

Paper one

THE VISION

September 2019

*Whitepaper Series
On Next Generation
Justice Platform*

DAKSH



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About DAKSH: DAKSH is a Bengaluru-based civil society organisation working on judicial reforms. We are focused on solving the problem of pendency of cases in the Indian legal system. We approach the problem from the perspectives of data, efficiency, process, technology and administration.

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Paper one

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Next Generation Justice Platform

Introduction

Information and Communication Technology (ICT) has transformed every sphere of life, from how individuals interact with one another, to how business is conducted, to how organisations operate, in both the private and public sectors. The importance of the judiciary as an institution that safeguards rights of citizens, resolves disputes, and protects the Indian Constitution and promote its values, is well understood. At the core of these responsibilities are the citizens, and in their interest, the judiciary has to function at the best of its capabilities to fulfill its constitutional mandate.

The judiciary is a complex system which needs efficient, streamlined, and robust systems in place for the communication, storage, and management of information. Seamless communication between citizens, lawyers, and other stakeholders in the justice system has emerged as the next frontier for reforming this system.

In this paper we propose a vision for a next generation justice platform that harnesses technology to make access to justice more equitable, efficient, and affordable for citizens.

Internet penetration in India was at 8.2 million by 2016 which surpassed the goal set by National Digital Literacy Mission.¹ In recent years we have seen

¹ Live Mint. 2017. 'How far has India come in its digitization journey?' Live Mint. 10 March. Available at <https://www.livemint.com/Industry/nAlcrfPTv5G1yGLGQ54LzN/EmTech-India-2017-How-far-has-India-come-in-its-digitization.html> (accessed on 9 May 2019).

the proliferation of smartphones and increasing coverage of mobile internet in India, which in some cases reach remote areas where other public services have failed to do so.

This justice platform will be intuitive and natural to use, primarily for citizens, but will also cater to the needs of other stakeholders like judicial officers, non-judicial court personnel, lawyers, police, and investigation agencies.

“This justice platform will be intuitive and natural to use, primarily for citizens, but will also cater to the needs of other stakeholders like judicial officers, non-judicial court personnel, lawyers, police, and investigation agencies.”

It will have the capability to monitor and respond to its own performance, adapt to the present and predict future demands, and plan accordingly. The judiciary will be able to use the data on court performance generated by the system, with the aid of analytical tools, to continually improve upon its present performance. This justice platform will cover judicial and administrative processes ranging from appointment of personnel and allocation of material resources to the performance management systems of the judiciary. A brief note on this capability is given in Chapter 5.

Such a justice platform will completely transform the relationship between citizens and the judiciary. One potential outcome of achieving the adoption of a citizen-centric system is to completely eliminate barriers that deter citizens from seeking justice in courts. The democratic implications of this are profound, given the importance of the judiciary as a pillar of democracy, its constitutional mandate to uphold the rule of law, and the need to enable access to justice to the citizens.

CURRENT ICT ADVANCEMENTS

Each vertical within the justice system operates their own distinct information system. ‘Whitepaper series on Next Generation Justice Platform, Paper 2: Implementation and Transition’, gives an overview of the justice system. The judiciary uses the E-Courts system created as a part of the E-Courts Mission Mode Project. Citizens can view case status, hearing dates, and cause lists online via the E-Courts portal. Judicial officers and non-judicial staff use the Case Information System (cis) to enter, store, track, and access case-related information.

Some of the Union Government ministries have adopted the Litigation Management and Briefing System (Limbs) to enable the ministries to manage their civil cases better. The system is a unified database of all court cases in which they are litigants.² The ultimate goal of this system is to speed up the disposal of civil litigation involving the Government of India. The State Governments and their departments have their own systems and tools for this purpose.

POLICE

Police across India have begun implementing a system containing a national database of criminal records including records of FIRs and challans through Crime and Criminal Tracking Network and Systems (CCTNS). Citizen-centric police services can be accessed online, including access to past records. There are plans to create a larger Integrated Criminal Justice System (ICJS) which will provide for sharing of information between the police, courts, prisons, prosecution services, and forensics – thereby spanning all verticals within

² Department of Legal Affairs, Ministry of Law and Justice. Government of India. ‘An innovative tool for the digitisation of court cases’. Department of Legal Affairs, Ministry of Law and Justice. Government of India. Available at <http://limbs.gov.in/#> (accessed on 14 January 2019).

“One potential outcome of achieving the adoption of a citizen-centric system is to completely eliminate barriers that deter citizens from seeking justice in courts.”

the criminal justice system. It will enable the creation of dashboards that will summarize information from each of these verticals.³

PRISONS

Prison departments of different states have E-Prisons systems to provide information about prisoners to prison staff and to offer certain services to citizens. Some of the services include the capability of instantly requesting for prison visits online, submitting grievances, and purchasing products made by prisoners. Staff of prison departments and other authorised users from the criminal justice system can track prisoners using these portals. The PRISMS system of Goa enables tracking of all relevant details of inmates from their personal information and their property details, to details of court schedules, visitors, parole, hospital visits, and transfers. The system is also used for managing and tracking other administrative details such as the timing of opening of prison gates, staff duties, management of supplies and stocks.⁴

³ National Crime Records Bureau, Ministry of Home Affairs, Government of India. 'Crime and Criminal Tracking Network & Systems (CCTNS)' *National Crime Records Bureau, Ministry of Home Affairs, Government of India*. Available at <http://ncrb.gov.in/BureauDivisions/cctnsnew/index.html> (accessed on 16 January 2019).

⁴ Inspector General of Prisons. Government of Goa. 'Prisons Management Systems (PRISMS)'. *Inspector General of Prisons, Government of Goa*. Available at <https://goaprisons.gov.in/Prisms.aspx> (accessed on 14 January 2019).

These developments demonstrate that the justice system has made significant advances by using technology to increase its efficiency and effectiveness. However, there is scope for ICT to be used more extensively in the Indian judiciary.

This paper has been structured as follows:

Chapter 1

Provides a comprehensive explanation of the approach and reasons for adopting a justice platform, the principles that will guide the course of action.

Chapter 2

Provides an overview of other countries' digitisation of their justice system.

Chapter 3

Provides an overview of the stakeholders engaged with the justice system.

Chapter 4

Explains the litigation process of a justice platform that has been transformed with a citizen centric approach.

Chapter 5

Explains the need of performance management in a justice platform.

1

Guiding principles and The ‘Government as a Platform’ approach

The ‘Government as a Platform’ approach focuses on achieving the ideal experience for the citizen by re-structuring government institutions as digital platforms for the delivery of public services. The process of designing such a justice system should be guided by a vision of what would be ideal for a citizen as a litigant, victim or accused. This will help define what stages and processes are necessary, and how they flow from one to the next.

Until recently, e-governance initiatives have largely been undertaken in a fragmented manner, with each government agency developing its own distinct procedures for online engagement and service provision to citizens. These efforts typically involve each agency pursuing their own initiative to digitise the provision of services. In the process, the data collected by each agency is stored in silos, which often results in duplication or a lack of communication. As a result, citizens often have to perform the same tasks for various government offices such as the payment of fees, verification of identity, submission and verification of documents, among others on multiple platforms. In this scenario, each agency must then independently invest in the development of online facilities to provide these services. Aside from the resulting inefficiencies, this

also leads to confusion among citizens who may have to learn new procedures when using the same services but for different governments for the first time.

An appropriate approach to adopt when attempting to conceive a citizen-oriented justice system of the future is Government as a Platform (Gaap). This approach was first outlined by Tim O’ Reilly⁵ in a 2009 article in Forbes magazine. He explored how governments and the ways they provide services to citizens can be redefined, based on developments and insights gained from Web 2.0 and computer platforms. In its essential and original form, it referred to the reconstruction of governments with internet-based technology at its core, with renewed focus on meeting collective needs of citizens. According to O’ Reilly, “...Government 2.0 is not a new kind of government; it is government stripped down to its core, rediscovered and reimagined as if for the first time”.

⁵ Tim O’Reilly. 2011. ‘Government as a Platform’. *Innovations: Technology, Governance, Globalization*, 6 (1): 13-40.

The section below looks at fundamental features of a desirable justice system and borrows principles from Gaap.

JUSTICE PLATFORM



1

Citizen oriented process



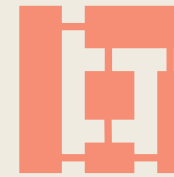
2

Common digital infrastructure



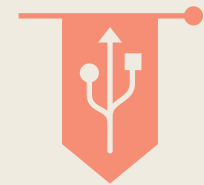
3

'One stop government'



4

Modularity



5

Open standards



6

Automation of key processes where applicable



7

Provision of intelligent tools to stakeholders



8

Ease of use



9

Accessibility



10

Minimal asymmetry of information



11

Transparency



12

Efficiency



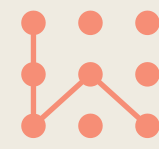
13

Privacy



14

Fairness



15

Security

1.1 CITIZEN ORIENTED PROCESS

People who approach the courts and the justice system should be the focus of the processes and procedures. Judicial reforms so far have been piecemeal and have not reduced barriers for the litigants in any significant manner. Despite several reforms, the judicial process is still a minefield for litigants. Litigants are heavily dependent on their advocates for accessing information and to understand the progress of their cases. Though this has been gradually changing, it has been a process of incremental change. The motivation of the present exercise is to envisage a total transformation of the judiciary, by implementing a next-generation, citizen-centric platform.

Digitising existing processes and hosting them on a single website is not sufficient if citizens need to be familiar with the internal workings of an institution in order to utilise a public service. Tom Loosemore, the founder of the UK's Government Digital Service, remarks on the shortcomings of the UK Government's effort to create a one-stop government: "you still need to understand the structure, and processes, and ways of thinking of government to even make a start. You have to adapt yourself to the bureaucracy. To have your simple need met, you are expected to understand the mess of silos into which government has fragmented".⁶

In order for a justice platform to be effective, citizens should have easy access to any relevant information, and the steps involved in using any public service should be intuitive and well explained within the platform itself, with there being a capability for citizens, lawyers, the police, witnesses, and other stakeholders to perform tasks over the same platform, whether submitting documents or statements, paying fees or fines, or filing cases, FIRs, or complaint. By 'citizen-centric', we mean that a well-designed platform therefore requires that performing any task is intuitive and easy for a citizen to perform. It also must ensure that the citizen is fully informed about:

⁶ Tom Loosemore. 2018. 'Making government as a platform real'. Public Digital, 25 September. Available at <https://public.digital/2018/09/25/making-government-as-a-platform-real/> (accessed on 18 March 2019).

By 'citizen-centric', we mean that a well-designed justice platform therefore requires that performing any task is intuitive and easy for a citizen to perform.

- 1 The options, in terms of filing cases or seeking alternative methods of dispute resolution, are available to them;
- 2 Laws applicable their situation;
- 3 Data and information they have provided to the platform, and which of these data has been stored; and
- 4 Permissions for who can access their data and how they must grant access in order to use the platform.

1.2 COMMON DIGITAL INFRASTRUCTURE

Integral to this kind of a system of service provision is the idea that infrastructure and processes are native to the internet. This means that the processes that a citizen and a government agency must undertake in order to fulfil a task is not merely a digital replication of traditional paper-based services. The institution itself would be built around a digital infrastructure, where all integral processes, both internal and external, are designed around digital systems. All processes, services, and tasks that are common between different public services and service-providing agencies, such as systems of

identity verification, payment of fees are built upon this common platform. Tom Loosemore likens a government to a city, with each public service being equivalent to a building. Each service, like each building, is supported by infrastructure, which they share with each other.⁷

Every external and internal process, right from substantive processes such as receiving written statements and writing judgments to administrative processes including budgeting and resource allocation, to collecting, accessing, and sharing data, would be built on this common digital infrastructure.

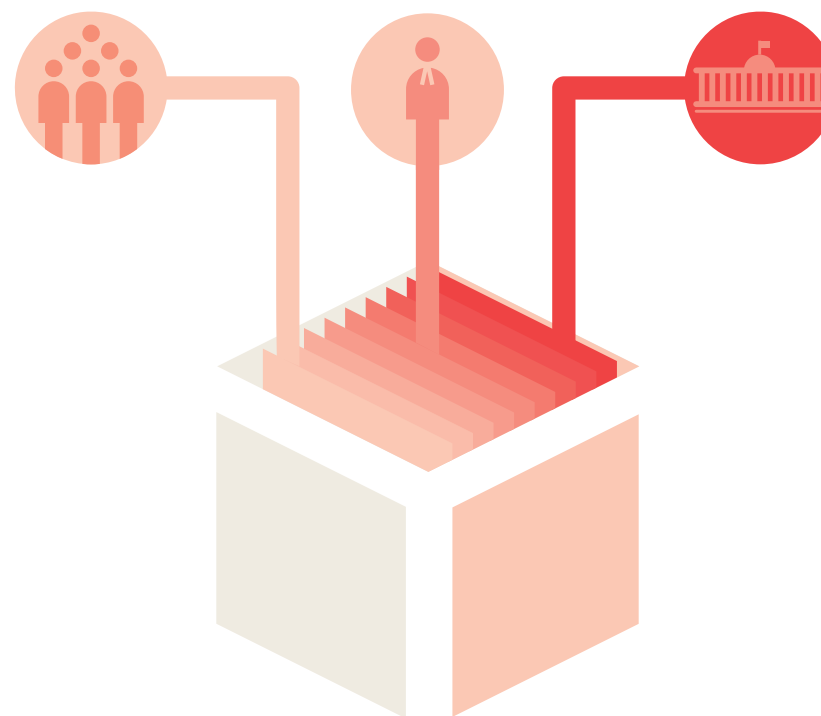
1.3 'ONE STOP GOVERNMENT' (SINGLE POINT OF ACCESS) AND COMPREHENSIVE CENTRALISED DATA REGISTRY

Unlike modes of public service provision where information is concentrated in silos, all public services in GAAP are provided at a single point of access. If a citizen is to access all services through a single justice platform, the platform will have to be a comprehensive and authoritative source of information on that service. A citizen with no prior knowledge of how an agency works and with no experience using a particular service should be capable of navigating the process without any assistance.

Efthimios Tambouris describes a 'one-stop government' as follows: "Ideally, online one-stop government requires that all public authorities are interconnected and that the citizen is able to access public services by a single point even if these services are actually provided by different departments or authorities".⁸

Authoritative, comprehensive banks of data, in the form of lists of information, are at the core of any public service. Currently, different public

services each have their own database leading to them individually possessing 'silos' of information – often of the same type, for the same purpose, such as postal addresses of businesses. There are many drawbacks to data being held in silos rather than on a common platform. An obvious inefficiency is the duplication of efforts involved in collecting, storing, and managing data, as well as in creating means of accessing it. In addition to this, agencies cannot easily use data collected by other agencies, which can slow down their work or force them to repeat the same data collection work as other agencies. A single, common, easily accessible list would resolve this, providing what Loosemore describes as a 'single source of truth'.⁹



⁷ Loosemore, 'Making government as a platform real'.

⁸ Efthimios Tambouris. 2001. 'An integrated platform for realising online one-stop government: the egov project'. Paper presented in Database and Expert Systems Applications. 12th International Workshop on Database and Expert Systems Applications. 359-363.

⁹ Loosemore, 'Making government as a platform real'.

1.4 MODULARITY

The task of transforming the justice system brings up many design challenges, one of the most important being the question of jurisdiction and who implements any reforms. There are many factors determining this, such as the sheer number of functionaries that play a part in justice delivery from the courts to the police and prisons. Even with one functionary, like the judiciary, jurisdiction is bifurcated at the union and state levels. Given that it is logistically impossible to co-ordinate a single effort at reforming all aspects of justice delivery in one go, even if such a task was possible jurisdictionally, it is inevitable that such transformation will have to be staggered and conducted by different bodies.

Allowing different bodies or authorities to design modules for functionalities within their jurisdiction will enable the platform to cater to the idiosyncrasies and processes of each territory. However, this customisation of individual modules could potentially result in the justice platform becoming extremely complex and hard to navigate. More importantly, if the modules are created in silos they will not be able to easily exchange information with one another, an impediment that defeats the stated purpose of the platform to reduce inefficiencies. It will be imperative that a specific body be entrusted with the task of supervising the overall roll out of the platform. With this slightly distant viewpoint, the body will be ideally placed to ensure that the modules are homogenous and interoperable. To ensure this, open standards and protocols must be adopted as a matter of principle in the design and implementation of the platform, but with the backing of the platform's legal framework. Finally, a modular approach to systems development in the judiciary and the justice system at large is made easier by the fact that the judiciary is already adopting open source operating systems and software and training personnel in its use as a part of the E-Courts project.¹⁰

¹⁰ E-Committee, Supreme Court of India. 'eCourts Project Phase II Objectives Accomplishment Report As per Policy Action Plan Document'. E-Courts. Available at https://ecourts.gov.in/ecourts_home/static/manuals/Objectives%20Accomplishment%20Report-eCourts-final_copy.pdf (accessed on 10 August 2019).

“Allowing different bodies or authorities to design modules for functionalities within their jurisdiction will enable the platform to cater to the idiosyncrasies and processes of each territory.”

1.5 OPEN STANDARDS

Being modular in design, the justice platform needs regulations to ensure that the modules are compatible and interoperable with each other even when developed independently. These regulations would specify the formats for entering information and digital storage formats for legal documents, evidence, information used in criminal investigations, and the communication protocols to be followed by platform servers and modules.

Where a standard is a technical guideline that informs the manner in which an object should be created or to which a task should be done,¹¹ regarding which there is some consensus, an 'open standard' is a standard which is created, adopted, and improved, with a degree of what is referred to as 'openness'.¹²

¹¹ Robert S. Sutor. 2011. 'Software standards, openness, and interoperability', in L. DeNardis(ed.), *Opening Standards: The Global Politics of Interoperability*, p. 209–217. Cambridge, MA: The MIT Press.

¹² S. Sutor, 'Software Standards, Openness, and Interoperability'; Elliot Maxwell. 2006. 'Open standards, open source, and open innovation: Harnessing the benefits of openness.' *Innovations: Technology, Governance, Globalization*, 1(3): 119-176.

‘Openness’ has a variety of interpretations. Those that we identify as relevant for a justice platform for the justice system are the following:

- 1 The process of standard setting is transparent;¹³
- 2 The standard is free to use, irrespective of its dependence on proprietary technology;¹⁴
- 3 The standard and all documents associated with its development is accessible to all;¹⁵
- 4 The process of standard setting requires the consensus of those who participate;¹⁶
- 5 The Application Programming Interfaces (APIs), which (in this context) are the rules that enable communication between modules and the platform, are also accessible.¹⁷

Open standards are an essential requirement for the justice platform. Since it has the chief goal of being citizen-centric, the process of arriving at the specifications to which the platform should be built must be as democratic as possible to ensure that the needs of citizens and other stakeholders are met. Open standards even allow the private sector and citizens to develop their own programmes and applications for engagement with the platform, allowing the platform the flexibility to address even the most specific user needs.

¹³ S. Sutor, ‘Software Standards, Openness, and Interoperability’.

¹⁴ Krechmer, ‘The principles of open standards’.

¹⁵ Ken Krechmer. 1998. ‘The principles of open standards’. *Standards Engineering*, 50(6): 1-6.

¹⁶ Krechmer, ‘The principles of open standards’;

John B. Morris. 2011. ‘Injecting the public interest into Internet standards’, in Laura DeNardis (ed.), *Opening standards: the global politics of interoperability*, p.3-12. Cambridge, Massachusetts, USA. The MIT Press.

¹⁷ Krechmer, ‘The principles of open standards’.



Since the platform will incorporate a modular approach to allow stakeholders to develop modules that best suit their needs, it is imperative that the modules are able to communicate with each other seamlessly with no loss of information.¹⁸ This includes loss of information caused by storage media becoming obsolete, and by unreadability of files due to other factor such as control of proprietary software licenses by a private vendor (‘vendor lock-in’), or lack of documentation by an open source developer.¹⁹

As with open source software (and in combination with it), open standards help the justice system avoid vendor lock-in, which occurs when reliance on a standard developed by a private vendor gives the vendor a market advantage in providing software solutions developed to that standard. Vendor lock-in also means that deviation from the proprietary standard can result in loss of information.

¹⁸ K.D. Simon. 2005. ‘The value of open standards and open-source software in government environments’. *IBM Systems Journal*, 44(2): 227-238.

¹⁹ Marco Fioretti. 2010. ‘Why open digital standards matter in government’, in Daniel Lathrop and Lauren Ruma (eds.), *Open government: Collaboration, transparency, and participation in practice*, p.363-73. California, USA: O’Reilly.

Therefore, open standards can also protect information by rendering it independent from the software and hardware used to process it.

1.6 AUTOMATION OF KEY PROCESSES WHERE APPLICABLE

The justice platform should provide for automation of appropriate processes to the extent practical. It is important to point out that this does not mean that the tasks of the judges, registry, etc will be performed by algorithms. Wherever appropriate, only tasks of a mechanical agency that do not require human judgement should be automated.

1.7 PROVISION OF INTELLIGENT TOOLS TO STAKEHOLDERS

Intelligent tools can be used to provide information and options to litigants regarding whether and where to file a case. Litigants need to be given explanations on the various parts of the litigation process and the options available to them, based on the facts of the case, the law, past outcomes in similar fact situations, and predicted outcomes of each option given. Information on the costs, disposal timelines, and penalties, if any should also be provided to the litigant.

For internal stakeholders such as judges, templates for action for orders/ judgments should be provided to save time.

For non-judicial internal stakeholders such as registry staff, a large proportion of their work involves routine verifications, passing information from one to another, and managing time and resources. Technological tools for verification and validation can eliminate these inefficiencies to a large extent.

1.8 EASE OF USE

All tasks and processes should be intuitive and easy to understand for citizens and other stakeholders, as far as possible. The procedures for a litigant to file

pleadings, produce evidence and present arguments should be simple, clear, and natural from their perspective. Frequent users such as judges and lawyers should have dedicated workflow developed for their specific use.

1.9 ACCESSIBILITY

The justice platform is intended to be the primary mode of engagement with the judiciary, it should be accessible physically, cognitively, and financially. Processes need to be affordable, and accessible from different geographies and in languages that are comprehensible to all citizens.



All documents submitted to and generated by the system should be machine readable. This enables case-related information to be more easily stored, accessed, transferred, and analysed by technological applications. This can be used to facilitate open data access, which would offer considerable benefits to litigants, judiciary, other branches of government, policy makers, civil society, and lawyers.

1.10 MINIMAL ASYMMETRY OF INFORMATION

The justice platform should be designed for minimising the asymmetry of information between the citizen and the judiciary thereby empowering citizens to make informed choices and to negotiate the complexities of the litigation process. Information regarding judicial processes, requirements under the law and options available should be made in an easy to understand language of the citizens' choice to guide them.

1.11 TRANSPARENCY

Transparency of public institutions is the bedrock of a democratic republic. It is a necessary condition for holding these institutions accountable and ensuring that they serve the public interest. The need for transparency is especially true for the judiciary, given its primary purpose as a forum of dispute resolution. This necessity is recognised in law as both the Code of Civil Procedure, 1908²⁰ and Code of Criminal Procedure, 1973²¹ have provisions on open courts. A nine-judge bench of the Supreme Court has also held that public scrutiny “naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice”.²²

²⁰ Section 153-B, Code of Civil Procedure, 1908.

²¹ Section 327, Code of Criminal Procedure, 1973.

²² Naresh Shridhar Majrekar v. State of Maharashtra. (1966) 3 SCR 744.

As such, it should be possible to view the processes, decisions, and outcomes associated with any given case, both as a court user, as well as a disinterested citizen, subject to restrictions protecting the privacy and safety of litigants. The platform must have the technical capability to disclose all information, with the decision to release it being based on statute and not only capabilities.

A litigant should, at any point, be able to access information on the options available to them and the status of their case, and should be provided with explanations of relevant case information in a way that a non-expert would understand. They should ideally be able to understand such information without having to contact a lawyer for every query. The platform should ensure that judgments, orders, and other important documents are in a format that is easily understood by litigants.

“Open data policies should be adopted to ensure that every order and judgment is made available as raw data in bulk form.”

Transparency and simplification of the process to the litigant, and relying on advocates for only intricate interpretations of law rather than mundane details, would increase accessibility and affordability of the judicial system manifold. Open data policies should be adopted to ensure that every order and judgment is made available as raw data in bulk form, with no conditions on its use. It should also be available in any relevant and widely accessible format suitable for analysis subject to principles of privacy that has been detailed in Section 1.13.

1.12 EFFICIENCY



Image by Dan Zen

As per then prevailing laws, a petition could be filed only by a victim or a relative. Kapila and her husband Nirmal Hingorani wanted to represent the undertrial prisoners in Bihar. The landmark case came to be known as the Hussainara Khatoon case 1979. Hussainara was one of the six women prisoners. This earned Kapila the title the “Mother of PILs”.

The Supreme Court, in *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81 held that the right to a speedy trial is a fundamental right under Article 21. Part of the rationale was to increase faith and participation in the judiciary of those people who viewed the lengthy average timeline of litigating a case as a barrier to justice. One method of achieving speedy trials is to increase efficiency within the judiciary so that litigants who approach the judiciary will have confidence that their case will be disposed of quickly and within a predictable time frame. In this context, efficiency means that there is frictionless transfer of information without any compromise in the quality of the outcome. The elimination or minimisation of barriers to the transfer of information means that time and resources can be more focused towards dealing with the core of the dispute rather than peripheral tasks. In order to achieve this, every aspect of the design can be optimised to increase the speed of case disposal, without compromising on procedural safeguards – by trimming redundant and irrelevant steps, refining procedures, and using more direct means of communication. Precise and predictable timelines for case disposal should be possible to devise with an appropriate system design.

1.13 PRIVACY

A fundamental requirement of any justice platform which stores information is a well-developed privacy framework that protects this information from any use that is not in accordance with the principles of privacy enumerated by the Supreme Court in *Justice K. S. Puttaswamy (Retd.) and Anr. v. Union Of India And Ors.*²³

There are three main ways in which privacy is a concern, with respect to judicial information:

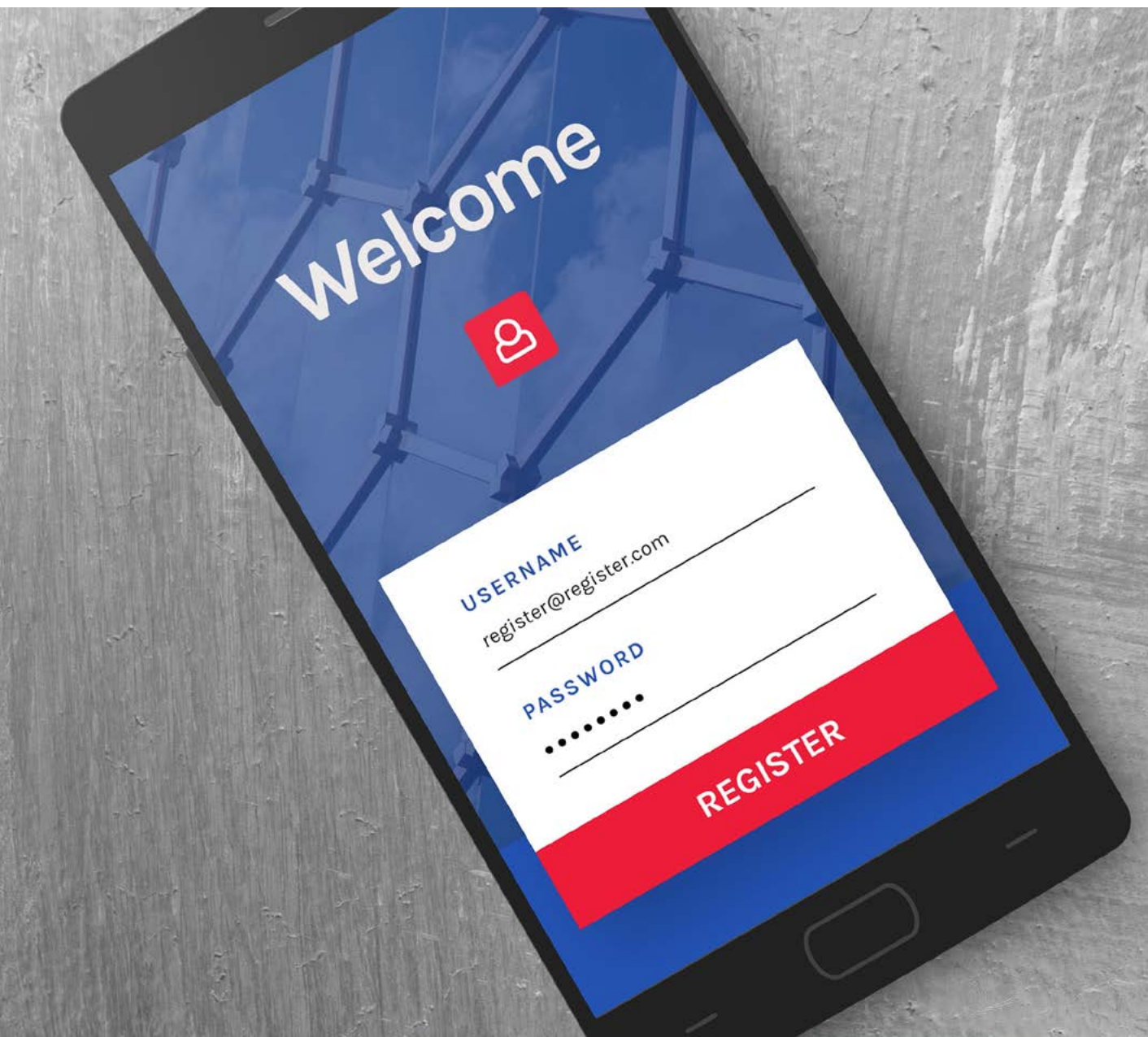
- 1 Access to private information in records of court proceedings by anyone who is not a party in the case;
- 2 The sharing of private information from court proceedings with other government agencies and bodies; and
- 3 Access to metadata.

Open courts are the norm in India and court proceedings are, and should continue to be, public. However, citizens should have confidence that private or personal information that is hosted on the platform cannot be misused. This approach to open justice has been recognised by the Supreme Court in *Swapnil Tripathi v. Supreme Court of India (through Secretary General)*,²⁴ where it stipulated a privacy limitation when live streaming court proceedings. Therefore, the privacy protection measures should use very precise criteria to determine which case information is made public on the platform.

Information and data submitted to courts for use in resolving disputes should be used exclusively for that purpose, and therefore the privacy framework should safeguard citizens from the use of this information by government and private agencies for any other use not authorised under law.

²³ (2017) 10 SCC 1

²⁴ *Swapnil Tripathi v. Supreme Court of India (through Secretary General)* (2018) 10 SCC 639.



1.14 FAIRNESS

One of the underlying principles for a judicial system is that every aspect of it should be ‘just and fair’.²⁵ The stakeholders should be aware and completely informed of the data/information being collected and should not be misled or deceived. The justice platform should be inclusive and strive to attain substantive equality. Technology should be harnessed in a way to eliminate any personnel biases and control unguided discretionary powers.

1.15 SECURITY

Any judiciary that wants to completely digitise its judicial system will encounter a basic question of how to protect the data it gathers. Digitisation will generate a voluminous amount of data, a portion of which will contain sensitive or private information. As such, it will be of paramount importance to ensure appropriate security measures are taken.²⁶ This will include appropriate protocols as well as sufficient accountability mechanisms in the event of a breach and to also have criminal and civil sanctions to minimise the chances of any breach.

²⁵ *Imtiyaz Ahmad v. State of Uttar Pradesh & Ors.* (2012) 2 SCC 688.

²⁶ *Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.* (2019) 1 SCC 1.

2

International experience in digitalisation of the judicial system

Many countries have updated their judicial systems to make legal services more accessible to their citizens and to make their justice system more efficient, fairer, and less expensive.²⁷ As the paper focuses on building a single point of access for different stakeholders, it is important to look at other countries' digital provision of judicial and government services to gain insight and understand their technological features. Some of the key features that countries like Korea, Malaysia, Singapore, Dubai and UK have in common are e-filing, e-court room, 24x7 access to judgments and orders, online payments, and other court management related features.

FEATURES OF JUDICIAL SYSTEMS

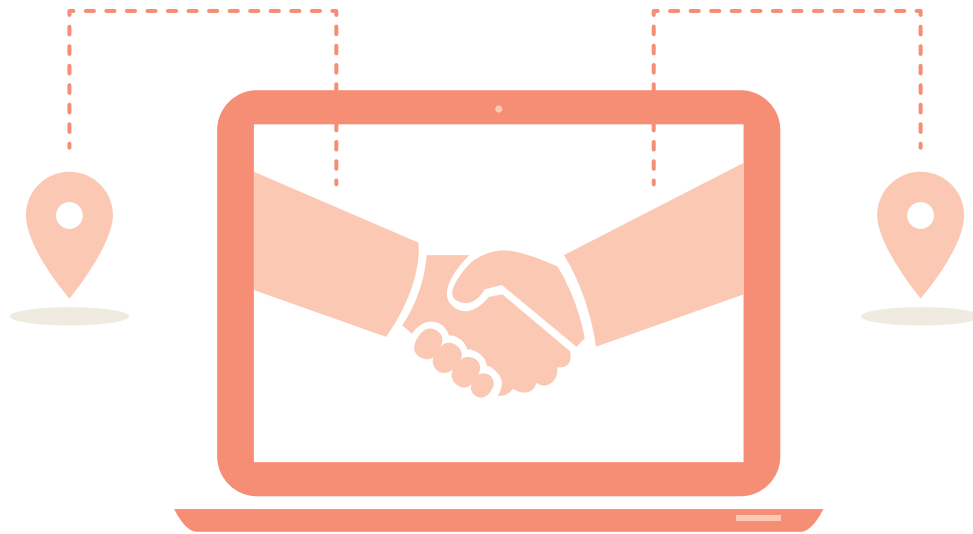
Countries have adopted systems for different aspects of the judicial process. Judicial systems can be broadly classified into three levels.

- At a basic level of this system, certain data is uploaded on to a system from the court records. There is no direct transcribing of information on to the system and court staff have to manually carry out the task of filling in each case details after the cases are heard.
- At the medium level, there are better case content systems with case data and standard texts blocks. The uploading of documents is streamlined and payment of court fees is online. Parties to the case are notified automatically about the various stages and the system is able to set timelines for the cases to be disposed. This platform has the capacity to predict timelines for various stages of the case. However, in the medium level of the case management system there is only simple automation and no use of artificial

²⁷ Antonio Cordella and Francesca. 2016. 'Law and Technology in Civil Judicial Procedures', in Brownsword, Roger, Eloise Scotford, and Karen Yeung (ed.), The Oxford Handbook of Law, Regulation and Technology, p. 245. United Kingdom: Oxford University Press.

intelligence or any predicting tools to manage the process. The case management systems of most countries examined in this paper vary from medium to advanced levels of management.

- In an advanced judicial information system, the judicial process is seamless and paperless. The digital aspect of such a system has logging facilities which provides all case related information with the option of audio and video recordings. Standardised templates are available for various pleadings, applications, summons etc. Records and documentation of evidence are stored on the system as far as possible. Payment of court fees is done online, the system automates scheduling and delivery of notifications and reminders to all stakeholders. Judges have access to a database of case and precedents. Every document has an e-signature to minimise security risks.²⁸



²⁸ Erwin J Rooze. 2010. 'Differentiated Use of Electronic Case Management Systems', International Journal for Court Administration, 1-10.

In an advanced judicial information system, the judicial process is seamless and paperless.

The system also recognises deadlines for filing pleadings and producing evidence and can be used to track the number of adjournments sought and other time bound provisions. The system assesses current workload of judges to estimate future inflow of cases. All data related to a case and to related cases filed in higher courts, their status, and outcome of each hearing should be on the system. The system uses the data available to generate reports based on case load, pendency, back log, and set realistic goals to address the issues.²⁹

Online dispute resolution (ODR) is being implemented in Singapore and Malaysia. The ODR forum is set to be used for consumer cases in China, UK and Dubai, and is being implemented on a pilot basis in few states in the U.S. This option is being used by litigants to settle disputes outside court through negotiation and mediation. The parties are able to draw their side of the dispute on the system and opt for an out of court settlement. The other feature is having a live chat, this feature allows the users to chat directly with a legal advisor who can help the user navigate through the system and the various features it entails. The objective of this tool is to engage with the user and address the problem immediately. When the legal advisor is not able to respond after working hours, a chat box developed with commonly asked questions and answers determined by conditional logic to give quicker answers can be set up.³⁰

²⁹ Cordella and Francesca, 'Law and Technology in Civil Judicial Procedures', p. 245.

³⁰ Tom Walker and Paola Verhaert. 2018. 'Technology for Legal Empowerment: A Global Review'. The Engineer Room. p.18. Available at <https://www.theengineroom.org/wp-content/uploads/2019/01/Tech-for-Legal-Empowerment-The-Engine-Room.pdf> (accessed on 10 May 2019).

The table below examines certain features of the online judicial system that are currently in use in a few countries:

Table 1: International comparison of judicial information systems

Online system	South Korea ³¹	China ³²	UK ³³	Singapore ³⁴	Dubai ³⁵	US ³⁶	Malaysia ³⁷
Case management system - A comprehensive online system that streamlines the judicial process from the stage of e-filing to disposal of a case by engaging in various case management principles.	Yes (Advanced)	Yes (Advanced)	Yes (Advanced)	Yes (Advanced)	Yes (Advanced)	Yes (Advanced)	Yes (Advanced)
E-court room - Live streaming of court proceedings, audio and video recording, and video conferencing.	Yes	Yes	Yes	Only audio recording	Yes	Yes	Yes

³¹ Julien Vilquin and Erica Bosio 2014. 'Improving court efficiency: the Republic of Korea's e-court experience', *Doing Business – World Bank*, August. Available at https://elibrary.worldbank.org/doi/pdf/10.1596/978-0-8213-9984-2_Case_studies_6 (accessed on 9 May 2019).

³² Bakermckenzie FenXun, 2018 'China's New Judicial Guidance clarifies scope and improves efficiency of internet disputes', *Bakermckenzie FenXun*, September 2018. Available at https://www.bakermckenzie.com/-/media/files/insight/publications/2018/09/al_chinanewjudicialguidance_sep2018.pdf?la=en (accessed on 9 May 2019).

³³ Judiciary of England and Wales. 2018. 'The Better Case Management Handbook'. Courts and tribunals Judiciary. January 2018. Available at <https://www.judiciary.uk/publications/the-better-case-management-bcm-handbook/> (accessed 10 May 2019).

³⁴ Singapore Subordinate Courts. 2011. 'Subordinate Courts Singapore Quality Award with Special Commendation Summary Report'. International Consortium for Court Excellence. Available at <http://www.courtexcellence.com/Resources-/media/Microsites/Files/ICCE/Subordinate%20Courts%20Singapore%20Quality%20Award%20with%20Special%20Commendation%20Summary%20Report%202011.ashx> (accessed on 9 May 2019).

³⁵ Gulf News. 2013. 'Dubai Courts on forefront in adopting smart technology' *Gulf News*, 21 November. Available at <https://gulfnews.com/uae/government/dubai-courts-on-forefront-in-adopting-smart-technology-1.1257949> (accessed on 9 May 2019).

³⁶ Walker and Verhaert, 'Technology for Legal Empowerment: A Global Review'.

³⁷ Wan Satirah Wan Mohd and Abrar Haider. 2013. 'E-Court: Technology Diffusion in Court Management'. Paper presented at Proceedings of the Nineteenth Americas Conference on Information Systems at Chicago, Illinois, 15 August.

Online system	South Korea	China	UK	Singapore	Dubai	US	Malaysia
Digital archive - Data collection of every aspect of the case related proceedings.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Document management - Availability of standardised templates.	Yes	Yes	Yes	Yes	No	Yes	Yes
Online payment - Option of making payment through the portal.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Judge Support system - Judge specific workflow management, template for judgment writing and access to case laws and precedents.	Yes	Limited	Not sure	No	Yes, but no template for judgement writing	Limited	No
Online Dispute resolution tool - Alternate dispute resolution for mostly consumer, divorce and civil cases.	Limited	Limited (e-commerce disputes)	Yes, only for consumer disputes	Yes	Yes, limited	Yes, but piloted in few states	Yes

2.1 SOUTH KOREA

South Korea is ranked 2nd in ease of enforcing contracts by World Bank in 2019. One of the main reasons for this is their robust e-judicial system with a case

management system, judge support system, and e-court rooms. In 2010, Korea launched the electronic case filing system which enables electronic submission, registration, service notification, and access to court documents. Since then, Korea has progressed briskly and with a special provision for e- filing of civil cases being introduced in 2012. The special provision led to the proportion of

cases filed digitally increasing to 45%, in a period of two years.³⁸ Apart from citizens, they were able to incentivise the lawyers to use the e-system by cutting the court fees by 10% if they chose to file the case through the system. They have a dedicated system to support judges which helps organise cases on priority basis. An option of 'my case history' helps the judges track the cases they have disposed and the final determination of the cases.

They also have a judge support system which enables them to use tools to automate document formatting, edit multiple judgments, and co-write judgments. The tool is able to take all the inputs of the case and generate a judgment. "Once completed, judges enter a digital signature and register the decision in a searchable database of judgments".³⁹

2.2 DUBAI, UAE

Dubai aims to make all courts paperless by 2021, and is rapidly progressing towards a completely digital judiciary. Their current system provides electronic services such as the e-judge, e-lawyer, e-courtroom, e-case registration, and e-notary public.⁴⁰ They have focused on citizens as the key stakeholders and launched an app called 'Shoor' that offers free legal services to its citizens, which has a reasonable amount of subscription from the legal fraternity.

2.3 MALAYSIA

In Malaysia, the e-court initiative started in 2009, introducing facilities such as the Electronic Filing System (EFS), the Queue Management System (QMS), the Case Management System (CMS), the Court Recording and Transcribing

(CRT), and video conferencing.⁴¹ Court proceedings are recorded, may be live streamed, and are stored for future access. Audio conference call facilities are available for simple civil matters, and for other matters if one party or an advocate to the case is physically absent. The option of video conferencing is available for all types of cases and hearings.

The QMS alerts lawyers of the time at which their cases are estimated to be listed, based on the line of cases. Lawyers are also updated of the outcome of the hearing by SMS. The Malaysian judiciary wants to connect different departments in the judiciary and other government departments to a single system, to minimize barriers posed by physical transfer of information. This would bring in seamless exchange of information and data between different stakeholders like law enforcement, police, public prosecutors, and prisons.

2.4 UNITED KINGDOM (UK)

The UK has begun transforming its criminal justice system into an integrated system which links the judiciary, the police, and prosecution service,⁴² as part of a broader judicial reforms. The movement of key services online, such as applications for mutual consent divorces, is an example of their effective replacement of paper-based tasks with digital ones.⁴³ This reduces information asymmetry and makes the process more efficient.



³⁸ Vilquin and Bosio, 'Improving court efficiency: the Republic of Korea's e-court experience'.

³⁹ Vilquin and Bosio, 'Improving court efficiency: the Republic of Korea's e-court experience'.

⁴⁰ Gulf News, 'Dubai Courts on forefront in adopting smart technology'.

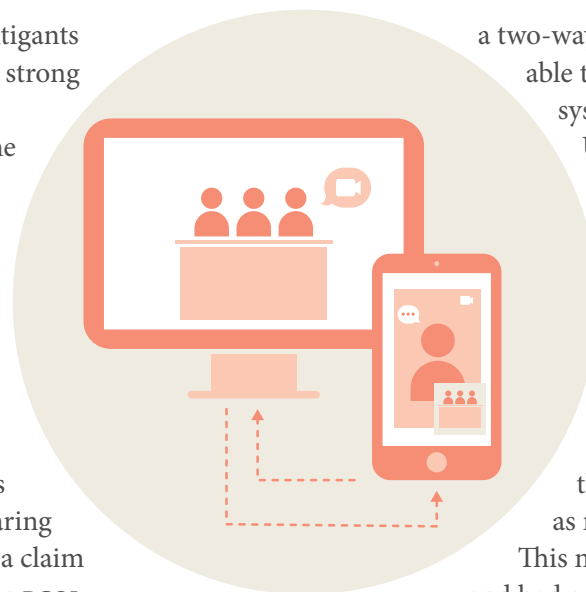
⁴¹ Wan Satirah Wan Mohd and Abrar Haider. 2013. 'E-Court: Technology Diffusion in Court Management'. Paper presented at Proceedings of the Nineteenth Americas Conference on Information Systems at Chicago, Illinois, 15 August.

⁴² Her Majesty's Courts and Tribunal Services. 2018. 'HMCTS reform programme projects explained'. Gov.uk, Available at <https://www.gov.uk/guidance/hmcts-reform-programme-projects-explained> (accessed on 10 May 2019).

⁴³ Her Majesty's Courts and Tribunal Services. 2019. 'HMCTS reform update – Family'. Gov.uk. Available at <https://www.gov.uk/guidance/hmcts-reform-update-family> (accessed on 10 July 2019).

The UK is also introducing video hearings, where litigants can appear before courts via video link.⁴⁴ They also offer a strong guiding system for people who might face any hindrance while navigating through the portal therefore they have the option of telephonic conversation to help the user and take them through the steps. They also have the option of web chat and if they require assistance and need face to face support, they provide these services but in very few places.

For civil cases, UK has two online systems for processing claims,⁴⁵ Money Claim On Line (MCOL) and Possession Claim On Line (PCOL). These online systems make the procedures for claims far simpler and faster: fees are paid electronically, claims issued immediately, and hearing dates scheduled automatically. Under these systems, once a claim is made, the defendant can easily upload his defence on the PCOL or MCOL portals thereby reducing delay and friction that is caused by the traditional filing system.



a two-way communication system was introduced. Citizens were able to receive and upload information, an intra-administrative system was set up, and other linked networks were enabled. Under this system, administrative staff could share and access information on the system. The third phase was the 'executable' phase where dynamic applications, interactive services, and interaction among different sectors were enabled to facilitate the resolution of cases. China is still in the third phase of implementation and has also introduced new 'Intelligent Courts'.⁴⁶

Intelligent Courts were piloted in China with two models in mind. The first model was a replacement of the current litigation process where it aimed at digitising as many steps as possible, with minimal human interaction. This model covered civil, criminal, and administrative cases, and had a 24 x 7 functional portal which eliminated the limitations of strict working hours. Such a system, together with comprehensive cooperation among different sectors, enabled China to reduce adjudication time.⁴⁷ This was mainly attributed to the fact that litigants were able to save time by uploading documents instantly. The second model dealt with e-commerce, divorce cases, accident cases, and contract cases. In this model, all actions from filing a case to delivery of the judgment could be completed within the online system itself. This model allowed for all stages including filing of cases, producing of evidence, etc. to be completed through the system, and completely eliminated the need for physical filings and appearance. Under this model, the judgment delivered could be automatically enforced once the users could create accounts on Alipay, the third-party online payment system, and the judges

2.5 CHINA

China over the decades has implemented various technological features for online judicial services over three phrases of implementation. In the first phase, China introduced a 'readable' phase in which basic case related data was accessible online, which contained some information about the case, filing, and legal rights of the citizens. The second phase was the 'writeable' phase where

⁴⁴ Her Majesty's Courts and Tribunals Service. 2019. 'Reform Update Summer 2019'. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806959/HMCTS_Reform_Update_Summer_19.pdf (accessed 13 July 2019).

⁴⁵ Giampiero Lupo. 2014. 'Law, technology and system architectures: Critical design factors for money claim and possession claim online in England and Wales.' in Francesco Contini and Giovan Francesco Lanzara (ed.), *The circulation of agency in e-Justice*, p. 83-107. Dordrecht: Springer.

⁴⁶ Alison Lu Xu. 2017. 'Chinese judicial justice on the cloud: a future call or a Pandora's box? An analysis of the 'intelligent court system' of China,' *Information & Communications Technology Law*, 26(1): 59-71.

⁴⁷ Lu Xu, 'Chinese judicial justice on the cloud: a future call or a Pandora's box? An analysis of the 'intelligent court system' of China.

could then link these accounts to the outcome of the judgment. This feature compels the guilty party to pay once the judgment is delivered.⁴⁸

2.6 UNITED STATES OF AMERICA

The USA is one of the pioneers in digitising its judicial system. In 2003, most of the District and Federal Courts had audio and video conferencing equipment facilities, and allowed e-filing of pleadings and imaging of documents online.⁴⁹ Over the years, the USA has rapidly adapted to changing technology, and the U.S. Federal and District Courts have successfully implemented Case Management/Electronic Case Files (CM/ECF), which have smoothened the filing process and allows for retrieval of data at any time by attorneys, litigants, and judges.

Under the (CM/ECF) system, judges are able to link one document to another, which enables the user to have a complete case related summary on a single page. Flagging of cases based on status and the nature of the case further helps in prioritising cases on the docket, which aids in quick disposal of cases.⁵⁰ Standardised templates for forms and orders are available with the court information provided by the clerks. Further, parties also receive automated email notifications with relevant information about the case.

The USA is also using online dispute resolution as the first point of interaction with the justice system and is directing citizens to use ODR before approaching the courts in some states. The National Centre for State Courts (NCSC) is pushing for ODR as a primary mechanism when the citizens approach

⁴⁸ Lu Xu, 'Chinese judicial justice on the cloud: a future call or a Pandora's box? An analysis of the 'intelligent court system' of China.

⁴⁹ Bradley J. Hillis. 2000. 'A review of electronic court filing in the United States.' J. App. Prac. & Process, 2, p.319;

Dory Relling. 2011. 'E-justice: experiences with court IT in Europe', in José A. Caballero, Carlos Gregorio de Gracia and Linn Hammergren (eds.). *Good practices for the implementation of technological solutions in the administration of justice. Mexico*.

⁵⁰ Supreme Court of Singapore. 2018. 'eLitigation'. Supreme Court of Singapore. Available at <https://www.supremecourt.gov.sg/services/services-for-the-legal-profession/elitigation> (accessed on 9 May 2019).

the court. States like Alaska have implemented ODR for all types of cases while California has ODR for limited cases.⁵¹ The NCSC noted that the introduction of ODR led to fewer hearings, and fewer warrants being issued.

2.7 SINGAPORE

Singapore launched the electronic filing system in 2000. In 2013, they launched the Integrated Electronic Litigation System (IELS) as a single online system of access for the litigants.⁵² The online portal allows for more flexibility for litigants as they can pick hearing dates; it provides for calendaring and better management of hearing dates, thereby reducing the work of court staff who had to upload all the documents after the hearings had taken place. The IELS also enables access for citizens as it does not require them to compulsorily install government software which the earlier system required them to do. Further, IELS introduced a cause book search which is an integrated service that allows users to search for information across various other platforms like the Supreme Court, State Courts, and Family Justice Courts.⁵³ It also has a facility of video-conferencing for prisoners and their lawyers, when the lawyers are not able to visit their clients in the prison. It even has help centres to assist litigants at various stages, including filing of a case and other procedural aspects. The help centre also provides litigants case related information to represent themselves in the court without the assistance of a lawyer.⁵⁴

⁵¹ Supreme Court of Singapore. 'eLitigation'.

⁵² Singapore Subordinate Courts. 2011.'Subordinate Courts Singapore Quality Award with Special Commendation Summary Report'.

⁵³ Singapore Subordinate Courts. 2011.'Subordinate Courts Singapore Quality Award with Special Commendation Summary Report'.

⁵⁴ Singapore Subordinate Courts. 2011.'Subordinate Courts Singapore Quality Award with Special Commendation Summary Report'.

3

An overview of stakeholder groups in the justice system

For the success of any attempt to design a justice platform for the public, it is essential to understand the various stakeholders in the justice system, and the processes and relationships that connect them. The next-generation platform for the justice system should connect stakeholders and facilitate transactions with each other seamlessly.

3.1 THE CITIZEN

Like other democratic institutions, the citizen should be the focus of the justice system. The system should be designed to ensure that the needs of citizens seeking justice are met, whether as a petitioner or respondent of a civil suit, or an accused or victim of a crime. As the primary stakeholder in the judiciary and the judicial process, the system should empower, inform, and assist the citizen at every stage of the litigation process.

Parties to a dispute should be confident of getting a fair hearing; victims of crimes should be assured of receiving justice; those accused of crimes should

be entitled to a fair trial; and convicted criminals should receive appropriate and humane punishment.

Citizens as witnesses have a stake in having a system which supports them, which ensures that they are well informed about their role in the litigation process and ensures that they are secure, while making their participation in the judicial process a painless one. With regard to the civil justice system, citizens and firms rely on it to resolve disputes and enforce contracts. The link between civil justice and economic performance is well-understood by legal scholars and economists.⁵⁵ Citizens therefore have an interest in an effective civil justice

⁵⁵ Dani Rodrik, Arvind Subramanian, and Francesco Trebbi. 2004. 'Institutions rule: the primacy of institutions over geography and integration in economic development'. *Journal of economic growth*, 9 (2):131-165;

Daron Acemoglu, Simon Johnson, and James A. Robinson. 2001. 'The colonial origins of comparative development: An empirical investigation.' *American Economic Review*, 91(5): 1369-1401;

Matthieu Chemin. 2004. 'Does the Quality of the Judiciary Shape Economic Activity? Evidence from India'. Doctoral dissertation, *London School of Economics*. Available at https://www.researchgate.net/profile/Matthieu_Chemin/publication/228659763_Does_the_Quality_of_the_Judiciary_Shape_Economic_Activity_Evidence_from_India/links/0a85e53bedcobac55b000000.pdf (accessed on 9 August 2019);

Attaullah Shah, Hamid Ali Shah, Jason M. Smith, and Giuseppe Joe Labianca. 2017. 'Judicial efficiency and capital structure: An international study'. *Journal of Corporate Finance*, 44: 255-274;

Theodore Eisenberg, Sital Kalantry, and Nick Robinson. 2012. 'Litigation as a measure of well-being'. *DePaul Law Review*, 62(247);

Matthieu Chemin. 2018. 'Judicial Efficiency and Firm Productivity: Evidence from a World Database of Judicial Reforms'. *Review of Economics and Statistics*. 1-16.

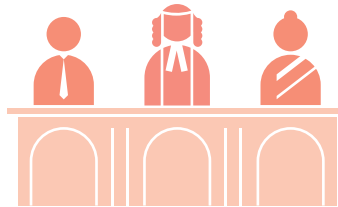
system not only as parties to a dispute but also to maintain and improve their social and economic well-being.

Finally, citizens are dependent on the judiciary to safeguard their rights, and to uphold the Indian Constitution. Courts safeguard the fundamental rights of the citizens protect them from the consequences of potentially unconstitutional actions of the executive and legislative branches of the government. An independent judiciary is an indispensable feature of a democracy in which political and civil rights are well developed.⁵⁶ Since the institutionalisation of public interest litigation and judicial activism, the judiciary has taken on the role of actively protecting collective rights, especially those of disadvantaged social groups and the environment.⁵⁷

3.2 JUDGES AND COURT STAFF

Within the courts, the judges and the non-judicial staff are important stakeholders in the justice delivery system. Judges interpret the law and the facts of a court case to deliver justice to citizens and thus bear the greatest responsibility for the protection of the rights of citizens, and the maintenance of rule of law. Judges deal with large volumes of case information, from when the cases are filed till their final judgments are delivered. Citizens interact with judges at every step and they are the most important stakeholders in ensuring the platform reaches its full potential.

The non-judicial personnel employed by the judiciary are also important stakeholders since they perform administrative functions, service of notices, operation of filing counters, listing, maintenance of physical premises, and



⁵⁶ Henry F. Carey. 2004. 'Is an Independent Judiciary Necessary for Democracy?' *Judicature*, 87(6):284.

⁵⁷ Upendra Baxi. 1985. 'Taking suffering seriously: Social action litigation in the Supreme Court of India'. *Third World Legal Study*, 4(6): 107.

Courts safeguard the fundamental rights of the citizens protect them from the consequences of potentially unconstitutional actions of the executive and legislative branches of the government. An independent judiciary is an indispensable feature of democracies in which political and civil rights are well developed.

providing information to litigants. All these functions are vital in ensuring that cases progress swiftly in court. They need to ensure that transfer of information and communication to citizens and other stakeholders is seamless and efficient.

3.3 POLICE

The police are responsible for maintaining law and order, investigating crimes and arresting suspects. They are under the authority of state governments. Citizens tend to come in contact more with the police than other branches of the judicial system.

Due to the nature of their responsibilities and the procedures they are bound



to follow, they share a close relationship with the judiciary. They are involved in every stage of the criminal trial process, and therefore have a considerable stake in any procedural reforms affecting the criminal justice system.

3.4 PRISONS

Prisons are also under the authority of state governments. They play an important role at every stage of the criminal trial process, holding undertrials and convicted prisoners in custody.

The prison system is severely overburdened, with an occupancy rate of 113.7 percent in 2016.⁵⁸ Prison authorities are therefore a major stakeholder in the criminal justice system as they stand to benefit considerably from increase in efficiency resulting from better communication and sharing of information with the judiciary.

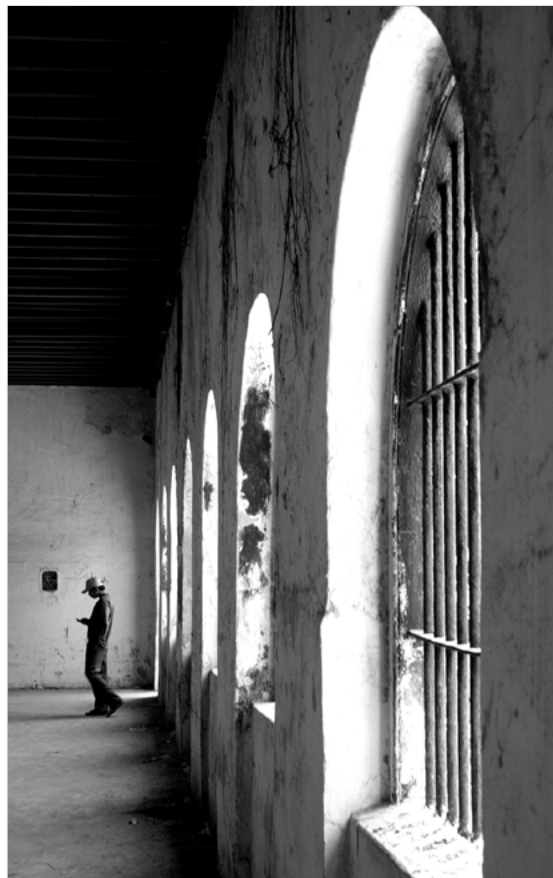


Image by Simply CVR

⁵⁸ National Crime Records Bureau. 2019. 'Prison Statistics India 2019'. *National Crime Records Bureau, Ministry of Home Affairs, Government of India*. Available at <http://ncrb.gov.in/StatPublications/PSI/Prison2016/TABLE-1.2.pdf> (accessed 20 August 2019).

3.5 LAWYERS

Lawyers serve as the link between ordinary citizens and the judiciary. For civil disputes, they are usually the first point of contact for any citizen. Lawyers advise and inform citizens and firms, act on their behalf, and represent them in court. Citizens are completely dependent on the services of lawyers to navigate through the judicial system and resolve disputes.

Lawyers also represent the central and state governments in court. After the members of the judiciary, lawyers are the most likely to be affected by changes to established procedures and by ways of its working.



3.6 PUBLIC PROSECUTORS AND GOVERNMENT LAWYERS

The state is known to be the most prolific litigant in India. The state prosecutes all criminal cases, in addition to which it is the biggest civil litigant in the country.⁵⁹ The interests and the various departments they represent, and the nature of their roles, make government lawyers a distinct group from the broader group of lawyers.

Public prosecutors are responsible for the prosecution of criminal cases on behalf of the state. Given their importance to the trial process, special

⁵⁹ Kinhal, Gupta, and Chandreshaekharan (2018) 'Government Litigation, an Introduction'. *Vidhi Centre for Legal Policy*. Available at <https://vidhiilegalpolicy.in/reports/2018/2/16/wbijj70yo5weitshift69rmzedyst8?rq=government%20litigation> (accessed on 16 January 2019).



Image by hermesmarana

attention must be given to their role within the justice system, which must be incorporated into the system's design. Since they bear responsibilities beyond that of a typical lawyer, the design must account for their needs of access to information, and their need to communicate with the judiciary, the government which appointed them, and the other agencies within the criminal justice system such as the police and investigation agencies.

3.7 NON-POLICE INVESTIGATION AGENCIES

Investigation agencies such as the Central Bureau of Investigation (CBI) and the National Investigation Agency (NIA), and other agencies like the Narcotics Control Bureau (NCB) and the Central Forensic Science Laboratory (CFSL), all play a vital role in the criminal justice system. They have jurisdiction over activities beyond that of the police. They work closely with state police forces and with the judiciary. They have much to gain from being integrated within a common platform to efficiently share, store, and access information related to ongoing cases.

3.8 GOVERNMENT DEPARTMENTS

Government departments themselves form a significant stakeholder group given the volume of government litigation. The Government of India itself has sought to address this problem, through the creation of the Legal Information Management and Briefing System (LIMBS) which tracks cases in which the government is a litigant.⁶⁰ The National Litigation Policy of 2010 suggests a monitoring system to track and monitor the legal burden of each department.⁶¹ State governments and their departments have developed their own systems for this purpose.

The justice platform will incorporate features that facilitate better communication and sharing of information between government departments, the lawyers representing them in court, and the judiciary itself. Delays in transfer of information from government departments to their advocates and to the courts are partially responsible for the delays in government litigation.

⁶⁰ Department of Legal Affairs, Ministry of Law and Justice. Government of India. 'Legal Information Management & Briefing System (LIMBS) V-II'. *Department of Legal Affairs, Ministry of Law and Justice. Government of India*. Available at <http://www.limbs.gov.in/> (accessed on 16 January 2019).

⁶¹ Department of Justice, Ministry of Law and Justice, Government of India. 2017 'Action Plan to Reduce Government litigation'. *Department of Justice, Ministry of Law and Justice, Government of India*. Available at <http://doj.gov.in/sites/default/files/action%20plan.pdf> (accessed on 16 January 2019).

Given the burden that the government itself imposes on the judiciary, a system that takes advantages of the modern capabilities of information technology in managing information to speed up this process will ultimately benefit the citizen by making the courts efficient and free from excess burden.

“Delays in transfer of information from government departments to their advocates and to the courts are partially responsible for the delays in government litigation.”

3.9 FROM STAKEHOLDERS TO SYSTEMS

To transition from having an awareness of stakeholders in the justice system to implementing a system which delivers justice of the greatest possible quality and efficiency, it is necessary to have a keen understanding of their roles within the system in the different stages of the judicial process, and their interactions and relationships with each other.

Over the course of the next chapter, we describe our conception of the ideal system and process of litigation, with the citizen at its centre. At each stage, we emphasise the empowerment of the citizen, facilitated by technology. This entails restructuring the relationships described above as well as a radical revision of the process, while maintaining the integrity of each stage in a case.

4

View of a citizen-oriented justice platform

This chapter describes the experience of a litigant over the different stages of a case in the next-generation justice platform keeping in mind the approaches and principles that we described earlier. There are specific features for the stages and tasks unique to civil and criminal cases.

We have identified the broad stages of a civil case and a criminal case, each of which require specific tasks to be performed by litigants, their lawyers, judicial officers, non-judicial court personnel, and other agencies such as the police.

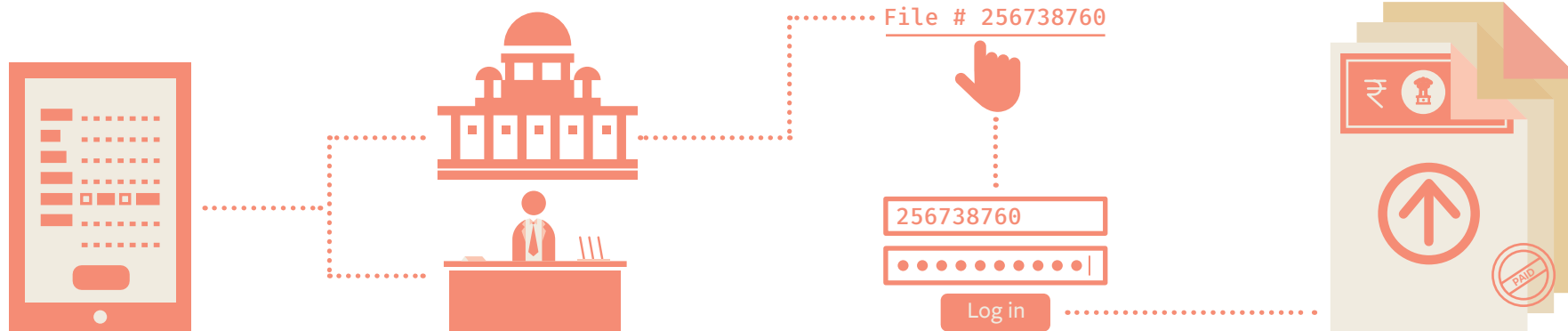
The platform, through an interactive process, will help the citizen research about their dispute, understand the laws pertaining to it, and understand how it can be remedied. In civil cases, the system will aid the litigant in decision-making by providing information about various paths to dispute resolution, possible next-steps, and historical statistics and outcomes of similar cases. Alternative Dispute Resolution (ADR) mechanisms such as arbitration, mediation, and conciliation should be incorporated into the system and may feature as options available to the litigant in the pre-filing stage. Further, even procedural stages in the ADR mechanisms can be conducted through the

platform. Where ADR institutions have legal backing and approval, records of decisions and proceedings from ADR mechanisms should automatically feed into the system to be approved by the courts. There should be seamless flow of information between them and the platform, with this information being publicly accessible where confidentiality restrictions do not apply.

This chapter lays out the features that must be provided on the next generation justice platform to ensure the smooth conduct of civil cases.

4.1 LIFE CYCLE OF A CIVIL CASE

To transition from having an awareness of stakeholders in the justice system to implementing a system which delivers justice of the greatest possible quality and efficiency, it is necessary to have a keen understanding of their roles within the system in the different stages of the judicial process, and their interactions and relationships with each other.



Step 1: Preliminary information

A potential litigant will feed in their name, age, phone number, district, state, subject matter, cause of action, place of residence of the defendant, and value of the suit.

Step 2: Select whether to file a case or opt for ADR

The potential litigant can either choose to file the suit either at the district court with appropriate jurisdiction or opt for mediation to settle the dispute outside court. If the potential litigant chooses the litigation route, the platform will automatically determine the court with appropriate jurisdiction.

The potential litigant will be able to make an informed choice with the help of information on the pros and cons of each option. The potential litigant can also view the legal aid options and see if they are eligible for legal aid services.

Step 3: Filing a case

The platform will ask if the potential litigant wishes to continue and file the case, if they choose to file a case, a unique number can be generated for the litigant and other stakeholders to access. This number will be used to link related applications and appeals filed in different courts. The party will also have a log in access to the platform.

The litigant can file the plaint and vakalatnama with the registry by paying the court fees on the platform. The litigant will have the option for choosing a standard vakalatnama and a plaint with the suggested template on the platform. The vakalatnama is a document that authorizes the advocate to represent

the litigant. It contains information regarding the payment of fees, liability of the advocate, and terms of disengagement.

The plaint filed by the plaintiff will contain facts of the case and the cause of action, the value of the suit, based on which appropriate courts fees have to be paid and advocate welfare stamp, if applicable.

The lawyer or the litigant will also be able to upload the plaint on the platform.

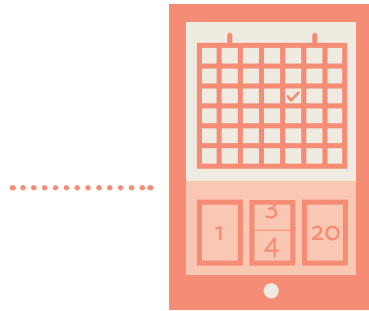


Step 4: Scrutiny by the registry

The registry will go through the plaint. If there are no irregularities, the registry will notify the plaintiff and his lawyers through the platform.

A notice will be sent to the defendant intimating him of proceedings being initiated against him. Through postal service, email, and sms.

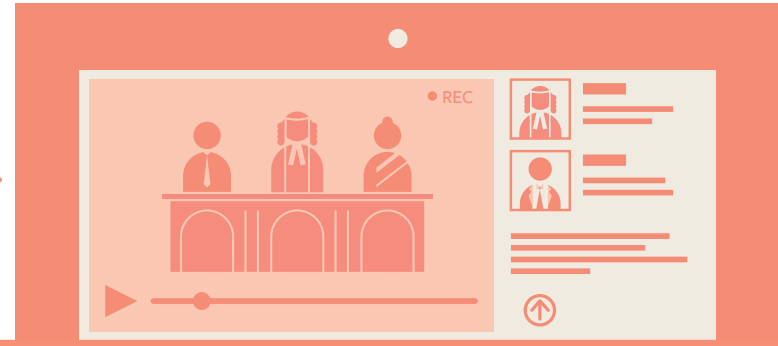
The platform will also be able to scrutinise documents submitted by the parties that can be easily validated by an intelligent tool.



Step 5: Notify date of hearing

The registry will notify the date of hearing to the plaintiff and his lawyer through the platform.

The listing of cases will be an automated process, and if either of the parties cannot appear on the given date the party will be able to log onto the platform and make a request for change in date without having to wait for the next hearing to seek adjournment or time.



Step 6: First Hearing

After examining the plaint filed by the plaintiff, the judge will decide if there are merits in the plaint. If so, he will then admit the plaint and summon the defendant.

From the first hearing onwards, the plaintiff or any other citizen will be able to watch a live stream of the court room proceedings on the platform if he/she wishes to. There should be automatic transcribing and uploading of documents, with the availability of video conferencing from the court room.

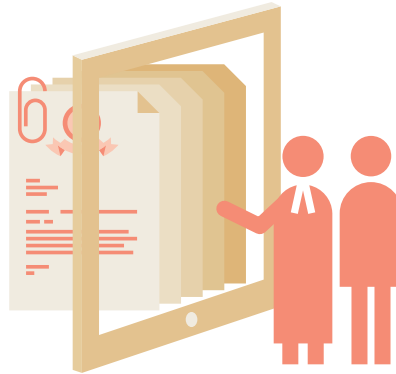
Every court room will be able to record proceedings for litigants/ lawyers to stream.

Listing of cases will be an automated process, and if either of the party cannot appear on the given date the party should be able to log onto the platform and make a request for change in date without having to wait for the next hearing to seek adjournment or time.



Step 7: Filing of written statements: The defendant is called upon to answer the claims made in the plaint.

The defendant and his advocate will be able to log on to the platform with the assigned unique number and submit the written statement and vakalatnama.



Step 8: Production of documents

At this stage, both the parties have to produce evidence to substantiate their claims and counter-claims. Such evidence will be produced in electronic form as far as possible.

Once the judge goes through the documents, he can grant access to the opposite party to view the documents submitted by the other party.



Step 9: Examination of parties

At this stage, both the parties are examined to ascertain the claims they have made in their respective documents.

Parties will be able to appear through video conferencing if either of them is unable to make it to the court. The parties will be able to track the outcome of the proceedings on the platform by either a summary of the hearing or a video and audio recording of the hearing itself.



Step 10: Discovery and inspection

Each party is given the opportunity to submit interrogatories (requests for further information) to the judge and can also make an application for discovery of documents. If either party thinks the other is in possession of any document that will help their cause, then the court may direct the party to produce such document before it.

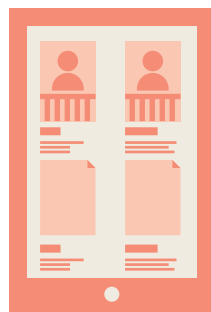
In this step, the parties will be able to make an online application for the discovery of documents, and the other party will be notified of the applications made.



Step 11: Admission and framing of issues

If either of the parties admits to any claims made by the other party, then the judge can pass an order as they deem fit, and further issues can be framed based on the disputed questions of law or facts.

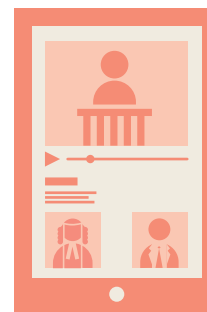
The interim order passed will be accessible online by both the parties and the option of challenging the order will appear on the platform.



Step 12: Summoning witnesses

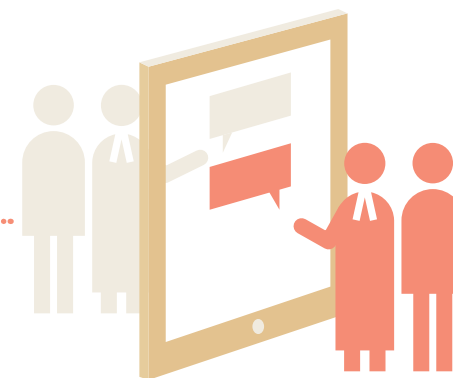
A list of witnesses whom each party wish to examine will be submitted online to the judge within 15 days of framing the issues.

Once the next hearing commences, the judge may give access to each party the list of witnesses and the documents they wish to produce. The list of witnesses and documents have to be marked by the court.



Step 13: Hearing of suits and examination of witnesses

Examination-in-chief and cross-examinations are conducted by advocates of both sides to a case through video-conferencing in the event witnesses are unable to be present physically.



Step 15: Arguments

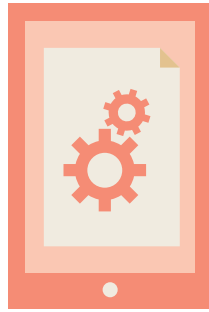
Once the stage of cross-examination is complete, the parties will have an opportunity to submit arguments based on the evidence. In case the arguments are only oral, it could be included as video documentation.



Step 15: Judgment

The outcome of a case and the reasons behind the decision are recorded.

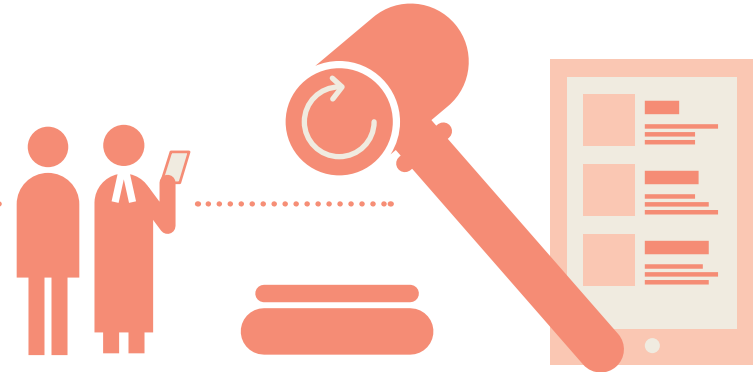
The judge will be able to generate a judgment based on a template available on the platform. They will have access to all relevant case laws and precedents through the platform.



Step 16: Execution of decree

Once a judgment is passed, the decree which determines the rights of the party has to be enforced by executing the decree. The party in whose favour the decree is passed will be able to make an application to execute it.

An automated process for filing an application for execution of the decree will be provided by the platform.



Step 17: Appeal, review, or revision

An aggrieved party has the option of filing an appeal against any order by the court. The party can also file for review or revision of a judgment based on the outcome of a case. Timelines for filing appeals, reviews or revisions should be indicated by the platform.

An automatic option will be visible to aggrieved parties of the options available to them and information regarding the average time taken to dispose a similar case before an appellate court could also be provided.

Litigants will also be able to access information on other judgments from cases with similar fact situations, filed under the same laws.



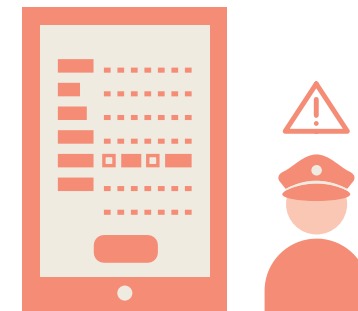
4.2 LIFE CYCLE OF A CRIMINAL CASE

The police is a major stakeholder in the justice system and any transition of the justice system should be in coordination with them.

At every stage, the police and judiciary should work together to make the judicial process simple for the litigants. Filing of documents, communication of stage-wise progress, and complete information about the case should be easily available on the platform.

Listing of cases will be an automated process, and if either of the party cannot appear on the given date the party should be able to log onto the platform and make a request for change in date without having to wait for the next hearing to seek adjournment or time.

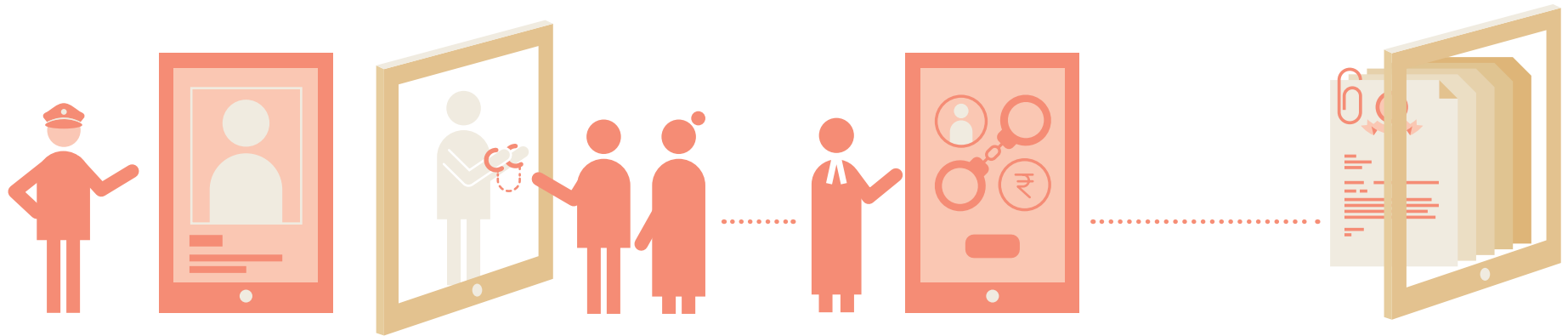
Whenever the physical appearance of the accused cannot be ensured the option of video conferencing should be available, keeping in mind the possibility of pressure and coercion in the prison.



Step 1: Filing of FIR

Any person who believes they have been a victim of a crime will be able to file a FIR on the platform, and the nearest police station will be notified through the platform. While filing the FIR the complainant has to disclose the name, age, contact details, offence committed, details of the accused, place, and other information about the crime.

The complainant should be able to track the FIR through the platform and will be assigned a unique number to access information related to the case. If the information provided in the FIR prima facie reveals a cognizable offence, the police officer has the power to arrest and carry out the investigation.



Step 2: Arrest of the accused

The police can provide an update on the platform regarding whether an arrest took place or not. This would help track any arrests and ensure the accused are produced before a magistrate within 24 hours or at least through video conference.

If the accused person is arrested, their family will have access to the unique number assigned to the arrested person and will be able to track the whereabouts of the accused. The family's contact information can be updated on the platform so that they are notified of the progress of the case.

The accused, while being held in custody, will also have access to information about options available to them even after arrest. They will be able to select a contact to be informed of the arrest, as well as access options available to them for bail and legal representation.

The accused will also be able to access information about the case, such as the specific offences they are being charged with, any laws that apply to these offences, and information on the likely outcome of the trial process, including potential punishments, based on an analysis of precedents.

If the accused already has a lawyer, they should be able to communicate with this lawyer through the platform. The system should be designed to ensure that the rights of the accused held in custody are respected.

Communication between prisoners and their lawyers will be confidential and protected. Access to the integrated platform will be available to prisoners regardless of whether they are in prison or released on bail.

Step 3: Bail

The accused will be able to make an application for bail on the platform itself, through their lawyer.

The accused will have access to the platform and will be able to make a bail application using a template through a lawyer.

Step 4: Access to FIRs or police reports

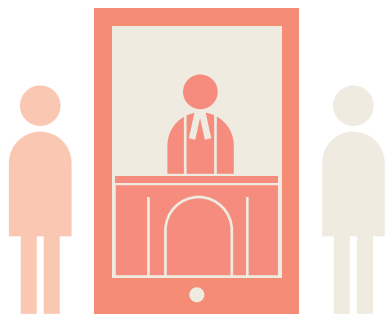
The police can use the platform to submit an e-document of FIR and forward the FIR to the appropriate magistrate.

The police should maintain police diaries and other mandated police reports on the platform, and the magistrates should have access to these diaries and police reports when necessary.

Once the FIR is sent to the magistrate, an automatic notification should be sent to the complainant with the case number assigned by the registry.

The charge sheet contains information about the parties to the case, the offence committed and whether the accused has been arrested or released on bail etc.

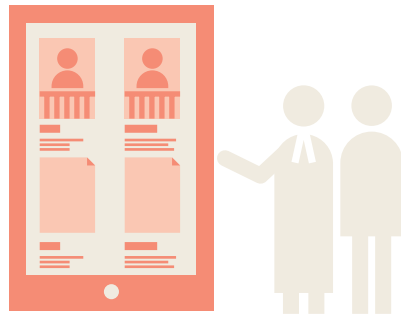
The accused and his family should have access to all the documents submitted on the platform.



Step 5: Framing of charges

Once an investigation report is submitted, the magistrate will hear arguments from both the sides. If the magistrate is satisfied that an offence has been committed, the magistrate will frame charges and record it on the platform.

At this juncture, the magistrate has to read the charges out to the accused and if the accused does not plead guilty to the charges, the trial commences. This step can also be recorded on the platform.



Step 6: Prosecution evidence

The prosecution will submit a list of evidence and witnesses. After this has been verified by the court, the defence can have access to this on the platform.

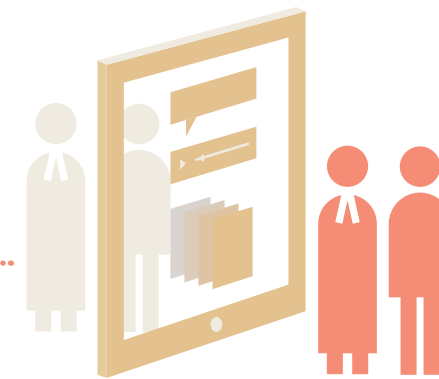
If any of the witnesses including expert witnesses wish to testify through video conferencing, they should be able to.



Step 7: Statement of accused and defence evidence

The accused has an opportunity to present their version of the story and explain the facts and circumstances of the case. The statements recorded should be available on the platform.

The accused can also submit the defence evidence on the platform.



Step 8: Cross-examination

The defence has the opportunity of cross-examining the witnesses and expert witnesses and rebut any evidence that is produced or discovered. The parties will use the platform to upload/ submit any documents. Transcripts of the examination should be uploaded simultaneously.

The defence will also have access to the list of witnesses and evidence. Online records and documentation of all evidence for a case would be available to all parties and advocates, with documentation of physical evidence having been conducted according to strict and formalized procedures.



Step 9: Final arguments

Both the parties can submit their final written arguments on the platform.



Step 10: Judgment and sentencing

The judge either convicts or acquits the accused based on the trial, and awards punishment accordingly.

The judge will have access to case laws and precedents on the platform. Templates to assist in writing the judgment would be available.



Step 11: Appeal or revision

The aggrieved party can either file an appeal or a revision petition before the appellate court and this option should be available at all stages of the case. The platform will also indicate the deadline before which such appeal or review petition must be filed.



Step 12: Execution of sentence

In the event that the accused person is convicted, the prison will be alerted. The family members of the convicted will be informed through the platform. There will be a system in place to track prisoners' release dates and if prisoners are eligible for parole.

4.3 SALIENT FEATURES OF THE JUSTICE PLATFORM

In addition to the stage-wise features of such a system, the platform will have the following features:

- 1 Tools will be available to judges to minimize their need to perform any task other than core judicial functions. They will have access to laws, legal precedent, guidelines, legal scholarship, and any other information-based resources through the system that is required for their role. The system will be able to provide them with templates for judgments, based on analysis of past judgments in similar situations, with the judge having the freedom to choose and modify these templates as they wish.
- 2 Video and audio recordings will be made of all court proceedings. Caution should be exercised to ensure that confidentiality is maintained in sensitive cases. The system will store them and make them available to all parties through the system. All citizens will be able to access these recordings through the system, with exceptions for sensitive cases.
- 3 The schedule of court proceedings will be strictly controlled. Hearings should be precisely scheduled, and information about the time and location of hearings within the court establishment will be shared in advance with citizens through the system, who can then acknowledge receiving these notices. If citizens or their lawyers have valid reasons for not being able to attend hearings, they will be able to provide information supporting this through the system, allowing the court to reschedule it to a time when all relevant parties can attend the hearing. The judiciary can define the characteristics of a case which demand higher priority for listing, based on the subject matter, the purpose of the next hearing, pendency, and the predicted disposal time. The system will then identify the level of priority of each case once it enters the system, classify them accordingly, and automatically generate cause lists based on this prioritisation.

If citizens or their lawyers have valid reasons for not being able to attend hearings, they will be able to provide information supporting this through the system, allowing the court to reschedule it to a time when all relevant parties can attend the hearing. The judiciary can define the characteristics of a case which demand higher priority for listing, based on the subject matter, the purpose of the next hearing, pendency, and the predicted disposal time.

- 4 The system will feed into performance management/evaluation mechanism within the judiciary. The vast body of data that could be collected from such a system would have tremendous potential to help the judiciary manage and improve its performance. A separate note regarding this capability is in Chapter 5.
- 5 As with judges, the system will contain workflow tools to help the police, doctors, and other expert witnesses prepare report, in order to save time and costs wherever applicable.
- 6 Similarly, the system will help lawyers in preparing their cases. Workflow tools can help them manage and access documents and information relevant to their case, and can suggest courses of action based on precedent, viable options, and predicted outcomes.

4.4 A DAY IN THE NEXT GENERATION COURT

This section describes what a day in court would look like in the new generation era, from a litigant's perspective.

- 1 The judge has a list of cases from their docket on display on the platform. The cases are listed based on their nature and stages. There will be separate cause lists for cases that are at procedural stages and at substantive stages. The court clerk will record the time taken for each case which will subsequently help other parties know when their case is listed.
- 2 If the parties are unable to attend the next hearing for the case, they will have an option of making an online request on the platform with their preferred date with reasons for re-scheduling the hearing. There should be a restriction on the 'number of change of dates' available to a party.
- 3 In the event the hearing is delayed, the parties will be informed through SMS.
- 4 The court clerk will be able to transcribe the proceedings and upload on to the platform simultaneously. The court clerk will follow a standard template while recording the proceedings.
- 5 The judge will have access to all the case related information on the platform. This includes facts, issue, witness examined, evidence produced, any proceedings initiated in other courts, etc. They will be able to view the issues of the case they wish to address in that hearing in a template form and be able to answer them.
- 6 While hearing the case, the judge will be able to make notes about the case on the platform, which will eventually help him write the judgment.
- 7 If either of the party or a witness is unable to attend the court on a given day, they can testify or appear through video conferencing. If a party logs on to the platform they will be able to retrieve all case related information and the current status of the case. For example, if the case is at a witness examination stage and the witnesses wants to testify through video conferencing, such requests will be processed through the platform.
- 8 The parties will receive a notification regarding the outcome of a hearing once it has concluded. The notification can be sent via SMS and email, and the parties will have access to the order copies if any.
- 9 The order copies should be in a simple form where the parties are able to understand the order, the outcome, and which party must bear the cost (if any). The parties can opt to link their digital wallets to the platform. Such linking will make enforcement of the order regarding costs easy by transferring money through these accounts.
- 10 The judge will be able to view statistics such as the number of cases heard with stage-wise information, the number of cases adjourned, among others.

5

Performance management



Performance management is a systematic approach to improving the functioning and operations of an organization through standards, planning, measuring, and continuous improvement. Performance measures not only allows an organization to assess the effectiveness of their work and decide what to do differently, but also to communicate to citizens, decision makers, and employees.

In the judicial context, it involves actively using judge and staff performance data to achieve better delivery of justice in particular, and access to justice in general. This can be done through the strategic use of performance measures and standards:

- 1 To establish performance targets and goals;
- 2 To prioritize and allocate resources;
- 3 To inform judges and staff about necessary adjustments or procedural changes to meet goals;
- 4 To frame reports on tracking performance goals; and
- 5 To improve the quality of justice.



An important part of the new system will be to help the courts manage their performance, to help them better understand how to optimize their time and resources. The system will be completely integrated into the court system's daily practice at all levels to help judges track indicators like disposal rates, number of hearings per case, time between each hearing, time spent on each stage of the case, etc. The system will help judges manage their time through dynamic, real-time scheduling of their cases where they can prioritize cases that need their immediate attention. This system will be a powerful tool that can be used to make important human resource decisions like judge transfers and promotions.

This performance management component of the new system can be integrated with the existing 'unit system' of performance appraisal⁶² established in each court. It will provide historical court management data and analytics to aid the court staff in managing court resources, documents, and aid in efficient management of their time to allocate it to prioritized tasks.

In addition, the performance management system will enable the judiciary to communicate their performance to the citizens of the country. Performance management dashboards will be a great tool to broadcast the indicators about functioning of our courts. It will also increase accountability and transparency of the judiciary.



⁶² Srikrishna Deva Rao, Rangin Pallav Tripathy, and Eluckia AA. 'Performance Evaluation and Promotion Schemes of Judicial Officers in India, A Report on West Bengal'. *National Law University Odisha. Department of Justice Ministry of Law and Justice, Government of India*. Available at <https://doj.gov.in/sites/default/files/Final%20Report%20West%20Bengal.pdf> (accessed on 5 July 2019). The Unit system is a way of allotting points to the subordinate judges based on the cases disposed, the type of case and the complexity of the case for performance evaluation and promotions.

Conclusion

The purpose of re-imagining the digital platform is to ensure that the right of citizens to access to justice is truly realised. In the judicial context, empowerment of citizens can be achieved by ensuring that there is greater awareness of the law and their rights, and that citizens are also confident that they will get justice in courts.

This proposed justice platform would also offer great benefits to those who engage with the justice system in a professional capacity. Judges, court staff, lawyers, and other legal professionals will be able to spend more time on their core responsibilities rather than on negotiating the procedural and administrative complexities of outdated systems.

The members of the judiciary will additionally benefit from the fact that non-judicial processes, related to administration and continuing development of the judiciary, will be incorporated into the system and will benefit from the information on court performance generated within it. Workflows and tools adapted to this purpose will ensure that the judiciary is functioning at peak efficiency, being optimised for the needs of the judges and court personnel.

The idea of how a perfect system would work cannot be a static one. The system must have processes to account for the dynamic nature of the societal, political, and economic environment in which it operates, and whose needs it caters to, as well as technological advancements that it could benefit from. It must therefore be given the internal capability to keep pace with developments in other spheres. For the justice system to remain effective as a democratic institution for the maintenance of rule of law, it is essential that it does not lag behind in adapting to the environment and needs of citizens whose needs it addresses, and that there are no barriers that deny justice to those that need it.

In the long run, the benefits to all stakeholders that will result from the implementation of this platform cannot be understated. It will strengthen Indian democracy in several fundamental ways by improving access to justice and strengthening the rule of law, while protecting rights of citizens under the Constitution.



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