

FEATURE STORY 3: ADAPTATION OF INFORMATION TECHNOLOGY IN JURISDICTIONS AROUND THE WORLD

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1. Introduction

Over centuries dispute resolution around the world has been refined, polished and groomed to keep up with the evolution of humanity: from gruesome public executions to being represented by lawyers before judges at court houses, which has now become the dominant approach. This mechanism has provided relief to those who seek justice albeit certain flaws rooted in the system. However, with a whole new decade emerging at the horizon, mankind's yearning to evolve, and thereby introducing a convenient lifestyle, where daily mundane tasks will take the least amount of time with a shorter paper trail has taken precedence. This notion has extended to the legal systems in the world with the advancement of technology. Equipped with the internet, advanced hardware and cutting-edge software coming on-stream, the present-day court system putting behind the days of bulging case files – though rather faster in some parts of the world than others.

Professor Richard Susskind, states that it is crucial courts explore and adopt emerging digital opportunities¹.

¹ India Legal, 'Virtual Courts In Delhi: Digital Justice - India Legal' (*India Legal*, 2019) <<http://www.indialegallive.com/viewpoint/virtual-courts-in-delhi-digital-justice-70291>> accessed 8 November 2019.

“The system is costly for users; it’s usually too time consuming and disputes take a long time to resolve; it’s largely unintelligible; and it also seems out of step in the internet society. Citizens have a growing expectation that services will be delivered digitally.”

The authors seek to make an analysis on how certain nations adapted to and adopted digitalization into their legal and judicial systems.

2. Europe

Europe has been one of the fore frontiers in introducing Information Technology to their legal systems. According to regular surveys conducted by the European Commission on the Efficiency of Justice (CEPEJ)², the European Countries have been classified into groups based on their implementation levels. As such, Finland, Austria, the United Kingdom along with Estonia, Slovakia and Hungary are in the very high implementation group, while France, Germany, Sweden, Latvia, Bulgaria and the Netherlands are placed in the high implementation group. Belgium, Ireland and Croatia are found in the moderate level group, with Cyprus, Ukraine and Russia classified under low implementation group. It has been made mandatory in the European Court of Justice submit all its application through an online platform.

In the United Kingdom the higher criminal courts in England and Wales completed the transition to fully digitised evidence files in April 2016.

Among the steps taken in digitalising court procedures, the development that stand out the most is introduction of an electronic filing pilot scheme in the Royal Courts of Justice Rolls Building courts in London. Through this court users are now able to access the new electronic court file

² European Commission on the Efficiency of Justice, 'European Judicial Systems Efficiency And Quality Of Justice' (Council of Europe 2018) <<https://rm.coe.int/overview-avec-couv-18-09-2018-en/16808def7a>> accessed 15 November 2019.

(CE-File) in order to issue claims and file documents electronically, and to pay court fees online, which is now available twenty-four hours a day, all year round.

The government and judiciary of the United Kingdom are working together in the hopes of radically reforming the English and Welsh justice system by the year 2020. The main focus of the reforms remains on digitisation and the use of advanced information technology for all procedures and hearings—for instance, the introduction the new Online Court in the civil courts. This is considered to be one of the most ground-breaking reforms and is being developed for money claims of up to £25,000 (subject to exceptions)³. The Online Court will assist the litigant in articulating their claim and evidence via an interactive software system, as well as offer case management and dispute resolution steered online or over the telephone. In the event a case cannot be resolved the Online Court will also offer a decision by a judge on the documents, on the telephone, by video or at a face-to-face hearing. Branching out from the above mentioned mechanism is simplification of processes and procedures in order to attain a uniform and common procedural regime for civil, family and tribunal justice, and for crime, simplification of processes and procedures. Furthermore, the reforms are expected to bring about a savings of £200m a year by the year 2020⁴. The UK is on a fast track path in building a justice system that is future-proof, efficient and meets the needs of court users.

Austria has been one of the pioneers in digitalizing its court administration and legal system. The various initiatives include the Case automation in the Justice system (VJ), Electronic Legal Communication (ELC), Land and Business Registers (*Grundbuch* and *Firmenbuch*), *Editsdatei*, *Justiz- Auktion* (internet auction platform of the justice system) and the Federal Law information system to name a few.

³ Silver www.silver-pride.com, 'Digitising The World's Courts - England And Wales' (*Geldards.com*, 2019) <<https://www.geldards.com/digitising-the-worlds-courts.aspx>> accessed 8 November 2019.

⁴ *ibid*

The Case Automation in the Justice System⁵ (VJ) application supports all courts and public prosecutors' offices in keeping the registers of more than 66 different types of proceedings. Some types of proceedings (e.g. the order for payment procedure) are fully automated; court decisions are issued automatically and dispatched via a centralised mailing line. Submissions and decisions are transmitted via the Electronic Legal Communication (ELC) system and court fees are collected as cashless payments.

The Electronic integrated assistance (EliAs)⁶ for the public prosecutors provides IT solutions facilitating file administration in preliminary criminal investigations and approximately 2 million cases have been closed exclusively digitally. The electronic file management system also allows supports of the service of file copies on petitioners and an extension of EliA is being developed for known offenders. Austria also has a comprehensive automated prison administration mechanism⁷ by way of Integrated Prison Administration (IVV), Electronic Enforcement Management (eVM), and Integrated Business Management (IWV)

The Electronic Legal Communication (ELC), was introduced in early 1990 - the first country to establish such a system for online submission. In 2017, more than 94% of civil actions and 76% of enforcement petitions were filed via electronic submissions. In total, more than 14.5 million submissions were received online.

Austria is also one of the earliest countries to set up registers for Land (*Grundbuch*), Businesses (*Firmenbuch*) and all other federal laws (RIS). A process which dates back to early 1980s, these reserves provide easy access to users and publishers. The *Grundbuch* recorded more than 3.289 million Land Register folios in 2018, while the *Firmenbuch* has over 260,000 registered legal entities. The *Rechtsinformationssystem*⁸ (RIS) introduced in 1983, exclusively documents all

⁵ Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, 'IT Applications In The Austrian Justice System' (Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice 2018), p6 <http://file:///C:/Users/i7/Downloads/it-justizbrosch%C3%BCre%20englisch_stand%20dezember%202018.pdf> accessed 15 November 2019.

⁶ Ibid, p7

⁷ Ibid, p8

⁸ 'RIS - Information About The Legal Information System' (*Ris.bka.gv.at*, 2019) <<https://www.ris.bka.gv.at/UI/Erv/Info.aspx>> accessed 15 November 2019.

Austrian legislation, from Federal law, State law to Municipal law including judgements of the Constitutional Courts, Supreme and Federal Administrative Courts, various tribunals and other authorities. The RIS also encompasses all other decrees, announcements, regulations, and gazettes.

Turkey, on the other hand being a progressive nation and having won the UN's public service award in 2012, now has a national electronic service across all its judicial functions. The service allows lawyers and citizens to examine files, pay application fees, submit their documents and claims and file cases electronically to any court in the country. As a case progresses, the system allows the user to access all relevant information including the day fixed for the trial. Stemming from this transformation of its judicial system into a digitalised mechanism has resulted in a service that is faster, more transparent and more cost efficient. Moreover, advanced video conferencing facilities also mean there is less need to transfer prisoners to court, other than in exceptional cases. The system which has close upon two million users, had led to savings of hundred million dollars and has created a virtually paperless working environment thereby supporting ecofriendly governance and social responsibility⁹.

In the efforts of transformation to a digitalised and digitized era of legal and judicial functions, it is vital that all personal, including lawyers and judges be given adequate training in the newly emerging process. In India, for instance, there is a single training centre working to support professionals wanting to learn more about the practice and principals sustaining the delivery of e-courts.

3. South Asia

India's first e-court was opened at the High Court of Judicature at Hyderabad, a common high court for the states of Telangana and Andhra Pradesh. This programme allows the user to file an appeal in the Supreme Court online by merely registering themselves with a number in the

⁹ Louise Tickle, 'Online Justice: Why Courts Should Explore Emerging Digital Possibilities' (*the Guardian*, 2019) <<https://www.theguardian.com/public-leaders-network/2017/jan/16/online-justice-courts-explore-digital-possibilities>> accessed 10 November 2019.

already existing data base and uploading the grounds on which the appeal is made. As soon grounds are filed, the entire paper book of the High Court gets transferred to the Supreme Court. So, the paperwork of the Supreme Court is complete. It is replaced by the grounds of appeal.

Though considerable attempts have been made in digitizing and digitalising the Indian legal frame work, Shri Kishore Mandyam, Co-Founder at DAKSH Society India, at a conference on ‘The Digitisation of The Indian Legal System’ stated that in India there are around 2.3 Crore cases pending and that it would take around 19 years to clear these cases. Mr. Mandyam stressed on the importance of embracing the technology in order to efficiently dispose of the cases¹⁰.

Countries that lag behind in efforts to reach a more streamlined, accessible online legal system and a judiciary are often struggling not just with the upfront costs of investment, but also for having failed to convince lawyers and court clerks who are deeply engrained in the particulars of existing protocols that there could be another way of doing things.

Much like other developing and transitional countries, the judicial system in Bangladesh faces the same constraints and setbacks. Though the Bangladeshi judicial system is considered to be largely independent, the system lacks performance measurement benchmarks and a nation-wide standardisation of case management processes that needs to be regulated as the number for pending cases are at over 3 million cases. This stark issue was addressed by the Honourable Chief Justice of Bangladesh who highlighted that highlighted the interplay between law, technology and societal developments as inseparable from one another¹¹,

"the law must assume new dimensions to suit the needs of an IT-based modern society and it should play a dynamic role like a living organ"

¹⁰ 'Discussion On Digitisation Of The Indian Legal System - Productnation' (*ProductNation*, 2019) <<https://pn.ispirt.in/discussion-on-digitisation-of-the-indian-legal-system/>> accessed 10 November 2019.

¹¹ 'Transforming Towards Digitalization Of Bangladesh Judiciary' (*UNDP in Bangladesh*, 2019) <<https://www.bd.undp.org/content/bangladesh/en/home/ourperspective/ourperspectivearticles/2015/07/09/transforming-towards-digitalization-of-bangladesh-judiciary.html>> accessed 10 November 2019.

4. South East Asia

Within the next ten years Thailand aims to be the digital hub of the Southeast Asia. Its main attributions being Thailand's ability to adapt to upcoming developments in the digital world willingness of Thai policy-makers to accommodate new and innovative digital trends and methods. And in order to make the country a more attractive international investment area, the government passed then Electronic Transaction Act B.E. 2544 (2001) (ETA), which came into effect on April 15, 2019. The ETA aims to mitigate or eliminate difficulties that arise in electronic transactions and harmonize Thailand's electronic transaction law with the United Nations Convention on the Use of Electronic Communications in International Contracts. In doing so, it has had vast practical impacts on Thai contract law and court procedure.

The ETA now permits any action that is imperative to be in writing can be executed in the form of information generated, sent, received, stored, or processed by electronic means, such as electronic data interchange, electronic mail, telegram, telex, or fax, where subsequent reference can be made on such information assuming that it is accessible and without altering its original meaning or sense. Any person denying the validity or enforceability of a contract entered into through "Automatic Electronic System for Data Exchange" (AESDE) on the grounds that there was no natural person involved in each operation of the AESDE will do so to no avail as the ETA prohibits any such contradiction¹².

Finally, courts and other government organisations under the Constitution of Thailand are now in a position to apply rules and procedures for electronic transactions in the public sector, as prescribed by royal decree, to court proceedings and other dispute resolution mechanisms¹³.

¹²(*Boi.go.th*, 2019) <[http://www.boi.go.th/upload/content/2017-07-24%20Thailand%204.0%20-%20Digital%20Economy%20\(002\)_35798.pdf](http://www.boi.go.th/upload/content/2017-07-24%20Thailand%204.0%20-%20Digital%20Economy%20(002)_35798.pdf)> accessed 10 November 2019.

¹³ Thammapas Chanpanich and Gvavalin Mahakunkitchareon, 'Thailand's Legal System Undergoes Major Digital Reforms | Tilleke & Gibbins' (*Tilleke.com*, 2019) <<https://www.tilleke.com/resources/thailands-legal-system-undergoes-major-digital-reforms>> accessed 15 November 2019.

Singapore, already being a logistic and arbitration hub in Southeast Asia, identified the need to adapt its legal services to the evolving technology and digital sphere and launched a white paper on 'Legal Technology Vision'¹⁴. Put into paper by the Singapore Academy of Law, the Legal Technology Vision call action for lawyers to participate and incorporate benefits of legal technology into their legal practice. The legal technology vision, known as the (AI)² Model, is a four-pronged approach planned to be developed over five years. The first prong, spanning over 18 months, aims to achieve a baseline suite of legal technology, communication capabilities for digital age legal services and adoption of specific technologies. Under the second phase, improvements to baseline legal technologies are made to cater to the needs to the evolving legal sector. While the results of the phase are expected over a period spanning three years, this focuses on capacity development of the new age lawyer and legal services.

During the third prong, the stakeholders and technologies will be merged to digitalize the legal profession. The final and the fourth prong focuses on the landscape of legal technology, as opposed to technological products or services. Smooth functioning of legal technological solutions depend and conform upon the ecosystem it's provided by. Thus, it is necessary to provide necessary networking facilities, research and development, venture capital investors with a strong cyber security infrastructure to realize the legal technology vision.

Further, the Ministry of Law, Law Society of Singapore along with Enterprise Singapore and the Infocomm Media Development Authority initiated a \$ 3.68 million funding scheme that allocates upto \$ 130,000 annually for each Singapore law practice that contributes the movement digitalize and establish the country as a legal-tech hub

¹⁴ Singapore Academy of Law, 'Legal Technology Vision - Towards The Digital Transformation Of The Legal Sector' (Singapore Academy of Law 2017) <[https://www.sal.org.sg/Portals/0/PDF%20Files/Legal%20Technology%20Vision%20\(final%20for%20print\).pdf](https://www.sal.org.sg/Portals/0/PDF%20Files/Legal%20Technology%20Vision%20(final%20for%20print).pdf)> accessed 16 November 2019.

5. Conclusion

In conclusion, while nations identify the risks and drawbacks that's attached to legal-tech solutions, there is a positive trend in all corners of the world to digitalize the legal profession owing heaps of paper wasted annually. Further, it is imperative that the legal profession and courts digitalize their functioning and operation to concur with the ever evolving technology and its application and adoption in daily activities. The legal services have to match up their capabilities and efficiencies, to meet the requirements of the changing electronic transaction landscape and sophisticated white-collar crimes, moving away from orthodox legal practices which requires bundles of manual paper work.

It is also important to understand that an advanced legal system is a not a prerequisite to adapting legal technology as countries like Uganda and Cambodia, with no rich legal history have taken initial steps towards automating the profession.

Sri Lanka, inherent to a long standing judicial and legal system, should take proactive measures to incorporate technology and make use of the readily available digital facilities to optimize its legal services. However, this can only be successfully achieved if there's a thorough understanding of the loopholes, drawbacks and risks of such digital transformation, and after taking necessary cyber infrastructure measures to address the same.