

## Reducing backlog of cases in the judicial system of Bangladesh: A critical study on legal framework

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### Abstract

Judiciary of Bangladesh is caught in a vicious circle of delays and backlogs. Backlog of cases causes frustrating delay in the adjudicative process, which is eating away our judiciary. While delay in judicial process causes backlog, increasing backlog puts tremendous pressure on Judicial System of Bangladesh. Delay in disposal of cases in our judiciary has reached a point where it has become a factor of injustice, a violator of human rights. Praying for justice, the parties become part of a long, protracted and torturing process. The present study is intended to highlight major causes of backlog of cases both in civil and criminal litigations of Bangladesh as well as to find out the way out of backlog of cases within the present legal framework.

**Keywords:** Judiciary, civil litigation, criminal litigation, delay, backlog, reduction, justice

### Introduction

In November, 2007 lower judiciary of Bangladesh was separated from the executive with a view to work independently. But mere separation of lower judiciary is not enough to improve the condition of justice delivery in the country. Instituting a lawsuit in Bangladesh can often mean planting a magic tree that growing years after years but never comes along with flowers and fruits. The process of delay in litigation is equally known to all and nevertheless it may sound inconsistent with due process of law. The fact remains that the very cases are misused and abused in order to delay cases for an indefinite period and ultimate success in the cause often proves false. Now, law is an effective weapon in the hands of the state to mitigate the social needs by ensuring proper justice in time. Such effort of law is liable if justice fails to mitigate the misery of the mass people due to delay in litigation only and the faith in justice can never be instilled in the mass people if the state doesn't ensure the speedy process of justice. It is alarming that a backlog of around 42 lakh cases is pending with courts across the country, including the Appellate and High Court Divisions of the Supreme Court. Reportedly, of the cases, 7,89,179 have been pending with district courts for more than five years. This is causing immense suffering for litigants who have seen their legal fees increased (making it hard to pursue justice for many) with the addition of stress which comes with long-unresolved cases. If legal redress or equitable relief for an injured party is not forthcoming in a timely fashion, it is effectively the same as having no remedy at all. Justice delayed is justice denied, as the maxim goes. As such, the backlog is putting a big question mark on our justice system <sup>[1]</sup>.

### Bangladesh Judiciary

The present judicial system of Bangladesh owes its origin mainly to 200- year British rule in Indian Sub-Continent. The present court structure particularly the subordinate judiciary in both civil and criminal side has their legal basis in the Civil Courts Act, 1887 <sup>[2]</sup> and the Code of Criminal Procedure, 1898 <sup>[3]</sup>. Again, the Constitution of the People's Republic of Bangladesh provides structure and functioning

of the Supreme Court comprising the High Court Division and the Appellate Division <sup>[4]</sup>. There are some other special laws providing for the basis of some special courts, Artha Adalat, Speedy Trial Tribunal, Nari O Shishu Nirjathan Tribunal, Administrative Tribunal etc <sup>[5]</sup>. Our judicial and legal system has a rich tradition of common law culture and it can boast of a long record of good delivery of justice. Like any other legal system, common law with its adversarial or accusatorial features, has both its merits and demerits. But in recent years, certain objective and subjective factors have led our judiciary to a situation where its demerits are ruling over the merits, manifesting in crippling backlogs and delays. Delayed justice fails to pay even the winning party of the litigation, for its costs in terms of time, money, energy and human emotions are too high <sup>[6]</sup>.

### Civil Litigation in Bangladesh

The civil litigation process in Bangladesh is, essentially, a contest between two parties. As regards civil litigation, these two parties are the plaintiff on the one hand and the defendant on the other hand. In the process the court takes a non-partisan role. The court plays no significant role in preparation of a case; the trial itself is not an inquiry into events but rather a hearing to decide within a complex set rules, whether the plaintiff is entitled to the right which the defendant denies <sup>[7]</sup>. All civil proceedings in Bangladesh are regulated under the Code of Civil Procedure, 1908 unless otherwise excluded. Particularly, three types of law are involved in a civil proceeding: the Code of Civil Procedure, Civil Rules and Orders and Civil Suits Instruction Manual. A civil proceeding has undergone through three stages such as pre-trial, trial and post-trial. Pre-trial stage includes institution of suit, issue of process, service of summons, return of summons and filing written statement, ADR, First hearing, Framing of issues, step under section 30 and settling date for hearing (SD). Trial stage includes opening of the case, peremptory hearing or examination-in-chief, cross-examination and further-cross and argument. Post-trial stage includes pronouncement of judgment, passing decree or order, appeal, review and revision, execution of decree.

## 1. Backlog in Civil Litigation

About 0.77 million civil suits are now pending in the subordinate courts in Bangladesh is not only the proverbial case of being justice denied by way of justice being delayed but also a case of injustice born out of mismanagement in justice dispensation <sup>[8]</sup>. Backlog in civil justice in Bangladesh is caused for many reasons. There is a fertile field in the Code of Civil Procedure, 1908 for a clever lawyer to prolong and protract proceedings to any length of time <sup>[9]</sup>.

### 1.1 Delay in Service of Summons

Generally, summons means the intimation which is sent to the defendant by the Court. Again, a summons can be defined as a document issued from the office of a Court of justice, calling upon the person to whom it is directed to attend before a judge or officer of the Court for a certain purpose. When a suit is instituted by the plaintiff the court orders to issue summons to the defendant. This is to permit the defendant to appear and answer the claim of the plaintiff. This ensures a fair trial. Without a duly served summons no further action can be taken against the defendant. Upon institution of a suit a summons shall be issued by the officer of the Court appointed in this behalf to the defendant within five working days from the date of filing the suit to appear and answer the claim on a day to be therein specified <sup>[10]</sup>. Although there is a time frame for issuing a summons but in many cases it is not strictly followed by the court. Under the Code of civil Procedure there are two modes of service of summons, one is ordinary mode of service of summons and substituted service summons. Almost 2-4 years takes to complete service of summons.

### 1.2 Delay in Disposal of Cases

Delay in disposal of cases is an alarming issue of the judiciary in Bangladesh. This is also a humanitarian issue all over the world both from social and economic aspects. When a case is filed with a court, nobody knows when it will end. Even a small case which should be disposed of within one year, may take 10-15 years to dispose of through all stages.

“It is a general impression prevailing amongst the litigant’s public that the difficulties of litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense arise after getting the decree <sup>[11]</sup>.” It has been witnessed from the practical scenario that lawyers, judges and the litigating parties especially the party who has fear to lose the suit are responsible for delay in disposing suit.

### 1.3 Non-appearance of the Parties

The provisions of the Code of Civil Procedure are based on a general principle that, as far as possible, no proceeding in a court of law should be conducted to the detriment of any party in his absence <sup>[12]</sup>. Dismissal for default followed by miscellaneous cases under Order IX Rule 4 and rule 9 of the Code of Civil Procedure for restoration of suits is a regular feature. Intentional non-appearance and absence by filing of petition for adjournment result in the dismissal for default to linger the course of litigation. Appearance on the date of ex-parte disposal seeking adjournment for filing of W.S. and rejection of such petitions for adjournment is followed by miscellaneous appeal creating deadlock and setting aside of

the ex-parte order by the appellate courts in terms of liberal construction enabling opportunity to the other side to contest the original suit consume much time to dispose of the original suit. In order to reduce unnecessary time in restoration of suit dismissed for default and setting aside of ex parte decree new provision has been inserted in the Code of Civil Procedure which is a timely amendment brought by the Government <sup>[13]</sup>.

### 1.4 Delayed in Appearance of Witness

The witnesses of the parties are often found not present in the Court on the date of hearing. Consequently, the hearing of the case has to be adjourned. In fact, self-respecting persons avoid attending the courts as witnesses because of the atmosphere around the court and treatment meted out to them.

In every contested trial of a case, procedure relating to examination of witness plays an important role as the disposal of the case depends on it. It has been observed that the party faces great difficulties in procuring witness and making them in attendance. It has been observed that the witness in attendance are not examined on the same day and then witness hesitate to turn up on the next date, resulting in further delay due to cumbersome process of resuming and procuring witnesses.

### 1.5 Delay caused by Interim Orders

Inter Orders passed by a court during the pendency of a suit or proceeding. They do not finally determine the substantive rights and liabilities of the parties in respect of the subject-matter of the suit or proceeding. The court may make it after the suit is instituted and before it is finally disposed of, as may appear to the court to be just and convenient. They are made in order to assist the parties to the suit or for the purpose of protection of the subject-matter of the suit. Applications for temporary injunction, local inspection, local investigation and appointment of receiver consume much time of the Courts. Orders either rejecting or allowing the temporary injunctions are followed by miscellaneous appeals preventing the disposal of civil suits because a long time is spent for the disposal of miscellaneous appeals in the higher court.

### 1.6 Delay Caused in Disposal of Applications

#### Application for rejection of plaint on the ground of res judicata

The doctrine of res judicata is based upon two Roman maxims, No man should be vexed twice over the same cause of action & it is the interest of the state that there should be an end to litigation <sup>[14]</sup>. Question of res judicata cannot be decided from a reading of the plaint and should be decided at the time of trial <sup>[15]</sup>.

#### Application for transfer of suit

On the application of any of the parties, the High Court Division or the district Court may at any stage transfer any suit or appeal pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same <sup>[16]</sup>. So, the parties have to apply to the High Court Division or the district Court for transfer of the suit and it takes delay in civil litigation.

### Application for use of inherent power

Every court is constituted for the purpose of administering justice between the parties and, therefore, must be deemed to possess, as a necessary corollary, all such powers as may be necessary to do the right and to undo the wrong in the course of administration of justice<sup>[17]</sup>. The Lawyer in civil court can file so many applications under section 151 of the code. Every court has inherent power to act *ex debito justice* to do real and substantial justice or to prevent abuse of the process of the court<sup>[18]</sup>.

### Application for correction of judgment

Clerical or arithmetical mistakes from any accident slip or omission may be corrected by the court on application of any of the parties<sup>[19]</sup>. An order allowing amendment of a decree is not appealable. So, it is found that if any clerical or arithmetical problems found in the pronouncement of judgment, any party may apply for the correction of judgment which also causes delay.

### Application for discovery of documents

Interrogatories and discoveries have been incorporated in the Code to bring down the surprise of trials of the other parties.

Repeated reminders are not complied with in sending such volum books which kills much time in the disposal of the suits in a quicker pace of period. Necessary directives are essential to be issued on the Registration Department to comply with the requisites of the Court by such officers at once<sup>[20]</sup>.

### Application for substitution of legal representative

An application for substitution may be filed during the pendency of the suit, if the plaintiff or any of the plaintiffs dies his heirs must be substituted within 90 days from the death of the deceased plaintiff<sup>[21]</sup>. But in many instances the interested party does not file substitution application within time limited for it. Then application is filed for condonation of delay which causes unnecessary delay.

### Application for withdrawal of suit

Application for withdrawal of a suit is also responsible to cause delay in Civil Litigation. Upon an application the plaintiff, at any time, may withdraw his suit.

### Application for remand of suit

Appellate court has power to grant remand<sup>[22]</sup>. Remand means sending back the case to the trial court for retrial of the case. If the appellate court or Revisional court finds lacuna in the procedure and then the case is sent back on the remand to the trial Court, in which procedure relates and the time spent is almost the same as that spent in the first round.

### Criminal Litigation in Bangladesh

The Criminal justice in Bangladesh is adversarial or accusatorial in nature. As regards crime, these two parties are the State on the one hand and the person accused of the crime concerned on the other hand. A person accused of a crime is presumed to be innocent until the prosecution proves his guilt beyond every reasonable doubt. All criminal proceedings in Bangladesh are regulated under the Code of Criminal Procedure, 1898 and Criminal Rules and Order unless otherwise provided. Four agencies are involved in a criminal administration of justice: Police, Prosecution,

Courts, Jail and Probation authority<sup>[23]</sup>. The stages of the criminal proceeding may be divided into four periods such as pre-proceeding stage, proceeding stage, trial stage and post trial stage. Pre-proceeding stage is the initial stage of investigation and preparation of a criminal case where police plays the significant role from the beginning to the end of this stage. This includes lodging FIR or Complaint, Reporting to the Magistrate, Investigation and Submission of police report. Proceeding stage includes taking cognizance of an offence or issue of process and transfer to the appropriate court for trial<sup>[24]</sup>. Trial stage includes discharge framing charge, framing charges, plea and conviction, taking evidence, examination of accused under section 342 of the Code of Criminal Procedure, 1898, acquittal or sentence of the accused. Post-trial stage includes release of the accused from the jail in case of acquittal where the accused was in jail at the time of trial, in case of conviction the accused has been sent to the jail with a warrant for serving out the sentence<sup>[25]</sup>.

### Backlog in Criminal Litigation

More than 1.92 million cases are now pending in the subordinate criminal courts<sup>[26]</sup> which caused untold sufferings and huge economic loss for the litigants as well as deteriorated the present law and order situation of the country the wrongdoer believed that he may be escaped ambit of law due to delay in criminal justice system. Causes responsible for backlog in criminal litigation may be discussed the following heads:

#### Delay in Investigation

In case of a cognizable offence the police can investigate the case without any order of a magistrate but in case of non-cognizable offence can not investigate the case without any order of a magistrate which caused delay in starting investigation and submission of the police report on a particular case<sup>[27]</sup>. Again, although there is particular time frame which is 120 days in the Code of Criminal Procedure, 1898 but it is not made mandatory to follow which allows the police to complete the investigation process for years<sup>[28]</sup>.

#### Production of the Accused for Trial

It is a principle of natural justice that no one can be condemned unheard that is why the Code of Criminal Procedure provides four different methods such as summons, warrant of arrest, proclamation and attachment of property of the absconded accused. In case of trial in absentia of an accused it is mandatory to follow the procedure mentioned in Section 339B of the Code of Criminal Procedure which kills the valuable time of the Court.

#### Production of the Witness

Although police is under obligation to produce the witness before the criminal court but under the Code of Criminal Procedure they cannot compel the witness rather requires a warrant for production of the witness which is also caused delay in disposal of the case.

#### Delay in Trial

Section 3339C of the Code Criminal Procedure, 1898 requires a magistrate court to conclude the trial of case within 180 days from that date of receiving the case from

the cognizance court and a sessions court to conclude the trial within 360 days but both courts cannot follow such deadline due to shortage of the sufficient number of magistrates and judges resulting the backlog in criminal trial system.

### Recommendations

From the above discussion it is revealed that the century old Code of Civil Procedure and Code of Criminal Procedure is mostly responsible for causing delay in disposal of cases in Bangladesh. As a result huge backlog of cases almost stops the access to justice of the citizens. Recently the Law Minister and the former chief Justice of Bangladesh Hasan Foez Siddique admitted the fact in several seminars. Thus the following amendments may be brought in the procedural law to reduce backlog:

- In case of ordinary service of summons a particular time should be fixed failing which the Court can immediately serve the summons by substituted mode.
- Fees for service of summons should be increased considering present transportation cost so that process server becomes more willing to serve the summons on time.
- Process server should be made liable if he fails to serve the summons on time due to his negligence.
- Specific provision should be mentioned about the time for adjournment of trial and it is to be mentioned how much time a party can apply for adjournment.
- In case of issuing interim order the Court must cautiously examine prima facie case without considering social or political position of party as well as the lawyer engaged by the party.
- In case of remand of the case the appellate can himself solve issue raised at the appellate stage without sending to the trial court since appellate court shall have same power of the trial court.
- An office of the ADR should be established and it needs to be made mandatory to undertake ADR in civil matters before filing a suit.
- In case of investigation of the criminal case period of 120 days should be made mandatory failing which the investigating officer needs to be made liable for his failures.
- In case of production of the accused for trial provision of the summons, proclamation and attachment of the property should be abolished and advertisement in the daily local newspaper can be included.
- Presiding officers of the Court need to be well trained and they should be monitored properly so that they strictly follow the working hour of the court.

### Conclusion

Problems of administration of justice in Bangladesh discussed above specially problems of increasing number of backlog and delay in disposal of cases are not the problems of our judiciary alone but are common to administration of justice in many other countries of the world. For solving the problems of the judiciary in many countries law commission, committee etc. are regularly constituted for examining the suggestions of the judges, lawyers, jurists, research bodies etc. for reformation of the administration of justice and on the basis of the considered recommendations of such commission or committee necessary steps are taken and legislation is made for solving the problems of the

judiciary. So to make the administration of justice in Bangladesh more effective and fruitful judiciary should be completely separated from the executive branch of the Government; subordinate Judiciary should be brought under complete control of the Supreme Court; standard of legal education should be raised for creating efficient lawyers and judges; salary, allowances and privileges of the judges should be increased to attract competent persons in the service to be recruited through a Judicial Service Commission and training should be given to the newly recruited as well as existing judges to increase their efficiency in case management and disposal.

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