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Dr. Justice D. Y. Chandrachud,
Chairperson,
E-Committee Supreme Court of India

May 31, 2021

Sub: Comments to the Draft Vision document for Phase III of eCourts Project

Dear Justice D. Y. Chandrachud,

ALG India Law Offices LLP (“ALG”) submits these comments in response to the invitation for feedback on the Draft Vision document for Phase III of eCourts Project prepared by the Expert Sub-Committee of the eCommittee of the Hon’ble Supreme Court (hereinafter referred to as the ‘Committee’), published on April 20, 2021.

Our key comments and suggestions, discussed in detail in the enclosed Note, are summarized below -

1. Public accessibility to pleadings and any other documents filed by the parties is to be allowed only upon the consent of the parties.
2. The draft vision document does not lay down adequate measures to ensure how the huge amount of data will be protected without there being a proper data protection legislation in place.
3. Care to be taken that the proposal in the draft vision document for creation of templates and increasing over-reliance on transformative technology does not lead to lack of accountability with passage of time.
4. The draft vision document does not lay down modalities for limiting the collection, purpose and use of such data, for restricting unfettered surveillance.
5. There is a lack of specificity on what steps would be taken to ensure inclusivity and equal accessibility in the judicial process.
6. The vision document does not take into account backward compatibility given that the entire court and legal system in the country cannot be digitized in a span of few years and adequate digital literacy will remain a concern for the

foreseeable

future.

7. The Draft does not address the issue of witness coaching and how such instances shall be prevented.
8. Repository of case laws should be organized to cater to easy and swift research.

We appreciate the considerable effort that has gone into the Draft. We recognize the time pressures and challenges, under which the Committee is working, particularly in COVID-19 times. We thank you for your time and consideration of these comments.

ALG India Law Offices LLP

Through

Abhimanyu Kumar, Partner
Sri Lekha Rayapati, Associate



NOTE CONTAINING ALG'S COMMENTS AND SUGGESTIONS ON THE DRAFT VISION DOCUMENT FOR PHASE III OF ECOURTS PROJECT

1. Public accessibility to pleadings and any other documents filed by the parties is to be allowed only upon the consent of the parties.

1.1. ALG's Observation

1.1.1. Under the heading 'Towards Digital Courts', the Draft states one of the fundamental ideas for evolution of the eCourts project architecture from a 'system' to a 'platform' is to "*make data such as pleadings, arguments, and judgments from the judicial system publicly accessible, subject to privacy regulations...*". The Draft states the reason behind this to be that "*...such information and data can be used such that it benefits the data principal, i.e. litigants, data controller, i.e. Registry, and potential data users, i.e. academics, researchers, technologists, and professionals who can leverage machine learning and AI to build solutions on this data.*".

1.1.2. The Draft listed out guiding principles for development of digital infrastructure wherein it stated with regards to ensuring privacy and security of data "*...designing with the principles of capturing minimal personal identifiable or other sensitive data, keeping the transient data in memory only, storing data in anonymised ways and displaying only relevant attributes on the user interface is key to ensuring privacy and security. The judiciary needs precise, codified regulations which specify categories of information, the restrictions and access permissions associated with them, and how these relate to specific actors such as judges, the registry, lawyers, and litigants.... It would also need to specify case types and legislations for which privacy regulations may be more stringent, such as cases under the Protection of Children from Sexual Offences Act or matrimonial cases.*"

1.2. ALG's Recommendation

1.2.1. The Draft rightly identifies the privacy and security concerns pertaining to the data in a digital infrastructure and also points out to specific scenarios (such as cases under the Protection of Children from Sexual Offences Act, or matrimonial cases) wherein data privacy regulations may be more stringent.

1.2.2. To add to it, ALG suggests that public accessibility to any documents filed by the parties is to be allowed only upon the consent of the parties. The consent may be obtained by making available an option (to either allow or opt out from public display of the documents) during filings of the documents.

2. The draft vision document does not lay down adequate measures to ensure how the huge amount of data will be protected without there being a proper data protection legislation in place.

2.1 ALG's Recommendation

The vision document undertakes to ensure privacy and security of data as a critical part of building the digital infrastructure and maintaining trust between ecosystem stakeholders. However, we are of the view that large scale digitization needs to be undertaken only after comprehensive data protection framework has been put in place. Also, a specialized body that regulates data protection must be appointed as an oversight committee, till a data protection legislation comes into force, to oversee the digitization process as well as any related data protection issues.

3. Care to be taken that the proposal in the draft vision document for creation of templates and increasing over-reliance on transformative technology does not lead to lack of accountability with passage of time.

3.1 ALG's Recommendation

The draft vision document proposes creation and use of templates and automated processes by judges for streamlining the decision-making process as well as to tackle pendency of cases. Also, it is proposed that an eCourt database is created that will provide citizens information with respect to justiciability of their proposed or pending case. Although this is a welcome step in ensuring that transformative technologies aid in decreasing the pressure on judiciary with respect to pendency and streamline the judicial process, however, clear checks need to be put in place to ensure that the process does not become mechanical in nature, wherein proper application of mind in deciding cases takes a back seat. Also, an automated portal cannot be tasked with giving an objective result/answer on complex legal questions. If such a step is undertaken, there must be grievance redressal mechanism against advice from the portal which is patently incorrect.

3.2. The draft vision document does not provide any provision for a grievance redressal mechanism against the legal advice/information on justiciability of the cases given by the portal created by sub-committee which uses data from eCourt database. It is recommended that a help desk facility be formed (apart from taking feedback from the users) as an effective grievance redressal mechanism.

4. The draft vision document does not lay down modalities for limiting the collection, purpose and use of such data, for restricting unfettered surveillance.

4.1 ALG's Recommendation

The draft vision document discusses in detail 'Interoperable Criminal Justice System (ICJS)' with respect to seamless sharing of data between different arms of law enforcement wings and courts, for allowing effective tracking and unifying various processes. However, large-scale collection of data has the propensity to allow investigative agencies undertaking unfettered surveillance. No modality has been set out in the draft vision document to limit such surveillance. We recommend creation of adequate safeguards and redressal mechanisms as adopted in other jurisdictions to put a check on unfettered surveillance. For example, in United Kingdom, the Investigatory Powers Tribunal, an independent court constituted under the Regulation of Investigatory Powers Act, 2000, looks into complaints of unlawful intrusion by public bodies, including security and intelligence agencies, the police and local authorities.

5. Lack of specificity on what steps would be taken to ensure inclusivity and equal accessibility for all in the judicial process.

5.1. ALG's Observation

5.1.1. The Draft lists one of the 'Core Values of Digital Courts' as empathy whereunder it states "*The Constitution requires the State to enhance and ensure equal opportunity, accessibility and inclusivity in the entire judicial process. In line with this mandate, digitisation efforts should be based on empathy for all actors... To ensure empathy in the application of technology, it is imperative that concerns of inclusion and integration are addressed at the design stage as well as during adoption. Such applied empathy in implementation and adoption of technologies will enable the system to be intuitive, proactive and responsive to user needs, especially in terms of filing, access to case information, scheduling, and overall litigation ease and experience.*"

5.1.2. The Draft discussing the potential of Digital Courts and consequent benefits for stakeholders states *“Digital hearings and e-filings will enable the practice of law to become more inclusive for women and differently abled lawyers.”*

5.1.3. In the guiding principles for development of digital infrastructure listed out in the Draft, one of the principles relating to accessibility and inclusiveness states *“...Ease of access can be secured by incorporating user-friendly user interface and user experience (UI / UX) design, minimising friction and reducing the cost of interaction so that nobody is excluded. In addition, ensuring optimal service delivery through omni-channel (e.g., web, mobile), universal, and affordable access is essential. For example, ensure availability of content on a platform in all official languages (not only Hindi and English), create multiple formats of access to the services offered by the platform, such as interactive voice response system (IVRS) services for users without smartphones or internet.”*

5.2. ALG’s Recommendation

5.2.1. While the Draft recognizes that digital infrastructure should be made more accessible and inclusive, it is noted from the stated principles and examples [such as a user-friendly interface for affordable access, availability of content on a platform in all official languages, interactive voice response system (IVRS) services for users without smartphones or internet] that the Draft does not wholistically address the issue of accessibility and inclusiveness.

5.2.2. It is recommended that specific steps (for example - the recent introduction of audio captcha introduced on Supreme Court’s website) in accordance with the Rights of Persons with Disabilities Act, 2016, should be outlined to make the digital infrastructure usable and functional across the board.

6. The draft vision document does not address backward compatibility

6.1. ALG’s Recommendation

Digital literacy in India still remains sparse and it is expected to remain an issue for the foreseeable future, given the varying literacy rate in the country. Therefore, a complete digitization of the judicial process as envisioned by the draft document in the coming years may not be realistic and compulsory digitization of the court system will likely lead to exclusion of those litigants from access to courts who are not tech savvy and still rely on the paper systems, especially in rural India. The proposals contained in the draft document are not enough to meet the challenges owing to lack of digital literacy amongst litigants. We recommend that there is a

strong need to maintain backward compatibility with respect to keeping the paper filings and existing court processes for a longer period of time to ensure that there is a short gap between availability of adequate legal redressal of disputes and that the litigants do not end up being excluded.

7. The Draft does not address the issue of witness coaching and how such instances shall be prevented.

7.1. ALG's Observation

7.1.1. The Draft, while elucidating on what a court user's experience of a digital court would look like, states "*Witnesses can be summoned by multiple modes of communication, in a manner similar to parties, as described above. Lawyers can submit their lists of witnesses online, and the judge can remotely grant access to the other party.*".

7.1.2. Apart from the modes of communicating the summons to the witness, the Draft does not address how the issues of witness coaching shall be tackled.

7.2. ALG's Recommendation

7.2.1. Although witness coaching is a problem even in the physical functioning of the courts, certain formalities and appearance in person to some extent may intimidate and encourage a witness to keep it honest. However, this is not possible in the virtual world and hence, it is imperative to come up with techniques and methods to avoid witness coaching to a great extent.

8. Repository of case laws should be organized to cater to easy and swift research

8.1. ALG's Observation

8.1.1. The Draft listed out one of the key goals for phase III to be a comprehensive and updated repository of case laws. The Draft stated "*A freely accessible, updated and comprehensive database of all legal precedents must form the backbone to a judicial system based on common law...A national repository for legal precedent from all courts will ensure a uniform, reliable and visible database for all case laws. Towards this, Phase III will build over the platform of the eCourts website to create a freely accessible aggregator of indexed case laws through coordination with High Courts and the use of appropriate standards and specifications along with open APIs.*".

8.2. ALG's *Recommendation*

8.2.1. It is worth appreciating the recommendation to create a national repository of legal precedents for it very well benefits the lawyers and other stakeholders. In order to optimize utilization of the repository, it is suggested that the same be well-organized (for example – use of colour coding, segregation based on the nature of cases etc.) such that it caters to an easy and swift research.

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