

Helping and hindering justice

Technology can be a game changer, but it is not a panacea for the ills plaguing courts



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In early June, while dealing with issues arising in connection with the CoWIN portal, the Supreme Court pointed out some of the major impediments to the delivery of vaccines to the people at large. They were: inadequate digital literacy across the country, inadequate digital penetration, and serious issues of bandwidth and connectivity, particularly in remote and inaccessible regions. Despite the ambition of bringing the benefits of vaccination to every human being in the country, the policy was falling short of its goal because of the inherent difficulties pointed out. The premise in the observations of the court was that relying solely on digital transformation may not be a sound idea. It could result in exclusion of a large section of the population on account of the enumerated shortfalls. Soon after this, the government said that CoWIN registration would no longer be mandatory for vaccination.

Rising to the challenge

What the court observed about the delivery of vaccines through digital portals alone is equally true of the delivery of justice, which is as important as ensuring the health of the people of the country. Although the courts have risen to the challenge posed by the COVID-19 pandemic, by using existing technology at an unprecedented scale and speed, it is proving to be an uphill task. In the wake of the pandemic, courts began using facilities like e-filing in true earnest. In May 2020, the Supreme Court also introduced another innovation: a new system of e-filing and artificial intelligence-enabled referencing. This was meant to herald efficiency, transparency and access to court delivery services for every user.

The judiciary's effort is not merely a one-off action to tide over the pandemic-created emergency. It also seeks to harness technology in overcoming and resolving the intractable ills that have for long dogged the judiciary. These include the massive backlog of cases and unacceptable levels of judicial vacancies across the country at all levels.



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Deep house cleaning is required in each court and there also needs to be an outreach to all litigants in a cost-effective, convenient and efficient manner. Perhaps, this could be the opportune time for making lasting changes that could transform the creaking justice delivery system in India. But an over-reliance on technology is not a panacea to all the ills plaguing the courts and if done without forethought, could become counterproductive.

Let us take the analogy of vaccination a little forward. Just like the rigorous process of vaccine trials is a prerequisite to rolling out universal vaccination programmes, after which technology is incorporated across the board, it would be imperative to resort to performance audits and sandboxing measures to carefully understand and gauge the potential and risks. Evidence shows that despite considerable investment to digitalise judicial infrastructure and administration, beginning with Phase 1 of the eCourts in 2007, the judiciary's performance during the pandemic period has left a lot to be desired. In absolute terms, data show that pendency reached an all-time high during this year of virtual functioning of the courts. In the case of district courts, pendency rose sharply by 18.2% between December 31, 2019 and December 31, 2020, according to the National Judicial Data Grid. Across the 25 High Courts, pendency witnessed its sharpest increase of 20.4% in 2019-2020. This, of course, does not include all those matters that were never filed.

The way forward

Given that the pandemic caught all institutions by surprise, there is bound to be teething trouble. However, now that we are in its second year, our next course of action should be based on an evidence-based rational approach. For instance, we need to study and understand why video conferencing in criminal cases has neither shortened trials

nor reduced the number of people awaiting trial. Similarly, we need to address uneven digital access: while mobile phones are widely owned and used, access to the Internet remains limited to urban users. Lawyers in semi-urban and rural districts find online hearings challenging, mostly due to connectivity issues and an unfamiliarity with this way of working.

Just as doctors cannot be replaced by chatbots, technology, no matter how advanced, cannot be a substitute for judges of whom there remains a big shortfall. The India Justice Report 2020 pegs vacancies in the High Court at 38% (2018-19) and in lower courts at 22% for the same period. More than four out of every 10 posts of High Court judges remain vacant as on August 1 this year.

If deployed with adequate data-based planning and safeguards, technological tools can be a game changer. However, technology is not per se value-neutral – that is, it is not immune to biases – and therefore, it must be properly evaluated for us to see whether it works to increase the power imbalance between citizens and the state or whether it affirms and furthers citizens' rights.

Open court is a cardinal principle in the delivery of justice. The question of public access cannot be pushed to the sidelines but must be a central consideration. The shortage of technical infrastructure has too often meant that access to online hearings is curtailed. This ad hoc deviation cannot be allowed to become a habit of convenience.

The latest Vision Document for Phase III of the e-Courts Project seeks to address the judiciary's digital deprivation. It envisages an infrastructure for the judicial system that is 'natively digital' and reflects the effect that the pandemic has had on India's judicial timeline and thinking. However, we must keep in mind that there will always be an inherent resistance to change, whether for good or bad. Therefore, two preconditions need to be addressed: adequate trained manpower, and tailoring systems to the specifications and contexts that we require. This is more a matter of mindset – not just of judges, but of litigants and lawyers as well; and is linked closely to trust in digital interventions.

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