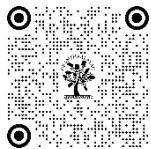


ANALYSIS OF ELECTRONIC LITIGATION IN INDIA

Palki Vats ¹, Dr. Nizam Khan ²

¹ Research Scholar, School of Law, GD Goenka University, India

² Associate Professor, School of Law, GD Goenka University, India



DOI

[10.29121/shodhkosh.v5.i6.2024.4554](https://doi.org/10.29121/shodhkosh.v5.i6.2024.4554)

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Copyright: © 2024 The Author(s). This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

With the license CC-BY, authors retain the copyright, allowing anyone to download, reuse, re-print, modify, distribute, and/or copy their contribution. The work must be properly attributed to its author.



ABSTRACT

The term “court” typically means a place wherein the matters are resolved between the parties by the adjudicating authority. A court is the last resort where people approach their issues with other people. The reason why people approach the court is that people have faith in the judicial system that justice will be served. The issues which arise among people can be related to property, family disputes, agreement related issues and such mentioned issues are civil in nature. There can be criminal issues also in which one person commits a criminal activity and the other person who is innocent suffers due to the performance of criminal activity by the criminal person. There are other issues also which arise in companies, service related issues, tax related issues which are settled by tribunals in the first place and then by the courts. So basically court is the only place where disputes are resolved and justice is served by punishing the wrongdoer.

Keywords: Court, People, Litigation, Electronic Litigation

1. INTRODUCTION

Every society needs to be administered in a particular manner so that peace and order can be preserved for its proper functioning. Adequate laws must be laid down and its proper implementation must be enforced so that people think twice before doing any unlawful act. One must fear before doing any kind of wrongdoing to the other person since punishment will be given for the same wrongdoing. Wrongdoing can be mainly divided into civil and criminal. Civil wrongdoing includes tort, breach of contract and breach of trust. Criminal wrongdoing includes murder, culpable homicide, burglary, cyber-crime, assault etc. Earlier courts used to function in a traditional way i.e. in an offline manner wherein the judge, lawyer and litigants used to meet each other in the courtroom in a face-to-face manner. The kind of issues which were brought before the court were not complex; instead, they were simple so with the help of simple laws issues used to get settled in a short period of time. But as time has progressed the use to technology has come into existence and now the issues have become more complex so the kind of issues which arise in today's 21st century is more complex and require similar kind of complex laws which can settle such issues but the only problem is that such complex issues takes long period of time to get settled. This is so because such complex issues require deep information so that laws can be applied accurately and as a result conclusion is reached. In today's time, technology plays a very crucial role and it is true to say that the way in which technology has entered our lives in every manner so in the same way technology has entered courtrooms also. This is evident from the circumstances which arose in COVID-19 wherein

everything went online and even court was not an exception. Nobody thought that the courts could even go online but in such a difficult situation there was no other choice for the courts. So, we were forced to learn technology to walk along with the time.

The term “court” typically means a place wherein the matters are resolved between the parties by the adjudicating authority. A court is the last resort where people approach their issues with other people. The reason why people approach the court is that people have faith in the judicial system that justice will be served. The issues which arise among people can be related to property, family disputes, agreement related issues and such mentioned issues are civil in nature. There can be criminal issues also in which one person commits a criminal activity and the other person who is innocent suffers due to the performance of criminal activity by the criminal person. There are other issues also which arise in companies, service related issues, tax related issues which are settled by tribunals in the first place and then by the courts. So basically court is the only place where disputes are resolved and justice is served by punishing the wrongdoer. Apart from court, there are other authorities as well who are responsible for the administration of justice such as police officers and legislature. These authorities help in the proper functioning of the society through the powers assigned.

Now let us understand the meaning of the term “e-court”. The term “e-court” implies a forum where the matters are brought before the court in an online manner. It can be said that the issues are settled electronically. Such a court is a one in which the filings are filed online, the status of the case & daily cause list can be accessed online. The concept of online court eliminates the face to face communication among the lawyer, litigants and the deciding authority. The term e-courts came into existence for the first time in India on 08.02.2010 when the first e-court was established in Karkardooma court complex and it was inaugurated by Hon’ble Justice Sh. A.P. Shah the then Chief Justice of Delhi High Court.

2. MEANING OF ELECTRONIC LITIGATION

The term “electronic litigation” means the procedure through which disputes between the parties are resolved in an electronic way¹. Issues such as electronic litigation (e-litigation) covers the use of technology to help in court proceedings. Electronic litigation comprises of the following litigation activities:

- Filing: Submitting legal papers (complaints, motions and evidence) with the court electronically through court systems or online legal platforms
- Managing Cases: Using this business matter programming will help you arrange your case files, schedules and deadlines efficiently.
- Electronic Discovery: The use of electronic tools and other technology to gather, analyze evidence such as emails, digital files etc.
- Communicate: Mail or email communications between parties, counsel and courts using an e-file system or other digital platform.
- Virtual hearings: courts or trials conducted through a video conferencing and other telecommunications applications.
- Demonstration of Evidence: The display of exhibitions and electronic evidence in the courtroom, such as media files.

Electronic litigation aims to smooth the functionality of legal procedures, minimize cost and enhance the overall working of the courts.

¹ Dr. Sami Al-Tayeb Idriss Mohammed. (n.d.). *Electronic Litigation: Its Components and Guarantees* [Review of *Electronic Litigation: Its Components And Guarantees*]. Journal of Positive School Psychology. <http://journalppw.com>

Electronic litigation can be combined into physical courts. So it can be said that various forms of dispute procedure can be organized electronically and in the meanwhile the courts work in physical or say face to face manner. Electronic litigation devices can supplement the conventional court setting which will improve regularity and approachability without changing the spirit of physical court set up.

3. POSITION OF ELECTRONIC LITIGATION BEFORE COVID-19 IN INDIA

It cannot be said that before COVID-19 the concept of electronic litigation was not prevalent but the scope was narrow. Previously, electronic litigation used to function by providing a facility to view current case status to litigants and advocates. Earlier three main developments took place which were: E-Courts Project, development of Supreme Court and E-Courts Services Apps.

• GENERAL DEVELOPMENTS AND INITIATIVES

Electronic litigation integrated mission mode project which was inaugurated by the Government of India so that the district courts and subordinate courts can work in a computerized manner so that justice can be obtained with the help of technology in a quick manner. The scope of electronic litigation pre-COVID-19 is discussed as follows:

1) Adoption and Infrastructure

Different Type of Integration: There was minimal integration between them, with e-litigation in India largely stifled due to lack of extensive orthogonality distributed across the judicial system. While some implemented digital systems, several courts still depended upon the age-old processes requiring paperwork to initiate any matter.

Pilot Projects: Until now, some pilot projects and initiatives have been introduced to encourage the adoption of technology in legal processes such as e-Courts Project digital case management systems.

2) E-Courts Project:

Initiation: The e-Courts Project in India, started by the Indian Government in 2005, was introduced to improve judicial functioning through technology and modernize all courts across india.

Components: The project included development of Case Management Systems, E-filing and Digitisation of the case records.

Progress: Some remarkable improvements were made by 2019 in discharging the e-courts project at district court and high court level but full consolidation was still ongoing.

3) E-filing and Case Management:

E-filing: On one hand some courts have allowed litigants to file some cases electronically and on the other hand some courts still require litigants to submit the documents in the courts itself.

Case Managements Systems: In some areas, electronic case management systems were in working condition to trace and handle cases.

4) Virtual Hearings:

Limited Use: Before COVID-19 the operation of virtual hearings was not regularized. But in particular cases, some courts availed the concept of virtual hearings. So it can be said that earlier virtual hearing was not in practice on a large scale.

5) Challenges:

Infrastructure Gaps: There were certain issues which cropped and posed infrastructure gaps like shortage of digital expertise, low-speed internet access and deficient technological resources.

Resistance to change: Some legal practitioners and judicial support staff opposed the idea to accept new latest innovations which might affect the speed of digital upgradation.

6) Legal and Regulatory Framework:

Regulations: Various attempts were made to regulate the framework of technology in legal proceedings which resulted in the formulation of guidelines for electronic filing, digital signature and electronic evidence.

4. KEY DEVELOPMENTS AND INITIATIVES

1) E-Courts Project Phases:

The E-Courts Project was operationalised in all the District Courts and Subordinate Courts in India before the COVID-19 issue arose². The focus of E-Court was to lay down such a judicial delivery framework to the people which is crystal clear, economical and reachable with the help of ICT and e-courts. E-Courts Project had made remarkable digital integration in all the courts starting from Supreme Court of India to the lower courts in India. The e-committee of the Supreme Court of India produced the E-Courts project which was approved in 2010. The said project was made with the intention to save time for everyone. So it can be said that the facility of e-service of summons, warrants, notices through email existed in many courts. In fact the e-cause list, orders in PDF format, information related to working days, holidays of courts, names of judges of courts was also made accessible on the website of the court.

2) Supreme Court App:

The next important step taken towards digitalization of the judicial system is the establishment of the Supreme Court App before the COVID-19 crisis. The Chief Justice of India then expressed his opinion that artificial intelligence has helped the law transformation system to give better planning in the Indian Judicial System. Earlier it was a huge problem to convert the judgment into the regional language because it used to take a lot of time in doing the same but the said app has helped the translation in a quick manner. This app can be downloaded free of cost and gives valuable data on decided and pending issues with a user-specific dashboard.

3) E-court Service App:

The data of cases registered in Subordinate Courts and High Courts of most states is laid out in the E-court service app. The effective features of the said app which aids the lawyers and litigants includes search of case by CNR. CNR is a number which is given to every case filed in District Courts and Taluka Courts and it is used to know the existing status and attributes of the case, cause list and calendar. In fact there is a tab in the app called "My Cases" in which the lawyer or litigant can save their interest of case or say private case record for future purposes. There are some other features also of this app such as next date of hearing, case status, cause list, total case background and digital payment of legal fees. In fact more than 30 million case updates can be accessed through the app which are connected with all District, Subordinate and High Courts.

- **POSITION OF ELECTRONIC LITIGATION AFTER COVID-19 IN INDIA:**

There is a saying "Justice must be served at any cost". This saying fits in today's time where the conditions demand "work from home". Due to the outbreak of COVID-19 in 2020 at large scale, nationwide lockdown was also imposed in India for a certain period of time. Even in 2021 lockdown was again imposed in some parts of India for some time as the second wave of coronavirus is now going on. So, in such a scenario even courts did not stop working and shifted their mode of working from offline to online. This mode was adopted so that overcrowding can be avoided which will prevent people from coming in close contact with each other.

- **GENERAL DEVELOPMENTS AND INITIATIVES:**

The position of e-litigation in India, following COVID-19, has been a subject of remarkable development and changes due to the disruption the pandemic caused to the legal process. A few of them are:

Accelerated Adoption: The COVID-19 pandemic, in a certain way, greatly accelerated the adoption of e-litigation in India. Courts and lawyers took a little time in adapting to tools and digital platforms for continuing the legal process amidst lockdowns and restrictions on movement.

² Rattan, J., & Rattan, V. (2021). "The COVID-19 Crisis – the New Challenges Before the Indian Justice and Court Administration System." *International Journal for Court Administration*, 12(2). <https://doi.org/10.36745/ijca.391>

Virtual Hearings: The court adopted virtual hearings, with video conferencing applications like Zoom, Microsoft Teams, and Google Meet for carrying out cases and trials. This increased accessibility for litigants from far-off places.

E-filing Systems: The effectiveness of case supervision has been enhanced through the acceptance of electronic filing systems. The lawyers and litigants have been given permission to electronically file documents since the Supreme Court and High Courts have effectuated e-filing systems.

Digital Infrastructure: Extensive time has been invested in digital infrastructure to assist electronic litigation which includes improvements in court websites, constructing protected online case management platforms and securing data privacy and integrity.

Increased efficiency: The concept of electronic litigation has increased the efficiency of handling cases in the courtroom wherein there is no requirement of presence of parties as well as paperwork is also not required.

Challenges and Accessibility: Despite the fact that technology has become advanced and people are using technology at a large scale still there are some people who are not well versed with the usage of technology because of lack of accessibility and as a result they face challenges. But attempts are going on so that technology can be made accessible to them.

Legal Framework: Most of the legal framework for e-litigation has changed with rules and procedures revised to fit the digital process. This has been greatly aided by the enactment of laws and regulations that facilitate electronic filing and conduct virtual hearings.

Hybrid Models: There are some courts which work at hybrid level which means the physical and online presence of the parties work simultaneously. This method stabilizes the advantages of electronic tools and necessity for face to face proceedings as required.

Future Prospects: All of us have obtained exposure amid COVID-19 and especially the authorities dealing with the said issue keeping in mind that law and order must be maintained & the spread of the virus must also be avoided. But if expenditure is spent on technology constantly and improvements are attainable in digital procedures then the judicial system can become more systematic.

5. KEY DEVELOPMENTS AND INITIATIVES

1) The Supreme Court

Beginning of the Supreme Court, a few measures were undertaken at that level to ensure the safety of the advocates, clients and other visiting members from the pandemic³. Early enough, the Supreme Court also began taking necessary precautions to counter the looming threat of the COVID-19 crisis. For example, it was in March 2020 itself that the Supreme Court issued a notification and directed that the functioning of the Courts from Monday, 16 March, 2020 was to be restricted only to urgent matters with such number of Benches as may be found appropriate. Further, no person except the lawyers who were going to act in the matter, that is to say either for argument or for making oral submissions or to assist along with one litigant only, were to be permitted in the courtroom.

2) The High Courts:

Even the High Courts worked accordingly keeping in mind the virus and published directives as required. For example, the Hon'ble Chief Justice of Punjab and Haryana Court instructed in April 2020 that while proceedings going on in the court all precautionary measures must be complied with by judicial officers and other officials such as wearing of masks, proper use of sanitizers and maintaining social distance norms. In fact if any necessity arises with respect to the presence of any person in the courtroom by the police then such person must have worn a mask, used sanitizer and maintained social distance.

3) The District Court and Subordinate Courts

Some important directives were issued by the High Courts to the Subordinate Courts in the states in March 2020 regarding important measures required to be taken up during COVID-19. Lower courts were ordered to take only bail matters which need injunction on top priority and rest of the matters were ordered to be adjourned. The subordinate courts were directed to avoid human crowd in the courts as much as possible by adopting video-conferencing. The instructions were clear that proper cleaning must be made all times and to avoid overcrowding in the premises which

³ Ibid

includes not only courtrooms but also include canteens and bar rooms & for this purpose the District and Sessions Judge were supposed to work together with the District Administration, Health Authorities and Bar Association. The orders did not encourage face to face presence of the clients in the courtrooms until and unless their presence was ordered by the court.

6. ADVANTAGES OF ELECTRONIC LITIGATION

There are certain advantages of electronic litigation which smoothen the process of litigation in the courtroom⁴. This was evident from the circumstances of COVID-19 pandemic which occurred in 2019 and shakened the world. During pandemic, the courts also went online and as a result we all witnessed that the disposal of cases was quick. This was so because in online set up the parties, the advocate, the witnesses were able to sit and appear from anywhere in front of their system which saved money and time of the proceedings. So this helped judges to dispose cases quickly. Some of the advantages are discussed below:

- **Accessibility and Convenience:** Electronic Litigation allows litigants to get rid of physical presence in the courtrooms which ultimately saves time and money. The facilities offered to the litigants includes e-filing, electronic submission of fees, access to judicial documents and monitoring caste status.
- **Efficiency:** Case supervision and official documents has been made effective from the moment the judicial process has been virtualized. Since the lawyers and judges can view the case records online has made their work easy. Also now the disposal of cases is quick which reduces the obstructions in giving judgements.
- **Transparency:** Clarity prevails in online mode of delivering justice since case data, court orders and judgements can be viewed online. Case updates and important documents can be accessed at any time by the lawyers and litigants which leads to upgradation in responsibility to deliver justice in proper and fair manner.
- **Cost effectiveness:** A lot of cost is saved at the end of the judiciary since there is no need to prepare and store files & also there is no infrastructure expenses involved. If we see from the end of the litigant then he is also saved from incurring travel expenses and also paper cost since there is no requirement to file a case by going to the court.
- **Flexibility in Scheduling:** In electronic litigation, cases can be scheduled without any glitches in a comfortable manner with reduced unforeseen disruptions. But in the case of traditional courtrooms, there is a possibility that the witness might not reach on time as a result of which the trial will get delayed. Also there is a waiting period for cases because there are already many cases which are scheduled in the courtroom.
- **Increased Safety and Health:** In the pandemic it was witnessed by everyone how it became so easy for people to sit at the comfort of their home and appear in proceedings. Before pandemic also, the psychological safety and well-being of at-risk witnesses must also be kept in mind because such witnesses might not tell the truth due to stress and uncomfortable situations. But if there is a facility to appear in proceedings from a safe place then the witness will speak the truth in an effective manner. This arrangement can be more effective in high profile cases.
- **Enhanced Tools and Resources:** With the help of enhanced tools and resources the lawyer can present the case virtually in an efficient manner. For example, if a document needs a reference then the screen can be shared and if a crucial point needs proper explanation then the lawyer can use digital annotations. In complex matters the virtual platform is very helpful to clarify all points.

⁴ admin2090. (2023, November 28). *E-COURTS IN INDIA: INTRODUCTION, BENEFITS AND CHALLENGES*. Jyoti Judiciary Coaching - Best Judiciary Coaching for Civil Judge Exam; Jyoti Judiciary Coaching. <https://www.jyotijudiciary.com/e-courts-in-india-introduction-benefits-and-challenges/>

- **Environment Friendly:** In traditional courtrooms, travel and paper cost is huge but in the case of virtual platforms the documents can be presented in a digital manner and travel time is excluded. In fact, cutting down trees can be prevented in a way as paper is made from tress.

7. CHALLENGES OF ELECTRONIC LITIGATION

Apart from advantages, there are certain challenges of electronic litigation in India. Despite of the success achieved through usage of video conferencing, still there are many people who do not have internet connectivity⁵. Also it is assumed that all the courts in India have good online infrastructure and are digitally proficient. Some of the disadvantages are discussed below:

- **Digital Divide:** The marginalized community faces challenges because of absence of availability of internet access and required equipment. This results in ineffective participation in virtual court proceedings.
- **Technological Infrastructure:** For effective functioning of e-courts, the current technological infrastructure needs development which includes enhancing of hardware and software, educating judges, lawyers and court staff and assuring reliable web connectivity.
- **Data security and privacy:** An interchange of sensitive legal data and personal data is associated with e-courts. Maintaining comprehensive data protection and preserving confidentiality of people involved in legal proceedings is critical.
- **Legal Framework and Regulations:** Legal guidelines with respect to e-courts require amendment to convey the obstacles and essentials of virtual court proceedings. Proper rules are required with respect to electronic evidence, approval of documents needs to be settled.
- **Resistance to Change:** Lawyers, judges and litigants showed opposition towards the adaptation of electronic courts as they were accustomed to established courtroom practices. Encouraging approval of electronic courts is very necessary for effective execution.
- **Capacity Building:** Guiding and developing the skills of lawyers, judges and court staff is essential with respect to the electronic court system. Digital competency and technical competency of lawyers and judges require upgradation which can be achieved by organizing educational programs and seminars.
- **Connectivity and Power Outages:** There are some areas where India still faces difficulties regarding reliable power and internet access. Once these issues are resolved then unbroken access to electronic courts will be established.
- **Public Awareness and Trust:** It is essential that public is aware of the advantages and operations of e-courts. Public trust and clarification of doubts and concerns would help in establishing widespread adoption and application of an e-court.
- **Access and Inclusivity:** All those people who do not have access to a stable internet connection or essential devices are ruled out. But the situation is completely opposite in the case of traditional courts wherein people can go to court easily as it is irrelevant whether they belong to any background.
- **Human Interaction:** Direct interactions are prevalent in traditional courts wherein lawyers, judges and litigants interact in a face-to-face manner so that proper understanding is established. But the same cannot be established in the case of electronic courts, especially in complex or emotional cases.
- **Evidence Presentation:** The facility to present evidence such as documents, objects or witnesses is prevalent in the traditional courts which is a simple procedure to follow. But on the other hand, the same facility can be challenged in the case of electronic evidence wherein the validity and acceptance of digital evidence are in question.
- **Judicial Discretion:** It becomes easy for the judges to notice an individual's body language and emotions related to the case and then reach a conclusion in the case of traditional courts. However, it becomes difficult for the judge to notice these signs in the case of electronic proceedings.

⁵ Ibid

- **Public Accountability:** Disclosure and answerability is provided by the traditional courts by permitting the public to see legal proceedings.

8. CONCLUSION

The introduction of e-courts in India is undoubtedly a revolutionary step in modernizing the judiciary. The most promising use of technology by the e-courts has made available to all citizens an easy, efficient and transparent justice system. Such digitization efforts of court processes and the provisioning of online services can transform the justice delivery mechanism of the country. On the other hand, there needs to be a proper balancing of traditional courts against e-courts in order to be able to provide equal access to justice by using the positives of technology. A hybrid model that combines the strengths of both systems can be the way forward.