

# Causes of Procedural and Non-Procedural Delay in Civil Suits of Bangladesh and its Remedies.

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## Abstract

*The code of civil procedure 1908 is an incomplete law .It can't be applicable alone. It needs help to take help from other laws such as Civil courts act 1887, Stamp act, Limitation act , and so on . The problem of delay is an old phenomenon. The problem is complex and its causes are multiple and various. No single component can satisfactorily explain delays in disposal of cases. Except for variations in degree, many causes have been commonly identified in the research work. The uncommon minor causes are not discussed herein and I was within the boundary of common causes of delay in disposing the Civil suits. The procedure to get justice is a lengthy process. Justice Lyer rightly says "Delayed justice is the means of inflicting injustice through the process of Law .An English proverb goes thus: a friend in need is a friend indeed . The judiciary is such a friend for the sufferer but this organ of the government fails to fulfill such purposes for which Judiciary is formed. There some reasons inveterate in judiciary as obstructions to dispose the civil suits. Property affected access to justice is one of the Fundamental conditions for the establishment of the Rule of law in our society specially for Bangladesh "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. The Bangladesh Civil Justice system is based on British pattern and continues to operate under the 1908 Civil Procedure Code. This Code indicates various stages in the litigation process. Some amendments have been integrated to quicken the process to avoid long and unnecessary delay. Those amendments must be efficiently followed and implemented. The Law Commission ought to consider whether further amendment is necessary.*

**Key words:** civil suit, Delay, Procedural, Non procedural, Bribery, corruption

## Introduction

A Court of law is a temple of justice where people go with the hope and belief that justice will be done to them. So, justice must be done within a reasonable time, as justice delayed is justice denied. The high image of judiciary is now being fast corroded by huge pungenencies in the Courts and long delays. When a common man desires justice from the law Courts, there are two anxious hurdles -first heavy expenses and second laws' delays. The demand for making justice cheap and speedy has been raised in every quarter for a long time. Bangladesh is an integrated Republic known as the People's Republic of Bangladesh. The Constitutional' law governs the State as a whole. The State speaks through legislature, acts through executive and administers justice through Courts. The powers, functions and duties of the said three wings of the State have been defined in the Constitution itself. Administration of justice is one of the main functions of the State. Justice is of wide implication to take in social justice, political justice, economic justice, legal justice etc; but the instant disquisition is concerned with legal justice only. So far as arrangement of legal justice is concerned the backlog of cases, as ever, comes to the front line for discussion. The problem of pending cases has reached a stage, which threatens to destroy the very faith of the people in the Court of law. The Courts are flooded with litigation. Lakhs of cases are pending for disposal in the Court from the Assistant Judge to the Appellate Division of the Supreme Court and it is almost impossible to assess up-to-date figures of pending cases in other Tribunals and in quasi judiciary. If we look into the figures of institution, disposal and pendency of cases in the Courts, we will find that the numbers of institutions of cases are more than the actual disposal of cases and as a result thereof total numbers of pending cases are rising at the fast speed. It is also found that the pendency of cases is rising at the rate of 10% per year. The entire judicial system is on the border of collapse, as the aggrieved persons are not getting justice promptly. Some of the civil cases, the litigants die before they obtain the fruits of their legitimate claims and even the second generation would be considered lucky to get justice for the vindication of their rights. It is said that being involved in a law-suit is like being grounded to bits in a slow mill, it is being roasted at a slow fire, it is being stung to death by single bees, it is being drowned by drops, it is going mad by grains.

### **Objective of the Study**

- To clarify the Civil Proceedings in Bangladesh
- To identify the Causes of Procedural and Non-Procedural Delay in civil suites
- To give some recommendations for removing Procedural and Non-Procedural Delay in Bangladesh

### **Rational of The Study:**

Bangladesh has a very large population of 160 million, although it is comparatively small geographically, covering an area of only 143,998 sq km. Bangladesh has a total of 3,684,728 case backlogs in all types of courts across the country. The Supreme Court administration sent a case statistic report to the media that includes all backlog of cases in the country's history till December 2019. Creating great pressure on the legal system and those who use it. Many research has been conducted to separate the causes of the backlog, to study and identify the possible impact of case management in reducing case backlogs, and to regulate these findings to suggest a suitable case management method for the civil courts of Bangladesh. Semi-structured, open-ended interviews through questioner with lawyers, litigants, judges, and court staff were conducted in seven districts of Bangladesh between September 2019 and January 2020. These article delineations the preliminary results of empirical research into the nature and causes of backlogs in the civil courts of Bangladesh, and makes suggestions and recommendations arising from those preliminary results. Delay in suit is a national problem in Bangladesh. Country like Bangladesh where more than 35% of people live under the poverty line and amount the people 29% is illiterate; this can be a one word disaster. Where people go to the court to stabile their right but they don't get that because of lack of knowledge and delay in suit. It becomes bigger when the backlog problem we get in civil nature suit means in civil suit. In civil suits parties come to court to establish their rights or want to get some things which they are entitled to get. But never have they got that when they ask for that. Its takes a long time to established their rights for some reasons. In this research I try to find out some reasons and ways to overcome those causes. Fast of all I mention those problems then I put some solutions but those are not the permanent solution so in the next part I have discus with some which can maintain the flow of case. After that I have mentioned some some steps which are taken by the supreme court to cut off the backlogs in cases.

### **Methodology of the Study:**

Data collection is primary as well as the important aspect of research. For collection of information from the case records, the permission of the District Judge, Dhaka was sought for which was graciously given. In the light of objectives of the study, the case files were carefully studied and information was collected and analyzed on the file data-sheet.

To collect information from the case record a file data-sheet was prepared. In this connection, concerned lawyers and judges were consulted for ascertaining simplification of procedure in matters connected with Trial Court, Appellate Court and Revisional Court.

**Sampling Method:** Purposive sampling method will be used for data collection.

**Sample Size:** Total 300 (Four hundred) respondents will be interviewed for data collection. And Seven cases have been studied in different civil courts for privacy purpose the case number cant be mentioned

**Sources of data:** Data have been collected from primary and secondary sources.

**Sources of primary data:** Primary data have been collected from the respondents of the study area through questionnaire by face to face interview & from the case study.

**Sources of secondary data:** Secondary data have been collected from books, journal, research, reports, internet etc.

**Tools of data collection:** Questionnaire has been used for data collection.

**Method of data collection:** Data has been collected through face to face interviews with questionnaires and also primary and secondary sources.

**Data analysis:** Data has been analyzed by using computer software, Microsoft excel & SPSS Standard Programming for statistical survey.

**Hypothesis of the study:**

**System digitalization can reduce Procedural and non procedural Delay in the civil suits in Bangladesh.**

**Respondent and their details information:**

Category	Quantity	Address	Qualification	Job title
Advocates	100	Dhaka Division, Barisal Division	Bachelor and above	Advocate judge Court and Supreme Court
Judges	50	Dhaka Division, Barisal Division	Bachelor and above	Judge court
Plaintiff and Defendant	100	Dhaka Division, Barisal Division	Bachelor and above	Civil Society
Civil Society	50	Dhaka Division, Barisal Division	Bachelor and above	Civil Society

**Sample questionnaire:**

1. Do you agree that the willingness of judges , Advocates, and Court staff is enough to reduce Procedural and non procedural delay in civil suites?
- 2 Do you agree the civil litigation should be reform?
- 3 Do you agree that corruption and bribery is one of the important causes for Delay ?
4. Do you think that the procedure of civil suits should be digitized ?

**There will be 4 grips in result discussion:**

Table : 1 The time actual limit and the time spent in each stage.

**Stages of civil suits in the court of original jurisdiction**

Stages of the Civil Suits in law	Time limit in law for each stage (in days)	Time spent in practice in each stage in the seven sample suits (in days, on average)
Submission of plaint /Filling	0	0
Issue of summons/SR	35	70
Appearance of defendants/ and submission of written statement	60	280

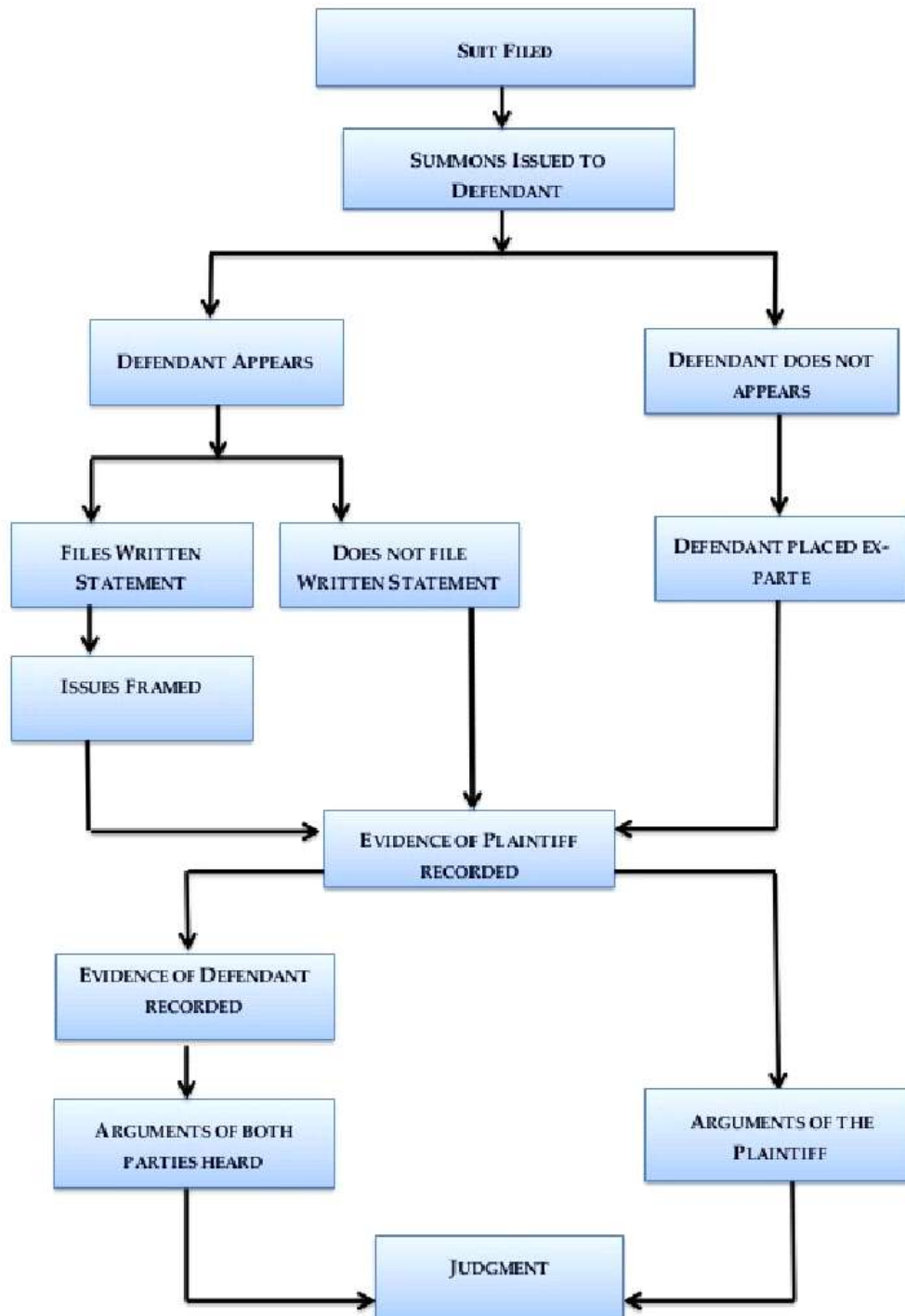
ADR(Alternative dispute resolution)	107	541
Framing of Issues	15	282
Steps for discovery production and inspection	24	77
S/D	0	435
Peremptory Hearing	120	1680
Further hearing	30	70
Argument	0	
Pronouncement of Judgment	7	
Decree	7	30
<b>Total</b>	<b>405</b>	<b>3465 days</b>
	Equivalent to	9.50 years

Source : Survey

**Flow chart of civil case:**



STAGES IN A CIVIL SUIT- BROADLY



### **Causes of Procedural Delay of civil suit :**

A pleader of New York is said to have begun his practice with the following motto on his wall. "If I am Plaintiff, nothing can stop me, if I am Defendant, nothing can move me." There is a popular belief that the technicalities of legal procedure can be exploited and a case continued almost indefinitely if so desired. There is a fertile field in the Code of Civil Procedure, 1908 for a clever lawyer to lengthen and protracted proceedings to any length of time. It is an unbreakable elastic piece of legislation, which enables all stepwise dealings in litigation.

The Code of Civil Procedure -1908 is based on English system and thus the same delay is inherent in that system itself. The essence of English System is fair trial. A fair trial means that each party must know the case of the other party. The whole object of pleadings is to give fair notice to each party of what the opponent's case is and to ascertain the points on which the parties agree and those on which they differ, thus to bring the parties to a definite issue. In order to have a fair trial it is imperative that the party should state the essential facts so that the other party may not be taken by surprise. The parties thus themselves know that what are matters left in dispute and what facts they have to prove at the trial.

**Delay in the mistake in the Plaintiff:** The preliminary step in the process of adjudication of civil rights is the institution of the suit by filing plaint in Court. The plaint has to be drawn up by incorporating therein details as set out in Order VII, Rule 1 of the Code. The particulars of the plaint shall be- (i) The name of the Court, (ii) Type of the suit, (iii) The name and address of the plaintiff and the defendant, (iv) Where the plaintiff or the defendant is a minor or unsound mind, a statement to that effect, (v) Description of the subject matter of the suit, (vi) The facts constituting the cause of action when it arose, (vii) The facts showing jurisdiction of Court, (viii) The relief which the plaintiff claims, (ix) A statement of the value of the subject matter of the suit for the purposes of pecuniary jurisdiction of the Court. Any mistake in the plaint, it needs to amend and to file an application for amendment of the same, which is shown one of the causes of delay in disposal of cases.

**Delay in non-deposit of process fee in time:** As per Order-9, Rule-2 of the Code of Civil Procedure, the suit of the plaintiff is to be dismissed if the plaintiff does not deposit the process fee in time. The dismissal of the suit for non-deposit of process fee leads to unnecessary delay for the disposal of the suit as the parties often apply for restoration of the suit and apply for deposit of process fee. The provision of issuing process in civil cases subject to deposit of process fee by the plaintiff or by the defendant as the case may lead to unnecessary delay and corruption among the employees of the judicial department.

**Delay in Service of Notice to Government:** The object of section 80 of the Code of Civil Procedure is to give intimation to the Government of intended litigation so that the Government may consider their legal position in the matter and to take initiative to redress the wrong. Notice under section 80 is intended to alert the Government to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. But unfortunately the real object under section 80 of the Code has not been obscured and the emphasis has shifted to the negative attitude of using the section only as a shield.

**Delay in non-compliance with Order-7, Rule-14:** Order VII Rule 14 of the Code of Civil Procedure requires that where the plaintiff relies upon documents in his possession, he shall produce them in Court when the plaintiff is presented. But it is observed that when the summons is ordered to be served upon the defendant a copy of the plaint only without copies of documents is served upon him. In the result, after the defendant appears in response to the summons, he seeks adjournment for filing his Written Statement on the ground that he has to take inspection of the documents relied upon by the plaintiff in his plaint and this the experience shows, causes delay.

**Delay due to late-appearance of the Defendant:** The next stage is to appear the defendant in response to the summons served upon him. Once the defendant is served summons, he appears before the Court. On the first appearance he takes time to engage an Advocate for him. The case is adjourned for the appearance of the Advocate and on the next date, the defendant appears with his appointed pleader and prayed for time to file Written Statements under Order-8 of the Code of Civil Procedure. This request for time is repeated until the judge loses his patience and this experience shows, causes delay.

**Delay-in non-filing written statements in time:** There is no time limit fixed for filing written statements or reply after the first date of hearing. It has been experienced that numbers of frivolous applications are filed at this stage before filing the written statements and this causes unnecessary delay.

**Delay-in settlement of issues:** The next stage of the proceeding is settlement of issues under Order-14 of the Code of Civil Procedure. The case is posted for a draft issue and both the parties take time to file the draft issues. After the draft issues are filed, the judge frames final issues. Here again a party files an application seeking amendment of the issues and on that application objection is called for and after hearing of that an order is passed. The aggrieved party prefers a revision to the High Court Division. If revision is admitted and further proceedings are stayed, it takes four or five years.

**Delay in allowing frequent adjournment:** The Civil Court by virtue of Order-17, Rule-1 of the Code allows adjournment of the case. The Order provides "The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit." Liberal attitude of the trial Court in respect of adjournment is responsible for the huge arrears of cases and inordinate delay. One of the main reasons for the delay in the disposal of cases is readiness to grant adjournment either for the Court's own advantage or for the convenience of the parties, especially the lawyers for defendants. Adjournment is sought and the Judge is helpless to grant adjournment on account of unavoidable factors. Every adjournment takes a month or two.

**Delay-in of substitution:** In the proceeding at any stage, one of the parties of suit may die and then his legal representative is to bring on record. The application for substitution furnishing the names, ages and addresses of the legal representatives is to be filed. If there is a minor among the legal representatives, another application for appointment of a guardian should be filed. Notice is ordered on these applications and the legal representatives are given an opportunity to file their objections. No doubt, it is also a source of delay in disposal of cases.

**Delay-in fixing an effective date of hearing:** After settlement of issue, the next course of trial is to fix a date of hearing and recording of the deposition of the witnesses. In this stage, adjournments are frequent on the pretext one after another and the litigant who has come to the Court with a number of witnesses on a number of dates, but no deposition was recorded due to adjournment.

**Delay due to piecemeal hearings:** One of the most important reasons for delay in disposal of cases is the widespread practice of Judicial Officers to deal with the cases in a piecemeal manner. When evidence of witness is recorded in peace-meal, not only witness is likely to forget what he has stated on previous occasion but also even the presiding judge is likely to forget and as a rule recording of such evidence becomes tardy affairs involving wasteful and avoidable delay. Judgments in matters heard piecemeal cannot be delivered expeditiously as the judges are unable to keep the evidence adduced alive in their memory. So, at the time of writing out the judgment I have to make elaborate study of the whole record, which is sheer wastage of time. At the stage of examination of witnesses, examination-in-chief is done on several occasions and not at regular intervals. Then cross-examination is done not on one occasion but in several prolonged installments and in peace-meal.

**Delay-in pronouncing Judgment:** The problem of delayed judgment is now assuming immense proportion. A judgment delivered after a long time from the arguments does not always inspire great confidence in its correctness; many submissions are often overlooked, sometimes forgotten. Delayed judgment can only be based on the judge's note and there is no assurance that the particular judge who writes the judgment is ready with detailed notes of all arguments. One general tendency is to cite a very large number of decisions of the highest Courts. But experience tells us that the fate of most cases depends on facts and not law.

**Delay-in drawing Decree:** After judgment, the stage is to draw up a Decree as per judgment. Some judges unnecessarily take a long time to draw up Decree. Specially, considerable delay takes place in certain categories of suit in which preliminary decree is passed. In a suit for accounts, or for partition, the Court after preliminary decree, generally appoints a Commissioner for going into the accounts or effecting partition by metes and bound. Experience tells that such proceedings before the Commissioner linger on for a long time.

An appeal must be made ready for hearing before it can be heard and cause delay in making an appeal ready for hearing. Order-41 of the Code of Civil Procedure provides various stages of appeal, which causes delay in following manner:

- a. Delay in making available certified copies of the judgment and decrees of the subordinate Courts so as to enable the aggrieved party to file an appeal or in presenting the appeal.
- b. Delay in scrutiny and registration of the appeal. After the appeal is presented, it has to be scrutinized.
- c. Delay by way of the requirement of preliminary hearing for admission.
- d. Delay in the preparation of notice of appeal and its service.
- e. Delay in the preparation of the paper books for hearing of the appeal.
- f. Delay in final hearing.
- g. Delay in appeal against interlocutory order as the grant by the Court of appeal of stay of proceeding holds up the progress of the case in the lower Court.

**Delay-in Appellate Division:** The litigant has further right to prefer appeal under section 109 of the C.P. Code and Article 103 of the Constitution of Bangladesh before the Appellate Division of the Supreme Court against the judgment and decree/ order passed by the High Court Division. Appellate Division has jurisdiction to grant leave to appeal from any judgment, decree or order in any cause or matter passed or made by any Court or Tribunal in the territory of Bangladesh. So many cases on point in question of law are pending in the Appellate Division of the Supreme Court and they keep on pending for years together, which results in unnecessary litigation and the delay at the lower Courts.

**Delay-in the provision of Remand:** Appellate and Revisional Court have power to grant remand under Order-41, Rule-23/25 of the Code. Remand means sending back the case to the trial Court for re-try of the case. If the Appellate Court or Revision Court finds lacuna in the procedure and then the case is sent back on remand to the trial Court, in which procedure relates and the time spent is almost the same as that spent in the first round.

**Delay in disposal of interlocutory application:** There is a popular belief that the technicalities of legal procedure can be exploited and a case continued almost indefinitely if so desired. In a weak case, apart from numerous applications for adjournment, frivolous interlocutory applications are made. There are so many provisions in the Code of Civil Procedure and other Statutes to file applications one after another. It is said that the Code is an unbreakable elastic piece of legislation, which enables all piecemeal dealings in litigation. Each application requires an opportunity to be heard and disposed of on its merit. Each application may take years together for disposal. The First Misc. Appeal or Revision to the High Court Division takes 3-5 years for disposal.

Some provisions for interlocutory order under the Code of Civil Procedure are given follows:

- Applications for stay of suit (Section-10).
- Application raising objection to jurisdiction of the trial Court (section-21).
- Application for transfer suits which may be instituted in more than one Court (section-22).
- Application for transfer of the suit from one Court to another (Section 24).
- Application for transfer of decree for execution to another Court (Section-39).
- Application for resisting to execution (Section-74).
- Application for compensation obtaining arrest, attachment or injunction on insufficient grounds (Section-95).
- Application for restitution (Section-144).
- Application for exercise of the inherent powers of the Court (Section-151).
- Applications for correction of judgment decree or order (Section-152).
- Application for instituting suits or defends on behalf of all in the same interests (Order-1, Rule-8).
- Application for amendment praying for substitution of person as plaintiff or defendant (Order-1, Rule-10).
- Application for addition to the party. (Order-1, Rule-10).
- Application for raising objection as to non-joinder or misjoinder of party (Order-1, Rule-13).
- Application for substituted services (Order-5, Rule-20).
- Application praying for sending summons through Post Office (Order-5, Rule-21).
- Application for striking out pleadings (Order-6, Rule-16).
- Application for amendment of pleadings (Order-6, Rule-17).
- Application for rejection of plaint (Order-7, Rule-11).
- Application for restore the suit to file, which was dismissed earlier for default (Order-9, rule-4).
- Application for setting aside the order of dismissal of the suit for default (Order-9, Rule-9).



- Application for setting aside decrees ex parte against defendant (Order-9, Rule-13).
- Application for leaves to deliver interrogatories (Order-11, Rule-1).
- Application for raising objection to interrogatories by answer (Order-11, Rule-6).
- Application for discovery of documents (Order-11, Rule-12).
- Application for an order for inspection (Order-11, Rule-18).
- Application for return of documents (Order-13, Rule-9).
- Application for summoning a record (Order-13, Rule-10).
- Application for summoning witnesses (Order-16, Rule-1).
- Application for issuing warrant of arrest against an absent witness (Order-16, Rule-10 (3)).
- Application for adjournment of hearing (Order 17, Rule-1).
- Application for certified copy of the judgment and decree (Order-20, Rule-20).
- Application for withdrawal of a case with liberty to bring a fresh suit (Order-21, Rule-1).
- Application for attachment of movable property not in judgment debtor's possession (Order-21, Rule-21).
- Application for attachment of movable property to contain certain particular (Order-21, Rule-13).
- Application for attachment of debt, share and other property not in possession of judgment-debtor (Order-21, Rule-46).
- Application for Garnishee order (Order-21, Rule-46 (A)).
- Application for release from attachment (Order-21, Rule-58).
- Application for set aside sale on deposit (Order-21, Rule-89).
- Application for set aside sale on the ground of fraud (Order-21, Rule-90).
- Application by purchaser to set aside sale on ground of judgment-debtor having no salable interests (Order-21, Rule-91).
- Application by decree-holder against resistance or obstruction by any person of possession of immovable property (Order-21, Rule-97).
- Application by decree-holder against resistance or obstruction by judgment-debtor of possession of immovable property (Order-21, Rule-98).
- Application by decree-holder or purchaser against dispossession of immovable property (Order-21, Rule-100).
- Application for substitution of legal representative of the plaintiff (Order-22, Rule-3).
- Application for substitution of legal representative of defendant (Order-22, Rule-4).
- Application for setting aside abatement of suit (Order-22, Rule-9).
- Application for leaves to continue the suit with new plaintiff in place of old plaintiff, who lost interest in the suit (Order-22, Rule-10).
- Application for withdrawal of suit (Order-23, Rule-1 (I)).
- Application for withdrawal of suit with the permission to file a fresh suit (Order-23, Rule-1 (2)).
- Application for having a decree on compromise (Order-23, Rule-3).
- Application for examining witnesses by commission (Order-26, Rule-1).
- Application for issue of a commission to make local investigations (Order-26, Rule-9).
- Application for commission to examine or adjust accounts (Order-26, Rule-11).
- Application for appointment of a guardian of a minor defendant (Order-32, Rule-3).
- Application by next friend or guardian for leaves to compromise (Order-32, Rule-7).
- Application for refusing leaves to defend in a suit Under Order-37 (Order-37, Rule-3).
- Application for arrest before judgment (Order-38, Rule-1).
- Application for attachment before judgment (Order-38, Rule-5).
- Application for temporary Injunction (Order-39, Rule-1).
- Application for punishment for disobedience or breach of injunction (Order-39, Rule-2 (3)).
- Application for discharging, varied or setting aside the order of injunction (Order-39, Rule-4).
- Application for local inspection (Order-39, Rule-7).
- Application for appointment of a Receiver in a suit (Order-40, Rule-1).
- Application for stay of execution pending Appeal (Order 41, Rule-5).
- Application for re-admission of appeal dismissed for default (Order-41, Rule-19).
- Application for re-hearing on application of respondent against whom appeal was heard ex parte (Order-41, Rule-21).
- Application for production of additional evidence in Appellate Court (Order-41, Rule-27).
- Application for admission of appeal as pauper (Order-44, Rule-1).
- Application for expert opinion regarding signature of executor of deeds (Section 45 of the Evidence act).
- Application for revision proceedings had under mistake as to jurisdiction in Small Causes (Order-46, Rule-7).

- Application for review of judgment (Order-47, Rule-1).

### **Causes of Non-Procedural Delay:**

**Delay due to defect in the Statutes:** Statute is Will of legislature. A Statute enacted by the parliament is binding on all as soon as it receives the assent of the President. There may be defects in statutes due to following reasons: (a) Printing mistake, (b) Draftsman's ignorance, (c) Intentional obscurities, perplexities or imperfection. Sometimes a statute is silent in respect of effectiveness of the same whether it is prospective or retrospective. Hurried and ill-drafted statutes on diverse topics enacted by the lawmakers to some extent contribute to the inflow of cases in Courts.

**Delay by way of dilatory tactics of the parties:** There is popular belief a case can be continued almost indefinitely if so desired. There is also a fertile field in the Code of Civil Procedure for a clever party to prolong and protract proceedings to any length of time. To quote few instances or illustration, applications may be filed for the following among other reasons- (i) Calling for particulars, (ii) Interrogatories, (iii) Appointment of Commissioner for local inspection, (iv) Temporary injunction, (v) Attachment of immovable property before judgment, (vi) Appointment of receiver etc. Each of the applications requires an opportunity to be heard and disposed of on its merit). The aggrieved party has an opportunity to file a Misc. First Appeal or Civil Revision before the High Court Division. Leave to appeal to the Supreme Court is the last resort. Each application may take years together for disposal. The First Appeal or Revision if admitted takes 5-8 years of disposal.<sup>2</sup>

**Delay due to insufficient number of Judges:** There are so many posts of judges from subordinate judiciary to the High Court Division that are lying vacant for a long time. In spite of the growing volume of cases, the strength of judiciary has not been increased proportionately. This unjust attitude on the part of the Government in not to appoint judges is one of the causes of delay in disposal of pending cases. The present system for judicial appointment is also liable to be abused by the Government working on political consideration, specially, in the High Court Division. It has been abused in the past and being abused by the present Government in the making of appointments of Additional Judges of the High Court Division. The result is that the quality of the Judge of the High Court Division is falling to the detriment to the whole nation.

**Delay for dual jurisdiction of judges:** In the legal system in Bangladesh, the same judicial officer exercises power over both Civil and Criminal cases. Specially District Judge, Additional District Judge and Joint District Judge tried Criminal cases in the name of Sessions Judge. Normally in such situations, judicial officers give preference to Criminal cases. There much time is consumed in hearing of bail applications and recording long deposition of so many witnesses in criminal cases. The same Court functioning both civil and criminal matters, which provides unwanted ground for adjournments of civil suits.

**Delay in the suit by or against the Government:** The officials of the Government are always unwillingness in getting pending cases against them decided early. Government Pleaders are always eager to have adjournment on one pretext to the other and even late stage of the case, asks for adjournment on the usual ground of 'seeking instructions' from authority concerned. The matter like Compensation case or acquisition case involving employees are kept pending skillfully because prima-facie the decision seems to be against them. On the contrary, the Court also indulges them, which is a clear-cut discrimination and a breach of the 'due process of law and equality' clause guaranteed under Article 27 of the Constitution. As per the said Article, Government and the citizen before judiciary are alike.

**Delay due to Judges Unpunctuality:** Sometimes it is found that the judges are absent from attending the Court without prior notice and sometimes attend at late hour, which causes adjournment of the case fixed on that date which increase the load in pending cases.

**Delay due to rapid urbanization:** The litigation has increased on account of rapid urbanization, pressure on land, and social concept of justice to the downtrodden, disintegration of joint family and indifferent attitude of the Executive to solve the peoples' problems, political problems etc.

**Delay in late reporting of law journal:** The law declared by the Supreme Court is binding on all the law Courts within the territory of Bangladesh. This binding is constitutional, which provides that the law declared by the

Appellate Division shall be binding on the High Court Division and the declared by either division of the Supreme Court shall be binding on all Courts subordinate to it. The present law reporting system is not only late reporting but also not up to the mark. In fact, this is a very vital issue because of Law reports are the tools of trade to the lawyers and if these are not up to date, naturally there is always a possibility of miscarriage of justice. The lawyers do not have on their tables the reports in less than six months from the date of decision.

#### **Delay in Trial system :**

Common law oriented adversarial or accusatorial character of the civil process as against inquisitorial as practiced in continental Europe, meaning that the litigation is party-controlled which provides wide maneuvering power to the lawyers, and presupposes lesser initiative and relative passivity of the judges.

#### **Tendency for make delay**

Pendency of a larger number of cases in the courts in comparison with the number of courts... In our courts there is no consistency between the numbers of judges with the number of pending cases. In some courts the number of cases is abnormally high but in some courts the number is insignificant.

#### **Delay for Absence of specialized type of courts**

At present different types of cases such as land disputes, family disputes, commercial disputes, disputes relating to loan recovery, specific performance of contract cases are tried by the court of assistant judges and subordinates and additional district judges. But as the present decade is the decade of specialized knowledge so if the existing courts could be earmarked as specialized courts in accordance with the nature and class of pending cases then that would increase the volume of disposal of cases and also make improvement in the quality of justice and the quicker dispensation of justice. In the metropolitan areas the number of cases in the courts is excessively high. In each court of subordinate judges thousands of cases are pending for years together. As such on an experimental basis a specialized court system may be introduced firstly in the metropolitan areas earmarking each court to try the same nature and class of cases. In any case the number of cases in one court should not be more than one thousand and where in several courts of assistant judges the number of cases is less than one thousand there from by way of administrative order some courts are to be withdrawn and to be transferred to places where the number of cases is excessively high. If courts are located in comparison to cases instead of regions by manning those with the persons having specialized knowledge to try special types of cases then undoubtedly that would ensure speedy disposal.

#### **Laches in the procedural laws:**

In our procedural law although there are provisions for chronological advancement of cases but there is no compulsion for maintaining a timeframe for each chronological step. A case arrived at peremptory hearing after a long journey can be brought back again to the primary stage by any of the parties without any reasonable excuse by taking the advantage of absence of compulsion.

#### **Delay for Lack of dutifulness of the presiding judge**

Sometimes presiding judges are found allowing frequent adjournments without considering the hardship of adversary and also fixing dates of examining witnesses with a gap of more than a month but if undue adjournment can be reduced and if adjournment is not sought on the personal ground of illness of the conducting advocate and also if witnesses are examined non-stopped prior to closure of evidence in one particular case and in cases of exceptional circumstances in part heard cases if adjournment not exceeding one week is allowed then that may contribute to the speedy disposal of cases.

#### **Delay for Lack of proper supervision**

Lack of proper supervision over function of the courts either by the superior courts or by the court itself... If the courts of magistrates are regularly supervised by the chief metropolitan magistrates and chief judicial magistrates and the courts of assistant judges and subordinate judges by the district judges and both subordinate judges and magistrates by the Supreme Court then that would ensure discipline and orderly manner amongst the presiding judges and remove bottlenecks and irregularities occasioned in any stage of the case. If the courts in the districts can be inspected once in a year then that would have immense bearing over improvement of the administration of civil and criminal justice.

#### **Delay for Lack of sincerity on the part of lawyers**

In Bangladesh in the absence of an authorized soliciting system some of the lawyers compromising with the ethical responsibility are in the habit of accepting as well as filing cases which do not in reality constitute any ground for placing before the court of law for adjudication resulting in pillaging of cases. If those handfuls of lawyers cherish the ethical sense in true sense of the term then only cases involving real question of law and fact will come before the court resulting in smooth growth of morality and ethics in the mind of the lawyers representing parties in different courts ranging from of the court of magistrates to the Supreme Court. Besides, lawyers should also be sincere and honest to the best of their ability so as not to seek adjournment on the ground like engagement in any other court, remaining away from station on any person ground, absence in the court on the ground of ordinary illness etc.

**Delay for Complexity in the service of summons:**

Complexity in the service of summons in civil cases and unconditional privilege of filing petitions of amendment of plaints, submission of additional written statements and other interlocutory petitions at any stage of the suit... In the cases of service of summons in civil cases sometimes there is misuse of both money and time. Without affecting the existing system of service of summons through court and registered post on the basis of consent of the plaintiff, summons may be served by publishing the same in the newspaper like that of commercial courts and where the plaintiff agrees to execute the same on his own initiative there he may be assigned to do the same. However, this would necessitate bringing in amendment in the procedural law. In addition to that unlimited privilege enjoyed by the parties with regard to filing of different petitions including that of interlocutory, amendment of plaints and written statements affects the usual course of case and unless extreme exigencies arise it is desirable to cut those privileges after passing through the initial stage of cases. In special circumstances provision for such permission may be given to the next higher court by amending the necessary provision of procedural law. Apart from that there should be a fixed time frame for each stage of cases by inserting provision that any laches at any stage would adversely affect the interest of the party seeking to step beyond the time frame.

**Delay for Lack of coordination:**

Lack of coordination amongst different branches of prosecution in the trial of criminal cases and separate investigating agencies... Investigation is regarded as the heart of criminal trial and if the investigation is faulty with all fairness it is not possible on the part of the presiding judge to ensure proper dispensation of justice. So far Bangladesh is concerned investigation is carried out by the age-old system. Separate investigation police equipped with modern technology can make considerable improvement in the investigation process. The other factor which can help a lot in the process of fair trial is accountability of witnesses who must not deviate from original stand at any eventuality and the prosecutors are to be capable of discharging their duties assigned with each individual case with a high sense of morality, ethics, and integrity. While appointing prosecutors due emphasis are to be given in their quality, integrity and length of service after a report to the effect is given both by sessions judge and district magistrate and in any case not upon any political consideration. Besides in each district there shall be facilities for chemical examination and analysis. Like other countries of the world, the creation of prosecution cadre and bringing all trial magistrates under the direct control of the sessions judge can also make improvement to the desired extent in the administration of criminal justice and would also ensure proper coordination.

**Delay for Lack of logistics for the judges**

In Bangladesh many courtrooms are dilapidated, many presiding officers are not provided with a steno-typist, many courts are functioning without having a type machine, many presiding officers are attending courts on foot in absence of transportation facilities and many courts are not yet provided with computers. All those have already been ensured in our neighboring country and regarding Presiding judges all have been made accessible to computers by imparting training. In this respect an honest intention on the part of the government can ensure better results with significant improvement in the process of delay.

**Delay for Lack of knowledge:**

Admissions of appeals, revisions and criminal miscellaneous cases without due consideration... The detailed guidelines are given in the Civil Procedure Code as to what orders are appealable and what are revisable and also in which cases prayers for bail to be sought. But some lawyers are found to be very liberal in accepting briefs of the clients and prefer appeals, revisions and miscellaneous cases in cases which do not call for preferring such claims. Sometimes it is found that after rejection of bail petition with due consideration of all the points the same bail

petition on the self same grounds and apparently on not any new ground is moved for admission in a span of less than a week. Where the district and sessions judge is well-versed, law knowing, capable of handling things in a good manner, prompt and efficient, there it is found that the rate of admissions of appeals, revisions are comparatively much low in comparison to original cases against which those relief's are sought. So if both lawyers and district and sessions judges are respectful to each other and carefully examine law before going for filing of cases in the case of former and before admitting the matter in the case of later then only cases involving real questions of law and fact will come before the court resulting summary disposal of more than 50 per cent of matters at the very outset.

**Delay for Absence of system for diversion of cases:** Diversion is a very popular concept in the western world and by resorting diversion petty criminal and civil cases can be resolved by way of alternative dispute resolution and there are three fold benefits of the alternative dispute resolution namely (1) it reduces the court congestion; (2) it minimizes the cost of litigation and (3) it saves time.

**Delay for no use of ADR:**

In seeking solutions through alternative dispute resolution, the role of judges and lawyers representing the parties is very important. It is the lawyers who are to convince the parties that the solution of the disputes outside the court is for the mutual benefit for them as it is cost effective and time saving. Initiating of resolving disputes may come from the presiding judge but while initiating such settlement the judge must be very careful so as to guard the chair from slur of any nature.

**Delay for Rotation and transfer of judges:**

Rotation and transfer of judges, often meaning that the same judge who heard testimony may not decide the dispute, taking away thereby much of his incentive to push forward the proceedings to judgment and seriously impeding the process of continuous trial; the new judge may have to repeat some of the procedural requirements already fulfilled.

**Delay for Scope for frequent amendments:** Scope for frequent amendments of the plaints and written statements at any stage of the trial. Absence of lawyer-client accountability giving the lawyer monopoly to conduct the case the way s/he considers best suited to her/his own interest, even to linger and delay the process.

**Delay for Lack of strict adherence:** Lack of strict adherence to time-frames or time-limits prescribed by laws (e.g. Section 339C of CrPC; Order VIII Rule 1, Order XVIII Rule 19 of CPC; Section 20 of Nari O Shishu Nirjatan Daman Ain, 2000; provisions on speedy trial court and tribunal) for the proceedings and disposal of suits at different levels, and skipping them by various exception and extra-ordinary clauses. The problem is accentuated by the controversy of directory or mandatory character of the time-limit provisions, and Supreme Court judgments (i.e. Fazlul Haque vs. Tohed Ali 47 DLR 326 and Lal Mamud vs. Seraj Miah 45 DLR 638) on the directory nature of most of such provisions.

Above reasons and conditions exist in a long win or lose battle where the parties fight in a 'do or die' manner with no or little perspective of any consensual settlement move coming from any side which could steer the dispute to win-win resolution. Consequential frustration, desperation and costs become too expensive for any judicial system to sustain.

So far we have tried to find out the causes of delay and it is apparent that Bangladesh like other countries of this subcontinent as well as other third world countries is faced with the serious problem of backing of cases and all these cases accumulated as our judicial system in absence of proper court management system could not keep pace with the filing and disposal of cases. This has resulted in court congestion in Bangladesh. Age-old trial system also contributes a lot towards court congestion. Unnecessary delay attributing court congestion diminishes the chance of achieving justice and increases the cost of litigation. Owing to delay evidence can be lost, witnesses become unavailable and

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these cases accumulated as our judicial system in absence of proper court management system could not keep pace with the filing and disposal of cases. This has resulted in court congestion in Bangladesh. Age-old trial system also contributes a lot towards court congestion. Unnecessary delay attributing court congestion diminishes the chance of achieving justice and increases the cost of litigation. Owing to delay evidence can be lost, witnesses become unavailable and actual value of the judgement is reduced. Recent research carried out in the countries having an advanced judicial system reveals that delay is not inevitable. Judges, administrators and people involved in the litigation now know that justice is enhanced when a court supervises case-progress from the time of filing, sets meaning events and deadlines throughout the life of the case and provides credible trial and hearing dates. By adopting the principle and techniques of effective case flow management courts throughout the country can dramatically reduce backlogs and time to disposition.

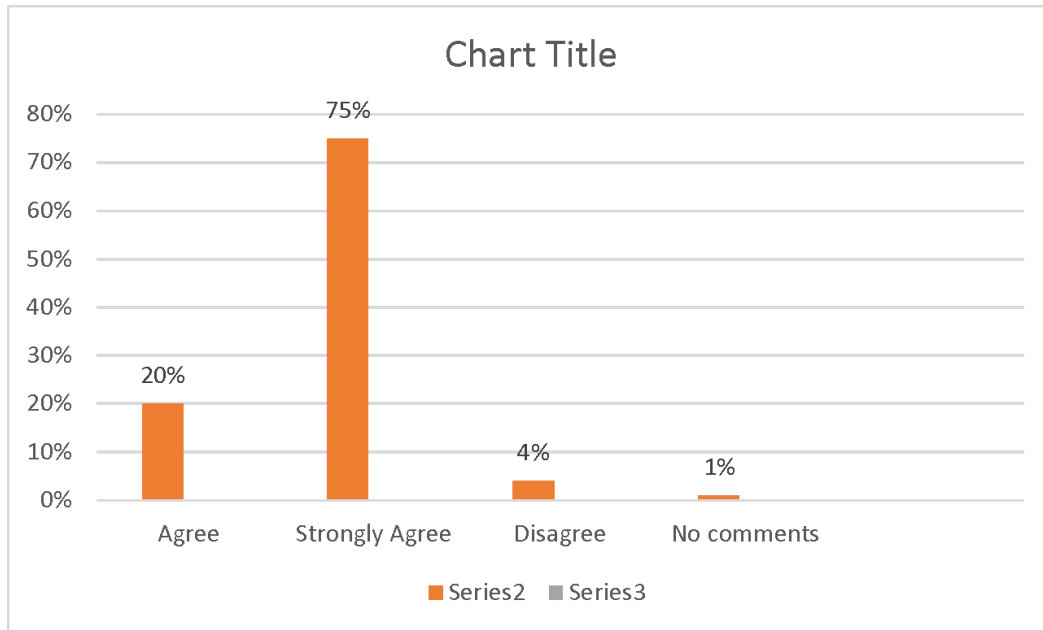
In Bangladesh in the Supreme Court alone more than half a million cases of different nature have remained pending for years. The situation is not different in the district courts of various jurisdictions where the number of pending cases is around two millions. The researchers found that even if all the courts ranging from the court of the magistrates to the Supreme

### Result and Discussion :

Table -2 willingness of judges , Advocates, and Court staff is enough to reduce procedural and non procedural delay in civil suites.

Variable	Frequency	Percentage (%)
Agree	60	20%
Strongly Agree	225	75%
Disagree	12	4%
No comments	3	1%
Total	300	100%

figure 2



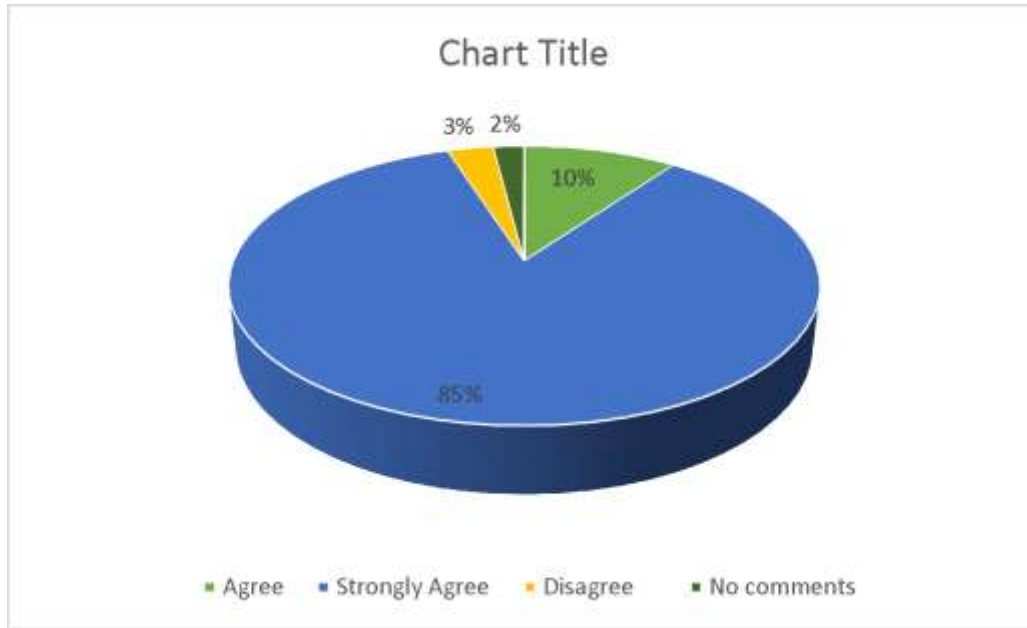
source survey

From the above result it is found that 75% respondent give their opinion and they are strongly agree that the willingness of judges , Advocates, and Court stuff is enough to reduce procedural and non procedural delay in civil suites in Bangladesh., 20% respondent give their opinion and only agree that that the willingness of judges , Advocates, and Court stuff is enough to reduce procedural and non procedural delay in civil suites in Bangladesh. 4%respondent are dis agree that the willingness of judges , Advocates, and Court stuff is enough to reduce procedural and non procedural delay in civil suits in Bangladesh&1%don't give their opinion about causes of procedural and non procedural delay of civil suits in Bangladesh.

Table -3 Civil litigation should be reform

Variable	Frequency	Percentage (%)
Agree	30	10%
Strongly Agree	255	85%
Disagree	9	3%
No comments	6	2%
Total	300	100%

figure 3



Source :Survey

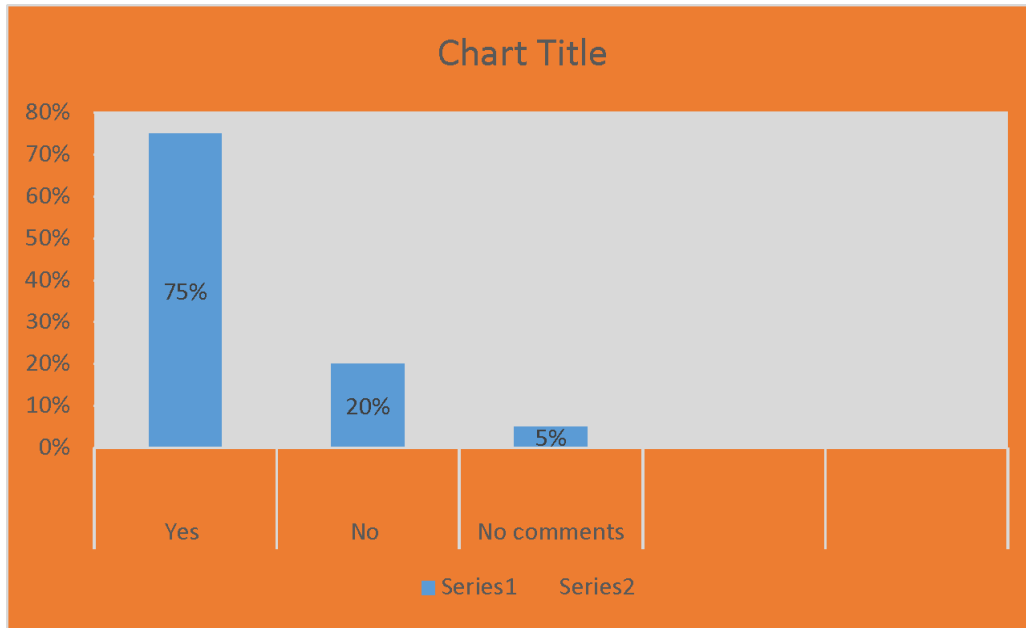
From the above result it is found that 85% respondents give their opinion and they are strongly agree that the civil litigation should be reform to prevent delay of procedural and non procedural delay in civil suits in Bangladesh. 10% respondent give their opinion and only agree that that the civil litigation should be reform to prevent delay of procedural and non procedural delay in civil suits in Bangladesh . 3% respondents are disagree that the civil litigation should be reform to prevent delay of procedural and non procedural delay in civil suits in Bangladesh & 1% dont give their opinion about causes of procedural and non procedural delay of civil suits in Bangladesh.

Table -4 Corruption and bribery is one of the important cause for Delay of civil suits

Variable	Frequency	Percentage (%)
Yes	225	75 %
No	60	20%
No comments	15	5%
Total	300	100%

Figure : 4





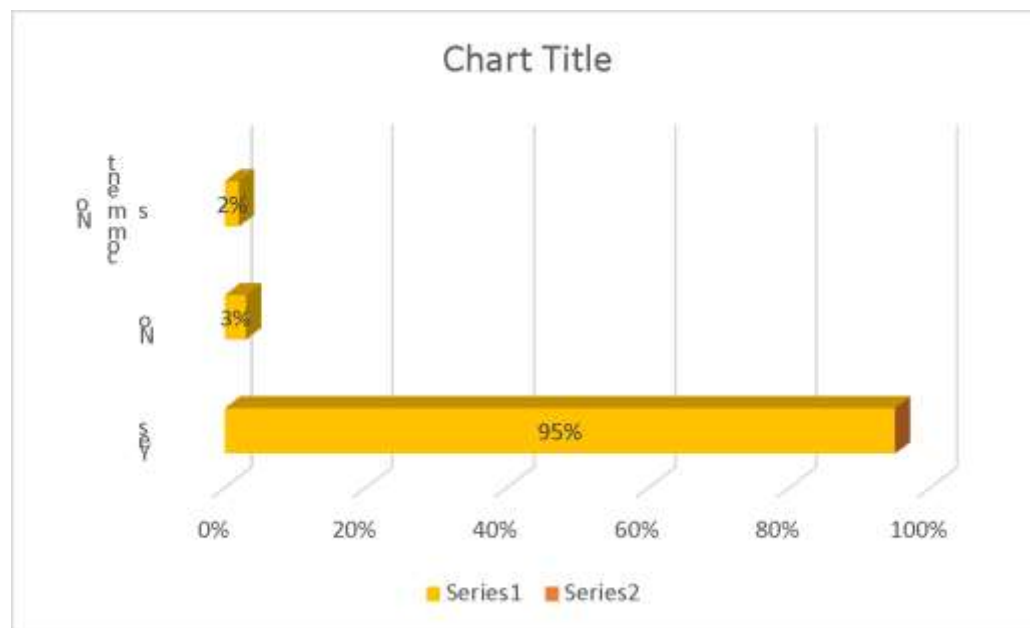
Source : survey

From the above result it is found that 75%respondents give their opinion "Yes “Corruption and bribery is an important cause for Procedural and Non procedural Delay of civil suits. 20%respondents give their opinion "No “Corruption and bribery is an important cause for Procedural and Non procedural Delay of civil suits. There are other important causes also for delay. 5%respondents do not agree to give their comments that Corruption and bribery is an important cause for Procedural and Non procedural Delay of civil suits.

Table -5 : The procedure of civil suit should be digitized

Variable	Frequency	Percentage (%)
Yes	285	95 %
No	9	3%
No comments	6	2%
Total	300	100%

figure :5



source: survey

From the above result it is found that 95% respondents give their opinion "Yes" about the procedure of civil suit be digitalized for prevent Procedural and non procedural delay of civil suits in Bangladesh. 3% respondents give their opinion "No" about the procedure of civil suit be digitized for prevent Procedural and non procedural delay of civil suits in Bangladesh & 2% respondents are not interested to give any comments.

### **Results and discussion:**

According to this research it is clearly shown that in Bangladesh Delay is a normal practice in civil suit . A Civil suit never be finished for the law .From the 1st table i can find out that the several case study the actual time limit is 368 days but after expending time it needs on average 3357 days .Figure 2 shows that 75% respondent give their opinion and they are strongly agree that the willingness of judges , Advocates, and Court stuff is enough to reduce procedural and non procedural delay in civil suites in Bangladesh., then Figure 3 presents that 85% respondents give their opinion and they are strongly agree that the civil litigation should be reform to prevent delay of procedural and non procedural delay in civil suits in Bangladesh. and figure 4 presents that 75% respondents give their opinion "Yes" 'Corruption and and bribery is an important cause for Procedural and Non procedural Delay of civil suits and finally figure 5 shows that respondents give their opinion "Yes" about the procedure of civil suit be digitized for prevent Procedural and non procedural delay of civil suits in Bangladesh. So I finally want to show that in this research my hypothesis is tested and it can be said that if the procedure is desitalized the time will be reduced .

The Code of Civil Procedure is based on English system and thus the same delay is inherent in that system itself. The essence of English System is fair trial. A fair trial means that each party must know the case of the other party. The whole object of pleadings is to give fair notice to each party of what the opponent's case is and to ascertain the points on which the parties agree and those on which they differ, thus to bring the parties to a definite issue. In order to have a fair trial it is imperative that the party should state the essential facts so that the other party may not be taken by surprise. The parties thus themselves know what matters are left in dispute and what facts they have to prove at the trial. When a dispute arises, the aggrieved person comes to the Court to express his or her concerns and seek justice through due process. Every civil court is obliged to try all suits of a civil nature if they are not explicitly barred by law. A civil suit comprises any suit arising from a dispute over a right to property or a right to an office. Though the Code has not defined the word 'suit', a suit is considered to be a civil proceeding filed in a civil court by an aggrieved person, institution, legal entity or the state, in a case where a civil right has been violated (Haque, 2011: 3). The law also holds that every suit should be tried in the court of the lowest grade that is competent to try it.

For that reason, for data collection purposes, civil courts of the lowest grade of competence are indeed complex—were easier to understand. One client, C6, suggested that since the civil cases are mostly document-based, it would be better not to waste time examining the witnesses and the plaintiffs/defendants at great length in each case, and to place more emphasis on the documents.

As indicated above, the clients did not have a clear grasp of their suits and the relevant law. Illiteracy may have had an influence here, or the fact that lawyers did not properly inform their clients. J4 observed that clients' lack of literacy meant it took time to make them understand the court procedures, and because judges are always overburdened they prefer to communicate with the client through the lawyer.

**Remedies from procedural and non procedural delay:**

- To avoid so called system and should have to use technology
- All procedures should be digitized.
- Mistake of plaintiff or defendant should correct within a time
- Late appearance of defendant should not be accepted
- Plaintiff should be in form
- Quick service of summon and must be desitalizes
- Abolish the provision of process fees
- Provision of notice should be by mail or message or use modern technology
- Order-7, Rule-14 should be observed strictly
- Avoid ex parte proceedings
- Time for filing W.S. strictly followed
- Issue should be settled in the presence of lawyers and in due time.
- No adjournment on flimsy ground
- Amendment of pleadings not beyond 3 months
- No substitution beyond prescribed time
- Fixing an effective date of hearing
- Avoid tendency of over proving the case
- Same day Examination and cross-examination
- Peace-meal hearing should be prohibited
- Cut dual jurisdictions of judges
- Argument not beyond 7 days
- Arguments should be precise
- Judgment within 7 days
- Avoid lengthy Judgment
- Decree within 7 days
- Early disposal of Appeal/Revision-interlocutory order
- Appellate Court under Special law
- Alternate Certified copy
- Avoid Remand order
- Lessen the provision of Interlocutory application
- Injunction with Condition
- Execution proceeding without adjournment
- Limitation Act should be followed strictly
- Summarily disposal of Rent cases
- Provision of Income-tax Reference be deleted
- Enact procedure for early disposing of Writ
- Amendment in the procedure/Statute
- ADR method should be mandatory and fix time frame
- Cost for dilatory tactics
- Dispose of cases in preference
- Grievance Committee
- Temporary appointment of Judges
- Reduce Court vacation
- Specialized Benches in the High Court
- Early disposal Cases common question of law

- Reporting in law journal timely
- Activate Village Court
- Remove system of corruption
- Court should be computerized
- Pre-trial proceeding
- Conciliation in Norway
- Conciliation in Japan
- Conciliation in Pakistan
- Conciliation in India
- Suggested Conciliation in Bangladesh
- Mediation strictly follow the time frame
- Arbitration strictly follow the time frame
- Cause list should be softwarized

**The Role of Bar and Bench for reduce delay:**

- a. Judges should not be hurry in hearing Suits
- b. Bribery should be remove from court staff
- c. Judges from competent persons
- d. Training of Subordinate Judges
- e. Judges act as umpire
- f. Number of Judges should be increased
- g. Pleaders' cause
- h. Training of the lawyers
- i. Compulsory junior to senior lawyer
- j. Government Pleader from competent persons
- k. Standard Bar
- l. Standard of Judiciary
- m. Remove the Mal-practice of the lawyers
- n. Dispute between Bar and Bench
- o. Quality of law education
- p. Judges must read the brief beforehand

**Recommendations:**

This research, I have tried to focus on the problem of delay in procedural and non-procedural civil suits in Bangladesh And its impact on society. I have tried to give a short description about civil Proceedings in Bangladesh and a short historical background of it. I have discussed the various causes of delay both procedural and non-procedural. I have suggested the possible remedies both procedural and non-procedural. and also is suggested for other remedies like pre-trial proceedings, conciliation process, meditation and arbitration in order to remove the backlog of the civil cases. I have tried to draw attention to the Role of Bar and bench in overcoming the problem.

In this conclusion, I think, experience gathered in research work should mention on the following manner:

1. In preparing the research result, I have tried to go through the long procedure of civil proceedings, delay in the progress of the civil suit and to make suggestions on it. All concerned are of the opinion that procrastination in dispensing justice should no more prevail for the greater interest of resorting peoples' confidence in the judicial system. The existing system does not effectively protect the interest of litigants, rather it frustrates the society. A lot of cases are pending in the subordinate judiciary to the Supreme Court and the unrest among the litigants is a signal for distracting against the judicial system. Before it may take the shape of a volcano, urgent remedial measures should be taken, so that the number of institutions of cases may become lesser than the number of disposal of cases.
2. The right to a fair trial is the part of the rule of law. The rule of law demands that, in the conduct of legal proceedings, procedural fairness is observed. The conciliation forum is set up to give effect to the long established custom of settlement of disputes through mediation, arbitration and compromise, whereas the ordinary Courts are primarily required to decide all matters brought before them in accordance with law.
3. There are two sets of laws. One is Substantive law and another is Procedural law like the Code of Civil Procedure. Substantive law determines the rights and obligations of citizens. Procedural law is the way to

proceed to establish the rights under Substantive law. Procedural laws are more important because the efficacy of substantive laws, to a large extent, depends upon the quality of the procedural laws. Unless, the procedure is simple, expeditious and inexpensive, the substantive laws, however good, are bound to fail in their purpose and object. It need hardly be stated that success or failure of any procedural law depends upon the men who administer it. A law of procedure, however perfect, will fail in its purpose unless the men who administer it are men of ability and are imbued with a missionary zeal for doing justice, and unless they receive in this task the co-operation of the Members of the Bar. If the judges are high minded, able and fearless, and if the Members of the Bar also share their zeal, there is no doubt that the problem of delay, which now threatens to bring the entire administration of justice into disrepute, will be solved to the satisfaction of the litigating public and the community at large.

4. All the suggestions made above herein, arrived at after completing a detailed research work on the topic, need thorough proof by all those who are engaged in and have been entrusted with the work of simplification of procedure in civil matter. During the last 32 years of independence, no significant development was made removing the bottlenecks in the early disposal of civil cases. I hope the suggestions given in the present work will receive attention of the above instrumentality.
5. The appointments procedure for judges and other judicial staff must be made fair and impartial, and tenure protected. Salaries for judges, magistrates, prosecutors and police should be raised.
6. The court record system should be computerized to allow litigants and their attorneys to access public files and track cases through to their resolution. A website should list such information as the date of filing, location of file and the length of time a file has remained at each stage of the justice system.
7. Judges should be appointed through a mechanism which is transparent and open to public scrutiny. It further argues that an independent commission consisting of members of the executive, legislature, judiciary, legal profession and laypersons may be useful to maintain public confidence in the judiciary. In this regard, the South African model of Judicial Service Commission may be considered as an acceptable model. The South African Commission consists of judges, the Minister of Justice, practicing and academic lawyers, members of National Assembly including a substantial number of opposition members, members of Provincial Parliaments, persons nominated by the President of South Africa consulting the leaders of all political parties represented in National Assembly and in some cases the Premier of Province or Premier's nominee. Consequently, the South African Commission representative in composition and is not under the exclusive control of any one branch of the government.
8. In order to ensure transparency in the appointment process and to exclude political or other considerations in appointing judges, an independent Judicial Service Commission should be established for the appointment of judges of all levels including the judges of the Appellate Division. In this regard, the South African model of Judicial Service Commission can be followed.
9. For the appointment, promotion, transfer and discipline of judges at all levels an independent commission should be established with members from the executive, legislature, judiciary, legal profession and lay persons. In this respect, the models of the Judicial Service Commission of South Africa and the Commission on Judicial Performance of California can be followed.
10. The criteria for appointment of judges should be made explicit and publicly known and in this regard the criteria for appointment of judges in Canada and England can be followed.
11. All judicial vacancies including the High Court Division and the appellate Division should be advertised and appointments should be made by open competition so that the best-qualified people can be appointed to judicial office. Open competition perhaps can restrain the executive government from appointing judges on the basis of discretion or favor.
12. The criteria and mechanisms for judicial appointment recommended above should be guaranteed by the constitutional or statutory law so that non-compliance with the guaranteed criteria and mechanisms can be challenged in court.
13. Judicial system with independence in judicial decision-making but administrative and budgetary dependence on an executive department, generally the ministry of justice or its equivalent

### **Conclusion :**

The principles that Lord Woolf (1995) identified as denoting a good and effective civil justice system, are mostly absent in the civil justice system of Bangladesh. It is a matter of sorrow that it is too slow in bringing cases to a conclusion. It is also incomprehensible to many litigants. Above all, it is too fragmented in the way it is organized—since there is no-one with clear overall responsibility for the administration of civil justice—and

too adversarial. Because cases are run by the parties and their lawyers, not by the courts, the rules of court are all too often ignored by the parties and not enforced by the court. In this situation, new amendments are required in the CPC 1908, incorporating case management; empowering the judges to control the cases; changing the traditional pleadings procedure; introducing summary judgments; reducing opportunities for appeal to a higher courts; motivating clients to mediate; increasing the number of the judges; and ensuring computer facilities in each court with proper maintenance and skilled persons to run them. It is high time to proceed with incorporating case management methods in substantive as well as procedural laws to make the legal system more effective, and to achieve maximum benefits for litigants. The data set out in this paper demonstrates how and why delays occur and establishes a basis upon which change could be made to reduce procedural and non procedural delay.

### Biography:



Doctor Md. Oliul Islam is an Advocate, of Supreme Court of Bangladesh. He has been working for Law & Human Rights in Bangladesh since 2010. Dr. Islam is a famous Lawyer in Bangladesh Supreme Court. Dr. Islam is engaged in research activities throughout his academic career more than 10 years and has published many research papers participating international conferences. Doctor Md. Oliul Islam has completed Double Masters Degree (Law and English literature) and persuaded Ph.D Degree in Law. His thesis was Role of Human Rights Organizations Ensuring Rule of Law and Justice in Bangladesh.

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