

Electronic Court System and Speedy Justice: A Comparative Critical Analysis of Legal Systems in Pakistan, Malaysia, and India

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Abstract

Recalling few decades back, our lives were completely different from todays as technology has tremendously transformed our lives, particularly the way we interact these days. Back then geographic limits primarily directed who we interact with every day, but now world has become like a global village. Interaction by means of technology is now usual in both professional and personal lives. One field that has quickly been transformed is the mode of dispute settlement. Covering minor disputes in e-Commerce and then shopping to parking tickets, technology has transformed things completely and simpler to discover solutions whenever an issue arises. On international level the use of technology has also been acclaimed for dispute resolution. In different legal systems in recent times an Online Dispute Resolution has been introduced as a medium of Alternate Dispute Resolution. This article explores the option of introducing E-courts in Pakistani legal system as a step towards speedy justice and peaceful development. A comparative study approach is adopted to assess the inclusion of E-courts in Malaysian and Indian legal system. The effects of E-courts in these systems will be analysed and compared with the Pakistani legal systems. The analysis will help to answer two basic questions; firstly, to what extent is the E-courts system compatible with the Pakistani courts system? secondly, which areas within the courts procedure must be digitalised in the initial phase? We propose that an e-court system is compatible with Pakistani legal system, and the process shall be initiated with E-Filing and a Case Flow Management System.

Keywords: Speedy Justice, Electronic Courts, Comparison of E-courts System, Technology and Legal Systems

1. An Introduction to the E-court System

Recalling few decades back, our lives were completely different from today as technology has greatly transformed our lives and the way we interact with each other these days. Back then geographic limits primarily directed who we interact with every day, but now world has become like a global village surpassing these limits. Interaction by means of technology is now usual in both professional and personal lives. One field that has quickly transformed is the mode dispute settlement. Covering minor disputes in e-Commerce and then shopping to parking tickets, technology has transformed things completely and simpler to discover solutions whenever an issue arises.¹ On international level the use of technology has also been acclaimed for dispute resolution.² In different legal systems in recent times an Online Dispute Resolution (hereinafter, ODR) has been introduced as a medium of Alternate Dispute Resolution (hereinafter, ADR).³ This advancement through the use of technology delivers a considerable opportunity to expeditious justice. The access to justice can be made more convenient for people using the ODR and other technological methods. In perspective of the courtroom procedures the use of technology is not very widespread; technology is used only in some areas of legal practice such as electronic case filing or research and case management.⁴ The transformation towards the use of technology in legal systems will become inevitable and an Electronic court (hereinafter, E-court) system will be required for establishing a speedy justice mechanism.

One aspect of the E-court involves resolving cases by judges, but the relevant stakeholders to suits does not physically come to the court, arguments and evidence are presented to judges through video links and then judge deliver judgment through online platform. The E-Court system is synchronous with traditional court

¹ Media Inquiries, 'Online Shopping and Americans' Purchasing Preferences' (*Pew Research Center: Internet, Science & Tech*, 19 December 2016) <<https://www.pewresearch.org/internet/2016/12/19/online-shopping-and-purchasing-preferences/>> accessed 14 June 2021.

² See for example, Comm. on Int'l Trade Law, Rep. on the Working Group IV (Electronic Commerce) on the Work of Its Fifty-Sixth Session, U.N. Doc. A/CN.9/936, at 7-8 (2018).

³ See for example, Amy Schmitz, 'Expanding Access to Remedies through E-Court Initiatives' (2019) 67 Buffalo Law Review 89.

⁴ Colin Rule, 'Online Dispute Resolution and the Future of Justice' (2020) 16 Annual Review of Law and Social Science 277, 1-3.

system; it merely is an exercise in framework advancement, but making court service accessible, convenient, and affordable. The idea is that the traditional court structure would prevail but technologically transformed to make services available additional than traditional court.⁵ This hybrid system will use modern technologies which will assist administration of justice for providing justice as well as to litigants therefore making easy access to justice as well as reducing pendency of cases due to which our justice system is plagued.⁶ There are two basic concepts of the e-court systems, firstly courts are equipped with advanced technology to assist in court procedure whereby decisions are made by human judges (first generation E-courts), secondly courts may be based on Artificial Intelligence (hereinafter, AI) technology whereby decisions are not made by a human judge but are made by a system which is programmed to do it (second generation E-courts). However, in some cases other forms of dispute resolution may include judicial process, although not a conventional judicial process. For instance, dispute resolution within online shopping and other online contracts.⁷ The system of E-courts is mostly referred to the electronic systems used in courtrooms for assistance in conventional courtroom procedure. Judges and parties have access to computers and court officers having distinct computer systems for displaying electronic documents to judge, parties and witnesses on screens. This system linked with electronic database which is centralised and containing all the information for its easy access and retrievals. This system then have a mechanism for searching across the database for exhibiting the evidence or for review.⁸ It is noted that a country which is using traditional court system, the first step should be to implement first generation of E-court system. So, justice system can be made accessible, convenient and affordable by transforming it through technology by implementing technological tools such as e-filing, e-trial which includes the use of video link for giving testimony remotely and paperless electronic case management.⁹ As Justice Bleby said “The electronic

⁵ R Susskind, *Online Courts and the Future of Justice* (Oxford University Press 2019) 55
<<https://books.google.com.pk/books?id=R0rkwQEACAAJ>>.

⁶ Karim Benyekhlef and others, ‘EAcess to Justice (Introduction)’ 1.

⁷ See for instance, Rule (n 4).

⁸ Roslyn M MacDonald, Mark Burdon and Sheryl M Jackson, ‘Ensuring the Integrity of the E-Court Process’ (2006).

⁹ Benyekhlef and others (n 6) 3.

court enables the parties, the trial judge and court staff to have secure access to all of the material in an efficient manner both in and out of the courtroom.”¹⁰

This study accepts the efficacy of the usage of modern technology in the justice system, we argue that the use of technology in the judicial process is important for the enhancement of the peace and development through speedy justice. The idea of the E-courts system is discussed in detail in first part with an emphasis on how the technology tends to work in a legal system. In the second part we analyse how the E-courts system has been adopted by India and Malaysia within their legal systems and compare the progress in Pakistan, also checking the viability of the use of technology in the legal system of these countries. In the third part we discuss the efficacy of the system and its relativity with Pakistani legal system.

1.1. Origin of E-courts

Etymologically, the term ‘court’ comes from French, Latin, and Ancient Greek, in each case referring to an enclosed space or yard. As we move from physical courtrooms to virtual hearings and online courts, we need not jettison this meaning. To anticipate later themes, the online court may indeed come to be regarded as a safe online space in which the process of justice can be secured.

It is important to understand the core developments which came in technology. In the beginning of court technology, one incredible development was the introduction of video link into court hearing from late 1980s.¹¹ The application of technology has allowed judges to appear on screen to parties and decide the matters remotely. The quality was not great and had issues such as delays, connection was frequently lost between, no sync between audio and video and difficulty to recognize any sort of facial expressions as user appeared as little figures at the corner of screen. The use of video link in court proceedings kept growing over time such as taking evidence from children and vulnerable witnesses, facilitating presence of defendants and experts who cannot make it

¹⁰ MacDonald, Burdon and Jackson (n 8) 3.

¹¹ See for example Davies GM and Noon E (1991) *An Evaluation of the Live Link for Child Witnesses*. London: Home Office; see also Cashmore J and De Haas N (1992) *The Use of Closed-Circuit Television for Child Witnesses in the ACT*. Sydney: Australian Law Reform Commission.

to the court because for a minor court appearance, a major travel was otherwise necessary.¹²

In the context of Malaysia, to get the idea of technology adoption, it is necessary to have a recall of how internet age in the country emerged since 1995.¹³ E-government was initiated by Malaysian Government in the year 1997 which led the country into Information Age. In E-government there were seven main projects which were Electronic Procurement, Electronic Services Delivery (e-Services), e-Syariah, Human Resource Management Information System (HRMIS), Project Monitoring System (PMS), Generic Office Environment (GOE), and Electronic Labour Exchange. Besides this, many government agencies started several projects to launch online public projects services which were aimed to enhance efficiency, effectiveness of public services and ease of use for the people. E-filing launched in E-courts system was also a result of this.¹⁴

In the courts of Australia, technology has started to play a vital role since 2000.¹⁵ After a cautious beginning, the courts of the country started the using technology in many court processes. Initial development was improvised, and some court complexes were implemented to meet technological need. The main focus for implementing these technologies were to increase effectiveness and efficiency of court system. They initially were applied to automate and catalogue huge amounts of evidence and information into convenient digital forms with digital case management databases. When data was in digital searchable system, the attention diverted from digitalization to presenting evidence digitally with document imaging systems. The result of this was that it encouraged an increase in digital presentations of complicated and important evidence. Synced live transcription empowered judges and litigants to document notes and to directly remember what was argued in previous hearing.

¹² Emma Rowden and Anne Wallace, 'Remote Judging: The Impact of Video Links on the Image and the Role of the Judge' (2018) 14 International Journal of Law in Context 504, 504.

¹³ Lim Heng Lin (2015), 'Adequacy of E-Filing Adoption by Malaysian Courts', Masters Thesis, Multimedia University, available at <http://shdl.mmu.edu.my/6291/>, 1.

¹⁴ Lim Heng Lin, 'Adequacy of E-Filing Adoption by Malaysian Courts' 1.

¹⁵ Roslyn M MacDonald, Mark Burdon and Sheryl M Jackson (2006), 'Ensuring the Integrity of the E-Court Process' in *Justice Environments Conference*, 1, available at <https://eprints.qut.edu.au/8480/>.

Courts also started using video link technology for vulnerable and distant witnesses and digital recording was used to capture visual evidence that can be viewed whenever court want.¹⁶

From that point, many stunning technological advancements have taken place. As it was predicted by Co-Founder of Intel Gordon Moore that processing power of computers would be twice every two years or so. Now video link supports very high level of communication and create sense of being together in same place. Such systems are now widely used in courtrooms across the world. In 2017, 20,000 video link systems were installed in China.¹⁷ Additionally, the Hangzhou Internet Court in China is a first courtroom experience using the second-generation E-courts.¹⁸ It has also recently accepted evidence through electronic means using the blockchain technology.¹⁹ Hence, the e-Court system has brought many changes in the Chinese legal system in recent past.

1.2. Introduction to E-Filing System

E-filing is one of the process which comes in the ambit of E-courts system. E-Filing can be defined as a “process of transmitting documents and other court information to the court through an electronic medium, rather than on paper. Electronic filing lets people get more of their work done with their PCs, to send and receive documents, pay filing fees, notify other parties, receive court notices, and retrieve court information.”²⁰

Currently, most lawyers write pleadings, print it and submit it in the court with court fees. Court officials then review pleadings, fee and other document and make entries into the case management into database. The case is then directed to appropriate court. Whereas, with the E-filing the pleadings are prepared in the same way but uploaded electronically with file transfer protocol (FTP). Information is stored and organized automatically to digital case management

¹⁶ Ibid.

¹⁷ Susskind (n 5) 58.

¹⁸ Schmitz (n 3) 106.

¹⁹ ‘Hangzhou Court Uses Blockchain-Based Evidence For First Time’
<<https://www.yicaiglobal.com/news/hangzhou-court-uses-blockchain-based-evidence-for-first-time>> accessed 28 June 2021.

²⁰ James E McMillan, J Douglas Walker and Lawrence P Webster, *A Guidebook for Electronic Court Filing* (West Group 1998).

system and routed to court officials online rather than by physical paper documents. It eradicates the time and cost of files and documents.²¹

1.3. Online Record Keeping

Online Record Keeping has some aspects. One is Case Management System (hereinafter, CMS) which is a system software to handle all cases administered by the court over a computer system. It enables the digitalization of court processes, easy monitoring of performance, retrieval of information online, and generates statistics automatically which makes equality in statistics. There are several modules under the CMS system which includes the registration module, the scheduling module, the administration module, and the master listing module.²²

Another online record keeping method is the Queue Management System (hereinafter, QMS) which is a structure to register the attendance of lawyers using kiosk system. Prior to this system, litigants had to wait for their turn to be called. With QMS the litigants will record their attendance using the kiosk when they reach the court, and this system will provide information on when the case is scheduled and if the other party is present. It also records attendance and gives information about where the case will be heard. The litigant also has the choice to register for an SMS alert, which means that they will be notified with SMS when their case is set to be called. Therefore, the litigant can be present in matters in other courts at the same time or perform other duties while waiting as they had registered their case number in a kiosk system. This not only save the waiting time, but also spare the litigants from having to search for the printed cause list and the place of hearing. It is beneficial for both litigants as well as court staff.²³

Further, Court Recording & Transcription (hereinafter, CRT) is a system which contains audio and video recording in open court as well as in hearings held in chambers. The recordings will be preserved in the database of the courts and

²¹ ibid 3.

²² Zaiton Hamin, Mohd Bahrin Othman and Ani Munirah Mohamad, 'Benefits and Achievements of ICT Adoption by the High Courts of Malaysia' (IEEE 2012) 1234.

²³ Gan Chee Keong, 'Judicial Reforms through the Use of Technology in Malaysia' 5 (1) European Academic Research, 403, 399-409.

monitored by the interpreter at the time of proceedings. The court will deliver the recordings in compact disc if the litigant wants to have it for own record. A typewriter is put within the court and run by qualified stenographers who transcribe it. The transcription will be composed live at the time of court proceedings and draft transcripts printed for the litigants to refer to at the time of examination of witnesses. Modified copies of the transcripts are accessible to both the parties after each trial day.²⁴

2. Comparative Analysis of Indian and Malaysian E-Court Systems with Pakistan

The historical background of a judicial system of Pakistan and India is somewhat similar because of its one colonial history. The laws adopted by both states are similar except for the post-independence amendments. Furthermore, analysis of the judicial structure of Malaysian courts also highlights its similarities with the system of Pakistan and India. Hence, it is interesting to compare the approaches of all these states on the topic.

2.1 Hierarchy of Courts

2.1.1. Superior Judiciary

The Court structure of Pakistan is pyramid like structure. In superior Judiciary there are Supreme Court and High Courts. Supreme Court in an apex court of the country which functions as the final authority to uphold the Constitution. It has Original, Advisory, and Appellate Jurisdiction. It is the final Court of Appeal in cases decided by the High Courts. It has branch registries in all four provincial capitals whereas it has permanent seat in Islamabad.²⁵ Next to it are the High Courts, one in every Province and one in Islamabad Capital Territory, exercise general control on the administration of justice in their respective territorial jurisdiction. It is an appellate Court for all Civil and Criminal matters in the respective province.²⁶

Indian Judiciary can also be classified as pyramid form of structure. Supreme Court of India is highest Court with total independence, below it is High Court

²⁴ Hamin, Othman and Mohamad (n 19) 1235.

²⁵ Constitution of the Islamic Republic of Pakistan 1973. Part VII The Judicature, Chapter 2
The Supreme Court of Pakistan

²⁶ ibid. The Judicature. Part VII The Judicature, Chapter 3 The High Courts

which dispensing justice at state level, and then District Courts at district level under supervision of each High Court. Article 142 of Constitution of India make judgments of Supreme Court binding on all subordinate courts including High Courts and they both also have judicial power.²⁷

The hierarchy of courts of Malaysia is also as pyramid form of structure. The Federal Court of Malaysia being the Apex Court followed by the Court of Appeal. Then there are two High Courts: High Court of Malaya and High Court of Sabah and Sarawak. The Federal Court of Malaysia is the Apex Court of the land have original jurisdiction as stated in Article 128 of The Federal Constitution of Malaysia under which it has jurisdiction to determine whether a law legislated by Parliament or legislature of a State is invalid on the ground that they have no authority to make laws or as to disputes on any other question between the States or between the Federation and the State. It also has a jurisdiction under which appeals of Civil decisions of Court of Appeal are heard in cases where Federal grant leave to do so and appeals of criminal decisions of Court of Appeal on respect of matters decided by High Court in original jurisdiction as stated in section 87 of Courts of Judicature Act, 1964. The Court of Appeal has appellate jurisdiction to hear appeals of criminal judgments made by the High Court in its original or appellate jurisdiction as stated in section 50 of Courts of Judicature Act, 1964 and to hear appeals of civil judgments made by the High Court in its original or appellate jurisdiction as stated in section 67 of Courts of Judicature Act, 1964. It is the court of the final jurisdiction for the cases started in subordinate courts. In cases where the claim is not more than RM250000, the order or judgement is related to cost only or against decisions of a judge in chambers on an interpleader summons on undisputed facts, it is compulsory to first obtain the leave of Court of Appeal. Then there are two High Courts in Malaysia having equal status and jurisdiction namely: High Court in Malaya which is in States of Malaya, and another High Court in Sabah and Sarawak which is in States of Sabah and Sarawak as laid down in Article 121 of The Federal Constitution of Malaysia. Every proceeding in High Court is heard and settled by a single judge. They have original and appellate jurisdiction

²⁷ Setlur BN Prakash, 'E Judiciary: A Step towards Modernization in Indian Legal System' (2014) 1 Journal of Education & Social Policy 111, 111–112.

for both civil and criminal matters. The High Courts have civil jurisdiction where a cause of action arose, the defendant resides or has place of business, the fact on which proceedings are based, or any land in dispute is situated, within the local jurisdiction of the Court as stated in section 23 of the Courts of Judicature Act, 1964.²⁸ But the pecuniary jurisdiction of Court is in matters where the claim exceeds RM1,000,000.²⁹ The High Court also has no limit on its jurisdiction on all criminal matters in its jurisdiction, any ship or any aircraft registered in Malaysia, by any citizen or any permanent resident in any place beyond the limits of Malaysia, by any person against a citizen of Malaysia, Government of Malaysia or the Government of any State in Malaysia as stated in section 22 of the Courts of Judicature Act, 1964.³⁰ However, court has no jurisdiction in matters involving Islamic law as they fall within the jurisdiction of the Syariah courts³¹ as they are outside the court hierarchy.

Through this we can say that the Superior judicial structure of India and Pakistan is similar but slightly different than that of Malaysia. However, in case of Pakistan and Malaysia, there are also different sets of Islamic Courts in both countries. Federal Shariah Court in Pakistan and Syariah Court in Malaysia having same type of jurisdiction.

2.1.2. Subordinate Judiciary

In subordinate Judiciary of Pakistan, there are Civil Courts and Criminal Courts. All Civil Courts are under the control of respective High Court as they are subordinate to it. All civil courts are under the control of District Judge within the local limits of jurisdiction. Civil Courts in Pakistan are created under the Civil Courts Ordinance 1962, in the respective province. The categories of Civil Courts are District Judge, Additional District Judge, Senior Civil Judge and Civil Judge Class I, Class II & Class III. Their territorial and pecuniary jurisdictions are fixed by the law. Judgments of civil courts are appealable in District Judge and to the High Court if the claim of the suit increases specified

²⁸ Section 23 Courts of Judicature Act, 1964

²⁹ Global Legal Group, 'Malaysia: Litigation & Dispute Resolution Laws and Regulations 2020' (*International Comparative Legal Guides*) <<https://iclg.com/practice-areas/litigation-and-dispute-resolution-laws-and-regulations/malaysia>> accessed 15 December 2020.

³⁰ Section 22 Courts of Judicature Act, 1964

³¹ Article 121(1A) Federal Constitution of Malaysia

amount. The Criminal procedure in Pakistan is written in the Code of Criminal Procedure 1868, whereas the substantive law about definition of a crime and its punishment is stated in Pakistan Penal Code 1860. Criminal Courts in Pakistan are Sessions Judge, Additional Sessions Judge and Judicial Magistrate Class I, Class II & Class III. Decision of criminal courts are appealable to Sessions Judge or High Court. Further, there are also other tribunals and courts of civil and criminal nature such as labour court, Income Tax Tribunal, Board of Revenue, Anti-Terrorism Court to deal with specified matters established under special laws. Their jurisdiction and powers are given in the statutes creating them. Outside this court hierarchy is Federal Shariah Court established to examine and decide cases related to the application of hudood penalties.³²

In subordinate judiciary of India, there are several subordinate courts under respective High Court. As every State is further division into Districts, these Districts are presided by a District and Sessions Judge. The District Judge have original and appellate jurisdiction. The Sessions Judge has the supreme judicial authority in a District. Below the District and Sessions Judge, there are Courts of civil and criminal jurisdiction. In civil jurisdiction, Civil Judge (Senior Division) which have unlimited jurisdiction to adjudicate the civil matters of any pecuniary limit and Civil Judge (Junior Division) which hold limited authority to decide the civil matters. Likewise, in criminal jurisdiction, consist of the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class.³³

However, in the Subordinate Judiciary of Malaysia, it consists of Subordinate Courts in Peninsular Malaysia consisting of the Sessions Court, Magistrates' Court and Penghulu's Courts. The Subordinate Courts in Sabah and Sarawak consisting of the Sessions Court, Magistrates' Courts and Native Courts. In the hierarchy pyramid of Subordinate Courts, the Penghulu's Court is at the bottom. Which is headed by a headman appointed by a state government. The jurisdiction in criminal matters of a Penghulu's Court is bound to the trial of

³² Maryam Hayat, 'Court Structure in Pakistan' (*Courting the Law*, 9 June 2015) <<https://courtingthelaw.com/2015/06/09/commentary/court-structure-in-pakistan/>> accessed 11 June 2021.

³³ Prakash (n 24) 111–112.

offences of a petty nature which are limited to the punishment of fine less than RM25.00. There also exists a Juvenile Court for offenders who are under the age of 18 years.³⁴

Through this we can say that the whole judicial system and hierarchy of courts is same for both Pakistan and India except that there is a slight difference of jurisdiction. However, there are some differences in hierarchy of Malaysia as there also exist Penghulu's Court for petty matters.

2.2 Judge to Citizen Ratio

One of the major reasons for pendency of cases is high citizen to judge ratio. The total number Judges in Supreme Court of Pakistan are 15 and Ad-Hoc Judges are 2 means total 17 Judges,³⁵ the total number of Judges in High Court of Sindh are 35,³⁶ the total number of Judges in Lahore High Court are 50,³⁷ the total number of Judges in Peshawar High Court are 15,³⁸ the total number of Judges in High Court of Balochistan are 10,³⁹ the total number of Judges in Islamabad High Court are 9.⁴⁰ So, the total number of Judges in superior judiciary of Pakistan are 136. The total number of judges in Pakistan are 4,000 and judge to citizen ratio is one judge available for 62,000 people.⁴¹

In India, the total number of judges of High Courts are 1079, in Supreme Court are 28 and total number of judges of subordinate judiciary was 22,833. So, there

³⁴ 'Malaysian Court System' <<https://www.globalbersih.org/resources/know-your-rights/malaysian-court-system/>> accessed 28 June 2021.

³⁵ 'Judges' (*Supreme Court of Pakistan*) <<https://www.supremecourt.gov.pk/judges/>> accessed 06 September 2021.

³⁶ 'Honourable Judges' (*High Court of Sindh*) <https://www.shc.gov.pk/sitting_judges.php> accessed 06 September 2021.

³⁷ 'Lahore High Court' (*Hon'ble Sitting Judges*)
<https://data.lhc.gov.pk/judges/sitting_judges/20> accessed 06 September 2021..

³⁸ 'Sitting Judges' (*Peshawar High Court*)
<https://www.peshawarhighcourt.gov.pk/app/site/35/c/Sitting_Judges.html> accessed 12 December 2020.

³⁹ 'High Court of Balochistan' (*Sitting Honourable Judges*) <<https://bhc.gov.pk/judges/hon-judges>> accessed 06 September 2021..

⁴⁰ 'Sitting Honourable Judges' (*Islamabad High Court:*)
<<http://mis.ihc.gov.pk/frmSitting.aspx>> accessed 06 September 2021..

⁴¹ '4,000 Judges Can't Clear 1.9m Cases: Justice Asif Saeed Khosa' (*DAWN*, 16 January 2018)
<<https://www.dawn.com/news/1383230>> accessed 13 June 2021.

are only 20 judges per 1 million population in country which makes one judge per 50,000 citizens.⁴²

However, the Population of Malaysia in 2020 is 33.8 million.⁴³ The total number of Judges in Superior Judiciary of Malaysia is 120 out of which 98 seats are filled and total number of Judicial officers are 40.⁴⁴ The Total number of judges of subordinate judiciary of Malaysia is not known.⁴⁵ By comparing this ratio, we can say that these countries have almost same judge to citizen ratio.

2.3 Pendency of Cases

From beginning, there has been upsurge in population in these countries. India has population of 1.366 billion in 2019⁴⁶, Pakistan has population of 212.2 million according to a survey in 2018⁴⁷ however, population of Malaysia in 2020 was 33.8 million.⁴⁸

With this upsurge in population, the pendency of cases is also increasing, which is increasing, and over-burdening judiciary in these countries. This not only infringes constitutional and human right but also have adverse effects on right of citizen which decreases the belief of people in judiciary and disgrace the justice system. India made National Judicial Data Grid for High Court (HC-NJDG) which was one of the significant outcomes of e-court project which shows real time number of pending cases.⁴⁹ Pakistan has no system to show real

⁴² 'There Are 20 Judges per 10 Lakh People in India: Govt' (*Livemint*, 6 February 2019) <<https://www.livemint.com/politics/news/there-are-20-judges-per-10-lakh-people-in-india-govt-1549457164121.html>> accessed 16 November 2020.

⁴³ 'Current Population Estimates, Malaysia, 2020' (*Department of Statistics Malaysia*) <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=155&bul_id=OVByWjg5YkQ3MWFZRTN5bDJiaEVhZz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09> accessed 28 June 2021.

⁴⁴ 'Superior Court Judges' (*Judicial Appointments Commission*) <<http://www.jac.gov.my/spk/en/component/tags/tag/judges-of-the-court-of-appeal.html>> accessed 28 June 2021.

⁴⁵ 'Roger Tan: Are We Paying Our Judges Enough?' (*The Malaysian Bar*) <<https://www.malaysianbar.org.my/article/news/legal-and-general-news/members-opinions/roger-tan-are-we-paying-our-judges-enough>> accessed 19 December 2020.

⁴⁶ 'Population, Total - India' (*The World Bank*) <<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=IN>> accessed 13 December 2020.

⁴⁷ 'Population' (*Pakistan Bureau of Statistics*) <<http://www.pbs.gov.pk/population-tables>> accessed 10 June 2021.

⁴⁸ 'Current Population Estimates, Malaysia, 2020' (n 40).

⁴⁹ Kshitiz Verma and others, 'Estimating Time to Clear Pendency of Cases in High Courts in India Using Linear Regression' 1–2.

time number of cases however there was a data released by National Judicial Policy Making Committee (NJPMC) that show Pakistani courts has 2 million pending cases in all courts.⁵⁰ However the backlog of pending cases in Malaysia is 91,702 cases in High Court, 125,944 cases in the Sessions Court and 777,703 cases in the magistrate's courts.⁵¹

Court	Pending Cases		
	Pak ista n	India	Mal aysi a
Supre me Court	45,5 08	63,693	Data coul d not be acce ssed
High Courts	3,32 ,376	53,33, 298	91,7 02
Subord inate Courts	5,04 ,528	3,59,3 9,317	903, 647

2.4 Implementation of E-courts System

In India the first phase of E-Court project was started in 2007 in which their courts were computerized and other hardware was installed. It included computerization of even Taluka and district courts. Case Information Software (CIS) was also made and installed for giving basic case related information and websites of District Courts were also launched. For the success of this project Court Staff and Judicial Staff was also trained to use the new digital framework. The biggest achievement of this phase was e-filing system through which

⁵⁰ 'Over 2m Cases Pending in Superior, Lower Judiciary' (*The News*)
<<https://www.thenews.com.pk/print/702243-over-2m-cases-pending-in-superior-lower-judiciary>> accessed 13 June 2021.

⁵¹ 'Roger Tan: Are We Paying Our Judges Enough?' (n 42).

litigants can file case online and National Judicial Data Grid (NJDG) which shows number of cases pending in High Court. This phase was completed on 30th March 2015.⁵² The Phase-II of e-Court project was started in 2015 which further updated everything covered in previous phase and also updated National Judicial Data Grid (NJDG) to show synched updated number of cases and their data in all courts across the country.⁵³

In Judiciary of Malaysia, E-Court System was first introduced in 2008 to resolve the issue of backlog of cases. It emphasized electronic based court system to use mechanism which is much efficient and faster. The main components of this phase were the e-filing system, which allow the litigants to file their cases online therefore they do not need to file the physical documents manually in court for filing the case, The Case Management System (CMS), which handles all cases managed by the court over computer system, The Queue Management System, which register the attendance of lawyers using kiosk system, Court Recording and Transcription System (CRT) which contains audio and video recording of all the hearings.⁵⁴ All these features were further advanced in Phase-II which started from 2016.⁵⁵

However, in Pakistan, the situation is different. E-Court became operational first time in the history of Pakistan Judiciary when Judge of Accountability Court No.3 of Rawalpindi Sohail Nasir recorded statements of two witnesses through online system on Skype as witnesses were out of city. This court is working under federal government. The aim of this was to ensure inexpensive and speedy justice.⁵⁶ For the Supreme Court of Pakistan it was in 2019 that case was adjudicated, after witness made appearance via video link connectivity, by three-member bench headed by the former Chief Justice of Pakistan Mr. Justice

⁵² 'About Us' (*eCourt India Services*)

<https://services.ecourts.gov.in/ecourtindia_v6/static/about-us.php> accessed 11 June 2021.

⁵³ 'EFC NOTE FOR ECOURTS PROJECT - PHASE-II'

<<https://doj.gov.in/sites/default/files/Policy%20and%20Action%20plan.pdf>>.

⁵⁴ GAN CHEE KEONG, 'Judicial Reforms through the Use of Technology in Malaysia' 401–405.

⁵⁵ 'ECourts Malaysia Phase 2' (Office of the Registrar General of the Federal Court of Malaysia) 4 <<http://www.kehakiman.gov.my/sites/default/files/ManualLatihanBhgn1.pdf>>.

⁵⁶ 'E-Court Becomes Operational in Rawalpindi' (*The News*)

<<https://www.thenews.com.pk/print/129938-E-Court-becomes-operational-in-Rawalpindi>> accessed 10 June 2021.

Asif Saeed Khan Khosa and comprising Hon'ble Mr. Justice Sardar Tariq Masood and Hon'ble Mr. Justice Mazhar Alam Khan Miankhel.⁵⁷ And also in 2020 after pandemic of COVID-19, High Courts and some courts of subordinate judiciary started hearing of cases online through video link after lawyer submits an application for it. But the concept of e-filing for new case is alien in context of Judiciary of Pakistan.

3 Implementation of E-Court System in Pakistan

As mentioned above the emergence of E-courts system in Pakistan is a very recent phenomenon. The involvement of technology in pleadings or other court procedure is limited in Pakistan, to an extent all the High Courts in Pakistan have introduced a case flow management system. In addition, recently the Peshawar High Court, Mingora Bench (Darul Qaza) have introduced a facility of online pleadings for the attorneys coming from far off districts.⁵⁸ On the level of lower courts the use of technology is very minimum, even the basic things of record keeping are often manual.

The requirement of E-courts during the recent pandemic and amid lockdowns was felt very harshly. On 26th of February 2020, the very first case of COVID-19 was reported in Pakistan. Since then the country has been under various lockdowns as the entire globe is trying to come out of the surge of the global pandemic. In the lockdowns every office, educational institutions, and other amenities of life remained closed.⁵⁹ These exceptional circumstances of the pandemic did not spare the legal system. Most of the courts in Pakistan had almost no technological infrastructure to allow them to expedite justice virtually. Courts were either closed or operating partially and most of the hearings were called off.⁶⁰ For instance the Sindh High Court notified, in view

⁵⁷ 'E-Court System Successfully Launched in Supreme Court' (*Supreme Court of Pakistan*, 24 July 2019) <<https://www.supremecourt.gov.pk/e-court-system-successfully-launched-in-supreme-court/>> accessed 11 June 2021.

⁵⁸ Telephonic conversation with the Registrar, Peshawar High Court, Mingora Bench on 27 June 2021.

⁵⁹ Dawn.com, 'A Month on, Pakistan's Covid-19 Trajectory from Patient Zero to 1,000 and Beyond' (DAWN.COM, 26 March 2020) <<https://www.dawn.com/news/1543683>> accessed 9 June 2021.

⁶⁰ 'UNODC Pakistan's Response TO COVID-19' (United Nations Office on Drugs and Crime 2020) 5 <https://www.unodc.org/documents/pakistan//Country_Office_Pakistan-RoLAC-30042020.pdf>.

of the coronavirus pandemic in the country and the likelihood of its spread in overcrowded places, ordered only cases of urgent nature to be heard and decided in the court and no adverse orders shall be passed in the absence of lawyers.⁶¹ The high court of Baluchistan also formed an opinion that cases of urgency matter will be heard, to follow precautionary measures physical movements restricted in the boundaries of High Court and the lower Courts, that the cases will be pleaded by the learned counsel or attorneys and parties may be called only when necessary, these orders were issued in respect of covid-19 to avoid the physical contact and to follow the precaution advised by Health advisory.⁶² Similarly, the Lahore High Court issued a strict advisory to the all the district & sessions judges in Punjab to take extraordinary measures in the wake of coronavirus outbreak and lockdown by the Punjab government. District & sessions judges in each district would nominate judges to perform duty of urgent nature for two weeks while female judges have been exempted from performing duty. Additional sessions judges hear cases of urgent nature including post-arrest bail petitions, habeas corpus petitions, and applications under Section 22-A & 22-B CrPC while magistrates and civil judges would only take up post-arrest bail petitions, physical remand and issuance of interim injunctions on fresh matters. Further, a magistrate will visit jail to grant judicial remand in pending criminal cases. No case including pre-arrest bail shall be dismissed for non-prosecution and all the judges would ensure that they dispose of their business till 10 am and their staff members wear masks.⁶³

Female staff working in subordinate judiciary has also been exempted from performing duty except where a female is in charge of a branch. No person from general public including a litigant, except in case of extreme need, would be allowed to enter court premises from main gate. District & sessions judges hold meetings with bar presidents and general secretaries to discuss and apprise them

⁶¹ 'SHC Not to Pass Any Adverse Order in Absence of Lawyers amid Coronavirus Threat' <<https://www.thenews.com.pk/print/631113-shc-not-to-pass-any-adverse-order-in-absence-of-lawyers-amid-coronavirus-threat>> accessed 12 June 2021.

⁶² 'Press Release: Precautions Measures Regarding Corona Virus' (2020) <https://bhc.gov.pk/news-announcements/pressreleases#lg=li_790&slide=0>.

⁶³ 'Corona Outbreak: LHC Issues Strict Advisory to Judges in Punjab' <<https://www.thenews.com.pk/print/633781-corona-outbreak-lhc-issues-strict-advisory-to-judges-in-punjab>> accessed 12 June 2021.

of these measures.⁶⁴ Similarly, the Peshawar High Court also notified that the work of the courts will be limited during the pandemic. Henceforth, the use of technology was dearly required during the pandemic. The pendency of cases will be higher even after the courts resume their normal routine work, which can only be reduced through increasing the number of judges and the use of technology in the judicial process.

“Electronic communication is no substitute for the ability of face-to-face conversations to foster important process values of resolving the matter.”⁶⁵ Notwithstanding the advantages discussed above, online dispute resolving also creates has several disadvantages when compared with traditional method. As Joel Eisen observes, the practice of dispute resolving cannot easily be reproduced in the online environment because “cyberspace is not a ‘mirror image’ of the physical world.”⁶⁶ As it is the most efficient and easier mode to overcome the litigation problem. But there is also a major flaw in this system and that is the connectivity issue. There are major connectivity with the internet issues some parts of the state and to a particular population.⁶⁷ So, the procedure of recording a personal statement, or an advocate presenting his arguments may in some cases remain challenging. This issue cannot be ignored, as there are many stakeholders involved in a judicial process. If there are hurdles in the main procedures, like recording a witness statement, then the system will be rendered useless.⁶⁸

3.1 Implementation of E-courts by Legal Professionals

In Pakistan’s perspective one of most important issue which we cannot overlook is the hurdles created by legal professionals. We have seen in past that when Model Courts were established even at that time lawyers went for strikes to end

⁶⁴ ibid.

⁶⁵ Joel B Eisen, ‘Are We Ready for Mediation in Cyberspace’ [1998] Byu L. Rev. 1305, 1308.

⁶⁶ ibid.

⁶⁷ ‘COVID-19 Reveals the Divide in Internet Access in Pakistan - BORGGEN’

<<https://www.borgenmagazine.com/internet-access-in-pakistan/>> accessed 29 June 2021.

⁶⁸ Rozha K Ahmed and others, ‘Challenges in the Digital Transformation of Courts: A Case Study from the Kurdistan Region of Iraq’ (IEEE 2020) 77.

the system,⁶⁹ the reason behind this is Pakistan's legal system whereby the lawyers have developed practises for their own gains to delay the cases.⁷⁰

3.2 Limited Range of Disputes and Confidentiality Concerns

Few drawbacks are particular to the mode of online dispute resolution chosen. For example, fully automated online system programmed for online dispute resolution can be used to resolve specific types of disputes and can only deal where the amount of settlement is only unresolved issue.⁷¹ Dispute resolution is most effective when parties are physically present before the court as Joel Eisen argues "the great paradox of online system is that it imposes an electronic distance on the parties, while physical way is usually an oral form of dispute resolution designed to involve participants in direct interpersonal contact." This is based on an informal in person discussion between the parties, creating an environment in which the litigants trust the court to adjudicate their dispute is deemed essential.⁷²

The traditional court system creates a physical record whereas online system creates an electronic record which enable parties to get easy access to communications without knowledge of other parties which may infringe the right of other parties.⁷³

3.3 Statutory Amendments

We are aware how a case is initiated or filed in the Courts in normal circumstances. In case of any civil matter the case is filed by giving the plaint with all documents and in case of criminal matter the case is filed by lodging of FIR or complaint. Same is the case of filing of suit in this Situation of COVID-19. The same manner is adopted for filing of case the registrar, or the relevant persons were available where the case is filed. Because there is no other manner prescribed by the Civil Code of Civil Procedure (C.P.C)⁷⁴ and Criminal

⁶⁹ 'Lawyers Go on Strike against Model Courts' <<https://www.thenews.com.pk/print/456568-lawyers-go-on-strike-against-model-courts>> accessed 29 June 2021.

⁷⁰ Raza Ullah Shah and others, 'Delaying Tactics Used by Lawyers in Dispensation of Civil Justice in Lower Courts of Pakistan' (2014) 6 Pakistan Journal of Criminology 113, 113–114.

⁷¹ Joseph W Goodman, 'The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites' (2002) 2 Duke L. & Tech. Rev. 1, 10.

⁷² ibid.

⁷³ M Ethan Katsh, 'Dispute Resolution in Cyberspace' (1995) 28 Conn. L. Rev. 953, 971.

⁷⁴ Section 26 of Code of Civil Procedure 1908.

Procedure Code (Cr.P.C)⁷⁵ for filing of suit. A proper legislation must be done for this manner by passing the bill in Parliament.⁷⁶

In order to effectuate the E-Court System, amendments including but not limited 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”; amendment in sections 25, 128, 142, 143; Order III, Order IV; Order IX; Order X; Order XVI; 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 Articles 77, 130 and 164),
- Supreme Court Rules, 1980 and the Rules of each individual High Court.⁷⁷

4. Conclusion

With increasing population in Pakistan, the number of cases to be adjudicated upon are also on the rise. In addition, the nature of disputes and the location and availability of the litigants and witnesses will also remain an issue. In contemporary system the information and communications technology has created a new era of accessible, speedy, and continuous justice which ensures inexpensive and expeditious justice for every individual through E-Court System. So, digital transformation of court system is the key to making justice universal, portable and available while also boosting investor confidence and thus, the economy. It can assist and revolutionize the current judicial system which will also aid in clearing the backlog of cases along with many other benefits. The overview of Indian and Malaysian E-Court system help us to analyse how they implemented Information and Communications Technology (ICT) in their current judicial system from the beginning, how they made speedy, accessible, inexpensive and expeditious justice to an extent for every

⁷⁵ Section 154, 155 and 200 of Code of Criminal Procedure 1898.

⁷⁶ Article 70, Constitution of Pakistan.

⁷⁷ Asma Hamid, ‘The Case for Smart Courts: Digital Transformation of Courts in Pakistan’ 3 <<https://www.riabarkergillette.com/pk/wp-content/uploads/2020/04/The-Case-for-Smart-Courts-RIAA-Barker-Gillette-PK.pdf>>.

individual and the challenges that they faced in implementing it, and their comparisons with our justice system help us better understand how it can be implemented in our Judicial System as they have similar Judicial Structure as Pakistan.

It is the need of the hour for the judiciary to examine the technology available and adopt the technology which works best, is the most cost-effective and offers the best quality of justice, to establish E-courts System in the current Judicial Structure of Pakistan to reduce huge backlog of cases, to enable litigants to file cases online, to facilitate vulnerable groups or distant people who cannot come to court and to relieve the aggrieved who generally bear stress due to delay. Though the E-court initiative was started but it just has one facility of E-court which is video link and that also lacks behind in so many aspects in terms of implementation. Thus, for revolutionizing our judicial system, we need to start it with a proper framework with proper implementation and awareness amongst judges, lawyers, and judicial officers for improving the court system across the country. This is how we can ensure and guarantee speedy justice for all.

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