

LEGAL TECHNOLOGY: MODERNIZING SRI LANKA'S CRIMINAL JUSTICE SYSTEM

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Introduction

Sri Lanka's criminal justice system experiences serious delays in case disposal. In 2017, a special committee on amending the Penal Code and the Code Criminal Procedure Act reported that the average length of time to taken conclude a criminal trial is 10.2 years. It also noted that a further period of seven years is spent during the appeal process.¹ Among other factors such as prescribed procedures, human resource shortfalls and coordination issues among the key stakeholders in the penal chain, the manual nature of case processing is a major source of inefficiency and delay.

In several other countries, legal technology has contributed to improving the quality of justice delivery and improving access to justice.² This article will discuss the need for the adoption of legal technology to improve the overall quality of justice delivery in Sri Lanka. It focuses on the need for the gradual adoption of legal technology in Sri Lanka to address the current manual case disposal in the criminal justice system. It argues that moving towards legal technology can help address inefficiencies and delays that have eroded public confidence in the present criminal justice system.³

¹ Sectoral Oversight Committee on Legal Affairs (Anti-Corruption) & Media, *Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice* (September 2017), <<https://www.parliament.lk/uploads/comreports/1510738363068517.pdf>> accessed 21 September 2019, at p.3. The committee also noted that the average time period between the date of commission of the offence and filing of the indictment was 4.7 years. The average time period between the date of the indictment and the date prosecution commenced was 3.7 years. Another period of 1.8 years is taken between the commencement of recording of evidence and the ruling of the case at the High Court.

² This includes initiatives such as KEI program (The Netherlands), eCourts Project (India), LexNet (Spain), Justice21 (France), eJusticeSOA (Germany) and Civil Resolution Tribunal (Canada). See Organization for Economic Cooperation and Development (OECD), *Equal Access to Justice, OECD 2nd Expert Roundtable, Background Notes* (December 2015) <<http://www.oecd.org/gov/Equal-Access-Justice-Roundtable2-background-note.pdf>> accessed 21 September 2019. p.14

³ Department of Justice, Canada, 'Reducing Delays and Modernizing the Criminal Justice System' (2019) <<https://www.justice.gc.ca/eng/cj-jp/redu/index.html>> accessed 22 September 2019.

Sri Lankan criminal justice system: justice delayed

In the recent past, key actors within the justice system, such as the Supreme Court and the Ministry of Justice have recognized the inordinate delays visible throughout the penal chain.⁴ For instance, the Supreme Court recently found that ‘undue delay and/or inaction by police in prosecuting the suspect’ amounts to violation of Article 12 (1) of the Constitution, which guarantees all persons equal protection of the law.⁵ In this case, the police took over eight months to complete a murder investigation with direct evidence and another 11 months to forward the investigation notes for the Attorney General’s advice.

Delays within the criminal justice system are detectable from the investigation stage to the trial and appeal stages. These delays are partly attributable to the excessive reliance on traditional methods of record

keeping, such as handwritten notes and files, which remain in a hard copy format during the investigation, as well as the trial.⁶ These manual methods give limited accessibility and transferability across actors in the penal chain. For instance, if an ongoing investigation were to be transferred from the area police to the Criminal Investigation Division (CID), it would lead to complete recommencement of the investigation, as the handover is manual. The investigators would have to allocate a considerable amount of time to read through the hard copies of documentation. Once the matter has reached the trial stage, if the judge is transferred mid-trial, the incoming judge would have to familiarize himself/herself solely through studying the physical case record. Therefore, if the victim gave evidence prior to the arrival of the second judge, the only source available to assess the demeanor of the victim is the paper-based documentation.

⁴ Ministry of Justice (Sri Lanka), *Performance Report* (2018) <<https://www.parliament.lk/uploads/documents/paperspresented/performance-report-ministry-of-justice-prison-reforms-2018.pdf>> accessed 21 September 2019. (MOJ Performance Report).

⁵ *M.M. Leelawathie Hariot Perera and others v. N.K. Illangakoon, Inspector General of Police and Others*, SC/FR/Application No.372/2015, Supreme Court of Sri Lanka, decided on 17.11.2017.

⁶ According to Sri Lanka police, ‘modern technology is used in the fields of calling reports, dissemination of information, issuing clearance reports, traffic surveillance and crime investigation.’ See Sri Lanka Police, *Performance Report* (2017) <<http://www.parliament.lk/uploads/documents/paperspresented/performance-report-srilanka-police-2017.pdf>> accessed 22 September 2019.

Under the present system, Judicial Medical Officers (JMO) must personally retain the sole copy of the Medico Legal Report (MLR) in a hard copy format. This raises two concerns – namely, (i) over reliance on a single hard copy report containing crucial evidentiary material, and (ii) the need to physically track the particular JMO (if the JMO has transferred out of the particular station) due to the lack of a centralized mechanism to store MLRs and details of the JMO. Delays coupled with other systemic features, which encourage inefficiencies, thrive within the Sri Lankan criminal justice system due to the minimal use of technology. Adoption of modern technology has the potential to resolve several delays within the case flow management.

Measures taken in Sri Lanka: court automation aspirations

As at September 2016, a total number of 745,191 cases were pending before the Sri Lankan court system.⁷ To deal with the systemic inefficiencies, which continue to contribute to this developing case backlog, the Ministry of Justice has acknowledged the need to address delays in the criminal justice system through a technological solution.⁸ However, the measures implemented so far range from increasing the cadre of the Attorney General's Department to establishing new court-houses.⁹ The Ministry has proposed a 'court automation' project in a bid to upgrade the quality of justice administration.¹⁰ While there appears to be a focus on the courts, there still appears to be no cohesive strategy to gradually adopt technological advancements across key agencies.

⁷ Ministry of Justice (Sri Lanka), *Statistical Records on Cases* (2016) <https://moj.gov.lk/web/images/pdf/statistical_records_of_cases.pdf> accessed 22 September 2019.

⁸ MOJ Performance report (n 4).

⁹ Ibid.

¹⁰ Ranjith Padmasiri, 'Laws' delays and the scourge of justice denied', *The Sunday Times*, (Colombo, 3 February 2019), <<http://www.sundaytimes.lk/190203/news/laws-delays-and-the-scurge-of-justice-denied-334057.html>> accessed 22 September 2019; According to a World Bank review of the Sri Lankan Justice Sector, pilot projects on court automation

were launched in the Colombo and Kandy District Courts in 2006. The pilot project itself encompassed a case tracking system, but it did not address digitization of records or other elements of case management that might be automated. According to this report a rigorous assessment of its utility and possible expansion as a system or utilization by other courts has not been carried out. See World Bank Group South Asia Region Poverty Reduction and Economic Management Unit, *Sri Lanka Justice Sector Review* (2013) <<http://documents.worldbank.org/curated/en/255751468164662812/Sri-Lanka-Justice-sector-review> > accessed 22 September 2019. At pp.19 & 44.

Potential solution to the delays: legal technology

Legal technology refers to the ‘use of technology and software to provide and aid legal services’.¹¹ New technology relating to criminal justice is constantly evolving from every stage of the forensic process, to court hearings.¹² Horizontal and vertical integration of technology within the key institutions in the criminal justice system has proven to improve efficiency, cost-effectiveness and fairness of proceedings in several other jurisdictions.¹³

Timely adoption of legal technology has three benefits: (i) facilitating the provision of legal and justice services through the reduction of operational costs of courts, (ii) enabling integrated access to services in the justice system, and (iii) enhancing

access to information through access to online legal assistance services.¹⁴

To evaluate the exact intervention required to execute a successful adoption of legal technology, the present uptake of technology within the justice system must be critically evaluated. This uptake can be viewed at three levels of digitization based on their complexity. First, there must be consistent use of basic technologies, i.e. the use of desktop computers, word processing, spreadsheets, and use of email.¹⁵ It is only through the active use of basic technology that other complex and advanced technologies can be successfully introduced and integrated. For instance, European governments introduced equipment and office applications to courts in the 1990s. In Belgium, by 1997, all judges were provided with a laptop. Second, there must be consistent use of

¹¹ ‘What is legal technology and how is it changing our industry?’ (*The Lawyer Portal*) <<https://www.thelawyerportal.com/blog/what-is-legal-tech-and-how-is-it-changing-industry/>> accessed 23 September 2019.

¹² ‘Effect of New Technology on Court Trials’, (*Sydney Criminal Lawyers*, 2014) <<https://www.sydneycriminallawyers.com.au/blog/effect-of-new-technology-on-court-trials/>> accessed 23 September 2019.

¹³ Law Council of Australia, *The Justice Project, Final Report- Part 2, ‘Court and Tribunals’* (2018) <<https://www.lawcouncil.asn.au/files/webpdf/Justice%20Project/Final%20Report/Courts%20and%20Tribunals%20Part%20%29.pdf>> accessed 23 September 2019; Charles Davison, ‘Technology Transforms Criminal Law’ (*LawNow.org*, 3

September 2015) <<https://www.lawnow.org/technology-transforms-criminal-law/>> accessed 28 September 2019.

¹⁴ Productivity Commission Inquiry into Access to Justice Arrangements, *Attorney General’s Department Submission* (2013) <<https://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub137-access-justice.pdf>> accessed 23 September 2019. p. 11.

¹⁵ Marco Velicogna, ‘Justice Systems and ICT: What can be learned from Europe?’ 2007 *Utrecht Law Review* <<https://www.utrechtlawreview.org/articles/abstract/10.18352/ulr.41/>> accessed 17 September 2019.

technology to support administrative personnel of the court.¹⁶ This includes automated registers and case management systems. Third, sophisticated technologies must be deployed to support the activities of the judges.¹⁷ The sentencing information system currently used in New South Wales, Australia contains sentencing principles, sentencing statistics, case law, legislation and other reference material for trial judges.¹⁸

The effectiveness of legal technology relies on a combination of factors such as reliable infrastructure to support online processes, compatible technology between parties, tech competent judicial officers, lawyers, investigators, non-judicial staff, and public to use technology.¹⁹ More importantly, a willingness to adopt legal technology is indispensable.

Measures taken by other countries

Technological initiatives in other jurisdictions include consistent use of body cameras, license plate readers, 3D scanners (at crime scenes), digitized evidence inventory, entry bar code software, in court evidence cameras, presentation software, and monitors in court rooms.²⁰

Sri Lanka could learn from the legal tech adoption experiences of India and Australia. In India, the 'eCourts Project' was launched to make justice delivery transparent for all the stakeholders. This system is dedicated towards the ICT enablement of the Indian judiciary. It allows for any party to access case status, details of next hearing, orders among other services with real time data, which is generated and updated continuously.²¹

In Australia, the Federal Court was one of the first courts to adopt an electronic filing system.²² The Australian justice system has

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Judicial Commission of New South Wales, *Judicial Information Research System (JIRS)*, <<https://www.judcom.nsw.gov.au/judicial-information-research-system-jirs/>> accessed 30 September 2019.

¹⁹ Law Council of Australia (n 13).

²⁰ Hank Kula, 'What technology has affected the criminal justice system?' (*L-Tron*, 28 March 2019)

< <https://www.l-tron.com/What-Technology-has-affected-the-criminal-justice-system>> accessed 25 September 2019.

²¹ 'eCourts Services, District and Taluka Courts of India',

<https://services.ecourts.gov.in/ecourtindia_v6/static/about-us.php> accessed 25 September 2019.

²² Robert Size, 'Taking advantage of advances in technology to enhance the rule of law' (Australian Academy of Law, October 2016)

actively used technology to improve efficiency. These measures include: electronic filing of court documents; electronic payment of court fees; providing online access to court documents, court lists and forms; conducting hearings via Audio Visual Link (AVL)²³ and telephone; electronic databases and case management systems; greater reliance on email for direct communication between parties, the court and the judge's associate; and informative and accessible websites.²⁴

Meanwhile, countries that have reached a higher level of technological sophistication in the criminal justice system are moving towards the introduction of blockchain technology.²⁵

<http://www.academyoflaw.org.au/resources/Documents/2016%20Robert%20Size%20Joint%20Winner%20Australian%20Academy%20of%20Law%20Essay%20Prize%202016%20_%20Taking%20advantage%20of%20advances%20in%20technology%20to%20enhance%20the%20rule%20of%20law.pdf> accessed 23 September 2019.

²³ High Court of Australia, Press Release (2013) <<http://www.hcourt.gov.au/assets/news/MR-audio-visual-recordings-Oct13.pdf>> accessed 23 September 2019.

²⁴ Law Council of Australia (n 13).

²⁵ 'Blockchain is essentially a ledger, like an excel spreadsheet recording important information, except that the ledger is duplicated across a network of computers (each a 'participant') and regularly updated; everyone participating on a blockchain network can be confident that they are sharing the same ledger (in terms of the information held), without the need of a central trusted third party to do so... When a digital transaction is carried out, it is grouped together in a cryptographically protected block with other transactions that have occurred and sent out to the entire network. In order to

For instance, in order to maintain the integrity of digital evidence, the Ministry of Justice in the United Kingdom is considering the possibility of using blockchain technology to store digital evidence such as documents, emails, and video footage with specific focus on storing evidence gathered through body cameras.²⁶

Conclusion

This article discussed the areas and reasons for delay under Sri Lanka's present criminal justice system. It highlighted the need to digitize the criminal justice system to resolve the recognized causes of delay. The adoption of legal technology is not an

determine the validity of a candidate block, users compete to solve a highly complex algorithm to verify it...The validated block of transactions is time-stamped and added to a chain in a linear, chronological order.'. See 'Blockchain: The legal implications of distributed systems' (*The Law Society, United Kingdom*, 2017) <<https://www.lawsociety.org.uk/support-services/research-trends/horizon-scanning/blockchain/>> accessed on 23 September 2019.

²⁶Al Davidson, 'Increasing trust in criminal evidence with blockchains' (*Ministry of Justice*, 2 November 2017)

<<https://mojdigital.blog.gov.uk/2017/11/02/increasing-trust-in-criminal-evidence-with-blockchains/>> 23 September 2019; Sam Trendall, 'MoJ talks up potential blockchain benefits for criminal justice system' (*Public Technology.net*, 3 November 2017) <<https://www.publictechnology.net/articles/news/moj-talks-potential-blockchain-benefits-criminal-justice-system>> accessed 25 September 2019.

instant solution, as it could disrupt the existing institutional culture. For sustainable adoption of technology, there must be a gradual and incremental introduction, beginning with the consistent use of basic technology. Introduction of legal technology will allow for the criminal justice system to enhance its efficiency, access, transparency and accountability among the key institutions. This article also identified the measures taken by other jurisdictions in terms of investigations and case disposal. Sri Lanka should seriously consider a tech adoption strategy rather than focusing on piecemeal approaches, as the delays will persist if all stakeholders are not given the technical know-how to harness the benefits of technology.

Sri Lanka is yet to introduce technological solutions to address the chronic delays in case disposal within the criminal justice system. Lethargic adoption of even the most basic technologies will make it difficult for the Sri Lankan justice system to seamlessly integrate modern technological solutions and fast-paced innovations. More importantly, this

reticence toward adopting new technology and related innovations continue to deteriorate the quality of justice delivery in the country.²⁷ An inefficient criminal justice system, crippled with excessive delays, will eventually cause the loss of public confidence in the entire justice system. After all, ‘justice delayed is justice denied’.

²⁷ MOJ Performance Report (n 4).