

A STUDY ON DELAY OF CIVIL SUITS OF BANGLADESH

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ABSTRACT

Delay of civil suits has become one of the tremendous social problems in Bangladesh. For delay of civil suits many people have been suffering years after years and many families have lost all of their properties and rich people become poor. It is crying need of justice is that it should be dispensed as quickly as possible. It is a well known proverb that, "justice delayed is justice denied". However, delay in litigation is equally recognizable and though it may sound inconsistent, the fact remains that the very provisions of the Code, which are designed to facilitate smooth and speedy trial of cases, are misused and abused which causes delay in disposing cases indefinitely and ultimate success in the cause often proves erroneous. The result is understandable, that cases pile up and huge amount outstanding gather in all civil courts. As no law intends to augment difficulties, but to improve them; loopholes in law cannot be said to be only responsible for delay in disposal and increases number of civil suits but may be said to be responsible for expanding scope of workings which in fundamental nature, pressure the parties to take advantage of such workings with aim to cause delay in the disposal of civil suits. The present study tried to identify the existing loopholes, to find out the causes of delay of civil suits in Bangladesh, to identify the effects of delay of civil suits in the society of Bangladesh and to explore the difficulties arising out of technicalities and of intentional delays and practical barriers. The study was conducted in Bangladesh. The study was documentary analysis type. Data were collected from secondary sources. Secondary data were collected from books, research report, journal, internet, annual reports of Supreme Court of Bangladesh etc. From the study it was found that there are some reasons for delay of civil suits such as lack of good lawyers. The attitude of some of the lawyers is also to some extent responsible for delay. A lot of civil cases are accumulated in different courts of Bangladesh but insufficient number of judges to solve the cases. There are lacks of proper observation of the provisions of the Codes. A large number of civil cases that come before the Supreme Court cannot be concluded hastily due to interpretation of legislative enactment in question. Delay in proper investigation or inquiry in a litigation. There are varieties of laws on a particular issue. There are lacking office equipment and machinery. Witnesses are absent due to unreasonable causes or any cause. There are cumbersome execution procedures of decrees in civil cases. There is a lacking of utilization of modern technology in keeping records and documents. So there is an urgent need to moderate the present procedure of administration of civil justice. Moreover, procedure is the handmaid of justice; it is to be used so as to advance the cause of justice and not to thwart it.

Key words: *Civil suit, justice, delay, corruption, trial, appeal, revision, stages, cause, work load, efficiency.*

1. INTRODUCTION

Effective access to Justice is one of the fundamental conditions for the establishment of the rule of law in a society. 'Justice' and access to Justice are two different things. Sometimes 'Justice is said to be the goal and access to Justice is the means to that goal. If the existing litigation process takes unnecessary long time and there are too much procedural hurdles to obtain Justice, these delay and procedural complexities themselves create another forum of injustice for litigants. 'Justice delayed is justice denied' is frequently and deliberately used by the people of our country. In the ordinary course of law, justice is not hurried in Bangladesh but practically it is true that, with a few exceptions, justice is usually delayed and thereby often seen to be denied. From newspaper report the congestion of cases in different courts of the country is clear. Many civil cases remain pending for years. To tackle with the congestion of cases pending in different courts, it is necessary to devise new method and strategy and existing method should be updated. Judges in America with the active cooperation of the prosecution and defence lawyers and even social workers, in some cases, invented a new method of reducing congestion of civil cases in the court. Realizing the utility of the ADR method about 25 out of total 50 states of the USA gave legal recognition to the same. In our country we gave legal recognition to ADR method by amending the Code of civil procedure in 2003.

Delay is a very harmful matter for civil suits in Bangladesh. Time consumed for the final disposal of cases from the date of its institution is too long. 10-15 years in many instances. This delay has been causing serious harassment to the litigant public. It has come to many mind that the present system of administration of justice, a foreign transplant, is unsuited to the genius of our people, its procedures are dilatory and cumbersome, not advancing the cause of substantial and quick justice. The situation is serious indeed and calls for careful consideration of the reasons for this delay. The system of administration of justice as obtaining in Bangladesh, both as regards the hierarchy of courts and the procedures followed by them, is the result of an evolutionary process the present system coming down from hundred years back and the people including the unlettered villagers have become used to its formalities and technicalities. Why then the people are losing confidence in the system is the question of the day. The answer is not far to seek.

The procedure delay in disposal of civil cases, may account for much of the erosion of confidence in the system. But no particular point in Bangladesh the administration of justice alone can be said to be the source of delay. It starts right from the beginning and end. In decree of execution the uncertainty looms unending to the woe and worry of litigants- winners or losers. Through the agony of trial and tribulations emerge some causes which were common to the courts of all levels and which are peculiar to the court of different tiers. In every step of trial, however, there are some defects accounting for delay which are though inherent have yet become part of the system.

The justice delivery system in our country is time consuming and unaffordable to the poor people to some extent. The existing regime of civil suits in Bangladesh is governed by the Code of Civil Procedure enacted in 1908. Since then little change has taken place. The legal system may very well be described as admirable but at the same time slow and costly and entails an immense sacrifice of time, money and talent. The causes of backlog and delay of disposal of cases are systematic and profound. The legal system's failure to impose the necessary discipline at different stages of trial of cases allows dilatory practice to protect the case life. A case usually takes about ten to twenty years to dispose of. It is learnt that nearly one million cases are now pending in different courts of the country.

2. OBJECTIVES OF THE STUDY

The objectives of the study are as follows:

1. To find out the causes of delay of civil Justice System in Bangladesh.
2. To identify the effects of delay of civil suits in the society of Bangladesh.
3. To provide policy recommendations.

3. DEFINITION OF KEY TERMS

3.1 Civil Suit

A civil suit is to be filed within the period of limitation in the lowest grade of the civil court of the local area having jurisdiction in the matter according to the valuation of the suit or in the specified courts by presentation of a plaint duly stamped with the requisite amount of court fee as provided under the Court Fees Act, 1870 by the plaintiff or his engaged advocate accompanied by the copy of documents relied on by the plaintiff. The plant is to be drawn up complying with the provisions of Order 7 of the Code of Civil procedure 1908 and valued according to the provisions of the Suit Valuation act.1887.¹ When the valuation of the civil suit is up to tk. 2,00,000/- the plaint is to be presented in the court of the Assistant Judge of the local area. Where the valuation is above that amount but up to Tk. 4,00,000/- the plaint is to be presented in the court of the Senior Assistant Judge of the local area and when the valuation of the suit is above Tk. 4,00,000/- the plaint is to be presented in the court of Joint District Judge of the local area.²

3.2 Trial of Civil Cases

If the suit or the proceeding is contested by filing written statement or written objection then the court frames the issues or points for determination. After settlement of issues or points for determination parties are allowed some time to take steps for making the suit ready by serving interrogatories, discovery of documents, local inspection, local investigation etc. Then the suit or the case is fixed for hearing. newly inserted sub-rules (3) to

1 See for details Court Fees 1870 Ss. 6 and 7. Suit Valuation Act 1887.Ss.3, 5, 8 & 9. Code of Civil Procedure 1908. Ss. 15.20 and Limitation act. 1908 schedule.

2 Civil Courts Act 1878. "Ss 18 & 19

(7) of rule 1 of Order XVII of the Code of Civil procedure prohibit more than six adjournments before peremptory hearing stage or any adjournment without reasonable cause at the peremptory stage at the instance of one party without payment of cost to the other party and on failure to pay such cost provided for exparte disposal of the case and prohibits rehearing of the case unless application is made on deposit of cost within 30 days. At the hearing of the suit parties adduce both oral and documentary evidence in support of their respective case or to controvert the case of the adversary. Though provisions have been incorporated in the Code of Civil Procedure by amendment in 1983 for making the civil cases ready within specified time limit those provisions are complied with more in breach than in observance and unnecessary adjournments sought and liberally allowed at different stages of civil cases specifically after fixation of the case for peremptory hearing delayed the disposal of civil cases increasing cost of litigation and necessitated enactment of Code of Civil Procedure (Third Amendment) Act 2003.³

3.3 First Appeals (Civil)

A First Appeal is required to be filed within the prescribed period of limitation by presenting before an officer of the court a memorandum of appeal drawn up in the manner prescribed by Order 41 Rule 1 of the code of Civil procedure stating the grounds of appeal against the decree or order of the subordinate court by which the appellant felt aggrieved and signed by the appellant or his engaged advocate. The memorandum of appeal is required to be duly stamped and accompanied by the certified copy of the impugned judgment and decree or order of the subordinate court. As soon as the memorandum of appeal is filed with the filing section of the High Court Division he same is examined by the officer in charge of the section. The said officer then endorses the date of presentation of the appeal and sends the same to the Stamp Report. If the memorandum of appeal is not barred by limitation and is sufficiently stamped and complies with the rules under chapter V of the rules of the High Court Division then the same is admitted and registered and notice is issued to the respondent at the cost of the appellant. Similarly a memorandum of cross-objection filed by the respondent under Order 41 rules 22 or 26 of the Code of Civil procedure if found in order is admitted and registered.

If it is found that the memorandum of appeal has been insufficiently stamped, the same is returned to the appellant or his engaged advocate with a note thereon by the stamp Reporter and if such memorandum of appeal is refilled within the prescribed period of limitation supplying the deficit court fee then the Stamp Reporter records a note to that effect on the memorandum and then the same is admitted and registered but a duly stamped memorandum of appeal presented within the prescribed period of limitation by the appellant in person cannot be admitted and registered without the order of the court before which party presenting the appeal must appear. If memorandum of appeal is presented beyond the prescribed period of limitation of without the copies of the judgment and decree or order appealed from it is returned to the advocate or he party presenting it and if such copies are filed after the period of limitation has expired the memorandum shall be presented to the court with an application for condoning the delay and if such delay is condoned by the court then office admits and registers the memorandum. An appeal from an order cannot be admitted and registered without bearing by the court like an appeal against a decree and hence posted in the list for admission hearing after it is found in order by the office. After admission by the court, hearing the appellant or his advocate, office registers such an appeal. After admission and registration of the appeal notice is issued on the respondent at the cost of the appellant and record of the case is called for from the court below. On arrival of the record and service of notice on the respondent paper books are prepared at the cost of the appellant and then a date is fixed for hearing the appeal and the appeal is listed in the daily cause list of the court. Discontinuance of publication of weekly and monthly lies of ready appeals chronologically showing them and bringing such ready appeals in the daily cause list resolved in anomalous situation now. At present ready appeal do not appear in the daily cause list of hearing in their due turn. Only when a ready appeal is mentioned by a party or his advocate Court fixes a date of hearing when it appears in the daily cause lies. Then after hearing the parties or their engaged advocates and perusal of the recorded called for from the court below a Division bench of the High Court Division by a reasoned judgment either allows the appeal or dismisses the same. In allowing an appeal court may set aside the judgment and decree or order in full or in part or may remand the case to the lower court for retrial. If the appellant on his engaged advocate fails to appear when the appeal is called on for hearing the court may dismiss the appeal for default or may adjourn the same to another day for hearing. If the respondent or his engaged lawyer does not appear at the time the appeal is called on for hearing but the appellant or his engaged advocate appears then the "Court may hear him and by a reasoned judgment may either allow the appeal or dismiss the same. If the appeal is dismissed for default or allowed exparte the appellant or respondent, as he case may be, may file an application for rehearing the appeal after setting aside the order of dismissed for default or allowing of the

³ Ibid, Orders XI, XIV, XVI, XVIII

appeal *ex parte* and if the court is satisfied as to the cause of non appearance on the aforesaid date of hearing may allow such application and rehear the appeal on a subsequent day fixed for hearing.⁴

3.4 Civil Appeals on Grant of certificate

Where a certificate has been granted by the High Court Division under article 103 (2) (a) of the constitution regarding the substantial question of law as to the interpretation of the constitution, any party who desires to appeal shall have to file a petition of appeal with requisite court fee within 30 days from the date of grant of the certificate or date of impugned judgment, decree or final order to the Appellate Division accompanied by a certified copy of the certificate if granted separately and not embodied in the judgment, certified copies of the judgment and decree of final order appealed against and of courts below and an affidavit of service of the copy of the petition of appeal on the respondent. The petition shall set forth appellant's objections to the decision of the High Court Division and where the appellant desires to raise other grounds in the appeal, the petition of appeal shall be accompanied by a separate petition stating such grounds and praying for leave on those grounds. Within 30 days of the service of the petition of appeal on him, the respondent may file objection to the grounds taken by the appellant and to the appellant's right to raise any other question. Other provisions followed in an appeal on the basis of leave granted by the appellate Division are also applicable to civil appeals entertained on the basis of the certificate granted by the High Court Division.⁵

3.5 Civil Petition for Leave to Appeal

A civil Petition for leave to appeal shall have to be presented to the appellate Division with requisite court fee within 60 days from the date of judgment or order of the High Court Division sought to be appealed from or within 30 days from the date of the refusal of grant of certificate by the High Court Division. Sub petition shall state succinctly all points of law and all necessary facts to enable the court to determine whether leave should be granted. Such petition is to be signed by the petitioner or his advocate-on-record or counsel. The Advocate-on-record shall cite all previous decisions of the court bearing on the question sought to be raised in the petition. Certified copy of the judgment, decree or order sought to be appealed from with the grounds of appeal or application before the High Court Division shall be accompanied with the leave petition. Paper book of the High Court Division, if any, and the other record, the order of the High Court Division refusing grant of certificate, if any, an affidavit in support of allegation of fact and unless caveat has been lodged by the other party, who has appeared in the court below, an affidavit of service of notice of the intended petition upon such party shall have to be filed. Seven additional copies of each of the above documents are also to be filed. Petitioner shall have to file eight copies of the orders made in the case by all courts subordinate to the High Court Division as well as grounds of the petition of any earlier appeal in case these documents are not already included in the paper book or record of the appeal. Petitions for leave to appeal are heard *ex parte* if no caveat is lodged by the other party. Where the other party appears on receipt of notice and lodges a caveat or dismisses the petition for leave to appeal. Where the court grants leave to appeal it gives order as appeal by leave is fixed for hearing unless the amount of security is deposited and compliance of any other direction given. After the grant of the leave the appeals is registered. A provisional petition for leave to appeal is not entertained unless all relevant documents except copy of the impugned judgment are filed. A provisional petition for leave is filed before receipt of the certified copy of the impugned judgment to enable the petitioner to pray for an interim order from the Appellate Division pending filing of a regular leave petition with certified copy of the impugned judgment. In a provisional petition for leave requisite court fees have to be paid Application for interim order filed with the provisional leave petition is normally heard by one of the Judges of the Appellate Division who is assigned by the chief Justice to hear such petitions in his chamber. No exemption for leave to appeal is received without requisite number of paper books except on properly stamped application filed before the court for time.⁶

3.6 Civil appeal on grant of Leave

As soon as a petition of appeal is lodged or the Court grants leave to appeal the appellant is to take steps for preparation of printed or cyclostyled record and recorded of the case from the High Court Division is called for and brought before the Appellate Division. If the preparation of paper books is dispensed with record from the High Court Division is not called Unless preparation of paper books is dispensed with paper books are to be prepared after arrival of the record in accordance with the rules. Unless the appeal is withdrawn or dismissed for non-prosecution after appearance of the respondent concise statement is to be filed by the appellant as well as by the respondent stating the facts of the case and the arguments upon which the appellant or the respondent proposes to rely. Requisite number of copies of the concise statement and affidavit of service of notice thereof

⁴ Ibid, Chapter II & IV, pp. 17-244 & Chapter V. pp & 25-39.

⁵ Supreme Court of Bangladesh (Appellate division) Rules (Dhaka 1988) (Order XII Rr. 1-8 Order XIV Rr.1-17 Order XV R.1 Order XVI Rr. 1-8. Order XVII Rr. 1-10. Order XIX Rr. 1-9 Order XX Rr. 1-7), pp. 17, 20-24 and 26-28.

⁶ Ibid, Orders XIII Rr.1-15), PP-18-19

upon the other party are to be filed by the parties. As soon as the appeal is set down for hearing the appellant shall bind required number of copies of the record, supplemental record, if any, leave granting order, concise statement or statements and lodge the same in the office at least 7 days before the date fixed for hearing of the appeal. Subject to the direction of the court, not more than two advocates are heard on each side. The appellant cannot, without the leave of the Court rely on, at the hearing, any new ground not specified in the petition of appeal, leave order and the concise statement. The Court, after hearing an appeal, may pronounce judgment then and there or may reserve the judgment to be pronounced later on any other day. An appellant whose appeal is dismissed for default of appearance may within 30 days of the order, pray for setting aside of that order and for restoration of the appeal and the court may, after service of notice on the respondent, who has entered appearance, restore the appeal if good and sufficient cause is shown. Where an appeal is allowed *ex parte* the respondent may pray for rehearing of the appeal on the ground that appeal was heard *ex parte* without notice to him or that he was prevented by sufficient cause from appearing and the court may reheat the appeal. Filing of a *papal* shall not prevent execution of the decree or order appealed against but the court may order stay of execution of the decree or order or the execution proceeding, in any case under appeal. On the application of a respondent court may summarily decide the appeal if it is frivolous or vexatious. A party appearing in an appeal in person shall furnish his postal address for service of notice and documents on him.⁷

3.7 Stages of Civil Suit ⁸

The stages of Civil Suit can be divided in to three stages-

1. Pre-Trial Stage
2. Trial Stage
3. Post-Trial stage

3.7.1 Pre-Trial Stage

1. Client Interviewing
2. Marshalling of Facts
3. Litigation Strategy
4. Institution of Suit/Filing of a Complaint
5. Summons/Return of Service (RS)
6. Written Statement (WS)
7. Discovery/Interrogatories/Inspection
8. Framing of Issues

Principles: No Surprise of the time of trial

3.7.2 Trial Stage

1. Opening Statement,
2. Examination in Chief,
3. Cross Examination
4. Re-examination/Further Cross,
5. Arguments

Principles: Parties litigate and judge controls the process.

3.7.3 Post-Trial Stage

1. Judgment.
2. Decree
3. Appeal/Review/Revision.
4. Decree
5. Execution.

Principles: Executing Court cannot go behind the Decree.

3.8 Stage of the Civil Suit of Glance

1. Presentation of plaint.
2. Issuance of summon.
3. Service return/Appearance of the dependant.
4. Written statement (WS).

⁷ Ibid. (Order XIV Rr. 1-17, Order XV R.I. Oder XVI Rr. 1-8 Order XVII Rr.-10, Order XIX.Rr.1-9.Order XXRr.1-7).Pp 20-24 & 26 -28.

⁸ Hassan, S., and Khan M. (2010) Skill in Trial Advocacy (Civil and Criminal), Law Book Company, Islamia Market, Nilkhet, Dhaka, Bangladesh pp.319-320

5. Alternative Dispute Resolution (ADR)
6. Framing of issues.
7. Step under section 30 of CPC with 11, 12, 13 & 26.
8. Setting date for peremptory hearing (SD).
9. Peremptory hearing (PH)
 - (a) Opening the case.
 - (b) Examination in chief
 - (c) Cross-examination
 - (d) Re-Examination
10. Argument.
11. Judgment.
12. Decree (if any).
13. Execution.

3.9 The Trial Management

The stage has four more stages and these are:

Stage-1: Presenting the case before the Bench Officer of the competent courts.

Stage-2: Presenting the case before the court itself

Stage-3: Evidencing

Stage-4: Arguments and Judgments.

Stages of Civil Trial ⁹

Figure 1: Stage-1 presenting the case before the bench officer of the competent court (For initial Scrutiny)

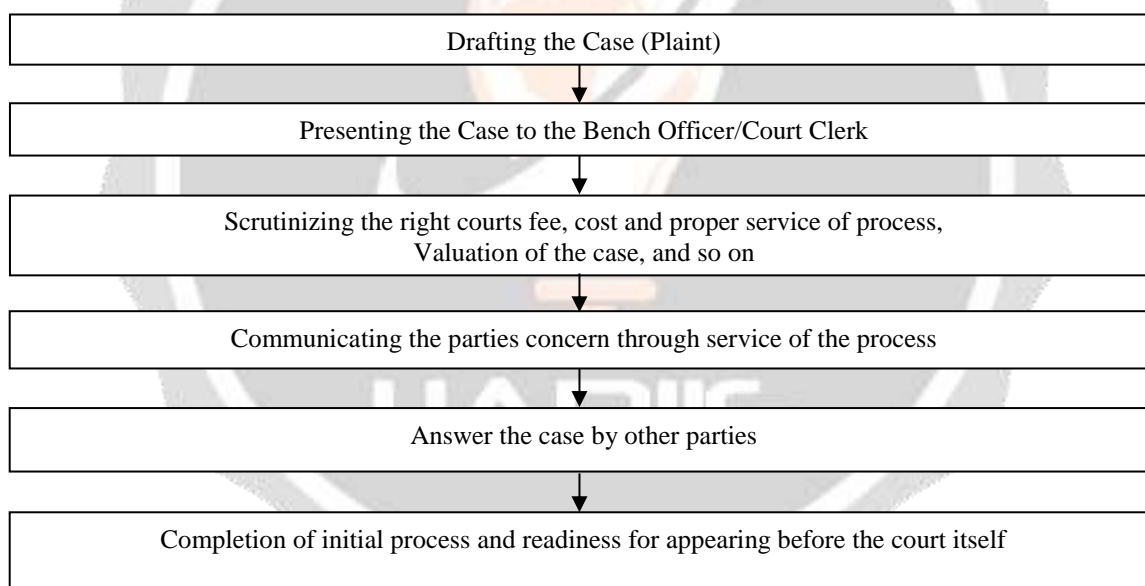
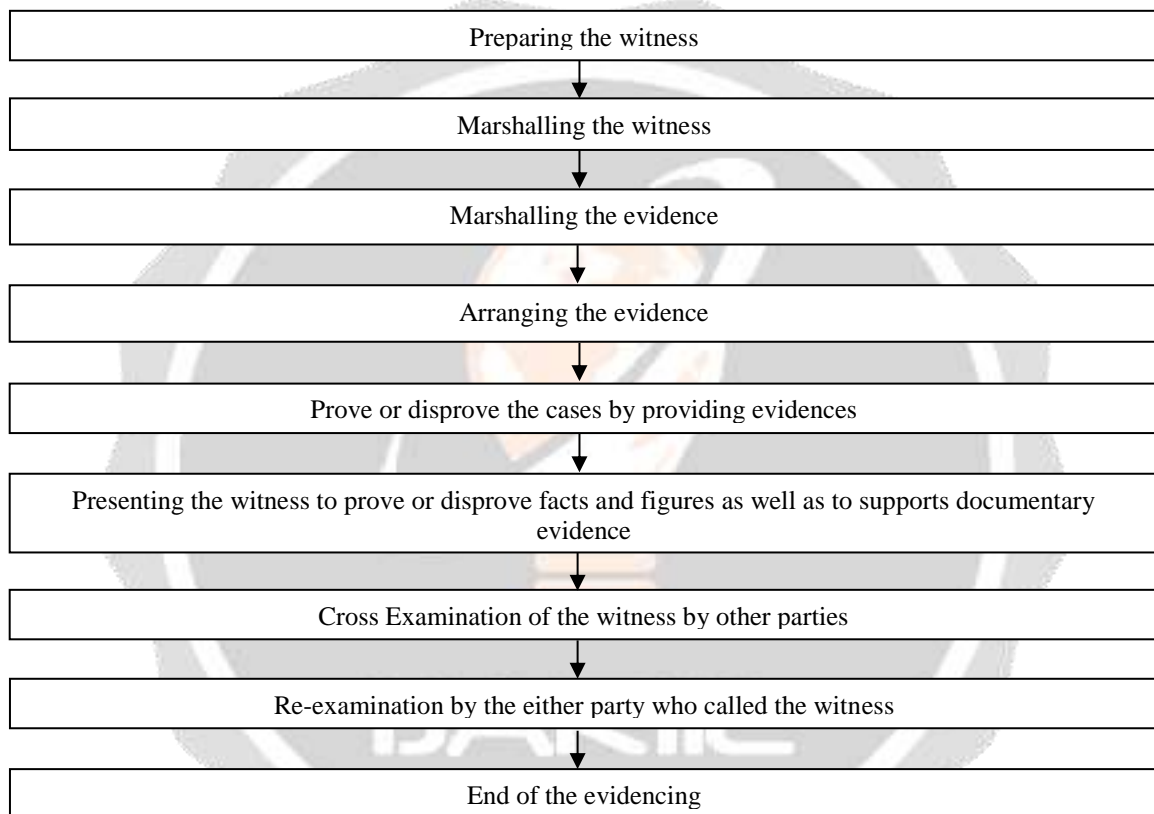
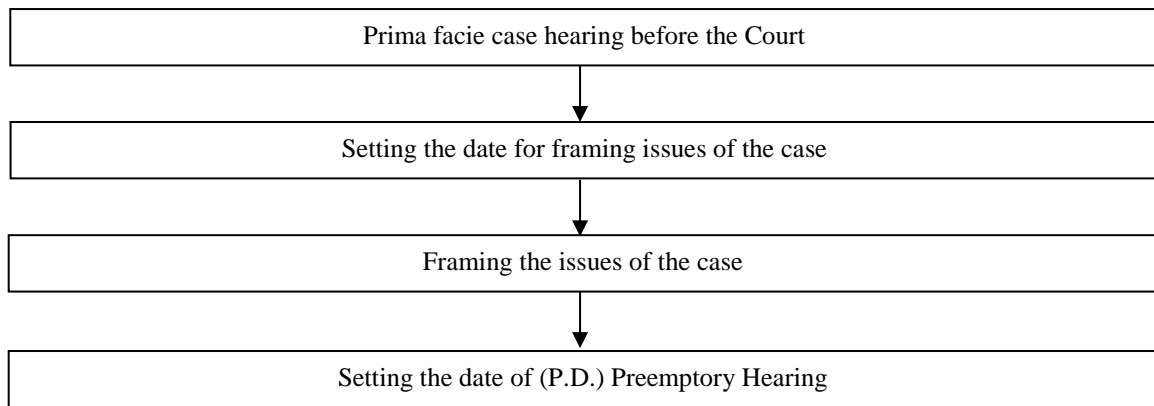


Figure 2: Stage-2 Presenting the case before the court itself¹⁰

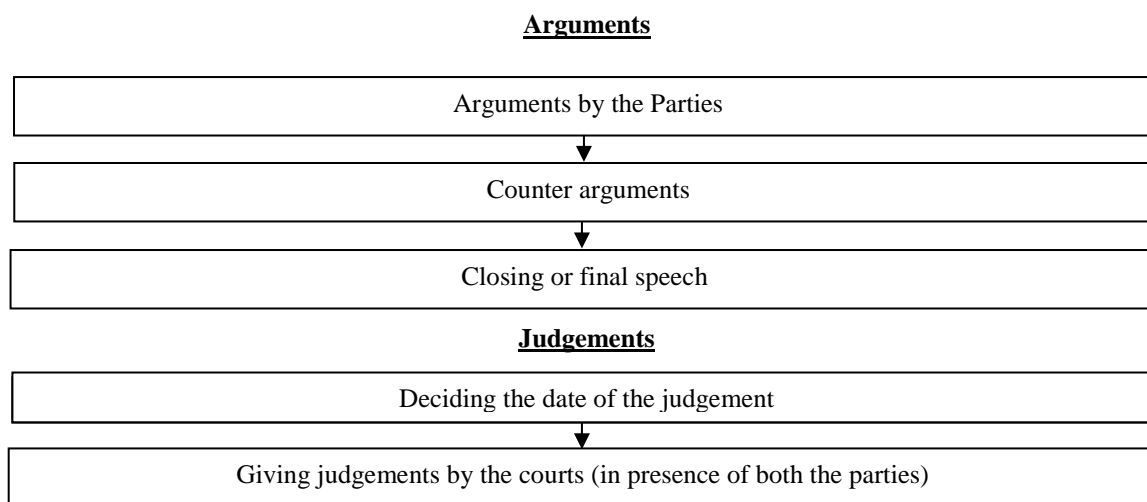
⁹ Huda, K.M.M., (2004) Practical Hints to Lawyering Skills, New Warsi Book Corporation, 14, Bangabandhu Avenue, Dhaka-1000, Bangladesh.p.136

¹⁰ Ibid, p.137



¹¹ Ibid, p. 137

¹² Ibid p. 137



4. METHODOLOGY OF THE STUDY

The study was conducted at Barishal, Chittagong, Dhaka, Mymensingh, Rangpur, Rajshahi, Sylhet, and Khulna district in Bangladesh. The study was documentary analysis type. Data were collected from secondary sources. Secondary data were collected from books, research report, journal, internet, annual reports of Supreme Court of Bangladesh etc.

5. RESULTS AND DISCUSSION

5.1 Causes of Delay in Civil Suit:

As remarked earlier, procedure is the handmaid of justice. It is to be used so as to advance the cause of justice and not to thwart it. An essential requirement of justice is that it should be dispensed as quickly as possible. It is a well-known adage that “justice delayed is justice denied”. However, delay in litigation is equally proverbial and, though it may sound paradoxical, the fact remains that the very provisions of the Code which are designed to facilitate smooth and speedy trial of cases are misused and abused in order to delay cases indefinitely and ultimate success in the cause often proves illusory. The result is that cases pile up and a huge backlog accumulates in all courts. The problem of backlog and delay in litigation has been engaging the attention of the Law Commission for a long time and as a result of its recommendations, made from time to time, fairly extensive changes have been made in the provisions of the Code in 1976 with a view to removing the causes of delay. However, those changes seemed to have had little impact, more changes, therefore, made by the Amendment Acts of 1999 and 2002. A number of causes seem to be responsible for this sorry state of affairs. An attempt has been made here to identify some of the causes and suggest measures to remove them. It appears that the main causes of delay are as follows:

(1) Increase in litigation.—A glance through the figures of cases filed in courts over a number of years would clearly show that litigation has been increasing phenomenally in the country. Whatever may be the causes of this increase, and it would be beyond the scope of this book to go into them, the fact remains that courts are over flooded with cases and though more and more courts are being set up, the increase in their number is not sufficient to keep pace with the increased number of cases.

(2) There is a general feeling that the Government is not appointing a sufficient number of judges to deal with the increasing work. It is a common experience that even existing vacancies in various High Courts remain unfilled for an unduly long time. Prompt appointment of judges to fill the existing vacancies and creation of additional posts in sufficient number would go a long way to solve the problem of delay and arrears.

(3) Much of the delay occurs because the provisions of the Code are not properly observed and followed. After filing a plaint, the process fee is not paid for a long time so that summons to the defendant is not served in time. After a defendant makes his appearance, his advocate often seeks long adjournments to file the written statement. After the pleadings are closed, there comes the stage of producing documentary evidence before issues are settled but nobody bothers to produce documentary evidence at this stage. Little use is made of the provisions for discovery and inspection of documents and for serving inter-rogatories. If these provisions are

properly used, the controversy between the parties can often be narrowed before the parties go to trial. However, what usually happens is that when the suit comes for trial, the advocates sit down in the court, open their briefs, probably for the first time, and begin laboriously to prepare lists of documents, etc. All the while the poor judge sits idly on the Bench, helplessly looking on. Countless hours are wasted in this way.

(4) It is a matter of common knowledge that in a large number of cases coming before the High Courts and the Supreme Court, the dispute is about the interpretation of the legislative enactment in question. The increase in the number of such cases is due to several reasons. There has been a vast expansion of the functions and activities of the State in all spheres with a corresponding increase in the number of laws enacted every year. But there is no reason why mere increase in the number of laws should by itself give rise to increase in litigation. Unfortunately, however, the laws are often hastily drafted with the result that the drafting is often loose and leaves great scope for lawyers to raise arguments about their interpretation. The difficulty of interpreting laws is often compounded by frequent and thoughtless amendments which, though intended to clarify the intention of the legislature, often fails to achieve the designed object and on the contrary results in greater confusion. The words of a statute are not inaugural words but words of valediction. "The problem has been tackled, long live the problem" is the message of most progressive legislations in Bangladesh.

(5) After the High Courts are empowered under Article 226 of the Constitution of Bangladesh to issue prerogative writs and after the definition of "State" being liberally interpreted by the Supreme Court so as to include the Union Government, State Governments, statutory corporations, nationalized banks, universities and any authority which is an instrumentality or agency of the Government, there is a soaring rise in litigation against the Government, with the result that today the Government is probably the biggest litigant in the country. The inefficiency of the Governmental machinery has naturally been responsible for considerable delay in disposal of cases where the Government is a party. The judiciary is often criticized, in and out of Parliament, for mounting arrears of cases. What is forgotten, however, is the fact that the Government itself is responsible for the major portion of delay. The judiciary is not in a position to give a public reply to the criticism leveled against it.

(6) The attitude of some lawyers is also to some extent responsible for delay. In many cases, where the plaintiff has obtained interim or ad interim relief, he is naturally interested in delaying the proceedings so that stay or injunction is continued as far as possible. Similarly, where the defendant has no defence, he is naturally interested in prolonging the trial with a view to put off the evil day as long as possible. It is the ingenuity of advocates in taking advantage of technicalities which helps defendants in such cases. Lawyers are also known to apply for frequent adjournments on flimsy grounds. When a particular ground, such as his sickness or personal problem, is advanced by the advocate, it is usually not possible for a judge to examine whether the ground is genuine or not and it is in the fitness of things that he should normally accept as true what an advocate says. However, when this is the position, it is equally the duty of lawyers not to seek adjournments on flimsy or non-existent grounds. It is not suggested that such practices are widespread and that a majority of lawyers indulge in such tactics. But it cannot be denied that, as in every profession, there are unscrupulous elements in the legal profession too and that they are responsible for much of the delay in litigation.

(7) If lawyers are able to prolong litigation by resorting to one ruse or another, the question naturally arises, why do judges allow lawyers to take advantage of procedural mechanics and prolong litigation? The answer is that judges often show themselves unable to exercise sufficient control over proceedings being conducted before them. The judges in our country have a reputation for honesty and integrity. But that is not enough. It is an unfortunate fact that, owing to a variety of circumstances, this is not the place to go into them: judges are not drawn from the most talented members of the Bar.

Other Causes of delay of Civil Suits

It appears that the main causes of delay are as follows:

- a) Lack of good lawyers. The attitude of some of the lawyers is also to some extent responsible for delay.
- b) Accumulation of cases.
- c) Insufficient number of judges and justice.
- d) Lack of proper observation of the provisions of the Codes.
- e) A large number of cases that come before the Supreme Court cannot be concluded hastily due to interpretation of legislative enactment in question.
- f) Delay in proper investigation or inquiry in a litigation.
- g) Variety of laws on a particular issue.
- h) Inadequate office equipment and machinery.
- i) Unreasonable absence of witnesses.

- j) Cumbersome execution procedure of decrees in civil cases.
- k) Lack of utilization of modern technology in keeping records and documents.

5.2 Work Load in the Civil Courts in 1972

When Bangladesh was liberated from the occupation forces of Pakistan on the 16th of December 1971 and in the year 1972 there were 18 District Judges, 19 Additional (District) Judges, 2 Special Judges, 39 Subordinate Judges (since 2001 designated Joint District Judges) including one Small Cause Court Judge and 119 Munsifs (since 1983 designated Assistant Judges) in total 197 judicial officers in the subordinate Civil courts. In that year 30,244 units were instituted including 26,909 title suits and 3,331 money suits. there were 57,737 suits pending for trial at the end of the previous year, 18,316 suits were revised and 3,693 suits were received otherwise making a total of 1,09,990 suits. Excluding transfer 39,333 suits were disposed of by the Munsifs, 6,029 by the Subordinate Judges, 87 by Small Cause Court Judges and 98 by District and Additional (district) Judges and thus in total 45,547 suits were disposed of by these judicial officers. Of the number of suit was disposed of in that year 26,783 were decided without trial, 10,934 *ex parte*, 140 on admission of claim, 3945 on compromise, 3,735 by full trial and 60 on reference to arbitration. Of the 3,735 suits decided after full trial 2,394 or 64.09 percent resulted in favour of the plaintiffs and 1,341 or 35.91 percent resulted in favour of the defendants. The number of applications for an order to set-aside *ex parte* judgment or judgment on default preferred during that year was 12,045. Out of those 7,375 or 61.23 percent were successful. Of 39,333 suits disposed of by the Munsifs average number of suits decided by each Munsifs was 331 suits. But number of suits decided by Munsifs after full trial was 3,189 or 8.1 percent of the total. The average number of suits decided after full trial by each Munsifs was 27. The percentage of suits disposed of after full trial by Munsifs under the ordinary procedure was 8.01 and that under Small Cause Court procedure was 09. The number of original suits disposed of by the Subordinate Judges during that year was 6,029. The number of suits decided under the ordinary procedure was 5,806 and under the Small Cause Court procedure was 223.

Of these 498 or 8.26 percent was contested under the ordinary procedure and 35 or .58 percent under the Small Cause court Procedure. Of the 5,806 suits decided by the Subordinate Judges average number of suits decided by each Subordinate Judge was 155. Average number of suits decided after full trial by each Subordinate Judge was 13. At the close of that year 61,879 suits were pending. Of those pending suits 34,352 had been pending for more than one year, 7,962 for more than six months and 8,512 for more than three months. Ring that year there were 97,007 Miscellaneous Cases of judicial nature before those courts. Of those excluding transfers 43,252 were disposed of. Of these 11,555 were disposed of by the Subordinate Judges and 31,667 by the Munsifs. Of the number disposed of 4,888 were disposed of after full trial Average number of Miscellaneous Cases disposed of by each Subordinate Judge was 297 and by each Munsif was 266. Adding the same with the number of suits decided by those officers average number including contested and uncontested disposal during that year by each Subordinate Judge was 452 suits and cases and by each Munsif was 597 suits and cases. Besides 14,761 applications for execution pending at the end of the previous year, 8,688 applications for execution were field during that year making a total of 23,449. Of those 7,962 applications were disposed of. Of the applications disposed of 2,406 were disposed of on full satisfaction, 779 on part satisfaction and 4,775 without satisfaction, i.e. those were wholly infructuous.

In addition to 2,803 appeals preferred during that year 4,423 appeals were pending from the previous year and 2,541 were received otherwise making a total of 9,767 appeals for disposal. Of these appeals during that year subordinate Judges disposed of 2,070 and District and Additional (District) Judge 1,590 leaving 4,043 at the close of that year pending, of which 1,807 appeals were pending over one year. Out of the total disposal of 3,660 appeals in 976 or 26.96 percent judgments of the lower courts were confirmed, those in 151 or 4.13 percent were modified those in 515 or 14.07 percent were reversed, those in 564 or 15.41 percent were remanded and those in 1,545 or 39.45 percent were either not prosecuted or dismissed for default including the number pending at the commencement of that year total number of Miscellaneous Appeals for disposal before those Appellate Courts during that year was 6,549. Of these excluding transfer of 1,467 appeals 2,699 were disposed of and 2,381 remained pending at the close of that year. As the number of disposal of Miscellaneous Appeals by the Subordinate Judges is not available excluding those disposed of by them during that year average number of disposal of suit, Miscellaneous Cases and appeals by each Subordinate Judges were 505.¹³

5.3 Work Load in the Civil Courts in 1973

In 1973 there were 18 District Judges, 24 Additional (District) Judge, 2 Special judges, 40 Subordinate Judges including one Small Cause Court Judge and 119 Munsifs making a total of 203 judicial officers in the

¹³ See unpublished report on the Administration on Civil Justice in Bangladesh in 1972 compiled by the Supreme Court of Bangladesh

subordinate civil courts increasing 6 from the previous year. During that year 47,490 suits including 43,5400 title suits and 3,988 money suits were inswittue3d. addition to 47,490 suits instituted during that year there were 61,879 suits pending for trial from the previous year, 5,846 suits were revived and 2,092 suits were received otherwise making a total of 1,17,307 suits for disposal before those subordinate courts. Excluding transfer 41,516 suits were disposed of during that year against 45,547 in the previous year.

Of the total number disposed of 36,172 suits were disposed of by the Munsifs and 5,229 by the Subordinate Judges, 97 by the Small Cause Court Judges and 115 by the district and Additional (District) Judges. Of the number of suits deposed of during that year 22,583 were decided without trial, 10,285 exparte, 138 on admission of claim, 4,465 on compromise, 4,042 after full trial and 300 on reference to arbitration. Of the 4,042 suits decided after full trial 3,118 or 79.05 percent resulted in favour of the plaintiffs and 925 or 22.95 percent in favour of the defendant. The number of applications to set aside expare judgment or judgment on default preferred during that year was 4,491. Of those 35.75 percent were successful. During that year the number of suts disposed of by the Munsifs was 36,172 and average suit disposed of by each Munsif was 303. The number of suits decided by the Munsifs after full trial during that year was 3,311 or 9.16 percent of the total. The average number of suits decided after full trial by each Munsif was 28. The percentage for sutis disposed of after full trial by the Munsifs under the ordinary procedure was 9.07 and those under the Small cause court procedure was 09. The number of suits decided by Munsifs under ordinary procedure was 35,539 and under the Small case Court procedure was 532. The number of original suits disposed of by the subordinate Judges during that year was 5,229. The number of suits decided under ordinary procedure was 4,863 and under the Small Cause Court procedure was 366 and of those 628 of 9.28 percent and 78 or .35 percent respectively were contested Small Cause Court Judges disposed of 160 original suits out of which 6 were decided after full contest. Those average numbers of suits decided by each Subordinate Judge during that year after full trial was 18. But disposal of contested and uncontested suits by each Subordinate Judge during that year was 133.

At the close of hat year 75,791 suits were pending. Of those pending suits 40,475 had been pending for more than one year, 6,259 for more than six month and 9,715 for more than three months. During that year there were 1,12,309 Miscellaneous Cases of judicial nature before those courts for disposal. Of these excluding transfer 43,107 were disposed of and 68,242 remained pending at the close of that year. Of the number disposed of 6,713 w3ere decided after full trial. Of these 8,844 were disposed of by the Subordinate Judges and 34,263 by the Munsifs. Average number of Miscellaneous Cases disposed of by each Subordinate Judge was 221 and by each Munsif were 288. Adding the same with the number of suits decided by those officers average number including contested and uncontested disposal by each Subordinate4 Judges during that year was 354 suits and cases and by each Munsif was 541 suits and cases. Besides 15,043 applications for execution pending at the ends of the previous year 6,033 application were filed. Of these 2,203 were disposed of on full satisfaction, 577 on part satisfaction and 2,882 without satisfaction i.e. those were wholly in fructuous.

In addition to 2,939 appeals instituted during the year 4,043 appeals were pending from the previous year and 2,538 were received otherwise making a total of 9,520 appeals for disposal during that year. Of these appeals subordinate Judges decided 2,013 and District and Additional (District) Judge 1,348 leaving at the close of that year 6,159 pending of which 1,399 appeals were pending over one year. Out of the total disposal of 3,348 appeals in 1,196 appeals the judgment of the lower courts were confirmed, those in 148 appeals modified, those in 454 appeals reversed, those in 761 appeals remanded and 802 appeals were either not prosecuted or dismissed for default including the number pending total number of Miscellaneous appeals for disposal during that year was 7,928. Of these excluding transfer of 2,134 Miscellaneous Appeals 2,921 were disposed of and 2,873 remained pending at the close of the rear. As the number of Miscellaneous appeals disposed of by the Subordinate Judges is not available excluding those disposed of by them during that year average number of disposal of suits, miscellaneous cases and appeals per Subordinate Judge were 404.¹⁴

5.4 Reorganization of Civil Courts

Since 1982 administration of civil justice in the courts subordinate to the High Court Division was reorganized and decentralized. Before decentralization of the subordinate judiciary with the creation of Upazila (Thana) Courts there were posts of 19 District Judges, 59 Additional (District) Judges, 75 Subordinate Judges and 132 Assistant Judges. The Upazila system was implemented on and from 7, November 1982 and the last Phase was completed on 1, February 1984 and post of Assistant Judge was created for each Upazila (Thana) 457 post of Assistant Judges were created but actually 354 assistant Judges were posted till 30th June 1984 and 103 Upazila courts of Assistant Judges remained vacant for want of sufficient number of cases in those courts and put under the charge of the Assistant Judges of the neighboring Upazila (Thana) Courts. Then by phases 42 Sub-Divisions

¹⁴ See unpublished report on the Administration of Civil Justice in Bangladesh in 1973 compiled by the Supreme Court of Bangladesh.

were upgraded to Districts thereby increasing the total number of District to 64. Excluding the three Hill Districts number of District Judges was increased to 61 by mid-eighties. Similarly number of additional and Subordinate Judges were increased to 63 and 76 respectively. Thus number of Judges in the subordinate judiciary increased about three times, with the reorganization and decentralization of subordinate judiciary.¹⁵ The number of judges in the courts subordinate to the High Court Division up to 15.04.2011 was 1,066 and out of those about 450 have been performing the functions of Judicial and Metropolitan Magistrates. It may be mentioned that out of sanctioned post of 1396 judicial officers number of vacant posts was 330 up to April 2011. Let us now consider the impact of such reorganization, decentralization and increase of number of Judges on the disposal of cases and efficiency of the Judges.

5.5 Work Load in the Civil Courts in 1982

Immediately before such decentralization and reorganization in the year 1982 there were 19 District Judges, 48 Additional (District) Judges, 70 Subordinate Judges and 131 Assistant Judges then called Munsifs) working in the subordinate judiciary. In that year 58,311 suits were instituted, 2,60,867 suits were pending from the previous year, 2,910 suits were revived and 2,978 suits were received otherwise, making a total of 3,25,066 suits for disposal before the subordinate courts. Excluding transfer 66,459 suits were disposed of. Of the total number of suits disposed of 54,954 suits were disposed of by the Assistant Judges (Munsifs), 11,438 by the Subordinate Judges, 4 by Small Cause Court Judges and 83 by the district and Additional (District) Judges, Of the number of suits disposed of during that year 38,785 suits were decided without trial, 16,497 *ex parte*, 219 on admission of claim, 4,637 on compromise, 6,318 after full trial and 3 on reference to arbitration. Of the 6,318 suits decided after full trial 3,762 i.e. 59.54 percent resulted in favour of the plaintiffs and 2,556 i.e. 40.46 percent resulted in favour of the defendants. The number of applications to set aside *ex parte* judgment or judgments on default preferred during the year was 11,231. Out those 57.24% were successful. During that year of 54,934 suits disposed of by the Munsifs average number of suits decided by each Munsif was 419. But number of suits decided by Munsifs after full trial was 5,241 or 9.52 percent. Average number of suits decided after full trial by each Munsif was 40. The number of original suits disposed of by the Subordinate Judges during that year was 11,438. The number of suits decided under the ordinary procedure was 11,106 and under the Small Cause Court procedure was 302. Of these 1,005 or 8.79 percent were contested under the ordinary procedure and 56 or .49 percent under the Small Cause Court procedure. Of the 11,438 suits decided by the subordinate Judges average number of suits decided by each subordinate Judge was about 164. On the other hand, average number of suits decided after full trial by each Subordinate Judge was about 15. At the end of that year number of pending suits was 2,55,516. Of these pending suits 1,55,028 had been pending for more than one year, 38,033 for more than 6 months and 44,771 for more than three months. During that year there were 1,30,640 Miscellaneous cases of judicial nature before those courts. Of these excluding transfers 29,059 were disposed of and 1,00,338 remained pending at the close of the year. Of the number disposed of 3,777 were decided after full trial. Besides 25,466 applications for execution pending at the end of the previous year 5,690 applications for execution were filed during that year making a total of 31,156. Of these 5,146 applications for execution were disposed of in that year. Of the application for execution disposed of 1,947 or 57.84 percent were disposed of on full satisfaction, 498 or 9.68 percent on part satisfaction and 2,702 or 32.5 percent were wholly infructuous.

In addition to 3,566 appeals preferred during that year 9,520 appeals were pending from the previous year and 3,566 were received otherwise making a total of 16,652 appeals for disposal. Of these appeals 1,546 were disposed of by the Subordinate Judges and 1,289 by the District and Additional (District) Judges making total disposal of 2,835 appeals leaving 13,817 appeals pending at the close of the year. Of these appeals 5,347 appear were pending over 2 year, 3,990 appeals over one year. Out of the total disposal of 2,835 appeals in 807 appeals judgments of the lower courts were confirmed, those in 103 appeals modified, those in 405 appeals reversed, those in 389 appeals remanded and 1,131 appeals were not either prosecuted or dismissed for default. Including the number pending at the beginning of the year the total number of Miscellaneous Appeals for disposal before the Subordinate Appellate Courts during that year was 13,545. Of these excluding transfer of 2,400 Miscellaneous Appeals, 3,152 were disposed of and 7,993 remained pending at the close of the year. Since the number of suits, miscellaneous cases, appeals and miscellaneous appeals disposed of by each Subordinate Judge and District and Additional (District) Judges is not available disposal of causes by each of those Judges in that year could not be given.¹⁶

¹⁵ See Report dated 30th June 1989 by a Committee of the Supreme Court Judges on the cause of delay of disposal of cases published by the supreme Court of Bangladesh in 1989. pp.3-4

¹⁶ See unpublished report on the Administration of Civil Justice in Bangladesh in 1982 compiled by the Supreme Court of Bangladesh.

5.6 Rate of Disposal of Civil Cases from 1988 to 1998

After reorganization and decentralization of the subordinate judiciary in 1988 there were 61 District Judges, 63 Additional (district) Judges, 76 Subordinate Judges and 354 assistant Judges, in total 554 Judges in the subordinate courts. They disposed of 1,15,870 civil cases out of 4,77,900 civil cases in that year including the cases decided *ex parte*, on default and on compromised. On the other hand in 1994 there were 61 district Judges, 70 additional (District) Judges, 163 Subordinate Judges and 359 Assistant Judges, in total 635 Judges in the subordinate courts. They disposed of 92,995 civil cases out of 3,29,302 civil cases in that year including the cases decided *ex parte*, on default and on compromise. Similarly in 1998 there were 61 District Judges, 116 Additional (District) Judges, 172 Subordinate Judges and 299 Assistant Judges in total 658 civil Judges and in that year out of 4,82,011 civil cases they had disposed of 1,07,020 cases leaving 3,74,991 cases pending for disposal.¹⁷ Thus rate of disposal of civil cases in 1982 was 22.16% in 1988 was 24.25%, in 1994 was 28% and in 1998 was 22.20%. If the increase of number of Judges in the subsequent years is taken into consideration whereas in 1982 rate of disposal of civil cases by each Judge was 402, in 1988 was 209, in 1994 was 127 and in 1998 was 162 and thus it is apparent that the efficiency of the Judges had been gradually decreasing.¹⁸

5.7 Rate of Disposal of Civil Cases from 1999 to 2005, 2006, 2008 and 2010

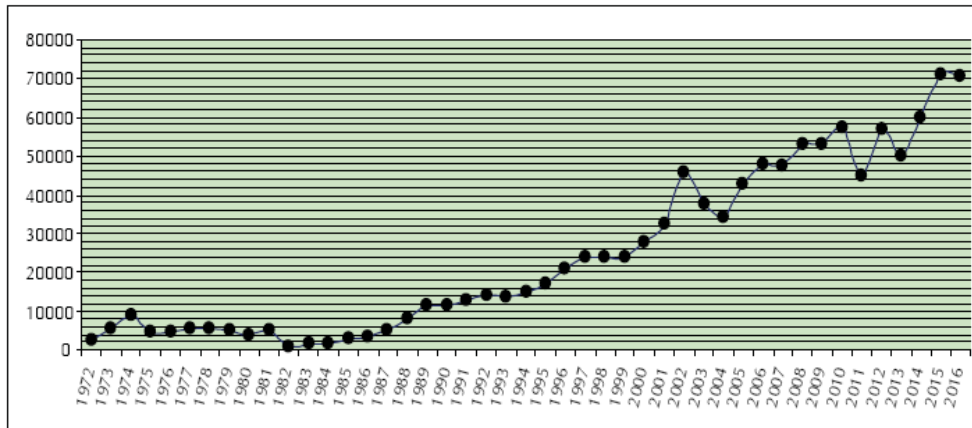
After appointment of a number of judicial officers between 1998-2000 by December 13, 2000 there were 781 Civil Judges, by the year 2005 that number was reduced to 688 and by recruitment of 165 Assistant judges by March 2006 that number again increased to 853. On average 18/19 judges retired every year from 2001 to 2005. In 1999 those 3 judges disposed of 1,42,654 civil cases out of 5,32,499 civil cases. And thus rate of disposal was 26.76% and disposal per judge was 167 cases in that year. In 2000 about same number of judges disposed of 1,52,246 cases out of 5,36,938 cases and thus rate of disposal was 28.35% and disposal per judge was 178 cases in that year. In 2001 about 763 judges disposed of 1,45,430 cases out of 5,36,414 civil cases and thus rate of disposal was 27.11% and disposal per judge was 190 cases in that year. In 2002 about 743 Judges disposed of 1,52,699 cases out of 5,50,397 civil cases and thus rate of disposal was 27.13% and disposal per Judge was 205 civil cases in that year. In 2003 about 726 Judges disposed of 1,47,260 civil cases out of 5,42,665 civil cases and thus rate of disposal was 27.13% and disposal per judge was 203 cases in that year. In 2004 about 707 Judges disposed of 1,50,757 cases out of 5,59,776 Civil cases and thus rate of disposal was 26.93% and disposal per Judge was 213 civil cases in that year. In 2005 about 688 judges disposed of 1,48,684 cases out of 5,83,708 civil cases and thus rate of disposal was 25.47% and disposal per judge was 216 cases in that year. From the above it appears that whereas in 1998 disposal per Judge was 162 cases, in 1999 disposal per Judge was 167 cases, in 2000 disposal per Judge was 178 cases, in 2001 disposal per Judge was 178 cases, in 2001 disposal per judge was 190 cases, in 2002 disposal per judge was 205 cases, in 2003 disposal per Judge was 203 per cases, in 2004 disposal per Judge was increased to 213 cases and in 2005 disposal per Judge increased to 216 cases. Whereas between 1982 to 1998 efficiency of Judge was found to be gradually decreasing between 1999 to 2005 it is found to be gradually increasing if we take into the consideration number of disposal of civil cases per Judge which rose from 162 cases in 1998 to 216 cases in 2005. This increase in the efficiency of Judges is due to amongst others to better training facilities in the judicial Administrative Training Institute and it is hoped that efficiency of Judge would further increase in the coming years through such training in the year 2006 about the same number of Judges disposed of 1,48,563 cases out of 6,17,059 cases and thus rate of disposal was little more than 24% and disposal per Judge was 215 cases. In the year 2008 about 600 Judges disposed of 1,37,280 cases out of 6,98,819 cases and thus rate of disposal was about 20% and disposal per Judge was 228 cases. In the year 2010 about the same number of Judges disposed of 1,31,323 cases Court of 6,55,705 cases and thus rate of disposal was 20% and disposal per Judge was 217 cases. From the above it appears that due to separation of judiciary in 2007 the number of Judges for disposal of civil cases decreased resulting in the decrease of rate of disposal of cases in the subsequent years.

¹⁷ Report compiled by the Supreme Court of Bangladesh 7.6.2000.

¹⁸ See page 4 of the report dated 30th June 1989 on the causes of delay in disposal of cases by a committee of Supreme Court Judges and published by the Supreme Court of Bangladesh in 1989 and also data supplied by Supreme Court office on 29.5.2000.

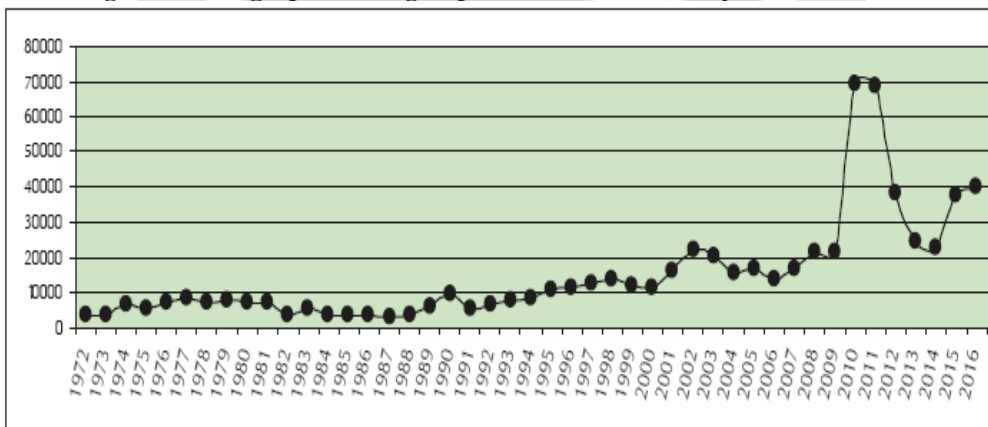
5.8 Rate of Disposal of Cases in the Supreme Court of Bangladesh

Figure 5: Line graph showing institution of cases from the year 1972 to 2016



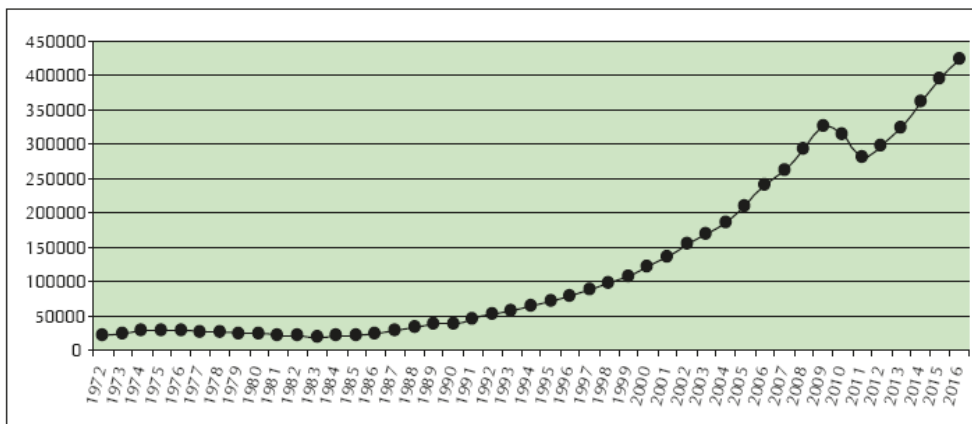
Source: Annual Report, 2016 of Supreme Court of Bangladesh

Figure 6: Line graph showing disposal of cases from the year 1972 to 2016

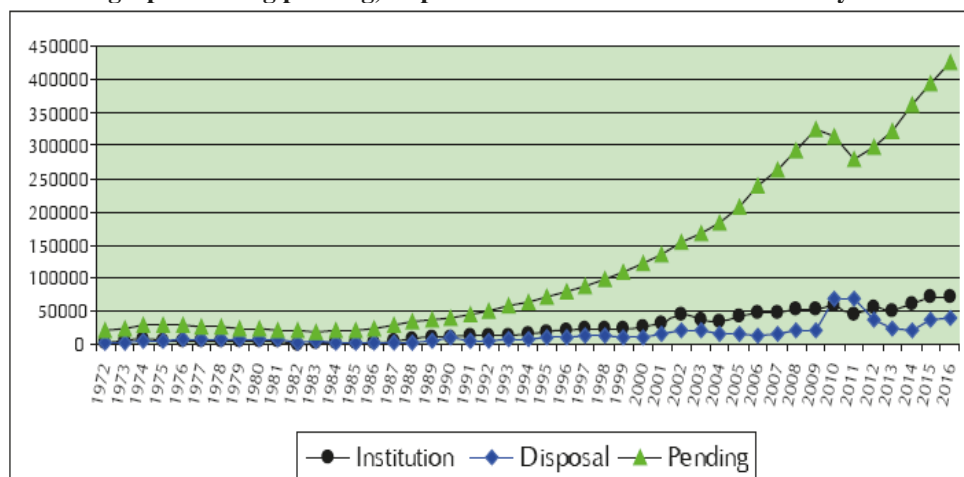


Source: Annual Report, 2016 of Supreme Court of Bangladesh

Figure 7: Line graph showing pending cases from the year 1972 to 2016



Source: Annual Report, 2016 of Supreme Court of Bangladesh

Figure 8: Line graph showing pending, disposal & institution of cases from the year 1972 to 2016

Source: Annual Report, 2016 of Supreme Court of Bangladesh

Table 1: Institution, disposal and pendency of civil cases in the High Court Division from 1972 to 2016

Year	Opening balance	Fresh Institution	Total	Disposal	Pending
1972	15517	1615	17132	752	16380
1973	16380	2771	19151	798	18353
1974	18353	3884	22237	3498	18739
1975	18739	2593	21332	1955	19377
1976	19377	2775	22152	2323	19829
1977	19829	2652	22481	3933	18548
1978	18548	2769	21317	3550	17767
1979	17767	2391	20158	3391	16767
1980	16767	1268	18035	2755	15280
1981	15280	2656	17936	3819	14117
1982	14117	489	14606	783	13823
1983	13823	667	14490	2325	12165
1984	13823	1044	14867	864	14003
1985	14003	1359	15362	873	14489
1986	14489	1534	16023	606	15417
1987	15417	2750	18167	750	17417
1988	17417	1575	18992	998	17994
1989	17994	4284	22278	2467	19811
1990	19811	4595	24406	4033	20373
1991	20373	4595	24968	2033	22935
1992	22935	4435	27370	2289	25081
1993	25081	5017	30098	2850	27248
1994	27248	5884	33132	3935	29197
1995	29197	6440	35637	3137	32500
1996	32500	5942	38442	3340	35102
1997	35102	6839	41941	5078	36863
1998	36863	7540	44403	4314	40089
1999	40089	7589	47678	3428	44250
2000	44250	8565	52815	2384	50431
2001	50431	9348	59779	4185	55594
2002	55594	9020	64614	6400	58214
2003	58214	7447	65661	4656	61005
2004	61005	7908	68913	3801	65112
2005	65112	7253	72365	3723	68642
2006	68642	6867	75509	3693	71816
2007	71816	7721	79537	4881	74656

Year	Opening balance	Fresh Institution	Total	Disposal	Pending
2008	74656	6257	80913	5275	75638
2009	75638	6716	82354	6565	75789
2010	75789	6667	82456	4597	77859
2011	77859	6662	84521	5118	79403
2012	79403	6418	85821	5233	80588
2013	80588	5691	86279	3472	82807
2014	82807	6471	89278	4862	84416
2015	84416	7088	91504	4194	87310
2016	87310	6603	93913	3665	90248

Source: Annual Report, 2016 of Supreme Court of Bangladesh

5.9 'Justice Delayed Is Justice Denied';

'Justice delayed is justice denied' is a very common saying in the judicial domain. It is one of the most burning problems in the administration of justice. This system of justice is so ambiguous and miserable for the mass people that it cannot be explained in a word. There are many instances that poor people who went to court to address their grievances after selling off their lands and property to meet the expenses of the court, but did not get justice in their lifetime. At present, the only demand of mass people is the speedy approach to justice. Certainly 'speedy approach to justice' is gradually getting the status of an important human right which is also denied by some administrators in justice and the underprivileged people continue to be dominated by them. This day, the judiciary organ is an independent organ in our country from the executive. So, it is high time to adopt effective steps to dispense our justice as early as possible. How much pain the delay process of justice involves need not be explained. This picture of justice is very much dreadful for our poor citizens. It is generally seen that a case is still hanging in court, which began more than one decade ago. There are many victims who don't easily think of going to court seeking justice because they know it will take years to prove a clearly visible wrongdoer is the actual criminal. Moreover, the impact of this unusual delay in disposal of cases falls on the victims. Due to delay in litigation, people become annoyed to obtain proper justice at any stage and also develop a negative outlook in their mind about the total judiciary schemes including judges, lawyers, associates and the administration of justice etc. 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.

In the field of justice, delay in litigation is traditionally practiced in our country as like at the same time as denying due process of law. The result is that cases are piled up in all the courts hugely day by day. Basically, the delay in litigation is incredibly practiced in civil courts. Our civil courts are governed by the Civil Procedure Code 1908 which was enacted during the British reign. But, after the independence, the government of Bangladesh had taken an attempt to accelerate the civil procedure system. The problem of delay in litigation including arrears of cases has been engaging the attention of the Law Commission for a long time and as a result of its recommendations made from time to time, reasonably wide changes have been made in the provisions of the Code in 1983 by making an Ordinance with a view to removing the causes of delay. Before such amendment Ordinance, there was no limitation to submit the court-fees and other relevant documents. But, by this Ordinance, the parties to a suit have to submit the proper court-fees with all relevant documents within 21 days after issue of summons and the plaintiffs have to submit all documents at the time of institution of the suit to focus on the cause of action. On the other hand, there was no specific time for examination of the defendants/witnesses and in framing of issues before such amendment. But, after promulgation of the Ordinance, no time is be allowed for examination of the defendants/witnesses after 2(two) months and the court is bound to frame the issues within 15 days after examination of the defendants/witness. However, by the blessing of this Ordinance, the court is also bound to give the judgment of a case within 127 days from the framing of issues. While 120 days is fixed for hearing and after hearing, rest 7 days is fixed for giving the judgment. But, these changes seem to have had little impact. Actually, delay in litigation is still prevailing in the field of civil justice. On the other hand in criminal area, it is usually seen that a person, from the date of arrest, is in custody without any trial for many days though it is not proved whether he is an offender or not. Crime increases only when the justice is delayed or do not take place. So, it is obviously a vital issue to change the present scheme of our legal procedure. A number of causes seem to be responsible for creating this crippling

situation in the way of our justice. An attempt has been made here to pinpoint some of the causes and suggest measures to remove them.

5.10 Efficient Judge and Administration of Proper Justice

To maintain respect and confidence of the people in the works of the courts in almost all the countries of the world honest, independent, dutiful and efficient judges are entrusted with administration of justice. If the judges of a country are not honest, independent, dutiful and efficient the people of that country are deprived of the benefits of even good laws of the country. For this reason another author correctly stated: "Truism that the quality of justice depends more on the quality of persons who administer the law than on the content of the law they administer".

Another ancient author Nizamul Mutk in his book 'Siasatnama' stated: "Only qualified, God fearing and persons having no greed for money should be made judges and those judges who lack such qualities should be removed as soon as possible from their offices and vacancies filled up by efficient persons. If judges are remunerated with salaries and other privileges according to their qualification then they would have no excuse to adopt dishonest means." If disputes are to be settled by efficient judges highly qualified, experienced and independent minded persons are to be appointed for the purpose and they are to be allowed judicial independence free from the harmful influence of the executive authority or any other power. Moreover for attracting highly qualified persons to the judicial office and to keep them free from any harmful influence they are to be paid suitable salary, allowances and privileges. When these are ensured then there will be no chance of any one to be deprived of proper and effective justice.

5.11 Delay and Efficiency of Judges¹⁹

A Committee of three Supreme Court Judges of whom two were former District Judges in 1989 after analyzing the causes of delay in disposal of civil cases and gradual decrease of efficiency of the judges of the subordinate judiciary identified 9 stages of civil suit, 5 stages of the miscellaneous cases and 5 stages of the civil appeals and found that in some stages delay is due to the lack of supervision of the works of the ministerial staff by the presiding judges and in the remaining stages due to the lack of commitment of the judges to their duty. In the report the committee observed; 'The Committee much to its regret and dismay has not come across one record or one diary in course of its random inspection of the courts where there has been an honest Endeavour by any judge to comply with the time limits provided in the various rules and Orders. Rather the committee found unnecessary and unreasonable delay in almost all the above stages of civil suits in the courts visited by it. However, this is not to say that the courts have not had enough ready cases to taken up for hearing. The Committee noticed that diaries almost everywhere with sufficient cases set down for peremptory hearing every day but then the cases have remained pending for months and years, although for days together there has been practically no work done'.²⁰ The committee further observed; "Lack of commitment and dedication on the part of the judges is noticeable in the day to day work as reflected in the dataries and records of the courts. Barring some exception at the senior level, it has been found to be the uniform practice in all subordinate courts of the country that not more than two hours' judicial work is done each day in any court. Granting of liberal adjournments leaving no work to be done appears to be the main pre-occupation of the court. They say that they feel helpless to refuse lawyer's prayers. They sign their orders written by their bench Assistant without caring the position of the case. Given the best of laws, the quality of justice and outturn as well can never be better than the quality of persons who administer it. The committee noticed that there has been generally serious erosion in the quality of the judicial officers barring a few exceptions".²¹

The author inspected two district courts in 1997 and found to his dismay that almost all the presiding officers have been sitting in their courts not more than 2/3 hours a day and allowing adjournments very liberally on flimsy grounds and transacting very little judicial work. Diaries of those judges showed that on each working day each judge either recorded evidence of one witness or delivered one judgment or one order. After consultation of relevant record of the cases it was found that on many days evidence of the witness recoded by an individual judge did not fully over even a single page. Inspection reports submitted by other Judges of the High Court Division after inspection of the sub ordinate courts in the recent past do not give any picture of

¹⁹ See the report dated 30th June 989 on the causes of delay in disposal of cases by a committee of Supreme Court Judges and published by the Supreme Court of Bangladesh in 1989 and also data supplied by Supreme Court office on 29.5.2000.

²⁰ Ibid, Pp. 5-6

²¹ Ibid. P.17

significant improvement in the work of the judges of most of the subordinate courts. The District Court in the Dhaka city conditionals did not improve before 1999 when the incumbent District Judge activated other judges of that court to give up the habit of not sitting in courts during the court hours. Though District Judges are required to constantly supervise and monitor the works of the judges subordinate to and working under them lack of such supervision and monitoring by the district Judges in many districts were the causes of delay, amongst other causes, noticed above, in the disposal of cases in those courts. To remove the delay in disposal of the cases outwash necessary to ensure strict supervision at all stages of the cases by the judges of the works of the ministerial staff and works of the subordinate courts by the district Judges, concerned and ultimately on all the subordinate courts by the High Court Division and to promptly report delinquencies and to take action for punishing the delinquents and rewarding the few ardent ministerial staff and judges. Due to content criticism by the news media about the sluggish activities of the subordinate judiciary and increase of supervision and monitoring started showing improvement in the disposal of cases very recently in the subordinate civil courts though the same is not yet remarkable. From 1999 to 2005 as noticed earlier efficiency of judges is gradually increasing. With the formation of the Judicial Service Commission quality of judicial officers appointed on the recommendation of that commission is much better than those recruited on the recommendation of the Public Service Commission. Thus the newly recruited judicial officers since 2008 have been contributing to the increased disposal of cases.

5.12 Civil Revisions

Any party to a civil proceeding may file a civil revision before the Division Bench or Single (Judge) Bench of the High Court Division according to the valuation of the original case against any order or decree of a subordinate court against which no revision before the district Judge or appeal lies. Civil Revision is filed by a duly stamped petition addressed to the Chief Justice and his companion Justice stating all the relevant facts giving rise to the cause of action for filing the same grounds for filing such a petition and the relief prayed for accompanied by the certified copy of the impugned judgment or order and other relevant documents. The statements made in such a petition are to be verified by affirming or swearing in an affidavit before an officer of the Court by the petitioner or his authorized agent. Then the petition is submitted before the Bench Officer of the appropriate Bench taking up civil motions according to valuation on the motion day or the week. When the petition is placed before the Judge or Judges constituting the bench the petitioner or his engaged advocate moves the same by making oral submissions.

If the judge or judges, as the case may be, be satisfied about a prima facie case a Rule Nisi is issued on the opposite party to show cause why the impugned decree or order should not be set aside and records of the court below may also be called for at the time of issuing the rule. If the Judge or Judges be not so satisfied the petition is summarily rejected by a short order. When Rule Nisi is issued copies of the petition and the Rule are served on the opposite party at the cost of the petitioner who is required to file the copies of the petition with process fee. After service of the Rule the opposite party may enter appearance either personally or through his engaged advocate to contest the rule. Opposite party may file a counter-affidavit controvert the facts stated in the revision petition and also stating the relevant facts and swearing in or affirming the truth of the statements before an officer of the Court by the opposite party or his authorized agent.

The opposite party may also file certified copy of relevant documents with the counter-affidavit. Then a date is fixed for hearing the Rule. On that date after hearing both the parties or their advocates, perusing the record and consideration of the matter if the court finds merit in the Rule then the same is made absolute by a reasoned judgment passed by the Court. In making the Rule Nisi absolute the Court may set aside the decree or order complained of either in full or in part or may send back the case on remand to the lower court for hearing the matter in accordance with the law. If the Court finds no merit in the Rule then also by a reasoned judgment the Rule is discharged. With the disposal of the rule an interim order of stay or injunction, if any, stands vacated.²² Civil Revision may be disposed of on merit in the absence of either or both the parties in view of a decision of the Appellate Division.²³ But on good cause shown such an order may be set aside by the court and the case may be reheard giving opportunity to the absent party or parties to be heard. In fact Rules issued in civil revisional applications are not heard as soon as the rules are ready for hearing after service of notice and arrival of lower court's records, if called for. Discontinuance of the publication of weekly and monthly lists of ready cases chronologically showing the ready cases and bringing in the daily cause list earlier ready cases resulted in an anomalous situation ready causes do not appear in the daily cause list of hearing in their due turn. Only when a ready case is mentioned before the court by a party or his advocate it is fixed for hearing and appears in the list. Thus hearing of old cases though ready long before is much delayed.

²² Ibid, chapter Iv, pp. 17-24 & Chapter V. pp. 25-39

²³ 49 DLR (AD) 151

5.13 Corruption²⁴

Corruption is official misconduct in which a judge uses judicial office for his or her personal benefit. A judge may be guilty of corruption for

- i) accepting bribes as rewards for judicial favours
- ii) extorting by threats of unfavourable judicial decisions and
- iii) misappropriating funds of court.

Judicial corruption has serious consequences for the administration of justice and public confidence in the justice system. The detrimental effects of judicial corruption destroy public respect for law and the judiciary. Therefore, as the Supreme Court of India held, judges must be individuals of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt...influences. In fact, corruption is a gross misconduct which warrants disciplinary sanction, including removal from office.

From the research the following sectors of corruption have identified:

- a) File punching
- b) File entry
- c) File affidavit
- d) Peon
- e) Bench Officer/Peskar
- f) Information slip
- g) Certified Copy (CC Copy)
- h) Requisite(Talobana)
- i) Cash deposit in Court

6. CONCLUSION

Delay in civil suits is a very big problem in our country. The main cause of delay is outdated laws, corruption, political cause, separation of judiciary, low quality of court staff, lack of indignation, ineffective law enforcement authority, shortage of manpower, lack of legal awareness, social acceptance of justice delivered, influence of money and power etc. We must recover from this problem law commission in Bangladesh can make report for avoid delay in civil suits. ADR can do a great role to avoid delay in Bangladesh. ADR can make a great role to avoid delay in civil suits. ADR means is a system of shalish or arbitration by which delay in civil suits can be removed. Delay in disposal of civil cases is 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. Management and assistance of efficient and dutiful lawyers is essential. 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. So far as indulgence of justice is concerned the backlog of cases, as ever, comes to the forefront for discussion. It is not only a great problem in our country but also a global menace. There have been many researches and deliberations all over the world; our country is expected as to how to lessen the number of cases how to dispose of them in a quickest possible way. In absence of the strong, impartial, independent, quick and dynamic judicial system neither the democracy nor development can flourish and sustain. Keeping all these in mind, law makers mandated speedy and fair trial in Article 35(3) of the constitution of the peoples' Republic of Bangladesh. With the insertion of this provision in our Constitution it has become a citizens' constitutional right to get speedy trial. In spite of this constitutional guarantee, speedy trial, however, remains a far cry for the citizens of Bangladesh due to some practical problems which cause inordinate delay in disposal of civil cases.

²⁴ Akkas, S. A., (2004) Independence and Accountability of Judiciary A Critical Review, Published by Cener for Rights and Governance (CRiG), 42/1/Ka Segunbagicha (2nd Floor), Dhaka-1000, Bangladesh, ISBN: 984-32-1603-2, p-200.

7. RECOMMENDATION

Actually, delay in litigation is practiced in our judicial domain for many days. So, it can't be removed in a day. But, it is as much crucial an issue that our Government has to take immediate steps to diminish this problem. However, from my view, following steps can be adopted to change the current character of administration of justice:

1. More judges and justices should be appointed in the civil court.
2. The atmosphere of judges and justices must be corruption free.
3. Judges' Promotion should be done as per rule.
4. Discipline of the judges and justices should be maintained in the subordinate civil courts.
5. Training should be provided for the judicial officers.
6. Judges and justices must be impartial
7. Case management should be done in the civil courts within least time.
8. Adjournment and speedy disposal of civil cases should be provided.
9. Extension of original jurisdiction of the High Court Division should be done.
10. Some measures should be taken for speedy enforcement of Arbitration Awards
11. Awarding Adjournment cost, actual and compensatory cost in civil cases.
12. Separate Investigation Authority should be provided for civil cases.
13. Time limit for the suit according to importance
14. Stop giving permit to delay suit or time petition indiscriminate
15. Return faith of people in judiciary
16. Some principle of judiciary is mould now. It should be removed.
17. Non-interference of the Government must be ensured.
18. Justice administration system should be easy and not much expensive. Although the Constitution guaranteed equal rights for all citizens in getting justice, in practice a vast majority of the people, who are economically weak, do not enjoy this right. Even, the poor and disadvantaged groups in the rural areas cannot think of moving to higher courts to seek justice and get remedy for violation of their rights because of expensive higher judiciary.
19. In preserving various records of the courts modern technology should be widely used.
20. Multiplicity of laws on a particular issue should be evaded.
21. It also seen that the lawyers may not be ready to argue the case and hence regularly submit 'time petitions'. So, frequent taking of time by the lawyers must be stopped. In Bangladesh constitution, there is a provision for getting speedy trial of every accused person of criminal offence as per Article 35(3). Besides, as per Article 22 of this constitution the judiciary is separated from executive organ, which has already been executed from 1st Nov, 2007. Now, our expectation is much more from the judiciary than before. So, we are looking forward to see that the judiciary organ is how far responsible to accelerate our prior procedure in litigation to remove the misery of the inhabitants of Bangladesh.

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