

## **Causes of Delay in Civil Litigation in Bangladesh**

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**Abstract:** Adversarial or accusatorial character in the civil process is practised in Bangladesh and delay is one of the main problems in our civil litigation. The main objective of this study is to find out the causes of delay in civil litigation and to suggest provable remedies to solve the problem. Where it should take one or two years for the disposal of a civil suit, but it takes five to ten years, or even more. So, it is the high time to take proper steps to get remedy against such delay. An essential requirement of justice is that it should be dispensed as quickly as possible.

**Keywords:** Civil, Litigation, Delay, Causes, Bangladesh.

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### **I. INTRODUCTION**

Delay in the civil suit is a big problem in Bangladesh. Where people go to the court to stabiles their right but they are discouraged from the delay in the suit and deprived of proper relief. "Justice delayed is justice denied". Delayed justice is the means of inflicting injustice through the process of law. Speedy disposal of the case is an important condition of the end of justice. The prolonged delay makes the litigation enormously worried.<sup>1</sup> Delay in civil justice is caused for many reasons. There is a fruitful field in the Code of Civil Procedure, 1908 for a clever lawyer to prolong and protract proceedings to any length of time.<sup>2</sup> To prevent the delay in civil litigation there are some amendments to the code of civil procedure, 1908. These are: Sections: 30, 35A, 35B, 35C, 89A, 89B, 89C & Order-9: RR: 9A &13A, Order-17: R: 3, Order- 22: R: 9A, Order-33: R: 7A, Order-39: R: 5A, Order-41: RR, 12A, 19A & 21A of the Code of civil procedure, 1908.<sup>3</sup> The functioning of the system is also being questioned in different quarters having regard to the procedural wrangles, enormous costs and inordinate delay involved in it.

Justice Iyer rightly says, "Delayed justice is the means of inflicting injustice through the process of law."<sup>4</sup> The delay in the judicial process causes a backlog, increasing backlog puts tremendous pressure on present cases is the annoyed and worrying problems in our country. That's why most of the civil case runs a long period. Our legal system bears testimony to the remnants of the British laws. The adversarial systems are generally responsible for the delay in civil litigation in our country. Every year a very large amount of civil suits are instituted in the civil courts of Bangladesh but the small number of cases is disposal that year. As a result, a large number of suits are pending in those courts. It is also found that the pendency of cases in rising at the rate of 10% per year.<sup>5</sup> The lack of a sufficient number of judges and courts force a judge to deal with five to six thousand cases in a year. The procedural delay allows the cases to be lengthy. Lawyers in some cases also play their part in delay because more delay will ensure more earning for them.<sup>6</sup>

An efficient and good administration is necessary for ready references and control over the exodus of cases and is to be ensured by judicial administrators to help the court instantly with any information it needs for effective case management. Efficient court staff equipped with modern technological facilities like computerization would be necessary for good court administration.<sup>7</sup> There are some factors neither procedural nor operational inside the courts responsible for delaying the disposal cases or diverting the course of justice. The delay problem of cases has been reached a point that it is incapable of being crossed and it has become a factor of injustice.

### **II. CAUSES OF DELAY IN CIVIL LITIGATION**

Actually, delay in litigation is still prevailing in the field of civil justice. The multiplicity of litigation, delay in disposal and causes for miscarriages of justice in civil cases spell nerve breaking the tension, anguish and financial strain on the litigants.<sup>8</sup> Delay in our judiciary has reached a point where it has become a factor of injustice, a violator of human rights.<sup>9</sup> Delay in civil justice in Bangladesh is caused for many reasons. There is a fertile field in the Code of Civil Procedure, 1908 for a clever lawyer to prolong and protract proceedings to any length of time.<sup>10</sup>

## **2.1 Defects in the procedural law**

Much of the delay occurs because the provisions of the Code of Civil Procedure are not properly observed and leaves room to escape speedy disposal. After filing the plaint, the processing fee is not paid for a long time so that the summons to the defendant is not served in time. After the defendant files his appearance, his advocate often seeks long adjournments to file 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 interrogatories. If these provisions are properly used, the controversy between the parties can often be narrowed before the cases go for trial.

## **2.2 Delay due to the Litigants**

It is found that the respondents verified that delay on the behalf of litigants is for the following reasons; lack of legal knowledge, failure to produce witnesses; intentional time killing, malicious prosecutions, delay in submission in a written statement and lack of client to client interaction.

## **2.3 Delay caused by the judges**

Insufficient judge: Each lower court judge, on average, is overburdened with around 2,000 cases for their hearing and disposal. A total of 1,397 judges have been dealing with more than 27.5 lakh cases across the country.<sup>11</sup>

There is a general feeling that the government is not appointing a sufficient number of judges to deal with increasing work. It is a common experience that even existing vacancies in various HCD remain unfilled for an unduly long time. Prompt appointment of judges to fill the existing vacancies and creation of additional posts insufficient number would go a long way to solve the problem of delay and arrears.<sup>12</sup>

## **2.4 Adversarial system in civil procedures**

In our procedural law although there are provisions for chronological advancement of cases there is no compulsion for maintaining a timeframe for each chronological step. A case arrived at the peremptory hearing after long journey can be brought back again to the primary stage by any of the parties without any reasonable excuse by taking advantage of the absence of compulsion. In Bangladesh adversary system of trial is enforced the adversary of trial in our country is in vogue. In this system, the accused person know the charges taken against him and preserves the right of self-defence. Both the complaint and the litigant have to face interrogations in this system. This system has some inherent weakness because of having a very normal role to play of judges. So it leads to delays and high costs in the disposal of cases.

## **2.5 Slow process in service of summons**

A great deal of delay occurs in summon service, processes filed by the parties are not promptly sent to the nazir for service.<sup>13</sup> Though summons must be filed along with the plaint in practice, it is not strictly observed. The slow process of service of the summons further slows down by the intentions of the parties concerned, indicating a poor state of court administration.<sup>14</sup> Processes filed by the parties are not promptly sent to the Nazir for necessary action and process service returns are also not sent to the sheresta of respective courts from nazarat in time.<sup>15</sup> Under the present procedural system, the process-server is the most powerful person without being responsible for his failure to serve a summons in time. This makes him shirking his work; as a result, more often summons is returned with the endorsement of 'party not found', 'address not known' and most of such endorsement are bogus and not genuine

## **2.6 Failure of the parties to present**

Dismissal for default followed by miscellaneous cases under Order IX Rule 4 and rule 9 of the Code of Civil Procedure for the restoration of suits is a regular feature.<sup>16</sup> Intentional non-appearance and absence by the filing of a petition for adjournment result in the dismissal for default to linger the course of litigation. Such malpractice needs to be discouraged because orders passed by the trial courts in such miscellaneous cases give rise to miscellaneous appeals consuming much time in the disposal of the original suit. However, responsible and conscious discharge of professional duties by the lawyers can only fight out such unbecoming practices. Appearance on the date of ex-parte disposal seeking adjournment for filing of W.S. and rejection of such petitions for adjournment is followed by miscellaneous appeal creating deadlock and setting aside of the ex-parte order by the appellate courts in terms of liberal construction enabling opportunity to the other side to contest the original suit consume much time to dispose of the original suit.

### **2.7 Presentation of plaint without documents**

According to the Code of Civil Procedure, 1908 provides that where the plaintiff relies upon documents in his possession or power as evidence in support of his claims, he shall produce them in Court when the plaint is presented and shall at the same time deliver the documents to be filed with the plaint.<sup>17</sup> But it is observed that when the summons is ordered to be served upon the defendant a copy of plaint only without copies of documents is served upon him. As a result, defendant appears in response to the summons, he seeks an adjournment for filing his written statement on the ground that he has to make an inspection of the documents and other issues relied upon by the plaintiff in his plaint and this usually causes an unusual delay in disposal of the proceedings.

### **2.8 Intentional delay caused by the defendant to submit written statement**

Once the defendant is served with a summons, he appears before the Court. On the first appearance, the engaged lawyer of the defendant prays for time on the plea that he has just received the copy of the plaint and he has not yet gone through the concerned documents of the suit. The case is adjourned and on the next dates, the defendant's pleader prays for time on different pleas to file written statement. The request for time is repeated until the judge interferes personally and expresses concern and this causes a delay of proceedings.

### **2.9 Delay caused due to passing interlocutory orders**

Interlocutory matters like applications for a temporary injunction, local inspection, local investigation and appointment of receiver consume much time of the Courts. Orders either rejecting or allowing the temporary injunctions are followed by miscellaneous appeals preventing the disposal of civil suits because a long time is spent on the disposal of miscellaneous appeals in the higher court.

### **2.10 Application for transfer of the suit**

On the application of any of the parties, the High Court Division or the District Court may at any stage transfer any suit or appeal pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same.<sup>18</sup> So, the parties have to apply to the High Court Division or the District Court for transfer of the suit and it takes the delay in civil litigation.

### **2.11 Application for local investigation**

A judge has the power to make a local investigation in person in any case or may appoint Advocate Commissioner to hold a local investigation.<sup>19</sup> The object of local investigation is to obtain evidence which from its very nature can only be obtained on the spot and to elucidate any point which is left doubtful on evidence taken before the court. It takes a long time to make any local investigation of any suit which is also one of the main causes of delay in civil litigation.

### **2.12 Application for remand of the suit**

An appellate court has the power to grant remand.<sup>20</sup> Remand means sending back the case to the trial court for a retrial of the case. If the appellate court or revisional court finds lacuna in the procedure and then the case is sent back on the remand to the trial Court, in which procedure relates and the time spent is almost the same as that spent in the first round.

### **2.13 Application for amendments of pleading**

Scope for frequent amendments of the plants and written statements at any stage of the trial causes a delay in civil litigations. The absence of lawyer-client accountability giving the lawyer monopoly to conduct the case the way she considers best suited to her/his own interest, even to linger and delay the process. The Court is empowered by Order 16, rule 17 to allow the application for amendment of pleadings at any stage of the proceedings. Generally, the application for amendment of a pleading is allowed for the purpose of determining the real question of controversy between the parties. It is true that there may be cases where amendments are necessary. But there is no time prescribed for seeking amendments relating to a fact after the pleadings were filed.

### **2.14 Delay in the execution of the decree**

In the execution stage, judgment-debtors take advantage of technicalities and adopt dilatory tactics and make application of tricks with intent to delay the execution. The entire judicial process in a civil suit has been brought to disrepute by the manner and method of executing proceedings that protract over decades and others are unintentional.

### **2.15 Delayed in the appearance of a witness**

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

### **2.16 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. Midterm transfer of judges often causes a delay in the disposal of cases.

### **2.17 Insufficient judge**

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

## **III. SUGGESTION TO SOLVE THE PROBLEM**

For the effective administration of civil justice, some recommendations are made in the bellow and we believe that if it becomes possible to ensure the recommendations then it will ensure the same.

To ensure speedy trial in the adversarial trial system that is running in Bangladesh, we should take up some measures which will enrich our trial system and minimize delay in the disposal of civil cases successfully.

Firstly, we should establish an effective administration. Court administration consists of the internal management of the courts including classification systems, monitoring, coordination and case-flow tracking mechanism. Classification systems will help the courts to consolidate adjudication of claims involving flow tracking will ensure that both pre-existing and new case management and consensual dispute resolution processes proceed according to the established timetables. An effective court administration will reduce the bad tactics of lingering civil lawsuits in courts.

Secondly, to minimize delay in civil litigation we should encourage alternative dispute resolution for resolving the disputes. Various forms of alternative dispute resolutions such as mediation, conciliation, arbitration, judicial settlement and early neutral evaluation can revolutionize our entire civil justice delivery system. The essence of the concept is that after the filing of the plaint and submission of the written statement, attempts would be made to resolve the dispute through ADR by early judicial intervention.

Some suggestive measures are given below to be taken in to account for a healthy administration of civil justice in Bangladesh perspective:

- (i) Administration of civil justice should be separated
- (ii) Plaint should be in form.
- (iii) An effective procedure for service of summons etc.
- (iv) Mandatory time limit for a written statement
- (v) Abolition of the provision of process fee
- (vi) The framing of issues in presence of both parties
- (vii) No adjournment of flimsy ground
- (viii) No amendment of pleading beyond time
- (ix) Examination and cross-examination on the same or consecutive day
- (x) Early disposal of interlocutory matters
- (xi) Avoid in passing ex-part decree
- (xii) No substitution beyond three months
- (xiii) No date except effective date of hearing
- (xiv) Examination and cross-examination on the same day
- (xv) Argument not beyond 7 days
- (xvi) Judgment within 7 days
- (xvii) Drawing of decree within 7 days
- (xviii) Avoid passing order of remand
- (xix) Follow limitation Act strictly
- (xx) A separate court for execution of the decree
- (xxi) Abolish the provision of dual jurisdictions of judges
- (xxii) Accountability of judges
- (xxiii) Accountability of advocates

- (xxiv) Reduce the court's vacation
- (xxv) Preference to disposal to an old case
- (xxvi) Increase number of judges
- (xxvii) Summarily dispose of the suit
- (xxviii) Reduce court vacation
- (xxix) Procedures should be computerized
- (xxx) An established specialized type of courts or a separate court
- (xxxi) The attitude of Lawyer should be a change
- (xxxii) ADR should be compulsory

#### **IV. CONCLUDING REMARKS**

It is found that delay is a curse in our civil litigation. Every year a large number of suits are instituted in the Civil Courts of Bangladesh but a few suits are disposed of. On the other hand, the amount of judges in the Civil Courts is very few. The court remains vacant for a long time. Our litigants are generally poor. The administration of justice must feel for them and come forward to do the sacred duty of meting out justice to all without any delay.

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<sup>1</sup> Md. Altaf Hossain, Civil litigation, p.358.

<sup>2</sup> Narayan Swamy, "The procedural Law in India Requires through Change" AIR, 1987, Jour.85.

<sup>3</sup> The Code Of Civil Procedure, 1908 (Act No. 5 of 1908)

<sup>4</sup> Quoted by Md. Nur Islam, Informal Justice System: Bangladesh Perspective", 54 DLR (2002), Journal Section, PP 36-38, at p.36.

<sup>5</sup> Dr Rafiqul Islam Mehedi, Civil Litigation in Bangladesh, 1<sup>st</sup> edn; p.175.

<sup>6</sup> Dr Rafiqur Rahman, Civil Litigation in Bangladesh.

<sup>7</sup> www.indialaw.com

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<sup>16</sup> Order ix of Code of Civil Procedure, 1908.

<sup>17</sup> Order 7 rule 14 Code of Civil Procedure,1908.

<sup>18</sup> The Code of Civil Procedure, 1905. s.24.

<sup>19</sup> The Code of Civil Procedure, 1908, Order –xxvi & rule 9.

<sup>20</sup> The Code of Civil Procedure, 1908, Order- 41, rule -23.