

JUSTICE THROUGH ELECTRONIC GOVERNANCE

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The aim of this article is to analyse the use of information technology by the Apex Court for the purposes of delivering justice in its true and practical perspective. A special reference of the Information Technology Act, 2000 has been made to provide an insight of the possible uses of e-governance for a sound justice delivery system. This analysis is equally applicable to all judicial and quasi-judicial authorities functioning in that capacity. The recently enacted Right to Information Act, 2005(RTIA-05) can be effectively and judiciously applied if these principles are followed in their true letter and spirit. The Central Information Commission can also use these principles for the effective implementation of the RTIA-05.

I. Introduction

The World Bank defines e-governance as the use of information and communication technologies by government agencies to transform relations with citizens, business world and other arms of the government. Ever since the creation of Ministry of Information Technology in the Union Government, State and union Territories expressed commitment for providing effective, responsive and transparent citizen governance through the use of Information Technology. E-governance is used as a synonym for an Information Technology driven system of governance that works better, costs less and is capable of servicing people's needs. It is also broadly defined as the use of Information Technology for efficient delivery of Government services to the people, business world and industry. The term e-governance involves the computerization and networking of all government departments and linking each district and taluka, with the State headquarters. The objective of e-governance in India goes beyond mere computerization of government offices. It fundamentally means changing the way the government operates and implies a new set of responsibilities for civil servants, business world and the public. Plans such as online services will give an average citizen access to Government services, with faster responses at more convenient hours. These services include providing information, collecting taxes, granting licenses, administering regulations and paying grants and benefits. The aim of e-governance is to eliminate middlemen and corruption. Once people know that information could not be monopolized, they would demand access to it¹.

II. E-governance and the justice delivery system

The first duty of a court is to do justice. If the "rule of law" has been declared to be a "basic feature" of the Constitution, which cannot be taken away even by exercising the constitutional power of amendment, then "rule of justice" is definitely above it and deserves

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¹ Anupama Katakam; 'Information Technology: Towards EGovernance', The Frontline 78, 10th December 1999.

the status of the basic feature of the constitution. This is so because the concept of justice is wider and is of greater importance than the rule of law because:

- (1) The express incorporation of Article 142 in the Constitution of India assures this guarantee. The Supreme Court in exercise of its jurisdiction can pass such decree or make such order as is necessary "for doing complete justice" in any cause or matter pending before it. For instance, the Supreme Court can extend the benefit of its judgment to a case not in appeal². In **D.D.A v Skipper Construction Co (P) Ltd**³ the Supreme Court observed that it is advisable to leave this power undefined and uncatalogued, so that it remains elastic enough, to be moulded to suit the given situation.
- (2) There may not be any law governing any particular situation, but the justice may require taking of an immediate and inevitable action.
- (3) There may be a law, which does not satisfy the present demands and requirements of the society at large.
- (4) The mandates of morality require taking of an action, which is normally not taken.
- (5) The concept of justice, equity and good conscience may be applicable in a given situation where the law has left a vacuum or is not addressing the problem in hand in an appropriate manner.

Thus, the courts in India to do complete justice invoke the concept of "rule of justice". This does not mean that one can ignore the concept of rule of law. It must be appreciated that both rule of law and rule of justice must go hand in hand to make the justice system just, fair and reasonable. In today's world we cannot afford to say that "justice must not only be done but it must also be seemed to be done". The concept of justice requires that:

- (1) it must firstly be done in a just, fair and reasonable manner,
- (2) it must be seemed to be done, and
- (3) it must be "felt" to be done.

Thus, unless this third element of "felt to be done" is satisfied, the concept of justice is not complete because this third element is the most important component of justice delivery system. The public at large in India has a great faith in Indian judiciary and this third element is absolutely essential to maintain and preserve that faith and confidence. A court of law cannot render justice unless the ultimate decision is based on the contemporary law as prevailing in the society. A decision based on an old law, which does not satisfy the requirements of the present situation, and environment should be avoided. In such a situation the efforts of the courts should be to give the law a "purposive, updating and an ongoing interpretation". This position makes the interface of justice delivery system with the information technology inevitable and unavoidable. We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law, which stands in the way of its growth. Law must therefore constantly keep on adapting itself to the fast changing society and not lag behind⁴. Justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better-off situation. Law courts exist for the society and ought to

² *Manganese Ore v Chande*, AIR 1991 SC 520.

³ AIR 1996 SC 2005.

⁴ **Justice Bhagwati** in *National Textile Worker's Union v P.R.Ramakrishnan*, (1983) 1 SCC 228, at p. 256.

rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to sub serve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of the law is its flexibility and its adaptability; it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day. Thus, the justice delivery system cannot afford to take the information technology revolution lightly.

III. Legislative efforts to bring technology revolution

To meet the challenges posed by the information technology, the Parliament has enacted the Information Technology Act, 2000. The aim of the Act is to provide a sound base for e-governance and e-commerce. It must be noted that the e-governance base can be effectively utilized for maintaining a sound justice delivery system. The various requirements, which are inevitable for the smooth functioning of the justice system, are adequately, economically and safely taken care of by the e-governance. For instance, electronic records are legally recognised, digital signatures have been given the status of signature in writing, a notification in electronic gazette is considered to be a valid notification, etc. The following provisions of the Act reflect India's determination to utilize the benefits of e-governance for judicial purposes:

(1) Legal Recognition of ERecords - Section 4 provides that where any law requires that information or any other matter shall be in writing or type written or in printed form. Such requirement shall be deemed to have been satisfied if such information or matter is rendered or made available in an e-form and accessible so as to be usable for a subsequent reference. The term e-record means data, record or data generated, image or sound stored, received or sent in an e-form or microfilm or computer generated microfiche⁵. The term e-form, with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated microfiche or similar device⁶. Thus as an alternative to paper based record, e-record has been recognised as a medium of communication and storage of information. Further, if an e-record is authenticated by digital signature, it can be produced as evidence for the inspection of the courts. This arrangement is definitely hassle free and more transparent as compared to traditional methods of record keeping. Further, it is not prone to tampering unlike paper-based record, which is difficult to maintain and has its own limitations.

(2) Legal Recognition of Digital Signatures- Section 5 of the Act mandates that if any information or any other matter is required by law to be authenticated by affixing the signature, then such requirement shall be deemed to have been satisfied if such information or matter is authenticated by means of digital signature affixed in the prescribed manner. The type of digital signature that shall be used to authenticate an e-record shall be as per the rules that may be framed by the Central Government. The rule may prescribe the manner or procedure to facilitate identification of the person affixing the digital signature. It may also prescribe the safeguards to ensure integrity, authenticity and confidentiality of e-records.

⁵ Sec.2 (1) (t) of IT Act, 2000

⁶ Sec.2 (1) (r) of IT Act, 2000

Further the rule may provide any other matter, which is necessary to give legal effect to digital signatures⁷.

(3) Use in Government and its Agencies- Section 6 of the Act recognises use of e-records and digital signatures in government and its agencies for filing, issue, grant, receipt or payment of money as an acceptable mode. The Central Government as well as the State Governments is empowered to prescribe the manner and format in which the e-records shall be filed, created, retained or issued. They may prescribe the manner or method of payment of any fee or charges for filing, creation or issue of any e-record.

(4) Retention of ERecords- Section 7 is an enabling section, which provides that if any law mandates that documents, records or information are required to be retained for any specific period, then, that requirement shall be deemed to have been satisfied if the same is retained in e-form.

(5) Electronic-Gazette- Publication of official gazette in e-form is permitted by Sec.8 of the act. Accordingly, where any law requires publication of rule, regulation, order, byelaw, notification or other matter in the gazette, publication thereof in e-form is permitted. If such publication is made in the e-form, the requirement of publication in the official gazette is deemed to have been fulfilled. When an official gazette is published in printed form as well as electronic gazette, the date of publication shall be the date on which the gazette was first published in any form.

(6) Non-Absolute Right- The provisions of Sec.9 mandates that e-governance, as envisaged in the Information Technology Act, does not confer a right upon any person to insist any Ministry or Department of the Central or State Government or any authority or body to accept, issue, create, retain or preserve any document in the form of e-records or to participate in any monetary transaction in the e-form. Thus, sufficient safeguards have been taken to establish a proper and timely e-governance base.

(7) Possible Uses of E-Governance- The future of e-governance is very bright. With the help of information technology, the daily matters can be effectively taken care of irrespective of the field covered by it. For instance, the Delhi Police Headquarter has launched a website, which can be used for lodging a First Information Report. Similarly, the Patna High Court has taken a bold step of granting bail on the basis of an online bail application. The educational institutions, including universities, are issuing admission forms electronically, which can be downloaded from their respective websites. The results of examinations of various educational institutions, both school level and university level, are available online, which can be obtained without any trouble. These are but some of the instances of the use of technology for a better e-governance. The beneficial concept of e-governance can be utilized for the following purposes:

- (1) To have access to public documents.
- (2) For making online payments of various bills and dues.
- (3) To file statutory documents online⁸.

⁷ Sec.10 of IT Act, 2000

⁸ Recently the SEBI has allowed filing of specified documents online by the listed companies vide, SMD/Policy/Cir-17/02 dated 3rd July 2002.

- (4) To file the complaints, grievances and suggestions of citizens online.
- (5) The online facility can be used to enter into a partnership the appropriate government in cases of government contracts.
- (6) The citizens can use the online facility to file their income tax returns⁹.
- (7) The citizens will enjoy the facility of online services.
- (8) The various departments of the government can be computerized and centralized and the responsibility for its proper maintenance can be fixed on an agency like National Informatics Centre.

It must be noted that to give effect to these provisions appropriate amendments have been made in the I.P.C, 1860, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934. These amendments have made these statutes compatible with the "e-justice system".

IV. Judicial reception of information technology

The judicial response vis-à-vis information technology is positive and technology friendly.

In **M/S SIL Import, USA v M/S Exim Aides Silk Exporters**¹⁰ the words "notice in writing", in Section 138 of the Negotiable Instruments Act, were construed to include a notice by fax. The Supreme Court observed: "A notice envisaged u/s 138 can be sent by fax. Nowhere is it said that such notice must be sent by registered post or that it should be dispatched through a messenger. Chapter XVII of the Act, containing sections 138 to 142 was inserted in the Act as per Banking Public Financial Institution and Negotiable Instruments Laws (Amendment) Act, 1988. Technological advancements like Fax, Internet, E-mail, etc were on swift progress even before the Bill for the Amendment Act was discussed by the Parliament. When the legislature contemplated that notice in writing should be given to the drawer of the cheque, the legislature must be presumed to have been aware of the modern devices and equipments already in vogue and also in store for future. If the court were to interpret the words "giving notice in writing" in the section as restricted to the customary mode of sending notice through postal service or even by personal delivery, the interpretative process will fail to cope up with the change of time. So if the notice envisaged in clause (b) of the proviso to section 138 was transmitted by Fax, it would be compliance with the legal requirement".

Thus the requirement of a written notice will be satisfied if the same is given in the form of a fax, e-mail etc, using the information technology. It must be noted that a notice by e-mail can be send instantaneously and its delivery is assured and acknowledged by a report showing the due delivery of the same to the recipient. This method is more safe, accurate, economical and lesser time consuming as compared to its traditional counterpart, popularly known as "Registered A.D".

In **Basavaraj R. Patil v State of Karnataka**¹¹ the question was whether an accused need to be physically present in court to answer the questions put to him by the court whilst recording his statement under section 313. The majority held that the section had to be considered in the light of the revolutionary changes in technology of communication and

⁹ Assessment year 2002-03, the bulk filing of returns of the employees by the employer on computer readable medium has been recognised by Sec.139 (1A) of the Income Tax Act.1961.

¹⁰ AIR 1999 SC 1609.

¹¹ (2000) 8 SCC 740.

transmission and the marked improvement in the facilities of legal aid in the country. It was held that it was not necessary that in all cases the accused must answer by personally remaining present in the court. Once again, the importance of information technology is apparent. If a person residing in a remote area of South India is required to appear in the court for giving evidence, then he should not be called from that place, instead the medium of "video conferencing" should be used. In that case the requirements of justice are practically harmonised with the ease and comfort of the witnesses, which can drastically improve the justice delivery system.

In **State of Maharashtra v Dr.Praful.B.Desai**¹² the Supreme Court observed: "The evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video conferencing. 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. Thus, it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is recorded in the "presence" of the accused and would thus fully meet the requirements of section 273, Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law". The advancement of science and technology is such that now it is possible to set up video conferencing equipments in the court itself. In that case evidence would be recorded by the magistrate or under his dictation in the open court. To this method there is however a drawback. As the witness is not in the court there may be difficulties if commits contempt of court or perjures himself. Therefore as a matter of prudence evidence by video conferencing in open court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of court and perjury are also punishable".

This judgment of the Supreme Court is a landmark judgment as it has the potential to seek help of those witnesses who are crucial for rendering the complete justice but who cannot come due to "territorial distances" or even due to fear, expenses, old age, etc. The Courts in India have the power to maintain anonymity of the witnesses to protect them from threats and harm and the use of information technology is the safest bet for the same. The testimony of a witness can be recorded electronically the access to which can be legitimately and lawfully denied by the Courts to meet the ends of justice.

Once again the safety of victims and the witnesses through the use of information technology was recognised by the Supreme Court in **Sakshi v U.O.I**¹³. The Supreme Court in this case observed: " The whole inquiry before a court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C merely requires the evidence to be taken in the presence of the accused. The section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by video conferencing has already been upheld. Moreover, there is a major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are handmaidens of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the

¹² 2003 (3) SCALE 554.

¹³ (2004) 5 SCC 519.

parties. Thus, in holding trial of child sex abuse or rape a screen or some arrangements may be made where the victim or witness (who may be equally vulnerable like the victim) do not see the body or face of the accused. Recording of evidence by way of video conferencing vis-à-vis Section 273 Cr.P.C is permissible".

The above discussion shows that the judiciary in India is not only aware of the advantages of information technology but is actively and positively using it in the administration of justice, particularly the criminal justice.

V. Conclusion

The advent of information technology has changed the mode of working of almost all the spheres of the life. The justice delivery system has also been benefited by this technological revolution. It must be noted that one of the cardinal rule of interpretation is that the Parliament intends the Courts to apply an ongoing Act a construction that continuously updates its wordings to allow for changes since the Act was initially framed. An enactment of the former days is thus to be read today, in the light of the dynamic processing received over the years. The Constitution is organic and living in nature. It is also well settled that the interpretation of the Constitution of India or statutes would change from time to time. Being a living organ, it is ongoing and with passage of time, law must change. New rights may have to be found out within the constitutional scheme. It is established that fundamental rights themselves have no fixed content; most of them are empty vessels into which each generation must pour its contents in the light of its experience. The attempt of the court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by the Supreme Court¹⁴. This valuable and golden rule of interpretation has been properly appreciated and adequately applied by the Indian judiciary in the context of information technology. Thus, it can be safely concluded that the "E-justice system" has found its existence in India.

¹⁴ *P.U.C.L v U.O.I, (2003) (3) SCALE 263.*