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INTRODUCING 'VIRTUAL JUSTICE' IN BANGLADESH THROUGH ICT BASED JUDICIAL DEVELOPMENT: A WAY OF MINIMISING COST, COMPLEXITY AND DELAY

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Bayazid Hossain^β

ABSTRACT *The rapid advancements of information and communication technology (ICT) have fundamentally changed the way of communication which has placed pressure on the judiciary to reconsider how information are handled by judges, lawyers and parties within the courtroom. While the deployment of technology is more frequently warranted on the grounds of efficacy, time and cost saving as well as convenience, hardly any research has been conducted in order to introduce virtual justice system in Bangladesh to embed new court processes and continue to pursue greater efficiency especially in a modern digital age. Reducing delay, rendering the cost-effective judicial remedy, promoting public confidence in the justice system of Bangladesh, continuing the interconnection of court-records as well as ensuring more efficient and effective judicial cooperation, mediation, execution of judgments, access to justice for individuals in Bangladesh through the use of ICTs are laudable objectives of this paper.*

KEYWORDS: *Virtual justice, virtual court, video conference, online dispute resolution (ODR), integrated judicial administration.*

1. INTRODUCTION

'We ... in order to ensure for the people of Bangladesh equality, human dignity and social justice, declare and constitute Bangladesh to be a sovereign

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People's Republic ...'¹ – the inspiring, elegant and socialistic terms of 'equality, human dignity and social justice' were no doubt the main demands behind the historic struggle for national liberation of Bangladesh. The court has been considered the 'last hope of the common man' but when there are delays in dispensing justice, this axiom loses its efficacy as another axiom, 'justice delayed is justice denied',² becomes a reality. The reason one goes to court is to get justice and therefore judicial proceedings must move forward promptly. While developed countries are looking forward to speedy trial with the massive expansion of science and technology, still the aspiration of equality, human dignity and social justice in Bangladesh is far away from the existing courts and justice systems which are even to date covered by the old traditionalism and colonialism. Criminal and civil litigation trials are cumbersome, expensive and time consuming. Long hearings become document-heavy, taking weeks or months investigating events that often took place many years ago and result in disinclination amongst clients to go to trial. To catch up the rapid advancement of technology, legal process has to be redesigned.

Moreover, the lack of faith in the formal justice system in Bangladesh is immense. As an illustration, a survey conducted by Transparency International, Bangladesh (TIB) found that 89% of the households interviewed agreed with the assertion that it was almost impossible to get help from the police without money or influence. According to the survey, among the bribe paying households, the largest number of households (25.9%) had to pay bribe for lodging GD or FIR, followed by getting exact and flawless information and hassle-free verification/clearance certificate (20.4%), avoiding arrest (14%), not filing case for breaking traffic rule (11.7%), getting the accused arrested (8.1%) and lodging charge sheets properly and on time (7.2%) (TIB 2012: 19). The survey also revealed that among the households who received services from the judiciary, 68% households had to pay bribe; 43.6% of the households seeking judicial services reported lengthy delay or red-tapism as a form of harassment. Besides, 7.5% households seeking judicial services were harassed by court staffs, 8.1% by lawyer's assistants and 1% by brokers and

¹ The Proclamation of Independence, Mujibnagar, Bangladesh 1971. See also 7th schedule, article 150(2) of the Constitution of the People's Republic of Bangladesh.

² This was stated by William E. Gladstone who was a British statesman and the Prime Minister from 1868 to 1894. He was considered to be the most prominent man in politics of his time (1809-1898).

3.8% households faced other types of harassment i.e., deception, not getting notice or summon, misbehavior (TIB 2012: 21).

Such facts lead to pressing questions: Is it possible to make the judicial system speedier and cost effective? Is there any room left for management and technological improvements? Is it justifiable to introduce virtual justice system in Bangladesh? This article approaches to answer these questions.

The concept of 'virtual justice' is almost a fictive one in Bangladesh. To shape and specify this very concept in Bangladesh, experiences of the UK, USA, Australia and other developed countries have been taken into consideration through examining available articles, expert opinions, evaluation reports and commentaries. The laws of Bangladesh, judgments of relevant cases, books and online sources are synchronised in a rhythmic way to make the concept clear. Both formal and informal approaches of exploration are conducted. This research attempts to present a detailed quantitative factual and legal analysis of the perceptions of virtual justice – the principal determinant of the demand for judicial services in Bangladesh followed by an overview of the options of using technologies in all phases of the court proceedings from filing to final determination to reduce delay and complexity, render the cost effective judicial remedy and promote public confidence as a part of the advancement of judiciary and thus to ensure a more successful and integrated justice system.

2. VIRTUAL JUSTICE – AN EMERGING CONCEPT

The adjectives 'virtual' and 'digital' and the prefixes 'e' and 'cyber' are all used in various ways to denote things, activities and organisations that are realised or carried out chiefly in an electronic medium.³ If this is the case, it is necessary to address to which field/s does 'virtual justice or cyber justice or e-justice' apply to. The obvious answer would be 'the field of justice'. Therefore to define 'virtual justice' we must first agree on how to define 'justice' in order to apply such a policy of 'virtual justice' (Xanthoulis 2010: 2). Justice is the fair and proper administration of the laws.⁴ In practice, 'justice' refers to the system used by governments to maintain social control, prevent crime,

³ The American Heritage Dictionary of the English Language, 4th Edition, 2000. Published by Houghton Mifflin Company [Online]. Available at <<http://www.thefreedictionary.com/virtual>>. Accessed 20 February 2013.

⁴ Black's Law Dictionary, 2006 (8th Edition). United States: West Publishing Company, 881.

enforce laws and administer justice itself (Politis et al. 2008: 42). Moreover, virtual justice is the arena where the most advanced technologies in the world make the administration of justice better, faster and less expensive for citizens and institutions. Its aim is to strengthen the legal system and law enforcement (Politis and Papasteriadiou 2003: 21). In its broadest sense, virtual justice refers to the integration of ICTs to dispute resolution processes whether they be judicial or extrajudicial. In this context, virtual justice thus designates technological tools designed to facilitate every stage of the judicial process, from the filing of the motion to the writing of the judgment. With respect to the extrajudicial sphere, virtual justice regards Online Dispute Resolution (ODR), which is essentially the migration of Alternative Dispute Resolution (ADR) onto the internet. The concept also evokes the technologically advanced courtroom or 'virtual courts and tribunals', equipped with, amongst other things, screens, digital cameras, computer stations, etc. Virtual justice as applied to the judicial field also implies the networking of actors and institutions taking part in dispute settlement (Benyekhlef 2011).

Instituting virtual justice is a complex process within a complex legal system as such a broad analysis of psychological, social, political and cultural factors should be used to understand where the legal system comes from, where it is and where it should go in the future. In the course of introducing innovative reforms made possible by technology, we must not forget that the judiciary is a conservative institution tasked with upholding the rule of law, enhancing access to justice and protecting constitutional, individual rights and rights of the public and private organisations. Any technology introduced in the justice system must be strategically aligned with the courts' objectives, goals, values and principles.

In this paper, the following strategies are used to modernise the courts through technology:

- i. promoting corporate excellence through organisation-centric initiatives;
- ii. implementing online public services making virtual court services a reality;
- iii. introducing integrated Judicial Administration Systems; and
- iv. implementing knowledge management initiatives.

2.1. Promoting Corporate Excellence

It is imperative to promote a culture of corporate excellence from the filing of the motion to the writing of the judgment. This can be achieved through a system of integrated corporate administration environment for the effective and efficient management of corporate functions. In Bangladesh the Supreme Court has developed different software following the digitalisation of Supreme Court case management system as well as the judiciary. Steps are taken to initiate e-registration of cases in the Supreme Court and all the case registers will be digitalized. The Supreme Court has designed its own website [www.supremecourt.gov.bd.com] and online cause list of both divisions of the Supreme Court are found in its website. Litigants can find case information by sending SMS through cell phone⁵. Identification number for different types of cases can be found in the website. Cases can also be searched through the website following the case numbers. By clicking on the case number anyone can find basic information about the case i.e., current status, case history and orders of the courts. Concerned staffs were trained in respect of online cause list preparation and uploading, e-registration of cases, judgment uploading in the server etc (Supreme Court of Bangladesh 2011: 81).

2.2. Virtual Court Services

Electronic case filing and video conferencing are the only two main elements required for a virtual court (Niescier 2012). At its most basic level, video conferencing is a method of two-way communication that links multiple locations through audio and video technology (Lederer 1999). While a 'virtual court' sounds hi-tech, it is not so vary from a modern bricks-and-mortar court. In criminal proceedings, courts in which the defendants make their first appearance before magistrates over a video link from police custody rather than travelling to court in person refer to virtual courts (Cross 2011: 10). It enables a defendant to appear in a magistrate court for first hearing over a video link whilst still physically located in the police station where they are charged. Case papers are shared electronically to enable the hearing to take place within hours of charge (OCJR 2010: 2). Courts may allow more witnesses to testify i.e., to discover and cross-examine of witnesses via

⁵ By sending SMS to number 2233 by following the format: SC <space> case type <space> case number/year. Some of the courts do not update the online cause list on regular basis.

internet-based telephony or video conferencing (Perritt 2000: 680). In order to ensure that the virtual court process is as efficient as possible, representation may be provided through advocacy assistance (OCJR 2010: 6).

The Constitution of Bangladesh is committed for human rights and fundamental freedoms. The enduring aspiration for rule of law, human rights and freedom can better be achieved by ensuring effective access to justice. By introducing virtual justice it would be easier to ensure fairness in legal proceedings and equal access to justice in obtaining legal redress. As per article 31 of the Constitution of Bangladesh, every citizen has the right to protection of law. If a person is discouraged from taking the 'protection' because of procedural complexities and costs of such 'protection', it is also the state responsibility to introduce an easier, cost effective and time saving procedure to take the aid of law. After all establishing a virtual judiciary does not mean a fundamental change in the existing judiciary, it is in fact a virtual communication network among the courts, judicial officers and parties but the rights and duties determined by a virtual court is same to the ordinary court proceedings. Actually introducing virtual court means to introduce new, supplementary and technological procedures but not new substantive rights or responsibilities.

Online dispute resolution

The phenomenon known as ODR refers to an array of dispute resolution procedures that requires technology to facilitate the resolution of disputes between the parties. Katsh defines ODR as any method of dispute resolution which wholly or partially designates the internet as the virtual location to solve a dispute (Katsh et al. 2001). Today's ODR mechanisms are said to be early harbingers of the future global dispute resolution landscape in the Digital Age (Stipanowich 2001). It is happening in many forms and forums across Canada, USA, Europe and other countries. In reality ODR is a technology based process of ADR between or among the parties living far from one another (Bygrave 2002: 2). The growing consensus believes that ODR can be useful for two types of disputes: those that arise in cyberspace or from online interactions and those that arise in offline (Goodman 2003: 1). There may be various types of ODR - some are fully automated cyber negotiation services through negotiation software without interference of any natural person; some are cyber-mediation through using sophisticated software and a neutral third

party facilitator and others are traditional mediation using online technology (Goodman 2006: 12). All modes of disputes resolution are in fact used on the mutual determination between or among the parties concerned. There are a number of potential advantages of ODR (Trakman 2003) which include: potentially speeding up decision making; building in pauses that can be periods of reflection, supporting further research during the process and reducing bias. Neutrals can use asynchronous communication as a cooling-off device, to re-frame (e.g., argument) and to caucus simultaneously with each party. Other potential advantages include early intervention, cost reduction and better feedback loops.

Using ICTs in case management, electronic submissions and related information

The judicial functions in Bangladesh are mostly documents based; here all forms of petitions, notices and determinations are required to mobilise faster. Traditional court docket books and other court registers are cumbersome tools and present many limitations. The docket is placed in the clerk's offices and just one office worker at a time can work with it. Therefore one of the first applications that need to develop in the courts is the automated register. Compiling case information for better case management in Bangladesh can be typically done by developing an electronic database that contains summary information about each case, concerning information about the way each case is processed, every action, cause or matter filed in the court, including parties' particulars, the nature and quantum of the claim, the document filed and the outcome of hearings and more. It would help to monitor the output and performance of the courts, helping the planning and organisation of court activities and the allocation of resources. In a sense, courts can use computerised systems to convert caseload data into caseload intelligence. Moreover computerised data is more likely to be recorded promptly, accurately, completely and transparently than otherwise. This has the advantage of scotching the low level corruption in court registries where court staff may be in the habit of seeking additional and secret payments from lawyers and others to register documents.

To improve case management system e-filing can be introduced. In Australia, Queensland Law Foundation Technology Services Pvt. Ltd. has already introduced an electronic filing pilot, THEMIS network, which has been a

secured extranet for legal parishioners (Stanfield 1998). Of course, e-filing allows a court to capture data from an original document to be used to create an electronic summary of the court case for later case tracking, thereby improving case management. Accepting a document electronically implies savings in time and effort, at least to the point of initiating a new case record in a court registry. To e-file a document means to provide the document to a court in an electronic form either in lieu of a paper document or in addition to it. The court may still process paper in the old way, but use e-filing to speed up the registration process alone. It would be necessary either to make every lawyer produce every document in electronic form or to establish a facility in the court registry for scanning paper records. Because scanning is a highly error prone activity as it assumes that low paid court staff may overlook a document to be scanned or may misfile the scanned version or may not have the time to scan the thousands of documents often lodged as evidence in a court case which can be incomplete paper records or contain the wrong documents with the same consequences.

Now-a-days securing the fundamental rights has become more calculative and more comprehensive one. Still after an order made by the High Court Division (HCD) for releasing the accused from the jail custody, the accused has to wait up to more five to seven days until that paper based order comes to hands of the jail authority. The courts may very easily order for release of the accused through emails of one second click to the prison authority if email communications in every proceeding are recognised by laws. Again the need to deliver a copy of a claim on a defendant in any civil or criminal case is the first and usually essential preliminary step before courts can validly do their work. Usually referred to as 'serving' or 'service' of initial court process, which step can delay the active engagement of courts in dispute resolution when there are difficulties in finding a defendant. Service is usually achieved by handing a copy of the initial court document to the defendant in person or, in certain circumstances, sending the document through registered postal service. In an age of widespread email and mobile phone usage virtual justice protagonists sometimes speculate that electronic media can be used as a substitute for traditional means of service. But the problem is that it is rare for a court to accept that the initial service of a claim may be served by email or phone text message because the whole purpose of service is to ensure that the correct person is served. Although it is common for courts that have electronic case management systems to record the email addresses of each party or at

least each party's legal representatives in the event that the court needs to send a notification to the parties. Again in many courts that have no automation at all it is a well established and convenient practice to notify parties of short notice changes in hearing times by simply calling them on a telephone - using the technology which already exists.

Taking evidence through technology

The usage of video conferencing in courtrooms is undoubtedly advantageous and its impact is seldom revolutionary. This technology allows for witnesses to testify from a room adjoining the courtroom via closed-circuit television or from a distant or undisclosed location. In the courtroom setting, it means that a judge, the defendant, the defence counsel and the prosecutor can ask questions of the witness and see and hear the witness's answers and demeanor in real time transmission (Lederer 2009). In other words a remote witness can be seen on a big screen while the document being discussed by the witness can be visible simultaneously also to the judge on screen monitors in video conferencing. So it can be used in the context of witness protection which enable such witnesses to give real-time evidence at a remote location so as to lessen the trauma of court proceedings, for example, where the physical security or the emotional well-being in bringing a witness to a particular court or jurisdiction cannot be adequately addressed or in order to avoid direct contact between the victims of witnesses and the accused (UNODC 2008). Courts may also take video evidence from expert witnesses such as physicians, who are too busy to attend court proceedings by leaving their medical duty.

Now-a-days video conferencing is effectively used for vulnerable witnesses who might be unreasonably intimidated if present in a public courtroom such as child victims of sexual assault (Queensland Law Reform Commission 2000: 13). Video conferencing has also been used to arrange for prisoners to virtually 'appear' in a court hearing that is considering the prisoner's bail application or a procedural hearing thereby avoiding the expense to the state in bringing a prisoner to a court only for a short court appearance. In the near future lawyers may even use 3G mobile phones to conduct hearings - perhaps entire trials may be conducted online.

Many state courts make extensive use of video conferencing in civil and criminal proceedings with substantial success. Australia has been a leader in

adopting video conferencing in the courtroom. Now there is no need for the judge, witnesses and advocates to be in the same room (Niescier 2012). Moving onward from the document camera, advanced technological courts such as the New York Supreme Court's Courtroom 228 (also known as 'Courtroom 2000') are equipped with its own Integrated Evidence Presentation Systems (IEPS) known as DEPS (Digital Evidence Presentation System) (Weinreb 2001: 423). Michigan passed legislation in 2002 that has established the nation's first public and fully virtual civil court in 2003 (Ponte 2002: 55). In Italy video conferencing technology is used in criminal proceedings applying specially the so-called 'ideo' technologies (Albers 2008: 7).

By the amendment in the Indian Evidence Act 1872 as well as insertion of sections 65A and 65B in effect since the 17 October 2000 a special provision as to evidence relating to electronic record and admissibility of electronic records had been introduced in India. In the case of *Amitabh Bagchi v Ena Bagchi* (2005)⁶ courts have interpreted this provision to include video conferencing. In 2003 in the landmark case of *State of Maharashtra v Dr Praful B Desai* (2003)⁷ the Supreme Court upheld video conferencing as a vital tool for collecting evidence where the witness may not be conveniently or necessarily be examined in court, specially from a witness who resides abroad. In the case of *Alcatel India Ltd. v Koshika Telecom Limited* (2004),⁸ the Delhi High Court allowed the witness to give evidence through video conferencing as the witness was unhealthy. In *Amitabh Bagchi* (2005), the High Court of Calcutta opined in allowing electronic video conferencing as it is a cost-effective facility and avoids delay of justice. Also in the cases of *Sakshi v Uol* (2004)⁹ and *Sheeba Abidi v State* (2004),¹⁰ the courts on several occasions have resorted to this technology to have deposition of a victim who had been sexually exploited and/or was suffering from post-traumatic stress disorder. This communication technology has also been used by the Indian subordinate courts where the judicial officer needs to record evidence of under-trial prisoners for security reasons.

⁶ AIR 2005 Cal 11.

⁷ 4 SCC 601.

⁸ 3 Arb. L.R. 107 (Delhi).

⁹ AIR 2004 SC 3566, 2004 (2) ALD Cri 504.

¹⁰ 113 (2004) DLT 125.

In the case of *Liverpool and London Steamship Protection and Indemnity Association Ltd v MV 'Sea Success I' and anor* (2005),¹¹ the Bombay High Court allowed the plea of the plaintiff to depose using video conferencing, as the witness was staying in UK with her two minor children and was unable to come to India. In the case of *Bodala Murali Krishna v Smt Badola Prathima* (2007),¹² the Andhra Pradesh High Court was of the view that there should not be any plausible objection for resorting to video conferencing in civil cases as long as the necessary facilities along with assured accuracy co-exist. Recently the Supreme Court of India in *Dr Kumar Saha v Dr Sukumar Mukherjee* (2011) (medical negligence case),¹³ went a step further and ordered recording of testimonies and cross-examination of the foreign expert witnesses through internet conferencing instead of video conferencing. In the case of *Twentieth Century Fox Film Corporation v NRI Film Production Associates (P) Ltd.* (2003),¹⁴ while the courts have held that recording of evidence through video conferencing is permissible in law, they have also cautioned that necessary precautions must be taken both as to the identity of the witnesses and accuracy of the equipment used for the purpose.

No doubt virtual presence is more convenient than the traditional *hazira* (physical attendance) system in the country as it minimises the cost of transportation and also ensures the speedy disposal of the case through minimising the time. This is the goal to be attained and there is a growing optimism surrounding the judiciary that the ICT based justice system would emancipate the litigants from the saddle of exploiting their precious time and money.

2.3. Integrated Judicial Administration

It is understandable that the leadership of a court institution that operates through numerous court locations would want to have access to a computer network that is capable of providing information about any case at any location. It is difficult to dispute that there are advantages to be gained by linking up the case databases of different courthouses when they are each a

¹¹ 4 ALLMR 17.

¹² 1 ALT 237.

¹³ Civil Appeal No 3173 of 2011 [Arising out of SLP (C) No 27071/2010].

¹⁴ AIR 2003 Kant 148.

part of some larger unitary system of courts. A network of that kind would enable the chief justice or a top judicial officer to examine any case record whether or not the case file was physically at hand. It would enable statistics to be quickly compiled about system-wide case management trends. It would allow judicial inspectors to investigate complaints about the conduct of judges in particular cases without the need to necessarily visit the court to examine the court files. And perhaps most conveniently in cases where a decision of a lower court is appealed, networked information systems would allow the electronic record of the lower case to be readily accessed and re-used by the relevant appeal court.

2.4. Knowledge Management

Knowledge management is concerned with simplifying and improving the process of collecting, creating, synthesising, sharing, capturing and understanding knowledge, information, insights, reflections, thoughts and experiences. Thence there can be no more practical substitute than an effective digital law library as a tool for accruing legal information. An effective digital library would mean the availability of information resources needed by legal professionals. The main feature of the digital library is the emphasis on access over ownership of the library collections at any time. The users of a digital library need not go to the library physically as long as an internet connection is available. It will make legal research more challenging and interesting as judges, legal practitioners and law students will be exposed to a richer and more up-to-date environment that it offers.

The idea of walking to the library to blow dust out of the books will be a thing of the past. In April 2011, IT section of the Supreme Court of Bangladesh has developed a library automation system for the two libraries of the Supreme Court (The Supreme Court Annual Report 2011: 81) and the Ministry of Law, Justice and Parliamentary affairs of Bangladesh has already updated the existing laws and hosted them on a website titled 'Bangladesh Code and Laws of Bangladesh' (MoF 2011: 27).

3. QUESTION OF PREFERENCE

The existing justice system of Bangladesh was designed for the pre-internet touchstone. Without being physically present before court nobody is allowed to justice. Only the age of ball pens have taken the place of the age of fountain pens of the judges. The Judiciary in Bangladesh is overburdened, slow, laborious and brainstorming. A total of 1,942,183 cases are pending in different courts of the country of which 9,141 in the Appellate Division (AD) and 313,735 in the HCD. For disposal of a case on an average the AD takes nearly six years, the HCD takes four to five years; while the civil and family courts consume four years, the time is two to three years in the criminal courts.¹⁵ Moreover, as all benches of both Divisions of the Supreme Court are in the capital (Dhaka), an aggrieved has no alternative but to come to the capital to have judicial remedy from the highest court. From many parts of Bangladesh communication with Dhaka is costly, time consuming and risky. More often the political instability such as *hartal* endangers the passengers coming and going from and to Dhaka. Thus the litigants as well as the courts are in immediate need to save time and it can possibly be achieved by introducing virtual justice.

Again because of the rigid formalities and emotional conducts of the court officials, the 'juvenile witnesses' apart from 'juvenile delinquent' may feel psychological pressure in making any statement before courtroom. Though the Children Act 2010 allows the juvenile court to hold trial of the juvenile delinquents in some sort of informal environment, neither this Act nor any other statutes prescribe any special provision for taking evidence from juvenile witnesses. To ease this crisis there is no alternative but to introduce ICT based and convenient virtual judiciary which will serve to avoid the 'tyranny of distance' (Wallace 2008: 7).

The virtual justice system will link up all courts electronically to exchange the information about cases. It offers electronic filing which will help speed up the disposal of cases. It will overcome the problem of errors being made in the court registry in recording the details of cases as well as the problems of staff sometimes deliberately go slow in registering cases and ask for bribes. It ensures accurate recording of what is said in court by providing an audio

¹⁵ The Daily People's View. 2013. Two Million Cases Pending. 26 February 2013. Chittagong. [Online]. Available at <<http://peoples-view.net/index.php?cPath=Front%20Page&showme=8760&dt=21&mt=Mar&yr=2011>>. Accessed 28 February 2013.

recording and a transcript. It provides the option of video conferencing so that the witnesses and prisoners need not physically attend a court to provide evidence. It will enable to record all the court decisions and make them available for all to see on the internet from which judges may research on laws more conveniently and improve the quality of their decisions. It also enables judges to utilise email and other messaging services in delivering papers of court hearings. Overall in virtual justice system the digitised court files will facilitate to get rid of paper files and avail to reduce staffing costs as computer systems need fewer operators than paper systems. More importantly by using databases and up-to-date case information, the court can arrive at better decisions about case management and manage the caseload more effectively.

4. POTENTIAL BARRIERS

The following barriers may appear to come up towards the unveiling of virtual justice in Bangladesh:

a. Deficiency in technological knowledge

Mistrust on technology and dearth of technical knowledge of the judges, lawyers and other concerned officers are considered to be the major barrier in commencing ICT based judicial development in Bangladesh. The existing off-line procedures of justice are more reliable to them as it is risk less and confidential, though vitiated by unavoidable delay.

b. Weak ICT infrastructure

The current ICT infrastructure of Bangladesh is not IT savvy rather it is overburdened and unprepared for technology based justice system. In one hand high-speed internet connection is still expensive and limited, on the other hand power supply and internet bandwidth outside of Dhaka is unreliable - which require serious attention.

c. Increasing the number of cases

Virtual justice may become encouraging for vexatious litigants. As the judicial process would be very easier, number of litigation may peak irrespective of merit.

d. Technology cost

The set-up costs for the pilot programme of the virtual court technology in London, UK were 1.8 million GBP and the running costs for the first four months of 2010 amounted to 382,000 GBP (MoJ UK 2010). With the increase of inflation throughout the world, the installation and running cost of the programme is increasing day by day. And just because of financial deficiency, in Bangladesh, there is a tendency to think only instant cost but not the long term future benefits which is a major roadblock to let on virtual justice in Bangladesh.

e. Shortage of online security

IT problems may cause a 'meltdown' in the operation of the virtual court. Data security and confidentiality has become another barrier towards this scheme.¹⁶ Under this programme all records and information are kept in a network. If these are destroyed or breached the losses would be irreparable. In recent past hacking of official website of the Bangladesh Supreme Court underscores the need to address the online security concern before launching of virtual justice.¹⁷ Computer viruses, hacking, data-diddling, email fraud, fake identity and some subsequent failure to trace out or delay in tracing out the source of offence are also the considerable part of misconception against virtual justice.

f. Management deficiency

After all a complete virtual justice requires a complete database management system of the whole population by which any authentication through justification with assessed data helps the virtual courts to identify who is actually communicating or with whom such judicial communication is going to be made. Although we have National Identity cards, it needs to be more informative, effective and comprehensive to ensure justification of communications by the potential litigants and others concerned.

¹⁶ 'Right to privacy' is provided by article 32 of the Constitution of Bangladesh and 'confidentiality of public documents' is required by section 74 of the Evidence Act 1872.

¹⁷ Bangla News 24. 2011. 'Supreme Court website hacked!'. 11 November 2011. [Online]. Available at <<http://www.banglanews24.com/English/detailsnews.php?nssl=e2cc2216734e38aa8e97ad9937489082&nntl=2012122127700>>. Accessed 15 January 2013.

g. Hard to testify justly

Though use of video conferencing is common in business and politics of present day, it is unlikely for businessmen or politicians to make vital decision over a video link with someone they have never met. Face-to-face contact is essential to build trust and develop relationships. Guilt or innocence is not, as many would have it, simply a case of knowing whether you did the act alleged. There are also mental elements to consider, such as the perpetrator's intention. Defences such as duress or reasonable excuse may require the defendant to reveal delicate or personal information – they may not feel comfortable doing so to a stranger over a video link, while sitting in a cramped room in a police station.

5. FEASIBILITY ANALYSIS OF VIRTUAL JUSTICE IN BANGLADESH

As a part of ICT development the current government of Bangladesh has taken initiatives to make a 'Digital Bangladesh' by 2021 by providing high speed internet connections through Fibre Optical Cables (FOC) to the vast rural areas across all 64 districts by December 2013 (MoEF 2012: 20). For ensuring delivery of e-services, District e-Service Centres were set up in all Deputy Commissioners' offices and as many as 4,501 Union Information and e-Service Centres started functioning on 11 November 2010 (MoF 2011: 28 and 32). The Right to Information Act 2009 has come into force along with an information portal to ensure right to information. Recently record keeping and filing of documents in almost all the ministries and divisions of the government offices are gradually being digitised and websites are being created for database and documents. The web portals of the country's 64 districts were introduced on 6 January 2010. To patronise activities of the software and ICT based industries, an ICT incubator has been established in Dhaka. The first software technology park at Karwan Bazaar, Dhaka is already operational. In addition the government has a plan to establish High-Tech Park at Kaliakoir, Gazipur.¹⁸

Machine readable passport was introduced on 1 May 2010. National ID cards are being issued. Online submission of income tax returns has been introduced. A number of 'quick-win' programmes has been implemented

¹⁸ Professor's Current Affairs. 2010. 'Rupkolpo 2021: Ekush Shotoker Shonar Bangla' (In Bangla), July 2010, 15(169): 68-69.

which include online submission of trade union, factory registration, license issuance etc with the Ministry of Commerce, online gate pass system at the Ministry of Home affairs and online library management system at the Ministry of Cultural Affairs (MoF 2011: 28). In 2009, a post of Controller of Certifying Authority (CCA) was created for the purpose of introducing digital signature with a view to introducing e-Transaction, e-Commerce and e-Procurement.¹⁹ It is expected that modernisation will create paperless offices in the near future (MoEF 2012: 20).

The National e-Information Kosh (www.infokosh.bangladesh.gov.bd) was introduced at the national level on 27 February 2011 (MoF 2011: 28). The government is planning to promote the use of ICT enabled education by making IT education compulsory at the secondary level and by 2021 at the primary level. Cyber centres have been established in 21 public universities and degree colleges. The mobile penetration rate, as per the BTRC website, grew enormously with 98.593 million subscribers at the end of February 2013 whereas it was only 1.75 million in 2002. As a result the tele-density of the country has exceeded 65% from 1.25%. Teletalk Bangladesh Ltd launched 3G services for the first time in Bangladesh on 14 October 2012.

The inauguration of WiMAX technology has increased the number of internet users. Currently people can register 'General Diary (GD)' online without reporting to a police station (MoEF 2012: 16). Criminal database, lost and found information database, biometric identification system with Automatic Fingerprint Identification Systems (AFIS) and photograph matching have already been introduced. Prisoner information management system along with names, thumb-prints etc, prisoner admission database, prisoner release database, visitor information database as well as process automation and network connectivity for Department of Jail and 11 central jails are going on. The government is going to set up a WiMAX based Metropolitan Area Network (MAN) connecting with 73 units of Bangladesh Police including Bangladesh Police Head Quarter, Detective Branch, Special Branch, Commissioners Office of DMP and Police Stations in Dhaka City (BEI 2010: 45).

To ensure an uninterrupted power supply for proper ICT development, the government has prepared a plan to generate 8500 MW of electricity by 2013 which will increase to 11,500 MW by 2015 and make provisions to meet the

¹⁹ *Ibid.*

expected demand for power of 20,000 MW in 2021 (Planning Commission 2010: 5). According to Bangladesh Power Development Board website,²⁰ the highest electricity generation so far was recorded at 6,675 MW on 12 July 2013. So in technical point of view Bangladesh is moving forward.

Digital land management system has been introduced in order to make land administration and management transparent and accountable by making land records available online, conducting satellite technology based digital survey, preparing digital maps and ledgers and providing Certificates of Land Ownership (CLO) instead of owner based land record (khatian). Moreover, action is underway to bring the activities relating to land development, rates payment and mutation under e-service (MoF 2011: 26).

In January 2011, case management software was introduced in the Supreme Court of Bangladesh. In February 2011, the ICT officers of the Supreme Court started developing the website and cause list entry software for the subordinate courts of Bangladesh; a data centre has also been established. In May 2011, the system of providing case results by SMS was introduced. At the end of 2011, LAN was established in the Dhaka District Judge Court, Dhaka Metropolitan Sessions Judge Court, Dhaka Chief Metropolitan Magistrate Court and Dhaka Judicial Magistrate Courts. Those courts are connected with the Supreme Court data centre and cause list; orders and judgments of those courts are being published on the internet (Supreme Court of Bangladesh 2011: 81). So the foregoing initiatives of the government would certainly be inspiring and optimistic towards a new era of technology based justice system in Bangladesh.

6. THE WAY FORWARD

i) In the legal system of Bangladesh, evidence is collected as per the Evidence Act 1872. In criminal proceedings, sections 244, 265F-265J and 340 of the Code of Criminal Procedure 1898 specify the procedure of collecting evidence and that the court has the power to compel a witness to appear before it to give evidence. In civil matters, the witnesses are summoned to appear before the court and adduce evidence under section 30, Orders XVI and XVIII of the

²⁰ Available

at http://www.bpdb.gov.bd/bpdb/index.php?option=com_content&view=article&id=126&Itemid=17. Accessed 25 July 2013.

Code of Civil Procedure 1908. But the statutes do not have specific provisions for recording evidence via video conference. Because of the viability and the favourable response in the legal arena, the use of video conferencing for obtaining witness in various disputes of Bangladesh is expected to be intensified in times to come. Therefore section 3 of the Evidence Act so far it relates to the definition of 'evidence' and the foregoing provisions of the Code of Civil Procedure and the Code of Criminal Procedure need to be revised to meet the requirements of virtual justice. Moreover, though there is the Information and Communication Technology Act 2009, it is silent in recognising email, video conferencing and other possible modes of technology-based communications in legal proceedings. As per section 63 of the Evidence Act a computerised scanned document or a printed copy of an email is treated as secondary evidence. These need to be interpreted or amended optimistically.

ii) To enhance the capacity of the judiciary, a computer based Management Information System (MIS) with suitable Wide Area Network (WAN) and Local Area Network (LAN) should be established both for the upper and lower judiciary. It may consist of three inter-related modules, namely, (i) a case management module, (ii) a legal framework module, essentially covering two basic sources of updates, namely the Bangladesh legislative code and the Bangladesh case law (reported Supreme Court rulings and decisions) database; and (iii) a court administration module, whose areas of application may include court inspection, planning and budgeting, transactions, financial accounts, staff-related information and reporting, statistical applications and records management.

iii) Legislations and law reports should be made available online to make it much easier for a judge or member of the public to search and obtain the provisions of the law or judicial precedent while seated at work station.

iv) To achieve the best output of the virtual justice the technology based legal education is a must. The curriculums of legal education should embrace basic computer knowledge. There may be an internship programme on computer equipment, common case management system, office management system, how to electronically file court documents via the internet, how to conduct legal research and even factual investigation on the internet, the mode of authentication of a video conferencing, digital signature, scanned documents,

knowledge about Voice over Internet Protocol (VoIP), digital confirmation, Computer Generated Evidence (CGE) technology etc.

v) The training provided by the Judicial Administration Training Institute (JATI) should include systematic and appropriate ICT training to meet the challenges of the virtual justice. The lawyers are also to be taken under the same ICT training. Hence Bangladesh Bar Council may come forward to provide the required supports in producing 'technologically skilled lawyers' to supplement the virtual courts.

vi) A technologically well-trained group of judges would be appointed to preside over the virtual courts. To this aim, the judicial service rules may be modified requiring the basic ICT knowledge in addition to academic qualifications, a prerequisite for judicial appointment.

vii) To guarantee the access to the virtual justice, confidence building upon the technology based justice system among the potential stakeholders need to be accentuated first. A spacious range of exposure and campaign to swell this notion has a colossal and of use role to play.

viii) The instantaneous use of email in any release order by the Supreme Court to any jail authority is a demand of time. An authenticated and digitally signed email should urgently be treated as primary document with regard to any required actions. A copy of summon or warrant or judgment should be sent to the accused and his legal counsel through email or any instantaneous media so that the accused may defend himself instantly and effectively.

ix) The software management must be highly protected. The communications are to be instantly copied and back-up copies must be preserved in more than one device so as to avoid any risk to data loss/management. Hence all the documents must be digitally signed and verified by the judges.

x) Outdated software and devices do not perform accurately or sometimes automatically misguide and very often create dangerous output. So the software application in a virtual court proceeding must be done with updated software and through updated electronic devices.

xi) A regular trip of the native judges and experts of the virtual courts should be made to scrutinise the virtual court programmes of other countries. Also the judges and experts of other countries should, in exchange, be allowed to visit the anticipated virtual courts after establishment.

7. CONCLUDING REMARKS

The present government's vision of 'Digital Bangladesh' by 2021 has brought about increased propulsion in efficiency and technological improvement towards a greater openness, transparency and accountability in government system and performance. This paper, as we can see in section 6 above, aims to assist the government of Bangladesh in achieving the vision of 'Digital Bangladesh' by premising virtual justice in Bangladesh. But 'build it and they will come' is an aphorism clearly unjustifiable for the incipient concept of virtual justice. The ICT knowledge which has changed the world, ways of interaction, communication and conflict resolution needs to be acquired and this can only happen over time and with practice.

The implementation of technology should depend on the acceptance of technology in society. New practices should accumulate credibility before they can be absorbed into consensus in the place of the old. That is why instead of complete virtual justice system, primarily just for the sake of assessment of optimum benefits, a partial virtual justice pilot programme should be introduced. Obviously such a pilot programme might prove to be the giant step towards the complete virtual justice. A definitive framework of standardised definitions and guidelines are needed for this programme. We do not suggest that all cases should be handled in virtual courtrooms. Indeed it is unlikely that even in the foreseeable future a majority of cases will be dealt with in virtual courtrooms. This is not for the lack of technology, but perhaps socially it is unlikely that the wider community will be ready to accept such a courtroom, especially for the cases where matters of life and liberty are concerned. It is vital to remind ourselves that progress is not an enemy of jurisprudence, rather clinging on to old ways stemming from an irrational fear of change may act as an enemy (Galves 2000: 301). 'Society needs not run from or fear these issues but should face the problems head-on' (Fulcher 1996) and solve them as they arise.

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