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VIRTUAL COURTS, REAL BARRIERS: THE PARADOX OF ACCESSIBLE JUSTICE IN A DIGITIZED JUDICIARY.

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Abstract

The framework for a digitised judiciary through e-courts and e-governance was introduced as a milestone towards a more developed justice delivery system. However, paradoxically, it ended up creating procedural barriers in justice delivery. The framework has increased the digital divide that already existed in our society. The lack of technological literacy is a procedural disadvantage for rural people to access justice. This digital divide, even after existing technologies, undermines the right to be heard in virtual proceedings and fair trial in marginalised areas.

This paper analyses the hurdles in the effective implementation of the e-governance policy and the challenges like Algorithmic bias, Professional Liability, and over-reliance on AI outputs arising from the expansion of Artificial Intelligence-driven work by legal professionals. The dependence on AI leads to burnout of critical interpretation amongst legal practitioners. This undermines the core principle of natural justice. Thus, while the implementation of e-courts and various legal databases leads to modernisation and expedited justice delivery, the absence of equal access, accountability still prevails. Ultimately, this paper proposes a two-fold reform: firstly, that digitisation of the judiciary is ineffective without a constitutionally rooted criterion for technological literacy and accessibility, and thus calls for legislative intervention to propose a guideline for minimal technological accessibility and literacy. Secondly, the paper demands regulatory attention towards the professional liability for discrepancies in the advent of AI and AI hallucinations in pleadings.

Keywords: Digital Divide, Procedural Injustice, Technological illiteracy, Artificial intelligence, Natural justice, AI Hallucination

INTRODUCTION

The framework of the judiciary in India has been based upon various traditional and modern sources of law. Out of all the modern sources of law, precedents are a source that is based upon judicial pronouncements and interpretations. The legal framework has held the Ratio Decidendi of any judgment to be held as an enforceable precedent, as judgement which uniformly guides future decisions in case of the same material facts and circumstances. The introduction of artificial intelligence challenges this substantial aspect of justice. On the other hand, technology affects the procedural aspect of justice delivery. It includes effective e-governance in order to reduce institutional imbalances, red tape, and maintain transparency. Maintain procedural fairness. The framework of e-governance and AI was enforced in India in 2005, while such frameworks are currently limited to procedural advancements, the question that the legal fraternity is dealing with is whether Artificial Intelligence shall enter the ambit of the substantial decision-making process?. Well, in such a case, both the Due process of justice as well as the procedural justice will be at stake. The introduction of technology has flourished as a great development in the judicial system. It has reduced the pendency of cases to a huge extent. The enforcement of online portals for each court has organised data and information and eased the complexities of the system. On the other hand, it has lacked effective implementation and failed to reach the doorsteps of the people who were the most in need of these accessible facilities due to the digital divide in society. The problem of the masses still remains unresolved as the physical courts still have pendency of cases, and virtual facilities are still inaccessible to rural areas. The government have made various reforms and provisions to eradicate such issues, but the lack of effective implementation as a procedural loop remains a question. Even though existing procedural loops can be resolved through various reforms, the bigger question is whether the judicial system can afford the substantial loop of AI-driven work.

Research Methodology

The research methodology is Empirical in nature, where the paper addresses the practical issues arising due to over- reliance over ai driven tools and infrastructural and literacy gaps in the effective implementation of virtual courts, and thus addresses the barrier of the rural–urban digital divide.

TECHNOLOGICAL IMPACT IN INDIAN JUDICIARY

The development of the judiciary in 2005, when the Supreme Court e-committee was commenced was a direction towards the digital era. The committee initiated the implementation of e-court projects. The E-court projects paved the way for increasing accessibility and transparency of justice delivery by focusing towards citizen-focused e-service.

National Judicial Data Grid - The project aimed to create a large scale database i.e National Judicial Data Grid, which secured data of district courts and talukas. With the development of ICT (information and communication technology) infrastructure, the task of tracking the status and details of a particular case in any court in the country has become very convenient and user-friendly.

FOSS- The digital era touched significant milestones in the development of judicial functioning by developing the Largest Free and opensource software (FOSS) based case information and management system in the world, with a saving of Rs. 340 crores in the tariffs. As per the report of the Supreme Court e-committee, there are individual websites of 688 district courts till date in the country. Further, the digital preservation standard operating procedure efficiently facilitated the procedure of scanning, storage, retrieval and digitalisation of court records.

Video – Conferencing. These developments were not limited to the administration but also accessible to the general public as well. One of the major such initiatives was taken after the case of *Swapnil Tripathi vs Supreme Court of India*, where the court held that the entire judiciary, starting from the Supreme Court of India, should move towards live streaming of proceedings in the interest of the public.

SUVAS- In a diverse country like India, where every region has its own language, to protect their right to language and culture, the government introduced an AI Tool SUVAS, which made judgments accessible to many languages, and an initiative to break the language barrier in the judicial process. It increases the engagement between the judiciary and the general people; it was really necessary to explore how the court would interact with the wider population. Now, the population is aware of the recent judgments and changes in law through the means of social media platforms as well, which eventually leads to legal awareness in society. These regional

languages are generally prevalent in district or session courts, in high courts, the English language is still formally prevailing in matters of drafting or submissions.

PHASE III OF E-COURT: ANALYSE THE PROJECT OF E-SEVA KENDRA AND ITS IMPLEMENTATION EFFICIENCY

Why is E-Seva Kendra necessary?

The essence of justice will vanish if it is not equally accessible to all in the country; such accessibility can be maintained by the facilities through e-governance, where the use of technology makes government functions more transparent and efficient. Some of the major examples are online portals, digital identity systems, etc. E-seva Kendras are one of the major projects to expand the area of e-governance. These Kendras are being made in the high court and district court to provide the following facilities:

Providing free of cost service of giving information related to case status, next date of hearing, hard copy of judgments, and other details

Facilitating the e-filing of the petition, as well as the submission of hard copies of files to the Adhar-based e-signature

Guide people regarding the procedure to avail legal aid services from the district or state legal service authorities

Facilitate the E-Mulakat service platform to avail booking to meet relatives in jail.

Facilitates the disposal of traffic challans in virtual courts and reduces the burden on courts

According to the report of the Supreme Court e-committee, all the states except Andhra Pradesh have implemented E-Seva Kendras in their respective District and High Courts.

HOW THE PROJECT HAVE BEEN IMPLEMENTED AND CREATED AN IMPACT TILL NOW

The project is still in progress and has done a handful of jobs till now. A district like Bastar in Chhattisgarh, where the people never celebrated Independence Day until now, since the time of independence, now the population is believing in the process of justice again. It is an area harshly influenced by Naxalite belts, where such facilities were crucially necessary. The journey to oneness through justice doesn't stop here. The E-seva Kendra in Ahmedabad, Gujarat, has gender neutral restrooms as well. This symbolises that justice doesn't have any barriers but itself a barrier to social stigmas, disparities, and differences. Implementation of these kendras in rural areas will not only develop their legal knowledge but also promote

principles that are still not acceptable in some parts of society. Every citizen has a fundamental right to be heard. The due procedure of law protects these rights under Article 21, but the delays in justice delivery have somehow hampered these rights. E-Seva Kendra is a symbol of digital era democracy. Which is for the people by the people, as in for the people it's a straight lane towards social and legal upliftment of their rights, and by the people means that now these common people need not be dependent on any person to understand how to seek their own rights. These kendras will help them be self-reliant.

OPERATIONAL HURDLES IN THE GOVERNMENT ONLINE SERVING PORTAL

The evolution of E-seva kendras is a great development. But this development may not last for long if the government fails to maintain these digital platforms and databases. With the evolution of technology, a new task of regular system check, assessing and fixing technical errors has increased. One major problem faced by the government organisation is that not all the workers are technologically literate. For minute system complications or glitches, a technological expert is required. Basic technological training to every staff member related to fixing system functions and knowledge related to digital safety precautions is necessary for each and every staff. This will not only ensure the efficiency of services but also develop technological skills amongst the workers.

It is pertinent to mention that even though the current generation is open to AI online services, on the other hand, they are the only ones who are facing major problems due to over-digitalisation. Nowadays, nowadays all the things, including contracts, leave and licence agreements, stamp duty registration fee payment, etc., are made through online gov portals, which still raises concerns. Are these portals effective enough for such an important documentation and registration process?. Under the IT Technology Act,2000, the government can be held liable for maintenance of its online portal, specifically under the provision section 43 (A) related to data protection and reasonable security practices Here, the government acts as a corporate body and can be held negligent if it fails to protect the information within the portal, certainly, the Digital Data Protection Act (2023)¹ further expands these liabilities of the state. The rule of the IT Act, which talks about Reasonable practices and procedures and sensitive personal data and information, furthermore addresses this major liability of the state.

¹ Digital Personal Data Protection Act, Act No. 22 of 2023

What remedies does the citizen have if they incur damage due to failure in maintainability of government online portals?

Section 46 of the IT Act 2000² provides remedies to citizens affected by portal failure. They can be awarded up to 5 crores of compensation for the damage incurred due to such negligence and failures on the part of the government. In the case of **Ramesh Kumar Nayak v. Union of India, AIR 1994 Ori 279**³. The liability of the government for not maintaining the online government portal, which caused damage to citizens, was taken into account. The general principle of negligence was upheld, where it was necessary to prove the direct and sole responsibility of the state to maintain its portals' security and secure them from technical discrepancies.

Algorithmic justice: Crisis of accountability in high stake decision making in the judiciary

Every human mind differs; what makes us human are these differences of behaviour, mentality, ideology, opinions and wisdom. AI is based on a set of algorithms that is also given to it by us humans. AI is filled with data from all over the world; no doubt, its knowledge is vast. It is an ocean of information, but only humans know how to dive past that ocean.

Technology, on the other hand, as per the above-mentioned advancement, has indeed fastened the justice delivery system, but are all these advancements practical? The Indian population is rural. They not only lack the means but also the ability to make use of these developments. All these tools, which were mentioned above, cannot be made easily accessible to the isolated sector of the population. The old, elderly, poor and people from secluded places are not well versed with technology, nor has it reached them, despite the fact that this is the category which is more prone to injustice and needs to be made to reach the doors of justice. Technology has not yet reached these places. Before focusing on all these developments, the primary attention of the government should be shifted towards them for their upliftment and awareness. The ease with which it has been created for the urban population, as many complexities it would cause for these rural and outcast individuals.

² Information Technology Act, No. 21 of 2000, INDIA CODE (2000)

³ Ramesh Kumar Nayak v. Union of India, AIR 1994 Ori 279

Coming back to AI, more of its negative consequences involve-

Replacing Human effort- As mentioned in the outset, AI lacks human touch. You may feed all the constitution, all the laws and precedents into yet it neither makes your case nor can it pass an effective judgement. Humans possess the shrewdness to prove a case, judges possess the wisdom to analyse the merits of a case and give a judgment based on a proper evaluation. Each case differs from another. An AI would probably apply the law or base its judgment on previous judgments. But only a human can understand the plight of another. A courtroom isn't just a place filled with rules and discipline and protocols. The principles of natural justice and the rule of law are followed there; the end goal of a court is to deliver justice, and all these principles are linked to human values. It comes from within human beings. Thus, the effective implementation of justice can only be delivered by a just and wise being. It is true and obvious that AI could never produce lawyers like Fali Sam Nariman, Harish Salve or Ram Jeth Malani and Hon'ble judges like YV Chandrachud, Justice PN Bhagwati, etc.

AI citing information with no legal backing: Often, you may find that AI would cite fake cases or principles just to fit your prompts. The facts of the case would not align with what AI provides. It gives conclusions and answers with no legal backing. Common people might rely on such answers for their legal problems, which would create problems for them in real life. It also creates problems for law students who may study from the internet and AI. They would gain false knowledge and may apply it practically.

AI lacking license to use information of media houses: The current ongoing case of Asian News International Vs Open AI highlighted serious concerns regarding the unlicensed use of data by AI bots. These unauthorised uses of data eventually affect the intellectual property rights of the media houses. It has been argued in this case that AI does not completely use the data for bot training. It rephrases or changes the meaning of the same. Here, there is a problem on both sides. If the AI changes the meaning of the content, it misleads the users, and if it copies as it is, the information it effects the intellectual property rights.

Copyright infringement by AI: AI doesn't have knowledge of its own; it only shows content of others, and many times without giving any credit or references. Several cases have been filed on such AI platforms.

In the case of Advance Local Media v Cohere⁴, Some of the news publishers like Conde Nast, The Atlantic, Axel Springer have accused Cohere AI, used by intermediaries to automate processes, of direct and indirect copyright infringement on the AI system on which Cohere

⁴ Advance Local Media LLC v. Cohere Inc., No. 1:25-cv-01305 (S.D.N.Y. filed Feb. 13, 2025).

operates.

Similarly, another case of Anderson v Stability AI ⁵Many visual artists have alleged direct and indirect copyright infringement, false endorsement and trade dress claims based on the functioning of AI. Another case, which involves the author, is that of **Brats v Anthropic**⁶, in which authors claim direct copyright infringement based on the creation of Anthropic's Claude LLM.

In the case of Doe v. GitHub, Inc ⁷plaintiffs alleged that Github, Microsoft, and OpenAI breached open-source software licenses and violated the DMCA by using the plaintiffs' copyrighted materials to create Copilot.

Dependence of lawyers and interns nowadays: It is true that AI makes everything very easy; it can provide assistance to any human problem. This quality of AI reduces the problem-solving capacity of a human mind; humans are unable to process their subconscious mind. Lawyers and interns nowadays get their legal drafts of pleadings, affidavits, etc., through AI. Even courts translate their files through AI, which totally changes the meaning of the actual facts and misleads the person reading those files. People forget that AI is being regulated by a human, which doesn't mean that AI can understand every situation and circumstance that humankind faces. For a lawyer, the major skill is to read between the lines and be sharp and problem-solving in nature. AI is not enhancing these skills but degrading them.

Increased digitisation of official affairs: In the present times, almost every governmental, administrative and official task is being performed online only, whether it is updating your Aadhar card, obtaining your marksheets or filling up any admission forms. Digitisation does help, as you can perform all these tasks while sitting at home, but often times people face various challenges while accessing these platforms, they are excessively slow, lag and most of the time there are server errors. There is no proper regulation of these platforms. This digitisation has made these simple tasks more complicated and time-consuming ⁸consuming. It has further led to many security breaches as well as fraud and scams.

People, in the name of any governmental and banking function, obtain OTPs from innocent users and use them for fraud against them. Ever since the era of digitisation started, we have witnessed the rise of more litigation on these matters, further increasing the load of the Judiciary.

⁵ Andersen v. Stability AI Ltd., No. 3:23-cv-00201 (N.D. Cal.).

⁶ Bartz v. Anthropic PBC, No. 3:24-cv-05417 (N.D. Cal. filed Aug, 19,2024).

⁷ Doe v. GitHub, Inc., No. 24-7700 (9th Cir.).

⁸ <https://doj.gov.in/eseva-kendra/>

Data Tracking by applications: Many times, you might have noticed that if you're talking about a particular thing or searching or viewing it on a website or any application, then somehow that is all that is displayed to you everywhere on your mobile phone, while accessing any other applications or websites, too, you'll keep seeing those ads and recommendations only. It demonstrates the interconnectedness of various platforms and also reveals that all those big tech companies that regulate these platforms may be involved in data tracking and data sharing without the user's consent or knowledge, which violates the principles of privacy and transparency. It also highlights potential targeted advertising and unwanted content on your feed, not as per your choice.

The Digital Personal Data Protection Act, 2023's Section 8 outlines the obligation of data fiduciaries, which asks them to implement reasonable security measures and safeguards to ensure personal data violations do not occur, but if such discrepancies are continued by these programs and applications, then it indicates a breach on the part of the data fiduciaries and violation of Section 8 of the DPDP Act.

Policy Suggestion Which Can Help Balance AI and Human Independence

It is suggested that the government should take into account the unreliable fake cases produced by AI. To date, there is a lack of any specific legal provisions dealing with such algorithmic issues.

The use of AI in translating files and documents in any regional language has eased accessibility of justice, but on the other hand, such translations are not solely reliable to interpret complex legal statutes, frameworks and terms. It may suggest ambiguous and vague interpretations, which undermine the credibility of legal documents. Thus, the government shall impose reasonable limitations on the use of such a translating tool for necessary legal documents.

The Indian Judiciary has bridged the gap of accessibility to an extent by establishing e-courts and e-seva kendras, but the goal is still not complete. The paradox of accessibility, even in the realm of digitisation, still exists in many parts of this country. To curb such challenges, the government shall promote more awareness programmes related to the provisions of relief sought for damages incurred due to portal discrepancies and also about government redressal helplines. It is very necessary to create such awareness programmes because nowadays all the

major contracts, leave and license agreements, and stamp duty registration fees are being accepted through online portals, and it is very necessary to look after the effective execution of ground work related to digitalisation. Mandatory technical training programmes should be upheld in all the government ministries, service centres, and e-kendras for workers of all grades. Training related to digital data protection, this will keep all the government employees aware of such discrepancies, and if there is any unavailability of a technical expert, these employees will be able to fix such discrepancies to an extent. The networks in these segregated remote areas shall be improved because without a network, these e – seva kendras, e-court would be inefficient. There is an efficient need for authorised surveys related to the effective working of the e-seva kendra and e-courts.

Conclusion

The Generation of artificial intelligence has surely paved the way for efficiency in justice delivery, decreasing pendency of cases, but the challenge between prompts and efficiency still exists. The fact that AI is merely an algorithm that provides delegated decisions is itself sufficient to prove that it can never erase the human essence. The authority to sentence someone or protect the rights of humans could never lie in the hands of a machine without a soul. As well said by Mahatma Gandhi - "There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts." Thus, a machine that is inefficient to reasonably comprehend equity, justice and good conscience, the core principles of our modern legal jurisprudence, depending on different circumstances. Can never be accountable for the protection of justice. Thus, it is suggested that there shall be a balanced line between reasonable use and reliance on artificial intelligence in the judicial system. It is necessary to understand that Artificial Intelligence is suitable for procedural use and not for substantial decision making, as a democracy would never accept artificial, unaccountable and ambiguous remedies.