

## **E-DISPUTE RESOLUTION: A JUDICIAL CONVERSATION**

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It is a great honor for me to deliver the opening address at this Round Table Discussion hosted by the Standing International Forum of Commercial Courts and the National Judicial Academy on the theme of 'E-dispute resolution – a judicial conversation'. At the outset, as I speak to you today, I cannot help but marvel at how our judicial systems have transformed and adapted to the disruption of normal life, as we knew it to be. The onset of the pandemic meant, in no uncertain terms, that the past was now a foreign country.<sup>1</sup> Our judicial systems were abruptly pushed into a territory where its physical infrastructure was inaccessible. In such times, the judicial systems across the world transcended physical barriers through technology. This highlights their tenacity and resilience in upholding the faith reposed in them by the citizens to deliver justice.

As the Chairperson of the e-Committee of the Supreme Court which oversees the digital transformation of High Courts and District Courts, I have gained valuable insights on how technology can be an enabler, yet it has to be molded to be inclusive and accessible for all. I will be addressing how the Indian judiciary has adapted to technological reform while ensuring equitable access to justice. As I talk about the present, I will also chart out the vision for the future.

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<sup>1</sup> David Lowenthal, *THE PAST IS A FOREIGN COUNTRY* (CUP, 1985).

At the heart of the overnight transition to virtual courts during the pandemic, lay the unembellished fact, that there existed a digital divide in the country.<sup>2</sup> We had to mitigate the technological barriers that litigants faced in accessing justice. At the same time, there was a fear that the pandemic would increase the backlog. Thus, the immediate challenge at hand was to create a robust tech-enabled system that could effectively deal with fresh litigation and concurrently, prioritize pending cases. Crucially, we had to ensure that the closing of the precincts of the highest constitutional court of the country did not mean that the doors to access justice were closed. We had to perform our duty to protect civil liberties, attend to cases of public importance and be available as the court of last resort.

The e-Courts project, which has been in its second phase since 2015 played an instrumental role in creating a tech-enabled judicial system that could withstand the novel challenges of the pandemic – a system that was conducive for virtual courts, electronic filings, and online payments. Let me give you a snapshot of what the e-Courts project was able to achieve in the past year. 3.54 billion electronic transactions were undertaken under the e-courts project. In a nutshell, this highlights the sheer reach of e-courts' services to the common citizens. A total of 9.6 million cases were heard by courts through video conferencing. Out of the 13 million cases registered, 8.3 million cases were disposed of, thus, achieving a disposal rate of over 60%. In our endeavor to promote paperless filing, we also developed an e-filing software, using which over 100

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<sup>2</sup> Statista, *Internet penetration rate in India from 2007 to 2021*, available at <https://www.statista.com/statistics/792074/india-internet-penetration-rate/> (Last visited on Nov. 21, 2021).

thousand cases have been filed online in over 17 thousand District Courts and 25 High Courts.

The e-Courts project has been cognizant of the inherent inequalities that exist in our society, and how they stood to get reinforced with the switch being made to a virtual ecosystem. We created service centers that could consolidate all the essential facilities offered under the e-Courts project and make them available to litigants who lacked digital access. These facilities included providing soft copies of judicial orders, facilitating e-filing of petitions, appending digital signatures, facilitating e-payments, and guiding people on availing free legal services from legal aid authorities. We have also ensured that our online judicial processes protect the privacy of our litigants and provide data security. As a part of the e-Courts project, we also took steps to make our digital services accessible to persons with disabilities by adhering to the principle of reasonable accommodation.<sup>3</sup> We are also in the process of digitizing over 31 billion court records across India. We have launched this digitization project in 5 High Courts as a pilot. The standardization of digitization across the country will ensure interoperability between data repositories and is bound to make our justice delivery system more seamless and efficient. This process of digitization of court records will expedite the dispute resolution process and particularly advance the objective of efficient enforcement of contracts, sought to be achieved by our Commercial Courts. Thus, further improving the ease of doing business in India in terms of the World Bank guidelines.

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<sup>3</sup> Accessible features like increase/decrease the contrast and text, screen reader access, accessible calendar and audio captcha are available on the websites of High Courts. Modifications have been done to allow access to judgments/orders, case status and cause list using screen reader software.

One of the necessary and welcome by-products of the transition to a virtual ecosystem was the increase in public access to our judicial systems. At the e-Committee, we saw this as an opportunity that could serve the cause of open justice.<sup>4</sup> Livestreaming was introduced in High Courts by the model rules framed by the e-Committee. This was an attempt to demystify judicial processes, increase judicial accountability and disseminate information in cases of public importance. An online portal called the National Judicial Data Grid was created. It is a repository of metadata, available in the public domain, holding court records of 40.3 million pending cases.

Digital reform should not be limited to merely automating our old ways of working and transposing the same old physical infrastructures to a virtual environment. As Professor Richard Susskind argues, the Covid-19 pandemic has given us a springboard into a new world, and right now, we are just at the foothills.<sup>5</sup> Aligning to Susskind's views, my vision for the future is to have a technologically equipped justice delivery system that not only outlasts the current pandemic but also segues into an ecosystem where adjudication is a service for the people and not just a sovereign function.<sup>6</sup> Take, for instance, something as elementary as a breach of contract. In an ecosystem of the future, the parties to the contract would be choosing the forum of dispute resolution based upon the efficiency and costs of the institution concerned. Thus, courts would have to keep up with modern

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<sup>4</sup> Cunliffe Emma, *Open Justice: Concepts and Judicial Approaches* (2012) 40 FED L REV 385; See also, Swapnil Tripathi v. Supreme Court of India (2018) 10 SCC 639.

<sup>5</sup> Brett Milano, *Online courts: reimagining the future of justice*, HARVARD LAW TODAY, Dec. 4, 2020, available at <https://today.law.harvard.edu/online-courts-reimagining-the-future-of-justice/> (Last visited on Nov. 24, 2021).

<sup>6</sup> De Souza et al., *The Supreme Court of India's Vision for e-Courts: The Need to Retain Justice as a Public Service*, THE HINDU CENTRE FOR POLITICS AND PUBLIC POLICY, July 10, 2021, available at <https://www.thehinducentre.com/publications/policy-watch/article35229520.ece> (Last visited on Nov. 24, 2021).

methods and processes adopted by ADR forums. In fact, with the advent of Artificial Intelligence, which can enable parties to anticipate, identify and predict outcomes of their disputes, we are not quite far from Frank Sander's concept of a 'multi-door courthouse' where Courts and ADR forums compete for adjudicating disputes in their capacity as service providers.<sup>7</sup>

While I believe that this is what the future should hold for us, transitions must be accompanied by a vision of access and inclusion. At the e-Committee, it has been our constant endeavor to bridge the digital divide, while making justice accessible to citizens at their doorstep. I also believe that the full potential of technology can be realized only if it's accompanied by a change in culture and mindset. To achieve this, the e-Committee's training programs have covered 200 thousand judicial officers, advocates, and staff to equip them to reap the benefits of the digital reforms that have been initiated. I look forward to seeing the increased participation of all our stakeholders in advancing technological innovation. As the e-Committee, we have given them wings, it's time for them to soar!

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<sup>7</sup> Lance Ang, *Legal Disruption in Dispute Resolution in the Age of COVID-19*, HARVARD INT'L L.J. (Forum), available at [https://harvardilj.org/2021/02/legal-disruption-in-dispute-resolution-in-the-age-of-covid-19/#\\_ftn6](https://harvardilj.org/2021/02/legal-disruption-in-dispute-resolution-in-the-age-of-covid-19/#_ftn6) (Last visited on Nov. 24. 2021).