The promise and perils of digital justice delivery

(Mains GS 2 : Government policies and interventions for development in various sectors and issues arising out of their design and implementation.)

Context:

- Perception about Indian courts is that courts justice delivery is with long delays and difficult for ordinary litigants.
- According to data released by the Supreme Court in the June 2020 newsletter of the e-Committee, 3.27 crore cases are pending before Indian courts, of which 85,000 have been pending for over 30 years.
- Technology will revolutionaries the justice delivery when it operates within the constitutional framework of the fundamental rights otherwise it will further increase exclusion, inequity and surveillance.

The e-Courts project:

- The e-Committee of the Supreme Court of India recently released its draft vision document for Phase III of the e-Courts project.
- Phases I and II had dealt with digitisation of the judiciary, i.e., e-filing, tracking cases online, uploading judgments online, etc.
- The project can so far be termed a success particularly during the COVID-19 pandemic, when physical courts were forced to shut down.
- Despite some hiccups, the Supreme Court and High Courts have been able to function online.
- This was made possible by the e-Courts project, monitored by the e-Committee.
- e-Court project committed to the digitisation of court processes, and plans to upgrade the electronic infrastructure of the judiciary and enable access to lawyers and litigants.

Ecosystem approach to justice delivery:

- draft vision document for Phase III of the e-Courts project goes on to propose an “ecosystem approach” to justice delivery.

- It suggests a “seamless exchange of information” between various branches of the State, such as between the judiciary, the police and the prison systems through the Interoperable Criminal Justice System (ICJS).

ICJS might exacerbate existing class and caste inequalities:

- It has been pointed out by organisations such as the Criminal Justice and Police Accountability Project that the ICJS will likely exacerbate existing class and caste inequalities that characterise the police and prison system.
- This is because the exercise of data creation happens at local police stations, which have historically contributed to the criminalisation of entire communities through colonial-era laws such as the Criminal Tribes Act of 1871, by labelling such communities as “habitual offenders”.
- This is of particular concern since the data collected, shared and collated through the e-Courts project will be housed within the Home Ministry under the ICJS.

A cause for concern:

- Several individuals and organisations have warned against the zeal of the data collection exercises contemplated by the draft proposal.
- The “seamless exchange of information” relies on large-scale gathering and sharing of data.
- Data collection is by itself not an evil process, in fact, data can be a useful tool for solving complex problems.
- For example, to address the problem of cases pending simply for service of summons, Phase II of the e-Courts project saw the development of the National Service and Tracking of Electronic Processes, a software that enabled e-service of summons.
- It is only when data collection is combined with extensive data sharing and data storage that it becomes a cause for concern.
- The Supreme Court must take care not to violate the privacy standards that it set in *Puttaswamy v. Union of India* (2017), especially since India does not yet have a data protection regime.

360-degree profile approach:

- Data can be useful when it provides anonymous, aggregated, and statistical information about issues without identifying the individuals.
- This could be made possible in Phase III by encouraging uniformity and standardisation of entry fields.
- Unfortunately, there has been a dangerous trend towards creating a 360-degree profile of each person by integrating all of their interactions with government agencies into a unified database.
- This 360-degree approach is the main objective of Phase III.

- Once any government department moves online, their pen-and-paper registers will become excel sheets, shareable with a single click and the localised data will become centralised.

- Holdovers from the analog age ought not to have an issue with this process, since it can lead to great advancements in problem-solving.
- However, it is the next stage which is a cause for concern even for the most vocal proponents of the digital age, which is integration with other agencies.

Integration of data and concerns:

- When integrating data from all the lower courts, the intersection lies at the higher judiciary, because those are the appellate authorities connecting all the lower courts.
- When integrating data of the courts and police stations, the intersection lies with the individual citizen, since it is the citizen's interaction with these branches of the state that is being monitored.
- While it is understandable why the courts could reasonably benefit from access to police and prison records, courts deal with a variety of matters, some of which may be purely civil, commercial or personal in nature.
- No clear explanation has been offered for why the Home Ministry needs access to court data that may have absolutely no relation to criminal law.
- This process creates concerns of state involvement in profiling and surveillance.

Conclusion:

- Since the Phase III vision document is a draft, there is still an opportunity to abandon the ecosystem approach as the objectives were to streamline judicial processes, reduce pendency, and help the litigants.
- To continue to do that within the framework of our fundamental rights, the e-Courts must move towards localisation of data, instead of centralisation.
- The e-Committee must prevent the "seamless exchange" of data between the branches of the state that ought to remain separate.