

Litigating Right: A Comprehensive Study in Various Jurisdictions.

حق التقاضي:
دراسة شاملة في مختلف الولايات القضائية

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ملخص البحث:

تُعدّ الدعوى الذاتية، أو تمثيل الشخص لنفسه دون الاستعانة بمحامٍ، ظاهرة متنامية في الأنظمة القانونية ذات التقليد الأنجلوسكسوني، حيث تترسخ كحق أساسي من حقوق التقاضي. ويظل هذا الحق قائماً بغض النظر عن القدرة المالية للمتقاضي على توكيل محامٍ أو مدى كفاءته في التعامل مع الإجراءات القانونية. إلا أن ازدياد أعداد الأفراد المنخرطين في النزاعات القضائية دون خلفية قانونية كافية يفرض عبئاً كبيراً على موارد السلطة القضائية، مما يشكل تحدياً ملموساً لفعالية وكفاءة النظام القضائي ككل.

ويستند الطرح الداعي إلى فرض التمثيل القانوني الإلزامي في القضايا المدنية إلى تحليل ثلاثي الأبعاد شامل؛ يتضمن مقارنة السياقات بين التقاضي الجنائي والمدني، وتقييم نتائج التمثيل الذاتي، واستكشاف المبررات الأساسية التي يستند إليها هذا الحق. ويهدف هذا التحليل المتكامل إلى إعادة تقييم الحق في التقاضي الذاتي، والدعوة إلى تبني إطار قانوني منظم، وربما إلزامي، للتمثيل القانوني بما يعزز نزاهة النظام القضائي.

ويتناول هذا البحث أهمية الحق في التمثيل الذاتي، ويُخضع للتمحيص الرأي السائد القائل بعدم وجوب اشتراط المحاكم لوجود تمثيل قانوني لرفع الدعوى أو الشروع فيها. ويعتمد الطرح المؤيد لفرض التمثيل القانوني الإلزامي في القضايا المدنية على تحليل معمق يشمل المقارنة بين بيئتي التقاضي الجنائي

والمدني، وتقييم آثار التمثيل الذاتي، واستقصاء الأسباب الجوهرية وراء ممارسته. ويهدف هذا التوجه إلى إعادة النظر في مدى مشروعية وجدوى التقاضي الفردي، مع دعم فكرة اعتماد نظام تمثيل قانوني منظم وربما إلزامي للحفاظ على مصداقية وعدالة النظام القضائي.

الكلمات المفتاحية: العدالة، التقاضي المدني، القانون العام، التمثيل القانوني، التمثيل الإلزامي، التمثيل الذاتي.

Litigating Right: A Comprehensive Study in Various Jurisdictions.

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Abstract:

Pro se litigation, or being oneself without legal counsel, is becoming more regular in common law authorities, asserting itself as a fundamental right. These right stays unchanged regardless of a litigant's financial ability to hire a lawyer or their skill in handling legal proceedings efficiently. The growing number of individuals involved in legal disputes, along with their little understanding of the law, puts a considerable burden on the judiciary's resources. This situation poses a significant challenge to the general effectiveness and efficiency of the legal system.

The case for mandatory legal representation in civil cases is built upon a comprehensive three-part examination. This examination involves comparing the environments of criminal and civil litigation, evaluating the outcomes of self-representation, and exploring the fundamental justifications behind it. This comprehensive approach looks to reevaluate the right to litigate independently, advocating for a more organised and potentially obligatory legal representation framework to keep the integrity of the justice system. This article delves into the importance of the right to self-representation and questions the widely held belief that courts should not require legal representation for litigants or make it mandatory to start legal proceedings. An extensive analysis supports the argument for compulsory legal representation in civil cases, this analysis entails a comparison of the settings in criminal and civil litigation, an assessment of the results of being oneself, and an exploration of the underlying reasons for it. This comprehensive approach aims to reassess the importance of independent litigation, supporting the implementation of a structured and potentially mandatory legal representation system to uphold the integrity of the justice system.

Keywords: Access to justice, Civil litigation, Common law, Legal representation, Mandatory representation, Self-representation.

I. Introduction

In exploring "Litigating Right: A Comprehensive Study in Various Jurisdictions," we delve into the intricate tapestry of legal frameworks that govern the ability of individuals and entities to seek redress and enforce rights through judicial processes. This analysis compares the fundamental principles that support the right to litigate across a wide range of legal traditions, from the adversarial common law systems prevalent in the United Kingdom and the United States to the inquisitorial civil law systems dominant in much of Europe and Latin America, as well as within legal systems in the Middle East. In adversarial common law systems, such as those in the United Kingdom and United States, parties present their cases before impartial judges, emphasizing adversarial presentation and extensive pre-trial discovery. Conversely, inquisitorial civil law systems found in Europe and Latin America feature judges taking a more active role in investigating cases, collecting evidence, and questioning witnesses to uncover the truth rather than engaging in adversarial confrontation. Additionally, legal systems in the Middle East, influenced by Islamic law (Sharia) principles, often show unique characteristics blending civil and religious legal traditions. In these systems, judges have considerable discretion in interpreting and applying Sharia principles to resolve disputes.

Central to our investigation is the historical genesis of litigating rights, which traces back to the Magna Carta in common law districts⁽¹⁾, embodying the principle that justice should not be denied or delayed. In contrast, civil law systems, with their roots in Roman law, emphasize codification and the proactive role of the judiciary in finding facts, thereby shaping the contours of the right to litigate differently.

The dynamic relationship between procedural formalities and substantive justice and between different authorities in addressing the deficit existing between the need for an orderly legal process and the imperatives for providing equal justice to all will be factored into this comparative work. The impact that legal professionals, particularly the role of the barrister-solicitor bifurcation in common law systems and

(1) T. Honore, 'Ulpian: Pioneer of Human Rights' (2002) 2 Oxford Studies in Ancient Philosophy 202.

the undivided legal profession in respect to civil law systems, have on the process of litigation.

Further complicating matters in litigating rights are the socioeconomic hurdles placed on access to justice, including costs associated with legal representation and complexity in legal procedures. It is against such a backdrop that legal aid and pro bono services have been made available to meet the gap de jure between standards and operation.

The increase in global interconnectedness and the advancement of digital technology has led to the emergence of new models of legal disputes. These encompass cross-border conflicts that question the limits of authority and digital justice procedures that deviate from conventional courtroom environments.

The article's background aims to construct a coherent narrative that captures the intricate essence of arguing for rights. It serves as a basis for advanced research that goes beyond national borders and explores the comprehension of how different legal systems worldwide handle the intricate dynamics at the crossroads of law, society, and the quest for justice.

II. Historical Evolution of the Right to Litigate

Litigation has been one of the principles on which the legal system has been based not for centuries but for millennia. It has developed from the primitive process in ancient civilizations to the complex one in modern courtrooms. This development is exactly parallel to the momentous changes in the societies, the bounds of technology, and changing concepts of justice.

The earliest known legal systems date back to ancient civilizations such as Egypt, Greece, and Rome. These societies had well-established legal systems designed to resolve disputes between citizens. In ancient Egypt, the pharaoh was considered the ultimate judge, having the final say in all legal matters⁽¹⁾. The judicial system in Egypt saw significant reforms in the 19th century, who set up new ministries, councils, and judicial bodies such as the Council of Judgments and the Council of Justice⁽²⁾. These reforms aimed to create a more structured legal framework, introducing the qânûn (law), an administrative order that modernized the judicial process. Despite these reforms, traditional Sharia (Islamic) courts and consular courts continued to function, highlighting the coexistence of multiple legal systems within Egypt⁽³⁾.

In ancient Greece, citizens would present their cases in front of a jury of their peers, who would then decide the verdict. This system emphasized the role of the citizenry in the judicial process and laid the foundation for democratic principles in legal proceedings⁽⁴⁾.

Rome introduced 'ius civile' (civil law), providing a more structured approach to litigation and allowing broader citizen engagement in legal disputes⁽⁵⁾.

The Roman legal system influenced many later legal frameworks, emphasizing codified laws and formal procedures.

During the Middle Ages, the legal landscape in Europe was heavily

(1) Baudouin Dupret and Nathalie Bernard-Maugiron, *Egypt and Its Laws* (Kluwer Law International, 2002) 3.

(2) Ibid 4.

(3) Ibid 5.

(4) David Marcus, "The History of the Modern Class Action, Part II: Litigation and Legitimacy, 1981-1994," *Fordham Law Review*, vol. 86, 2018, 1788.

(5) 1. Metzger E. Litigation. In: Johnston D, ed. **The Cambridge Companion to Roman Law**. Cambridge Companions to the Ancient World. Cambridge University Press; 2015:272-298.

influenced by the Catholic Church, with ecclesiastical courts playing a significant role in judging disputes. However, the rise of monarchical power saw the emergence of royal courts, marking the beginning of the common law system⁽¹⁾. The Magna Carta of ١٢١٥, a landmark document of this era, laid foundational principles for legal equality and fair trial⁽²⁾. This document was a significant step towards the recognition of individual rights and the limitation of royal power, setting up a precedent for legal accountability and the protection of personal liberties.

The Enlightenment era further propelled the concepts of individual rights and the separation of governmental powers, with thinkers like John Locke and Montesquieu shaping the modern legal framework⁽³⁾. This period also saw the United Kingdom's Bill of Rights in ١٦٨٩ embedding individual rights within the legal system and recognizing the role of legal professionals in court representation⁽⁴⁾. These developments highlighted the increasing importance of legal principles that protect individual freedoms and ensure checks and balances within the government.

The Industrial Revolution brought about significant changes, leading to an increase in commerce and industry, which resulted in a rise in legal disputes. During this era, the legal profession became more specialized, with the emergence of fields such as corporate law⁽⁵⁾.

The ٢٠th century, alternative dispute resolution mechanisms like

(1) "British History, 2: The Origins of Common Law." Legal Studies Program, users.ssc.wisc.edu/~rkeyser/?page_id=625.

(2) Magna Carta - UK Parliament. Available at: <https://www.parliament.uk/magnacarta/> (Accessed: 20 February 2024).

(3) The enlightenment and human rights, LIBERTY, EQUALITY, FRATERNITY: EXPLORING THE FRENCH REVOLUTION. Available at: <https://revolution.chnm.org/exhibits/show/liberty--equality-fraternity/enlightenment-and-human-rights> (Accessed: 20 February 2024).

(4) Bill of Rights 1689 - UK Parliament. Available at: <https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/revolution/collections/1/collections-glorious-revolution/billofrights/> (Accessed: 20 February 2024).

(5) Centre for Business Research, University of Cambridge. Legal Origin, Juridical Form and Industrialisation in Historical Perspective: The Case of the Employment Contract and the Joint-Stock Company. Working Paper No. 369.

arbitration and mediation were introduced, offering more efficient ways to settle disputes. These mechanisms provide efficient and less adversarial ways of resolving conflicts, reflecting the evolving needs of a more complex and interconnected society.

The modern era has also seen the impact of technology on litigation, with electronic discovery and the use of digital evidence becoming integral to legal proceedings. Social media and other digital platforms have introduced new sources of evidence, highlighting the intersection of technology and law⁽¹⁾.

Today, litigation stays an essential mechanism for dispute resolution, reflecting the continual adaptation of the legal system to meet the changing needs of society. The work of legal scholars such as Joseph A. Conti offers valuable insights into the complexities of litigation in modern legal systems, especially within international frameworks like the World Trade Organization⁽²⁾.

The evolution of litigation, from ancient times to the present, illustrates the dynamic interplay between law, society, and technology, underscoring the legal system's ability to adapt and ensure justice is served in a fair and impartial manner.

(1) The impact of technology on modern-day legal practice The Impact of Technology on Modern-Day Legal Practice | Enterprise Tech News EM360Tech. Available at: <https://em360tech.com/tech-article/impact-technology-modern-day-legal> (Accessed: 20 February 2024).

(2) Joseph A. Conti, Learning to Dispute: Repeat Participation, Expertise and Reputation at the World Trade Organization (forthcoming, Law & Social Inquiry).

III. Comparative Analysis of the Right to Litigate

The districts should equate the processes; so far, it seems to be the only way to safeguard one of the most fundamental rights within the legal frameworks, the right to litigate. Inequal access to legal resources is marked with a whole bundle of inequalities and stays a hostage of socio-economic status and technological ability. Only if these inequalities are acknowledged and handled in the proper way, justice will remain intact. The same demands reforms in the enforcement department that should ensure justice through fair litigation among the diversified classes.

This is one of the features that characterize democratic societies in their guarantee and access to legal redress: setting up mechanisms in which individuals and institutions may have recourse and defend their rights within the framework of judicial systems. This conception, understood as a human right, deeply lodged within world legal orders, is not in any way immune to the digital divide or the impact of technology infusion into judiciaries. Therefore, the legal framework for such a will constantly have to reform and realign itself to principles related to justice and equity, so that one of the basic rights-access to legal representation-stays.

It is only until one looks at the future of rights in litigation that there becomes quite an importance to set up the relationship between traditional legal standings and the transformation that may occur due to changes in society or technological advancement. Legal reform will need at its core the means to reduce any exclusion from litigation and do so for everyone, regardless of financial status or technological inequality. Expanding inclusivity within the legal systems worldwide would go a long way in upholding the strong, fair right to litigation.

This comparison of the treatment of rights relating to litigation under different legal districts is a foray into the very heart of principles that essentially remain the same but whose application and challenges are substantially different in the various areas. Further discourse is needed on how these rights may best be protected and enhanced in the development of legal systems which could be described as justly fair and attuned to a rapidly changing world.

When exploring the parameters of this significant entitlement, it is essential to analyse the commonalities and distinctions among various

legal systems that have evolved throughout history. The United States, the United Kingdom, and Australia are notable illustrations of this progress, each possessing its own distinct legal background yet linked by a shared history in the common law system⁽¹⁾.

These jurisdictions, stemming from a shared history, have each moulded the practice of litigation to fit their unique socio-legal environments, resulting in a varied terrain for comparative examination.

In the United States, the legal system is founded on a solid basis of constitutional rights and a profound appreciation for personal liberties. Within this context, the act of litigation is not only protected, but also seen as a crucial foundation of the country's democratic values. The United Kingdom, renowned for its extensive common law tradition and its integration of European human rights norms, adopts a deliberate and balanced approach to safeguarding the rights of individuals involved in legal disputes. This approach carefully considers both established legal principles and contemporary human rights considerations. Australia highlights the profound influence of legal interpretation and constitutional protections on the legal landscape, underscoring the pivotal role of the High Court in the resolution of rights-related matters⁽²⁾.

This comparative study aims to create a base of similarities and differences in how these districts under discussion implement, protect, and enforce this right to litigate. This paper attempts to make a focused inquiry into the *raison d'être* of such rights of litigation within a legal system, democratic governance, and access to justice. It zeroed in on the United States, the United Kingdom, and Australia; it provided furtherance for the current debate on effectiveness, challenges, and potential future directions of litigation rights across common law authorities; and major judicial decisions, as well as foundational jurisprudential concepts, were discussed. We want to raise better awareness of the basic value of their contributions to democratic

(1) Mixed Jurisdictions: Common Law vs. Civil Law (Codified and Uncodified)," LSU Law Review, available at accessed 22 March 2024.

(2) T. R. S. Allan, 'Constitutional Rights and Common Law', in Law, Liberty, and Justice: The Legal Foundations of British Constitutionalism (Clarendon Paperbacks, Oxford 1994; online edn, Oxford Academic, 22 March 2012) <https://doi.org/10.1093/acprof:oso/9780198259916.003.0006> accessed 22 May 2024.

system-making and principle-building for justice.

In the United States, the privilege of pursuing legal action is firmly proven in the Constitution, serving as the bedrock of the American legal system. The topic at hand primarily focuses on the fundamental right, prominently highlighted in the Sixth Amendment. This amendment provides a variety of protections for individuals who find themselves in criminal proceedings. These provisions cover a range of fundamental rights that are crucial for guaranteeing a fair and fair legal process. These rights ensure a fair and transparent trial process. Individuals are entitled to a prompt and public trial, complete knowledge of the charges against them, the ability to cross-examine unfavourable witnesses, the power to summon supportive witnesses, and, crucially, the choice to have legal counsel to defend their case.

The landmark case of *Gideon v. Wainwright*⁽¹⁾ highlights the significant role played by the Sixth Amendment in bolstering the rights of individuals involved in legal proceedings. Clarence Earl Gideon, facing charges of felony theft and lacking the means to hire an attorney, was unjustly denied legal representation, which resulted in his unfortunate conviction. By documenting his experiences and presenting them persuasively, he was able to sway the Supreme Court's ruling, leading to the reversal of his conviction. This groundbreaking decision solidified the fundamental notion that state courts are bound to provide legal counsel to indigent defendants, as mandated by the Sixth Amendment. This important decision highlighted the crucial need for legal representation to guarantee fairness and neutrality in court proceedings, thereby boosting the credibility and inclusiveness of the legal system for everyone, regardless of their financial situation.

Probably the most vivid proof that legal rights of people have never been static is the everyday dynamism and the level of challenge they are subjected to. The current paper attempts to investigate the relationship between transparency, security, privacy, and litigation in the realm of the executive. It deals with electronic information and digital communication, which have significantly changed the fabric of evidence and disclosure in court proceedings. New and extraordinary challenges to disclosure and litigation by public demand have always run directly parallel to the need of the government to prevent disclosure, particularly concerning national security or privacy.

(1) *Gideon v Wainwright* 372 US 335 (1963)

The intricate dynamics of various legal traditions, coupled with resulting reforms, influence the landscape of litigation rights in the United Kingdom, guaranteeing the preservation of the right to litigate. In the core of this landscape, the interplay between enduring legal principles and modern human rights norms takes centre stage. This interplay experienced a significant transformation, especially with the implementation of the Human Rights Act ١٩٩٨. This act marked a pivotal moment in the legal history of the United Kingdom, as it integrated the European Convention on Human Rights into national law. This has greatly improved the safeguarding of essential rights during legal proceedings.

The Human Rights Act ١٩٩٨ not only reaffirmed existing rights but also introduced new aspects to the right to a fair trial, as outlined in Article ٦ of the ECHR. This provision has had a profound impact on litigation practices within the UK, ensuring that individuals can receive a fair and transparent hearing from a tribunal that is unbiased and neutral, all within a reasonable period. The Act has empowered courts to evaluate legislation and decisions made by public bodies to ensure they are in line with ECHR rights, thus enhancing the judiciary's role in safeguarding the rights of litigants⁽¹⁾.

Among the most well-known cases illustrating the impact of the Human Rights Act on litigation practice is *A v. Secretary of State for Home Department*, which dealt with indefinite detention of foreign nationals suspected of terrorism, an issue of fundamental human rights concerns. In this case, the House of Lords resolved that the detention in question was not following the European Convention on Human Rights, particularly with the provision protecting the right to liberty and security⁽²⁾.

This landmark ruling served to further underline not only that the judiciary remained committed to upholding human rights standards but also to underscore the significant role the Human Rights Act played in entrenching a firm base for the challenge of unfair practice and the delivery of fair dealing under the rule of law.

More importantly, it is largely European human rights norms that

(1) Equality and Human Rights Commission, 'Article 6: Right to a fair trial' (Published 4 May 2016, last updated 3 June 2021) <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-6-right-fair-trial>

(2) *A v. Secretary of State for the Home Department* [2004] UKHL 56.

have influenced the UK's litigation rights because the ECHR fundamentally contributed to changing legal norms and practice. However, the doubt is large with the decision of the UK to leave the European Union, and it put a question mark over the future relationship between UK law and European human rights standards. The arguments over, and debates on, the subject of the impact of Brexit on litigation rights and the role that the ECHR plays in UK jurisprudence have never settled since the introduction of the Human Rights Act.

The UK's perspective on litigation rights highlights a legal system that blends conventional principles with a strong understanding of contemporary obstacles. The framework is designed to be responsive and adaptable, incorporating a mix of common law principles, statutory reforms, and human rights norms⁽¹⁾.

As the United Kingdom charts its course through the complex legal landscape brought about by Brexit, the enduring values of justice, fairness, and the rule of law will remain steadfast in safeguarding the right to pursue legal action. This further emphasises the UK's dedication to upholding individual rights and ensuring equal access to justice.

In Australia, the High Court has a significant impact on the right to litigate by using its interpretative authority in judicial review. This power enables the court to evaluate the constitutionality of legislative and executive actions, ensuring their compliance with essential legal principles. This role is crucial in shaping the rights of individuals involved in legal disputes, as proved by influential cases that have had significant impacts on the legal system, especially in terms of guaranteeing a fair trial and access to legal counsel.

The participation of the High Court of Australia in cases of judicial review carries substantial implications for the parties involved, as it often sets up crucial legal precedents that strengthen or clarify the rights of individuals within the legal system. The High Court interprets the constitution and statutes to ensure the preservation of the fundamental principles that support the right to engage in legal proceedings. These principles encompass the importance of upholding fairness, ensuring that everyone is treated equally under the law, and

(1) Botek Corp, 'Common Law in Great Britain: Understanding the Legal System'<https://botekcorp.com/common-law-great-britain-understanding-the-legal-system/>

making sure that justice is accessible to all. This is clear in significant cases that have been brought before the court, particularly in *Dietrich v The Queen* (١٩٩٢) ١٧٧ CLR ٢٩٢, where the High Court acknowledged the crucial role of legal representation in guaranteeing fair trial outcomes⁽¹⁾.

In the *Dietrich* case, the court emphasized the importance of providing legal counsel to financially disadvantaged defendants in significant criminal trials. The court recognized that the absence of legal representation could compromise the impartiality of the trial, leading to a suspension of proceedings until legal representation is provided. This ruling highlighted the court's commitment to upholding justice and fairness, especially in safeguarding the right to legal representation.

Australia's litigation landscape is heavily influenced by the complex interplay between indigenous rights and legal proceedings, with the High Court assuming a pivotal role in this realm. The court's landmark decision in *Mabo v Queensland (No ٢)*⁽²⁾, which recognised native title rights and overturned the doctrine of *terra nullius*, marked a significant turning point in Australian legal history. This ruling not only had significant implications for the rights of indigenous communities, but it also proved the High Court's ability to address historical injustices through the legal system. The complexities surrounding the litigation of indigenous rights underscore the importance of a legal framework that acknowledges and honours the unique position of Australia's First Peoples, ensuring the protection and enforcement of their rights within the judicial system.

The dynamic legal landscape in Australia, influenced by the High Court's rulings, highlights a legal system that is adaptable and responsive to the changing needs of society. The High Court has consistently highlighted its vital role in safeguarding the rights of litigants and supporting the integrity of the Australian legal system, as showed by its decisions on legal representation, indigenous rights, and other critical issues. The court's unwavering attention to these issues ensures that the Australian approach to litigation stays firmly grounded

(1) *Dietrich v The Queen* [1992] HCA 57; 177 CLR 292; 67 ALJR 1; 109 ALR 385; 62 A Crim R 176 (13 November 1992)

(2) *Mabo and others v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1, F.C. 92/014 (3 June 1992).

in the ideals of justice, fairness, and equal access to legal remedies⁽¹⁾.

The United States, the United Kingdom, and Australian legal systems are overly complex and intricate where the rights to litigation are concerned. Points common to all those countries relate to the principles of a fair trial and a proper right to legal representation as a crucial factor in upholding justice and fairness within the judicial process. These principles thus permeate the districts of these countries; hence, their constitutional mandates, their statutory reforms, and their judicial interpretations all combine to safeguard the right of the individual to litigate.

It is also well-established that the right to a fair trial forms very fundamental elements under these fields of law. It provides for a public hearing before an independent court, all the facts and reasons of the charge, and to cross-examine witnesses as basic rights. Significant legal cases like *Gideon v. Wainwright* in the United States⁽²⁾, *A v. Secretary of State for the Home Department* in the United Kingdom, and *Dietrich v The Queen* in Australia have played a crucial role in emphasising the significance of legal representation as a fundamental part of a just trial. These cases have helped guarantee that individuals receive the essential legal help needed to navigate the intricacies of the judicial system.

In each country, every aspect of litigation is treated independently, and often very differently, including both legal fees and fee-shifting procedures. There may be a few similarities, but the differences among countries are very striking. In the United States, each party typically pays their own legal fees regardless of who wins or loses under the "American Rule." The result is a procedure markedly different from the most used in the United Kingdom, called the "English Rule." This often leaves the losing party under this regulation to cover most of the legal costs for the winning side. The English Rule thus brings fairness and helps deter frivolous litigation by placing this financial burden on those parties who do not win their legal cases. Similarly, Australia's approach shares similarities with the English Rule, but with unique

(1) Murray Gleeson, 'Global Influences on the Australian Judiciary' (Australian Bar Association Conference, Paris, 8 July 2002) https://www.hcourt.gov.au/assets/publications/speeches/former-justices/gleeson/cj_global.htm

(2) *Gideon v Wainwright* 372 US 335 (1963), United States Supreme Court, No. 155, argued 15 January 1963, decided 18 March 1963.

nuances. Australian courts exercise discretion in awarding costs, considering principles of fairness and the specifics of each case. This discretionary approach allows courts to tailor cost orders to the circumstances of individual disputes, ensuring fair outcomes and discouraging abusive litigation practices. The United States Court of Federal Claims has a detailed fee schedule for assorted services, effective December ١, ٢٠٢٣⁽¹⁾.

For filing a civil action or going ahead, the fee is \$٣٥٠,٢٠. Reproducing any record and providing a paper copy costs \$٠,٥٠ per page, applicable to both original documents and microfiche/microfilm reproductions. Additionally, reproducing and transmitting an electronic record stored outside the court's electronic case management system incurs a fee of \$٣٣ per record. Certification of any document or paper is priced at \$١٢, while exemplification costs \$٢٤. Issuing an apostille incurs a fee of \$٥٠. Admission of attorneys to practice is \$١٩٩ each, which includes a certificate of admission. A duplicate certificate or a certificate of good standing costs \$٢١. The schedule also includes a fee of pf-word suggestion ٥ per year for receiving a monthly listing of court orders and opinions. Any payment returned or denied due to insufficient funds, or reversed because of a chargeback, will incur a word-sub ٣ fee. For every search of court records conducted by the clerk or a deputy clerk, the fee is \$٣٤ per name, or item searched. Reproduction of an audio recording of a court proceeding is priced at \$٣٤. Filing or indexing any document not related to a case or trying for which a filing fee has been paid costs \$٥٢. Retrieval of one box of records from a Federal Records Center or other storage location costs \$٧٠. Each other box costs \$٤٣, and electronic retrievals are priced at \$١١ plus any charges assessed by the storage location. An administrative fee of word-ins ٥ is needed for filing a civil action, suit, or going ahead, but this fee does not apply to petitioners granted in forma pauperis status under ٢٨ U.S.C. § ١٩١٥. Judicial costs in this context can be categorized into two main types. Firstly, fees paid by the loser to the court (the government) are estimated by law. Secondly, the costs of the lawyer and the case, which are paid by the loser to the winner and are estimated by the court. This structure aims to ensure that the financial burden of litigation is appropriately

(1) U.S. court of federal claims fee schedule United States Courts. Available at: <https://www.uscourts.gov/services-forms/fees/us-court-federal-claims-fee-schedule> (Accessed: 23 March 2024).

distributed, potentially discouraging frivolous lawsuits and promoting fair legal practices.

Court and tribunal fees in England and Wales vary depending on the nature of the claim or case. Some examples of fees include £٥٩٢ for divorce or civil partnership dissolution, £٣٥ to £١٠,٠٠٠ for money claims (amount depending on the claim), no fee for appealing a benefits decision, £٦٨٠ for bankruptcy applications, and free or £٢٧٢ for probate applications (depending on the estate value)⁽¹⁾.

Payment for these fees can be made via phone (debit or credit card), in-person (cheque, cash, debit, or credit card), or online. Some fees can also be paid by post with a cheque made payable to 'HM Courts and Tribunals Service.' It is mandatory to pay fees online when using specific online services, such as making a court claim for money.

Thus, attorney's fees, and fee-shifting in particular, differ because it is part of a much larger policy choice and legal tradition in the local legal orders. The American Rule is often justified, for instance, by its purpose of ensuring access to justice. Concretely, the aim is to ensure that meritorious disputes are not hindered by public apprehensions about the financial costs associated with litigation against their adversaries. The English Rule and its Australian reincarnations have been seen by many as embracing a culture of deterrence from frivolous litigation and inculcating responsibility and cautiousness in legal matters.

The comparative analysis about litigation rights across the United States, the United Kingdom, and Australia underlines each of their strong commitments to the principles of justice, fairness, and access to legal representation. Simultaneously, it shows different approaches and legal traditions characterizing each authority with respect to litigation costs and fee-shifting, thus stressing their diversity within common law systems. As these legal regimes continue to develop, so these shared themes and variations will lie at the heart of discussions concerning rights to litigate, being a proper weighing of universal ideas of law against the unique context of a particular district.

Continuing with the topic of litigation rights, the Saudi Arabian legal framework sheds light on the procedures and regulations that govern litigation in the Kingdom. The Law of Commercial Courts in

(1) HM Courts & Tribunals Service, "Court and tribunal fees: Gov.uk" (<https://www.gov.uk/court-fees-what-they-are>)

Saudi Arabia is influenced by key provisions, such as Articles ٢٠, ٢٥, and ٧٣. These provisions have a significant impact on the litigation landscape in the country.

Article Twenty of the Law of Commercial Courts⁽¹⁾ outlines the necessary steps to begin legal proceedings in the Saudi legal system. It requires that legal actions be officially started by sending a statement to the court. In addition, this article states that specific types of lawsuits require representation from a qualified lawyer, as outlined by the regulations. These regulations guarantee that legal actions are begun in a formal and organized manner, with the necessary legal representation when needed.

Article Twenty-Five outlines the processes for reviewing and presenting cases before commercial courts in Saudi Arabia. As per this provision, cases are distributed among court members using a specific mechanism figured out by the Council. The procedures for examining and pleading cases primarily take place through written means, although parties have the possibility to request oral hearings to present their statements and defences in a concise manner. The regulations provide added details on the specific instances where legal representation is necessary during the pleading process.

In addition, the Law of Commercial Courts, specifically Article Seventy-Three, provides guidance on the objections that lawyers must raise during legal proceedings. This article highlights certain situations or legal matters that require objections to be made when one is represented by legal counsel. Article Seventy-Three plays a crucial role in ensuring the proper handling of objections that need lawyer intervention. It helps keep the integrity of legal procedures and enables effective representation in the Saudi commercial court system.

The provisions collectively display Saudi Arabia's dedication to creating a well-organized and controlled litigation environment in its commercial courts. The Saudi legal system strives to ensure fairness, transparency, and efficiency in resolving commercial disputes by implementing comprehensive regulations and procedural requirements.

When exploring the legal landscape of Saudi Arabia, it is important to consider the Implementing Regulations of the Commercial Courts Law. These regulations offer valuable insights into the rights and

(1) Law of Commercial Courts, art. 20, 25, 73, available at: <https://laws.moj.gov.sa/legislation/zUyaqB+HpK7CggnY7Z19%2Fg==>

procedures involved in commercial court proceedings.

Article Fifty-One⁽¹⁾ of these rules emphasizes the need for legal counsel and states that, with few exceptions specified in the law, it is needed in all cases falling under the court's district and in appeals. Notably, as told in Article Seventy-Eight, some minor legal actions are exempt from this requirement. This shows that legal representation is provided with consideration for the particulars and circumstances of every case. In business courts, however, the requirement of legal representation raises certain difficulties. The possibility of preventing the injured party from pursuing legal action to defend their rights is a major obstacle. Obtaining legal advice involves added costs that may discourage individuals from pursuing their claims. To hire a lawyer, for example, can be quite expensive. Sometimes the plaintiff gives up their claim completely because the damages looked for are less than the legal costs. Moreover, there are situations when individuals with excellent legal credentials, including law professors, might not have the necessary license to practice law. In this case, starting court proceedings requires the engagement of legal counsel, who may have lower qualifications. This need may seem contradictory because it could compel highly skilled individuals to engage someone who may be less experienced solely due to licensing restrictions. Such instances highlight the complications and potential inefficiencies that can arise from a strict requirement for legal representation in the court system.

In addition, Article Fifty-Two highlights the importance of legal ability in handling higher-level judicial processes within the commercial court system. It emphasizes that only lawyers are allowed to file cassation and reconsideration requests, underscoring the crucial role they play.

In addition, Article Fifty-Three provides detailed information about the necessity of having legal representation during the pleading stage in both the first instance and appeals chambers. This requirement is especially important in cases where the claim value exceeds certain thresholds specified in the law. This provision highlights the crucial significance of having legal representation, especially in intricate commercial disputes with significant financial consequences or

(1) Implementing Regulations of the Commercial Courts Law, articles 51, 52, 53, 54, 55, 56, available at:
<https://laws.moj.gov.sa/legislation/Azu3Gm9e%2FumOyNkF4JMAhw==#content-card-yXLmfisdGgdFYoQOOeKw>.

procedural complexities.

It is required by Article Fifty-Four that all pleading and submissions before the Commercial Division of the Supreme Court be handled by a lawyer. This ensures that legal standards and procedural requirements are upheld at the highest judicial level.

Article Fifty-Five outlines' exceptions to the mandatory legal representation requirements. It allows certain administrative authorities and licensed representatives of private legal entities to file claims, objections, and pleadings on behalf of the legal personality they are.

Finally, Article Fifty-Six emphasizes the importance of adhering to legal representation requirements within the commercial court system by saying that any lawsuits or requests filed in violation of certain provisions of the Implementing Regulations will not be accepted.

Continuing with the exploration of litigation rights, it is crucial to consider the legal environment of Saudi Arabia in the wider scope of global legal advancements. Saudi Arabia, like other authorities, is adapting its legal system to meet the evolving needs of society and align with international standards.

Over the past few years, the Kingdom has enacted a series of legal reforms that better promote the efficiency and accessibility of its judiciary. A number of these include streamlining court procedures, raising transparency, and enhancing the rule of law for individuals and companies. For example, specific commercial courts have been proved, as well as investments in alternative dispute resolution mechanisms within the Kingdom. This is especially how Saudi Arabia has focused on ensuring fair and effective procedures.

Moreover, the legal system of Saudi Arabia is very enlightened in terms of its responsiveness to contemporary challenges. For example, more recently, the judiciary has been digitizing as many procedures as possible. The launch of electronic filing or a digital evidence management platform supports continuous reform in court operations toward the improvement of access and availability of justice.

Saudi Arabia has made extensive efforts in human rights and social justice areas to implement change for improvement of legal safeguards and make mainstream structures of its society inclusive. These efforts align with a more substantial exercise in the alignment of the legal system to changing societal norms, which includes efforts to strengthen labour rights, combat discrimination, and ease access to legal representation.

In addition, the legal system of Saudi Arabia is becoming more involved with global legal standards and practices, showing the interconnectedness of modern legal advancements. Saudi Arabia's

dedication to upholding universal legal principles and fostering a more integrated approach to litigation rights is clear in the alignment of its national laws with international conventions and treaties.

In the meantime, since Saudi Arabia is the current perseverance together with its attempt to carry out legal reforms and address new challenges, justice, fairness, and legal representations become important principles in figuring out the progress of the legal rights of lawsuits within the Kingdom. Consistent realignment of legal structures and practices across other jurisprudences goes a long way in being tantamount to commitment towards ensuring the rule of law and justice on a world platform.

By comparing the rights to sue in the United States, the United Kingdom, Australia, and Saudi Arabia, we can assess the extent to which these countries are dedicated to upholding principles of fairness, justice, and the right to counsel. The vast variety of practices within common law systems and beyond is illustrated by the fact that every authority has its own unique tradition and strategy for handling litigation costs and fee-shifting.

As legal systems continue to develop, these recurring patterns and variations will continue to be at the heart of discussions on litigation rights, highlighting the ongoing equilibrium between universal legal principles and the distinct circumstances of different areas.

The analysis of litigation from the perspective of auction theory, as explored in the "Comparative Analysis of Litigation Systems: An Auction-Theoretic Approach",⁽¹⁾ offers a new perspective on understanding litigation strategies and outcomes across different legal systems, including Saudi Arabia. This perspective sees the litigation process as a competitive event, where the parties invest in legal resources to gain an advantage, and the one with the most convincing legal argument or evidence typically prevails. This analysis provides a unique viewpoint for evaluating the strategic decisions made by parties in legal conflicts and the impact of different legal systems on costs and outcomes.

A remarkably interesting perspective on the application of auction theory to legal disputes is represented by the underpinnings, which give a very enlightening view of litigation as a competitive process for

(1) Bernoth, K., Hagen, J., & Vries, C. (2021). The Term Structure of Currency Futures' Risk Premia. *Journal of Money, Credit and Banking*, 54. DOI: 10.1111/jmcb.12872.

resource allocation in which parties invest efforts to improve their chances. From this perspective, it can be more easily understood how far the design of litigation systems influences the strategies and incentives of the participants—in particular, with respect to cost allocation and rules governing fee-shifting. For instance, if it were a 'loser pays' jurisdiction, parties would approach litigations much more cautiously, prudently handle their resources — the outcomes of the litigations being very significant and able to bear not only on the settlement of the parties' dispute but also on the future financial burden of the opponent's attorney fees.

Such auction theory-based analysis of litigation opens serious issues that must be considered with respect to careful cost control and ensuring everybody has a reasonable chance in court. The latter might well be coped with only through the re-evaluation of the legal architecture and the policies under which litigation is done. Policymakers can only create a legal system that will induce efficiency in the allocation of resources, deter meritless suits, and enhance access to justice by thinking about the litigation as a strategic activity under certain rules.

This also helps shift attention away from resources as a measure of success if there is the ability to cap recoverable legal fees or to set up a framework for early case assessment and alternative dispute resolution—the process perhaps being perceived as more neutral. The introduction of such reforms should reduce the occurrence of "cost wars" in litigation, whereby the focus of the process changes from obtaining justice to the financial ability to withstand prolonged litigation.

Integrating auction theory⁽¹⁾ into the examination of litigation systems encourages a more empirical approach to legal reform. By using empirical data, researchers could analyse litigation behaviour and outcomes in different legal frameworks, including those in Saudi Arabia. This approach enables the use of empirical data to inform policymaking, proving a solid basis for decision-making.

Exploring legal disputes and the inner workings of litigation systems through an auction-theoretic lens offers a fresh and thought-

(1) Baye, M. R., Kovenock, D., & de Vries, C. G. (2000). Comparative analysis of litigation systems: an auction-theoretic approach. WZB Discussion Paper, No. FS IV 00-13, Wissenschaftszentrum Berlin für Sozialforschung (WZB), Berlin.

provoking perspective. By using these valuable insights, it becomes possible to generate innovative solutions for persistent challenges in litigation. This, in turn, can enhance the efficiency, fairness, and accessibility of the justice system both in Saudi Arabia and worldwide.

Not only in the United States, the United Kingdom, and Australia but also in Saudi Arabia, the ever-changing landscape of litigation practices is being shaped by ongoing reforms and challenges. The traditional models of litigation have been rethought considering recent technological developments and societal shifts. For example, the European context of inclusive education litigation exemplifies a growing trend where litigation is used as a potent tool for advancing social justice and influencing policy reform, beyond its conventional role of resolving conflicts. Commercial conflicts and individual rights are the focus of litigation in Saudi Arabia. The unique cultural and socioeconomic context causes a focus on law, as it starkly contrasts with the systemic movements for social justice and policy change sweeping through other parts of the world.

The introduction of technology and digital evidence into modern legal proceedings adds a huge dimension of complexity because it changes the interactions of agents in legal conflicts and raises severe discussions around privacy matters and the digital divide, especially in Saudi Arabia and similar regions. The very introduction of digital information that allowed electronic communication inevitably shifted the very anatomy of the discovery process to afford seamless access to the ever-burgeoning data realm for seamless legal scrutiny. Resilient systems are needed to ensure that there is the protection of an individual's privacy right in finding a fair balance with the need to ensure accessibility to show for maintenance of justice in the various legal districts.

In Saudi Arabia, the legal framework has evolved to address these challenges through specific regulations concerning digital evidence. According to Article Fifty-Three of the Evidence Law⁽¹⁾, any evidence derived from data generated, issued, delivered, preserved, or communicated by digital means, and which is retrievable or obtainable in a form that can be understood, is considered digital evidence. Article Fifty-Four outlines that the digital guide includes digital records,

(1) Saudi Ministry of Justice. (2021). Saudi Evidence Law. Available at: <https://laws.moj.gov.sa/legislation/0ztzQTuBqk4Peo8h35iqUA==>.

digital editors, digital signatures, digital correspondence (including digital mail), communication methods, digital media, and any other digital evidence.

Article Fifty-Five: Any evidence in digital form shall have the same legal effects as those made in writing, as provided for in this law.

Article Fifty-Six: Digital evidence shall equate to the class of official documents if it satisfies all the conditions mentioned in Article Twenty-Five of this law, referring to documents coming out of automatic digital systems of public administration bodies or public service-providing organizations.

Article Fifty-Seven provides that unless there is a sign to the contrary, any unofficial digital evidence among transaction parties shall be taken as producing legal evidence. The articulation embraces a situation where such digital evidence as electronically agreed upon transaction or even under the electronic commerce is embraced by the party or parties involved as benefiting either from an indicated digital method in the used contracts or they apply a documented or otherwise publically digital method. Articles Fifty-Six and Fifty-Seven provided that the party opposing the assertion had to prove the falsity of such digital evidence as contained in Article Fifty-Eight.

Article Fifty-Nine notes that, except for what is stipulated in Articles Fifty-Six and Fifty-Seven, digital evidence shall have the authenticity prescribed for a regular document according to the provisions of this system. Article Sixty indicates that digital evidence can be presented in its original form or by any other digital means. The court may ask that its content be given in writing whenever its nature allows.

In cases where any of the warring parties refuses to deliver items being inquired from the court as digital evidence without worthy causes, Article Sixty-One offers a loss of their right to use or keep such evidence, or view it as relevant against them, depending on the facts of the case. Article Sixty-Two further believes that if the truth concerning digital evidence can't be set up and no party can be blamed, then the court is compelled to decide if it must be admitted to a scale that is proportional to the case. Article Sixty-Three finally reveals that the pieces of digital evidence must be authenticated on an authentic basis in the same form as the original evidence assuming the fragments equate to their digital entries. This very principle also applies to the above extracts from digital payment systems. Article Sixty-Four further provides that except where provisions are addressed in this section, the provisions of Part Three of this statute will apply to digital evidence in a way that preserves inbuilt nature peculiar to digital as

digital evidence. Still, the desire for equal access to justice for all faces significant challenges courtesy of the digital gap even within Saudi Arabia. The relentlessness with which digital evidence is being embraced and virtual adjudication will seriously disadvantage any person who may find themselves disadvantaged due to the lack of necessary technological tools or a lack of the relevant digital literacy skills. It shows how legal changes will profit from the adoption of technology while taking care not to escalate the already existing gaps. It is this multifield approach that requires a more contemporary challenge wherein shifting societal norms, the impact of technological changes, and the fundamental notions of justice and equality at national and global levels have got to be reckoned with. Therefore, any reform should aim at balancing by the convenience and access that technology helps in legalese, ensuring that there is no breach in safeguarding individual rights and keeping provisions in which the legal order can offer redress and assure social change and development inclusive.

Exploring the litigation rights in various authorities and examining current challenges and reforms highlight how legal systems, including those in Saudi Arabia, adapt to societal changes and technological advancements. These systems incorporate new challenges such as digital evidence and privacy concerns while keeping the core principles of justice, fairness, and the right to legal representation. This adaptation process ensures that the rights of litigants are protected and continually redefined to meet modern demands, proving that legal frameworks can innovate and evolve while supporting their core values.

The dynamic interplay between well-established legal systems and the evolving needs of society has led to significant updates in legal frameworks and innovative approaches to legal processes. Legal systems worldwide, including in Saudi Arabia, are adapting to the demands of contemporary society by addressing issues such as the impact of digital technology on evidence and privacy. This transformation proves how the legal system can evolve with changing circumstances, ensuring justice and fairness while integrating new technological advancements and societal needs.

Across Saudi Arabia and around the world. The increasing interconnection of legal practice and the sharing of legal ideas and reforms suggests that global human rights advocacy and international legal developments will greatly influence the shaping of national litigation rights and practices. This will promote a more unified approach to litigation across various areas.

This comprehensive examination, which includes Saudi Arabia, enhances our understanding of global legal systems and how they respond to contemporary issues. It emphasizes the importance of universal legal principles while also acknowledging the diverse settings and cultural influences that figure out litigation rights and practices around the world. This analysis illustrates how legal regimes look to balance innovation with a commitment to fundamental values by investigating the interaction of conventional legal principles and contemporary demands. For example, the use of digital evidence in Saudi Arabia exemplifies the country's endeavours to modernize its judicial systems while upholding the integrity and reliability of court proceedings. This strategy writes down a commitment to keeping justice accessible and fair in an increasingly digital age. Furthermore, this study emphasizes the significance of recognizing cultural and socioeconomic implications on litigation procedures. In Saudi Arabia, cultural considerations have a substantial impact on how laws are interpreted and applied. Recognizing these factors allows for a more nuanced understanding of how legal systems can evolve to meet the unique demands of their society while upholding universal principles of justice and fairness. The article also emphasizes the significance of legal reforms that tackle emerging issues, such as the digital divide and privacy concerns, without worsening existing inequalities. This study emphasizes the significance of developing systems that protect individual rights and ensure that all members of society, regardless of technological capabilities, have access to justice. Overall, this analysis sheds light on how legal systems evolve in response to modern concerns. It emphasizes the dynamic process of legal adaptation, highlighting that while the underlying aims of justice and fairness remain constant, the techniques used to uphold them must evolve to meet new realities and societal changes.

It stays a significant concern to ensure that everyone, regardless of their technological skills or socio-economic background, has equal access to and participation in the legal process. Reforms are crucial in tackling the digital divide and ensuring equal access to justice, thereby providing a level playing field for all. Addressing this gap and ensuring equal access to legal resources is crucial for upholding the principles of fairness and justice in the digital era.

Ultimately, the course of legal action is shaped by conventional legal concepts and the dynamic impact of societal shifts and technological progress. These variables play a significant role in the development, adjustment, and response of legal systems to appearing challenges. Traditional legal principles prove a stable basis, ensuring

that fundamental values such as justice, fairness, and due process remain central to legal procedures. Nevertheless, the evolving cultural norms and expectations of society need legal systems to be more inclusive and adaptable to cater to the varying requirements of different people. On the contrary, technological progress brings about novel instruments and approaches for managing evidence, conducting legal investigations, and improving communication among parties. These developments have the potential to enhance the efficiency and effectiveness of judicial processes, but they also raise new concerns about privacy, cybersecurity, and technology accessibility. Legal systems must strike a balance between harnessing the advantages of technology and ensuring the protection of individual rights, as well as guaranteeing fair and equal access to justice. As legal systems navigate this complex terrain, the steadfast commitment to safeguarding the rights of litigants and ensuring fair access to justice will continue to be paramount. Ensuring this dedication is essential for preserving the confidence of the public and enforcing legal principles during a time of swift transformation. By engaging in ongoing discussions, conducting thorough research, and making proper adjustments, the legal community could shape the future of litigation following the requirements of modern society, all while upholding the timeless principles of the rule of law. This process needs a proactive strategy, actively involving oneself with evolving trends and issues to ensure that legal frameworks are still relevant and robust. By combining traditional concepts with innovative methodologies, legal systems can adopt a more dynamic and adaptable approach to dispensing justice. This equilibrium ensures that as the legal process evolves, it does so in a way that stays true to its core goal of delivering fair and impartial justice to every individual, regardless of the changing socioeconomic and technological landscape.

In civil law districts such as France, Germany, and Japan, the litigation rights are regulated by specific legal principles and procedural norms.

In France, there is a notable case that exemplifies the country's approach to litigation rights - the "Outreau Trial" (୨୦୦୪)⁽¹⁾. The trial underscored the significance of upholding fair trial principles and

(1) "Outreau Trial" (2004)

safeguarding defendants' rights within the French legal system. It displayed the importance of robust legal procedures and safeguards to prevent false accusations.

Similarly, in Germany, the "Bosman Case" (١٩٩٥) highlighted the exercise of litigating rights within the framework of EU law and fundamental rights. In this case, Jean-Marc Bosman took on the transfer rules in European football, shedding light on Germany's legal procedures in interpreting and applying legal principles⁽¹⁾.

In Japan, the "Hanaoka Case" (١٩٩٥) shed light on the issue of medical malpractice and patient rights, highlighting the changing legal environment in Japan with regards to individual rights and societal interests. The Hanaoka Case (١٩٩٥) shed light on how the country handles the delicate task of reconciling legal principles with traditional customs and informal methods of resolving disputes.

Litigating rights in countries such as Saudi Arabia, India, and Native American tribal systems are influenced by religious and customary law systems, including Islamic Law, Hindu Law, and Indigenous legal traditions.

Several incidents in Saudi Arabia have attracted worldwide attention due to the legal procedures concerning women's rights and criminal justice under Islamic law (Sharia). These prominent cases have triggered extensive disputes over the understanding and implementation of Sharia principles in present-day legal systems, emphasizing the ongoing discussions about the balance between traditional legal structures and contemporary human rights norms⁽²⁾.

In India, the "Shah Bano Case" (١٩٨٥) dealt with the issue of maintenance rights for divorced Muslim women under Hindu Law, highlighting the intricate legal landscape in India when it comes to religious freedoms and gender equality within personal laws⁽³⁾, was a

(1) [Bosman Case (1995).]

(2) The Saudi government relies on Islamic law (Sharia) for legal decisions, prompting concerns about its compatibility with international human rights norms. This has sparked debates worldwide on balancing religious principles with universal human rights, not only in Saudi Arabia but also in other Muslim-majority nations. Additionally, recent legal reforms in Saudi Arabia aimed at enhancing women's rights have ignited discussions on interpreting Sharia in modern governance and adapting traditional legal systems to evolving social norms and human rights standards.

(3) The Shah Bano Case, which took place in 1985

significant event.

In Native American tribal systems, the case of "United States v. Sioux Nation of Indians" (୧୯୮୦)⁽¹⁾ brought attention to the legal conflicts surrounding land rights and treaty obligations. This case displayed the intricate legal principles and jurisdictional complexities that exist within Indigenous legal traditions.

(1) United States v. Sioux Nation of Indians, 448 U.S. 371 (1980).

IV. Modern Challenges and Debates

In the ever-changing world of global legal systems, the right to litigate is undergoing significant changes. These changes are being driven by the fast pace of technological advancements, the complexities of globalisation, and shifting societal values. These changes bring about both obstacles and possibilities for individuals and organisations pursuing justice through litigation.

The rise of the digital era has brought complex concerns about digital rights, data privacy, and the regulation of cyber activities to the forefront. The General Data Protection Regulation (GDPR)⁽¹⁾ of the European Union has appeared as a guiding light in the mission to protect personal data, setting up strict guidelines for data protection that have had a far-reaching impact on various authorities. Nevertheless, the internet's lack of boundaries adds complexity to the enforcement of these regulations, raising important considerations about area and the necessity for global alignment of digital laws.

Globalisation has led to economic integration and cross-border interactions, but it has also introduced complexities to the legal sphere. Individuals and corporations engaged in international activities may face legal disputes that are subject to multiple legal systems. Ensuring fair and fair access to justice is a significant challenge, regardless of individuals' geographical location. Efforts have been made to simplify the process of recognising and enforcing foreign judgments through instruments such as the Hague Convention on Choice of Court⁽²⁾. However, challenges are still due to differences in legal systems and procedural obstacles.

There has been a surge in legal action targeting those responsible for environmental harm, driven by growing environmental concerns and the urgent need to address climate change. Landmark cases such as Urgenda Foundation v. The State of the Netherlands⁽³⁾ have played a

(1) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (2016) OJ L119/1.

(2) Hague Convention on Choice of Court Agreements, 30 June 2005.

(3) Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment), Case C/09/456689 / HA ZA 13-1396, The Hague District Court, 24 June 2015.

crucial role in shaping environmental jurisprudence, acknowledging the legal responsibilities to address the challenges of climate change. Considering these progressions, the intricate issue of assigning responsibility and enforcing legal solutions is further complicated by the cross-border impact of environmental harm. This highlights the necessity for a unified global legal structure to safeguard the environment.

Juridical litigation has become one of the strong potential tools in the field of social justice and human rights, undertaken to confront systematic inequities for more fair transformations in society. But there are challenges some disputants face because of contention about being right and some political backlash in their favour. The success of strategic litigation in promoting social change relies on a larger network of advocacy and policy involvement, emphasizing the relationship between legal tactics and broader societal movements.

Central to these contemporary challenges is the crucial role of the judiciary in interpreting the law and upholding the principles of justice and fairness. The importance of an independent judiciary cannot be overstated when it comes to upholding the rule of law and safeguarding the right to litigate from any form of undue influence. However, the integrity of legal systems and the democratic values they uphold can be seriously compromised by threats to judicial autonomy, such as political interference or tries to undermine the courts.

As legal systems navigate these complex waters, it is essential to support a strong commitment to upholding the rule of law, ensuring access to justice, and adapting to the ever-evolving global legal challenges. The legal community's response to these challenges will undoubtedly shape the future of litigating rights. It will require innovation, resilience, and steadfast dedication to the principles of democracy and justice.

V. Case Law and Legal Precedents

In common law districts, legal reasoning and decision-making are primarily based on case law and legal precedents. The enduring tradition, upheld by the idea of adhering to precedent, ensures that the resolution of legal disputes is not a fleeting effort but an ongoing process that integrates earlier judicial wisdom with present societal norms and beliefs. The doctrine of precedent mandates that courts adhere to the legal principles set up in prior decisions when confronted with comparable facts or legal inquiries, especially those set by superior courts within the same authority.

The use of precedent is not just a nod to legal history, but a dynamic tool that helps the law adapt to new societal challenges. Courts play a crucial role in shaping the law by applying established legal principles to new situations. This allows the law to adapt to the values and beliefs of society without constantly relying on legislative changes. An exemplary example of this evolutionary process is the landmark decision of *Marbury v. Madison*⁽¹⁾, which not only resolved an immediate legal conundrum but also solidified the principle of judicial review, fundamentally altering the landscape of American constitutional law.

For example, respect allowed to legal precedents is riddled with a host of problems and begets debate among the learned friends. One of the major criticisms is that it may also act as a source for inertia in the law where a precedent is undesirable or becomes outdated until it is overtly overruled or revised by statute. It is hard to go against convention and habits of long-standing that require an amicable judiciary and a case that neatly summarizes the most principal elements of the legal argument.

In addition, the interpretation of precedents can vary depending on the judge's discretion, leading to different understandings and implementations. This variability highlights the inherent conflict within the doctrine of *stare decisis* - the tension between the desire for consistency and predictability in the law and the need for flexibility and adaptability to new situations. In this challenging situation, the skill and wisdom of the judiciary are put to the test as they navigate the delicate balance between respecting precedent decisions and meeting

(1) *Marbury v. Madison*, 5 U.S. 137 (1803).

the demands of contemporary justice.

Aside from the binding precedents, the legal system also receives help from persuasive precedents from other areas. While not mandatory, these precedents provide a wealth of judicial reasoning and doctrinal development. This exchange of legal ideas promotes a more sophisticated and enhanced legal discussion, particularly when confronted with unprecedented legal challenges. Courts can examine the decisions made by foreign districts with comparable legal systems to gain valuable insights, fostering a more cohesive and synchronized understanding of fundamental legal principles across various countries. Most conflicts brought before the English courts are based on English legislation. Courts are increasingly resolving conflicts governed by foreign law. The Commercial Court Guide has recently been revised to address the considerable number of trials that involve expert testimony on foreign law. When courts must decide which party's expert is correct, they are accustomed to doing so. However, when it comes to expert opinions about the law itself, there are more factors that make the situation more complicated. The Court of Appeal's recent rulings in *Cassini SAS v Emerald Pasture Designated Activity Company & Ors*⁽¹⁾ and *Byers v The Saudi National Bank (SNB)*⁽²⁾ exemplify the procedural steps that courts must undertake when dealing with conflicting expert viewpoints on foreign legislation. These instances underscore the significance of meticulous deliberation and thorough examination when applying foreign legal concepts, ensuring that the courts' rulings are well-informed and fair.

The discussion surrounding case law and legal precedents captures the essence of common law systems—a delicate balance between tradition and innovation, honouring the wisdom of the past while adapting to the changing fabric of societal norms. In the ever-changing landscape of the legal world, with its intricate issues like digital privacy and transnational disputes, the doctrine of *stare decisis* will continue to play a crucial role. It serves as a guiding force, shaping the evolution of law while drawing from the vast reservoir of judicial knowledge accumulated over centuries.

(1) [2022] EWCA Civ 102

(2) [2022] EWCA Civ 43, [2022] WLR(D) 51, [2022] 4 WLR 22

VI. Theoretical Frameworks and Philosophical Underpinnings

The exploration of the right to litigate and the significance of precedents unveils the multifaceted foundations upon which legal systems are constructed. These foundations are deeply embedded in the historical trajectories, cultural contexts, and philosophical doctrines that have shaped societies over centuries. This intricate tapestry of influences is particularly clear when contrasting the common law and civil law traditions. Each embodies unique methodologies in legal reasoning and divergent conceptions of the authority vested in judicial decisions.

In common law authorities, the doctrine of precedent, or *stare decisis*, plays a pivotal role. It proves a legal framework wherein courts are bound by the decisions of earlier cases to ensure consistency and predictability in the application of the law. This tradition underscores a deep-seated reverence for historical judicial rulings, viewing them as essential building blocks in the edifice of the legal system, continuously shaped and reshaped by the hands of time and judicial interpretation.

Conversely, civil law systems, with their roots in Roman legal traditions and later influenced by the codification movements of the 19th century, tend to prioritize statutory law as the primary source of legal authority. In these systems, the role of precedent is considerably more subdued, with judicial decisions often seen as individual applications of the law rather than binding rules for future cases. This approach reflects a different philosophical stance on the nature of legal reasoning and the role of judges. It emphasizes the primacy of legislative intent and the codified law as the ultimate arbiters of legal disputes.

The comparison of these traditions not only highlights the diversity in legal thought and practice but also underscores the adaptive nature of legal systems as they evolve in response to changing societal norms and values. This evolution is not merely a passive adaptation but a dynamic interplay between the law and society. Shifts in societal attitudes, technological advancements, and global interconnectedness cause a continuous re-evaluation of legal principles and their application.

As legal scholars and practitioners delve into the complexities of this relationship, the dialogue between different legal traditions serves as a rich source of intellectual exchange and mutual enrichment. It challenges entrenched notions of legal reasoning, invites a re-

examination of the principles underlying judicial authority, and fosters a deeper understanding of the law's function as a societal institution.

This ongoing discourse is not only academically enriching but also practically significant as it informs the development of legal education, the practice of law, and the administration of justice. It encourages a more holistic view of the law, one that recognizes the law's roots in human experience and its ultimate purpose in serving the needs of society. As this dialogue continues, it holds the promise of bridging divides between legal traditions, fostering a more nuanced appreciation of the law's role in society, and guiding the evolution of legal systems in a way that resonates with the universal pursuit of justice and equity.

VII. Reformation and Future Directions

Reforms and potential trajectories in the field of litigation and legal precedents are revelatory of the complex interplay between shifting values in society, technological advance, and considerably basic needs of justice systems. The next section will investigate probable reforms and the prospective future in legal systems across the world for improving access, increasing uses of technology, and making global standards. A common feature of most of the imminent legal reforms is an elevated level of public access to the legal system, implying much more than merely giving a larger body of information about the law. It requires the simplification of complex legal procedures so that any person may go through the system, with or without legal counsel. Such attempts may include explanations of legalese in statutory bodies and judicial decisions; enhancing procedural requirements, legal aid services and all other relevant services, humanly and in a manner reaching a higher percentage of the population. The digital revolution is a two-pronged opportunity and challenge to the law sector.

The predicted reforms are expected to bring the use of technology in making judicial processes more efficient and effective. This may range from online dispute resolution systems to development in the use of artificial intelligence in legal research and case management practices, all the way to the digitization of court documents and filings. Adoption of these technologies should be tempered against issues related to privacy and data security, the digital divide, and questions of fairness in access to justice.

In an increasingly integrated world, legal concerns often cross-national borders, needing more attempts to harmonies disparate legal systems. Potential improvements could include initiatives to standardize specific legal norms and procedures, particularly in areas such as international trade, intellectual property protection, and human rights. This harmonization could be facilitated by international treaties and bilateral agreements, as well as the development of supranational legal institutions tasked with addressing cross-border law challenges.

Legal orders are under pressure to adapt to changing times in society's values, new ethical dilemmas brought about by the rapid progress in technology—biotechnology and cyber law, for ample, — and global challenges such as climate change and migration. The expected legal changes may very well call for a transformation of the legal structures into ever-evolving creations that react to new challenges in ways correspondent to contemporary values and ethics.

The adversarial nature of the traditional litigation is realization of its

limitation, suggesting there is increasing importance of ADR mechanisms, mainly that of mediation, arbitration, and conciliation. More significantly, it presents proffers that are economically sound and take a negligible time in preserving the relationships for the involved parties. The way ADR will be dealt with in the future reforms will show that there is a possibility of necessary enforcement of the steps before litigation in the specific case types.

Such a concept would be based on an independent judiciary with high ethical standards. Other reforms should include the effort to protect those very bases from political influence, corruption, and improper influence. It may involve the establishment of clear and effective procedures for appointment, supervision, and discipline of the judiciary; right resources and training of the staff of the judiciary. In doing so, the legal systems facing this issue need to decide at once how to balance the desire for stabilization and predictability in legal rules versus the compelling need for flexibility and the ability to react to contemporary social needs. Such general aim of these developments will be that of seeking an environment in which the law is fair, open, and well geared toward new challenges facing an ever-livelier world community.

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