



UTILIZATION OF MODERN TECHNOLOGY CAN REDUCE DELAY IN CIVIL LITIGATION

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Fall-2021-22

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Abstract: Utilization of modern technology in courts of developed countries is not new, and these countries are now enjoying the benefits of a prompt justice delivery system. Bangladesh has started technologies though not at a desirable speed. Recently Bangladesh has amended some legal provisions, enacted new laws, and started a mega project to modernise the judiciary. But till now, so many things are left and almost no benefits of change are apparent.

1. INTRODUCTION

Modern technology can provide so many advantages and most importantly can save our time, which is similarly applicable in the case of the judiciary. Many first world countries have been able to significantly reduce the delay in civil litigation by utilizing modern technologies in courts. But due to lack of funding and some other reasons, a perfectly modernised judiciary is just a dream in many parts of the world, including Bangladesh.

2. LITERATURE REVIEW

2.1 Utilization of Modern technology- is it a must?

With the pace of technological advancement, many countries adopt different technologies in their judiciary to boost up the prompt disposal of cases. And new technologies have the capacity to bring revolutionary change if those technologies can be adopted in an effective way. "New technologies have the capacity to change the core values of civil litigation by making litigation more efficient and effective, by making the civil justice system more accessible." (Janet Walker & Garry D. Watson, 2008, P. 282) Really, new technologies can provide some convenience which is not possible to get in older systems. Not only in filing cases, but adopting technologies in a country's judiciary have so many amazing effects in case record classification, trial system and the like, due to which doing timely justice can be made possible. "The purpose of timely justice.....can only be achieved when all the required pieces of information concerning the disputes are available as well as retrievable and properly managed from the beginning to the end."(Mohammad Abu Taher & Siti Zaharah Jamaluddin, 2022, P. 318)² Without using modern technology, such an arrangement from beginning to end is not possible at all.

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² Mohammad Abu Taher & Siti Zaharah Jamaluddin, Enhancing access to justice through e-judiciary in Bangladesh: A study. UUM Journal of Legal Studies, 13(2), 317-344.
(<https://repo.uum.edu.my/id/eprint/29105/1/UUMJLS%2013%2002%202022%20317-344.pdf>)



2.2 Current state of civil litigation & different e-judiciary mechanisms

Still in Bangladesh, using modern technology in different sections of the judiciary is just a dream, and delay in civil litigations is a common phenomenon here. "Inordinate delay involving service of process. Too many adjournments are being indulgently granted. Audio and video evidence is not currently legally acceptable as evidence." (Mohammad Ikbal Hasan and Fahmida Johura Rupa, 2021, P. 53)³ All these steps involve so many ways that can be misused to lengthen a suit, and commonly parties who are in fear of being defeated, take the unfair advantage. All these things were common problems in many developed countries, and many of them got rid of such things through using different e-judiciary mechanisms. There are "various types of e-judiciary mechanisms such as Electronic Filing (E-filing), Electronic Case Management System (ECMS), Video Conferencing System (VCS), Queue Management System (QMS), and Case Recording and Transcribing (CRT)" (Mohammad Abu Taher & Siti Zaharah Jamaluddin, 2022, P. 325) If we start to use all these technologies in Bangladesh, the current state of Bangladesh judiciary will surely be changed in just a few weeks.

2.3 How much does procedure really matter?

Utilizing modern technology in judiciary will not bring any change in substantive provisions but it is really important now in Bangladesh to properly ensure substantive rights of people. Substantive law declares which right a party is entitled to get and procedural law determines the way in which the entitled person can enjoy his right. Proper procedure can ensure proper justice in the right way and wrong procedure does just the opposite, that's why procedural change is really important. "Procedure is the handmaid of justice; it is to be used so as to advance the cause of justice and not to thwart it." (Md. Shafiur Rahman, 2019, P. 416)⁴ Adopting new technology in the judiciary will not bring any chance in substantive provisions but will bring revolutionary change in procedure. And it is a must in countries where delay in civil litigation was and is a common phenomenon, to reduce the unusually long trial.

2.4 No room for unavoidable delays

Actually for the delay in civil litigation not only is the intention of parties liable but there are some delays which are unavoidable. Issuing summons by court, typing and printing judgments, etc are perfect examples in this regard which are in the hands of different departments of the judiciary, not in the hands of parties. And delay in doing such clerical works cannot be avoided if we follow the old practice. But, modern technology "reduces printing, binding, and review costs, which would improve document location and retrieval.....would eliminate up to 60 percent of court clerical work." (Ummey Tahura, 2021, P. 12)⁵ Besides reducing delay in clerical works, using modern technology can be surprisingly helpful for judges to reach the conclusion very soon. "In addition to the benefit of electronic access to the case docket and attached documents, a modern court CMS can facilitate the courts' access to cumulative information about case processing." (Richard Slowes, 2016, P. 5)⁶ So,

³ Mohammad Ikbal Hasan and Fahmida Johura Rupa, Digitalization of Bangladesh Judiciary and Access to Justice, *Asian Journal of Social Sciences and Legal Studies*, 3(3), 49-58, 2021 3(3), 49-58, 2021 (<https://doi.org/10.34104/ajssls.021.049058>)

⁴ Md. Shafiur Rahman, A STUDY ON DELAY OF CIVIL SUITS OF BANGLADESH, Vol-5 Issue-2, 2019, *IJARIE-ISSN(O)-2395-4396* (ijarie.com/AdminUploadPdf/A_STUDY_ON_DELAY_OF_CIVIL__SUITS_OF_BANGLADESH_ijarie9581.pdf)

⁵ Ummey Tahura, Can Technology Be a Potential Solution for a Cost- Effective Litigation System in Bangladesh? Can Technology Be a Potential Solution for a Cost-Effective Litigation System in Bangladesh? *Justice System Journal*, 42(1), 2021 (DOI:10.1080/0098261X.2021.1902437)

⁶ Richard Slowes, Benefits of a Modern Court Case Management System, Thomson Reuters, 2016 (<https://static.legalsolutions.thomsonreuters.com/index/pdf/benefits-of-a-modern-court-case-management-system-whitepaper.pdf>)



utilizing modern technology properly can eliminate steps which involve unnecessary delay, and enable courts to determine rights between parties promptly, resulting in prompt disposal of civil litigation.

2.5 Adopting modern technologies- not a challenges-free chapter

It is true that in adopting modern technology in the judiciary of countries like Bangladesh, some challenges will have to be met. Utilizing modern technology involves purchasing different software and tools, so a proper budget should be allotted which is not so easy in countries like Bangladesh. Besides insufficient budget, the priority of the executive branch is also a factor here, because most often branches other than judiciary get priority in respect of budget allocation. According to Janet Walker & Garry D. Watson (2008) this is the phenomenon in most of the common law countries. "It is not altogether clear why courts in common law jurisdictions have been relatively slow in progressing.....ultimately dependant on the executive for funding and this puts them in the peculiar position of not being..... able to martial the resources necessary to implement important reforms." (Janet Walker & Garry D. Watson, 2008 P. 255)⁷ Another thing is that training up sufficient numbers of people overnight is just impossible, and just adopting new technology without sufficient numbers of trained people will not make anything better but will cause some further problems. "The e-judicial setup demands high level of fund infusion into the programme; One of the biggest challenges is the complete digitization of its records and proceedings; It will be difficult at the outset to make everyone familiar with the digitalized court system, for the concept is relatively new and requires technical knowledge." (Mohammad Ikbal Hasan and Fahmida Johura Rupa, 2021, P. 54) As modern technology is relatively new in countries like Bangladesh, training judicial officers from scratch is really challenging.

3. OBJECTIVE OF THE STUDY

The primary objective of this study was to find out what modern technologies can do in disposing civil litigations early. And analysing the current state of modern technology adoption level in Bangladesh judiciary was also one of the objectives of this study.

4. METHODOLOGY

4.1 Methods of data collection

For this study, writings of different researchers in this field have been taken into consideration. To understand and analyse the current state of Bangladesh judiciary and the level of adoption of modern technology here, information from different newspapers in Bangladesh like the daily jugantor, prothom alo, Ittefaq, etc have been mentioned here.

4.2 State of using technology in courts

Old practices of filing civil litigation manually, physical appearance of parties, storing of case records and other documents, etc are still the features of our judiciary. But in the recent past Bangladesh has taken several steps to modernise the judiciary.

To introduce e-judiciary and e-court room a supreme court lawyer filed a writ petition before the high court division in 2020. On 19 January 2020 a high court bench ordered with rule (why defendants will not be ordered to introduce e-judiciary and e-court room). And in that order the court issued an ad-interim order to intimate the high court division about the steps taken for introducing e-judiciary and e-court room, within 30 days. But the law ministry didn't file the report on the next hearing date in June, 2021 when the case came up for hearing, but on that date the court granted further one

⁷ Janet Walker & Garry D. Watson, *New Trends in Procedural Law: New Technologies and the Civil Litigation Process*, *Hastings International and Comparative Law Review*. Volume 31, Number 1, 2008 (https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2378&context=scholarly_works)



month time for the report. On the next hearing date, on 11 August, 2021 court granted further two months for submitting the report as the law ministry didn't file the report on that day as well. (Daily Prothom Alo, 11.08.2021)

In February, 2021 the government had taken up a tk. 2878 crore e-judiciary mega project for the digitization of judiciary. The project goal was to run a judicial system through online means, introducing data centres, making copies of judgments and orders available online, and the like. (daily Jajaidin, 09.02.2021) But already two years have passed of this thousand crore tk. project, but desirable progress is not apparent yet. Till december, 2021 Only the records of 15 thousand cases have been transformed into digital format. (Daily Ittefaq, 13.12.2021)

Though Lacs of cases are pending before different courts in Bangladesh, and the record of search cases are disposed of manually in the old manner. Still in Bangladesh, people file suits by submitting complaints, summons are issued manually, mentionable periods are passed due to clerical works, and delay is a common issue here.

4.3 Whether changes in law are necessary or not?

Recently Bangladesh enacted several provisions for using technology in courts and admission of digital records, though this is not the proper utilization of modern technology in judiciary, but in this way proper utilization may be possible in near future.

On 23 March, 2020, COVID lockdown was started for the first time in Bangladesh and due to COVID pandemic courts couldn't run their activities. On May 9, 2020, the then President of Bangladesh promulgated The Use of Information Communication Technology by Court Ordinance, 2020. This ordinance enabled courts to run normal activities like enquiry, trial, etc by ensuring the appearance of parties, their lawyers, and other necessary people, through audio, video conferencing, or other electronic means,

Enforcing the same provisions, parliament enacted The Use of Information Communication Technology by Court Act, 2020 (11 no. Act of 2020) on July 9, 2020, by repealing the ordinance. This Act is in force now and according to section 3(1) of this Act, courts can run trial, hearing, etc with virtual appearance of parties, lawyers, and other necessary people. This system is useful, because sometimes physical appearance was not possible, and courts had to wait for a long time due to this. But according to section 3(2) of Act, without the virtual appearance, all the other related activities have to be done by parties or their lawyers through ordinary procedure.

14 March 2022, cabinet approves The Evidence (amendment) Act, 2022 incorporating the provision of, inter alia, admission of digital record. (daily Jugantor, 14 March 2022) And the amendment Bill has been passed in parliament on 03 November, 2022. (Daily Jugantor, 03 November, 2022) so, now courts can admit digital records in evidence, if such evidence is available, they don't have to wait for witnesses to come.

All these things are creating an environment for utilising modern technology in the judiciary, though these are not sufficient at all. The reason is that still most of the work in the judiciary is done manually. Complaints are presented by plaintiffs manually according to section 26 of the Code of Civil Procedure (CPC), 1908. All the time, the process is to be issued personally, as per rule 69 of the Civil Rules and Order (CRO). The defendant has to file a written statement in paper before Court, under order 8, rule 1 of CPC. Rule 137 of CRO provides the way of writing judgement- either typewritten or handwritten. All this process involves good chances of delay, though modern technology can be used in all these.



4.4 Analysis of collected data

Bangladesh is adopting modern technology in judiciary but the speed is really slow, actually it is dependent on the priority of relevant authorities. Suppose, on 23 March, 2020, first COVID lockdown was started and the President declared ordinance for virtual Court after only one and a half month on 09 May, 2020.

But incorporating provisions for digital records in the Evidence Act was a necessity for a long time, but at last on 14 March 2022, cabinet approved the draft bill and after nearly 8 months of passing the draft bill by cabinet, it was passed in parliament on 03 November, 2022. To utilize modern technology in judiciary amendment in the CPC the CRO is a must, but till now, no effective attempt is apparent anywhere.

The changes made in laws like Evidence Act or enacting The Use of Information Communication Technology by Court Act, 2020 has some positive effects, like- now courts don't have to wait for witnesses, or courts don't have to lengthen the trial where there's no evidence other than digital records. This can reduce the delay in civil litigation, but to a very, very limited extent. Because, the steps in civil litigation, such as- issuing summons, recording evidence, arguments, writing judgements and orders, are mainly determined by CPC and CRO, which suggest the old practice- manual filing, processing, writing, etc. resulting in delay.

Government made different attempts and the e-judiciary mega project (2021) is one of the important projects in this regard. But, two years have passed already, and almost no significant change is apparent. Even there is no effective training programme for judicial officers to make them prepared for e-judiciary. If this situation continues then utilizing modern technology in our judiciary will not be possible in near future.

5. MAJOR FINDINGS:

1. Using modern technology in judiciary can reduce the delay in civil litigation, and Bangladesh has started adopting modern technology in judiciary but the process is very slow.
2. Some new legal provisions are helpful for utilising modern technology, but so many important amendments are still left in civil procedural laws such as CPC and CRO.
3. Budget is a factor in modernising the judiciary of countries like Bangladesh, but the task completion level of ongoing projects is not satisfactory.
4. Till now, there is no strong sign which suggests that our judiciary will be perfectly modernised in near future.

6. CONCLUSION AND RECOMMENDATIONS

Unnecessary delay in civil litigation is harmful in so many ways and it has a huge negative impact on the enjoyment of civil rights of people. The countries which started using modern technology in judiciary several years ago, are now enjoying the benefit of a prompt justice delivery system. Needless to say, Bangladesh will surely get similar benefits by utilising modern technology, and following recommendations might be helpful for starting such utilization soon.

- ❖ The Code of Civil Procedure the Civil Rules and Order should be amended, to make them suitable for using modern technology in every possible step in civil litigations.
- ❖ Budget allocation should be made sufficient for purchasing necessary tools and equipment for modernising the entire judiciary.



- ❖ Before making the utilization of modern technology mandatory, training programmes for judicial officers in this regard is a must.
- ❖ Government should be careful about ongoing projects for modernising the judiciary, especially on the project task completion in time.
- ❖ Offline and online media should always highlight the success of utilization of modern technology in the judiciary of developed world.
- ❖ Computer literacy should be made mandatory for law students of all public and private universities in Bangladesh.