

## **E-COURTS—DO WE NEED’EM?**

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Last decade of 20<sup>th</sup> Century witnessed the emergence of an entirely new branch of Jurisprudence, Cyber Law, which undermined long-standing definitions of jurisdiction, and extended new meanings to ‘ex-territoriality’. Revolutionary advancement in Information Technology, introducing all sorts of hardware and software world-wide, coupled with fast and economical access to information, knowledge and market, has compelled the Legislatures to introduce legal modalities to cope with strange issues and complicated propositions encountered by the Judiciary never before. Particularly, promotion of E-Commerce during the last 5 years has highlighted serious issues of legal consequence warranting immediate resolution. Not only perfect solutions to freshly-arising disputes on the Web are desired, but also extra-ordinary expediency is demanded by Trade and Commerce on one hand, and the Consumer, on the other. A balanced Judge has to weigh between both maxims: ‘Justice delayed is Justice denied’; and ‘Justice rushed is Justice crushed’. But hundreds of thousands of trans-border transactions on the Web can’t wait that long for a judicial pronouncement, nor can they afford legal expenses to redress grievances for smaller amounts involved in most of such transactions. Then, time has been acknowledged since long as money. For paying traffic fines, or for violations of minor restraints, citizens find no time to hover around the corridors of justice. For all such reasons, some Parliaments in the World have undertaken the task to introduce E-Courts, to dispense with attendance of litigants and juvenile accused, and to enable their citizens to save time by utilising virtual access to such Courts, as well to sort out e-commerce issues on the web.

However, multimedia graffiti being introduced these days in some of the developed countries, in the name of modernisation of Judiciary, is to be reviewed by the developing nations with much caution. Projects like ‘Courtroom 21’<sup>1</sup> might look attractive to eyes and melodious to ears, are not only very expensive, but yet to be authenticated as better substitutes for conventional courts. Pioneers in the field of introducing I-Tech and Hi-Tech hardware and software aiming at E-Courts are, obviously, USA and Canada, now followed by Australia and Singapore. Laudable advocates of E-Courts are, of course, manufacturers and providers of ultra-mod gadgets, but a small country with meagre resources should think twice before launching such an enterprise. Looking at the vendor’s showcase, presently functioning E-

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<sup>1</sup> A project of College of William and Mary School of Law, Virginia, US, directed by Prof. Fredric I. Lederer, in collaboration with National Center for State Courts, USA. Inaugurated on September 13, 1993, it is located in the McGlothlin Courtroom, and considered as the most technologically advanced courtroom in the world.

Courts are found using stuff for evidence presentation and preservation; Court-room displays; remote video conferencing; E-filing; record maintenance and retrieval; transcriptions and translations etc. A good evidence production system enables an E-Court to use every sort of audio-visual and multi-media presentation, sometime on a life-size screen, to the view of the Court and the Jury, and to help build a nearly-true site of occurrence for better understanding of roles of independent characters. Court room systems are attached to the laptops or desktops of the counsel for the parties, and with the help of e-pens, they may indicate to the Court and the witness, the exact points to be explained. LCD-display life-size screens are installed there to give a live image to the Jury which, E-Court advocates believe, is prone to TV and Monitor screen, and impressed greatly by graphical and video details on the screen, rather the same fact explained by a physical person in the witness box. Another important segment of E-Court technology is its ability to view, hear, examine and cross-examine a remotely stationed witness or expert, or even to hear arguments from a counsel sitting abroad in front of his web-cam. It also enables the lawyers in different countries to argue the same case simultaneously before a Court, though continents apart, or even more than one judges from different countries, may constitute into a single Court, communicating through virtual presence with parties, witnesses and counsel. At an E-Court, testimony of a witness is visible before the Court, the Counsel and the Jury simultaneously, with facility to get hard copies immediately, or even getting instant translation of a deposition not understandable by the Court or the Counsel.

On the education and training frontier, good efforts are in progress, as well many associations are assuming such responsibilities, like American Association of Electronic Reporters and Transcribers, National Court Reporters Association, National Court Reporters Foundation, National Verbatim Reporters Association, all from USA, dedicated to infuse technological knowledge and expertise necessary to cope with new challenges. Softwares are also being developed fast, like Stenoscribe, CaseCatalyst, e-transcript, FTR Gold, SpeechCat, DepoSync 4.0, TrialPro, TrialDirector, WP Lawoffice 2000, Office 2000 Premium, e-brief etc. So far as supporting hardware is concerned, everyday some new gadgetry is being introduced, improving audio-visual, storage-retrieval and database capabilities of judicial systems. But the odd is still there. Even supporters of E-Courts frankly concede that alteration and fabrication of e-evidence can't be totally excluded, and with the help of high-tech softwares, presentations can be altered, even before reaching the Court. They present the 'logic' that same risks are also persistent in conventional trials. Then, are we going to spend millions of dollars on one single E-Courtroom just to be not-sure about credibility of material displayed on its life-size screens!

Individual jurisdictions are also working on modalities for E-Courts, and introducing into their judicial system little bits of technology. Counties of New York, Monroe and Westchester have adopted 'FBEM' (filing by electronic means) but mainly, such facility is available in commercial and taxation cases. They however have proclaimed that FBEM will be a voluntary program, and open to action only when both the parties agree to e-filing. Moreover, if the Presiding Officer does not approve the system, hard copies of such filings shall be prepared and the case would be dealt with like

a paper case. Even if a participating judge does not find FBEM suitable in a particular case, he may pass orders accordingly, and before commencement of trial, a formal judicial order permitting FBEM would thus be required.

Another branch popular in E-Courts, and even in conventional courts of resourceful judiciaries, is the ease of access to court records, decisions and proceedings, electronically. For example, in New York, using a PC from home or a cyber café, one may access hundreds of thousands of cases pending in New York Courts, including court rosters, and next dates of hearings. Australians have inaugurated their first E-Court on 4<sup>th</sup> July 2001, providing computer screens on the Judge's table, Jury desk and the bar table. Running transcript is entered into the system by stenographers, simultaneously viewable on all the screens, providing the lawyers and the Jury an opportunity to take immediate notes for instant usage. Queensland University of Technology is providing training to judges and lawyers, enabling them to have the maximal output. On the other hand, Singapore has launched its EFS Phase 1.2 program, from March 2000, and thus introducing paperless Appeals in the Court of Appeals and for Magistrate's Appeals, as well filing of documents in civil proceedings. They also have offered a course for lawyers on Virtual Advocacy in the Court Room (a \$80 course for 4 hours coaching). In fact, Singapore is ambitious. On 31<sup>st</sup> March, 2000 they launched three services on Lawnet litigation; bankruptcy petition system, originating summonses in bankruptcy system, and companies winding up system, all relating to corporate sector. They call it investing in justice in the new economy. In the words of Hon'ble the Chief Justice Yong Pung How, during the next 4-5 years, Singapore Judiciary has to meet four challenges:

*firstly*, sustaining international commitment to stability in global financial markets, free trade and economic progress;  
*secondly*, preparing for tough global and regional competition;  
*thirdly*, adapting and building stable relations in a changing strategic environment;  
and *fourthly*, strengthening Singapore's social cohesion, national identity & rootedness.

C.J. How has further defined the forces responsible for driving these challenges as:

*firstly*, the global economy;  
*secondly*, the dominance of the Net Age, catalysed by the convergence of computing and communications;  
*thirdly*, the emergence of knowledge capitalism and its emphasis on intangible assets such as knowledge, competencies and intellectual property;  
and *fourthly*, the "Third Industrial Revolution" which is under way.

In brief, as the Hon'ble Chief Justice claimed, Singapore Judiciary is expected to 'be a premier justice eco-lab, a Silicon Valley of the global justice community; and to sustain their pole position in the administration of justice for the nation and the community'. Apart from working under Singapore Co-operation Programme for exchange of views on common judicial and judicial administration issues with ASEAN and non-ASEAN Judiciaries, and providing technical assistance to ADB's developing member countries in the area of judicial and legal reforms, Singapore Judiciary is

collaborating with WIPO (World Intellectual Property Organisation) Arbitration and Mediation Centre to provide virtual dispute resolution to aggrieved parties in IP, e-commerce and domain name cases. Their CDRI (Court Dispute Resolution International) programme is inter-acting with judges from Europe and Asia-Pacific. The Subordinate Courts of Singapore, having already established e-Courts, i.courts and e-Chambers equipped with the latest technology for the resolution of e-commerce disputes, 'working with the Economic Development Board, the Trade Development Board, the Singapore Mediation Centre (SMC), the Singapore International Arbitration Centre (SIAC) and the Ministry of Law, intend to establish a comprehensive dispute resolution framework for e-commerce cases. Parties concerned will be able to resolve e-commerce disputes by resorting to videoconferencing and other electronic means. E-commerce cases coming before the Subordinate Courts involving small claims will be channelled directly to the Small Claims Tribunals, which are fully equipped to resolve disputes by electronic means. Where claims are complex and substantial, the litigants will be offered three options: the CDRI scheme offered by the Subordinate Courts; mediation offered by the SMC; and arbitration offered by the SIAC'. Singapore also claims to be the 'only judiciary offering an e-commerce dispute resolution hub. e@dr is applicable to disputes arising from any kind of e-commerce transaction, be it consumer, business or commercial, as well as in related areas of disputes such as intellectual property rights and domain names. In addition this facility is also available to parties, who although are not involved in e-commerce transactions, nevertheless wish to settle their civil and commercial disputes via the Internet'. e@dr offers a wide variety of dispute resolution services. Based on the nature and complexity of the matter, it will be channelled to resolution by a referee of the Small Claims Tribunals, mediation by an e@dr mediator, or mediation by a judge-mediator at CDRI and eCDRI..

In USA the Supreme Court has accepted in criminal cases, when necessary, child witness testimony via one-way video<sup>2</sup>. In another case, the Florida Supreme Court has sustained a robbery conviction based largely upon the two-way video testimony of complainants testifying from Argentina<sup>3</sup>.

Thus it looks that sooner or later, every Judiciary of the World will have to examine its prospects for upgrading its system and resources. So far, no criteria is set to appraise usability of E-Courts in not-so-fortunate countries. To my estimate, automation and use of Information Technology in Judiciary may be viewed in four broad divisions; Management, Convenience, Economy and Necessity.

In the context of E-Courts, management issue would necessarily relate to man vs. machine debate. A small-scale judiciary, handling a comfortable number of cases effectively, keeping due vigil, may not need e-filing, or expensive hardware or software to maintain its record for retrieval. However, most of the judiciaries are now complaining of over-burdening their resources. Governments are always reluctant to finance their judiciaries adequately and to enhance number of courts commensurating with workload and ever-increasing population, thus raising backlog everywhere.

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<sup>2</sup> Maryland v. Craig, 497 U.S. 836, 853-54 (1990)

<sup>3</sup> Harrell v. State, 709 So. 2d 1364 (Fla. 1998); cert. denied, 67 U.S.L.W. 3237 (U.S. 1998).

Perhaps, it suits politicians. By cutting funds for the judiciary, they are able to divert the same to some more political ends, and by criticising the judiciary for the consequential backlog, they are able to make political scores in masses. In countries with better education rate, and higher awareness in the Bar and NGOs, situation is comparatively comfortable. Texas Judiciary is maintaining a software enabling its courts to communicate institution and disposal of cases electronically. OCA (Office of Court Administration) then is able to prepare consolidated statements, with such precision that average time consumed in disposal of cases is worked out, alongwith per-case cost of adjudication. Institution and disposal of every court is then prepared and published annually, enabling the citizens to evaluate usefulness of each and every judge and judicial officer. So, if working and output of the court is likely to improve greatly by introduction of IT, it would be worth investment.

*While pushing judges and lawyers against bright, colourful screens, a study should also be undertaken on health hazards involved in paperless adjudication, containing stress and strain in prolonged viewing at monitors and hanging screens.*

‘Convenience’ is the major argument by advocates for E-Courts. No doubt it looks great to hold the court while dispensing personal attendance of an Expert sitting thousands of miles away, or even a party to proceedings unable to attend the court for any good reason. It also enchants to see deposition transcript on computer screen instantly and to inter-act with witness in chamber, or to get hard copies of transcripts or even of translation, immediately. But risks involved in ‘distance-trial’ are also to be kept in view. What compels a witness to state truth before a court of law? Personal goodness? might be. Oath? to some extent. Fear of punishment for perjury? Yes. Then, conducting a trial via satellite or even through ISDN how a court may retain control over the witness in chamber; and how complete demeanour of a witness in box can be viewed by the court. In *Harrell v. State*<sup>4</sup> the problem was examined and very eminently it was made ‘incumbent upon the trial judge to monitor such problems and to halt the procedure if these problems threaten the reliability of the cross-examination or the observation of the witness's demeanor’. In the same Judgment it was held that ‘to ensure (that) the possibility of perjury is not an empty threat for those witnesses that testify via satellite from outside the United States, it must be established that there exists an extradition treaty between the witness's country and the United States, and that such a treaty permits extradition for the crime of perjury’. It was further held therein that ‘in all future criminal cases where one of the parties makes a motion to present testimony via satellite transmission, it is incumbent upon the party bringing the motion to (1) verify or support by the affidavits of credible persons that a prospective witness resides beyond the territorial jurisdiction of the court or may be unable to attend or be prevented from attending a trial or hearing and (2) establish that the witness's testimony is material and necessary to prevent a failure of justice. Upon such a showing, the trial judge shall allow for the satellite procedure’. I believe, having followed these guidelines, E-Courts, or even conventional courts, may decide upon the question of convenience in its true import.

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<sup>4</sup> Id. at 1370-72.

‘Economy’ is definitely a major consideration while introducing partial IT components in judiciary, or while setting up a complete E-Court. Having all huge financial resources and a vast e-com backbone, even USA couldn’t establish more than 1 e-court per State, on average. Singapore is displaying all its enthusiasm on the basis of its economic might, tightly woven into its judicial system. Spending on judiciary is in fact spending on sustenance of economic growth and prosperity. It is an open secret that out of \$111b trade on the Web last year (including inter-companies transactions) Asian countries got only \$8b share, and that too was mainly lifted by Singapore and Hong Kong. So while spending a few millions on ultra-expeditious measures for dispute resolution, they are not losers. But the economies in bad shape, under heavy debt, and dwindling forex reserves, showing no respectful presence on e-market, may not have luxury of high-tech e-courts. However, for occasional instances of recording evidence through video-conferencing, it’d be just practicable to set-up one e-court, available to all courts of the country to use. Dates of hearing may be fixed in advance, after consultation with registrar of such court. It’d be ideal to set up such court at the place of Judicial Academies, so that in spare days, judges and lawyers could be trained over there in the use of high-tech equipment, which would also fetch some money for meeting recurring expenditure of such court. The party requesting for its usage may also be asked to pay reasonable cost for its usage, not more than that it saved by using video-conferencing.

Last comes in consideration, the Necessity for setting up E-Courts. Sooner a country enters into E-commerce, it is impossible to deny extra-fast redressal of grievance to an unsatisfied customer. A new breed of crimes has cropped up on the Net, like cyber-stalking, squatting, spamming, e-mail bombing, and of course hacking, coupled with bad merchandise, scamming of various kinds, etc. *This Century will have no patience for evolution of law and procedures for encountering web-related issues. It looks inevitable for judiciaries of the World, coupled with the Bar, the Chambers of Trade and Commerce, and cyber-jurists to work intimately to answer all the riddles. Conventional traits of judiciary, to stay aloof from the Government and the Commerce may not work now. Destiny of every institution is linked with healthy economy, and so the Judiciary should also leap forward to catch the train, and to equip itself with necessary expertise capable of meeting the new challenges, without compromising its independence and integrity. A comprehensive plan is to be devised to build up research divisions, necessary statutes and rules, education and training to judges and lawyers, and then to switch over to E-Courts for the true results.*