

TOWARDS DIGITAL JUSTICE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Towards the end of last year, [China](#) reported the advent of a new world of digital justice delivered by mobile (cyber) courts on the popular social media platform, WeChat. It had already handled more than three million cases by December 2019. Also running since 2017 is a digital court in Hangzhou that deals with legal disputes online, even as it disburses justice through AI-powered virtual judges. And all this is enabled by technologies like blockchain and cloud computing.

To cite China, considered by many engaged in cyber policy as the poster-boy of state surveillance, is risky to begin with. But, to a rational mind it is also enticing to think about the gains it could bring, if implemented, to a tortuous judicial system in India.

As easy and effortless as it may sound, reaching such a radical state of cyber-policy would require foolproof and seamless inter-linkages — through well-defined and enforced digital norms — of various sub-sectors of jurisprudence, such as investigation, prosecution and judicial process. Presently, the push to establish digital norms within each of these domains is mired in intense, muddled battles of wit and debate — both inside the courts and in the media — launched by privacy activists and civil liberties' supporters.

First, let us consider the investigative domain. To identify a culprit is the basic premise to set the ball rolling for any jurisprudence. But new technologies are increasingly viewed with suspicion by public oversight stakeholders. Facial recognition — sought to be introduced by the NCRB in an under-policed system, and a technology that is seen as a force multiplier for security agencies in crime control and anti-terrorism — has been met with heavy resistance over privacy issues. Current proceedings before the Supreme Court in a petition to make social media traceable to their originator — through the linkage of identity information such as [Aadhaar](#) or mobile number — is also being challenged vociferously. It is a double blow for security agencies, considering there has already been a truncation of the linkage of Aadhaar to SIM purchases by the Supreme Court judgment on Aadhaar. Data localisation to enforce social media giants into having some regulatory discipline is in limbo too — the data protection bill is still to be passed, having been referred to a parliamentary joint committee.

Second, the domain of prosecution has to be examined. Though the IT Act, the CrPC and the evidence Act have made electronic records and evidence admissible in the courts of law, many hurdles need to be crossed still. Voice sample, for instance. We can't imagine natural justice to follow if voice samples provided during investigation by the public or culled out by interception techniques go unexamined. Voice samples had become a bone of contention, in fact, whereby criminals resorted to the right to privacy for refusing samples. Thankfully, the Supreme Court in *Ritesh Sinha vs State of UP, 2019*, has upheld the lower court's order to elicit voice samples even though no legislation exists, thus invoking the principle of imminent necessity till any legislation is put in place. This judgment is a great neutraliser in the whole debate of public and judicial oversight where, so far, the only judgment quoted by privacy proponents was the *Puttaswamy* judgment of the Supreme Court.

Third, the judicial process itself needs a major facelift and upgradation. E-courts, e-servicing of processes, CCTNS (Interoperable Criminal Justice System) dovetailing with auto-fetching of data from police records, Interoperable Criminal Justice System(ICJS), the live streaming of judicial proceedings, video-conferencing of undertrials from prisons — these are some of the

initiatives being monitored by the apex court itself. A late entrant in this digital landscape, it has made commendable progress, but still there is much to be done before seamless structures are created.

The state usurping powers in the name of security has always been a nightmare scenario for civil liberty proponents. Incidents such as those involving Cambridge Analytica and even Aadhaar have effectively restricted the surveillance tendencies of companies and the state respectively. Thus, public oversight is welcome in many cases. However, digital justice will be delivered only by believing in new technologies. The lordships, crucial to the judicial process, will always be there to provide necessary oversight.

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