

Integrated Database Of Judgments

AUGUST 2022



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ACKNOWLEDGMENTS:

The author would like to sincerely thank Surya Prakash B.S. for his valuable suggestions. The author is also grateful for the assistance provided by Leah Verghese, Sandhya P.R. and Shruti Naik in reviewing and editing the paper.

This paper is an independent, non-commissioned piece of academic work by the author.

Supported by a grant from Rohini Nilekani Philanthropies.

Layout Design by Indu Manohar.



Index

Part A:	Introduction	4
Part B:	The Importance of Publication of Judgments	5
	RULE OF LAW	6
	ENHANCES BUSINESS CLIMATE	8
	AIDS PROFESSIONAL DEVELOPMENT	9
	IMPORTANCE OF PUBLICATION IN THE INDIAN CONTEXT	10
	NEED FOR AN AUTHENTIC SOURCE	12
Part C:	Current State of Online Legal Databases in India	15
Part D:	An Integrated Open Database of Judgments (“IODJ”)	18
	FEATURES	19
	BUILDING UPON THE SUPREME COURT eCOMMITTEE PROPOSAL	28
	DESIGNING PRE-REQUISITES	30
Part E:	International Experience - Best Practices & Lessons	36
Part F:	Implementation Strategy	41
Part G:	Conclusion	45

Introduction

Over the past few years, technology has demonstrated its role in improving efficiency, transparency, and access to laws in India. DAKSH has explored the idea of a single source for laws to consolidate the various legislations across India in its white paper *Single Source for Laws*.¹ An integral component of access to law is the accessibility of decisions and judgments rendered by the courts.

This assumes particular significance in a common law system, where judge-made law can define the law of the land. The availability of information on the outcome of cases and on the courts' interpretation and application of laws provides people with invaluable insights into how the law applies to their circumstances. This ensures predictability, inspires public trust, and improves justice delivery.

The creation of an integrated database of decisions of all the courts in India which will serve as an authentic source of case law is an urgent necessity in this context.

An integrated open database of judgments (hereinafter referred to as "IODJ") will facilitate effective public access to authentic versions of court decisions. Further, it will ensure the

integrity of the information and minimise data redundancy, as a unified storing place also implies that a given court decision has only one primary record.

Part B of this paper discusses the benefits of the publication of judgments such as its contribution to the rule of law and its economic significance. It also discusses the need for access to an 'authentic source' of court decisions in the Indian context

Part C explores currently available legal databases in India, users' experiences and the shortcomings of these online resources.

Part D describes the design pre-requisites and features that should be adopted while creating the IODJ to facilitate

- a. public access to case law; and
- b. digital record-keeping of court decisions.

Part E highlights certain best practices and experiences of other jurisdictions in respect of the publication of judgments of their courts which can provide useful guidance in creation of an integrated database for the Indian judiciary.

Lastly, Part F makes recommendations for the implementation of the IODJ.

The Importance of Publication of Judgments





RULE OF LAW

Access to information, especially in the field of law and justice, establishes a significant benchmark indicating the level that a society has achieved in pursuance of the rule of law and human rights.

1. Access to Judgments is Integral to Open Courts

The principle of open justice is recognised as a vital element in preventing perceptions of secrecy and lack of accountability, which can in turn generate distrust and confusion amongst the public. Such perceptions can be avoided by ensuring public access to the decisions made by the judiciary, at all levels. Accessibility to court decisions and other court and legal information is central to a well-functioning democracy and ensures that the administration of justice is accessible and open to public scrutiny.

The significance and potential impact of easy accessibility to court decisions are recognised by many international instruments that provide specific guidance on standards of accessibility.

“

The International Covenant on Civil and Political Rights requires that

“any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”²

“

The Council of Europe recommends, *“access of the citizens of Europe to laws, regulations and case-law of their own and other European states and to administrative and judicial information should be facilitated through the use of modern information technology in the interest of democratic participation.”³*

“

The Organization for Security and Cooperation in Europe's Kyiv Recommendations on Judicial Independence states

“..to enhance the professional and public accountability of judges, decisions shall be published in databases and on websites in ways that make them truly accessible and free of charge.

Decisions must be indexed according to subject matter, legal issues raised, and the names of the judges who wrote them.”⁴

These standards are relevant to any region and provide valuable guidance. Time and again, Indian courts have also re-iterated the importance of publication of judgments in an open-court system.

“

The Supreme Court of India in *Swapnil Tripathi v. Union of India* categorically stated,

*“judgments must be open not only in the sense of being available to the public, but, so far as possible given the technical and complex nature of much of our law; they must also be clear and easily interpretable by lawyers. And also to non-lawyers.”*⁵

“

In *State of Gujarat v. Gordhandas Keshavji Gandhi*, the court held that if anybody wanted to have information as to what the law on a particular issue is, it is

*“not enough for him to know only the holy texts on the subject, but, he must know how that text has been interpreted by the judicial decisions and it is the latter which gives him the correct information of the ‘law in force’ and not the former.”*⁶

*“To acquire knowledge of statute law in force, knowledge of case law is equally essential, because, enforceable law is not that which exists on the statute book, but, it is that which is to be found on the statute book and in the interpretation thereof by judicial precedents created by the competent Courts.”*⁷

2. Access to Judgments Ensures Predictability

The rule of law possesses three core attributes: generality, equality of application, and certainty. ‘Certainty’ connotes an ability to predict reliably what legal rules will be found to govern conduct and how those rules will be interpreted and applied.⁸ Submitting judgments to public scrutiny through publication regularises the application of the law, and fosters greater clarity and consistency in judicial decision making. Greater consistency enhances respect for and adherence to the law, as well as confidence in the rule of law.

The availability of information on the outcome of cases and on the courts’ interpretation and application of laws provides litigants and the public at large with invaluable insight into their rights and duties, and how they are protected.

Additionally, decisions of the higher courts (i.e. the High Courts and the Supreme Court) are vitally important as they lay down the law and establish guidelines for the operation of the trial courts. Having this information provides predictability which can play a key role in improving public’s confidence in the courts.





ENHANCES BUSINESS CLIMATE

The publication of court decisions also has economic value which is perhaps not easily appreciable. Widely accessible publication influences how the public, including ordinary citizens, businesses, and investors as well as the legal community, view the judiciary and conduct their transactions in society.

Access to the results of commercial cases benefits companies that invest in a particular jurisdiction, clarifying the scope of their duties and rights.⁹ Predictability and transparency in the judicial system improves business climate and is a crucial factor behind investment decisions, especially in transitioning and developing countries. Publishing court decisions can reinforce efforts to increase integrity and can serve as a tool for curbing and reducing the perception of corruption.

Ultimately, the effectiveness of all such measures depends upon the capacity and the willingness of the courts to collect, present and rule on evidence of alleged corrupt acts and to confront powerful political and economic interests.¹⁰ Data from the 'Doing Business' studies conducted by the World Bank suggests that judgments are more likely to be made publicly available to third parties in economies with stronger rule of law and greater control of corruption.¹¹

“

Beyond corruption within the judiciary, there has long been broad agreement that success in combating corruption anywhere

“must include measures that reduce the opportunity for – and the benefits of – corruption, increase the likelihood that it will be detected, and make punishment of transgressors more likely.”





AIDS PROFESSIONAL DEVELOPMENT

Providing access to judicial decisions can also serve to indirectly promote the professional development and capacity building of judges, which may in turn contribute to improving court efficiency. In particular, knowing that decisions will be published and are subject to public scrutiny can improve the quality of decisions rendered by the judges.

In addition, the publication of decisions can support the development of scholarship in various areas of law by enabling the legal community (scholars, professionals and students) to study and advance legal theory and improve legal services.

In Mongolia, for example, the World Bank supported a justice sector reform project that focused on, among many other issues, making court judgments more widely accessible via a public website. In particular, the online publication of Supreme Court decisions increased transparency and also provided law faculty members with the opportunity to utilise these decisions as part of their new teaching approaches. There was also evidence that the publication of court decisions helped judges pay closer attention to how they draft their opinions.¹²



IMPORTANCE OF PUBLICATION IN THE INDIAN CONTEXT

1. *Common Law Tradition and the Value of Precedents*

It is a fundamental requirement of the rule of law that laws are clearly expressed and are easily accessible. To put it simply, people should know, or at least be able to find out, what the law is. This assumes particular significance in a common law system like India where judge-made law or case law is one of the most important sources of law. Judgments of the High Courts and the Supreme Court interpret the text of a statute, to protect the principles of natural justice, to fill a gap in the law, or to deal with an unforeseen situation not covered by statute. Through such interpretation, the courts determine how the law will be enforced in the future.

These judgments may be cited in subsequent litigation, when other courts may approve of, follow, or distinguish the original judgment. These later judgments modify the position of law in the country and are responsible for the organic evolution of the law. Indian courts themselves recognise that the evolution of the law may happen in the process of adjudication of cases before the court.¹³ While employing common law techniques, courts in India have undeniably played an important role in moulding legal concepts, rights and duties.¹⁴

The doctrine of stare decisis is recognised by the Indian judicial system. The Supreme Court has held that it is necessary to follow binding

precedent in order to maintain consistency in judicial decisions and enable an organic development of the law.¹⁵ The doctrine operates both horizontally and vertically.

Horizontal stare decisis refers to a court adhering to its own precedent. A court engages in vertical stare decisis when it applies precedent from a higher court. Article 141 of the Constitution lays down that the law declared by the Supreme Court is binding upon all the courts. Hence, the High Courts in India are bound by the law declared by the Supreme Court.

By virtue of the provisions of Article 227, the High Courts have power of superintendence over all courts and tribunals in their respective jurisdictions. Thus, it is implied that all courts and tribunals in the respective state will be bound by the decisions of the High Court.¹⁶ While, the judgment of a particular High Court, is not binding on other High Courts as they are courts of co-ordinate jurisdiction, nevertheless, the decision of one High Court is of persuasive value for other High Courts.

Owing to India's common law tradition, the meanings of legal terms and legal concepts are continuously susceptible to changes in order to address the challenges faced by the society at different points in time. Nevertheless, the reliance on precedents ensures a certain degree of predictability.

Therefore, access to judgments becomes critical for:

- the public, to become aware of their rights and duties which may evolve over time through court decisions; and
- for legal professionals (judges and lawyers) to study, analyse and apply precedents and be up to date with the current position of law.

Quick, simple, and efficient access to judgments is therefore crucial for effective legal representation, which is a key facet of access to justice.

2. Unified Structure of Indian judiciary

It is important to emphasise that unlike other federal systems, for example, that of the United States, India does not have separate hierarchies of federal and state courts. In India, though the polity is dual, the judiciary is integrated.

For the entire country, there is one unified judicial system with the Supreme Court of India as the highest court and also as the arbiter in matters of relations between the Union and the States and the States inter se.

One hierarchy of courts means that a particular case initiated at the level of the trial court may travel all the way to the Supreme Court through several rounds of appeal. Therefore, when the courts exercise appellate jurisdiction, quick access to authentic records of the history of the case (which includes the orders, decrees, judgments and sentences passed by the trial courts) at one place without having to wait for certified copies to be provided, can facilitate a speedy and efficient disposal of the appeal. One of the objectives of having a unified judiciary is to improve uniformity in administration of justice throughout the territory of India. Supervision of a state's court by the High Court contributes to such uniformity. Requiring all judgments to be uploaded to a database will facilitate quick accessibility of all trial court judgments by the High Court which can then effectively monitor whether trial courts are correctly applying the law. The improved supervisory capacity of High Courts in turn will require the trial courts to comply with precedents and thereby lead to uniform application of the law.





NEED FOR AN AUTHENTIC SOURCE

1. Aiding the Judiciary in Informed Decision Making

In common law systems, the judges count on advocates to find and raise the arguments, that forms the raw material from which they try to extract, apply, and develop the legal principles that apply to a particular case. Lawyers usually provide copies of the enactments or judicial precedents relied on during the course of the argument to the judges. This necessitates that the information available to participants in the judicial process (lawyers, litigants etc) be reliable, precise, relevant, accurate and authentic.

As courts have developed a system for releasing their opinions in electronic format, a problem has arisen with regard to the accuracy of these versions and whether they are considered 'official'.¹⁷ The current practice followed by lawyers across courts in India is to furnish photocopies of judgments from journals or printouts from court websites or online legal databases during the course of arguments before the bench. Often it has been noted that different sets of lawyers and judges are referring to different versions of the same judgments due to photocopies and print outs from different journals/ databases. Some commercial publishers change the paragraph numbers and have their own citations for the judgments rendered by the court.

This creates unnecessary confusion and wastage of time for lawyers and judges in reconciling the differences. Even when presented with a print out of the order from the

official court website, sometimes judges insist on the production of certified copies to ensure authenticity of the document.

Several High Courts have had to clarify that judgments rendered by the courts must be uploaded on the court website immediately without any delay¹⁸ and web copies of such judgments and orders must be accepted by the courts and in case of any doubt, suspicion or apprehension, the courts or the authority may verify from the official website whether such judgment/ order has been uploaded or not.¹⁹ To overcome the above stated difficulties, there is an urgent need to have a single, uniform reference to the authentic text of a judgment/ order passed by a court.

Judges and lawyers in the trial courts often complain of lack of adequate infrastructure²⁰, including legal research tools (ranging from web databases to the most basic case reporters and legal periodicals). Lack of access to the relevant judicial precedents, especially in the trial courts, may constrain judges to decide cases without direct knowledge of such precedent, which can lead to decisions being unpredictable because they are based on a judge's limited working knowledge of the law.

Therefore, a single point access to an authentic archive of all court decisions will put the onus on the judges to educate themselves about relevant precedents before making a judicial decision. Further, having access to authentic copies of judgments of the courts from states other than where the judge officially sits

may prevent and/or reduce conflicting opinions between different High Courts on the same question of law.

2. Improving Legal Literacy

Although ignorance of the law is not considered an excuse in legal proceedings, this principle can be applied fairly only if people outside the legal community have access to the law. Ignorance of the law is partially attributable to the inadequate publication and/or dissemination of the law. Even if the law is known in some superficial sense, there could be a general inability to ascertain whether a particular principle applies in a given case or context. Legal illiteracy disempowers both litigants and their lawyers, leading to resentment and suspicion stemming from litigants' lack of control and lawyers' frustration at litigants' inability to engage. This is especially disconcerting given the socio-economic profile of litigants before Indian courts.

According to a survey conducted by DAKSH, over 15% litigants who approach the courts in India have no formal educational background, while another 23.6 % percent are just high school graduates. Further, around 43.8% of the litigants have a meagre annual income of less than Rs. 1 lakh.²¹ Limited access to information is also an impediment to self-represented litigants effectively accessing justice. Such litigants need information on how to take their case to court. This information needs to be legally correct i.e. it must be authentic. Trust in the justice system reduces transaction costs and accelerates many kinds of economic and social interactions.

One way in which the courts can play a role in building such trust is through effective dissemination of its decisions that can educate the public about their legal rights and duties and also enable them to assess the quality of legal services proffered to them.



3. Building Public Trust in the Digital Era

The Supreme Court in *Swapnil Tripathi v. Union of India* has observed that a large segment of the society rarely has an opportunity to attend open court proceedings. This is due to constraints like poverty, illiteracy, distance, cost, and lack of awareness about court proceedings. Litigants depend on information provided by lawyers about what has transpired during the course of hearings. Others, who may not be personally involved in a litigation, depend on the information provided about judicial decisions in newspapers and in the electronic media. When the description of cases is accurate and comprehensive, it serves the cause of open justice. However, if a report on a judicial hearing is inaccurate, it impedes the public's right to know.²² Usually, the common person experiences justice delivery only as a passive observer.

With the digitisation of courts in India, the physical interaction with the courts is likely to reduce. The Indian judiciary has adopted e-filing for urgent matters, conducted frequent hearings over video conferencing, and has also begun to serve summons and notices through email, fax, and instant messaging applications. Hence, it is worthwhile to reflect on the effects of reduced physical interaction on trust and openness in the judicial system.

While the digital revolution has no doubt improved access to information like ever before, it has also aided the proliferation of 'misinformation' and 'fake news.'

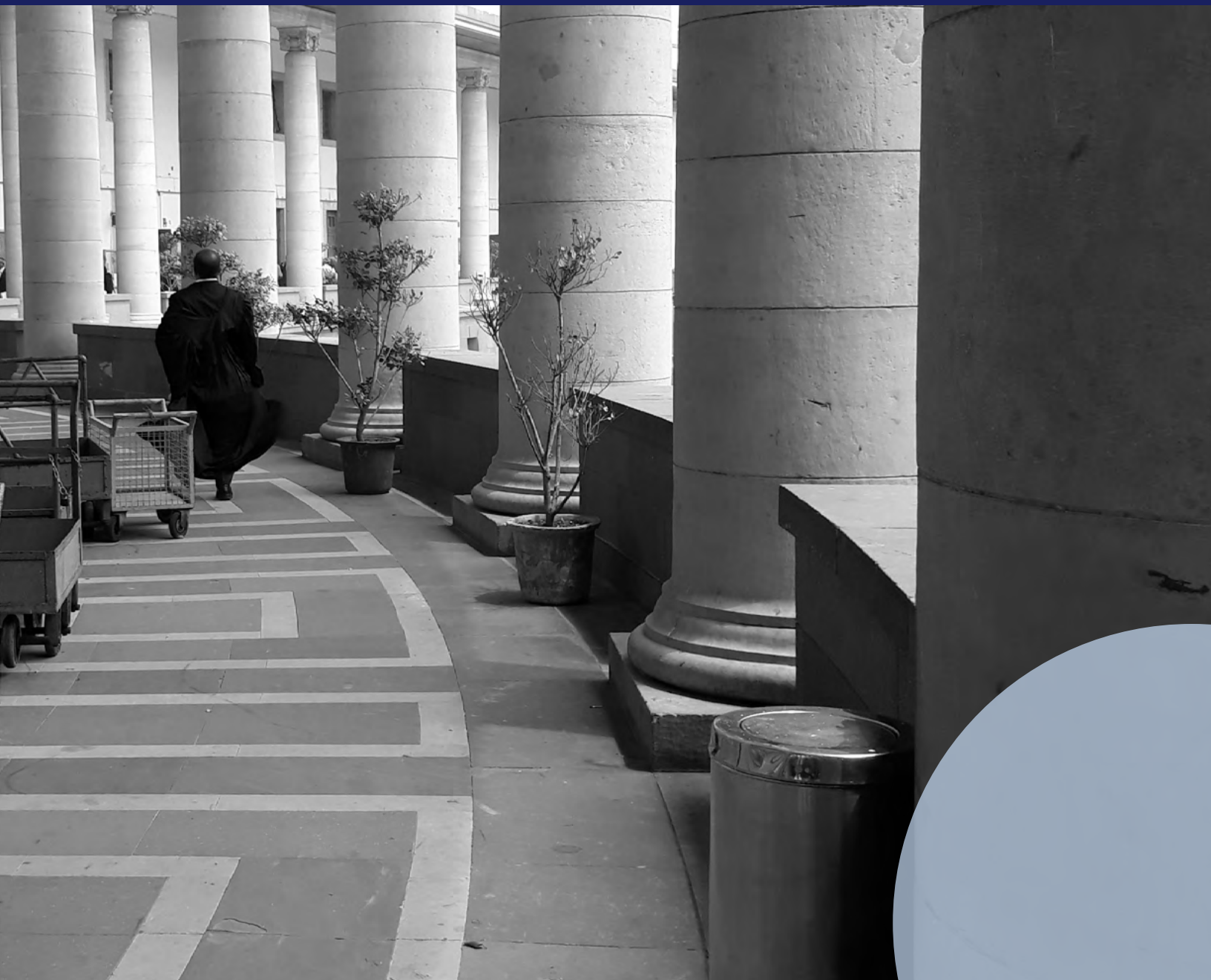
Therefore, it becomes imperative to reduce the public's reliance on second-hand narratives to obtain information about important judgments of the courts.

Since the courts and judicial officers have a limited capacity to engage with the public as the 'court is not supposed to speak except through its judgments', an authentic source of court decisions will go a long way in facilitating an informed communication between the judiciary and the public.

This will not only help reduce misinformation and misunderstanding, but also improve public trust in the judicial process.



Current State of Online Legal Databases in India



In the digital era, case law on a particular subject or party name or citation, may be found on various online databases. Manupatra and SCCOnline have enjoyed near duopoly status for years when it comes to the legal research requirements of Indian lawyers. Before these platforms, lawyers faced grave difficulties in finding reliable and usable legal information for their cases. The problem intensified since there were no unified sources for Indian cases laws. Further, the available court judgments were unstructured and incomplete, also making it difficult to confirm the information's actual source. The entry of Manupatra and SCCOnline created a pay-per-search or subscription model for lawyers to access streamlined legal databases.

Most consider these platforms to be the best legal databases for Indian lawyers and law students. However, lawyers have to pay large sums for subscribing or purchasing modules for different courts.

Annual individual subscription fees for SCC Online ranges from Rs.24,000 to Rs.36,000 per year, excluding GST.²³ Manupatra offers several

subscription plans to choose from depending on one's research requirements. While annual subscription plans start at Rs.7,500, the annual subscription rate for the full site is Rs.48,300. It also offers a daily plan of Rs.999 for those with limited requirements.²⁴ These commercial legal databases also offer subscription plans for law firms and institutions. While big law firms and institutions may be able to afford this cost, smaller firms and individual lawyers often find it difficult to bear the price.

This has led to the development of open access databases like Indian Kanoon, in addition to the court websites and court operated judgement information systems like JUDIS. These open-access resources are available free of cost on the internet.

In a comparative study of online legal resources in India, conducted by Rajkumar Bharadwaja and Madhusudhan Margam, respondents were asked if they were aware of open-access legal information resources. It was discovered that 82.9 per cent of the respondents said "Yes", that is, they were aware



about availability of online legal information resources, but 17.1 per cent said “No”, that is, they were not aware of such type of resources in the field of law. An open-ended question was put to understand which open-access legal information resources were most popular. It was found that 48.6 per cent respondents frequently used Indian Kanoon and the Supreme Court of India website, while 39.2 per cent indicated JUDIS and High Court websites. However, 12.2 per cent of the respondents did not mention any open-access resources.²⁵

To assess the level of satisfaction in using open-access and commercial resources in the field of law, a five-point rating question was asked.

Responses revealed the results as elaborated in the Table 1.²⁶ The respondents cited a number of problems in using online legal resources such as the accessibility of legal information in legal resources, lack of online help features, description of legal information sources, search screen too confusing and poor website design.

Interestingly, too many logins required

during the access process was also a major problem faced by respondents. In addition, respondents highlighted that access instructions on the online resources were not clear. Lack of expertise and insufficient knowledge of ICT in using legal databases were also major hurdles in the usage of online legal information resources. Majority of the respondents stated that open-access resources are less user-friendly than commercial legal information resources.²⁷

As is evident from the above study, open-access legal resources are unorganised and commercial sources are expensive in India. Both types of resources lack user-friendliness and are incomplete. Moreover, different types of information can be accessed only at specific websites; it is very cumbersome for users to locate the relevant contents of value and a great deal of useful information is likely to be missed.

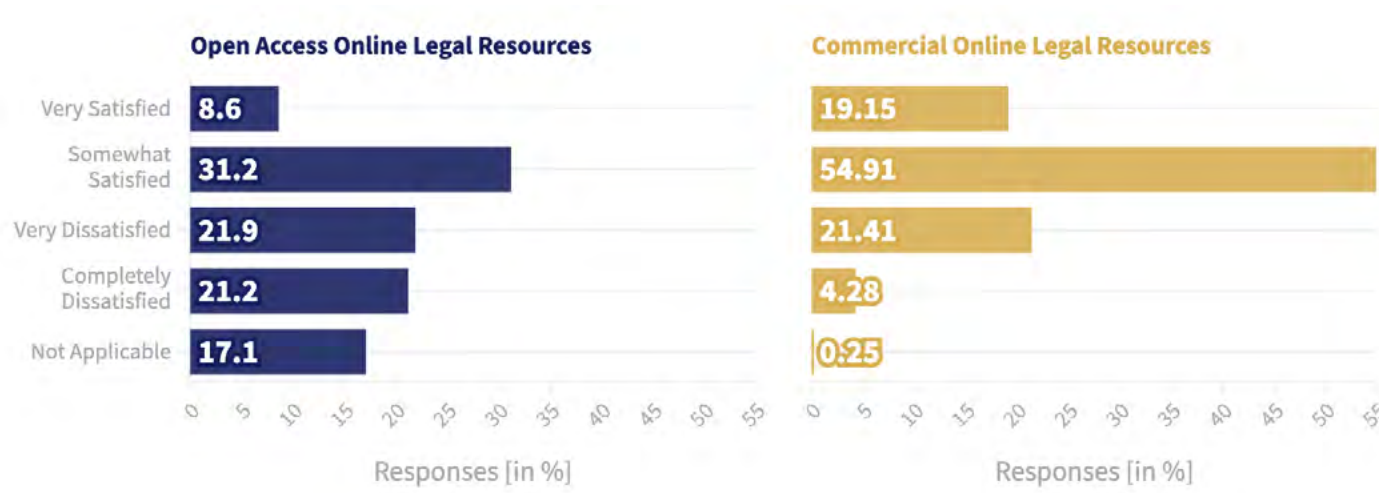


TABLE 1

An Integrated Open Database of Judgments ("IODJ")

As technology presents new prospects for facilitating access to justice, we propose the creation of an integrated open database of judgments ("IODJ"), a database of decisions of all the courts in India which will serve as

1. a digital record room of decisions of all courts in India; and
2. the primary and authentic source of case laws.

The availability of information at a single place for public use without the need to search individual databases of the respective courts will be a huge advantage as it will aid effective public access to court decisions. A unified digital record room would also ensure safety of records and result in reduction in trial delays on the pretext of papers going missing or being untraceable, as it often happens at present.





FEATURES

Database features like reliability, relevant search functions and queries, bundling of cases (based on subject matter or some other criteria), case notes and headnotes, translations and a simple intuitive interface can make judgments more accessible and understandable. Therefore, the IODJ should foremost be designed with the smartest search relevance technology and a host of other user-friendly features which can save the user's time and energy.

Other than the above features, what will set IODJ apart from other judgment databases is its comprehensive coverage and interlinking of all decisions in a particular manner throughout its lifecycle along with possibility of access to related laws and similar judgements.

1. User-Friendly Features

It is not enough to merely publish all judgments in an online database for public use. Paradoxically, the publication of all judgments may lead to a less informed public, due to an overload of information.

The courts, therefore, have the responsibility to unlock the large amounts of case law in a user-friendly way. Various methods can be employed in the IODJ for facilitating the user to find the relevant information in an easily accessible and understandable manner.



a. Search Functions

Most commercial legal databases such as LexisNexis, WESTLAW, Manupatra etc. break down legal documents into sub-parts or 'fields.' For example, judgments typically include the following fields: party name, summary, headnote, jurisdiction, and date. Advanced search functions show what fields are available for the types of document searched and allows one to search specifically within those fields. This is very helpful in narrowing down relevant content since full-text searching returns a lot of irrelevant search results. A method that is quite often used is adding keywords to facilitate the search of case law. Another frequently used search facility is adding references to related cases or to legal acts. For example, in the JURIDAT database for Belgian case laws, decisions are introduced by a list of keywords or 'abstract', followed by a summary of the most important points of law and references to the law or to earlier judgments.²⁸

WESTLAW's West Key Number System is a classification that indexes cases into over 400 topics and more than 98,000 legal issues. A topic and a key number are assigned to each legal issue within a case. The West Key Number System allows one to efficiently find other cases addressing a particular legal issue in any jurisdiction because all federal and state cases (in US) included in the system are organised using the same topics and by the same points of law.²⁹

Based on best practices of various legal databases, effective search options should be made available on IODJ relevant to the Indian context, which will enable its

users (whether judges, lawyers or other citizens) to navigate the vast amount of information in the database to quickly find the relevant information that they seek. In the comparative study of online legal resources in India cited above, respondents were asked what search parameters they preferred. Of 397 responses received, majority said they preferred search through appellant/ respondent (350), followed by date of judgment (309), case number (301), subject (293), acts/statute (261), judge name (212) as the top six parameters. The remaining parameters like court, bench-strength, case/head-note, etc., recorded less than 50% preference. Amongst other features, respondents also stated that they would like the option of getting notified about over-ruled judgments (253), dissent judgments (232) and relied-upon judgments (200) in the search result.³⁰

b. Headnotes and Summaries

Many commercial legal databases as well as court databases provide summaries and/or headnotes of the decisions. Similarly, a summary of the case should also be provided on the IODJ to efficiently narrow down the search results as it will allow the user to quickly decide whether or not the decisions found are relevant for their purposes. The responsibility for preparing the summary should preferably be on the court itself so that it is official and also for the sake of accuracy. This is in conformity with the Policy and Action Plan for Phase II of eCourts which proposed that High Courts would be responsible for the preparation of headnotes and uploading of judgments

in the Case Law eJournal. Summaries/headnotes should be sufficient to enable a non-lawyer to know the facts, the issues, and how the case was resolved.

The legal information department of the Supreme Court of Estonia drafts an annotation, in cooperation with the chamber which rendered the decision. This summary of the most important points of the decision is made available to the public on the website of the Supreme Court and is approved by the reporting judge prior to publication. In the Netherlands, the Supreme Court's research service is responsible for preparing a short summary of the case highlighting the most important issues in the ruling. At the Supreme Administrative Court of Lithuania, the legal research and documentation unit also drafts the summaries. These summaries are subject to revision by the legal staff working in the department and by the judges themselves before publication. In Hungary, the judges of the Curia (Supreme Court) are obliged to prepare a short summary of decisions of great importance or of a complex nature on the same day as the delivery of the judgment, which is immediately published on the Curia's website.³¹

Attempts have also been made at automating the process of summarising cases by extraction of catchphrases in the decisions. Some notable examples are the work of Hachey and Grover to summarise the UK House of Lords judgments³², and PRODSUM, a summariser of case reports for the CanLII database.³³ Both systems rely on supervised learning algorithms, using sentences tagged as important to learn how



to recognise important sentences in the text. An improved method for summarisation of text documents has been proposed by using the notion of 'hypertext'. In this, a link is placed between the related pieces of text in different documents. Using the links, text relation maps are constructed and an improved system is built to access the text on related themes that exist in different documents. The idea behind putting such links is to enable a user easy access to various section of the documents. Several efforts are underway to explore the scope for link-based similarity in finding similar legal judgments.³⁴

c. Categorisation of Cases

The World Bank Report on Good Practices for Courts notes that developing appropriate categorisations of judgments to allow for effective database searches is essential for providing easy and quick access. Some court databases already categorise cases based on certain criteria. One of the criteria that is often used is to categorise cases by the subject area they pertain to. For example, the CENDOJ database in Spain permits filtering of decisions based on an area of interest under the jurisdiction box - civil, criminal, contentious administrative, employment, and military.³⁵

On WESTLAW, cases are categorised into 40 broad, high-level categories. Currently a process called 'topical view queries' assigns these incoming cases, or opinions, to the categories. Topical view queries are Boolean queries manually constructed by domain experts, i.e., editors, who are also attorneys: a labor-intensive, expensive process. Editors

create queries, and then iteratively test and refine them by retrieval against WESTLAW, until acceptable performance is achieved. The queries must be manually revised periodically to maintain this performance. In recent years, technology such as machine learning is also being leveraged to automate the categorisation process.³⁶

While searching the European Court of Human Rights' HUDOC database, it is possible to refine the results, based on the importance level attributed to each decision.³⁷

Cases are divided into four categories, the highest level of importance being Case Reports, followed by levels 1, 2 and 3. The importance of levels is mentioned in the Case Details which accompanies each judgment or decision, as elaborated in Table 2.

Even in India, the Advisory Council of National Mission for Justice Delivery and Legal Reforms has stated that grouping of cases needs to be undertaken as an ongoing continuous exercise so that cases arising out of the same subject matter and involving the same question of law can be assigned to one judge. Improved categorisation will enable courts to adhere to pre-decided timelines.

In the Joint Conference of Chief Ministers and Chief Justices held in April 2015, it was agreed to adopt a uniform nomenclature of cases across the country for better monitoring of the specific areas which are more susceptible to litigation. Further, during the Chief Justices Conference held in April 2015, it was resolved that the High Courts will endeavor to evolve a uniform

nomenclature for all categories of cases in co-ordination with the e-Committee.³⁸ Through the Case Information System 3.0, various aspects of the cases have been standardised using a national code and the same has been unified under the unification option,³⁹ which is a step in the right direction. While it is possible to search the status of cases by case type in the e-courts portal, courts in India continue to employ divergent practices to classify cases into various categories. The IODJ should leverage technological tools for a uniform, more advanced and effective categorisation of cases, supported by the standardisation efforts undertaken by the judiciary.

While the judiciary should spearhead the efforts for uniform categorisation of cases across different courts in India, the

IODG should provide several options of classifying cases categorisation based on different criteria (subject matter, stage of proceeding, jurisdiction, or other non-legal criteria etc) beyond the categorisation done by the courts in order to optimise search results.

d. Translations

In supra-national legal institutions such as the Court of Justice of European Union (“CJEU”), translation services are of utmost importance for the uniform development, interpretation and application of the law. The CJEU publishes its judgments in 24 official languages (with the exception of Irish) ensuring that its case-law is disseminated throughout the territory of the member states. The original version is in French and

<p><i>Level 1</i></p> <p>High Importance</p>	<p>All judgments, decisions and advisory opinions not included in the Case Reports which make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State.</p>
<p><i>Level 2</i></p> <p>Medium Importance</p>	<p>Other judgments, decisions and advisory opinions which, while not making a significant contribution to the case-law, nevertheless go beyond merely applying existing case-law.</p>
<p><i>Level 3</i></p> <p>Low Importance</p>	<p>Judgments, decisions and advisory opinions of little legal interest, namely judgments and decisions that simply apply existing case-law and friendly settlements.</p>

TABLE 2

the rest are authentic translations. Because of the highly technical nature of the legal texts to be translated, the Court's Rules of Procedure require the Court to set up a translating service staffed by experts with adequate legal training and a thorough knowledge of several official languages of the Court.⁴⁰

Although the IODJ is a purely national database of Indian case laws, India's linguistic diversity warrants that the IODJ provide translations of at least the decisions of High Courts and the Supreme Court in all the official languages recognised under the Indian Constitution. Translation of judgments into other languages increases access to these judgments for users from a linguistic background different than the official language of the court. The Official Language Act, 1963 provides the legal framework for authoritative translations of High Court decisions into Hindi or other regional language used in the respective states.

The Supreme Court of India has started employing AI tools for translating its daily orders and judgments into nine vernacular languages.⁴¹ While employing AI for translations may not provide hundred percent accuracy, such translations even with disclaimers, will also go a long way in making judgments more accessible. Further, as an incremental step, translations of trial court judgments rendered in local languages should also be made available in more widely used languages, which will be especially useful for researchers. The courts' budgets should factor in the costs of translations. While technological tools will

be employed for developing a multilingual interface and translating judgments into vernacular languages, the services of translators, especially in the initial phases of the project, for an additional level of manual check, would be useful in ensuring accuracy of the information.

e. Access for the Differently Abled:

Differently abled persons face a significant barrier in finding legal resources. A lack of accessible information prevents them from making informed decisions. This includes a lack of easy-to-read or plain language formats, as well as a failure to provide braille or sign language translation.

The Rights of Persons with Disabilities Act, 2016 which seeks to give effect to the rights and obligations enshrined in the United Nations Convention on the Rights of Persons with Disabilities, recognises that accessibility is critical for inclusion and that it is a cross-sectoral issue to be implemented by different stakeholders across different government departments and ministries and agencies. Further, the Act clearly mandates that accessibility includes both environmental and information technology accessibility (ICT accessibility).⁴²

Like other legal databases such as LexisNexis⁴³, the IODJ should also adhere to international standards such as Web Content Accessibility Guidelines (WCAG) 2.1 that defines how to make Web content more accessible to people with disabilities. The guidelines are based on the principles of making content "perceivable, operable, understandable, and robust."⁴⁴

Some features that can improve

accessibility for such groups are screen magnifiers, and other visual reading assistants, which are used by people with visual, perceptual, and physical print disabilities to change text font, size, spacing, color, etc. and text-to-speech software, which is used by some people with cognitive, language, and learning disabilities to convert text into synthetic speech.

2. *Comprehensive Access to all Decisions*

A lengthy and complex case often includes a number of non-dispositive court orders issued in response to interim motions for rulings on a variety of matters. For example, a criminal conspiracy case involving multiple defendants and various categories of evidentiary materials may involve numerous interim requests for search warrants, wiretapped telephones, other secret monitoring devices, and covert vehicle tracking devices, each of which would require a separate judicial order authorising the action. Thus, having access to all such orders will enable a deeper understanding of the judicial decision and process. Access to interim orders is also important to scrutinise compliance with procedural laws. At present, however, no single online legal resource exists as a one-stop destination for all the judgements and orders passed in a particular case.

While some commercial databases like Manupatra do provide hyperlinks to earlier decisions in a case when it was heard at the lower court level, it is not always comprehensive (High Court and Supreme Court level only) and is often limited only to final judgements. One would rarely find a hyperlink to interim orders,



and almost never find a hyperlink to the decision of the trial court within the appellate court's judgement in a matter. For a member of the public, the only choice is to visit the websites of the courts at various levels to access all decisions, orders and judgements related to a particular case. Therefore, in order to provide complete information to the public, the IODJ should should provide access to interim and final decisions of courts. Further, a digital archive of all court decisions pertaining to a case including interim orders will enable a targeted analysis of different stages of a case which can provide valuable information for case-flow management.

In 2005, Ukraine promulgated a law whereby access to all decisions issued by the courts of general jurisdiction, in redacted format and with some restrictions, is available to everyone. The law defines the scope of the effort to ensure access to court decisions by providing that 'court decisions' encompasses not only the final dispositive judgment in a court case but, in addition, "court orders, resolutions, verdicts, and determinations taken by courts of general jurisdiction."⁴⁵

However, including all interim orders, within the definition of a court decision/judgment and requiring that they be included will dramatically expand the size and complexity of the IODJ and may lead to information overload for the general public. Due to their unfamiliarity with the procedural protocol and terminology of court document-naming conventions and organisation, the public may experience difficulty and frustration when searching, for example, for the final judgment in a lengthy and complex case which went through several levels of appeals.

The search may return a list of interim orders in addition to the final dispositive judgment which

the layperson may not be able to distinguish between. Therefore, the IODJ will have to be designed such that it provides meaningful and relevant access to the public.

3. Integration of Decisions

As noted above, the procedural history of a case may include interim orders and in the case of an appeal, the trial court decisions. All of these contain crucial information for reaching a judicial decision, especially in a unified judicial set-up where higher courts are often reviewing decisions of the trial courts. If the judges do not have access to the key judgments of the intermediate and final appellate courts, it can lead to inconsistent or erroneous application of the law. Moreover, in rendering a decision, the judge will go over the facts of the case, the relevant law in the circumstances, and then discuss how the law applies to the relevant facts. In doing so, a judge will almost always refer to relevant legislations and to precedents. Accessing and understanding such legislations and precedents alongside the judgment is vital to our understanding of the rationale behind a judge's decision.

Therefore, the IODJ should integrate all court decisions – orders, decrees, and judgments throughout the lifecycle of a case. Information should also be supplied about the finality of a decision. This implies that information about subsequent decisions by the same or another court in the same proceedings, and pending appeals, should be provided. The IODJ should also cross-link the orders at various stages of the case and provide hyperlinks to precedents and legislations cited in the judgment. Ready availability of all this information at one place

will not only lead to a more informed decision-making by the judges, but also speed up the judicial process as judges can rely on the authenticity of documents (trial court orders, interim orders etc) on the IODJ without having to wait for certified copies to be provided. As an incremental step, the integration of the IODJ with other information systems like the Integrated Criminal Justice System (ICJS) could also be undertaken. Such integration will ensure a single source of truth between law enforcement and judicial systems and improve the operational efficiency of the criminal justice system.

In Latvia, information on follow-up procedures is available on the National Courts Portal by using the option 'Progress of proceedings' (Tiesvedības gaita) in the 'E-services' (E-pakalpojumi) section. By entering the case number, information can be obtained on the relevant court, the judge assigned to the case, the calendar of hearings, any appeals received, the results of any appeals, and any annulment of any ruling.⁴⁶ The China Judgements Online website also ensures the interconnectivity of judgment documents based on case numbers.

A pre-requisite for integration and sharing of decisions across various levels of courts is interoperability between systems. As the IODJ is envisaged to be designed based on a federated architecture, interoperability between the digital judgement repositories of each High Court and that of the Supreme Court will be critical. Interoperability of these systems with Case Information System (CIS) is also required for integration with other information systems like ICJS. Therefore, the standardization of metadata, data formats and repository management systems across all levels of judiciary becomes very essential.





BUILDING UPON THE SUPREME COURT eCOMMITTEE PROPOSAL

The Supreme Court eCommittee envisaged the creation of an Official Case Law eJournal in its Policy and Action Plan for Phase II of eCourts.

“

It was proposed that a

“comprehensive software mechanism in the form of legal database has to be in place which will be a repository of all the Supreme Court and High Court judgments and also keep track of new judgments affecting the earlier judgments.”

It was recommended that the software be developed on Free and Open Source Software (“FOSS”) technologies. The software should also have a mechanism for porting metadata of the judgment onto it which will include head notes of the judgments.

The Action Plan envisioned that this will eventually become the Official In-house Case Law eJournal of the Indian Judiciary. Software solution development for this eJournal was to be taken up by the eCommittee from the manpower resources provisioned from the eCourts Project. High Courts were required to take care of the creation of headnotes and uploading their

judgments along with the headnotes to this software. Therefore, the software was to be designed based on a federated architecture as the case law applicability and management was High Court based.⁴⁷ The IODJ can therefore implement the above proposal, and over time, build and expand upon it.

On 9 April 2021, the Judgments and Orders Search Portal, a repository for searching past judgments and orders pronounced by various High Courts in the country was inaugurated. As of date, the portal has data of 38 million cases available. Users can search judgments based on various criteria like including bench, case type, case number, year, petitioner/ respondent name, judge name, act, section, disposal nature and decision date.⁴⁸

While the eCommittee envisaged the Official Case Law eJournal to be a repository of only the Supreme Court and High Court judgments, the IODJ should go a step further to house the decisions of the trial courts as well. This is because a person seeking justice has the first exposure to the justice delivery system at the level of district judiciary, and thus a sense of injustice can have serious repercussions on that individual and the society.

“

The Supreme Court in *Ram Murti Yadav v. State of Uttar Pradesh* observed,

“it is therefore absolutely necessary that the ordinary litigant must have complete faith at this level [subordinate judiciary] and no impression can be afforded to be given to a litigant which may even create a perception to the contrary as the consequences can be very damaging.”

Hence, publication of decisions of the subordinate courts on the IODJ can inspire public confidence and encourage people to approach the courts for resolution of their grievances. Additionally, access to trial court decisions can aid in the supervision of these courts by the respective High Courts as well as lead to uniform application of law at the subordinate judiciary level thereby reducing the number of appeals.

As we move towards phase III of the e-Courts Project which envisions a natively digital infrastructure for the judicial system, a freely accessible, updated and comprehensive repository for legal precedents from all courts will ensure a uniform, reliable and visible database for all case laws⁴⁹ which will be crucial for democratizing and making a citizen centric next-generation justice platform.⁵⁰





DESIGNING PRE-REQUISITES

1. Open Data

The IODJ should be built and operated on the principle of open data i.e. the information in the database should be freely available to everyone to re-use as they wish, without restrictions on copyright, patents or other mechanisms of control such as licenses etc. Currently most re-users of publicly available data on Indian court websites resort to screen scraping. This can cause overloading of server for the information providers and a lot of work for the re-users. Further, extensive use of CAPTCHAs also hinders researchers from accessing such information easily. Therefore, using technological standards that make it possible for others to use and reuse the data for either analysis or for building new products is imperative. Specific solutions such as using an FTP site, providing API access or using machine readable and mark-up formats like XML etc for judgments is advisable.

2. Digitisation Of Court Records and Use Of Machine-Readable Formats and Mark-Up Language

Making judgments available is not just a matter of giving physical or on-line access to them. "Open access" requires the information to be described and classified in a uniform and organised way so that content is structured into meaningful elements which can be read and understood by software applications. Such content must be made "machine readable" so that more sophisticated applications such

as enhanced search and appropriate display features are made possible.

While posting PDF versions of decisions online is a start, but a searchable database that allows judges and others to search through more specific criteria is what is ultimately needed. At present, only about 6% of legacy documents have been digitized.⁵¹ Using semantically marked-up, structured, machine-readable format for judgments has several benefits - including efficiency; improved collaboration among institutions; preservation; interoperability; cost-effectiveness; value addition; and ease of comparative research.

Judgments in machine readable formats⁵² are useful for researchers to study trends and make projections as they make statistical analyses easier. The provision of machine-readable judgments by the Supreme Court and the High Courts in India have already spurred innovation in legal-tech (for example, litigation management applications like Provakil, and legal databases such as indiankanoon.org etc.), thereby improving access to justice.

Further, making judgments available in 'mark-up language' can also offer new functionalities. A mark-up language is a human-readable language that is used by a computer to annotate an electronic document so that the computer can better understand the style and structure of the document. Simply put, a mark-up language uses tags to define different elements throughout a document. Using mark-up language allows the structures and semantic

components of a legal documents to become visible to software applications. This aids the use of ICT capacities to manipulate documents not just as just plain undifferentiated text but in their structure and semantic components as well, so that high value information services can be developed to assist institutions and citizens to better play their respective roles.

Several European countries have been using machine-readable formats for their court documents. Austria provides an API to access legal documents and associated metadata that comply with the European Case law Identifier (ECLI) - a uniform identifier that has the same recognizable format for all Member States and EU courts in a Java Script Object Notation (JSON)⁵³ format. While, Germany offers documents and metadata in Extensible Markup Language (XML)⁵⁴, Finland goes as far as offering legal information as linked data in JSON-LD⁵⁵ and via a SPARQL⁵⁶ endpoint.⁵⁷ Therefore, all judgments contained in the IODJ (including decisions of the trial courts) should be made available in the most optimal computer-readable format possible, given the capabilities of the drafting process. JSON or RDF/XML are the more preferred formats. Scanned PDF files are not usable at all. Indexable PDF, Word and HTML documents are also hard to re-use.

3. Metadata Standardisation

Metadata are structured information about a resource. It facilitates the discovery and use of online resources by providing information that aids and increases the ease with which data can be located by search engines that index metadata. Because searching by using plain text often doesn't lead to useful results,

case law search interfaces have specific filters based on metadata. To facilitate access to relevant information, the metadata contained in judgments should be standardised.

To that end, the European institutions set up an Inter-institutional Metadata Maintenance Committee (IMMC), the role of which is to define shared metadata, exchange rules and protocols, and a minimum metadata set. By working on metadata standardisation, the EU aims to improve access to information placed online and, in general, ensure better communication of and access to law.⁵⁸

Standardising metadata elements across the Indian judiciary can promote interoperability and offer many benefits such as enabling faceted search, category-based classification, sorting using common parameters and boosting automation efforts. For the purposes of searching judgments on the IODJ, objective metadata as well as subjective metadata should be provided, including keywords, summaries and standardised links to legal sources that are cited within or covered by the decision. All available metadata should be supplied in a well-structured format, as far as possible according to open standards.

The Paris Principles for Cataloging are helpful in selecting the common cataloging parameters for access purpose. These principles primarily focus on how to find a single resource (e-record) and how to find sets of resources (large volume of e-records) associated with a given person, family, or organization or all resources on a given subject. It also covers the finding of resources defined by other criteria such as, language, date, type, place etc.⁵⁹

4. Adopting Neutral Citation

As noted previously, judgments of the courts are currently available not only on the respective court websites but also published by digital and print publishers and legal databases, each with their unique citation. With numerous law journals and digital databases in the country, it is an arduous task to keep track of citations. It is also observed that courts prefer some citations more than the others, thus creating a commercial monopoly for the publishers whose citations are favoured. Hence, it is vital to identify one authentic and neutral source of judgments/orders of the court which can be achieved through the adoption of neutral citation standards across the Indian judiciary.

A neutral citation is a unique court assigned reference number for a judgment. The primary objective of a neutral citation system is to create an infrastructure for permanent identification of judicial decisions independent of their mode of publication, be it print or electronic (medium neutral). Unlike the traditional citations that are conferred by publishers reporting the decision and which contain proprietary elements, neutral citations are designated by the court or tribunal making such decisions (vendor/publisher neutral). Several common law countries (like the United Kingdom, Canada, Australia, United States and others) have adopted their own versions of neutral citations.

Neutral citations have benefits for all stakeholders – courts, judicial administration, commercial publishers and the legal community. Some of the advantages include promoting judicial independence by creating a public method of citing judicial decisions, increasing freedom of choice in the selection of research

tools, facilitating the availability of high-quality electronic reference systems, enabling integration of multiple publications, promoting the development of electronic tools while offering an official method of referencing unpublished decisions etc.

Neutral citations can also spur healthy competition in the legal publishing industry. Under the Indian Copyright Act, 1957, the reproduction or publication of any judgment or order of a court, tribunal or other judicial authority (unless the reproduction or publication of such judgment or order is prohibited) is specifically exempted from constituting a copyright infringement.⁶⁰

The underlying purpose is that it is in public interest to place judgments in the public domain. Any person who wishes to reproduce or publish a work in public domain is obliged to go to the public domain/common source of such work. The neutral citation will serve as the authentic common source for judgments of the courts. When any party utilises the judgments given by the court of law for making a compilation, database, law report or for any other purpose, that party's creation becomes a derivative work. For claiming protection of copyright in a derivative work, under the Indian law, originality is a pre-condition.

While originality doesn't necessarily require novelty or invention, the work must possess a certain degree of creativity such that it leads to a new work in itself. To secure a copyright for the judgments delivered by the court, it is necessary that the labor, skill, and capital invested should be sufficient to communicate or impart to the judgment some quality or character which the original judgment does not possess and which differentiates it from the original judgment.

Therefore, in order to enjoy copyright protection, commercial legal publishers will have to compete on the basis of the value they add to judicial decisions in the form of head notes, case summaries, citing references etc. beyond what the judgments database is providing.

Attempting to automate the processing of the traditional print citations has a number of problems such as:

1. inaccuracy in machine-processing (a citation may point to a page with complex text that requires a human reader to decipher the intended target); and
2. encoding consistent metadata behind print citations that may vary from one jurisdiction to the next is not possible.

A neutral legal citation markup standard designed with inputs from subject-matter experts and focused on the unique requirements of the broad legal community can enrich legal texts in ways that can be useful across multiple groups of interested parties. It will support the

development of integrated citation databases that help connect legal professionals to resources and support the growth of open source legal content.⁶¹

The European Case Law Identifier (“ECLI”) exemplifies the use of formal markup language vocabulary and syntax for composing and addressing machine-readable identifiers in a structured citation. It was established by the European Commission in 2010 following the recommendations of the Working Party on Legal Data Processing (e-Law) (12907/1/09) in order to ensure improved cross-border access to national case law, as well as standardising the citation of decisions of the European Court of Justice and the European Court of Human Rights.⁶²

In India, the exercise of assigning a Court Record Number (CNR) to each case filed in the High Courts or district courts is a step in the right direction. With great strides being made under the eCourts project, the time is ripe for the Indian judiciary to adopt a neutral citation standard.



5. Norms for Format of Judgments

Judgments have certain universal components - they comprise the parties and their respective roles, the date of the decision, the facts of the case, the considerations, the final decision, names of the judge(s), citations of cases and paragraphs of law, etc. Unlike a lawyer who is able to identify these elements due to specialised knowledge, a computer is not capable of parsing a judgment that was drafted without a structured template, into its constituting parts. While machine learning and natural language processing techniques are improving, the ability to undertake computational analysis of legal documents (including judgments) is significantly complicated by their lack of structure.

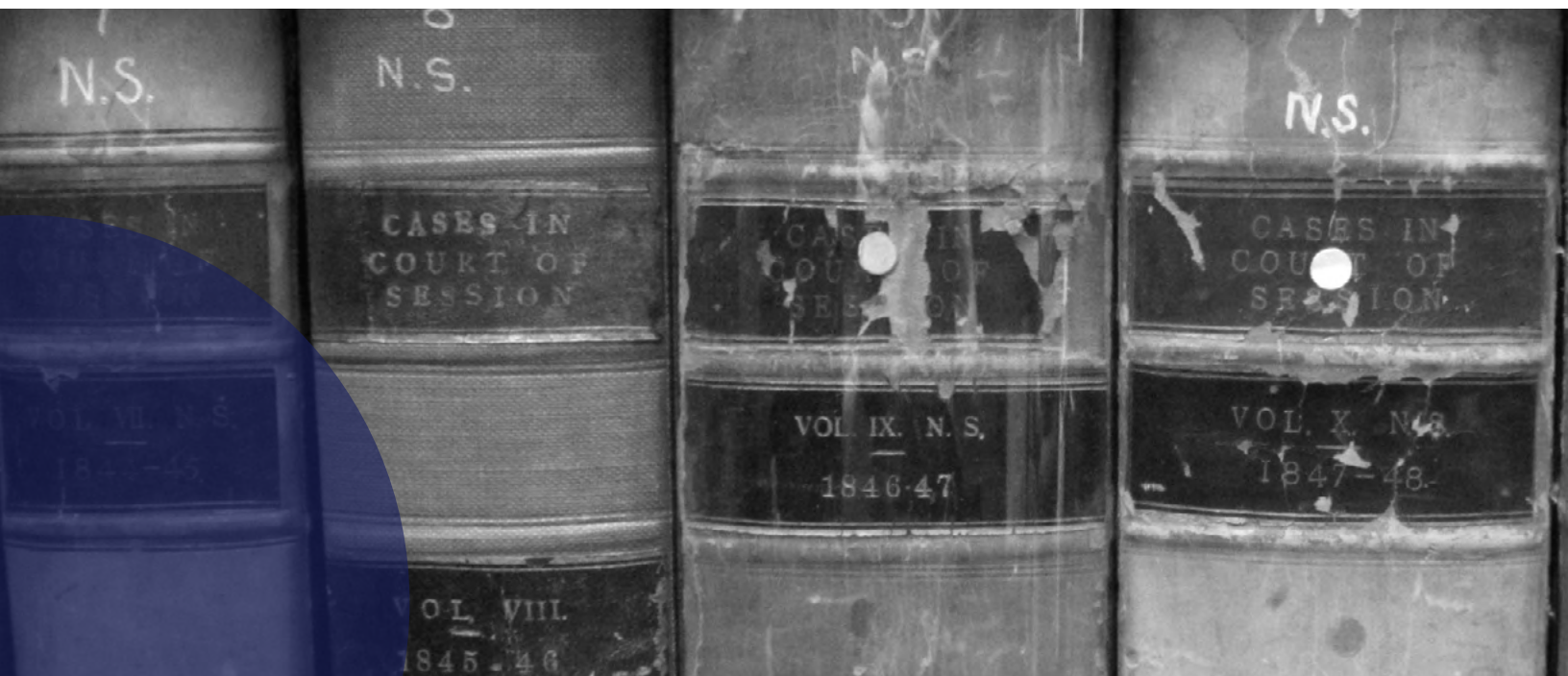
Explicitly structured judgments offer several advantages:

- numbering of paragraphs facilitates referencing specific paragraphs of the judgment (both in writing and by deep linking);
- search results can be improved if searches can be performed on specific parts of the judgment;

- for a computer, understanding the syntax of a judgment is an indispensable first step for understanding the semantics, and subsequently the legal reasoning of the judgment. This enables sophisticated tools for legal reasoning, quality control and knowledge tools.

Although the structure of judicial decisions is comparable, a judge's individual style or a court's practice may prevent the development of a unique decision template.

While a straightjacket template for judgments may be resisted on the grounds that it restricts the judges' creativity, an agreement on a lowest common denominator might be acceptable. A lowest common denominator is intended not to replace jurisdiction-specific standards in the publications process but to impose a standardised view on legal documents for the purposes of information exchange and interoperability in the context of software development. This lowest common denominator might serve as an interchangeable format, without restricting expression.⁶³



The Case Information System currently used by Indian courts which has been developed based on core and periphery models is one example of achieving standardisation while at the same time allowing for flexibility and customisation.

The most important pan-European initiative at the moment for standardising the manner in which judgments are represented is the CEN MetaLex standard. CEN MetaLex standardises the way in which sources of law and references to sources of law are to be represented in XML for the purposes of information exchange and interoperability in the context of software development.⁶⁴ Akoma Ntoso is another open document standard for judicial and legislative documents.⁶⁵

6. *Developing Legal Ontologies*

Further, the legal-tech community is also testing the use of an ontological framework for enriching access to law.

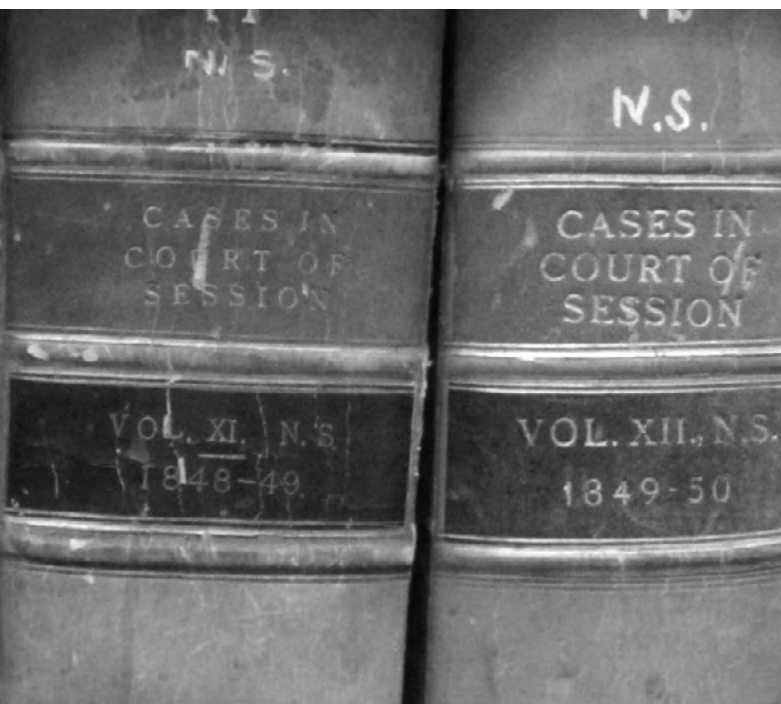
Ontologies are conceptual models of a specific domain. An ontology is a shared vocabulary, a taxonomy and axioms representing a domain

of knowledge, knowledge, created by defining objects and concepts with their properties, relations and semantics.

In artificial intelligence, ontologies are primarily meant to provide a basic framework for knowledge representation: the entities and relations distinguished in an ontology provide a user with the means to represent knowledge in the domain that the ontology covers.⁶⁶ Legal ontologies aim to provide a structured representation of legal concepts and their interconnections.⁶⁷

These ontologies are then exploited to support information retrieval, translation of legal documents, automated classification and summarising of documents, decision support and decision making, judgment modelling etc. Any changes in the domain have to be modeled to keep the representation up to date. As legal concepts change through time (they are either replaced by new concepts, or their meaning or interpretation changes through judicial decisions), their place in the ontology should change as well.

Since much of the information on both commercial and open access legal databases is scattered with low discoverability, legal professionals need more than just a repository of judgements. Artificial intelligence and machine learning provides a way out. By consuming big chunks of data, learning from it, recognizing patterns, and giving more than just data but actual knowledge and insight, artificially intelligent legal research tools will undoubtedly be the next gold standard in the way lawyers, legal professionals, and clients wade through case laws.



International Experience - Best Practices & Lessons

The practice of making all judgments at all levels of the judiciary in a country available to the public is not untested. According to World Bank's Doing Business Report of 2012, the Constitution of Chile and Maldives⁶⁸, provides for public availability of all judicial decisions.

In 2013, China's Supreme People's Court ("SPC") issued a new regulation, 'Provisions on the Online Issuance of Judgment Documents by People's Courts', requiring that all judgment

documents from People's Courts at all levels (more than 3,000 across China) are required to be submitted to relevant authorities for online publication within seven days of their effective date in a searchable public database specially set up for that purpose.⁶⁹

In the following paragraphs, we discuss some examples and experiences of implementation of judgment databases in international jurisdictions.



1. *Unified State Register of Judgments in Ukraine*

There is currently a practice in Ukraine of granting any person the right of free access to all court decisions, which, under the law 'On Access to Court Decisions'⁷⁰, are published freely in the Unified State Register of Court Decisions (hereinafter referred to as the 'USRCD')⁷¹. Such an idea was realised in view of the need to ensure public access to the acts of the judiciary, as well as to prevent any abuse, in particular, by amending an already announced court decision.⁷² According to the abovementioned law, all court decisions shall be open and shall be made public in electronic form, not later than the day after their preparation and signature.⁷³ In order to access court decisions of courts of general jurisdiction, the State Judicial Administration (the 'SJA') of Ukraine provides for the maintenance of the USRCD – an automated system for collecting, storing, protecting, recording, searching and providing electronic copies of court decisions.⁷⁴ Judgments entered in USRCD shall be open to free round-the-clock access on the official web portal of the judiciary of Ukraine.⁷⁵ Court rulings may also be published in printed publications in compliance with the requirements of this law. Judgments shall be deemed to have been officially published on condition that the body ensuring the maintenance of USRCD (i.e. the SJA) certifies that the judgments conform to the originals or electronic copies of the judgments entered in the USRCD.⁷⁶

Everyone has the right to reproduce, in whole or in part, judgments delivered by a court in public, by any means, including publication in the press, in the media, and in the creation of electronic databases of judgments.⁷⁷

In its efforts to execute the provisions of the above law and to implement the USRCD, the SJA encountered a variety of challenges. According to Article 1 of the above law, court decisions encompass not only the final dispositive judgment in a court case but, in addition, court orders, resolutions, sentences, rulings adopted by courts of general jurisdiction.⁷⁸ Therefore the USRCD contains not only final judgments but also non-dispositive court orders issued in response to interim motions on a variety of matters. The vast amount of information contained in USRCD has made the database inconvenient to use. In order to find the relevant court decision, it is necessary to know precisely the court that passed it, the date of the decision or the registration number in court or the statute under which a person was convicted.

The lists provided by the search system do not specify a category of the case. If it is necessary to get acquainted with the court practice of a certain category, users (both a judge and a regular citizen) are forced to search through all the decisions. Considering the number of courts in Ukraine and the volume of cases they consider daily, this becomes unrealistic.⁷⁹

As for datasets, the USRCD is inadequate, because it contains only the list of court judgments with a limited set of metadata and links (URL) to it, whereas the judgments themselves must be downloaded individually.

Further, studies have found some commonly occurring deficiencies in the metadata of judgments on the USRCD like certain judgment categories are incorrectly indicated, some judgments have not been assigned any number or category, and even though certain judgments are delivered by a panel of judges, the judgment's metadata states only the presiding judge etc.



Deficiencies in judgment text have also been noted like depersonalisation of judgments in the same court case is inconsistent: for example, one judgment mentions PERSON_1 as an accused, while another judgment as a witness. That makes it difficult to find out, for example, which of the parties to the case appealed the judgment.⁸⁰

In the Indian context, if the IODJ is to house the sheer volume of court decisions (final and interim) made across all levels of courts in India, it has to be ensured that:

- i. the database search engine is sufficiently powerful, sophisticated and user-friendly to make it easy for users to find what they seek, and
- ii. sufficient resources are allocated for the purpose of processing, indexing, and integrating massive quantity of documents into the database in a timely manner.

Further, the Ukrainian courts were initially complying with the requirement to submit their decisions to the USRCD by sending certified paper copies rather than transmitting electronic copies.

The additional workload entailed in processing the physical paper copies which had to be scanned utilising OCR software, then proofread to ensure accuracy, then converted for editing and indexing into an electronic format suitable for the USRCD added significant costs to this investment. It proved to be overwhelming and led to the accumulation of a serious processing backlog from which SJA staff responsible for the maintenance of the USRCD were hard pressed to recover.

The law has since been amended to require that all decisions be submitted in electronic format.⁸¹

This experience holds important lessons for India where the process of digitisation of court documents is still ongoing in majority of Indian courts, especially in the subordinate judiciary.

2. National Archives in the UK

Since 2022, in the UK, the National Archives has been responsible for the external publication of court judgments, creating the first publicly available government database of judgments there. The new service, Find Case Law, publishes court and tribunal decisions from the superior courts of record – The Supreme Court, Court of Appeal, High Court, and Upper Tribunals.⁸² Current versions of judgments on Find Case Law are available freely for republication under a new copyright regime, the Open Justice Licence.

Judgments are freely available for computational analysis subject to a ‘transactional licence’. This license will be automatically be granted for previously approved purposes.⁸³

Judgments in Find Case Law are held not as documents but as live data. This gives the administrators of the portal the option of redacting details such as parties’ names at any time.

All England and Wales courts’ and tribunals’ decisions are sent to the archives through its Transfer Digital Records service for public bodies. Transfer Digital Records (TDR) is the National Archives’ digital transfer service that helps public bodies upload, prepare and transfer their selected digital public records to The National Archives for permanent preservation.⁸⁴





3. E-File Central Information System in Estonia

Estonia has been recognised globally for the advancements it has made in terms of its e-justice programme. The e-File is at the heart of the Estonian judicial system. It is a central information system that provides data not only to the court information system but enables simultaneous exchange of information between police, prosecution offices, courts, prisons, probation supervision, bailiffs, legal aid system, tax and customs board, state share service centre, lawyers, and citizens.

Court judgments are made available electronically on the Public e-File.⁸⁵ While it is impossible to replicate such a model in India, one important feature that must be borne in mind is that the data in the e-File system is shared between institutions that are linked to the case. These interactions are based on the once-only policy which means that duplicates of information are not allowed in state databases, which saves time and money.⁸⁶

The Estonian model can provide useful guidance in integrating the IODJ with other information systems such as the Integrated Criminal Justice System (ICJS).

Implementation Strategy



1. Study Of Best Practices

The development of the IODJ will require a thorough study of the best practices adopted by court databases as well as commercial legal databases across jurisdictions. These practices can then be adopted, with necessary modifications, if any, owing to the judicial system of India. Wherever possible, the progress made on the e-Courts project should be leveraged to build this database. A careful assessment of resources and capacities must be undertaken to identify realistic and viable options for accomplishing this goal. International experience shows that the best approach to make case information publicly accessible is to do so on an incremental basis in stages. International collaborations should be forged with organisations like National Centre for State Courts (NCSC), National Archives in the UK, National Institute of Standards and Technology (NIST) in the US, etc., to learn from the implementation models in developed countries and give wider exposure to technology trends in the judiciary.

2. Designing a Legal Framework for Enabling Access

International standards and country-specific factors, such as the existence of constitutional guarantees and laws (such as in Chile), as well as the development of precise access policies, have guided the efforts in many economies to provide access to court information. Although an enabling legal framework governing access can be a helpful guide, the presence or absence of specific laws should not prevent the provision of access to court decisions. Courts in Australia, Ireland, the United States, and Singapore, for example, provide online access to decisions despite the lack of specific legal mandates.

It should be noted, however, that access to court information in these economies is guided by clear and detailed government policies that address wider access issues and also apply to court judgments. Providing access to court judgments, whether online or in paper format, is an issue that well-performing courts address as a part of a broader strategy and policy to



make court records available. Developing these policies is essential to establishing a governing framework for accessibility and ensures uniformity in how and what information is provided and to whom.⁸⁷

To ensure that access to judgments is provided in a consistent and transparent manner, a robust judicial data regulation framework must be developed which will set forth the scope of dissemination and access, while balancing public access with other important factors such as privacy, fair trial etc.⁸⁸

According to the World Bank's Good Practices for Courts, an ideal access policy should⁸⁹:

- Define the types of cases by court types and levels that will be published and whether unqualified access to certain cases will be provided.
- Define access to judgments by parties and third parties.
- Define the format in which judgments and other information will be provided (paper and/or online).
- If online access is provided, define the time period within and the frequency with which judgments and other information will be updated.
- Articulate exceptions where judgments and court records will not be accessible (such as cases involving minors, family matters, and certain crimes related to national security concerns and so forth)
- Identify the information that may be redacted from judgments
- Identify how far back in time the court will go when publishing old judgments

3. Resources and Capacity-building

Providing access to judgments, whether online or in paper format, requires financial and human resources. When identifying the means and scope for providing access to decisions, courts must carefully assess their resources and capacities and identify realistic and viable options for accomplishing this goal.

Resources need to be available to regularly publish judgments, to check for consistency, and to develop mechanisms to search for judgments. To ensure that judgments and other information are regularly provided and updated, courts must dedicate sufficient staff and resources.

In addition, medium to long-term plans should be developed to build the courts' internal capacity to provide enhanced access to judgments. Raising judicial capacity and training, and government-wide drive to increase online accessibility to all legal information can also support the overall efforts.

4. Incremental Implementation

Developing and implementing a transitional plan that provides for the initial publication of a few types of judgments (by court type and court level) to a particular set of users (such as judges and parties) will allow the court to test the effectiveness of its policy and change it accordingly. For example, the IODJ could at first include the final judgments of the High Courts and the Supreme Court and then gradually include the judgments of the district courts.

Once the final judgments across all levels of court are made available, the database could then include the non-dispositive interim orders related to such judgments.

This transitional approach may be required to iron out any technical issues that could affect publication, especially in courts with limited IT capacity and functional websites. Developing pilot schemes to test the new policy in courts in a particular area can also be beneficial in identifying specific issues that a court may face in that locality.

For example, it can bring to the fore issues such as lack of digital infrastructure, poor legal literacy etc. which can then be addressed through more targeted solutions like providing free copies of printed law reports or other paper publications of judgments, providing access to user-friendly computer terminals at the court premises, making legal aid readily available etc.

In parallel, the older judgments of the courts, to the extent available, must also be digitised and converted to machine readable formats for uploading them onto the IODJ. In undertaking this exercise, the practice of the Central Administrative Tribunal (CAT) with regard to its Digital Repository of Judgments may provide useful guidance.

In addition to over 51,000 judgments of all the Benches already uploaded on the website, the CAT is checking and verifying its older judgments and after final correction, the same will be uploaded on the Advance Search Module (Digital Repository of Judgments) of the tribunal's website.⁹⁰

5. *Stakeholder Consultation*

Access policies are not static but should evolve over time to reflect the changing needs of court users, the legal environment, and technological developments. As such, courts should regularly conduct reviews and update the mandate for the design and functioning of their case law database. A participatory approach based on broad input and feedback from all stakeholders, including lawyers, judges, members of the business community, litigants, and other members of the public, should be undertaken to ensure that their needs and concerns are specifically addressed by the access policy.

Conclusion

DAKSH's Next Generation Justice Platform paper series emphasises the need for a 'Single Source for Laws.' It highlights that sources of law extend beyond legislation to also judgments in India and reiterates that dissemination of laws will have to include dissemination of judgments as well.

The intrinsic value of a holistic legal information infrastructure which allows for access to laws and judgements cannot be understated. Such a system allows the judiciary to function in a robust manner and adds a purposeful approach to open justice.⁹¹



Open justice comprises of several precepts, one of which is public access to judgments of courts.⁹²

“Judgments are the means through which the judges address the litigants and the public at large, and explain their reasons for reaching their conclusions. Judges are required to exercise judgment – and it is clear that without such judgment we would not have a justice system worthy of the name ...It is therefore an absolute necessity that judgments are readily accessible. Such accessibility is part and parcel of what it means for us to ensure that justice is seen to be done...”⁹³ — Lord Neuberger

In furtherance of the above objective, in this paper we have proposed the creation of a unified open database of the judgments of courts in India which will act as an authentic source of case laws as well as serve as a digital record of the court decisions.

The database will facilitate not only easy public accessibility of judgments but also aid the judiciary in applying the law of the land uniformly, and in improving the judicial process.

For building the IODJ, several preparatory steps like adoption of neutral citations, uniform categorisation of cases, standardising metadata, transition to machine readable formats, etc., will have to be undertaken in order to exploit the full potential of technology.

The core elements in developing the IODJ with a focus on public accessibility of judgments will be studying of the best practices and learning from experiences of other countries, framing a legal framework enabling access to judgments, identifying and allocating sufficient human and financial resources, building technical capacity and adopting an incremental approach to publishing judgments on the database.

The IODJ if implemented effectively can be a substantive milestone in making justice accessible in its true sense.



ENDNOTES

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54 XML (Extensible Markup Language) is a markup language and file format for storing, transmitting, and reconstructing arbitrary data. It defines a set of rules for encoding documents in a format that is both human-readable and machine-readable.

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