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E.MBA, LL.M, Ph.D, PGDSAPM

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Subhrajit Chanda

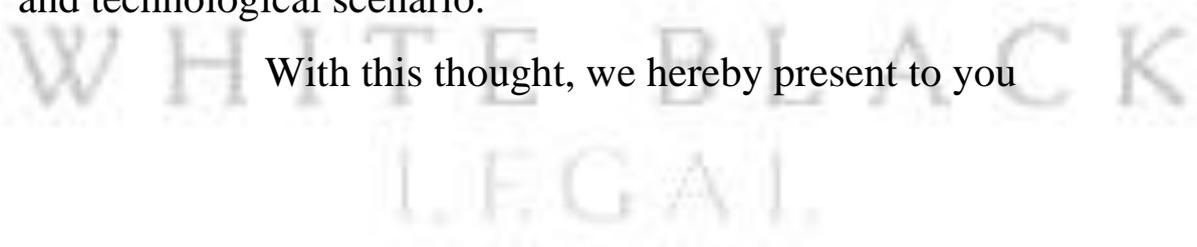
BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



EMERGING ISSUES OF DIGITAL DIVIDE AND ACCESS TO JUSTICE

AUTHORED BY - DR. ANKITA KUMARI¹

& MS. PRACHI PRIYAMVADA²

Abstract

As the world rapidly adopts digital technologies, the legal and judicial systems are increasingly moving online. While digitization has the potential to improve access to justice, it also risks marginalizing vulnerable populations due to the existing digital divide. The digital transformation of legal and judicial systems has ushered in new opportunities to improve access to justice. The Indian legal system is among the many areas that have been profoundly touched by the digital revolution. Digital innovations have significantly impacted India's access to justice, with a focus on online conflict resolution and technological integration in court procedures. However, it has also magnified existing inequalities through the digital divide. This paper explores the contemporary issues stemming from unequal digital access, especially among marginalized and rural populations, and how it impacts their ability to seek, understand, and obtain justice. By examining national and international frameworks, judicial digitization efforts, and legal aid mechanisms, this research highlights the urgent need to bridge the digital divide to ensure inclusive and equitable access to justice. This paper explores how the digital divide rooted in disparities in access to technology, digital literacy, and infrastructure, affects access to justice. It examines the legal and institutional frameworks addressing this issue and offers policy suggestions to make justice delivery systems more inclusive and equitable in the digital age.

Key words: *E-courts, digital divide, digital access, justice, technology*

¹ Assistant Professor, Chotanagpur Law College, Namkum, Ranchi

² Assistant Professor, Chotanagpur Law College, Namkum, Ranchi

Introduction

The concept of access to justice, is a fundamental right³ guaranteed under the Constitution of India, refers to the ability of individuals to seek and obtain a remedy through formal or informal legal institutions for grievances in compliance with human rights standards. Access to justice is a cornerstone of the rule of law and democratic governance that promotes justice, equality, and the core idea of the rule of law⁴. Ensuring universal access to justice is crucial for upholding social justice, defending human rights, and creating a peaceful and stable community.

Nevertheless, a number of nations struggle to provide universal access to justice for a variety of reasons, such as insufficient funding, a lack of public knowledge of their legal rights, and inefficiencies in the judicial system. As evidenced by numerous international documents including the Universal Declaration of Human Rights⁵ and the International Covenant on Civil and Political Rights⁶, the international community has consistently recognised the importance of securing access to justice. These documents demonstrate how important it is to give everyone the chance to seek and receive justice on equal terms, regardless of their unique situation.

Globally, the digital revolution has brought about revolutionary developments that have a significant impact on access to justice. The incorporation of digital technologies holds potential for improving accessibility and efficiency in India, where the court has long been beset by delays and pendency.

With the proliferation of digital technologies, courts and legal services are increasingly shifting online. While digitization holds the potential to reduce delays and enhance efficiency, it simultaneously risks excluding those who lack digital literacy, resources, or connectivity. In the 21st century, the integration of technology into legal systems has become essential. However, the benefits of digital justice are not evenly distributed, and the digital divide has become a significant barrier to equitable access.

³ Anita Kushwaha v. Pushap Sudan, (2016) 8 S.C.C. 509 (India).

⁴ Galanter, Marc S. and Krishnan, Jayanth K, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, 55 HASTINGS L.J. 789, (2004), last accessed on June 8, 2025

⁵ The Universal Declaration of Human Rights, 1948, art. 10.

⁶ The International Convention on Civil and Political Rights, 1966, art. 9(4).

The concept of digital divide defined by disparities in access to technology and the internet has thus emerged as a critical barrier to equitable justice. In the era of information technology, disparities in access to technology can be used to conceptualise the "digital divide." The "haves" are those who can access information and profit from the digital economy, while the "have-nots" are those who are left out⁷.

This digital divide is not merely technological, it reflects deeper social, economic, and educational inequalities. Without addressing it, the promise of technology-enhanced justice may remain inaccessible to large segments of the population.

Widening of Gap in Electronic Justice-Delivery System

Not only does the digital divide impact people and communities, but it also has negative effects on solicitors, making it more difficult for them to engage in the legal system. Many solicitors lack the necessary skills and access to technology, which hinders their ability to use and utilise digital tools and resources in their business. The divide between attorneys with sufficient resources and those without is growing in an increasingly digitalised legal environment where courts and legal procedures are adopting technology. For example, a substantial portion of the population in India does not have access to digital technology, which limits their capacity to take advantage of government programs and online services meant to raise their socioeconomic standing. A group of attorneys is forced to the judicial system's periphery as a result of this divide, finding it difficult to meet the changing needs of contemporary legal practice.

The increased accessibility that digitization offers is one of the main advantages for the legal profession. Online platforms greatly reduce traditional obstacles to justice, such as physical distances and the high expense of legal services. Citizens can access judicial resources without having to physically be in courtrooms because to online legal aid services, virtual hearings, and e-filing systems.

This digital gap has wide-ranging effects on the legal profession. When it comes to organising and organising case files, conducting legal research, preparing and filing papers online, and effectively presenting arguments in court, attorneys who are not tech-savvy may find

⁷ <https://www.scconline.com/blog/post/2023/07/03/judicial-innovation-and-digital-divide-promoting-access-to-justice-amidst-rising-inequality/>, last accessed on June 8, 2025

themselves at a disadvantage. The effectiveness and efficiency of legal representation can be greatly impacted by these duties, which have been made simpler by digital platforms and technologies. Therefore, in order to promote equal access, it is imperative that any technology used in the courts take into account the challenges surrounding digital literacy and abilities.

Digitising Access to Justice

Modern society depends so extensively on technology that it would be impossible to function without it, whether it be digital or analogue. With the creation of e-documentation, e-notices, e-courts, legal search engines, online dispute resolution procedures, and AI-based predictive analysis tools, technological innovation has completely transformed and re-engineered the way the legal sector operates. Unquestionably, the goal of these advancements is to increase the productivity, efficiency, and strategic nature of the legal services delivery process⁸. Enhancing access to justice for regular people who deal with social, economic, and cultural issues on a regular basis has received relatively little attention, despite the fact that many of these improvements may be concentrated on bettering the provision of legal services to those who can afford them. Ensuring socioeconomically disadvantaged populations have access to justice is crucial and non-negotiable in order to overcome these obstacles.

Despite having a strong structure, India's legal system has historically struggled with issues like backlogs of cases, drawn-out trial procedures, and restricted access to legal services, especially in rural areas. A paradigm shift in how these problems are addressed is provided by the onset of the digital revolution. This change is best illustrated by the E-Courts Project, which was started by the Indian government as part of the National e-Government Plan with the goal of using ICT to deliver effective and timely citizen-centric services. In order to make the justice delivery system accessible, affordable, economical, transparent, and accountable, this effort aims to increase judicial productivity on both a qualitative and quantitative level.

The main aspects of access to justice serve as the foundation for an independent, transparent, accessible, accountable, and democratic judicial institution. These principles are regularly interpreted and applied by Indian courts to protect litigants' rights and administer justice in accordance with our constitutional goals. By embracing technology and holding digital hearings, the Supreme Court intervened to guarantee access to justice in the wake of COVID-

⁸ akshindia.org/Technology-and-Analytics-for-Law-and-Justice/part3.xhtml, last accessed on June 8, 2025

19 and concerns about the physical operation of courts. Shortly after India was placed under total lockdown, the Supreme Court utilised its extraordinary authority under Article 142 of the Constitution to make a number of instructions to address the pandemic-related crises in the administration of justice. The court ruled that it was necessary to embrace technology in "furtherance of the commitment to the delivery of justice" and that doing so was its "duty" rather than its "discretion".⁹

The pandemic thus necessitated striking a balance between access to justice and the public health emergency by ensuring courts functioned and guaranteeing the right to life and health, of all stakeholders.

Emergence of E-courts in Indian Legal System

India's legal system has undergone significant transformation in recent decades, especially since technology was introduced into its courts. An important step in modernising the legal system and facilitating the faster, more transparent, and more effective administration of justice in India has been the creation of e-courts, or electronic courts¹⁰. Access to justice is hampered by a number of factors, including lack of funds, poor legal literacy and understanding, geographic limitations, linguistic and cultural hurdles, and prejudices and discrimination that are pervasive in the legal system¹¹. In order to establish a fair and inclusive justice delivery system, it becomes pertinent to overcome these obstacles.

A significant push towards judicial modernisation using information and communication technology (ICT) is indicated by the emergence of e-Courts in India¹². The idea of e-courts, sometimes referred to as digital courts or online courts, has gained popularity in reaction to the judicial system's digital revolution.

In many countries, e-courts have become an essential part of the judicial system. E-courts have demonstrated their promise, especially in economically challenged nations that struggle with a

⁹ Guidelines for Court Functioning through Videoconferencing during Covid-19 Pandemic, In re, (2020) 6 SCC 686

¹⁰ <https://www.freelaw.in/legalarticles/E-Courts-in-India-Progress-Challenges-and-Future-Prospects->, last accessed on June 9, 2025

¹¹ Hurter, E., Access to justice: to dream the impossible dream? 44.CILSA 408–427, (2011).

¹² https://www.google.com/search?q=the+rise+of+e+courts+in+india&oq=the+rise+of+e+cour&gs_lcrp=EgZjaHJvbWUqCQgDECEYChigATIGCAAQRrg5MgkIARAhGAoYoAEyCQgCECEYChigATIJCAMQIRgKGKABMgkIBBAhGAoYoAEyBwgFECEYnwUyBwgGECEYnwUyBwgHECEYnwUyBwgIECEYnwUyBwgJEC EYjwLSAQkxMjA0OWowajeoAgiwAgHxBVGB_eYLubU&sourceid=chrome&ie=UTF-8, last Accessed on June 9, 2025

lack of judicial infrastructure and resources. However, there are a number of difficulties in putting e-courts into practice. Protecting the confidentiality and security of court data is a major priority and one of the main concerns¹³. Another challenge that needs to be addressed is making sure that the e-court system is accessible to everyone, especially those without internet connection or electronic devices.

With the launch of the National Judicial Data Grid (NJDG), India has become a leader in the deployment of e-court systems. In order to enable litigants and solicitors to view case information online and make applications, this centralized database compiles case data from courts throughout the nation. Faster court proceedings and lower expenses and time spent acquiring case materials are the outcomes of NJDG's deployment. India has also put in place e-filing systems, which allow lawyers and litigants to electronically submit court documents. This strategy has improved the court system's efficiency and greatly decreased the need for paper-based filings¹⁴.

Furthermore, by offering a way to continue court procedures while reducing the risk of virus transmission, e-courts have been essential during the Covid-19 outbreak. Initiatives for e-courts have the potential to completely transform how legal systems function.

E-courts can improve access to justice, speed up legal proceedings, and cut down on delays by utilising technology and digital tools. We may anticipate more developments in e-court programs globally as technology continues to evolve.

Issues and Concerns Relating E-Courts

Access to technology: Although e-courts have the potential to increase the legal system's effectiveness and accessibility, it is important to recognize and respond to the many challenges and objections that come up. The digital gap is a significant obstacle to the establishment of e-courts in India. Even while urban places have relatively superior internet infrastructure and access, these technologies are difficult to find in rural and isolated areas. Many Indians lack even access to e-court services because they are so technologically inept. There are still

¹³ KINHAL, D. and JAUHAR, A. VIRTUAL COURTS IN INDIA: A STRATEGY PAPER. VIDHI (2020).

¹⁴ *E-committee Supreme Court of India*, "Policy and Action Plan Document Phase II of the ECourts Project" https://sci.gov.in/pdf/ecommittee/PolicyActionPlanDocument-PhaseII-approved-08012014-indexed_Sign.pdf, last visited on June 10, 2025

significant gaps in district and taluka-level courts notwithstanding improvements to the digital infrastructure of courts. The vast majority of these courts lack the necessary computer technology, reliable internet access, and management skills for e-court systems. Poor support systems and erratic power supplies continue to plague the courts¹⁵.

Threat to security and privacy concern: Due to their heavy reliance on technology and electronic communication, e-courts face considerable security vulnerabilities. Possible weaknesses and hacking events could jeopardize the legal system's integrity and jeopardize private information. Because personal information is sent and stored digitally when using e-courts, privacy concerns are raised. These privacy concerns are made worse by the possibility of illegal access to private information. The digitization of court documents and case proceedings has made cybersecurity a critical problem. Judgements, case files, and personal information are all susceptible to hacking, breaches, and cyberattacks. For e-courts to be dependable, it is crucial to provide robust security protocols and adherence to data protection regulations¹⁶.

Technical challenges: Another barrier to the efficient operation of e-courts is technical challenges. For judicial procedures to run smoothly, technology must be dependable and useful. On the other hand, technical difficulties like software bugs, network problems, and server outages can hinder or postpone court proceedings, frustrating and inconveniencing all parties. Even if e-courts can expedite proceedings, the massive backlog of cases remains a major obstacle. Technology has not entirely eliminated the problem of overcrowded courts and delayed justice. Automation and digitization can speed up some operations, but the fundamental issue of less infrastructure and human resources persists.

Suggestions and Way Forward

In the digital age, access to justice must be revolutionized in order to provide a more effective, affordable, and accessible judicial system for anyone. An option that has shown promise for enacting this change is e-courts. E-courts can reduce the backlog of cases by encouraging alternative dispute resolution procedures like online mediation and arbitration.

¹⁵ <https://www.freelaw.in/legalarticles/E-Courts-in-India-Progress-Challenges-and-Future-Prospects->, last accessed on June 10, 2025

¹⁶ <https://www.freelaw.in/legalarticles/E-Courts-in-India-Progress-Challenges-and-Future-Prospects->, last accessed on June 10, 2025

Furthermore, e-courts have the power to transform access to justice in the digital age by improving the legal system's efficacy, efficiency, accountability, transparency, and general efficacy.

Even with the advancements in e-court implementation, obstacles still need to be addressed. One of the biggest challenges is making sure that everyone has access to e-courts, regardless of their level of digital literacy or technological proficiency. Additionally, when e-courts proliferate, privacy and data protection issues can surface, requiring careful thought and solutions. The effective integration of e-courts is essential to the change of access to justice in the digital age. Since e-courts have the potential to transform access to justice in the digital age, it is imperative that the problems surrounding their efficacy be addressed in order to guarantee true accessibility for everyone and preserve public confidence in the legal system.

The justice system has undergone significant transformation in the digital age, and e-courts are a major step in ensuring that everyone has access to the legal system. The administration of justice might be completely transformed by e-courts, which would increase efficiency, openness, and impartiality. E-courts can significantly increase access to justice, especially for disenfranchised and underprivileged groups who face obstacles to traditional court systems. Since e-courts can lower costs and speed up case resolution, the advantages are shared by all parties.

Additionally, by enhancing openness, e-courts help a larger community comprehend and have more faith in the judicial system.

Action must be taken to guarantee that e-courts are accessible to everybody, particularly those who might encounter technological obstacles, in order to realize their full potential. To develop e-court systems that are easy to use, safe, and transparent, cooperation between governments, civil society organizations, and the private sector is required. Furthermore, it is essential to engage in training and capacity building to give court employees and legal professionals the know-how to use digital platforms efficiently.

Due to a number of barriers, including lack of information, physical distance, and financial limitations, many people have difficulty accessing justice. Nonetheless, the digital age presents a chance to improve and modernize access to justice. In the digital age, e-courts have become

a viable way to improve access to the legal system. The judicial system can decrease case backlogs and increase efficiency by utilizing e-courts. All parties involved must work together to revolutionize access to justice through e-courts. Justice can be made more effective and accessible for everyone by implementing steps to increase access to e-courts.

Conclusion

The integration of technology, including e-filing, virtual courts, and AI-driven case management, is a pivotal step in reforming the Indian judiciary. These tools not only address procedural inefficiencies but also enhance accessibility and transparency.

India's resolution to modernise its judicial system is reflected in the growth of e-courts in that country. Even while there are still problems like resistance, cybersecurity risks, and inadequate infrastructure, the advancements made thus far hold enormous promise for the future. E-courts will play a key role in the development of India's justice system as technology advances and funding for judicial reform increases, resulting in more accessible, effective, and transparent justice for all citizens. Justice, being the cornerstone of democracy, requires continuous innovation to adapt to changing times and meet the evolving needs of society.