

A Proposal On Bridging Digital Divide In India And Incorporating Digital Aspects Into The Justice System

Team code: H06

Objectives:

- To address the lacunas created in the digital interface of India
- To address how to bridge the digital divide
- To examine how a wider digital interface of India could aid in the speed of justice

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Preface:

The diverse economic and political developments have resulted in various jurisdictions hoping to adopt digital platforms as a means of disseminating justice. However, one of the biggest problems among marginalized communities is the fact that the access to digital systems comes at a very high socio – economic price. The rise of digital technologies in the court rooms would act as an important factor to finally address the much-anticipated issue about the rights of under trial prisoners. To envision a future wherein the liberties of individuals are protected through the means of swift and effective justice, the investment in the digital infrastructure would save us a collective gasp of panic attack. The implementation of legal aid has been staple issue for years in various reports and judgements. However, the infusion of technology in the legal field with the involvement of all the stakeholders from government to civil societies, would extend justice to every individual. Digital technologies bring in myriad of benefits by boosting economic growth and efficiency, expanding the education opportunity and delivering social justice. The advantages brought by the digital innovation largely depend upon internet connectivity. This policy suggestion would provide a brief background of the issues that plague our justice delivery and provide a framework to anticipate the results in a strict timeframe. We believe the efforts from the government to address the challenges inside and outside of the courtrooms would liberate thousands of people from injustice.

Background and Existing Jurisprudence:

On undertrials

It has been adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. It is the first major document which advocates the rights of the prisoners

- According to the NCRB report, The number of undertrial prisoners has increased from 3,71,848 in 2020 to 4,27,165 in 2021 (as on 31st December of each year), having increased by 14.9% during this period. Among the 4,27,165 undertrial prisoners, the highest number of undertrial prisoners was lodged in District Jails (51.4%, 2,19,529 undertrials) followed by Central Jails

(36.2%, 1,54,447 undertrials) and Sub Jails (10.4%, 44,228 undertrials) as on 31st December, 2021¹

- Indian law regulates prisons and prisoners under the Prisons Act 1894 and the Prisoners Act, 1900. India has one of the highest undertrial populations in the world. It is estimated to be the 18th highest in the world and third highest in Asia.²
- These are the people who were awaiting a trial or whose trials were still ongoing and who have not been convicted. In figures, it means that there are twice as many undertrials in Indian's prisons as there are convicts.
- Most prisons in India are overcrowded, partly as a result of excessive undertrial detention. The average occupancy rate in Indian prisons is 114%, and is as high as 233.9% in states such as Chhattisgarh

On usage of video- conferencing facility by undertrials³

- The Supreme Court of India has ruled that an inordinate delay in bringing an accused person to trial violates the right to personal liberty guaranteed by Article 21 of the Constitution of India. Article 14(3)(c) of the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party, says that an accused person has the right to be tried without undue delay and that criminal proceedings should be started and completed within a reasonable time. Undertrials need to be brought before court regularly for their trials to progress and a decision to be made in their cases.
- According to the RTI responses, among states with the largest undertrial populations, Uttar Pradesh has the highest production rate of undertrials through videoconferencing. Arunachal Pradesh, Chandigarh, Chhattisgarh and Himachal Pradesh said they had produced all the undertrials required to be produced through videoconferencing.

On legal aid

- India's Law Commission noted in a 2017 report that in practice, legal aid was provided only after charge-sheets were filed. This practice limits the access of poor detainees - who cannot afford private lawyers - to legal assistance in the crucial precharge stage
- Article 8 of the The Universal Declaration of Human Rights, 1948, recognizes the right to free legal aid. It emphasizes on the right to approach the National Tribunal for effective remedy in case of violation of Fundamental Rights. Whereas, Article 10 of the declaration recognizes the human right of full equity emphasize on the fair public hearing and independent and impartial tribunals to determine right. Furthermore, Article 14 says that everyone has the right to seek and enjoy in other countries asylum from prosecution.
- Article 14 of the International Covenant on Civil and Political Rights, 1996, states that all person shall be treated equally before courts and tribunals. Everyone is entitled to fair public hearing by competent and independent tribunals or courts. The accused should be informed about the offence and should be granted adequate time to prepare.

¹ Ministry of Home Affairs, National Crime Records Bureau 2020, 2021

² International Centre for Prison Studies, Highest to Lowest - Pre-trial detainees / remand prisoners, Available at http://www.prisonstudies.org/highest-to-lowest/pre-trialdetainees?field_region_taxonomy_tid=Al

³ Data source: Responses to RTI applications made by Amnesty International India to all District and Central prisons in India

- The Doctrine of Rule of law that is equality before law enshrined in Article 14 of the Indian Constitution promotes equality in the legal field also. The three principles of natural justice that is nemo debet esse iudex in propria causa, audi alterum partem, and reasoned decision are the founding stones of article 21 of the constitution. It grants the basic right to justice to everyone. Furthermore, Article 39A of the constitution obligates the state to secure operations of the legal system to promote justice, on the basis of equal opportunity and provide free legal aid to ensure that opportunities for securing justice are not denied to any citizens.
- The Legal Services Authorities Act, 1987 was enacted to efficiently implement legal aid in the Indian legal System. The act recognizes the composition, powers and functions of various legal service authorities at different levels- national, state, district or taluk. Section 12 of the act specifies the category for persons who are entitled for legal services.

On digital divide⁴

The National Family Health Survey 2019–21 (“NFHS”)⁵, however, shows a significantly larger gender gap in internet usage. The NFHS Report suggests that only 57.1 percent of the male population and 33.3 percent of the female population had ever used the internet. The NFHS also provides data segregation based on the rural-urban divide. Whilst 72.5 percent of the urban males and 51.8 percent of the urban females have ever used the internet, only 48.7 percent of rural males and 24.6 percent of the rural females qualify for this condition. It is interesting to note that across all states urban males have the highest percentages, whilst rural females have the lowest percentage.

- It is also important to note here that further gap in usage is based on age and caste group.⁶

Policy suggestions:

1.0 Bridging the digital divide

Before we can adequately expect implementation of digital aspects in the dissemination of justice, we must address the pressing issue of digital divide in India. We are to take the Merriam-Webster definition of digital divide⁷ as it succinctly describes the issue of digital divide, a social barrier between those who own computers and those who do not which would be exacerbated by the sudden introduction of involving digital aspects within the justice system. Part 1 of the policy aims to work in phases over a span on 10 years from the proposed date of bringing this policy into power of 1st May 2023 before Part 2 of the policy also comes into power. From then on, Part 1 of the policy is proposed to continue staying in power indefinitely until the desired per capita rate of computers to adults which is 4:10 is achieved and per capita rate of computers to adolescents which is 3:10 is achieved in rural areas of Raagland.

1.1 Segregate budget allotment for Corporate Social Responsibility activities within Information Technology companies

Corporate Social Responsibility is an important aspect within social development. Corporations that deal within digital spheres shall be asked to allot a certain amount of their CSR budget allotment to

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<https://press.un.org/en/2021/dsgsm1579.doc.htm>

⁵ http://rchiips.org/nfhs/factsheet_NFHS-5.shtml

⁶ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0236078#pone.0236078.s001>

⁷ Merriam-Webster dictionary, digital divide, “the economic, educational, and social inequalities between those who have computers and online access and those who do not”, 2021

digital divide. One such mandatory allotment would be for internet where an internet provider would be expected to provide 1 tower in a rural area for every 5 new towers created in an urban area. Moreover, internet providers will be encouraged to provide free or discounted internet packs for rural customers. Hardware companies shall be expected to make 1 unit for free for every 10 units sold to the urban populace. This 1 unit is to be donated to a rural school which has been accredited as in need after rigorous survey by a social worker, communications expert and legal expert.

1.2 Enforce social responsibility of NGOs in playing a role to support bridging the digital divide

The interface of NGOs has been an important aspect to the fabric of social development for decades. Within Raagland, all NGOs registered with a 12A and 80G certificate will be viable for a grant that will be provided under specific pretense. A grant of Rs. 50,000/- will be provided quarterly to NGOs to help finance the opening of computer laboratories in rural schools and rural areas. The NGOs must undergo strict government auditing at the end of every quarter to ensure the funds are correctly allocated.

1.3 Government funded hackathons for creative ideas

Quarterly hackathons are to be arranged within Raagland for all students within the age groups of 15 – 20 to give creative ideas to bridge different sectors of the digital divide. Ideas that win such hackathons will be provided funding through a government-granted seed-funding of Rs. 50,000/- and placed under the mentorship of an NGO working in similar sectors to help the idea flourish.

2.0 Bridging the legal gap through digital means

This part of the policy aims to come into force by 1st May 2033 after a desired per capita rate of computers to adults which is 4:10 is achieved and per capita rate of computers to adolescents which is 3:10 is achieved within 7 rural districts of Raagland. This is to ensure that most people can access legal rights and courts under such jurisdictions which would have digital provisions more easily until the digital divide is adequately fulfilled.

2.1 Changes within the criminal justice system

Most prisoners in India are undertrials. And most undertrials tend to be marginalized people. One way of incorporating technology in the criminal justice system is to have computer labs for bail hearings and other petty offence hearings where the lawyer can defend the case from prison. This would omit traveling charges and other costs that an undertrial may incur. Moreover, for prisoners who have been recently arrested can be given an online meeting with the Magistrate within 24 hours and an in-person meeting if necessary due to weight of the crime within 3 days. This would help speed up the process of petty crimes. A computerized database and tracking system for all prisoners can be set up in prisons to regularly alert authorities on which undertrials are eligible for release within Raagland. This can also be updated to include prisoners eligible for parole or bail. Digital incorporations within criminal justice also give vulnerable victims and witnesses a chance to provide evidence in a secure, convenient and less traumatic environment as well as to pre-record witness testimony. Moreover, documents can be easily recognized with the addition of a digital signature, seal or time stamp.

2.2 Changes within the alternate dispute resolution system

Digitization can also speed up alternate dispute resolution. Arbitrations can happen efficiently and speedily online with a pre-determined jurisdiction. Lok Adalats can be conducted online so that people may attend from the comfort of their homes and as per their convenience. Moreover, this would allow for proceedings to be easily recorded omitting the need for a stenographer. Mediation proceedings can also be made more comfortable through an online medium. Moreover, the choice of mediators and

arbitrators increases as anyone around the world with an internet connection can now fulfil these roles for the parties. This would help encourage people to choose Alternate Dispute Resolution over courts to also reduce the burden of cases on courts.

2.3 Changes within legal aid, awareness and services

Once adequate per capita rate is reached, a mandatory legal course can be disseminated via internet that be completed at ease and from home, allowing to easily and effectively give legal knowledge. Moreover, online seminars can be held to improve legal knowledge which many people can attend, and one jurisdiction can arrange for multiple jurisdictions within a 50km radius. This helps quickly distribute information that is essential for legal knowledge of marginalized parties. Legal services like booking court dates and issuing vakalatnamas can be shifted to an online process, making getting legal help easier for people. Legal aid and the need of Lok Adalats can be appealed for online, and the online presence of Lok Adalats allows for multiple jurisdictions to attend 1 Lok Adalat. Multiple breakout-rooms can be arranged within Lok Adalats and issues can be clubbed so each breakout-room deals with a certain type of issue. This would increase the output of Lok Adalats.