

DIGITAL JUSTICE DELIVERY IN POST-PANDEMIC INDIA: UPHOLDING THE PRINCIPLE OF OPEN COURTS

—ANAMIKA SHUKLA*

India's justice delivery system underwent a radical change as a result of the COVID-19 pandemic, which forced the judiciary to adopt digital technology and adjust to virtual court hearings. With a focus on the 'open courts' principle, a pillar of accountability, transparency, and public trust in the judiciary, this study examines the development and difficulties of digital justice delivery in post-pandemic India. The study investigates how information and communication technologies ('ICTs'), like video conferencing and e-court initiatives, affect judicial accessibility and efficiency. It is based on statutory provisions, judicial interpretations, and comparative observations from other jurisdictions. The study addresses important issues like the digital divide, privacy concerns, and gaps in digital infrastructure while highlighting notable developments like the National Judicial Data Grid ('NJDG'), e-Courts initiatives, and AI-driven tools like SUPACE. The paper underscores the potential of virtual courts to improve accessibility, reduce costs, and overcome geographical barriers, thereby democratising justice delivery while ensuring the principle of open justice remains intact in the digital era. This paper calls for targeted reforms to address infrastructural disparities and integrate international best practices. By balancing technological innovations with judicial principles, this study advocates for a robust, transparent, and inclusive justice system aligned with the demands of a digitally empowered society.

Keywords: principles of open court, e-courts, digital infrastructure, digital justice.

* Anamika Shukla is an Assistant Professor of Law at the Gujarat National Law University, Gandhinagar. The author is pursuing her PhD at the West Bengal National University of Juridical Sciences, Kolkata. She completed her LLM from the Hidayatullah National Law University, Raipur, specialising in Technology and Law, and her LLB from the Symbiosis Law School, Noida. Her research interests lie at the intersection of technology and the legal framework.

I. INTRODUCTION

As a counter-response to the COVID-19 pandemic and to curb its spread, the Government of India ('GoI'), in line with the directives of the World Health Organization ('WHO'), emphasised social distancing in all public services and areas.¹ While India actively undertook measures, even the judicial wing attempted to adapt to new modes of operation. The Supreme Court of India mandated the utilisation of information and communication technology ('ICT') for court proceedings and carrying out administrative procedures through an order on April 6, 2020.² In highlighting precedents like the *State of Maharashtra v Praful Desai*,³ the said court order endorsed the importance of electronic evidence and video conferencing as viable tools for judicial processes. This led to the conceptualisation of open courts, a system that traces its evolution in the jurisprudence of open justice.

The evolution of open justice as a core principle in the administration of justice mirrors the broader influence of contemporary transparency movements. These movements have leveraged the principles of open justice and transparency with more radical objectives, including the potential transformation or even dismantling of State structures. Changes in litigation practices have swayed the type of materials that may be requested under open justice, and contemporary courtroom management practices and have accelerated the constraints on the scope and variety of materials accessible to non-parties.⁴

Although a subject of ongoing debate, the concept of open justice, along with the mechanisms that support its implementation, has significantly evolved over time. Traditionally, non-party requests for access to court information have been largely utilised by commercial media agencies. On the other hand, it can be contended that researchers and scholars, as non-parties, should be afforded greater access to the justice system. This would not only grant a more in-depth

¹ World Health Organisation, *Advice for the Public: Coronavirus Disease (COVID-19)* (Issued on 18 March 2023) <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>> accessed 22 December 2024. See also, Ministry of Home Affairs, Government of India, *Guidelines for Effective Control of COVID-19*, Order No. 40-3/2020-DM-I (A) (Issued on 23 March 2021) <https://www.mha.gov.in/sites/default/files/MHAOrder_23032021_o.pdf> accessed 22 December 2024.

² Supreme Court of India, *Guidelines for Court Functioning Through Video Conferencing During COVID-19 Pandemic, In re* (2020) 6 SCC 686. <https://main.sci.gov.in/supreme-court/2020/10853/10853_2020_o_1_21588_Judgement_o6-Apr-2020.pdf> accessed 22 December 2024.

³ *State of Maharashtra v Praful B Desai* (2003) 4 SCC 601.

⁴ Open Society Foundation, 'Strategic Litigation Impacts: Insights from Global Experience', OSJI (28 October 2018) <<https://www.justiceinitiative.org/uploads/fd7809e2-bd2b-4f5b-964f-522c7c70e747/strategic-litigation-impacts-insights-20181023.pdf>> accessed 22 December 2024.

examination and critique by experts but also magnify the transparency and accountability of the judicial process.⁵

Open justice is founded on the belief that the legal process can only achieve accountability and legitimacy when court procedures, records, laws, and judicial decisions are made accessible to the public. The principle of open justice has evolved alongside the concept of open government, which, in modern democratic governance, emphasises transparency and the public's right to scrutinise the actions and decisions of those in power.⁶

Philosophers of the eighteenth century, such as Kant, Rousseau, and Bentham, envisioned notions of open government and open justice that differ significantly from those advocated by contemporary transparency movements, such as Transparency International, OpenSecrets.org, or WikiLeaks.⁷ The cases of Chelsea Manning,⁸ Edward Snowden,⁹ and the extradition of Julian Assange¹⁰ illustrate how transparency can also be wielded as a tool for more radical aims, particularly in the exposure of official data by individuals seeking to challenge or undermine State authority.¹¹

The principle of open justice demands that justice must not only be done but also be seen to be done. Courts are required to remain open to the public, with any deviations from this principle being justified only under the most exceptional and clearly defined circumstances. Such deviations must be based on necessity, though this necessity should not be interpreted too restrictively.¹²

⁵ Emma Cunliffe, 'Open Justice: Concepts and Judicial Approaches' (2012) 40 Federal Law Review 385.

⁶ J Bosland & J Gill, 'The Principle of Open Justice and the Judicial Duty to Give Public Reasons' (2014) 38:482 MULR, 484 <https://law.unimelb.edu.au/__data/assets/pdf_file/0010/1586989/382BoslandandGill2.pdf> accessed 22 December 2024.

⁷ Ishita Menon, 'The Political Dialectics of Transparency in Modernity and Beyond: The Radicalization and Problematic of Visual Politics' (2010) FGSAS Georgetown University <https://repository.library.georgetown.edu/bitstream/handle/10822/558059/Menon_georgetown_0076D_10865.pdf?sequence=1&isAllowed=y> accessed 22 December 2024; *See also*, JR Bruno, 'Democracy Beyond Disclosure: Secrecy, Transparency, and the Logic of Self-Government' (2017) Harvard University Office of Scholarly Communication <<https://philarchive.org/archive/BRUDBD-3>> accessed 22 December 2024.

⁸ *United States v Private First Class Bradley E Manning (nka Chelsea E Manning) United States Army*, ARMY 20130739 <<https://sgp.fas.org/jud/manning/appeal-053118.pdf>> accessed 22 December 2024.

⁹ *United States of America v Edward Snowden*, Case No. 1:19-cv-01197 (2019) <<https://www.justice.gov/opa/press-release/file/1203236/dl>> accessed 22 December 2024.

¹⁰ *Julian Paul Assange v Government of United States and Secretary of State for the Home Department*, 2024 EWHC 700 (Admin) <<https://www.judiciary.uk/wp-content/uploads/2024/03/Assange-v-USA-Judgment.pdf>> accessed 22 December 2024.

¹¹ David D Cole, 'Assessing the Leakers: Criminals or Heroes?' (2015) JNSLP <https://jnslp.com/wp-content/uploads/2015/03/Assessing_the_Leakers_Criminals_or_Heroes.pdf> accessed 22 December 2024.

¹² A R Oakes and Haydn Davies, 'Justice Must be Seen to be Done: A Contextual Reappraisal' (2016) 37 ALR 2.

The principle of open courts ensures transparency, accountability, and public trust in the judicial process. *Black's Law Dictionary* defines an open court as a forum accessible to the public, where justice is not only administered but seen to be administered.¹³ This principle fundamentally includes each party's right of access to hearings which in essence means they have the right to attend and participate in court proceedings. As a corollary, there is also a right of the public and media to have access to hearings and their outcomes.¹⁴

Historically, jurisdictions worldwide have emphasised public trials to ensure impartial and effective justice. For instance, *Scott v Scott* highlighted the necessity of public trials,¹⁵ and *Attorney General v Leveller* stressed the public communication of evidence.¹⁶ The Canadian Supreme Court in *Attorney General (Nova Scotia) v MacIntyre* reiterated that openness fosters public confidence in the judiciary.¹⁷ Similar principles are upheld in the Australian,¹⁸ American,¹⁹ and European legal systems.²⁰

The digital justice delivery system introduced during the COVID-19 pandemic presents a significant opportunity to enhance efficiency and accessibility. However, integrating technology must be done carefully to uphold the principles of open justice. Uniform guidelines, robust technological infrastructure, and continuous evaluation are necessary to ensure digital adaptations do not compromise transparency and fairness. This study opens avenues for further research on the long-term impact of digital justice systems on legal principles and public confidence in the judiciary. Comparative studies with other jurisdictions can provide insights for improving the digital justice framework in India.

While the digital justice delivery system introduced during the COVID-19 pandemic has shown potential benefits, addressing its challenges to the principle of open courts is crucial. Ensuring justice remains transparent, accessible, and fair in a digital age requires continuous adaptation and vigilance. This research investigates the impact of the digital justice delivery system on the principle of

¹³ *The Law Dictionary* (2nd edn) <<https://thelawdictionary.org/open-court/>> accessed 22 December 2024.

¹⁴ STL Rewal, 'Public Hearings as Social Performance: Addressing the Courts, Restoring Citizenship' (2018) 17 SAMAJ (Online) 2018.

¹⁵ *Scott v Scott* 1913 AC 417, 463 ('Scott').

¹⁶ *Attorney General v Leveller Magazine Ltd* 1979 AC 440.

¹⁷ *Attorney General (Nova Scotia) v Linden MacIntyre* 1982 SCC OnLine Can SC 5 : (1982) 1 SCR 175, 185.

¹⁸ K Biber, 'Open Justice in Australian Jurisprudence' (2019) OJR University of Technology Sydney <<https://lawreform.nsw.gov.au/documents/Current-projects/Court-information/Preliminary-submissions/PC125.pdf>> accessed 22 December 2024.

¹⁹ Rory B O'Sullivan & Catherine Connell, 'Reconsidering the History of Open Courts in the Digital Age' (2016) 39 Seattle U L Rev 1281.

²⁰ Open Government in the EU, 'Open Court Proceedings' (August 2024) <<https://www.eu-open-government.eu/?tag=open-court-proceedings>> accessed 22 December 2024.

open courts, exploring if video conferencing and digital adaptations can maintain transparency, accessibility, and public confidence akin to physical courtrooms. By addressing critical challenges such as the digital divide, privacy concerns, and infrastructural gaps, the paper highlights opportunities for reform and innovation in the justice delivery system.

This research employs a qualitative approach, analysing judicial orders, guidelines from various High Courts, and relevant case laws. It examines procedural adaptations made by courts in India and evaluates their compliance with the principle of open justice. To address the research problem revolving around the challenges faced by digital justice systems post-pandemic, the role of ICT tools like video conferencing, and the integration of digital technologies to enhance transparency and accountability, this research study has been divided into five parts.

Part I gives an overview of the research problem. Part II incorporates the principles of open courts, how various foreign jurisdictions adopt these principles and their application in the Indian courtrooms in a digitally growing society. In Part III of this study, the Indian government's measures to streamline litigation and reduce court backlogs through ICT tools are elaborated. Sub-sections deal with policies like NJDG, e-Courts, and SUPACE. Part IV features a dedicated section on the need for improving digital infrastructure, addressing privacy concerns in virtual hearings, and boosting digital literacy across the Indian judiciary and society. Ultimately, Part V closes the argument by highlighting that the reforms discussed throughout the paper are not just necessary but inevitable for upholding open justice principles in India.

II. THE PRINCIPLE OF OPEN COURTS

The concept of an “open court” is defined in *Black's Law Dictionary* as a judicial setting where the public has an inherent right to access. The foundational principle of open justice was articulated by Lord Chief Justice Hewart who asserted that justice must not only be carried out but also be visibly evident to all.²¹ This principle is central to the notion of open courts, which encompasses the following essential elements:

- i. The accessibility of the hearing to all involved parties;
- ii. The right of the parties or their legal representatives to actively participate in the proceedings;
- iii. The public and media's right to access court hearings and their outcomes.

²¹ *R v Sussex Justices* (1924) 1 KB 256, 259.

These elements are critical to ensuring fair adjudication and are instrumental in maintaining public trust in the justice system. The doctrine of open courts is deeply rooted in the English legal tradition, where public participation in the judicial process was a cornerstone. In *Scott v. Scott*, Lord Atkinson acknowledged the discomfort that public hearings might cause to parties and witnesses, especially in criminal cases, where the details could be distressing or morally questionable.²² However, he emphasised that such discomfort is tolerated because public trials provide the best safeguard for impartial and effective justice, thereby fostering public confidence and respect.

Similarly, in *A v British Broadcasting Corpn.*, Lord Reed underscored the fundamental importance of open justice, stating that justice should be subject to public scrutiny, with the media serving as the primary conduit through which the public learns about court proceedings.²³ This linkage between open justice and media freedom was further elaborated by the Supreme Court in *Khuja v Times Newspapers Ltd.*, where it was recognised that media reporting on legal proceedings is an extension of the open justice principle, serving as the “eyes and ears” of the broader public, who may not be able to attend trials for practical reasons.²⁴

In *Attorney General v Leveller*, Lord Diplock further clarified that open justice mandates the public communication of all evidence presented in court.²⁵ It was emphasised that the principle of open courts underwrites the publication of fair and accurate reports of court proceedings, assuring that nothing is done to dissuade such transparency. Similarly, in *R v Legal Aid Board*, Lord Woolf MR defined open justice as a common law principle that requires public access to legal proceedings, which includes access to court files and trial court recordings.²⁶ It was noted that an open justice system acts as a check and deterrent to inappropriate judicial behaviour, which in effect decreases the chances of uninformed or inaccurate commentary on legal issues.

On similar lines, in *R (E) v Chairman of the Inquiry into the Death of Azelle Rodney*, the importance of open courts was ascribed to its promoting transparency in legal proceedings which could counteract the public perception of secrecy or misconduct within the judiciary.²⁷ Further, ensuring open justice would curb the exaggeration of facts and the unruly passing of responsibility among parties, as noted in *R (Wagstaff) v Secretary of State for Health*.²⁸

²² *Scott* (n 15).

²³ *A v British Broadcasting Corpn* 2015 AC 588.

²⁴ *Khuja v Times Newspapers Ltd* 2019 AC 161 : (2017) 3 WLR 35.

²⁵ *Attorney General v Leveller Magazine Ltd* 1979 AC 440 : (1979) 2 WLR 247.

²⁶ *R v Legal Aid Board, Ex p Kaim Todner* 1999 QB 966.

²⁷ *R (E) v Chairman of the Inquiry into the Death of Azelle Rodney* 2012 EWHC 563 (Admin).

²⁸ *R (Wagstaff) v Secretary of State for Health* (2001) 1 WLR 292.

The Canadian Supreme Court, in *Attorney General (Nova Scotia) v MacIntyre*, firmly established that the public's exclusion from court proceedings should be the exception rather than the rule.²⁹ The court emphasised that openness in judicial acts is a vital public policy, citing Bentham's assertion that "publicity is the very soul of justice", as it is the strongest safeguard against judicial misconduct. In *R v Mentuck*, the court extended the obligation of open justice beyond judges to include all participants in the justice system, such as police officers and warrant issuers.³⁰

In Australia, the principle of open justice is integral to a fair trial, as affirmed by Gibbs J. in *Russell v Russell*.³¹ The court asserted that public administration of justice is essential to maintaining confidence in the judiciary's integrity and independence. Open trials are a hallmark of judicial proceedings, distinguishing them from administrative actions.

Under the American legal system, the concept of open courts is enshrined in Article III, Section 3 of the U.S. Constitution³² which mandates that trials for treason must be held in open court. Similarly, the European Convention on Human Rights ('ECHR') upholds the principle of open justice. Article 6(1) of the ECHR³³ guarantees the right to a fair and public hearing by an independent tribunal, with judgments pronounced publicly, albeit with provisions for excluding the public in certain circumstances to protect morals, public order, national security, or the privacy of the parties involved.

A. UPHOLDING THE PRINCIPLE OF OPEN COURTS IN THE DIGITAL AGE

The idea that justice must not only be done but must also be seen to be done inspires the principle of open courts. A cornerstone of the Indian judicial system, this principle upholds transparency and public accountability in the administration of justice.³⁴ With the view of sustaining public confidence in the judicial process, open courts have allowed the public and the media to observe court proceedings.

The transition to virtual courts has raised doubts about how this principle can be upheld in a digital environment. Traditionally, a physical courtroom with

²⁹ *Attorney General (Nova Scotia) v Linden MacIntyre* 1982 SCC OnLine Can SC 5 : (1982) 1 SCR 175, 185.

³⁰ *R v Clayton George Mentuck* 2001 SCC 76 : 2001 SCC OnLine Can SC 75.

³¹ *Russell v Russell* (1976) 134 CLR 495, 520.

³² Constitution of the United States, art 3 §3.

³³ European Convention on Human Rights 1950, art 6.

³⁴ OECD Legal Instruments, 'Recommendation of the Council on Access to Justice and People-Centred Justice Systems', OECD/LEGAL/0498 (July 2023) <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0498>> accessed 22 December 2024.

the presence of the public and the media facilitates fairness and transparency in court proceedings as a means of checking on the judiciary. However, in a virtual court, where hearings take place online, this conventional mechanism of accountability is challenged.³⁵

Despite these notions, virtual courts can still uphold the principle of open courts if implemented with appropriate safeguards. Remote access to observe court proceedings by way of live-streaming technology ensures transparency, even in a digital format. For instance, in *Swapnil Tripathi v Supreme Court of India*, the Supreme Court endorsed the live-streaming of court proceedings, upholding it as an extension of the open court principle.³⁶

Further, new opportunities arise towards transparency and accountability by way of the digital format of virtual courts. A permanent and organised record of the court proceedings can be maintained and accessed through digitalisation, enhancing accountability, as these records can be reviewed to ensure that justice is administered fairly.³⁷

B. THE IMPACT ON INDIAN COURTS

The COVID-19 pandemic has profoundly impacted every aspect of society, including the justice delivery system. In response to the unprecedented challenges posed by the pandemic, the Indian judiciary has accelerated its adoption of digital technologies to ensure the continuity of legal proceedings. The shift towards virtual courts has been a significant step in maintaining the principle of open courts while adapting to the constraints of a post-pandemic world. By examining the role of technology in judicial reforms, the National Litigation Policy ('NLP'),³⁸ and the challenges and opportunities presented by digital justice, this paper aims to provide a comprehensive understanding of the evolving landscape of India's judicial system. It lays emphasis on how the principle of open courts has been bolstered by the means of digital justice delivery in post-pandemic India through virtual courts.³⁹

The principle of open courts, inspired by the English legal tradition, has been incorporated into the Indian legal system. The Indian Constitution, along

³⁵ Jane Donoghue, 'The Rise of Digital Justice: Courtroom Technology, Public Participation and Access to Justice' (2018) 80 MLR 6.

³⁶ *Swapnil Tripathi v Supreme Court of India* (2018) 10 SCC 639 ('Swapnil').

³⁷ 'Digital Courts: Future of the Indian Legal System' (*LexisNexis*, 27 June 2024) <<https://www.lexisnexis.in/blogs/digital-courts-future-of-the-indian-legal-system>> accessed 22 December 2024.

³⁸ Ministry of Law & Justice, *National Litigation Policy* (Press Information Bureau, 17 December 2021) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1782618>> accessed 22 December 2024.

³⁹ J Rattan & V Rattan, 'The COVID-19 Crisis – the New Challenges Before the Indian Justice and Court Administration System' (2021) 12 IJCA 2 <<https://iacajournal.org/articles/10.36745/ijca.391>> accessed 22 December 2024.

with various other statutory provisions mark the significance of transparency in judicial proceedings. Provisions such as Article 145(4) of the Indian Constitution clearly mandates the delivery of judgment by the Supreme Court in open court,⁴⁰ and no reference under Article 143 shall be made without an opinion delivered in open court.⁴¹

Section 366 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (erstwhile Section 327 of the Code of Criminal Procedure, 1973),⁴² stresses upon the importance of criminal trials to be conducted in an open court and their accessibility to the public to the extent permissible. However, exceptions are carved out, particularly in sensitive cases that require protection of vulnerable individuals such as minors or those involved in sexual offences, where trials may be held in-camera, and publication of proceedings is restricted to protect the identity of the parties involved. The functioning of Special Courts under the Protection of Children from Sexual Offences (POCSO) Act, 2012 is a prime example of such exceptions, where in-camera trials are mandated to safeguard the identities of children and ensure a sensitive environment. In *Sakshi v Union of India*,⁴³ the Supreme Court issued significant guidelines to make the justice process child-friendly, emphasising the importance of shielding minors from trauma during judicial proceedings. These exceptions, while appearing to conflict with the transparency of open justice, align with the broader objective of delivering justice while prioritising privacy and dignity.

In affirming the principle of open courts, Section 153-B of the Code of Civil Procedure, 1908,⁴⁴ asserts that civil trials must also be conducted in open court, while vesting the power of discretion to limit public access, in the presiding judge under special circumstances. Order XVIII of the CPC⁴⁵ reinforces this principle, stating that witness testimony must be taken orally in open court under the supervision of the judge. These statutory provisions reflect a deep commitment to transparency, forming the bedrock of open justice in India.

The principle of open courts has been further solidified by the Indian courts through judicial interpretation in landmark decisions like *Naresh Shridhar Mirajkar v State of Maharashtra* (1966).⁴⁶ A nine-judge bench of the Supreme Court regarded public scrutiny as a crucial check against judicial arbitrariness. It recognised the vital role of public trials in fostering a fair and impartial judicial process and enhancing public confidence in the judicial system. Nevertheless, the Court acknowledged the need for a trial in-camera in certain circumstances in

⁴⁰ Constitution of India, art 145(4).

⁴¹ Constitution of India, art 143.

⁴² Nagarik Suraksha Sanhita 2023, § 366; *See also*, Code of Criminal Procedure 1973, § 327.

⁴³ *Sakshi v Union of India* (2004) 5 SCC 518 : AIR 2004 SC 3566.

⁴⁴ Code of Civil Procedure 1908, §153(B).

⁴⁵ Code of Civil Procedure 1908, Order 18.

⁴⁶ *Naresh Shridhar Mirajkar v State of Maharashtra* 1966 SCC OnLine SC 10 : (1966) 3 SCR 744.

upholding justice, highlighting that open court proceedings are a means to ensure fairness, not an absolute end in themselves.

The Supreme Court's decision in *A.K. Roy v Union of India* (1982),⁴⁷ clarified that the right to a public trial is a critical component of the judicial process, although it is not a constitutionally guaranteed right in India, as under the Sixth Amendment of the U.S. Constitution. Decisions like *Swapnil Tripathi*,⁴⁸ wherein the Court recognised live audio-video streaming of cases as an extension of the open court principle, are of great significance. The Court further addressed the issue in *Indira Jaising v Secretary General*,⁴⁹ where it directed that matters related to live-streaming of court proceedings should be brought before the Chief Justice of India on the administrative side, indicating the judiciary's cautious approach toward integrating technology with the open justice mandate.

From an analysis of these provisions and judicial decisions, several key interpretations emerge. First, the principle of open courts is a universal rule and a vital element of the justice delivery system. Second, exceptions to this principle are permitted only in special circumstances, where privacy concerns or other compelling reasons justify a departure from public hearings. Consequently, the right to an open court hearing is not absolute in the Indian context.

The introduction and promotion of virtual court proceedings at the time of the COVID-19 pandemic caused a huge stir with concerns surrounding their alignment with the principle of open courts. The directives dated April 06, 2020⁵⁰ issued by the apex court of the country were scrutinised for their plausible limitation on public access to judicial proceedings. The main cause of concern was the pre-dominant confinement of access to virtual proceedings to the parties involved, along with their legal representatives. This stood in stark contrast to the traditional court setting, where the presence of the public and media fosters transparency. A few exceptions, such as in the Bombay and Kerala High Courts, had been made in addressing this issue by implementing live streaming for specific cases.⁵¹

The Supreme Court, in *Guidelines for Court Functioning Through Video Conferencing During COVID-19 Pandemic, In re*, striving to uphold the principle

⁴⁷ *A.K. Roy v Union of India* (1982) 1 SCC 271.

⁴⁸ *Swapnil* (n 36).

⁴⁹ *Indira Jaising v Secretary General* Misc. Appl. No.2058/2020 in W.P.(C) No. 66/2018.

⁵⁰ SCI (n 2).

⁵¹ Daksh, *Technological Transformation of Kerala High Court* (October 2023) <<https://www.dakshindia.org/technological-transformation-of-kerala-high-court/>> accessed 22 December 2024; *See also*, Agrud Partners, 'Resolving Disputes Virtually: An Analysis of Position in India' (*Legal 500*, April 2024) <<https://www.legal500.com/developments/thought-leadership/resolving-disputes-virtually-an-analysis-of-position-in-india/>> accessed 22 December 2024; *See also*, PTI, 'Bombay High Court Begins Live Streaming of Case Hearings Via Video Conference' (*NDTV*, 9 April 2020) <<https://www.ndtv.com/india-news/bombay-high-court-begins-live-streaming-of-case-hearings-via-video-conference-2209028>> accessed 22 December 2024.

of “justice, at all cost, always”, highlighted the significance of Information and Communication Technology (‘ICT’) systems in courts across India. The eight guidelines presented by the bench, led by the then Chief Justice of India, Hon’ble Justice S.A. Bobde, delineated various strategies that courts must adopt to balance the dual imperatives of justice delivery and public health.⁵²

The bench referenced *State of Maharashtra v Praful Desai*⁵³ to affirm the use of technology in the Indian judiciary. In this ruling, the Supreme Court broadened the interpretation of the term ‘evidence’ to encompass electronic evidence, asserting that video conferencing could be utilised for recording testimonies. The court observed,

*“Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place...Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you, i.e., in your presence... In fact, he/she is present before you on a screen. Except for touching, one can see, hear, and observe as if the party is in the same room. In video conferencing, both parties are in the presence of each other... Recording of such evidence would be as per the procedure established by law.”*⁵⁴

In addition to this order, the Supreme Court has periodically issued several notifications outlining Standard Operating Procedures (‘SOPs’) for judges, lawyers, and litigants.⁵⁵ These SOPs provide detailed instructions on e-filing, digital appearances, and other routine judicial procedures, ensuring that the transition to virtual courtrooms adheres to the established legal framework while maintaining the integrity of the justice delivery system.

In contrast, the United Kingdom, through its Coronavirus Act, 2020,⁵⁶ had made provisions for broadcasting and recording virtual court proceedings to ensure public and media participation, demonstrating a more inclusive approach to maintaining open justice in the digital age.

The Supreme Court of India, in its defence of virtual courts, had argued that these systems are not contrary to the principle of open courts. The Court’s report emphasises that public access to courts does not necessitate unrestricted

⁵² SCI (n 2).

⁵³ *State of Maharashtra v Praful B Desai* (2003) 4 SCC 601.

⁵⁴ *ibid.*

⁵⁵ Supreme Court of India, ‘Standard Operating Procedure for Ld. Advocate/Party-in-person for e-Filing, Mentioning, Listing and Video Conferencing Hearing’ (2020) <https://main.sci.gov.in/pdf/LU/04072020_153040.pdf> accessed 22 December 2024.

⁵⁶ Coronavirus Act 2020 (The United Kingdom).

entry, comparing courts to public places where access is regulated for security and practical reasons. Even prior to the pandemic, the general public's access to courtrooms was controlled, while the media representatives often acted as the public's eyes and ears.⁵⁷ The report also lays down the advantages of e-courts, such as saving time, energy, and resources for litigants and lawyers. However, it also acknowledges the challenges, including the need for adequate technology infrastructure and digital literacy.⁵⁸

While the concept of digital justice in India is not a novel concept, the pandemic has significantly expedited its implementation. Even before the pandemic, efforts to digitise court processes were underway, but the transition was gradual.⁵⁹ The pandemic, with its requirement for social distancing and restrictions on physical gatherings, created an urgency for courts to adopt virtual platforms to continue functioning. This rapid shift to virtual courts has been marked as an important milestone in the Indian judiciary's history. The distinctive features of the virtual courts such as digital filing systems, online hearings, and electronic case management, have been transformative. Virtual courts have provided opportunities for better accessibility to justice and breaking down geographical barriers by allowing litigants and lawyers to participate in proceedings from remote locations. Further, virtual courts suggest potential solutions to longstanding issues like the backlog of cases in the Indian legal system by streamlining processes and making case management more efficient.⁶⁰

III. INDIAN GOVERNMENT'S EFFORTS TO IMPLEMENT OPEN JUSTICE

The alignment of virtual courts and the principle of open courts faces major challenges. The prerequisites to effective participation in virtual court proceedings such as access to technology and digital literacy, remain as considerable obstacles. The digital divide in India, heavily marked by disparities in access to reliable internet connections, digital devices, and digital literacy leaves a vital gap in overcoming these challenges. The issue of lack of availability and quality of digital

⁵⁷ J Townsend & P Magrath, 'Remote Trial and Error: How COVID-19 Changed Public Access to Court Proceedings' (2021) 13 *Journal of Media Law* 2.

⁵⁸ Centre for Research & Planning, Supreme Court of India, 'State of the Judiciary: A Report on Infrastructure, Budgeting, Human Resources, and ICT' (2023) <https://cdnbbsr.s3waas.gov.in/s3eco490f1f4972d133619a60c30f3559e/documents/misc/state_of_the_judiciary.pdf> accessed 22 December 2024.

⁵⁹ E-Committee of Supreme Court of India, 'National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary' (August 2015) <<https://cdnbbsr.s3waas.gov.in/s3eco490f1f4972d133619a60c30f3559e/uploads/2024/11/2024111250.pdf>> accessed 22 December 2024.

⁶⁰ E-Committee of Supreme Court of India, 'Digital Courts Vision & Roadmap' (2022) <<https://cdnbbsr.s3waas.gov.in/s388ef51f0bf91e452e8dbbd807a81ab/uploads/2023/04/2023042088.pdf>> accessed 22 December 2024.

infrastructure is still relatively less severe in urban areas than in rural and remote areas. This digital divide creates barriers for litigants and lawyers in these areas, potentially denying them access to justice.⁶¹

Furthermore, the lack of uniform standards for virtual courts across courts in India has led to inconsistencies in how virtual hearings are conducted, raising concerns about the fairness and integrity of the judicial process. Different courts may adopt different platforms and inconsistent procedures for conducting virtual hearings, which may undermine the fairness of the judicial process. There is a need for standardised protocols for virtual courts to be effective, ensuring uniformity in how cases are heard and decided.⁶²

These challenges may be addressed through significant investment in digital infrastructure and digital literacy to enhance digital literacy among both the public and legal professionals. Training programs and resources should be made available to ensure that all participants in the justice delivery system can effectively engage with virtual court platforms.⁶³

A. INTRODUCTION OF THE NATIONAL LITIGATION POLICY IN JUDICIAL REFORM

A vital part of India's ongoing judicial reforms is the institutionalisation of the National Litigation Policy ('NLP'). It was introduced with the aim of reducing the overbearing litigation cases, relieving the burden on the judicial institutions and reinforcing the efficiency of the justice delivery system. One of the key tenets of NLP is to nurture the government's role as a responsible litigant and to actively dissuade filing and continuation of frivolous litigations. This would help decongest the courtroom dockets and repair judicial efficiency.⁶⁴

In the aftermath of the COVID-19 pandemic, the digital era has bolstered the significance of the NLP substantially. The pandemic compounded the already existing issue of backlog of cases, thus showcasing the urgency of a more streamlined and effective litigation process. The NLP aims to reduce the pressure on courts by diverting certain cases from the traditional judicial process. Fostering responsible litigation practices and prioritising the use of alternative dispute resolution ('ADR') mechanisms such as mediation and arbitration, not only helps

⁶¹ B Candler, 'Court Adaptations During COVID-19 in the World's Two Largest Democracies' (SSRN, 24 May 2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3609521> accessed 22 December 2024.

⁶² Jane (n 35).

⁶³ *ibid.*

⁶⁴ Ministry of Law & Justice (n 38).

reduce the caseload but also facilitates quicker and more cost-effective dispute resolution.⁶⁵

The digital justice framework may be reinforced through the proper implementation of the NLP, upholding the principles of open courts. A well-functioning litigation policy can enhance the principle of open courts, ensuring transparency and public access to judicial proceedings.

The broader objective of transparency may be achieved by a reduction in the volume of trivial or avoidable cases, helping courts focus their resources on significant cases, and facilitating adequate attention and public scrutiny to critical matters. Further, digital justice initiatives which promote the integration of technology in judicial proceedings can synergise with the NLP's emphasis on efficiency. For instance, streamlining the litigation process may be achieved by e-filing systems, virtual hearings, and the digital management of case records. By making organised judicial data such as court records and case proceedings more accessible to the public and the media, these digital tools promote open justice and effective transparency, along with reducing cases cluttering the judicial system.⁶⁶

However, notable hurdles still plague the successful implementation of the NLP such as bureaucratic inertia, coupled with a lack of accountability within various government departments. The persisting issue of frivolous litigation dampens the objectives of the NLP. Despite the policy's best efforts, certain departments continue to file cases that are neither urgent nor necessary, contributing to the clogging of the judicial system. A more stringent application of the NLP, combined with the adoption of digital tools for monitoring litigation, can help mitigate this issue.⁶⁷

Moreover, litigation is often considered the default method of resolving disputes. This traditional view requires a cultural shift within both the legal and governmental communities towards alternative mechanisms like arbitration or mediation. With the aim of furthering the principles of open justice and better realisation of the NLP's potential, concerted efforts are required to promote ADR

⁶⁵ M Behura, 'NLP to Make India an Arbitration Hub' (*ETLegalWorld*, 14 June 2024) <<https://legal.economictimes.indiatimes.com/news/editors-desk/nlp-to-make-india-an-arbitration-hub/110993899>> accessed 22 December 2024.

⁶⁶ N Raju, 'Digital Courtrooms: Streamlining the Litigation Process in the 21st Century' (*CXOToday*, 20 May 2023) <https://cxotoday.com/specials/digital-courtrooms-streamlining-the-litigation-process-in-the-21st-century/#google_vignette> accessed 22 December 2024.

⁶⁷ Varun Kumar, 'Initiatives Taken by E-Committee of Supreme Court for Facilitating Access to Justice' (2023) 5(3) *Law Audience Journal* <<https://www.lawaudience.com/initiatives-taken-by-e-committee-of-supreme-court-for-facilitating-access-to-justice/>> accessed 22 December 2024.

methods and reduce the dependency on litigation as the primary recourse for dispute resolution.

Jurisdictions like the Kerala and Bombay High Courts have showcased notable growth in implementing digital technologies and ADR mechanisms, leading to more efficient handling of cases and better public access to justice. These efforts have promoted the foundational principle of transparency in justice delivery while also reducing the strain on the courts.⁶⁸

In this digital age, the National Litigation Policy promises great prospects in furthering the principles of open justice by encouraging responsible litigation, reducing frivolous cases, and promoting ADR mechanisms. By streamlining the judicial process, the courts are empowered to function more transparently and efficiently. The NLP stands as a crucial pillar in the ongoing judicial reforms when combined with digital technologies enhancing public access and engagement, upholding the principle of open courts in a rapidly evolving legal landscape.

B. OTHER DIGITAL INTERVENTIONS TOWARDS ACCESS TO JUSTICE IN INDIA

The post-pandemic world has turned out to be a landscape for digital exploration where Indian courts are turning to digital technologies that extend beyond video conferencing. The recent developments in ICT have proven to offer more efficient solutions with inclusive mechanisms. Technological intervention in traditional processes holds the promise of maintaining transparency and enhancing the ease of public access to all facets of the justice delivery system.

- i. The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 (erstwhile the Code of Criminal Procedure, 1973) marks a transformative step in integrating electronic means into India's criminal justice system. Sections 273, 275, 313, and 366 of the BNSS⁶⁹ pivot on the adaptability of the Indian judicial system in embracing technology while safeguarding procedural fairness. It enhances access to justice by aiming to overcome geographical barriers and reducing delays caused by the physical unavailability of interested parties. For instance, the ability to record evidence electronically in remote or rural areas empowers witnesses who may otherwise face logistical challenges in attending court proceedings. In a broader context, the BNSS aligns with India's digital justice framework by reinforcing transparency and accountability.⁷⁰

⁶⁸ PTI (n 51).

⁶⁹ Nagarik Suraksha Sanhita 2023, ss 273, 275, 313, 366.

⁷⁰ 'The Bharatiya Nagarik Suraksha Sanhita, 2023' (*PRS India*, 2023) <<https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023>> accessed 22 December 2024.

- ii. The National Judicial Data Grid ('NJDG'), serves as a prime example of a technological development that offers a thorough database of cases, judgments, and orders, spanning from courts of all levels across the country.⁷¹ All High Courts of India have become a part of the NJDG. Praised by the World Bank for its unique features, it acts as a monitoring tool for real-time access to case status, pendency reports, and other vital statistics. NJDG will function in consonance with the National Data Sharing and Accessibility Policy ('NDSAP')⁷² and enable the institutional litigants to track the progress of their respective cases, including the reason for delays. Thus, such digital portals ensure the fortification of the principle of open justice by making court data more transparent and accessible.⁷³
- iii. Approved in 2010, the e-Courts Project is a significant example of digital advancement ushering in a regime of ease of justice that aims for the universalisation of litigation and case filing processes.⁷⁴ The project is currently in phase III since 2023, where the platform is built to offer a range of services including e-filing, e-payment of court fees, and the digital issuance of summonses and warrants. The aim of this platform is to enhance litigant reach and accessibility to courtrooms where they may be geographically located in a distant area from the court premises. This, in turn, also increases transparency, reduces the physical burden on courts, and enhances the efficiency of judicial processes. This project realises the essence of open justice in the digital era by letting the litigants file their documents online and access court records remotely.⁷⁵ It is not just specific websites and portals that are allowing for increased accessibility of users. Examples like the e-Courts Services App, a mobile application, can be cited to showcase how the Courts are persuasively attempting to further the principles of open justice. These apps enable users to check case status, access court orders, and receive notifications about hearings on their mobile phones. This is especially true for litigants and legal professionals in rural or remote areas who may not have easy access to a computer but can still engage with the justice system through mobile technology.⁷⁶

⁷¹ Department of Justice, *The National Judicial Data Grid (NJDG)* (2024) <<https://doj.gov.in/the-national-judicial-data-grid-njdg/>> accessed 22 December 2024.

⁷² Department of Science and Technology, *National Data Sharing and Accessibility Policy* (2012) <<https://dst.gov.in/national-data-sharing-and-accessibility-policy-o>> accessed 22 December 2024.

⁷³ Ministry of Law and Justice, *The Flagship E-Courts Project Completes Full Circle with Supreme Court of India Onboarding the National Judicial Data Grid Portal (PIB, 14 September 2023)* <<https://pib.gov.in/PressReleasePage.aspx?PRID=1957318>> accessed 22 December 2024.

⁷⁴ Department of Justice, *E-Courts* (2024) <<https://doj.gov.in/division/ecourts/#:-:text=eCourts%20is%20a%20Mission%20Mode,and%20speedy%20delivery%20of%20justice>> accessed 22 December 2024.

⁷⁵ E-Courts Services <https://ecourts.gov.in/ecourts_home/> accessed 22 December 2024.

⁷⁶ E-Committee, Supreme Court of India, 'E-Courts Services Mobile App' <<https://ecommitteesci.gov.in/service/ecourts-services-mobile-application/>> accessed 22 December 2024.

- iv. Embracing the vogue of technological interventions through the integration of artificial intelligence ('AI') and machine learning ('ML'), the Indian judicial system is moving towards streamlining its processes, overhauling its systems and improving access to justice. With the list of ongoing projects steadily increasing, the Supreme Court Portal for Assistance in Court Efficiency ('SUPACE')⁷⁷ and the Fast and Secured Transmission of Electronic Records ('FASTER')⁷⁸ are two striking examples of the Supreme Court of India experimenting with the integration of AI-driven platforms to enhance judicial efficiency. While SUPACE is designed as a legal research assistance portal, FASTER and now FASTER 2.0 will enable the sharing of information like orders of release of prisoners instantly with jail authorities, trial courts, and high courts. Such AI-integrated tools and platforms ensure that justice is delivered more swiftly, which, in turn, heightens public confidence in the system's transparency and effectiveness.⁷⁹ Another initiative is the implementation of e-Mulakat systems across the Indian prison systems. Although still in its initial stages, this initiative is undertaken with the object of enabling virtual meetings between inmates and their families/lawyers, which enhances access to justice for undertrial prisoners.⁸⁰

While the NJDG was introduced in the pre-pandemic era around 2013 and served as a foundational tool for tracking case progress and pendency, most High Courts and the Supreme Court of India got onboard after 2020.⁸¹ In contrast, post-pandemic innovations, such as e-Mulakat, the FASTER system, and Phase III of the e-Courts Project, reflect the judiciary's commitment to integrating digital solutions in response to COVID-19. Maintaining a clear timeline of these

⁷⁷ Indian Express News Service, 'CJI Launches Top Court's AI-Driven Research Portal' (*The Indian Express*, 7 April 2021) <<https://indianexpress.com/article/india/cji-launches-top-courts-ai-driven-research-portal-7261821/>> accessed 22 December 2024.

⁷⁸ Srishti Ojha, 'Chief Justice of India NV Ramana Launches 'FASTER' — Software to Transmit E-Copies of Court Orders' (*Live Law*, 31 March 2022) <[https://www.livelaw.in/top-stories/cji-ramana-launches-faster-software-to-transmit-e-copies-of-court-orders-195427#:~:text=The%20FASTER%20\(Fast%20and%20Secured,a%20secured%20electronic%20communication%20channel.>](https://www.livelaw.in/top-stories/cji-ramana-launches-faster-software-to-transmit-e-copies-of-court-orders-195427#:~:text=The%20FASTER%20(Fast%20and%20Secured,a%20secured%20electronic%20communication%20channel.>) accessed 22 December 2024; See also Online Bureau, 'CJI DY Chandrachud Launches FASTER 2.0 Portal for Swift Implementation of Court Orders' (*ET Government*, 27 November 2023) <<https://government.economicstimes.indiatimes.com/news/governance/cji-dy-chandrachud-launches-faster-2-0-portal-for-swift-implementation-of-court-orders/105522687>> accessed 22 December 2024.

⁷⁹ Forum on Information and Democracy, 'AI as a Public Good: Ensuring Democratic Control of AI in the Information Space' (*Information Democracy*, 2 February 2024) <<https://information-democracy.org/wp-content/uploads/2024/03/ID-AI-as-a-Public-Good-Feb-2024.pdf>> accessed 22 December 2024.

⁸⁰ National Government Services Portal <<https://services.india.gov.in/service/detail/schedule-virtual-meetings-with-prisoners-emulakat>> accessed 22 December 2024.

⁸¹ Department of Justice, *The National Judicial Data Grid (NJDG)* <<https://doj.gov.in/the-national-judicial-data-grid-njdg/#:~:text=Through%20the%20NJDG%20platform%20currently,on%20National%20Judicial%20Data%20Grid>> accessed 22 December 2024.

innovations highlights the judiciary's adaptive efforts in strengthening access to justice through technology. Another revolutionising step in a similar direction is projected to be the integration of blockchain technology for securing court orders, processing bail applications, and handling the evidence chain. The immutable ledger technology will certify the integrity and transparency of the judicial processes. It will guarantee the security of any recorded document from being altered. This, in turn, safeguards the authenticity of court records and cements the public's trust in the justice delivery system.⁸²

It is worth applauding how the Indian Courts have accelerated in leveraging these digital technologies. This has a direct impact on furthering the principle of open courts where substantial strides have been made to enhance inclusiveness and accessibility to the justice system. Such technological integration endorses that the foundational ideals of transparency, accountability, and public access to justice are preserved and strengthened.⁸³

IV. ENHANCING INFRASTRUCTURE, PRIVACY, AND PUBLIC TRUST

The shift towards a digital justice system in post-pandemic India has emphasised the pressing need for a robust digital infrastructure to support the effective delivery of justice. The rapid transition to virtual courts has exposed significant infrastructural gaps, particularly in rural and semi-urban areas.⁸⁴ These challenges, coupled with concerns surrounding privacy in virtual settings and the urgent need for enhanced digital literacy, make it imperative to re-evaluate and strengthen the digital framework of the judiciary. At the core of this transformation lies the integration of cutting-edge technologies such as AI and blockchain, each utilised towards safeguarding the principle of open justice and fostering public confidence in the judicial system.

⁸² Online Bureau, 'AI, Blockchain Being Integrated into Legal System to Make Justice Delivery Robust: Meghwal' (*ET Government*, 8 February 2024) <<https://government.economictimes.indiatimes.com/news/governance/ai-blockchain-being-integrated-into-legal-system-to-make-justice-delivery-robust-meghwal/107524701>> accessed 22 December 2024; *See*, Center of Excellence in Blockchain Technology, National Informatics Centre, 'Blockchain Technology in Judiciary' (2024) <Microsoft Word - Use of Blockchain Technology in Judiciary July 2023.docx> accessed 22 December 2024; *See also*, Ministry of Electronics & Information Technology, National Informatics Centre and Centre of Excellence in Blockchain Technology, 'Judiciary Chain (JC)' <<https://blockchain.gov.in/Home/Product?product=JudiciaryChain#:~:text=Blockchain%20could%20be%20used%20for,sourcing%20as%20well%20as%20storage>> accessed 22 December 2024.

⁸³ James Cabral and others, 'Using Technology to Enhance Access to Justice' (2012) 26 HJLT 1 <<https://jolt.law.harvard.edu/articles/pdf/v26/26HarvJLTech241.pdf>> accessed 22 December 2024.

⁸⁴ Roshini Sinha, 'Standing Committee Report Summary on Functioning of Virtual Courts' (*PRS Legislative Research*, 30 September 2020) <Report_Summary_SC_Virtual Courts.pdf> accessed 22 December 2024.

A. NEED FOR IMPROVED DIGITAL INFRASTRUCTURE

India's judicial system, characterised by an overwhelming backlog of cases, has long struggled with inefficiency. As of October 2024, over 50 million cases were pending across Indian courts,⁸⁵ including 82,685 cases in the Supreme Court alone.⁸⁶ The introduction of virtual courts has been a partial remedy, but the success of this digital transition hinges on the availability of robust infrastructure. A report by the NJDG indicates that courts in metropolitan areas like Delhi and Mumbai are better equipped for digital proceedings, while rural courts face challenges due to inadequate internet connectivity and outdated hardware systems.⁸⁷ This disparity creates a digital divide, hindering access to justice for those in rural regions.

For virtual courts to function seamlessly, significant investments are required to improve bandwidth, install state-of-the-art video conferencing equipment, and ensure the security of digital platforms. The e-Courts Phase III project, launched in 2023, seeks to address these challenges by introducing a uniform digital infrastructure across all courts in India.⁸⁸ This initiative aims to improve digital accessibility and streamline case management. Phase III emphasises several critical advancements, including the digitisation of approximately 3.1 billion pages of historical records, the creation of robust cloud infrastructure, the establishment of 4,400 fully operational e-Sewa Kendras, and the adoption of innovative technologies like AI and ML.⁸⁹

B. PRIVACY PROTECTION IN VIRTUAL COURTS

While the principle of open courts mandates that judicial proceedings be accessible to the public, the digital realm presents unique privacy challenges. Virtual courts allow for broader participation and transparency, yet they also expose sensitive information to security breaches. In cases involving personal or family matters, such as child custody or sexual harassment, the public availability of virtual court recordings may lead to privacy violations, potentially causing

⁸⁵ National Judicial Data Grid, District Court of India <https://njdg.ecourts.gov.in/njdg_v3/> accessed 22 December 2024; *See*, National Judicial Data Grid, Supreme Court of India <<https://scdg.sci.gov.in/scnjd/>> accessed 22 December 2024; *See also*, National Judicial Data Grid, Supreme Court of India <<https://scdg.sci.gov.in/scnjd/>> accessed 22 December 2024.

⁸⁶ National Judicial Data Grid, Supreme Court of India <<https://scdg.sci.gov.in/scnjd/>> accessed 22 December 2024.

⁸⁷ Centre for Research & Planning (n 58).

⁸⁸ *ibid*; *See also*, Samaya Dharmaraj, 'India's Smart Judicial System: eCourts Phase III' (*OpenGov*, 2 August 2024), <<https://opengovasia.com/2024/08/02/indias-smart-judicial-system-ecourts-phase-iii/>> accessed 22 December 2024.

⁸⁹ *ibid*.

harm to the involved parties.⁹⁰ The Supreme Court has also emphasised the importance of in-camera proceedings for undertrials, detainees and other prisoners in custody in specific scenarios, ensuring the dignity and safety of individuals involved. These guidelines allow sensitive cases to be conducted in a controlled environment, balancing the open court principle with privacy concerns. For instance, cases involving high-profile defendants or witnesses often require measures to prevent undue influence, harassment, or public scrutiny, to ensure a fair trial.⁹¹

Indian courts have made strides in addressing these concerns by implementing certain safeguards. The Supreme Court's guidelines issued in the Swapnil Tripathi case,⁹² allow for real-time public access to hearings while restricting media access in sensitive cases. However, further steps are necessary to safeguard privacy in the virtual environment. The introduction of encryption protocols, secure log-in mechanisms, and controlled access to court records must be prioritised.⁹³ The Supreme Court of India's e-Committee is working towards digitising judicial records ('JDR'). To ensure long-term reliability and legal admissibility, these JDRs need to be ISO 16363-certified, addressing privacy and data security concerns through rigorous standards. As of 14 June 2024, around 311.10 crore pages have been digitised across High Courts and District Courts, advancing secure, accessible digital justice in India.⁹⁴ Additionally, privacy policies need to be tailored to the Indian context, where socio-cultural factors often complicate the balance between transparency and privacy.

The incorporation of blockchain technology could revolutionise privacy protection in virtual courts.⁹⁵ Blockchain's immutable ledger ensures that judicial records, once created, cannot be tampered with, thereby maintaining the integrity of sensitive data. Blockchain could be particularly useful in cases involving evidence management, where tamper-proof systems are crucial for maintaining judicial credibility.⁹⁶ The Judiciary Chain ('JC'),⁹⁷ a blockchain pilot project by India's

⁹⁰ Sabreen Ahmed, 'Online Courts and Private and Public Aspects of Open Justice: Enhancing Access to Court or Violating the Right to Privacy?' 2023 AHRJ 20.

⁹¹ See, *Port of Bombay v Dilipkumar Raghavendranath Nadkarni* (1983) 1 SCC 124, 7; *Subramanian Swamy v Union of India* (2016) 7 SCC 221; (2016) 3 SCR 865; *Public Eye v Union of India* 2024 SCC OnLine Ker 6494.

⁹² Swapnil (n 36).

⁹³ E-Committee, Supreme Court of India, 'Digital Preservation (Digitization, Storage, Preservation, Search & Retrieval) Version 1.1' (24 September 2021) <<https://cdnbbsr.s3waas.gov.in/s3ec020a-fa92fcof8a9cfo51bf2961bo6a/uploads/2023/04/2023040932.pdf>> accessed 22 December 2024.

⁹⁴ Department of Justice, *Digitization of Records* <<https://doj.gov.in/digitization-of-records/>> accessed 22 December 2024.

⁹⁵ Demertzis and others, 'A Secure and Privacy-Preserving Blockchain-Based XAI-Justice System' (2023) 14(9) Information 477.

⁹⁶ *ibid.*

⁹⁷ National Informatics Centre, Centre of Excellence in Blockchain Technology, 'Judiciary Chain (JC)' <<https://blockchain.gov.in/Home/Product?product=JudiciaryChain>> accessed 22 December

Ministry of Electronics and Information Technology, is already exploring these possibilities.⁹⁸

C. INTEGRATING AI AND BLOCKCHAIN FOR JUDICIAL EFFICIENCY

AI has the potential to transform the Indian judiciary by streamlining legal processes and reducing the burden on overworked courts. As mentioned in Part III of this paper, a working example of an AI tool integrated into judicial working is the SUPACE project which assists judges in legal research and case management.⁹⁹ By automating routine tasks like document analysis and case law referencing, AI can expedite judicial decision-making without compromising accuracy.¹⁰⁰

Moreover, the combination of AI and blockchain can significantly improve transparency in the justice system. Blockchain's decentralised framework can ensure that court records and judgments are stored securely, while AI can be used to analyse case patterns, detect inconsistencies, and predict potential outcomes. This dual technology integration will enhance the accountability of courts and promote public confidence in the judicial system.¹⁰¹

India's digital justice framework is poised for transformation, but it requires significant enhancements in infrastructure, privacy protection, and digital literacy to fully realise its potential. The integration of advanced technologies like AI and blockchain will be pivotal in safeguarding the principles of open justice while ensuring that the judicial system remains transparent, efficient, and accessible to all. By addressing these critical areas, the Indian judiciary can not only improve its functioning but also foster greater public trust in the era of digital justice.

V. CONCLUSION AND SUGGESTIONS

There have been sufficient evidentiary demonstrations that highlight the experience of the Indian judiciary during COVID-19, which have carved the way for the adoption of new and varied digital technologies that can transform the Indian justice delivery system. The most significant contribution of virtual courts has been to make possible the continuation of legal proceedings in the face of significant unforeseeable disruptions. Needless to say, there is still scope for further reforms that can ensure that the judiciary is equipped to handle and adapt to any such future challenges as well.

2024.

⁹⁸ *ibid.*

⁹⁹ Indian Express Service (n 77); *See also*, Ojha (n 78).

¹⁰⁰ Forum on Information and Democracy (n 79); *See also*, Cabral (n 83).

¹⁰¹ *ibid.*

In the Indian context, with the plethora of cases being filed every day in tandem with the ongoing ones, it becomes imperative to adopt a fully functional digital mechanism for the justice delivery system. The pandemic has ushered the world into a time where robust digital infrastructure is the need of the hour. It is necessary that standardised cross-border procedures are developed which can ensure that all participants and stakeholders in this technopolitical¹⁰² world have the necessary skills and resources to engage with these new platforms.

The principle of open courts shall remain sacrosanct to any reforms being introduced in the justice delivery system. In hailing the onset of virtual courts and their uplifting notions of transparency and accountability, it is essential to keep track of the prevalent challenges and devise ways to carefully manage such issues as well. It is incumbent for the Indian judiciary to ensure that virtual court proceedings now remain accessible to the public and the media to uphold the principle of open courts in the digital age.

The judicial landscape in post-pandemic India showcases a significant shift in the administration of justice. While the original intention lay in maintaining the continuity of justice delivery, the integration of video conferencing into the judicial system has come as a welcome and indispensable change. Today, each court of the country is attempting to integrate digital interventions into the justice delivery mechanism, to realise and uphold the principles of fair and open justice. However, the holistic realisation of such a complex bulwark mechanism needs to navigate a plethora of challenges and cater to socio-political advancements. Drawing lessons from the global health crisis of COVID-19, the significance of open courts takes the forefront given that it remained a fundamental pillar of the justice delivery system when the courts across the country switched to virtual courtroom proceedings without there being a supporting infrastructure at the beginning of the crises.

The use of virtual courts is brimming with potential benefits and possibilities to uphold and enhance justice. In a country like India, where geographical barriers often hinder individual's access to justice and legal services, eliminating the need for physical presence in courtrooms by way of virtual courts can be greatly impactful. Virtual courts can make it easier for litigants and lawyers to participate in proceedings, regardless of their location.¹⁰³

¹⁰² C Kurban, I Peña-López & M Haberer, 'What is Technopolitics? A Conceptual Schema for Understanding Politics in the Digital Age' (2017) 24 UOC IDP 3 <<https://www.redalyc.org/pdf/788/78850913002.pdf>> accessed 22 December 2024.

¹⁰³ Alicia Bannon & Janna Adelstein, 'The Impact of Video Proceedings on Fairness and Access to Justice in Court' (*Brennan Centre for Justice*, 10 September 2020) <<https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court>> accessed 22 December 2024.

Reduction of litigation cost is another impactful factor provided by virtual courts as parties do not need to travel to courtrooms, and cases can be heard more efficiently. It is a way of making justice more affordable and accessible to a broader range of people, including those from lower socio-economic backgrounds. Virtual proceedings also create possibilities of parties' participation from a safe space, limiting the influence of emotions in certain situations involving intense family law settings such as child welfare and high trauma cases.¹⁰⁴

In circumstances of power and influence imbalance between parties, such as involving an abuser and a victim, physical separation of the parties for neutralising structurally harmful emotions may serve as an important factor in cultivating a safer environment in the hearing process. The virtual courtroom supports the problem-solving and non-adversarial nature of child welfare proceedings.¹⁰⁵

However, the success of virtual courts in enhancing access to justice faces several obstacles discussed earlier, such as the digital divide and the need for standardised procedures. Addressing these issues is of great consequence as the benefits of virtual courts may be limited to those who already have access to the necessary resources, thereby compounding the existing inequalities in the justice system.

In light of the above, it is imperative for the authorities to formulate and adopt innovative solutions that ensure that the principle of open courts is preserved holistically. The tenets of virtual courts need to be further evolved, and their technological features need to be expanded to directly cater to the challenges the country faces. These techno-legal solutions are needed to strike at the anvil of ease of access to justice, reduction of case backlogs, and upholding the principle of open courts. As a direct corollary, the success of any such initiatives also depends on addressing the challenges of digital infrastructure, digital literacy, and the need for standardised procedures. For this purpose, several steps can be undertaken:

Firstly, it is a widely accepted fact that courts across the country do not have a standardised infrastructure. It becomes imperative to develop and adopt a robust digital infrastructure that is user-friendly and allows widespread public access to virtual proceedings. It should not be a challenge for people with limited digital literacy to operate the platform or a feature that leads to virtual court proceedings. In this context, the live-streaming models tested by the Bombay and Kerala High Courts can be used as reference points for demonstrating the potential such initiatives possess.¹⁰⁶ What becomes a focal point of contention is the

¹⁰⁴ Gabriel Bichet, 'The Intangible Impacts of Virtual Court' (*RDOOLR*, 10 April 2024) <<https://rdo-olr.org/the-intangible-impacts-of-virtual-court/>> accessed 22 December 2024.

¹⁰⁵ *ibid.*

¹⁰⁶ Daksh (n 51).

scaling up of such practices and how they can be refined in a manner that can service a diverse heterogeneous group with varied digital literacy levels across the country.

Secondly, a focal point of concern is protecting the privacy rights of individuals who are involved in the virtual proceedings. While there is no denying that the principle of open courts is foundational, there is an alternative position in law that confirms the validity of in-camera trials when justice itself necessitates such measures. This can be highlighted by studying the provisions under the Family Courts Act, 1984, or the Juvenile Justice (Care and Protection of Children) Act, 2015. Reliance can also be placed on judicial precedents such as the *Ujjam Bai v State of U.P.*¹⁰⁷ and *Superintendent & Remembrancer of Legal Affairs v Satyen Bhowmick*¹⁰⁸ cases which underline the need to maintain a degree of confidentiality that precludes public access and the requirement to balance competing rights of privacy with transparency and accountability in the public domain.

Thirdly, it is also imperative for the Indian authorities to examine the best practices being followed in other international jurisdictions and to adopt the ones most suitable to India's unique socio-political landscape. Lessons can be taken from the UK's Coronavirus Act of 2020¹⁰⁹ which prescribes specific obligations for broadcasting and recording virtual courtroom proceedings. The aim of the Act is to uphold transparency and encourage public and media participation. Indian courts could come up with clear guidelines that feature the spirit of transparency and judicial accountability and promote public participation.

Fourthly, digital literacy is another crucial area issue that must be improved for the success of any digital justice model including the functioning of virtual courts. The need of the hour is to have a holistic study of gaps and challenges in India that barricade the efficient use of digital platforms in the judicial system. While devising techno-legal solutions, importance must also be given to conducting training programs and awareness campaigns that aim at empowering all stakeholders.

Lastly, while the Indian judiciary is transitioning to a user-friendly, technology-centric approach, fostering transparency and accountability at every level holds paramount importance. Virtual courts are analogous to the principle of open courts, which demand a continuous effort towards technological innovations that align with the fundamental tenets of justice. The rolling out of an updated NLP will prove crucial in this context. NLP will help navigate litigants towards the use of Alternative Dispute Resolution ('ADR') and Online Dispute Resolution

¹⁰⁷ *Ujjam Bai v State of U.P.* 1962 SCC OnLine SC 8 : (1963) 1 SCR 778.

¹⁰⁸ *Superintendent & Remembrancer of Legal Affairs v Satyen Bhowmick* (1981) 2 SCC 109 : AIR 1981 SC 917.

¹⁰⁹ See, Coronavirus Act 2020.

(‘ODR’) mechanisms, which will prove vital for reducing the burden of litigation on courts. Successful implementation of NLP in close consonance with the technological development of other digital justice delivery platforms holds the promise of a more efficient, accessible, and transparent justice system in India.

The Indian judiciary is meandering through the challenges of the post-pandemic world by adapting technological interventions that aid in upholding the principles of justice, fairness, and transparency. Needless to say, the integration of technological advancements with the myriad processes of judicial functioning acts as a catalyst for creating a transparent and accountable system. The evolution of virtual courts and the allied access of the public to court proceedings remains a critical feature grounded firmly in the fundamental principles of equitable justice. India must pivot its justice delivery system on the new age technologies and leverage its potential to catapult itself as a leader of innovation and accountability that suits this age of technologically immersive twenty-first century.