

For the past three weeks now, subordinate and high courts throughout Pakistan have remained unavailable for hearing of cases other than

and unemployment will make for an ugly mix in which tolerance of the population for state institutions that cannot or will not deliver will run

The case for smart courts

Digital transformation of courts in Pakistan

Sub-Title/Date

urgent matters and *habeas corpus* petitions. Only the Islamabad registry of the Supreme Court has remained operational. The spread of the COVID-19 has ground our justice system to an almost complete halt despite the initial resolve to keep the courts functional. This article examines our courts' existing (lack of) technological capacity¹ that has prevented the judiciary's laudable policy of carrying on dispensing justice and suggests certain essential modernising reforms, the required statutory support and the associated risks and challenges. Given that a wide range of digital services are available, this article focuses primarily on those that are more easily implemented and effective now.

In the post-COVID 19 world, the ensuing depression from loss of life and property, recession

¹ In 2002, Asian Development Bank's \$350 million package earmarked for the 'Access to Justice Program' in Pakistan was implemented through the Law & Justice Commission of Pakistan. The related Access to Justice Development Fund of Rs. 1479 million, of which 60.3% was distributed to the Provinces, was to be spent on automating procedures - 52% of which was earmarked for the Lahore High Court alone. Case Management System, Management Information System, I.T. Training, e-Court system, video conferencing, Case Law Management System, Accounts Management System, Files Tracking System were amongst the list of measures that are supposed to have been put in place in all courts around the country. While some of these such as SMS alerts of hearings, online access to reported judgements, biometric verification access to online cause lists and video conferencing (offered by the Supreme Court) are available, these automations are more of static information and have not enabled courts to transform their functioning or the Courts of Pakistan could have remained functional during the current lockdown.



thin. This unlikely driver of digital transformation is the judiciary's golden opportunity to equip itself in the interim and emerge as the leader in public service delivery; its role may also prove pivotal in creating a conducive investment climate. In the recent experiment of the 'Access to Justice Program', it was statistically established that a minimal investment in technological infrastructure for improved delivery of justice (0.1% of GDP) resulted in an exponential boost in investor confidence (0.5% of GDP).

In several countries around the world, courts are continuing to dispense justice, by either taking advantage of their digital infrastructure (courts in Abu Dhabi and UK)² or leveraging available technology (courts in India and the US).³ Digital transformation is made all the more possible in Pakistan on account of two important factors: firstly, the recent boom in our software and start-up

² For Abu Dhabi's digitalized justice system, visit: <https://www.adqm.com/adqm-courts/digital>

The UK's judicial digitalization reforms are available at: <https://www.gov.uk/guidance/the-hmcts-reform-programme#progress>

³ Last week, the High Courts of Kerala, Bombay and Calcutta used Zoom video conferencing to hold hearings. The High Court of Bombay has issued guidelines for video conferencing giving power to the Court to mute/unmute participants, ejecting participants for non-compliance with no redressal mechanism for such removal, prohibiting recording and laying down a dress code for virtual hearings for lawyers and non-legal participants. The Supreme Court of the United States of America has issued an emergency order laying down mandatory privacy and security settings in participants' Zoom accounts so that hearings can continue uninterrupted for those who comply with the order.

ecosystem that has made available locally innovated cheaper digital technology and, secondly, the introduction of the smart phone/3G/4G technology that has spawned an entire generation of mobile device users whose degree of technical savviness outstrips their formal educational qualifications. In other words, the adoption of digital technology, universal access to mobile connectivity and e-governance is the natural progression for a generation that expects no less from the State.

Essential reforms

Every judicial proceeding comprises of five stages: 1) filing, 2) issuance/delivery of notices, 3) disposal of interim applications, 4) hearings, which in original proceedings will include production of evidence, cross-examination and oral arguments, 5) announcement of final judgement. In order for these stages to be remotely and digitally managed, the following reforms are recommended:

E-filing

This stage is the gateway to a smart court, requiring the input of data for smart technology to process efficiently and transparently. It will require a user-friendly interface that offers: registration, a unique username/password for login, a drop down menu of the nature of the document(s) to be filed, a series of questions to be filled by the applicant that include all of those that are already listed on the hard copies of filing forms such as personal details of the litigant and/or counsel, nature of pleadings being filed, category of matter (tax, property, service, bail, etc.), details of opposing parties, list of annexed documents/index, authorizing documents, value of suit, etc.. Smart computing will calculate the fees and duties due, issue a payment slip and a receipt of the PDF form of the application. Secure systems needed for online payment, verification of the applicant's biodata and electronic signatures are already in use by banks, mobile networks, digital platforms and utility companies, supported in turn by CNIC and biometric verification already completed by NADRA and mobile network companies. The introduction of Personal Identification Numbers (PINs) and One Time Password (OTP) is beginning to displace even the need for CNICs in some public service delivery models. Therefore, the early adoption of such a

system is entirely possible by taking advantage of this "low-hanging fruit" and making e-filing available for any person to file at any time from any device. E-filing can also incorporate the courts' existing automation systems such as the Case Alerts Management System and offer an option to review hard copies of the application, if required. A similar one-window fast-track service should be made available for filing of urgent applications. E-filing can be incentivized through offering shorter waiting periods for confirmation of processing and fixation of case, tax incentives, reduced fees, etc.. It also offers many ancillary advantages including, but not limited to, smart identification of applicants to highlight previous litigation history, reduction in paper, clubbing similar categories of matters, automatic allocation to the most relevant Bench/court, elimination of logistical delays due to unavailability of hard copies in the courtroom, offering of incentives to taxpayers, option to schedule a hearing by consent of parties, option for video conferencing, etc.. Over time, the transition to digital filing only can replace the need to file physically. In 2-3 years, all evidence can be presented digitally with equal access available to all participants. Eventually, with the introduction of Artificial Intelligence (AI), e-filing can become increasingly sophisticated and efficient.

For summons and notices' process to be automated, these can be served via a verified email/Short Message Service (SMS)/WhatsApp to the known email address or cell number of the recipient. A unique Quick Response Code (QR Code), a black grid that looks like a maze and can be scanned for information can be generated on each such e-notice/summons. The scanning of the code by the recipient through his/her smartphone can trigger a confirmation to the sender that may account for receipt of notice. A QR code can also contain a link to the details of the date, time and location of the hearing without the need to visit a separate website; these can be generated for all participants. The current system does provide for receipts of service through courier, registered post and/or public notice to be placed on the court record, yet courts continue to adjourn cases for further hearing on account of non-response to notices. This practice has to be curtailed strictly by the courts themselves.

E-hearing

Since March 2020 with the imposition of work from home policies and lockdowns, business applications with a video conferencing feature became the most downloaded applications worldwide; the use of some (Microsoft Teams and Zoom) is estimated to have increased between 500-760%.⁴ Video conferencing is already in use by the Supreme Court in all of its registries and even in some civil courts in cases where statements of witnesses who are abroad need to be recorded. If the same customized technology will require a lot of time to be transferred for use by all other courts, the afore mentioned applications can be downloaded in seconds and put to immediate use. Guidelines for decorum, appearances, permissions, timings, etc. can be issued. Existing guidelines such as the Seoul Protocol on Video Conference in International Arbitration released in March 2020⁵ and others can be studied, borrowed from and modified according to our needs.

Video conferencing aids inclusion of otherwise marginalised and vulnerable victims and witnesses who can be provided with a safe environment for deposing evidence and being subjected to cross-examination. Similarly, disabled and differently abled participants can also be accommodated. Litigants from rural areas can participate in proceedings without incurring the cost of travel to attend hearings.

E-records

A less explored technological leap is audio/video recording that allows transcripts of proceedings to be produced for every hearing. This measure eliminates the need for judges to take notes and instead, concentrate on the proceedings; the transcript makes it possible for judges to refer to exact statements instead of relying on memory – their own and others'; it has a chilling effect on misdemeanour during proceedings as every utterance forms part of the record; it allows judges

to annotate the transcript as it scrolls past and mark it for later review, thus saving time and increasing efficiency and it prevents procedural abuse and corruption. E-recording paired with e-hearing even has the potential to integrate speech recognition and transmute speech in real time, thus making it possible for every participant to follow the proceedings by reading the text that may even be displayed in multiple languages.

E-certification

Once an order or judgement is announced, applications for certified copies are processed by the relevant branch of the court and a copy prepared for collection by the applicant in due course. An online application and corresponding payment can result in a certified copy being mailed within a stipulated number of days via email and courier, the dispatch of which will be deemed as proof of receipt.

Statutory amendments

In order to effectuate the recommended measures, amendments to the relevant statutory procedural framework will need to be made, primarily, to the Code of Civil Procedure, 1908 (inclusion of definitions of "e-filing", "e-hearing", "e-records", "e-certification"; amendments including, but not limited to sections 128, 142, 143; Order III, Rules 1,3,5,6; Order IV, Rules 1&2; Order IX; Order X; Order XVI, Rule 21; Order XXIV; Order XXVI; Order XXVII; Order XXIX; Order XXX; Order XXXVI; Order XXXVII; Order XXXIX; Order XLVI; Order XLVIII; Order XLV), the Qanoon-e-Shahadat Order, 1984 (including but not limited to Articles 77, 130 and 164), Supreme Court Rules, 1980 and the Rules of each individual High Court.

Risks and challenges

Transformation of the system will incur challenges that may be classified as systemic and technical. Systemic changes are those associated with resistance to digital transformation from groups that are entrenched in traditional modes of operating and are change-averse either due to mistrust of technology or fear of redundancy or both. These

⁴ According to Productiv: <https://productiv.com> and Viewers Logic: <https://www.viewerslogic.com>-companies that track the use of software.

See also:

<https://www.theguardian.com/technology/2020/mar/31/zoom-booms-as-demand-for-video-conferencing-tech-grows-in-coronavirus-outbreak>

⁵http://www.kcabinternational.or.kr/user/Board/comm_notice_view.do?BBS_NO=548&BD_NO=169&CURRENT_MENU_CODE=MENU0025&TOP_MENU_CODE=MENU0024

can be partially overcome by offering training, reskilling and reallocating personnel and resources. Technical risks are: cyber-attacks, proliferation, hacking, high costs for training and support, limited access to high speed internet connection and high rates of illiteracy that limits the value of text-based information. Cybersecurity is a wide field that is catered to by experts whose services will necessarily need to be co-opted; most digital systems though, have inbuilt features for ensuring their secure functioning. Where the challenges related to literacy and ability are concerned, it is critical that the services offered are user-friendly for all, available in English and Urdu and all regional languages and supported by online tutorials, videos and prompts. It is likely that digital transformation of our justice system will spawn a collateral support system of resource centers, online legal aid help centers, etc., thus creating jobs and aiding the system at the same time and contributing to universal digital literacy which must be adopted as a goal for the future.

Conclusion

Digital transformation of courts is the key to making justice universal, portable and available and to boost investor confidence and thus, the economy. The judiciary has to examine the available technology and adopt that which works best, is most cost-effective and offers the best quality of justice; technology is only the means to the goal of providing effective access to justice.

Asma Hamid
+92-42-111-529-937
asma.hamid@asmahamid.law
www.asmahamid.law



Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

I would like to acknowledge with gratitude the valuable input of the following Associates: Muhammad Almas, Kaswar Gardezi, Zainab Kamran and Mahum Shahzad Laun.

As a precautionary measure against the spread of Coronavirus (COVID-19), we're working remotely, but our environmentally friendly paperless practices allow us to access all systems remotely as if we were in the office and to continue to offer you the same high-quality service you've come to expect from us.

What does this mean to you? Business as usual!