, cause list allocation, generation, and case status. besides this, case status, cause list & judgments on the website <http://highcourtchd.gov.in> can be accessed. Litigants and lawyers can also access the status of their cases through 6 touch screens installed in the High Court building. (www.nic.in)

(vi) Model e-Courts

A Model e-Courts pilot project was launched at the District and Session Courts in Gujarat in 2009 in order to make the judicial process more transparent and the delivery of justice faster. The e-Courts project will be providing authentic audio-video recording of proceedings with video conferencing facilities for linking the central jail, courtroom, Police Commissioner's office and the Forensic Science Laboratory respectively (Dasgupta, 2009).

(vii) e-Filing system

The High Court of Punjab and Haryana, in Chandigarh is the first high court to start the e-Filing system. Previously, the Supreme Court of India had also started e-filing through which lawyers can file litigation after submitting the petition in soft copy in compact disc.

(viii) e-Cause List

Cause lists are the scheduling of cases to be heard by the Courts on the following day. The National Information Centre Division in the courts maintains the Cause lists of the Supreme Court and 21 High Courts, and 10 Benches. With the help of e-Cause lists advocates are able to download their cause list as soon as lists are generated every evening. E-cause lists have had a significant impact by (a) helping to prepare the case, (b) advocates can

generate a customised cause list with their own case list, (c) the general public can check the listing of a case. (d) it saves money, time and effort of advocates and parties. The website of cause lists is: www.causelists.nic.in (also Pandurangan, 2009).

(ix) **Case status**

This service allows both the advocates and the people to know the status of a case whether pending or disposed of. It provides daily orders and gives the latest information which includes party names, subject category, disposed of details, advocate, the waiting position, the date of the next hearing and the last date of listing. (Pandurangan, 2009).

OTHER SPECIFIC INITIATIVES

Digitisation of Allahabad High Court

The Allahabad High Court has initiated the digitisation of court files in collaboration with the IIIT-A (Indian Institute of Information Technology – Allahabad), a project to be completed in 2 years. The project also involves training High Court staff and providing consultancy. The court decided to start the digitisation process with IIIT-A because of their expertise in the area and their involvement in developing a universal digital library (UDL). About 15 scanners have been acquired for the project and the courts are completing a comprehensive survey to identify the total number of files to be digitised.

ICT in the Gujarat Judiciary

In 1996–97 the process of information and communication technology application in the district of Gujarat was initiated with the help of in-house software developed by the NIC-High Court of Gujarat. This was FoxBASE running on SCO UnixWare and the application

has been successfully running at all 24 Appellate Side Courts as well as City Courts of Ahmadabad. (Verma, 2011).

ICT application in Delhi Judiciary

In the year 2002–03, the Ministry of Home Affairs, along with the Planning Commission and Ministry of Law and Justice, granted an amount of Rs. 49.80 million for the computerisation of district courts in Delhi. In the process a database was created of all the 82,265 civil cases and 389,138 criminal cases that were pending in the court.⁸

As part of this operation, an automatic generation of cause lists was begun. Also, an automatic monthly statement was generated showing instances of fresh cases, disposal of the cases during the month and pendency at the end of the month. Prior to computerisation, filing of material was scattered in different courts causing great inconvenience to lawyers and the public. The creation of a centralised filing system has allowed the litigant to make queries via the internet or by visiting the Information Counters. Public Relation Officers have been appointed to assist by answering specific queries regarding the allocation, transfer and pendency of cases and their present status.

CONCLUSION

The size and complexity of the court system in India, and the many perceived inefficiencies associated with it, have focused the government on funding vast improvements to the legal administrative court structure. The application of ICT and the attention given to a range of initiatives, many of which are mentioned above, have begun to reshape the efficiency of the legal landscape in India which has a long and complicated history. However, the size of the task is significant and it will take time.

Footnotes

¹ National action plan for implementation of information and communication technology in the Indian judiciary Prepared by E-Committee Supreme Court of India, New Delhi Available at <http://supremecourtsofindia.nic.in/ecommittee/action-plan-ecourt.pdf>.

² "Over 3 Crore Cases Are Pending in Courts in India: Government." Editorial. Deccan Chronicle. N.p., 7 Mar. 2013. Web. 15 July 2013.

³ <http://www.supremecourtsofindia.nic.in>

⁴ <http://www.firstpost.com/fwire/government-sets-up-national-mission-for-justice-delivery-52488.html>

⁵ "Union Government Approved Decision to Double the Number of Judges in next 5 Years." Jagran Josh 8 Apr. 2013: n. pag. Web. 15 July 2013. <<http://www.jagranjosh.com/current-affairs/union-government-approved-decision-to-double-the-number-of-judges-in-next-5-years-1365401577-1>>.

⁶ Court News, January – March 2012 Vol. VIII (1), 1–20.

⁷ <http://supremecourtsofindia.nic.in/e-committee.htm>

⁸ <http://delhicourts.nic.in/ICT%20IN%20THE%20DISTRICT%20COURTS.pdf>

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Useful websites

<http://www.indiacode.nic.in>

<http://www.indiankanoon.org>

<http://www.wikipaedia.com>

<http://www.supremecourtindia.nic.in/ecommittee.html>

<http://delhicourts.nic.in/ICT%20IN%20THE%20DISTRICT%20COURTS.pdf>

www.bhu.ac.in/mmak/resent_article/JusticeKatjusLec.pdf

<http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>

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