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Defining the Digital Paradigm of the Indian Legal System

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ABSTRACT

In the contemporary scenario, scientific and technological advancements have cloaked every corner of the activities associated with the routine life of human societies. In India, although technological advances have been under contemplation and scrutiny since the 1960s, they have marked a drastic shift in the pandemic and the post-pandemic era. The COVID-19 omens have contributed vehemently to the further utilisation of the existing technologies. Such technologies aided in the continuation of the routine of the man's life without causing any extreme nuisance to the daily life. It is not wrong to say that, if pandemic on one hand, holistically annihilated the structure of world societies, on the other hand, it advanced the technological know- how.

These advancements are not confined to the arenas of giant Multinational Corporations (MNCs) or the tertiary sector, rather they have made rapid strides in the Indian Justice System. Since, the instances of crime and injustice never come to a pause, the need for the mechanisms to resolve and reconcile the wrongs done during the pandemic period and to decide pending cases before the courts incepted that leads to the vociferous usage of digital tools and platforms like Zoom. The incessant evolution of technological mechanisms, gradually paved the way for cyber or online crimes which was further intensified by the exclusive dependence on technology during the pandemic period led to an increase in the statistics of online crimes in India. This paper tends to analyse the reasons that led to the transformation of the Indian Judicial System from physical courtrooms to digital courtroom, from heaps of files to paperless filing. In the similar vein, the paper will analyse the impact of technological evolution and dependency during the pandemic period on the Indian Justice Delivery System from the lens of legal professionals. A threadbare perusal of the legal and regulatory framework shall reveal the legal nuances of the changing paradigms in the justice delivery system. The statistics provided by the international organisations for instance, The International Telecommunications Union will be relied upon to trace the changing trends.

Keywords: Digital technology, Indian legal system, Digital Gender Gap.

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I. INTRODUCTION

Digital Technology, as the term elucidates, refers to the use of Artificial Intelligence and modern computer science mechanisms that form the basis of modern society. The fangs of technology have covered the overall business of human existence, whether in general or particular, varying from the day-to-day affairs to billion investments. It is evident that the technology has taken hold of the contemporary global village but if we see deeply, it can be traced that the evolution of the society on the terms of technology began around the mid-20th century, at a global level. Under Indian phenomenon, the same has been witnessed since the last decade of the 20th century. The scenario drastically changed during the pandemic era when the world holistically altered and every sector and every society cloaked themselves with digital inducement. The inducement, though initially restricted to the computer science, engineering and anatomical spheres, liberated itself and cloaked other branches of study in itself. The most pertinent branch which is now under the main focus of technology is Legal Education and the related trends.

The legal education and the legal profession has been totally shaped by the introduction of technology in the pandemic era. Earlier, the existence of physical courtrooms was the basis of the Indian judiciary but, in the present scenario, the virtual courtrooms are gaining prominence. The heaps of files have been reduced to paperless filing making it easier for the legal professionals and the parties to gain access in a quick and smart way. The pandemic era, though a bane to the world, has unfortunately proved a boon to the society and encouraged the long-term felt need of the society to track the development on the foundation of technology. The digitalisation of legal education is one of the prominent technological advancements in the present era. The law students, at the comfort of their niche, can attend any of the international events and be a part of it. The International and National Conferences, the International and National Moot Courts, the Arbitration Awards, are all now conducted in the virtual mode with the option of physical presentation, in order to provide opportunity to the remotest students of the world. Hence, the augmentation of legal education has considerably been affected by the digitalisation tools such as Zoom and Google Meet.

Further, the digitalisation has also covered the court proceedings under its shade. The conventional practice of physical courtrooms with physical proceedings in the presence of paperwork documents has been altered to the virtual courtrooms through online platforms with virtual proceedings and in the presence of paperless files. This advancement has led to minimise the burden of the judiciary and distributed the work to virtual courts. The impending judgements

have also been alluded to at a fast rate since the introduction of virtual courts. The *legal tech sector* has been gaining prominence since 2021 and it is alluded that in the near future, the AI and Blockchain will grow eminently.

II. RETROSPECTIVE ANALYSIS OF THE INDIAN LEGAL SYSTEM

The Indian Legal System originally traced its foundation after the year 1947 when our country got independence from century-old draconian rule of Britishers. However, the formation for the foundation of the Indian Legal System began much earlier when the task of drafting the Constitution of India was taken up by the Drafting Committee.

The Indian Legal System being formulated on the conventional principles with intricate nexus with the traditional aspects of the society and people, has executing principles as the traditional affirmation of the people and the abiding by law. The Indian Judiciary, also the *ever-living parent* of our Indian Legal System followed the conventional methods of giving justice to the stakeholders and the concerned people also followed the conventional methods in order to access justice by the hands of judiciary.

The Indian Judiciary, however courageous and determined, was still travelling the phase of evolution. The filing of complaints, issuance of notice, rendering justice and granting relief to the victims were all accompanied through the conventional paper mode. The whole system of judiciary depended on the paper system for its work. The situation being complacent in the initial stage got reluctant when the burden on the shoulders of judiciary became heavier through the inadequacies in the Judicial system that led to the compilation of millions of impending cases before the judiciary.

Hence the need for the reformation in the Indian Legal System was realised by the critics who have given suggestions for the formulation of the same. In the same vein, the former Chief Justice of India, Dr. M.N. Venkatachalin in 2010 reiterated that the *present era marks the negative affirmation of steps in the reformation of Indian Judiciary as minimum efforts have been done to sort out the issues of the rights of litigants and accused which amplified the deterioration of the credibility of Indian Judiciary and hence the country has serious responsibility to look into the same.*²

Hence, the task of reforming the legal system was taken up by the judiciary since the early 2000s. The reforms being implicit in the initial phase became explicit later on and a comparative analysis had been done by the reformers with other developed legal systems in order to provide

² Ratnesh Kumar Tiwari and Aman Singh, *Digitalisation: The New Era of Indian Judiciary*, JOURNAL OF SOCIAL SCIENCES AND HUMANITIES, 2020, p. 197.

pace to the development contemporaneous to Indian phenomenon. However, in recent years, the original advancement has been taken up and the digitalisation of the legal system has continued at a noticeable speed. Marking the recent trends, the launch of ICMS by the Prime Minister of India is an applauded one. ICMS is a website which shelters explicit information concerning the cases which are presented before the Supreme Court and restores an all-new integrated case management information system or ICMS.³

The retrospective scrutiny of the Indian Legal System may reveal that the essence of Digitalisation was negligible but the pertinent point to be affirmed is that through the 1990s the role of technology was recognised by the eminent persons holding various posts under the Government of India. As the 1990s is ushered as the *era of Globalisation* in the Indian society and with Globalisation, the opportunity of forging amiable relations with foreign countries incepted. The Indian government, as evident, has always been the enthusiast of adopting mechanisms that aid its development from the developed countries, started to forge ties with countries like, United States of America, United Kingdom and Russia, helping India to attain technological advancements from them through bilateral agreements and treaties. Hence, it is partially true to say that in the pre-pandemic era, the notion of digitalisation was unknown to the Indian society. But, the postulation that there was no nexus between the Indian Legal System and the terms of digitalisation is explicitly justifiable.

III. THE BANE OF PANDEMIC AND THE TECHNOLOGICAL UPHEAVAL

The continued trend of conventional principles being followed in the Legal world were substantially altered by the introduction of the COVID-19 pandemic in the year 2020. It is unfortunate to relate that as the menace of pandemic strongly took the hold of the society, the advancement of technology thereby accelerated at the unexpected rate. The technological development which was negligible in the pre-pandemic era sufficiently amplified its speed in the pandemic period, as ranging from the basic activities to the billion dollar activities, all came to a halt. Hence, the need for the digitalisation of the activities was realised and the same had been followed.

The digitalisation of the activities and professions does not restrict itself to the areas of engineering, education, science but also cloaked the *prevalent legal norms* whether it be augmentation of legal education or the rendering of justice to the victims. The digitalisation of the legal field had been tremendously made in the pandemic era. Legal education, which came to a halt, started to be continued in the online mode through the introduction of online platforms

³ *Supra* note 2.

namely, Google Meet and Zoom. The introduction of such platforms led to the continuation of the making of the future legal professionals and inflicted less loss on their productivity. Also, as being a law student, various branches of law are dwelling upon the law students such as the International law, Cyber law and other general laws, the reformation of the same has also been done. Legal internships which are the pertinent part of the routine of a law student were affected by the sudden closing of the courts, hence by the perusal of various eminently skilled professionals, the opportunities of online legal internships were introduced. Hence, the times when the internships were only succeeded by the physical courtrooms came to an end, and online platforms provided for the formulation of online legal internships which has given students a chance to understand and get familiar with the legal know-how even at the comfort of their homes considering the vehement pandemic upheavals.

Besides the digitalisation of the augmentation of legal education, the pandemic also accelerated the process of altering physical courtrooms to digital courtrooms and paperwork proceedings to paperless proceedings. Indian Judiciary being dwelled with the heavy responsibility of providing speedy relief and justice to the victims, was impossible for it to staticise its eminent role hence the proceedings of the ongoing cases began to be held in the online mode. The online platforms, like Zoom and Webex Meet aided the judiciary to shoulder its responsibility with care and intricacy.

In the same alignment, the pandemic led to the increment in the number of pending cases before the courts whether it be the Supreme Court, High Courts or the Local courts. As per a report reiterated by Union Law Minister Ravi Shankar Prasad, it was delineated that there are approximately 43 lakh cases that are pending before the High Courts and approximately 8 lakh case among them are decade old. The cases include both the civil as well as criminal matters on which the judgements are to be pronounced. The reasons behind the same were the inadequacies of the Indian Judiciary including the lack of manpower, non-transparency and the insufficiency of data required.⁴

IV. RECENT TRENDS OF REFORMING LEGAL NORMS IN INDIA

The post-pandemic era marks the significance of technological advancement in the various sectors of the activities of life and among them the legal sector forms one of the pertinent sectors. The Indian courts have adopted a view over the introduction of virtual court proceeding in the pandemic era but after the same, it has been realised that the inception of virtual courts

⁴ *Supra* note 2.

in addition to physical courts will aid to the speedy trial which is guaranteed under Article 21 of the Indian Constitution and will help in sharing the burden of the courts.

In the same vein, the state of Odisha has become the first state witnessing the existence of virtual High Courts in 10 districts. On February 3, 2023, Chief Justice of India, Dhananjaya Y. Chandrachud inaugurated virtual High Courts in ten districts of Odisha in the presence of Chief Justice of Odisha High Court, Justice S. Muralidhar.⁵

While inaugurating the same, Chief Justice has reiterated his concern over the impending judgements before the courts and the urgent need of sharing the burden of the judiciary. He further alluded that the inauguration of virtual courts will help in shouldering the responsibilities of *scaling justice to the people* at a fast rate. The Virtual High Courts have been supported by modern technological equipment and the systems for better and uninterrupted proceedings have been provided including TVs for better visual representation, speakers for amplifying the quality of audible voices and other systems. The mechanism of *Back Office* has also been provided in order to restore the case files in the form of electronic media. Also, the legal professionals with negligible or no-technological know-how have been provided with the team who will guide them through the same and aid them in order to curtail the irregularities thus incept from the lack of computer knowledge.⁶

If we dive much deeper into the context, then it can be noticed that the digitalisation has not been restrained only to legal education and court proceedings but also circumvented the law firms. The term *Legal Tech Sector* is quite influential in the present scenario and includes law firms indulging heavily on the digitalised tools in continuing their day-to-day business. The use of *Predictive Coding Technology* also known as TAR or Technology-Assisted Review is another boon for law firms. It helps in the prediction of electronically stored information documents and uses AI coding and eDiscovery tools which aid in the making of better decisions for the law firms, and cost no money and saves time. Further, the introduction of electronic contracts has elevated the hold of digitalisation in the legal sector.

The validation of the same can be traced from the Global Legal Department Benchmarking Report of 2019 which reiterated that the adoption of technology for various affairs of law firms had increased significantly all over the world. Further, it had also been expected that by the end of 2022 the legal organisations are expected to adopt different technologies such as the Smart

⁵ Jyoti Prakash Dutta, *CJI D.Y. Chandrachud inaugurates Virtual High Courts in Odisha's 10 Districts*, Live Law, Feb. 3, 2023, available at: <https://www.livelaw.in/amp/news-updates/cji-dy-chandrachud-inaugurates-virtual-high-courts-in-10-districts-odisha-220657>.

⁶ *Id.*

contracts that use AI and Blockchain mechanisms and are time and cost efficient, Predictive Analysis and other Decision Support Tools for enriched decisions. Also, it has been alluded that the valuation of AI technology will increase by 36% by 2026 which was \$3.2 billion in 2018.⁷

V. TECHNOLOGY-INDUCED LAWS IN INDIA

As it is evident that the last decade of the 20th century had culminated into the realisation of the need for technological advancement in comparison to the world countries. With the introduction of different digital mechanisms, the crime causation also took a shift and new forms of technological induced crimes came into notice. These instances led to the enactment of technology laws on the soil of India.

The most pertinent and ever-applauded is the Information Technology Act, 2000.⁸ The Act provided for various forms of crimes that are committed through digital tools on online platforms. The issues of data protection, restriction of online speech and obscenity, and the fraudulent and immoral wrongs are taken into consideration. The policies regarding the instances of hacking are also mentioned. Since then, amendments have been made in the Act in order to cloak new wrongs that have been developed taking into consideration the advancement of social structure. Recently, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 have been formulated that provide for a three-tier grievance redressal system and transparency in cases of content moderation on social media platforms.⁹

In the same alignment, the Digital Personal Data Protection Bill, 2022 has been prepared by the Ministry of Electronic and Information Technology after the withdrawal of the Personal Data Protection Bill, 2019. The new Bill sought to take into consideration the protection of personal data of an individual with intricacy and restricted it to the matters for which it is collected. The misuse of the same is penalised under the Bill. For minors, the Bill reiterates that the permission of parents or guardians of such minors is obligated which are termed as *Data Principals*.¹⁰

The technological advancements have also shaped the prevailing structure of the statutes that are the foundation of our Indian legal system. For instance, through the Indian Evidence (Amendment) Act, 2000, Section 65A and Section 65B have been incorporated under the Indian

⁷ Peeyush Singh, *A Brief Overview of Evolution of the Technology Sector*, Appinventiv, May 26, 2022, available at: <https://www.google.com/amp/s/appinventiv.com/blog/evolution-of-legal-technology/>.

⁸ The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

⁹ *Key IT Laws that Regulate Tech Platforms in India*, CNBC TV18, May 26, 2021 available at: <https://www.google.com/amp/s/www.cnbctv18.com/smart-tech/key-it-laws-that-regulate-tech-platforms-in-india-all-you-need-to-know-9438791.htm/amp>.

¹⁰ *Id.*

Evidence Act, 1872.¹¹ Section 65A talks about the admissibility of electronic evidence under the proceedings of a case and Section 65B adjacently deals with the procedure to be followed in order to make an electronic evidence admissible in a court of law. Also, under Section 3¹² of Indian Evidence Act, 1872¹³, the term *evidence* has been defined as the oral and written documents and also include electronic documents for the very same purpose.

Further, the vehement dependency on the electronic contracts has made the foot of digitalisation firm in our legal sector. The use of AI and Blockchain mechanism to support the formation and execution of contracts and their management has been applauded as a boon and curtailed the cost of money and is on-time consuming. Hence, the acceptance of electronic contracts under the Indian Contract Act, 1872 has heavily paved the way for the digitalisation of the legal profession in the contemporary context.

VI. DIGITALISATION OF LEGAL SYSTEM AND THE RELATED DRAWBACKS

Undoubtedly, the inducement of technology in the legal sector is a boon for the Indian Judiciary taking into view the ongoing judicial crisis of the system that witnesses the compilation of millions of impending judgement connected with the justice to be served to billions of victims. The introduction of technology is the *beacon light* for the people to register their complaints and seek justice at a speedy rate. The voices of billions have been faded by the unfathomable distance they have to cover in order to ask for justice, the digitalisation of the legal profession has minimised such instances.

Although, having million positive affirmations on the society and being regarded as *the need of the hour*, the legal digitalisation has been criticised on many fronts. The pertinent of such criticisms is the acceleration of existing gender-divide in the society. The truth of gender inequality is not unknown to anyone, with this the extreme dependency on technology especially of legal professionals has led to the grave *Digital Gender Gap*. The pandemic period that marks the upheaval of technology in different sectors of the society has also led to the amplification of the gender gap between male and females pertaining to the digital phenomenon.

As per the report of the International Telecommunications Unions published in the year 2019, it had been indexed that approximately 50% of the world's women population are unknown to the digital world. The case is worst in developing countries where only 41% of women are

¹¹ The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (British India).

¹² The Indian Evidence Act, 1872, s. 3, No. 1, Acts of Parliament, 1872 (British India).

¹³ *Supra* note 12.

indulged into the online world compared to 53% of the male population. With such observations, it becomes lucid to showcase that the harsh truth of gender deterioration has settled his foot in Indian society.¹⁴

Mentioning specifically about the Indian context, it has been evident from the *Mobile Gender Gap Report* of GSMA that the year 2020 marked the stark gender divide in the population and those without any help of digital tools are prone to be left far behind in the near future. Also, the statistics of the women population who are under digital inclusion is approximately 30% as compared to 51% of the male population residing in India.¹⁵

Besides, Gender Digital Divide, another anachronistic phenomenon followed by the digitalisation of various sectors of life, is the incessant multiplication of cyber and related crimes in India. Through the development of technological strategies to manage different fronts, the amplification of crimes has also been witnessed and the persons committing the same have been left in cloak for a long time due to the insufficiency of cyber laws in India. The fact that the presence of cyber statutes in India does not fade out the fact that there is an urgency to deal with the continuous and amplified crimes being committed in the territory of India or outside the territory of India having their effects within the Indian territory. First such statute to be ever enacted was the Computer Fraud and Abuse Act, 1986¹⁶ which provided for the safeguarding of computer resources and prohibited unauthorized access to computers and misuse of digital information. In the contemporary context, the most healed cyber law is The Information and Technology Act, 2000. Though, the amendments have been made to the Act several times but the need of urgency to explicitly address the matter has not been met by the Act. The concern over data protection of individuals has also become an issue with continuous technological formulations. Hence, the Digital Personal Data Protection Bill, 2022 has been prepared by the Ministry of Electronic and Information Technology to curtail this cumbersome issue.

In the same vein, mention maybe made of Douglas Kellner's work, *Technology and Democracy: Toward A Critical Theory of Digital Technologies, Technopolitics and Technocapitalism*.¹⁷ The book tries to infuriates the society into two rational masses, on the basis of the formulation

¹⁴ What We Know About the Gender Digital Divide for Girls: A Literature Review, UNICEF, available at: <https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.unicef.org/eap/media/8311/file/What%20we%20know%20about%20the%20gender%20digital%20divide%20for%20girls:%20A%20literature%20review.pdf&ved=2ahUKEwi-1N72uo39AhXtcWwGHWeyABsQFnoECMDMAQ&usq=AOvVaw3zdEViOfOl6zzmzts9h-J>.

¹⁵ Nushaiba Iqbal, *India's Digital Gender Gap is stark and its showing*, Scroll.In., Oct. 31, 2022, available at: <https://scroll.in/article/1036204/indias-digital-gender-gap-is-stark-and-its-showing>.

¹⁶ The Computer Fraud and Abuse Act, 1986, U.S.C, 1030.

¹⁷ Douglas Kellner, *Technology and Democracy: Towards A Critical Theory of Digital Technologies, Technopolitics and Technocapitalism* (2021).

of negative and positive perception as to the technological advancements. The first group is called the *technophilic* group, who like the most of today's population are on term with technology and consider digitalisation as a blessing to the aching human society. While, on the other hand, there are *technophobics* who are in alignment as the critics of technology. They rationalise their arguments on the basis of the degradation that are caused by the gradual advancement of technology and relate technology as a menace to the society rather than a boon. Hence, it is quite explicit from the index of the book that technology though been a saviour to the ailing population, is an unfathomable curse which side by side degrades the society and cause annihilation of the moral principles, which are neglected at every other step.

Recently, the report published by Amnesty International elucidated the same issue and perpetuates to realise the masses that the online platforms like Facebook and Instagram though being committed with the notion of uniting the world, creating it a better place for human society, have vehemently contributed to the gross violence against Rohingya Muslims in Myanmar.¹⁸

VII. CONCLUSION

The above analysis concludes the affirmation that in the contemporary scenario, digital tools have considerably changed the outlook of the legal field encompassing legal education and the legal profession. The technological advancements being made in recent years have culminated into the extension of the conventional methods of legal formulation to modern methods of legal formulation. The significant effect has been done to the extensive research and writing mechanism under the legal field. As, it is evident that legal research forms the basis of any legal profession, let it be academician, lawyer, judge or the stakeholder of the same. Hence, through the application of AI, the research of various subjects of law has become easy and extensive.

Further, the compilation of electronic files in the form of codes makes it easy for the researchers and lawyers to access the proceedings of the previous cases and other relevant cases cited by courts of other countries, to conclude any proceeding. The phenomenon of Globalisation and the comparative study methods are aided through extreme reliance on digital mechanisms that made it possible for our legal system to develop at the global pace. Also, the introduction of contract management systems through the use of AI and Blockchain methods heavily influenced the road of legal field to plant the trees of digitalisation on the sidewalk.

¹⁸ Md. Zeeshan Ahmad, *Book Review, Technology and Democracy: Towards A Critical Theory of Digital Technologies, Technopolitics and Technocapitalism*, Live Law, Feb. 8, 2022, available at: <https://www.livelaw.in/cdn.ampproject.org/c/s/www.livelaw.in/amp/book-reviews/book-review-technology-and-democracy-toward-a-critical-theory-of-digital-technologies-technopolitics-and-technocapitalism-douglas-kellner-220987>.

For the sake of *burden-sharing* and *race of advanced countries list*, the augmentation of digital technology in legal norms is applauded heavily.

However, despite being the *star of the contemporary world*, the digitalisation has elevated severe digital gender divide in the world and especially in developing countries like India. Various international and international reports have alluded to the fact that the gender divide pertaining to digital and online use, though being grave in the pre-pandemic period, has become severe in the post-pandemic era.

Hence, it becomes extremely important to scrutinise the instances of digitalisation of the sectors specifically legal profession and propound a way to secure digitalisation of the legal norms in a uniform manner.
