



THE IMPACT OF COVID-19 IN THE COURT PROCEEDINGS IN SRI LANKA: A CRITICAL ANALYSIS ON THE SCOPE FOR ADOPTING THE MODERN METHODS USED DURING THE COVID-19 PANDEMIC

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INTRODUCTION

COVID-19 has impacted negatively not only on the medical system, but also the legal system. Courts all over the world have had to react quickly to the pandemic's challenges and the resulting social distancing regulations. People were separated from their loved ones, societies, schedules, aspirations, and occasionally their planned futures in 2020, so much so that this year was named “the Great Separation” (Marie, 2020). People witnessed widespread digitization of the world to bridge the gap created by COVID-19, yet many people do not have access to robust or accessible connective technologies. COVID-19 placed large pressures on court systems, demanding urgent transitions to digital platforms. Virtual courtrooms are fragmented and exposed to technical failures. COVID-19 resulted in adjournments around the world as courts came to a halt, despite efforts to make the best of the situation, yet the judicial system could not come to a complete halt. (Krans, 2020).

During the early 2020, as a result of the island wide lockdown in Sri Lanka most of the essential services such as food supply chain, education services and many other government services were severely disrupted. Due to travel restrictions and other difficulties, the Sri Lankan Court system did not function properly. Even though the Judicial Services Commission from time to time issued various circulars with directions as to the functioning of Courts during the pandemic period, implementation of those guidelines were not very much effective.

According to Laws of Procedures in Sri Lanka certain steps in Cases have to be taken within a specific time frame. In addition to that, according to the Prescription Ordinance, Certain actions have to be filed within a specific time period if such time limits are not adhered to, that would result in the dismissal of such appeals, applications as well as actions. In addition to that it was found that there were lot of litigants and witnesses who could not come to Sri Lanka from abroad due to travel restrictions in such countries to give evidence in pending cases in Sri Lanka. Sometime even within Sri Lanka persons could not travel due to various travel restrictions. E-filing of written submissions in the Court of Appeal and the Supreme Court, which was introduced for the convenience of litigants during the COVID-19 pandemic, also demonstrates the advancement of technology in the justice system.

To remedy these types of situations, the Parliament enacted ‘Coronavirus Disease 2019 (COVID-19) (Temporary Provisions) Act’. The Ministry of Justice had appointed a committee for the purpose of drafting this law and the draft Bill of the said committee was approved by the Ministry when the Bill was presented to Parliament and placed on the order paper, its Constitutionality was challenged in the Supreme Court. Accordingly, a three-judge bench of the Supreme Court was constituted to determine the same. By majority judgment, certain clauses in the draft Bill was held to be unconstitutional and it was held that if there were to be made law, a two thirds majority of the Parliament (including those who are absent) should vote for such Bill and in addition to that those provisions had to be approved by people at a referendum. Therefore the Bill re-drafted according to the amendments suggested by the Supreme Court and the Bill become law of the land when the Speaker certified it on 23.08.2021. It must be noted that the operation of the Act was made retrospective, and it operates for a period of two years starting from the 1st of March 2020.

Research Questions

- What are the different methods adopted by the legal systems around the world to overcome the challenges of COVID-19?



- How those new methods would enhance the existing legal system in Sri Lanka?
- What are the impacts of adopting technology on Courts and the Judiciary?
- Why Sri Lanka has failed to implement Digital legal system?
- How can Sri Lankan legal system adopt these technological advancements to modernize Sri Lankan legal system?

Research Objectives

- To examine the various methods used by the legal systems in different jurisdictions.
- To analyze how those methods can enhance the existing legal system in Sri Lanka.
- To appraise the impacts of introducing new methods of technology on Courts and Judiciary.
- To discuss the factors that hinders the digitalization of legal system in Sri Lanka.
- To stress the fact that the importance of adopting technological advancements to modernize Sri Lankan legal system.

METHODOLOGY

Doctrinal Legal Research has been dominant in the realm of research in law field for over centuries. This method always assists to construct new legal theories, principles and doctrines, to test them and add new knowledge in the legal scholarship. Based on primary and secondary published sources, this paper aims to provide a broad and much more comprehensive picture of the worldwide scenario of court and justice administration. This research will look at how other jurisdictions responses have evolved from primarily face-to-face sessions to virtual court processes (as supported by internet technology). This will further examine how certain nations have reacted to this move to online mode while maintaining an emphasis on access to justice by using a comparative approach.

RESULTS AND DISCUSSION

Key benefits of digitalization of the Sri Lankan Legal System

Technology plays definitely a fundamental role in contemporary judicial work and life, both on and off the bench. Along with immense benefits, it imports new challenges that increasingly impact upon courts, litigants, and witnesses. Its advancement has always been a transformative force in any sector. Legal departments and law firms are becoming more attentive of the cost efficiencies provided by modern technology because the effect of legal technology is rapidly transforming their way of operating day today work.

These technological advancements and distance litigation services have numerous advantages. They would enable filing written submissions, petitions and other related documents to the courts in electronic form, litigants can also monitor the status of their applications via online, judgments and orders can be obtain easily and a huge amount of time and costs can be reduced by the introduction of these novel technologies (Musial,2021). When sentencing convicts with similar profiles, digital justice can assist judges in making more appropriate sentencing decisions. Litigants can interact with the justice system in novel and improved ways with the assist of online portals. For example Court staff,



can provide information and advice, a method for paying fines and fees, and a list of opening hours via a portal, while citizens can schedule hearings for minor offenses.

Also it is observed that paper-based procedures create opportunities for corruption in many jurisdictions. Charge sheets and other documents may be altered or simply disappear. Cases may be dismissed due to missing documents before the defendant's guilt or innocence is determined. Attorneys and judges can use digital technology to access information remotely, such as online legal documents, briefs, case records, and up-to-date hearing schedules, as well as communicate and collaborate in real time. This type of remote interaction between judges and attorneys is already taking place in places like Israel and the Netherlands.

Legal technologies can also have broader social effects on the communities governed by the legal systems that adopt them, in addition to the legal implications they can have by enabling changes to the law itself and the functional implications they can have by changing methods of legal practice and the way legal systems work. Research refers to these non-legal implications as "generic implications" since they are similar to those that can result from any technology. This kind of implication frequently results from the substantive and functional modifications made possible by legal technology. Because the legal system is so thoroughly intertwined with society, changing the substance of the law, or altering its practice in functionally important ways, will almost certainly have follow-on effects that are non-legal in nature.

As previously stated, the term "access to justice" relates to the idea of having immediate access to courts and judges. In order to prepare for a potential 'case boom' in the post-pandemic age, courts around the world must adopt comparable tactics. Apart from the broad use of technology to aid court services, it may be an ideal option for jurisdictions to cut delays by encouraging individuals to use alternative dispute resolution (ADR) processes instead of traditional court action.

In this new pandemic age, it is indicated that online modes of conflict resolution, often known as Online Dispute Resolution (ODR), can encourage resolution while promoting social distancing. Even during the crisis, the swift move from traditional judicial processes to an online method has aided the public, lawyers, and experts in accessing the justice system in various jurisdictions.

The various methods adopted by legal systems around the world to overcome the challenges of COVID-19

Digital technologies have already begun a radical transformation of the justice system and legal profession. It is further observed that becoming a digital lawyer in this rapidly transforming legal arena is a vital aspect to become successful (Ikramov, 2021). As a prompt response to COVID-19 pandemic many courts have quickly developed video conferencing facilities as a solution for hearing process. In reality, some courts have struggled with this due to various factors while others have navigated the process with fewer complications.

During the pandemic period some countries were ready to go virtual while other struggled, because of that there was an international digital gap. Before COVID-19, Countries such as England, Australia, Brazil, Indonesia and Finland began to remodel their courtrooms. Singapore was considered as a model for digitalized court rooms prior to the pandemic. Everything was available online while participants also attended via electronic devices (Thompson, 2021).

These countries were better prepared for such eventualities than Sri Lanka, who had to confront with systems which are largely out dated, lacking access to the internet, virtual meeting management systems, e-case lists, online submission systems, modern database, etc., which resulted in delays,



mismanagement, corruption, and unnecessary expenses. In reality, countries that rely on paper documents, such as Canada, were most affected by the transition.

Some global critics have expressed concerns that conducting judicial processes online during the COVID-19 pandemic places the notion of 'Open Courts' at danger (Sehgal, 2021). Others have raised the possibility that the COVID-19 situation may serve as a catalyst for revealing technology's potential to improve access to the legal system, while underlining "the importance for a systematic and scientific approach to integration of technology in the judiciary. E-judiciary is a step toward modernizing legal systems, and computerization in the judiciary has proven to be a useful way of minimizing the unnecessary delays in lawsuits.

As a result of these measures, court virtual hearings are becoming more and more common by the day. Normally, virtual proceedings were being conducted in the pre-COVID-19 crisis era generally in criminal cases where the accused could not be produced physically before the court due to security reasons. Some of the technologies and methods of digitalization used by countries around the world during the pandemic era that can be adopted in post pandemic era are discussed below.

➤ Online dispute resolution (ODR)

ODR provides a new method for resolving civil claims and disputes. ODR avoids overburdening courtrooms by using an online platform outside of the traditional court system. Rather, the case is resolved remotely by a judge or mediator and the two parties using, online video conferencing technologies such as Skype or Zoom. ODR is already available in some Nordic countries, where it is accessible through the same online portal that citizens use to pay taxes, request social security, and interact with the government in other ways. Expansion of this method into other regions is expected in the coming years. The purpose of implementing ODR is not only to introduce technology into the courts, but also to use it to improve the court process and to use court modernization as a chance to examine core court processes and systems (Karikkandathil, 2016).

➤ e-Filing and Electronic Exchange of Procedural Documents

Front-office technologies for civil lawsuits including e-filing and other methods can be used for exchanging procedural material electronically. In the course of court proceedings, these technologies enable the exchange of data and documents created and maintained in electronic devices. E-filing (i.e., the filing of procedural documents), e-summoning, e-delivery of deeds, e-payment of court fees, and all other solutions that enables the establishment of electronic channels of communications between courts, lawyers, and litigants in civil lawsuits will be benefitted by the electronic exchange of data and documents in the course of judicial proceedings because it will increase the efficiency and legal certainty.

➤ Artificial Intelligence

Artificial Intelligence (AI) is an innovation of the modern computer technology that is trying to emulate human behaviour, and this would provide number of opportunities for solving justice problems. In a data-driven world, data transformations that integrate AI are a very crucial way for organizations to enhance speed and accelerate time to value. AI offers a plethora of possibilities for resolving legal issues. The use of information technology in courts as a tool for direct aid for judges, prosecutors, and clerks, court administration and case management, and communications between courts, professionals, and court users has been the most integrated into the legal profession thus far. The advent of a AI to legal technology has transformed the sector, as well as digital applications such as contract administration, timesheets, research, and legal analytics.

➤ Improved client service and online legal services



In many countries such as UK, USA and India legal services have become more accessible as a result of progression in AI. The number of online platforms that allow potential clients to contact with lawyers for fundamental legal services, such as trademark registration, execution of wills, leases, and contracts, are gradually expanding. Legal technology has introduced novel opportunities for optimizing the lawyer-client connection. Various portals and collaboration platforms aid the systems, allowing for faster turn-around times, virtual presence and availability, transparency into matter status, content sharing, research, and audio/video capabilities, as well as advanced security technology.

➤ Virtual courts

Is it really necessary for a police officer or a government servant to take hours of his valuable work to deliver a five-minute testimony? Also should an expert witness have to travel long distances across the country just to testify for a few minutes? These are the types of questions that are fuelling the virtual courtroom's ascent. The impact virtual courtroom would be felt in many ways. The speed and quality of justice, would definitely improve. It is observed that thousands of court hearings have been postponed today due to the absence of official witnesses who could testify. Obtaining this testimony would be considerably easier with a virtual courtroom, and more trials might be completed. This would also save money by not having to transport as many inmates to numerous hearings and trials daily.

The Impact of the use of Technology in the courts and the Judiciary

Healthcare and judicial systems struggled to deal with the new ways of operating and increased demand as the COVID-19 pandemic caused chaos around the world. While the effects of health systems and workers received a lot of media attention, this was not always the case in the justice sector, where extremely out-dated court systems based on legacy technologies often failed to keep up with a world that required social distancing, remote arrangements, and document exchange via electronic methods (Tom,2020). The modifications that were adopted in the court system were not uniform. This is due to the fact that certain jurisdictions operate 'modern' courts (which could more effectively utilize current technologies), whilst in many others, courts remain to repeat decades-old methods to litigation (or even centuries). Nevertheless, responses varied, with some sectors of the justice system seeing an increase in workload and others seeing a decrease in demand.

In response to COVID-19, a large number of courts around the world have made an immediate switch to online mode. Given the advantages of continuing to provide court services, the use of the internet and other online technologies in the judicial system has raised interesting issues about the impact on the right to access justice, the right to a fair trial, and the administration of justice in general (Karen, 2011). The right to access to justice, in particular, is the cornerstone of international human rights law, as well as the rule of law and the principle of equality before the law. For example, under Article 13 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), States Parties need to provide procedural and age-appropriate accommodations to facilitate an individual's participation as a direct and indirect participant in a trial (including as witnesses). The principle of access to justice is regarded as an overarching principle which must be considered in connection with the Convention's other rights. Access to justice has also been used to describe a variety of other rights, such as the right to know about the procedures, information, and locations employed in the administration of justice, as well as the right to be tried without undue delay. As a result, it must be addressed in all systems of dispute resolution and respected in countries that have ratified human rights treaties.

It is to be noted that digitalization has different aspects. Some of them are storage of data, exchange of data, improving the structure and integration of information and speeding up the communication. These aspects would ensure the reduction of transaction costs and unreasonable delay in legal proceedings. It has become evidence that both litigants and legal practitioners must have access to justice also online, from their laptop at home. The increasing digitization of our living environment



has far-reaching implications for private law and the enforcement of private rights. The legal system has changed dramatically in the last few years: the modern client shops online, looks for first legal aid online, and many lawyers communicate with their clients via the Internet (Fries, 2016).

Policymakers have been concerned about the reform program's impact on access to justice, but their efforts have been hampered by the lack of standard frameworks for evaluating the impact of these initiatives on access to justice. At the same time issues on data privacy and security have been prevalent with the introduction of these modern technologies. Digitalizing courts has the ability to capture more data in order to better understand what works in terms of assisting persons in obtaining justice. However, to do this, it is fundamental to develop an evaluation framework for digital reform efforts capable of measuring access to and the fairness of the justice system. It is also examined that existing frameworks lack objective measures of procedural justice and they do not include measures of substantive justice and systemic bias in the court system.

What's holding back the growth of digital justice in Sri Lanka?

Despite Sri Lanka's decades of experience dealt with many disasters, COVID-19 offers a unique issue, necessitating the establishment of innovative frameworks. It is no wonder that during the COVID-19 crisis, e-judiciary is being praised as a better mode of justice administration, with enhanced efforts being made to achieve its speedy universalization across the country. However, the transition poses a number of issues that must be resolved as soon as possible in order to minimize undue hardship for lawyers and litigants during the post pandemic period (Caserta, 2020). The COVID-19 situation, on the other hand, has thrown up new challenges in the country's justice and court administration, particularly those addressing the courts in the aftermath of the lockdown.

Even though there is a lot of momentum behind it in other jurisdictions, In Sri Lanka digital justice still has a long way to go. It is observed that the rule of law is a drawback in some countries including Sri Lanka. Also, certain digital technologies may not be permitted in the courts. On the other hand, the lack of required facilities and infrastructure are also hindering the digitalization process. More importantly it would be a challenge to train the judges and court staff to use of digital technologies if the training is underfunded that may also delay the adoption of digital technologies into the legal system.

In addition, computer literacy of vast majority of Sri Lankan population is very low. For people who lack a computer or professional computer skills, putting court proceedings online can cause an added layer of problems. The level of automation at record rooms is still in its early stages, with more than half of all questions requiring human intervention. The use of digital solutions like robots, bots, chat bots, more advanced Virtual Agents with AI and machine learning at the help desk are currently limited. As a result, each and every enquiry must be handled by a human, adding to their workload and preventing them from learning about more complex technical solutions. Even if everyone has proper access to these technological advancements, the basic challenge with this issue is that not everyone is comfortable with the new tools and methods of justice delivery (Wedasinghe, 2020). The main objective of the digitalization should be to make justice more accessible to all members of society.

RECOMMENDATIONS

Legal systems are transitioning from legacy IT systems to digital technologies, which is redefining how justice is delivered. Without the development and implementation of fundamentally new legal structures with a long-term commitment, success in the digital economy will be impossible. The legal identity of technologies, copyright and related laws and insurance, in particular, must all be thoroughly examined. Therefore research recommends to amend the existing Supreme Court rules (following the procedure mentioned in the Article 136 of the Constitution) or to introduce a new code to govern the rules and regulations regarding the digital courts proceedings.



Aside from the growing need for widespread use of technology in court services, jurisdictions can reduce unreasonable delays by encouraging the use of alternative dispute resolution (ADR) and online dispute resolution (ODR) instead of pursuing traditional methods through the courts. Therefore it is recommended that Sri Lanka should also introduce alternative methods of dispute resolutions by using these modern technologies. Technological challenges are also another fact of hindering the adoption of newest methods. WIFI issues, blurry images, frozen screens, sudden loss of connection, malfunctioning cameras, and poor sound quality are all common problems in the virtual courtroom, which are unavoidable. These challenges delay court procedures and cause participants a huge amount of frustration and distress. They cause postponements, hinder attorneys' capacity to converse with their clients, restrict family members from watching the proceedings, and contribute to prolong pre-trial confinement, among other issues. It's also difficult to share papers in a secure manner.

Also in order to enhance the digital literacy societies must consider access to ICT to be a basic human right, and therefore must ensure that everyone has timely access, skills, and technical assistance to effectively navigate a fully digital world. For the elderly, doing so may require access to technology and training tailored to their different levels of experience, disability, and cognitive ability. As courts become digitalized, it is critical to ask the technology industry which build digital solutions to ensure that the settlements achieved offer respect to people's rights. The ability of the developing world to access technology frameworks, the effectiveness of existing systems, institutional bias in online systems, and potential pushback from the judiciary are all concerns voiced by audience members about court digitalization efforts. Therefore it is also recommended that Sri Lanka court must adopt the methods used during the pandemic period, in order to update and to modernize the existing legal system. That would eventually reduce the delay, mismanagement, corruption, and unnecessary expenses of the functioning of the Courts.

CONCLUSION

Greater access to judicial services or institutions is a necessary prerequisite for improving the value they provide, but it does not guarantee that the judicial system will have a positive impact on economic growth and social development. Legality and legitimacy of judicial actions are critical prerequisites for ensuring positive effects on economic growth and social development. Although there is much uncertainty about the future of legal systems, it is almost certain that technology will play an increasingly high-profile role in practicing, accessing, enforcing and making the law. It is essential that, as we consider the future, we do so in a sufficiently nuanced manner to ensure we both benefit from the efficiency gains that legal technologies can offer, while also avoiding their more pernicious possibilities.

The COVID 19 pandemic has impacted in a very negative manner to the society. At the same time it is open many opportunities to think in an innovative manner as to how to overcome the difficulties created by the pandemic itself. It is high time for the legal fraternity and stakeholders too to get actively involved in this process to adopt the methods that we have used to counter the challenges we faced during the pandemic in order to digitalize the existing court system in Sri Lanka.

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