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ROLE OF TECHNOLOGY TO GUARANTEE ACCESS TO JUSTICE

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ABSTRACT

The paper explores access to justice and its concept of evolution. Over time, access to justice has broadened beyond just legal aid. It now encompasses alternative ways of resolving disputes and technological advancements. Technology has played a significant role in shaping access to justice, and it is crucial to acknowledge that internet access is a fundamental aspect of ensuring equality in accessing justice. It investigates the existence and realisation of the justice gap. Advancements in technology have created fresh possibilities for bridging the justice gap. Online platforms and tools can provide low-cost or even free legal assistance, making it easier for underserved populations to access justice. This paper acknowledges the role of technology and e-courts in reducing the justice gap and how it has been a boon to the Indian legal system. Its implementation has made legal processes more efficient, accessible and transparent, resulting in quicker resolution of disputes and increased accountability. This paper observes the current state of technology's use in accessing justice in India and suggests techniques to use it and also room for improvement. Only by doing so can we ensure that justice is delivered effectively and efficiently to all citizens. This paper emphasises the backing of fundamental rights and human rights in the role of technology in access to justice as justice must prioritize the unequivocal endorsement of fundamental and human rights. It also explores the anticipated benefits and impacts of upcoming changes in the Indian legal system on society.

Keywords: Human-Technology Collaboration, Efficiency, Online platform, Justice gap, Online access, Legal right.

INTRODUCTION

Ensuring access to justice is essential in any legal system, guaranteeing individuals the opportunity to pursue and receive justice regardless of their socio-economic status or personal characteristics. It is a fundamental principle that underpins equality, fairness and the rule of law.¹ Technology has played an important role in improving access to justice. With technological advancements, legal services can now be delivered remotely, allowing people to access legal services from anywhere, regardless of location. It addresses the ability to be "present" during proceedings, to have sufficient information to make informed decisions and to be represented in court. Technology offers one hope for closing legal system gaps and increasing accessibility.

Access to justice is a fundamental right guaranteed by the Indian Constitution, specifically Articles 14 and 21, which ensure that every individual has the right to approach a court of law to seek justice and fairness. It is not enough to have access to legal resources and mechanisms; it is also necessary to have reliable and affordable internet access. The internet has become an indispensable tool for those seeking justice, allowing them to access legal information, communicate with legal professionals, and participate in online legal proceedings. Individuals without internet access may face an unfair disadvantage in the legal system. As a result, ensuring that everyone has equal access to the Internet is critical for fostering fairness and equity in the legal system. In today's world, access to justice includes not only having access to legal resources and mechanisms but also having access to reliable and affordable internet.²

In recent years, technological advancements have revolutionized the delivery of justice, resulting in a significant transformation of the judicial process. Individuals can now access legal services, communicate with their lawyers, and file applications and documents online, all from the comfort of their own homes. Some of the advantages that technology has brought to the judicial system include better allocation of judicial resources, lower costs of administering justice, and improved services for litigants. Furthermore, lawyers have been given professional tools to improve the quality of their services and secure decisions, ensuring the enforcement and recognition of their judgments. It is clear that technology has had a significant impact on access to justice, and we

¹ Marc Galanter & Jayanth K. Krishnan, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, (2005), <https://papers.ssrn.com/abstract=682324>

² Estelle Hurter, *Access to Justice: To Dream the Impossible Dream?*, 44 *COMPARATIVE AND INTERNATIONAL LAW JOURNAL OF SOUTHERN AFRICA* 408 (2011), <https://unisapressjournals.co.za/index.php/CILSA/article/view/11532>

can anticipate further advancements in the future. As a result, ensuring universal access to justice is critical for safeguarding human rights, promoting social justice, and cultivating a peaceful and stable society.

EXISTENCE OF JUSTICE GAP

The term "justice gap" refers to the disparity or inequality between the legal assistance that people require and their ability to obtain justice.³ This gap focuses primarily on the experiences of those looking for solutions to their problems. Conflicts with neighbours, problems with the police, issues with receiving entitled government benefits, disputes over minors' custody, unfair labour layoffs, property and land disputes, conflicts with landlords, and criminal problems such as being a victim of crime or violence are all such examples.

While the Indian Constitution guarantees equal access to justice for all, many people are unable to obtain legal assistance for a variety of reasons, including financial constraints, a lack of awareness, and geographical barriers. This has resulted in a significant gap between people's legal needs and their ability to obtain justice. The justice gap is especially evident in the case of marginalized communities, including women, children, and people with lower socioeconomic backgrounds. Poor people who live in rural areas, in particular, lack legal identity documents due to a lack of property titles for their land or home, or because they are unregistered workers. The most extreme cases of the justice gap affect those who live in areas of high violence, insecurity, and political instability, as well as those who lack citizenship or live in modern slavery.⁴ These communities frequently face multiple barriers, including a lack of education, language barriers, and discrimination, which exacerbate their inability to obtain legal services.

The justice gap is a complex issue caused by a variety of factors. One of the primary reasons is a lack of legal awareness among the general public, which causes them to be unaware of their rights or the mechanisms to protect them. The case of *The Sheela Barse v. State of Maharashtra* (2011)⁵ case highlighted the plight of undertrials who are imprisoned due to a lack of legal representation and delayed trials. Inadequate legal aid systems worsen the justice gap by preventing many people

³ Increasing Access to Justice with Technology, LEGAL MANAGEMENT, <https://www.alanet.org/legal-management/2021/january/departments/increasing-access-to-justice-with-technology>

⁴ Federico Ast, *The Role of Technology to Guarantee Access to Justice*, ASTEC (Jun. 22, 2020), <https://medium.com/astec/the-role-of-technology-to-guarantee-access-to-justice-da3c0e508171>

⁵ *Sheela Barse v. State of Maharashtra* (2011) (2012) 2 SCC 666.

from obtaining affordable legal representation.

People are unaware of their rights or how to enforce them (where to go and who to contact). These mechanisms are frequently expensive or slow, making them unaffordable to a large proportion of the population. This frequently makes legal procedures slow complicated, and even expensive at times, rendering them unaffordable for a large portion of the population, leaving them to suffer in silence.

This justice gap has serious implications for human rights, social justice, and the rule of law. Studying the justice gap provides us with how to develop public policies to ensure justice for all.

E-COURT INITIATIVE IN REDUCING JUSTICE GAP

Access to justice is restricted by a variety of factors, including financial constraints, limited legal knowledge and literacy, geographical constraints, language and cultural complexities, and biases and discrimination within the legal system. Overcoming these obstacles is critical to establishing a fair and inclusive justice system.

The concept of e-courts, also known as digital or online courts, has grown in popularity as the judicial system has been digitized. The rise of e-courts has been made possible due to the advancements in technology. Technology has played a crucial role in making justice more accessible to people. For instance, online legal resources, such as legal databases and forums, have made it easier for people to research and understand legal issues. Additionally, online dispute resolution platforms and mobile court applications have made it easier for people to resolve disputes and engage with the justice system. In 2010, the Ministry of Justice published a report titled 'Virtual Court Pilot: Outcome Evaluation' that demonstrated how a video link between police stations and the courtroom can be used to hold the first hearing in the majority of criminal cases. It also reduces the number of failed appearances, alleviating the burden of transporting prisoners from court to court.

E-courts have made the process of filing cases and accessing justice faster and more convenient. With e-courts, people can file cases online, check the status of their cases, and even attend hearings remotely. The convenience of e-courts is especially helpful for those who live far from

the court or have mobility issues. Moreover, during the COVID-19 pandemic, e-courts facilitated judicial proceedings while reducing the risk of virus transmission. and became a technological solution that aims to streamline the court process by digitizing court procedures.

E-courts are a growing alternative to conventional courts, utilizing technology to streamline legal proceedings. [With e-courts, judges and court staff can access case files and related documents electronically, which saves time and eliminates the need for physical paperwork]⁶. Furthermore, e-courts have also helped in reducing the backlog of cases by streamlining the court processes and making them more efficient.

With the automation of the court processes, e-courts have made it possible for case records to be easily accessible and available online. This means that lawyers and litigants can file cases and access court documents from anywhere and at any time, without the need to physically visit the court.

[E-courts have also enabled judges to conduct court proceedings online, reducing the need for physical appearances and making the court processes more efficient.]⁷ This has helped to reduce the time taken to dispose of cases and has enabled the courts to handle a larger number of cases in a shorter time. *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav*⁸- video conferencing was used for a fair trial; the accused's appearance was waived, and the proceedings were held from Tihar Jail in Delhi. The learned trial judge also ensured that the accused was available for video conferencing before recording statements under section 313 to ensure that the statements were not merely formal. When the accused is detained in another city.

In the case of the *State of Maharashtra vs. Praful B Desai*⁹, witness examination was permitted via video conferencing. The question of witness examination via video conferencing was compared to that of virtual reality, which violated the accused's rights under Article 21 of the Constitution. It was determined that virtual reality is a situation in which one is made to feel, hear, or imagine something that does not exist in reality. The presence of the accused or his

⁶ Ecourtsservices, "ECourts", https://services.ecourts.gov.in/ecourtindia_v6/

⁷ The Report of the Law Commission on the Reform of Judicial Administration, 1 JOURNAL OF THE INDIAN LAW INSTITUTE 331 (1959), <https://www.jstor.org/stable/43953792>

⁸ (2005)Cri.L.J. 1441 (India)

⁹ (2003) 4 S.C.C. 601 (India)

pleader during the recording of evidence via video conference satisfies the condition of 'presence' under section 273 of the Criminal Procedure Code. The accused will be able to see the witnesses much more clearly than in a crowded courtroom.

In the case of *Sujoy Mitra vs. State of West Bengal*¹⁰, the Calcutta High Court permitted witness examination via video conferencing from Ireland. In the current case, all other witnesses were recorded; however, the victim of the crime was an Irish lady who was currently in Ireland, where the trial court had allowed the witness's statement to be recorded via video conferencing.

All these advancements in technology have helped in making justice more accessible and affordable for people from different walks of life.

Nevertheless, the implementation of e-courts poses several challenges. Ensuring the security and privacy of court data is a major concern. Providing universal access to the e-court system, especially for those without internet or technological devices, is another challenge that needs to be addressed.

TECHNOLOGY'S ZEAL FOR CLIENT EXPECTATIONS AND CLIENT INTERACTION

Technology has the potential to significantly improve clients' interactions with legal services and meet their expectations. With the increasing demand for legal services, technology is constantly evolving to provide better and more efficient services to clients. Legal services can improve their clients' overall satisfaction and trust in the justice system by embracing technology and utilizing it to enhance their experiences. This has the potential to improve client outcomes and increase access to justice.

Previously, seeking legal advice or information was a time-consuming and daunting task that often required in-person meetings with lawyers or extensive library research. However, with the advent of the internet, clients now have access to a wealth of online legal resources, such as legal research databases, online legal forums, and virtual consultations with lawyers. This has not only

¹⁰ 8(2015) 16 S.C.C. 615 (India)

made legal services more accessible but also more cost-effective and efficient for clients. This has also had a significant impact on clients' expectations for access to justice, as they now expect quicker, more efficient, and more convenient legal services.

Clients and lawyers can now communicate more effectively thanks to technological advancements¹¹. The use of video conferencing and online messaging platforms has transformed how lawyers interact with their clients. Previously, clients had to physically go to their lawyer's office to discuss their legal issues, which could be time-consuming and inconvenient. However, with the use of video conferencing and online messaging platforms, lawyers can now communicate with their clients in real-time, regardless of their location. [Clients can now receive legal advice, case updates, and other important information without leaving their homes or offices.]¹² Furthermore, the use of technology has improved the security and privacy of communication between clients and lawyers by encrypting messages and video calls and protecting them from unauthorized access.

Overall, technology has improved client-lawyer communication, making legal services more accessible and convenient for all.

CURRENT SUCCESSFUL E-COURT MODELS

India's E-Court initiative aims to provide efficient and transparent services for litigants. The system supports electronic filing, case management, and online access to case information. The initiative has also implemented virtual court hearings and videos. Conference calls have also helped to reduce delays caused by physical distance.

Several successful e-court models have been deployed in India. Here are some of the most notable ones

1. National Judicial Data Grid (NJDG): NJDG is a case management system that provides real-time data on the status of cases in all district and subordinate courts throughout India. It improves the judiciary's efficiency by providing judges with up-to-date case

¹¹ PRACTICE DIRECTIONS FOR E-FILING (PHASE-II) IN THE SUPREME COURT OF INDIA https://main.sci.gov.in/php/FAQ/5_6246991526434439183.pdf.

¹² Norul Mohamed Rashid, *Access to Justice and Rule of Law Institutions*, UNITED NATIONS AND THE RULE OF LAW, <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/>

information and reducing the time and effort required to search for case records. This means that judges can make better-informed decisions and cases can be resolved faster, benefiting all parties involved in the legal system. The NJDG is an important tool for ensuring that the Indian judiciary operates effectively and efficiently.

2. The e-Courts Integrated Mission Mode Project: It aims to digitize the entire judicial process, from filing to disposal. It entails the implementation of an online case management system, e-filing of cases, virtual court hearings, and digital signatures on legal documents. This project has been implemented in more than 16,000 courts across the country.

It encourages transparency and accountability within the legal system. The system provides accurate and up-to-date information on the status of cases, reducing delays and ensuring that justice is delivered on time and efficiently. This, in turn, contributes to public trust in the judiciary and boosts confidence in the legal system.

3. The Supreme Court Electronic Court (SCEC): The Supreme Court of India has implemented an electronic case management system known as the Supreme Court Electronic Court (SCEC). This system allows judges to access digital case records such as judgments, orders, and pleadings. It also allows for electronic filing of cases and virtual court hearings. This means that lawyers can file cases online from their offices rather than physically visiting the court. Lawyers and litigants can participate in court proceedings from a distance without physically being present in court. This has made it easier for people to participate in court proceedings, particularly those who live in rural areas or are unable to travel to court for a variety of reasons.
4. High Court of Bombay Online: The High Court of Bombay has implemented an online case management system that allows litigants to file cases, track their case status, and receive email and SMS notifications. This system has reduced the need for in-person court appearances while also improving judicial efficiency. Furthermore, the implementation of this system improved the efficiency of the judicial process, ensuring that cases are resolved on time.
5. The Delhi High Court eCommittee: It has implemented several digital initiatives, such as e-filing of cases, online payment of court fees, virtual court hearings, and video conferencing facilities. These initiatives have contributed to a reduction in case backlogs and improved litigants' access to justice.

One of the most important initiatives is e-filing, which allows litigants to file their cases online rather than going to court in person. This has reduced the time and effort required to file a case, making it more efficient for all parties involved.

Previously, litigants had to pay court fees in person, which was time-consuming and occasionally difficult to navigate. With the introduction of online payment, litigants can now easily pay their fees while saving time and effort. Thus, the Delhi High Court eCommittee's digital initiatives have significantly improved the legal system and made it more accessible to the public.

These are some of the most successful e-court models that have been implemented in India. They have helped to improve the efficiency of the judicial process, reduce case backlogs, and make justice more accessible to the average citizen.

THE LINCHPIN FOR GUARANTEEING ACCESS TO JUSTICE

Awareness Enhancement

Access to justice is a fundamental human right that allows people to seek and receive legal redress when their rights are violated. It is a necessary component of a fair and just society, as it ensures that everyone is treated equally under the law. However, many people struggle to exercise this right for a variety of reasons, including a lack of resources, limited legal knowledge, and societal barriers. One of the most important factors in ensuring access to justice is raising awareness among the people themselves. When people are educated about their rights, the legal system, and available resources, they are better able to navigate the justice system and seek the justice they deserve. In this context, raising awareness about legal issues can be critical in promoting access to justice and ensuring that everyone is treated equally under the law.

Access to awareness is an essential component of ensuring access to justice. Individuals who are unaware of their legal rights and remedies may be unable to assert them or navigate the legal system effectively. When people are unaware of their rights or the legal options available to them, they may feel powerless and incapable of seeking justice. As a result, it is critical to raise people's awareness of their legal rights and the resources available to them to ensure that everyone has equal access to justice, regardless of background or situation.

As a result, it is critical to educate people about their right to justice and the legal remedies that

are available to them. People can learn about their right to access justice in a variety of ways. One of the most effective methods is to use legal aid programs, which provide free or low-cost legal advice and representation to those who cannot afford it. Legal aid clinics can be established in communities where people can visit and learn about their legal rights and choices.

Public awareness campaigns are another effective way to educate people about their right to seek justice. These campaigns can be promoted through a variety of media, including television, radio, social media, and billboards. Public awareness campaigns can also be tailored to target vulnerable populations. These campaigns can use targeted messaging to reach those who are most in need of legal help. For example, campaigns may be launched on social media platforms popular with specific groups, such as women or people with disabilities. They may include information about the legal system, the significance of seeking legal advice, and the advantages of obtaining justice. Community outreach programs can also help to educate people about their right to access justice. These programs may include legal professionals visiting schools, community centres, and other public areas to provide information and answer questions. Workshops and seminars can also be held to teach people about their legal rights and how to navigate the legal system.

E-Justice System Training

With a population of over 1.3 billion, India has always faced significant challenges in accessing justice. The traditional justice system in India is slow, inefficient, and frequently unavailable to many people, particularly those living in rural areas. This is where E-Justice System Training can help to improve access to justice in the digital age.

The E-Justice System Training is a novel program that provides comprehensive training to legal professionals and justice system stakeholders on the use of electronic tools and technologies to improve access to justice. The program is specifically designed to increase the efficiency, effectiveness, and accessibility of the justice system through the use of technology. Participants in this program will gain a thorough understanding of the most recent advancements in legal technology, as well as how to use these tools to achieve the best results for their clients. Whether you're a lawyer, judge, court clerk, or other justice system stakeholder, it's an invaluable resource for staying ahead of the curve and providing the best possible service and support to clients.

The training covers a variety of topics, including electronic case management, online dispute

resolution, digital evidence management, and electronic document filing and service. The training is frequently delivered in a combination of in-person and online sessions, and it is intended to provide participants with the necessary skills and knowledge to use technology to improve access to justice. The training helps participants understand the benefits and challenges of technology in the justice system, as well as the skills required to navigate digital tools and platforms. By providing training on these topics, the program aims to provide legal professionals and justice system stakeholders with the skills and knowledge they need to use technology to improve access to justice.

Thus, E-Justice System Training and making people aware is an important initiative for increasing access to justice in the digital age.¹³ By leveraging technology, the justice system can become more efficient, transparent, and accessible to all. The program is a step toward ensuring that all people, regardless of background or circumstance, have equal access to justice.

BACKING OF THE CONSTITUTION AND HUMAN RIGHTS

Access to justice is a fundamental right in any democratic nation. This right is enshrined in many countries' constitutions, including India. The principle of equal access to justice states that everyone should have access to justice, regardless of gender, sexual orientation, location, socioeconomic status, religion, right to representation, or disability. The court system is an essential component of any democratic society, and it is the government's responsibility to ensure that it is open to all.

The European Convention on Human Rights establishes access to the courts as a legal right. According to Article 8 of the 1948 Universal Declaration of Human Rights, "everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law¹⁴". E-justice systems should also incorporate the concept of 'equal access' to ensure that users with limited technological literacy are not left behind. This means that the government must invest in e-justice infrastructure that is accessible to all, regardless of technical proficiency.

¹³ Law Commission of India, Reform of Judicial Administration Report No.14, (September 1958).

¹⁴ UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY(2015).

E-justice systems can provide faster justice, which is a fundamental right under Article 21 of the Indian Constitution, as opposed to paper-based procedures, which are more expensive. The development of e-justice systems should be evaluated using methods such as user surveys, qualitative and quantitative analysis, and participant observation. This will provide valuable insight into the effectiveness of e-justice systems, allowing for improvements where needed.

It is time for the government to invest in technology to support courts and dispute resolution, which will solve the problem of pendency. The government must invest in e-justice infrastructure that is accessible to all, regardless of technical proficiency. This will ensure that everyone has equal access to justice and that the court system is efficient, cost-effective, and open to all.

The court system is an essential component of any democratic society, and it is the government's responsibility to ensure that everyone has access to it. Access to justice is a fundamental right, and the government must ensure that everyone has equal access, regardless of gender, sexual orientation, location, socioeconomic status, religion, right to representation, or disability. E-justice system development should be evaluated using methods such as user surveys, qualitative and quantitative analysis, and participatory observation to ensure that it is effective and accessible to all. The government must invest in technology to support courts and dispute resolution, which will address the issue of pendency.

CHALLENGES IN PROMOTING E-ACCESS TO JUSTICE

Resistance to change is a significant barrier to implementing capacity building and training in e-court. The adoption of e-court has led to significant changes in court operations, but some judges, attorneys, and employees may struggle to adapt to new procedures and tools. A few coherent problems within legal systems prevent the promotion of e-access to justice are as follows:

a) Individuals' perceptions and acceptance

People's perceptions and acceptance can pose significant barriers to accessing justice. Many people still believe that traditional ways of seeking justice, such as visiting a lawyer's office or going to court, are more effective than online platforms.

b) Lack of practice updates

The term "digital divide" refers to disparities in access to technology and internet connectivity among different groups of people. This can make it difficult for people who

are already marginalized or disadvantaged to get legal help online. Furthermore, there are concerns about the security and privacy of sensitive legal information sent online. This raises concerns about the security of confidential information and the possibility of data breaches. Furthermore, individuals must possess the necessary digital literacy skills to navigate online legal resources and services. Some people may struggle to use e-access to justice tools and resources effectively unless they receive proper training and support.

CONCLUSION

To fully realize the potential of e-courts, it's crucial to make them accessible to all, including those with digital barriers. E-court systems must be user-friendly, secure, and transparent through collaboration among governments, civil society organizations, and the corporate sector. Investing in training and capacity building equips legal professionals and court personnel with the necessary skills to use digital platforms effectively.

To improve access to justice through e-courts, stakeholders must work together. Improving access to e-courts can enhance the effectiveness of justice for all.

