

## **COURT ADMINISTRATION IN THE DIGITAL AGE**

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In order to ensure the effective administration of justice in this constantly and rapidly evolving digital age, as a core public institution, courts must take the primary role in the responsible implementation of technology in terms of the law and legal practice.

This feature article will explore the myriad ways in which technology can be utilised for the effective administration of justice, the considerations that must be taken into account in the implementation of technology driven court procedures and the feasibility of implementing these procedures in Sri Lankan context.

To begin, it is important to bear in mind that courts are human driven institutions. This means even with the many advancements in technology, there will be certain areas that will still require a human's ability to evaluate evidence, analyse legal arguments and apply them on a case by case basis, all the while balancing many competing interests. Furthermore, courts have to engage in every day human issues and require the knowledge and intuition to understand these issues in a human context. Thus, the court system is not fully digitisable.

As identified by Nihan and Wheeler, technology can be utilised to provide management and operational support, to make the execution of routine tasks speedier and increase the amount of useful information available to a court and to help the courts accomplish the research and planning tasks required for the effective administration of justice.<sup>1</sup>

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<sup>1</sup> Charles W Nihan and Russell R. Wheeler, *Using Technology to Improve the Administration of Justice in the Federal Courts*, 1981 BYU L., Rev 659 (1981) at p 661

There are many ways in which technology can be utilised in order to manage and support court procedure. One helpful method would be to distinguish between internal court procedures and external court procedures. In this context, internal court procedures would be those procedures that are equivalent to the work currently carried out by court clerks and internal staff such as, storage of documents filed, maintenance of the docket and general case management etc. External court procedures where engagement is required by the court administration system with other actors such as, lawyers and their clients.

If technology is applied responsibly and cautiously to internal court procedures, it would help save time and make the procedures more transparent and accessible to both lawyers and litigants.

One such instance can be seen in the Federal Courts of Australia where the implementation of the National Court Framework (NCF) and the adoption of the Electronic Court File has led to the harmonisation and synchronisation as to how registries and dockets are maintained. Prior to this, individual judges had specific ways in which their docket was maintained. However, the introduction of the aforementioned system, has introduced certainty and uniformity to the court procedure.

In Australia again, the Federal Court has implemented an eLodgment system which allows documents to be filed electronically. Earlier, procedures that would have taken several days such as the manual checking, signing and sealing of original documents by the Registrar, now has a 24hour turnaround.

The procedures implemented in the Federal Court of Australia are good examples of how technology has been utilised to make the legal system more accessible through the timely administration of justice and the elimination of undue delays.

Countries such as Dubai now have a Small Claims tribunal which is a video-driven digital court where the claimants have the option of giving the defendants notice via an instant message. The

Civil Resolution Tribunal in Canada, the first online tribunal in that country has adopted a program where the dispute is diagnosed, legal information and templates for letters are provided, and the parties have the ability, on application to the CRT to negotiate and mediate the dispute all online. This level of engagement with technology before a dispute even reaches the court room ensures timely dispensation of justice and highlights the fact that technology can be utilised as an extra arm in the administration of justice.

### **Weighing the good and the bad**

In a haste to update the court procedures to bring them in line with the advancement in technology, it is possible to implement systems that hinder rather than help. As said before, courts are human institutions and require a certain degree of flexibility in its application. Therefore, creating technologically driven systems that are too complicated, rigid and not intuitive can make the process of court administration less effective and less just. The key is to ensure that the implementation of technology does not bar access to justice.

### **Challenges**

There will always be practical limitations when it comes to the implementation of technology driven processes.

As the dispenser of justice, public confidence must be maintained in the administration of the Law and the procedures through which such administration is carried out.

Therefore, prior to the practical application of technology it is important to bear in mind that the type of court and the nature of the case are important considerations. Technological systems and supporting infrastructure are more often than not expensive. However, not all courts would

have the budget to implement these procedures nor to have the infrastructure in place for their effective implementation. Furthermore, the nature of the case would also be relevant and it simply might not be cost-effective to implement costly systems in order to facilitate the management of simple matters.

When considering the development of legal applications ('apps') specifically designed for the administration of justice, complex Intellectual Property issues also come into play. Who owns the code? Who owns the data? These are all considerations that must be evaluated prior to the implementation of complex and costly technological systems for the administration of justice.

## **The Sri Lankan context: A feasibility assessment**

The Constitution of the Democratic Socialist Republic of Sri Lanka. The Constitution governs certain procedures to be adopted in administration adjudication.

This feature will explore the practical stand point in the procedural law in relation to stepping towards a digital era. In order to do that, it must be illuminated that the practical procedures are more fully laid down in Supreme Court Rules, enacted according to the Constitution.

It must be noted that, almost all the procedures laid down by the above-mentioned laws necessitates the use of papers. For example, a bail application that is to be forwarded to the High Court, requests the petitioner to make an affidavit alongside the petition. Furthermore, each respondent should be given copies both of the petition, the affidavit and also of each document that is attached. Not to mention the proxies, notices and motions that have to be filed, an average bail application contains approximately 90 pages minimum including all of the above. A bail application is one of the least document-consuming petitions. Nevertheless, it is the practice of many courts to fix the bail inquiry through written-submissions, which again would bear at-least 25 pages.

Any action except one filed by the State (including Police, Bribery Commission etc.) requires the matter to be fixed for support, notice returnable date, objections, counter objections and sometimes written submissions before the action is to be fixed for argument, inquiry or hearing. This involves returning visits by each party to the Court, state money and Court time being wasted and many other expenses.

## **Moving towards digitalisation**

The heart of digitalisation is 'Technology'. Therefore, as a starting point one must see the areas where moves were made to utilize technology.

As the Supreme Court rules clearly exhibit, it is now possible for a petitioner to file a Fundamental Rights petition through the Supreme Court Website. However, it must be noted that the hard copies of the petition should be filed in the due course at the registry. Moreover, respondent copies also will have to be filed.

Another area where technology has some involvement is when filing written-submissions in the Court of Appeal and the apex court. This again is limited to e-filing.

However, it is an affirmative point that many Magistrates are using smart-tablets to browse through laws whilst adjudicating. It can moreover be noted that many lawyers too use smart-tablets or smart-phones to read through case law and statutes whilst on their feet. The above technological involvement can be seen predominantly in the Western Province and in some urban Bars. Moreover, it can be seen that many lawyers use smart-engines such as Lexis, Law Lanka, Law Net, Baiili and CommonLii for legal research pertaining to their court related matters. These include, finding sources for their legal submissions and written submissions, drafting of FR etc. These are good examples of how technology has increased access to information and made it more expedient.

In the Corporate sector, databases have become a commodity. Similarly, banks and financial institutions have introduced flagging systems that are frequently used by their legal departments.

Apart from the above common features, digital involvement through intervention of technology is rather a concept in the making in Sri Lanka.

**What are the current practical issues in digitising the Sri Lankan legal system?**

Digitalisation or electronic intervention is a timely need in this globalised era, especially to the legal system of Sri Lanka.

Currently, all the Preliminary Courts use Stenographers to record court proceedings. These proceedings would then be typed and given out to parties upon requests. Due to the volume of work, averagely the Registrar takes about two weeks to finalise a day's proceedings. The surrounding circumstances are such that, there is a high volume of trials, inquiries and arguments for a day. Similarly, there are many preliminary objections being raised by parties. All these must be recorded. To process the same and type them to gather the proceedings into a soft copy consumes time. Moreover, there are not many computers available in all the courts. The Colombo Court system has the greatest number of computers, both in the Magistrate Courts and the High Courts. It would still be practically difficult for even a lawyer to get proceedings of a case within at least a week's time. It is pertinent to note that, many out-station bars have 10 times a smaller number of computers.

One who intends to digitalise the adjudication system, must focus on the area of obtaining proceedings of a case, as it is a necessary next step for the preparation of a case. Instead of the above-mentioned time-consuming method, rather lucrative and expeditious methods are being used in many developed countries.

Digitising proceedings would have the following benefits;

1. Prevents delay – One of the major reasons for recess of a case is due to the fact that proceedings of the previous date could not be obtained on short notice. As a result, Courts fix dates that allow the parties to obtain proceedings and prepare. This results in a practice where court allows a long gap between two dates. This delay can be saved by digitalisation, where people can access the proceedings online.

2. Saves money – an enormous cost has to be incurred for the entire process of finalising a set of proceedings of a day. This includes wages, paper costs, ink costs and many more. Although there might be an initially high cost of setting up the equipment required to digitise proceedings, eventually, the process will lead to a reduction in overall cost.
  
3. Re-builds confidence in the system by promoting efficiency and transparency.

Digitising the above process has many technical and practical difficulties. Technical difficulties are applicable in rem. However, the practical issues are due to the surrounding circumstances of the country.

### **Technical difficulties**

Major technical difficulties that could arise are that, the system that is to be brought has to have the capability of processing all the recordings of a day in each case, in a single document. This means that the system to be introduced has to have a comprehensive method of recording the entire session, either audio or video and convert the audio into a complete and contemporaneous transcript. After fulfilling the above-mentioned, a system of uploading the same to the website must be attended to. For the development of technology that allow for electronic proceedings to be made available, the legal administrators should coordinate with the IT industry.

### **Practical issues**

These are unique to each country. Therefore, in resolving one has to see how countries with similar backgrounds and problems have achieved the ends of digitalisation. The editorial team will discuss the same in a coming chapter.

However, it is vitally important to identify the practical issues the country would face in introducing technology to the legal system in court administration. As mentioned above, the

status quo of Sri Lanka must be understood through the attendant circumstances. Sri Lanka is a developing country. Most of the people are of average low income. Thus, financially, people are expecting justice to come to them at an affordable cost. Similarly, technological literacy is low in Sri Lanka. The average person does not possess the knowledge to go through internet and make a payment. Urban areas have now evolved in the digital era and are quite conversant in online payments, obtaining services online and arranging their day to day needs through online marketing etc.

In the same time, many of the outstation Bars have difficulties in accessing internet. Quite frankly, their major focus is not on the issue of delay in hearing cases or obtaining proceedings. Definitely not digitalisation. There are many Bars where no lawyer uses electronic devices in courts to access case law or statutes. Their major problems include not having basic library facilities, a room for the lawyers, lack of bathroom facilities etc. Therefore, there are few major issues that needs to be addressed as a preliminary step before introducing a digital map to the legal and court administration.

Firstly, a comprehensive information technology knowledge should be given to all the lawyers and Judges. This must include practical knowledge on handling the matters that are related to the legal profession and day to day practice. The steps that need to be taken in order to provide this education is a point of debate. Whether it should come academically as a compulsory subject in the legal education or whether it should be given to all the practicing lawyers as a mandatory training, or any other alternative method should be adopted.

The idea of digitalising also includes, going to a paper-less era. Not only in the proceedings and the administration process but also in day to day court activity. If the number of books and printouts that one needs to bring to courts and when filing can be reduced that will be an achievement en-route to digitalisation.

In order to achieve the above, firstly, a full digital filing method needs to be activated. This requires a comprehensive system for the petitioners to file their petitions or other forms of actions online. There must be a system developed for this, which is unique to each court and that system has to have links for the judges to go through their own copy of the documents and a way of making remarks if necessary. Then if and when notices are issued, the respondents must have a way to be notified of the same through email or by post of the links to download the copies. Attachments must be original documents; thus, these will not be able to be replaced electronically. In such situations, those that cannot be electronically attached must separately be sent to Judges and the Respondents.

Secondly, the cases and statutes referred to in the action filed must be made available to the judges. Such systems are there even today such as Law Lanka.

The same method as above can be adopted for filing written-submissions, objections etc. This therefore will call for a system where there is an entire e-file that is being operated through the web-site of the specific court. This could even develop into the judges' journal too, in line with the digital recording system discussed before.

Concurrently, the same legal encyclopaedia could be used by the judges and the lawyers in the courts to access all the case laws and statutes. This will reduce the number of papers being used for printouts. Similarly, e-books, audio-books and many more electronic medias will take over the paper dominated court room. A system of promoting smart-tablets can simultaneously be activated through which lawyers could be introduced to smart-tabs in a discount scheme or an easy payment scheme by partnering with one of the leading retailers.

### **Financial limitations**

In order to digitise, devices, internet connections, subscription fees, computers and other various assets must be obtained. Overhauling an archaic system and updating it and bringing it to the digital 21<sup>st</sup> century will not only prove difficult, but also very costly.

As discussed earlier applying technological systems to all courts in all cases would not be sensible or practical. Therefore, the best proposal would be to bring-in the system to where it can be brought in. Apex Courts and Court of Appeal could be a good starting point. Both the Courts are situated in Colombo and many lawyers who appear in these Courts are quite literate in IT. The fully equipped digital filing, maintaining and obtaining records must commence from here. This can then be slowly spread to other courts in Colombo and eventually to the outstation Courts. While beginning at the very apex of our justice system and slowly working its way down would ensure that courts that require it and lawyers who need it are adequately prepared for the inevitable technological overhaul.

It is a practical concern that a slow wheeling, costly, environmentally hazardous manual and analogue court administration system and procedural system still exists in Sri Lanka.. Substantive laws must cover the emerging digital practices of the country Technical procedures and administrative steps in the legal profession face many practical difficulties owing to the financial, social and global status of the country as a whole.

Thus, bearing in mind that when it comes to technology, especially the application of it to a system that has relied heavily on physical resources such as papers, books and filing for its administration since time immemorial, the move towards digesting the court administration system of Sri Lanka should be a gradual and measured one.

Perhaps the biggest requirement for a successful transition towards a digital era is a change in attitude. A change in the attitude of judges and lawyers is required for this venture to be a success. Judges must be willing to maintain electronic dockets and accommodate lawyers who wish to file written submissions electronically or access case law while in court on their tablets

etc. In turn, lawyers must be willing to become technologically proficient and adapt to any systems that are implemented in order to facilitate this move towards a digital era. Thus, cooperation among all parties involved in or affected by court administration is essential. Then, and only then can we move towards a future where lawyers are not physically burdened with carrying cumbersome files to court, court administrative staff are not required to wade through enormous stacks of files in order to find a single one, and judges are not required peruse through voluminous proceedings and evidence to find the single relevant section that they are looking for. They would simply be able to 'ctrl + f'.