Court Administration and Case Management in Bangladesh

A Thesis Submitted in Fulfillment of the Requirements for the Award of the Degree

Doctor of Philosophy in Law

Under the Supervision of
Professor Dr. Nizamur Rahman

By

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Dedicated
to
Late Matlubur Rahman

DECLARATION

I hereby declare that this Thesis entitled ***'Court Administration and Case Management in Bangladesh'*** for submission to the Department of Law, University of Dhaka for the Degree of Doctor of Philosophy (Ph.D.) in Law is completely a personal work of mine. No part of it has been submitted elsewhere for the award of any degree or diploma or any other purpose.

Md. Akhtaruzzaman 26.03.2011

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CERTIFICATE

Certified that the work incorporated in this Thesis entitled ***"Court Administration and Case Management in Bangladesh"*** submitted by Mr. Md. Akhtaruzzaman, was carried out by the candidate under my supervision. Information culled from other sources has been duly acknowledged in this.

I have gone through the Thesis carefully and recommended for its submission to the University of Dhaka for the award of the Degree of Doctor of Philosophy (Ph.D.) in Law.

(Professor Dr. Mizanur Rahman)
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ABSTRACT

A successful judicial system is the hallmark of a civilized society; and the success of a judicial system is determined by its ability to dispense justice in a free, fair and timely manner. Justice has to be delivered in accordance with law and due process. Ensuring 'inexpensive and expeditious justice' is a crucial duty cast on the state. It is prescribed by the principles as laid down in the Constitution of Bangladesh. The duty, quite naturally, is to be performed by the judicial organ of the state. To do so the judiciary requires the support and cooperation of the other state organs and authorities. In the absence of cooperation and unless it is adequately resourced, equipped and staffed, the judiciary will be hampered in this vital task.

The idea of good governance of the citizens has nourished and brought into maturity a persistent demand for the searching out of a satisfactory solution to all legal problems within the quickest possible time. With the march of modernization of enjoyment of all the amenities and privileges of life, there has come into play the significant facet of the theme of the entitlement of quick dispensation of justice. The objective of ensuring inexpensive and expeditious disposal of cases has been in the making in the minds of the legal luminaries in order to do away with the obstructions of belated justice system. We are promise-bound to resolve the events of delayed distribution of justice from our legal system by a thoughtful analysis, vigilant comparison with contemporary legislations of other states and by a massive study of the extensive corpus of sources.

This work entitled ***'Court Administration and Case Management in Bangladesh'*** deals with the various causes of delay which hinder the smooth and timely disposal of cases. And in order to formulate concrete recommendations, this work has also highlights the modern techniques of court and case management. Well-informed scholars and legal intellectuals felt free to spell out that case management is the only means of resolving the problems of delayed disposal of cases. Management fashions the mode of conducting with as much promptitude as there is a schedule of target for achieving the maximum consumption of minimum money, energy and time. Management imparts an essence of confidence in the courts to maintain the fabric of permitted stages of cases for the removal of inefficiency and delay from the start to the end. Backwardness of age-old laws, medieval management methods and non-accountability of the ministerial staffs are primitive of dockets stagnation. So, effective case management has become the crying need of the hour.

A careful scrutiny of the plaint of a case can lessen a lot of time, energy and money. A plaint being the basis of a suit is to accompany the legal requirements. A defective plaint is liable to withdrawal under Order XXIII Rule 1 or rejection under order VII Rule 11 of the Civil Procedure Code. The fact of withdrawal or rejection after the running of the suit for a long period would certainly entail much money, energy and time. Effective case management could ensure a scrutiny of the plaint, so that the same could not run any further without a remedy of its defects.

Service of processes is not satisfactory in our legal system. Delay is caused in the issuance of processes for non-payment of requisite fees, non-sending of the processes to *Nazarat* forthwith and non-distribution of the same effectively to the process server for service, etc. Examination of the served processes is not sometimes duly made forecasting a step for fresh processes. Service return is not presented in the case record in time. The above factors remedy the manner of service of processes and are likely to diminish undue loss of time, money and energy.

It is also seen that several adjournments are allowed for filing of a written statement in spite of the existence of provision of filing the same within two months. In the cases where the interest of the government is involved, the Government Pleaders pray for several adjournments on the ground of their being not supplied with necessary papers for preparation of the written statement. It is also observed with alarm that on a flimsy ground the written statement is not filed. The blame goes both to the Bar and the Bench for not being able to manage the written statement in time. A discipline is necessary in this regard to expedite the filing of written statement with an aid to have a speedy disposal. It also happens that the written statement is not supplied with specific facts of defense as per Order VIII Rule 2 to 8. Proper case management can only enable the direction by the Court to clarify a definite statement of defense and without contesting a case would take a lot of time.

Necessary documents are frequently not deposited with the pleadings by the parties which prevent the framing of issues in time in spite of the provision for framing of draft issues by the lawyers of the parties. The said disinterest

sometimes emanates from the unawareness of the essential matter of controversy. The higher courts very often send back the case on remand for the framing of proper issues for real adjudication of the matter in dispute. Thus the failure of framing correct issues can or in this way hold up a speedy disposal. Effectiveness of management could or have lightened the opportunity to decide the matter of contest by the framing of correct issues and would thereby assist speedy disposal.

The rules relating to discovery, inspection and admission under Order XI and XII of the Code of Civil Procedure are not strictly observed. This defective and unbecoming practice results in the wastage of time and money. Complicacy arises when a case goes for trial without the observance of the rules of discovery, inspection and admission. Preparation of the case removes the surprise before trial. As such if strict management was there, the observance of section 30 of the Code of Civil Procedure would have certainly taken place. The court can compel a litigating party to bear the subsequent cost if at the time of proving the documents are refused or neglected to be admitted on the notice of the court. The said provision is rarely followed. Documentary proof is very much essential for the sound decision of the case. Since the litigating parties are unmindful of their documents they should be directed by the court to file affidavit of documents under Order XI and rule 12 of the Code of Civil Procedure in order to expedite the matter of decision of cases. The court has authority to direct the admission of documents by the parties to enable the documents to be formally proved. This type of direction would minimize time and expenses. Such a direction is rarely found to have been made by the court. Proper case management would ensure the observance of

Order XII Rule 4 of the Code of Civil Procedure in directing the parties to admit the documents on which they rely. It has become a common practice not to admit the documents at all; but invariably the documents get to be admitted by the parties during the cross-examination. Effective case management can diminish the wastage of time and expenses in the proof of documents by way of timely admission of them. Sometimes it happens that certain facts are not disputed, but their admission is necessary to save a lot of time. The provision of Order XII Rule 4 of the Code of Civil Procedure is not seen to be activated by the court as to the admission of fact. Case management provides the realism of saving a lot of time by activating the admission of fact. It so happens that interrogatories are not duly observed as per Order XI Rule 14 of the Code of Civil Procedure. The production and inspection of documents as stated in the pleadings could certainly lessen the length of the litigation. Complicacy ensues when at the time of trial the documents are not admitted without earlier awareness of the parties. The manner of proof of the document may turn a new way as per the objection to the documents when made by the party. Effective case management would lessen the unnecessary wastage of time for the interrogatories. The rules relating to striking out and amendment of the pleadings are not obeyed. Pleadings are often found not to have been happily drafted. The unscientific drafting of pleadings offers to scope of insertion of irrelevant matters within the pleadings. Case management could locate the irrelevance of matters which need to be struck-off an amendment as per direction of the court under Order VI Rule 16 of the Code of Civil Procedure.

It is also found that real assertions and contentions are not represented in the pleading for which delay ensues in the disposal of the cases. Proper case

management would minimize the amendment of the pleadings as per Order X Rule 1 and 2 by the direction of the court. It is also a common practice that amendment is allowed at any stage of the suit in view of Order VI Rule 17 of the Code of Civil Procedure. Such discretions of the court in the amendment of the pleadings should not be leniently used because the same would linger the length of the litigation. It is also found that several new facts are inducted in the pleading affirming a change of character of the suit. Effective case management can only safeguard the lenience of amendment and prevent the undue and unusual longevity of the case.

It so happens that in most of the cases time and date of peremptory hearing is fixed by the *Peshkars* (Bench Assistant) of the courts which leads to abuses and confusion of work. According to the provisions of law it is the duty of the presiding officer that he should himself fix up the date of peremptory hearing so that the total state of files may be brought to discipline. Trial should take place chronologically in reference to the age oldness of the suits. In the absence of management, the daily files may be arranged haphazardly preventing the judges from giving sufficient time to absorb attention to them. Case management would offer such an opportunity of fixing peremptory dates as would appear that such arrangement is not a mere formality but it is to be observed without any exception.

There is a provision for the opening of a case on examination of witnesses as per Order XVIII Rule 2 of the Code of Civil Procedure. Opening of a case is seldom followed in a case which needs to be opened up properly. An advocate should state the case with substance of facts. The presiding officer

should make a note of the opening statement in order to know the statement of which the trial needs to be conducted. If a case is not opened, the party cannot be confined to his original case for the unawareness of the court. Proper case management would show that much time can be saved by the opening of a case.

It is observed that cross-examination frequently extends over a long period which is more that necessary. Effective case management could enable the court to keep the cross examination within a reasonable bound. It is commonly found that courts are not strict enough to keep the cross examination within limits. The Senior Advocates rigorously go in with a practice to continue the cross examination for several days entailing a great loss of time of the court as well as money of litigants. Prevention of needless cross-examination would save a lot of time leading to speedy disposal of the case.

It is frequently found that judgments are not written and delivered in time. Decree should be framed within time which should be exhibited to the lawyers concerned. Effective case management would ensure the disposal of the case with delivery of judgment and framing of decree in time.

Expeditious disposal of cases involves active attention of every presiding officer of the Court. Presiding officer should take upon him the solemn duty of administering justice with due observance of existing provisions of law. It is sometimes found that the court support- staffs harass the illiterate, poor litigants. Adequate supervision of the staffs would minimize the loss of money and time of the litigants by activating speedy disposal of cases.

Effective case management can prevent long adjournments and non-payment of requisite court fees and non-service of processes. The substitution of parties and appointment of *guardian at litem* for protection of the interest of the minors can be safeguarded by proper case management. The unsystematic arrangement of the cause list provides anomaly of works. Effective case management can ensure the system of arrangement of the diary with reference to the congestion of files. Examination and cross-examination of the parties can be subjected to adequate control by means of proper case management safeguarding the delay of disposal.

Keeping all the above principles in mind and for a convenient discussion of the subject, this work has been divided into eight chapters.

Chapter I being the introductory one, deals with the aims and methods of the study. It also discuses the scope and limitations of the work, objectives of the study, research methodology and literature review.

Chapter II relates to the development of the concept of case management. In this chapter detailed discussions have been made on court administration and case management to give the study a proper shape. Moreover, in this chapter, discussions in respect of questionnaire are also made to value the opinions of the respondents.

Chapter III of the study deals with internal causes of delay in the disposal of civil suits/cases. In finding out the different causes of delay, due attention has also been given to find out the lacunae's of cases management

and thereafter the study has drawn suggestions at the appropriate places to overcome the problems.

In Chapter IV deficiency in case management and external causes of delay has been discussed extensively. There are many external causes which badly influence the disposal of cases. Among these, lack of proper supervision; lack of proper working conditions in courts; lack of court/ residential accommodation; lack of libraries; shortage of forms and stationeries; lack of training facilities, etc. have been very carefully discussed in this chapter and at the same time suggestions are also made to overcome those problems.

Chapter V of the work is devoted to delay in appeal, review and revision. It is a fundamental principle of law that there should be an appeal from the decision of a court. As man is not infallible, so no court is perfect and the possibility of a review is a valuable safeguard for justice. At every stage of appeal and review, there is a possibility of causing delay. On the other hand, it is observed that one of the potent causes of delay is the disposal of suits in revision. Interference with interlocutory orders invariably causes delay in the disposal of suit, because either the proceedings are stayed or records of the subordinate court called for by the higher courts. Considering all these points in view in this chapter, specific suggestions have been made for early disposal of appeal, review and revision.

Chapter VI contains importance of case management in execution of decrees. There are some lacunae in the law itself in relation to execution proceedings. Moreover, the presiding judge's unwillingness and other minor causes also hamper the disposal of execution cases. All these along with

suitable suggestions to overcome the situation in detail have been discussed here.

One of the biggest problems besetting in Bangladesh at present is with regard to the arrears of cases pending before the Supreme Court and subordinate courts. In view of the pendency of cases in Bangladesh courts it can be said that if steps are not taken within a shortest possible time to clear the backlog, the judicial administration may collapse under its own weight. So considering the situation, in **Chapter VII** statistical data has been provided and side by side some selected civil suits have been discussed to find out the need of case management in reducing backlog of cases.

Chapter VIII is the concluding chapter. This chapter contains the conclusion of the whole work. In this chapter some suggestions are made to reform the law as well as to build up special awareness among the people and spread the flavour of justice and judicial system among the common people of Bangladesh particularly among its downtrodden citizens.

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GLOSSARY

AC	:	Appeal Cases
AIR	:	All India Reports
BLD	:	Bangladesh Legal Decisions
CJ	:	Chief Justice
CMCA	:	Case Management and Court Administration
CMIS	:	Court Management Information System
CWN	:	Calcutta Weekly News
DLR	:	Dhaka Law Reports
ELCOP	:	Empowerment through Law of the Common People
ILR	:	Indian Law Reports
IT	:	Information Technology
J	:	Justice
JAO		Judicial Administrative Officer
JATI	:	Judicial Administration Training Institute
LAN	:	Local Area Network
PC	:	Privy Council
PLD	:	Pakistan Legal Decisions
SC	:	Supreme Court
WAN	:	Wide Area Network

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CHAPTER I

1. Introduction

1.1 Court Administration and Case Management: Meaning

The problem of court arrears has nowadays assumed alarming propositions. People hear several voices expressing concern about the mounting arrears in all the courts up to the Supreme Court of Bangladesh. Neither increasing the number of judges, nor increasing their salaries will be an answer unless some timely and drastic measures are adopted. Good court administration and especially efficient case management are two necessary pre-requisites for the successful reduction of cases. Good court administration implies systematic filing of the cases and proper record-keeping; subject wise classification of the cases; good monitoring to classify the cases on the basis of the stages they have reached; clearing the docket of 'dead' or moot matters to prevent them from clogging the schedules; monitoring and case-flow tracking to know the status of each case, to know its procedural position, to locate documents and records more easily and to reflect everything in transparency plate; and finally, attaining the above goals by efficient judicial administrators using modern technological facilities like computerization with the assistance from technical hands. Good court administration is necessary for efficient case management which is vitally important for disposal of the suits by trial as well as for settlement of the disputes by Alternative Dispute Resolution (ADR).[1] On the other hand, case management means detailed scheduling of the life and history of the case, after written statement has been submitted, drawn by an early judicial intervention *i.e.* sitting judge's order, forcing active participation of the parties and strict observance of the schedule

[1] Alam, Dr. M.Shah, *'A Possible Way Out of Backlog in Our Judiciary'*, The Daily Star, April 16, 2000, Dhaka, 5

under the court's supervision. Its primary features are the early identification of disputed issues of fact and law, the establishment of a procedural calendar for the life of the case, and a triggering device for available consensual processes aimed at the resolution of the case other than through a court trial. After the identification and narrowing down of the main issues following the separate and then joint case management statement by the parties, with the participation of the trial judge, if and when necessary, the judge will send the case to one of the modes of available ADR.[2] In short, case management includes organizing the cause lists, fixing of cases, categorizing the cases for hearing on the basis of urgency, prescribing time frame, fast tracking etc.

The basic concept behind case management is for the court to become actively involved, early in the case, in analysing the specific issues presented by a particular lawsuit and to work with counsel and the parties to manage the structure of future proceedings to achieve the fastest and most cost effective resolution of the dispute. One of the goals of the case management approach is to structure the pre-trial proceedings of a particular case in a way that will compel the parties to exchange additional information on key issues as early as possible, so the parties are in a continually better position to evaluate those key issues as the case proceeds. By structuring the case in this manner, it is hoped that case management process will facilitate and promote earlier out-of-court settlements.[3] Case management establishes "judicial responsibility for the otherwise substantially party-controlled adversarial preparations of civil cases....[It] is designed to reduce dilatory, frivolous, inefficient and protracted litigation

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[2] *Ibid*

[3] Alam, Dr. M.Shah, *'Enforcing Court-sponsored Alternative Dispute Resolution (ADR) in Bangladesh : Need for Strengthening Legislative, Administrative and Institutional Measures'*, Paper presented on August 7, 2010 at Chittagong, Bangladesh in a Seminar organized by the Bangladesh Law Commission in collaboration with the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS),4

practices and to replace party controlled litigation processes with judge-controlled sequential steps in the life of a civil proceeding."[4]

1.2 Delay and Backlog of Cases

One of the biggest problems besetting our country at present is with regard to the arrears of cases pending before the Courts. When there is a dispute in between the two parties, irrespective of the fact whether it is civil or criminal, it leads to the arousal of passions and which in turn leads to bickering, acrimony and quarrels. It is at this juncture that the Courts come into the picture inasmuch as the said disputes are referred to the Courts for their decision and whenever the decision is handed down to the litigants by the Courts it is binding on them. Thus the reference to the Courts serves as a '*Cathersies*'. Thus the need for speedy justice is prime ordeal for the existence of a civilized society.[5] The problems of delay in disposal and resultant backlog of cases at all tiers of the judiciary, and the prohibitive costs of litigation for the parties, which have been identified as major road-blocks to access to justice, rule of law and smooth socio-economic life, continue to plague our society and polity. In fact, delay in the judiciary of Bangladesh has reached a point where it itself has become a phenomenon of injustice and a violator of human rights. In a society of class differentiation, the lengthy process of litigations, which is adversarial and confrontational in nature, puts the economically stronger party at an advantageous position. Our procedural laws which contain elements and scopes for delay have become by misuse by the party/parties procedurally hostile to the marginalised sections of the people, defeating the goals of social justice.

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[4] Chodosh, Hiram E (*et al*), 'Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process', *New York University Journal of International Law and Politics*, Vol. 30, 1997-1998, Numbers 1-2, 62

[5] Shamim, Justice Mohd., *'How to Clear the Backlog of Arrears of Cases in Courts'*, AIR 1994 Delhi (Journal), 129

Many Commission/Committee was established and main concerns were easing the problems of delay and backlog. They indeed suggested measures for this, but without much success.

In fact, causes of delay and backlog are not generally unknown to the policy makers and the concerned individuals and institutions. What is needed is to go to the historical and socio-economic roots of the causes; to make in-depth study to recommend realistic measures for their eradication; and to take bold administrative steps to implement the recommendations.

There are various causes of delay. No one particular cause is responsible. Delay is the result of many or most of the causes combined, although each cause requires separate treatment for rectification. However, they are so inter-related warranting to be seen in a complex, and therefore, in the present study, a holistic approach is to be made to achieve any tangible result.

1.3 Rationale for the Study

Delay in the disposal of cases is a burning question in Bangladesh like a number of other countries of the world. The problem of delay in adjudicating cases around the world is common and is increasing day by day. It may be mentioned here that on January 1, 2010 a total of 5260 cases were pending in the Appellate Division, 325571 in the High Court Division of the Supreme Court of Bangladesh, and 163822 cases in the District Courts. If we aggregate the total figure, it stands at 1969053 which are pending for disposal in different courts of Bangladesh.[6] If we take into account the figures of institution, disposal and pending of cases, it will be found that the number of institution of cases is more than the actual disposal

[6] *See,* Statement of Pending and Disposal of Cases, prepared by Assistant Registrar-2, Supreme Court of Bangladesh, April 20, 2010

of cases. And as a result, total number of pending cases is rising speedily. Therefore, considering the volume of backlog of cases in different Courts of Bangladesh, overcoming the problem of disposing of suits and cases appear to be the most important challenge in the administration of justice in Bangladesh. To examine and address this problem, a number of committees and commissions have been formed at different times and a large number of written recommendations are still lying for the consideration of the government.

The alarming rate of increase of piling up of cases in courts has attracted the attention of conscious citizens particularly statesmen, economists, members of the civil society and also the people in the legal profession. The problem of causes of delay in Courts has also drawn the attention of the politicians and legislators. At the beginning of the present century, the problem has further changed its avenues, and from the territorial boundary of a particular country it has reached the inner circle of international sentiment resulting in the adoption of various UN documents for the introduction of free, fair and expeditious disposal of cases *vis-a- vis* access to justice.

To ensure expeditious and inexpensive justice we have some procedural laws, *e.g.* the Code of Criminal Procedure, 1898 and the Code of Civil Procedure, 1908 where time limits are available in concluding a trial. But in spite of that the problem is becoming acute day by day. The number of filing of cases is gradually increasing more than their disposal.

1.4 Importance and Impact of the Study

It is an underlying fact that huge backlog of cases hampers the economic development of the country. It puts constraints on the smooth growth of democracy and rule of law. Side by side injustice is established instead of justice. Litigants became furious at times to establish their legal

rights. Procrastination of hearing may sometimes result in injustice, because in an unduly prolonged process, much of the material evidence may perish, as when witnesses die or situations are altered. So, there is a necessity of establishing a healthier environment and congenial atmosphere with access to justice so that the litigants can easily get inexpensive and early disposal of cases and thus bring peace and harmony in the society. Huge backlog of cases turns the wheels of democracy backward, puts barriers on economic development of the country, hampers social mobilization and establish tyranny in a society. Litigation affects the harmony of the society in many ways. It creates hostility between the parties. In Bangladesh, most of the litigations originate from land disputes. A research study has revealed that about 2.5 million operating land litigations including 1.4 million pending cases are clogging the courts annually. This causes a colossal national wastage: about 120 million people are affected by land litigations; almost equivalents to 27 million people are suffering a year. The cumulative amount of money spent to meet the litigation cost is higher than the annual development budget of the country; the total amount of assets of the households under litigation is Taka 115195 million per year; and the annual amount of incidental expenses relating to land litigation is Taka 248599 million.[7] Land litigation causes colossal wastage in Bangladesh. Within the framework of overall politico-economic criminalization, land litigation causes further deterioration of the law and order situation, fuels corruption further, and aggravates the malfunctioning of legal and judicial systems.[8] This view calls for serious and searching look into the whole situation. Moreover, the theoretical discussions and informative perceptions on the

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[7] Barakat, Abul and Roy, Prosanta K, '*Political Economy of Land Litigation in Bangladesh: A Colossal National Wastage*', Dhaka: Association for Land Reform and Development and *Nijera Kori* (2004), 291-292

[8] *Ibid.*, 292

subject are still inadequate and fragmentary in nature and consequently the measures concerning removal of delay and backlog of cases are yet to achieve its goal in national policy system. So, the overall situation of delay in courts prevailing in the country in general and Court management in particular directs the importance of an enquiry into the situation to provide pertinent information to the planners, legislators, policy makers and the like to address the problem from a fresh and realistic perspective. When a speedy and inexpensive justice can be ensured, country's development process will be smoother. It can, therefore, be logically concluded that the present study bears tremendous importance in the context of prevailing situation of backlog of cases in the country.

1.5 Research Methodology

In the preparation of this thesis historical, analytical, empirical and comparative methods are used. To find out the causes of delay and development of the concept of court management historical method has been used. In assessing the effectiveness of existing laws to overcome backlog of cases help of comparative method has been adopted. The study requires in-depth information on the field study. So, the empirical method of social survey is followed for the purpose of the present study. The analytical method has been used to suggest reforms of the existing laws. Moreover, in suggesting reforms, personal discussions have been made with the judges, leading lawyers, academics, litigant public and others connected with the judiciary. Suggestions which are made in the conclusion are mainly the presentation of their considered opinions as will be suitable in the clime and climate of Bangladesh.

1.6 Scope and Limitation of the Study

The study concentrates on finding out the causes of delay in the disposal of civil suits, cases, appeals, revisions and other judicial

proceedings in general and also to find out the defects and weaknesses of Court management system prevailing in Bangladesh judiciary in particular where no research of this kind was conducted before. Since findings that are presented here are based on primary data gathered through questionnaire and personal experience of the researcher, it has limited the scope of a comparative analysis to examine to what extent this backlog of cases is happening in civil courts and how those problems are being solved in the advanced countries. Since the backlog of cases are related to the litigant peoples and since most of the litigants are illiterate and since the delays in the disposal of cases are closely connected with the establishment of rule of law and economic development of the country, the study will outline some recommendations to remove delay and expeditious disposal of cases in civil courts and also suggests to reform the existing court administration and case management system to have a speedy judicial system. The backlog of cases also exists in the criminal courts which are not the subject matter of the present study and this might be a limitation of this study.

1.7 Literature Review

Delay in the disposal of cases in Bangladesh, like in other parts of the world, is a common phenomenon. Land related disputes in its acute form in many cases force parties to file cases instead of taking privileges of traditional mediation system run by village elders/village courts. The prime causes of land litigation, in short, are two folds: opaque and inconsistent laws relating to land management, and malfunctioning of the authority responsible for land management. And the related factors acceptable for land litigation are either due to complex process under judicial or quasi-judicial system and ignorance of the people about land laws, in addition to their obscurity and inconsistency. Corruption of all sectoral people

regarding land dispute resolution irrespective of their nature and type is an important contributing factor in intensifying litigation in Bangladesh.[9]

It is found that possession is the prime factor responsible for land litigation. Conflict regarding possession in fact lies with the registration of land, record correction and record updating. The second cause lies with the sale-purchase and registration. The third is relating to the record of rights, preparation and maintenance of record and title. In fact, irregular record correction leads to irregular enjoyment and possession; irregular registration leads to irregular mutation or record correction and both lead to irregular possession that finally produces three types of litigation: in revenue, for revision of record updating/mutation; in criminal court, due to riot; and in civil court for cancellation of wrong deeds. These three cases/suits have come into action with one piece of land between two parties. Thus three factors are complementary to each other.[10] Other factors like distribution of property among co-sharers, violation of rights of the sharecroppers, mismanagement of vested and non-resident property, illegal demand of title in land etc. cause many civil and criminal litigations.

Therefore, in the context of the present socio-economic conditions an attempt to review some of the major works on 'delay and court management' will, no doubt, build up knowledge- base to see how and to what extent this field has been covered up and what more still remains to be done and what alternatives can better suit the situation in the present circumstances.

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[9] *Ibid.*, 284

[10] *Ibid.*, 285

To find out the cases of delay and to introduce court administration and case management techniques, a few research works have been done. Thus, the literature on the subject relevant to the present work is rather few in number. Some reference books on delay and court management are found in different libraries. But none of them contains adequate information about what our judges, lawyers, litigants, academicians, policy makers and readers desire to know on the topic ***'Court Administration and Case management in Bangladesh'.***

Works which bear much significance and which were relevant to conduct the present study, are briefly reviewed below:

(a) **Manual of Practical Instructions for the Conduct of Civil Cases**: This is the first of its kind which was published in 1935 by H.L. Hindley, Registrar of the Calcutta High Court. In this Manual, the report of the Committee, headed by Sir George Clus Rankin, appointed to investigate the causes of delay in the administration of civil justice has been discussed to some extent. Some suggestions have been made to overcome the delay but the manual is quite silent about disposal of criminal cases.

(b) **Report of the First Law Reforms Commission, 1958**: The Government of Pakistan set up the first Law Reforms Commission in Pakistan in 1958 under the chairmanship of Justice S.A. Rahman, then a Judge of the Supreme Court of Pakistan to examine the causes of delay in the disposal of cases by the courts. The terms of reference of the Commission, among others, were as follows:

(i) to suggest how justice might better and more speedily be done;

(ii) the hierarchy of courts and their powers;

(iii) the structure and discipline of the legal profession;

(iv) the cost of litigation; and other relevant matters.[11]

The Commission recommended quite a number of amendments in the procedural laws with a view to eliminating delay in the disposal of cases. Only a few of its recommendations were accepted. The Government of Pakistan amended the Code of Civil Procedure and Registration Act to give effect to some of the recommendations but soon after the promulgation of the Code of Civil Procedure (Amendment) Ordinance (Ordinance No. XLIV of 1962) it was found that the amendment in the Code of Civil Procedure were not received with approval by the litigant public, the members of the Bar and members of the Bench. So, a Committee was set up by the Government to examine these amendments. On the recommendation of this Committee, almost all the amendments, save a few, were withdrawn by the Government through the Code of Civil Procedure (Amendment) Act, 1962.[12]

No doubt, the report of the Commission is an excellent piece of work of its kind for the first time in Pakistan which gave rise to further research and subsequently the Government of Pakistan set up another Law Reform Commission in Pakistan in 1967.

(c) Government of Pakistan in 1970 published the ***'Report of the Law Reform Commission, 1967-70'***. The Law Reform Commission was set up by Notification of the Ministry of Law and Parliamentary Affairs (Law

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[11] See the *Report of the Law Reform Commission*, Ministry of Law, (Karachi: Manager of Publications, Government of Pakistan Press,1959),1

[12] Zahir, Dr. M, *Delay in Courts and Court Management*, (Dhaka: Bangladesh Institute of Law and International Affairs, 1988), 2-3

Division), Government of Pakistan in 1967. The Commission was headed by renowned legal personality Justice Hamoodur Rahman. Its terms of reference as set out in the Notification, were as follows:

(1) To ascertain the causes of delays to which the disposal of cases are known to be subject, and to recommend efficacious remedies for the removal of such causes; in ascertaining the causes and recommending remedies the following matters may, in particular, be considered-

(i) factors inside and outside courts that is responsible for the delay;

(ii) attitude of the litigant public and lawyers towards litigation and its effects on the disposal of cases;

(iii) ways and means by which a continuous check may be exercised over the manner and the speed of disposal of cases; and

(iv) steps in the way of 'Organization and Method' that are needed to improve efficiency in offices of courts.

(2) To suggest-

(i) measures that may usefully be adopted without affecting the quality of justice to remove duplication and over-elaboration in court proceedings;

(ii) steps by which the conciliation procedures may be intended and utilize to secure early determination of disputes in whole or in part; and

(iii) whether and, if so, how, the jurisdiction of courts to try cases summarily may be enlarged.

(3) To recommend ways and means by which competent legal aid may be brought within the means of poor litigants.

(4) To recommend steps to effectively minimize false pleas and perjuries by parties and witnesses in court proceedings.[13]

The Committee submitted its report on 15 February, 1970 and made a lot of recommendations to eliminate delays from both civil and criminal cases but the report is totally silent about recommending any mechanisms relating to court administration and case management.

(d) **'Report of the Law Committee, 1976'**. This Committee was headed by Justice Kemaluddin Hossain. The terms of reference of the Committee were:

(i) to review the recommendations made by the Law Reform Commissions constituted in 1958 and 1967 and the Law Commission of India;

(ii) to suggest the recommendations which, with necessary modifications in the light of the circumstances prevailing in the society of Bangladesh, would best meet its judicial needs.[14]

In reviewing the recommendation and making suggestions, the Committee was required, in particular to consider the following:

(i) the factors responsible for delay in the disposal of cases ;

(ii) the attitude of the litigant public and lawyers towards the disposal of cases;

(iii) the ways and means to ensure exercise of continuous check over the disposal of cases;

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[13] See the *Report of the Law Reform Commission*, Ministry of Law and Parliamentary Affairs, (Karachi: Manager of Publications, Government of Pakistan , 1970),1-2

[14] See, *the Report of the Law Committee*, Ministry of Law and Parliamentary Affairs, (Dhaka: Manager, Government Printing Press, 1976), 1

(iv) the measures, the useful adoption of which, would remove duplication in court proceedings;

(v) the enlargement of the jurisdiction of courts to try cases summarily; and

(vi) the ways and means by which competent legal aid could be brought within the means of poor litigants.[15]

It is evident to us that in preparing the report the Committee were basically depended on the report of the Justice Hamoodur Rahman Committee. Most of the terms of references were borrowed from the earlier Committee. However, the work appears to us as a vast work and on the basis of this work, government enacted Law Reforms Ordinance, 1978. The aim of the legislation was, among others, setting time limit for criminal enquires. But this gives no effective suggestions to avoid delay at different stages of judicial proceedings.

(e) ***'Delay in Courts and Court Management'***, a book written by Dr. M.Zahir, a senior advocate of the Supreme Court of Bangladesh. A Bangladesh Institute of Law and International Affairs (1988) publication, this book is the first attempt in Bangladesh where delay in civil suits and incidentally to observe the lacunas existing in court management is discussed. The objectives of the study were to search the causes of delay in disposal of cases and to make suggestions. The research work suggested introduction of the concept of court management on an experimental basis at the courts in Dhaka at first. The idea of introducing the original side jurisdiction in the High Court Division to deal expeditiously with commercial cases has also been focused in this work. The study was carried

[15] *Ibid*

out through in-depth information by using structured questionnaire with the help of experienced judges and lawyers. Moreover, personal observations were also given due importance to enrich the study. This research work has revealed that factors responsible for delay in the disposal of civil suits are mainly the tendency to allow frequent adjournments, delay in serving summons and lack of facilities in court etc.

The information presented in this study has been given without any reference to its accuracy of sources which at the first glance may confuse the readers about the originality of the data used therein. The study by its feature neither represents case study nor does it contain specific suggestions to remove delay in civil and criminal cases. By and large, the study contains some basic information about the causes of delay and Court management in Bangladesh. For this defect, the study has failed to have been considered an excellent piece of research conducted by the author.

(f) ***'Report on the Causes of Delay in Disposal of Cases and Recommendations for their Elimination and Better Management of Courts'*** (1989) is the next major work done in this country. The Chief Justice of Bangladesh constituted a Committee in July, 1988 to examine the causes of delay in disposal of cases and suggest ways and means for their elimination, and also authorized the Committee to make the study in respect of the subordinate courts and the High Court Division of the Supreme Court of Bangladesh as well. The Committee was constituted with the Chairmanship of Mr. Justice A.T.M Afzal of the Appellate Division of the Supreme Court of Bangladesh, who was subsequently appointed as the Chief Justice of Bangladesh. Two other Judges of the High Court Division acted as members and the Registrar of the Supreme Court was the Member Secretary of the Committee.

Although the study was not an academic research, it was done by the most experienced Judges who had found out the causes of delay and made some valuable recommendations to eliminate the same. Afterwards on the basis of the recommendations, the High Court Division issued some directives to the judicial officers for speedy trial. The following, among others, were identified by the Committee as major causes of delay in the disposal of cases, namely:

(i) many judicial officers fail to conduct judicial business as per court's time table in consequence of which it adds backlog of cases;

(ii) many judges do not hear the suits on the date fixed in their daily diary and leave the court without hearing causes simply recording such an order that 'the court is busy in other jobs';

(iii) instances are very rear that issues were framed on the very first date in spite of both parties present in court;

(iv) in most suits written statements are not filed within two months as limited by Order VIII, Rule 1(1) of the Code of Civil Procedure etc.

In addition to above findings, the Committee also found out some more causes which put constraints on the disposal of criminal cases, and they suggested means to avoid undue delay in those cases. The Committee also made a lofty attempt to indicate how the Judges could play a pioneering role in the proper management of court by utilizing their court hours. The Committee visited some of the District and *Upazila* Courts to identify the real problems.

The research is, no doubt, rich in its contents and also bears all characteristics of a well written article, but had the committee taken the troubles to incorporate some more basic and pertinent statistical information, the research would have been much wider in the perspective of its analytical frame of presentation.

(g) ***'Recommendations in Respect of Measures to be Taken on Urgent Basis to Ensure Speedy Trial of Cases in Subordinate Courts'*** is another research conducted by the Law Commission of Bangladesh in 1998. The main causes of delay in the eye of Law Commission are short listed as follows:

(i) absence of specialized courts;
(ii) Weaknesses of procedural laws;
(iii) absence of devotion of judges to duty;
(iv) absence of effective superintendence over the judicial system; and
(v) absence of sincere co-operation by the lawyers.

With the identification of causes, the Commission also made commendable recommendations in its reports delimiting specific areas of immediate action.

The recommendations made in the report are written in simple and lucid language. However, the Commission did not consider other causes of delay which hinder the easy way of disposal of cases.

(h) '***Report on Recommendations for Expediting Civil Proceedings'*** is a recent research work conducted by the Law Commission of Bangladesh. At the preamble of the report, the Law Commission stated that

the problem of delay and backlog in the disposal of civil suits and cases has become alarmingly perennial, resulting in unbearable cost and time, and posing serious threat to access of the people to justice. A fresh amending looks at the Code of Civil Procedure, 1908, the Civil Rules and Orders and the Evidence Act, 1872, for the conduct of civil cases have become necessary. The Code of Civil Procedure (Third Amendment) Act, 2003, introduced some mandatory provisions dealing with compensatory cost, revision, adjournments, revival of suits, fixation of suits in daily cause list and others with the purpose of restricting the scope of the parties to resort to dilatory tactics and requiring the courts to follow the provisions to expedite the civil proceedings. Unfortunately these provisions are not being properly followed.[16] Under the circumstances, the Law Commission recommends to undertake some measures, both legislative and administrative, to expedite the proceedings of civil suits. The suggestions which were made by the Law Commission, to some extent, basically touches the internal causes of delay and in fact, it does not made suggestions in respect of court administration and case management in Bangladesh. However, the report is concentrated on to make some amendments in the Code of Civil Procedure and other related laws to expedite the civil suits.

(i) The research titled ***'Political Economy of Land Litigation in Bangladesh: A Colossal National Wastage'*** was jointly conducted by Abul Barakat and Prosanta K Roy in 2004. The book is published by Association for Land Reform and Development and *Nijera Kori*. This is an in-depth research on the political economy of land disputes in Bangladesh. In the book thirty case studies are presented, and from this study the researchers have become able to find out the causes of land litigation in Bangladesh, and at the same time they make some useful suggestions for mitigation. The

[16] The report was submitted on December 30, 2010 before the government with the Chairmanship of Professor Dr. Shah Alam.

book is written on the basis of economic point of view, as a result, it may give some light to researchers.

(j) V.K.Mathur in his book ***'Early Disposal of Court Cases'***(1996) discussed that in order to control unprecedented delay in the disposal of the cases, the only way left out is that the procedure for disposal of cases be simplified so that the cases may be quickly disposed of by the courts. In this book problems relating to simplification of procedure in different Courts have been high lighted and suggestions for simplification of procedure to remove delay and expedite disposal of cases have been mentioned. Some of the causes which are scrutinized in the book are common to our country. It is known that the Code of Civil procedure and the Code of Criminal Procedure and other related laws have been amended in India and for the reason we have some separate problems in the disposal of cases. The book is of such a nature that from it researchers can get lot of information to conduct further studies. Although the book supplies a lot of information about delay in the disposal of suits, but since it is written in the Indian context, it does not deal with Bangladesh situations.

(k) Blackstone's ***'Civil Practice'*** provides the civil litigation practitioner with a comprehensive and authoritative work covering every topic related to civil practice. The book published in 2004 by Oxford University Press. In this book important issues like Alternative Dispute Resolution (ADR) mechanisms and case management techniques have been discussed. The book is worth reading and it will help the researchers to conduct further research. But the book is silent about mentioning the causes of delay in litigation.

(l) Dr. Rafiqul Islam Mehedi in his work ***'Civil Litigation in Bangladesh'*** published by Saquib Mohammad Sadman in 2009 at Dhaka has discussed the principles of civil litigation to some extent; and the matter relating to delay in the disposal of cases has also taken due importance. But the book is to some extent silent about recommending any specific suggestions. However, the presentation falls short of finding out a relation between delay and case management.

(m) ***'Caseflow Management: The Heart of Court Management in the New Millennium'*** is a publication of National Center for State Courts, USA (2004). The main premise of this book is that case flow management is more than just a way to reduce and avoid delay. It is also stated that to reduce and avoid delay, American Courts have developed a set of principles and techniques since 1970s which are referred to as 'case flow management' in the book. The principles relating to case management in civil and criminal cases have been discussed in this book. The presentation of the topics is orderly and resource oriented. For developing a concept on court management suitable for our country, the book can be used as a guide.

(n) ***'Caseflow Management in the Trial Court: Now and For the Future'*** is a book published by the American Bar Association in 1998. In this book emphasis is placed on case management to defeat delay and developing and implementing a court delay reduction program. This research oriented book has highlighted the method of application of the principles of case management. It is again to be mentioned as a good book for further studies.

(o) ***'American Court Management: Theories and Practice'***, written by David J. Saari, published in 1982 by Quorum Books. The book deals with basic concerns of court management. It also discuses theories of court management and the author tried to link those theories and practices in his

book. Moreover, evolution of the meaning of the term 'court management' is also discussed therein.

(p) ***'Hand Book of Court Administration and Management'*** edited by Steven W. Hays and Cole Blease Graham, Jr. and published in 1993 by Marcel Dekker, Inc. (USA). The book consists of twenty five articles written by skilled and experienced scholars to provide an appropriate blend of academic and practitioner perspectives.

Over the above mentioned books and articles there appear some more works on delay and Court management, but practically there is no in-depth study on court administration and case management to form guidelines for the policy makers and thinkers. These inadequacies and shortcomings of different works have prompted me to undertake this research; and it is my firm conviction that my thesis titled ***"Court Administration and Case Management in Bangladesh"*** will contribute a new chapter to the storehouse of knowledge on court administration and case management in Bangladesh. In this work, I have taken care of deficiencies existing in our judiciary for centuries together. This will be virgin product in this field and may be regarded as a creative and original work on civil justice system in reducing delays from the judiciary of Bangladesh.

1.8 Objectives of the Study

It was one of the declarations in the famous *Magna Carta*, 1215 that right and justice shall not be sold, denied or delayed. To British statesman William E. Gladstone (1809-1898), justice delayed was identical to justice denied. In the modern complexities of administration of justice, a party is generally reduced to material bankruptcy and mental brokenness by the

time his case is finally and completely disposed of. These are matters to engage the attention both of the reformers of social and political institutions and the system governing them as well as of the seekers and dispensers of justice. Keeping these points in view, the study is basically designed to find out the causes of delay, their probable solutions and to suggest a timely court management mechanism so that the litigant people can get justice with inexpensive cost and without delay and with this end in view, the study lays particular attention:

(i) to find out the causes of delay in the disposal of cases due to factors inside and outside the courts and suggest ways and means for their elimination;

(ii) to examine the inadequacies leading to lack of case management in courts; and

(iii) to recommend suitable measures for ensuring speedy disposal of cases and better court management.

1.9 Summary of the Chapters

The study is divided into eight chapters. Chapter I being the introductory chapter introduces rationale for the study and reviews the literature linked with the study. This chapter also records the objectives of the study and its methodological characteristics. Moreover, in this chapter scope and limitation along with importance and impact of the study is discussed to some extent.

Chapter II relates to development of the concept of case management. In this chapter, the concept of case management has been generally discussed in the light of development of the notion in the developed countries as well as in the sub-continent. In this chapter detail discussions have been made on court administration and case management

to give the study a proper shape. Moreover, in this chapter, discussions in respect of questionnaire are also made to value the opinions of the respondents.

In Chapter III 'Lack of Case Management and Internal Causes of Delay' is highlighted.

Chapter IV deals with 'Deficiencies in Case Management and External Causes of Delay.' In this chapter attempts are made to high light the points of delay outside the courts and to overcome the problems. Suggestions are made to simplify the procedure to remove delay and expeditious disposal of cases.

Chapter V of the dissertation is related to 'Want of Case Management and Delay in Appeal, Revision and Review.' In this chapter attempts are made to highlight the problems in the early disposal of appeal, revision and review.

Chapter VI is devoted to 'Need for Case Management in the Execution of Decrees'. In this chapter problems relating to disposal of execution cases are analyzed.

Chapter VII of the thesis is entitled 'Delay Reductions and Case Management.' In this chapter, position of case flow management in Bangladesh is discussed with statistical data analysis.

And finally, Chapter VIII being the last one presents the concluding remarks; and annexure contains the set of questionnaire and bibliography and references to the study.

CHAPTER II

2. Case Management in General

2.1 Case Management and Speedy Justice

Judiciary is one of the three organs of the state. The excellence of government depends upon the excellence of its judiciary. Excellence of judiciary depends mainly on the fact whether litigants are getting speedy remedy of their disputes with minimum costs from the courts of law. To get speedy and easy remedy under the legal dispensation is the constitutional right of the people. It is the foremost duty of the state in democracy to ensure speedy disposal of cases and disputes and fair justice.

It is undeniable that with the increase of population there has been a tremendous increase of litigations in Bangladesh. It goes without saying that in our legal system the delay in the dispensation of justice has been a chronic problem. The mounting back-log of cases in almost all tiers of the judiciary among other is the main causes of delay in the disposal of cases. The cause of justice many times is being defeated or frustrated due to inordinate delay. When justice looses its savour people looses confidence in the judiciary and that is the point where lies the peril of the civilization. As such a need is felt for expeditious disposal of cases with inexpensive costs.

Efficient case management and court administration are main factors for giving the litigants speedy remedy with minimum costs. In order to ensure efficient court administration the judges must have the leadership role in properly managing the affairs of their respective courts. The success of the administration of justice in its wider connotation depends on the efficient court administration and management of the courts' business.

Before a case goes on for trial it has to be made ready on completion of various pretrial stages which are done by the court support staffs under the supervision of the presiding judge of the court. Registration of suits and cases, service of summons are usually done by the staff of the *Sherestha* and *Nazarat*. Other incidental matters are also dealt with by them. Thus the working of a court is a chain of process from the beginning to the delivery of verdict in which the judges and members of court support staffs play their respective roles. If the entire chain works well, the entire adjudicatory process goes well giving the desired result meaning thereby the efficient administration of justice.

Article 40 of the *Magna Carta*, provides, 'To no one will we sell, to no one will we refuse or delay, right or justice.' *Magna Carta* created under the reign of King John in 1215 was the '*Charter of Liberties*' which indicates that during that period delay existed in courts and as such the King made the agreement with his people to manage the problem.[1] In the sixteenth century, William Shakespeare in his greatest treatise ***'Hamlet'*** cited laws' delay as a reason for preferring suicide to continuing life. Thereafter, in the nineteenth century, the greatest British statesman William E. Gladstone said, 'justice delayed is justice denied.'[2] Later on in the twentieth century, in 1958, the Chief Justice of the United States of America Earl Warren observed, "Interminable and unjustifiable delays in our courts are today compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundation of Constitutional Government in the United States."[3] Later on in 1998 the

[1] *http*://www.magnacarta-musical trial.com visited on December 14, 2007
[2] Bruce and Allan Zullo (*ed.*), and Kathryn, Zulo comp., *Lawyers' Wit and Wisdom: Quotations on the Legal Profession*, (Philadelphia: Running Press 1995),139
[3] Cited by Nawaz, Chaudhary Hasan, PLD (2004), Journal,12 at 13

Supreme Court of the United States in the case of ***Steel and Picking Co.*** v. ***Citizens for a Better Environment*** [4] opined that the increased case-load of appellate and districts courts was creating a more 'cumbersome system' that ran the risk of "justice delayed, justice denied." The Supreme Court of India has made a critical observation regarding civil litigation: Justice cries in silence for long, far too long. The procedural delay is eroding the faith in our justice system.[5]

Explaining the disadvantages of adversarial system of justice and criticizing the judiciary, the Supreme Court of India, in the case of ***L. Babu Ram*** v. ***Sree Ragunathji Moharaj and Others***[6] observed:

> "It has witnessed a silver jubilee, thanks to our system of administration of justice and our callousness and indifference to any drastic reforms in it. Cases like this, which are not infrequent, should be sufficient to shock our social as well as judicial conscience and activise us to move swiftly in the direction of overhauling and restructuring the entire legal and judicial system."

The short fact, leading to the above case was that the original decree was passed by the Civil Judge, on March 31, 1953 in a suit instituted on August 10, 1950. The judgment of the Allahabad High Court reversing it was given on January 31, 1964. It took nearly eleven years for the High Court to dispose of the appeal before it and then followed an appeal to the Supreme Court by certificate. The certificate proceedings took about four years. It was on January 22, 1968 that the certificate was granted. The

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[4] Certiorari to the United States Court of Appeals for the Seventh Circuit, Supreme Court of the United States No. 96-643, Argued on October 6, 1997, Decided on March 4, 1998
[5] AIR 1988 SC 1208 at 1217
[6] AIR (1976) SC 1734

appeal which came to be filed on the strength of this certificate had then to undergo a period of incubation in the Supreme Court for about eight years before the Supreme Court could get time to take it up for hearing. At long last, the unfortunate and heroic saga of this litigation comes to an end. In deciding the case their Lordship Justice P.N. Bhagwati said:

> "The Indian people are very patient, but despite their infinite patience, they cannot afford to wait for twenty-five years to get justice. There is a limit of tolerance beyond which it would be disastrous to push our people. This case and many others like it strongly emphasise the urgency of the need for legal and judicial reform. A little tinkering here and there in the procedural laws will not help. What is needed is a drastic change, a new outlook, a fresh approach which takes into account the socio-economic realities and seeks to provide a cheap, expeditious and effective instrument for realization of justice by all sections of the people, irrespective of their social or economic position or their financial resources."[7]

2.2 Court Management

Nowadays it is the responsibility of the court to actively control the flow of cases from filing to disposal. For proper running of the court, judges play vital roles in policy making to manage each and every case. The object of court management is to facilitate planning and budgeting, financial management, staff related information and reporting, court inspection, statistics gathering and records management. The success of court management depends on some of the factors, like:

(a) monitoring of each cases from filing to disposal;

(b) consultation among the judges, bar, court support staffs etc.;

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[7] *Ibid.*, 1735

(c) uniform procedures for case processing;

(d) uniform practices in granting adjournments;

(e) supervision of subordinate courts by the higher courts;

(f) reasonable time frame for case management;

(g) updating the court system by adopting modern techniques of case management.

2.3 Case Management

Case management has been defined as 'management of the continuum of processes and resources necessary to move a case from filing to disposition, whether that disposition is by settlement ... dismissal, trial or other method.'[8] It carries a much broader than the terms 'Calendar management', 'docketing', 'case scheduling,' or 'assignment' of cases to judges.[9]

Case flow management is strictly a management process, encompassing all the functions that affect movement of the case disposition. It embodies planning, organizing, directing and controlling these functions. It brings together many resources and functions usually thought of as independent entities such as, the judge himself, the lawyers appearing before the court, the fiscal or public prosecutor, the clerk's office, the probation office, the public defender, the police, the post office, the bar association, and the local legal culture of the community over which the court exercises jurisdiction.[10] Case flow management aims at coordination

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[8] Maurenn M. Solomon, '*Fundamental Issues in Case flow Management*' in Steven W. Hays and Cole Blease Graham Jr. *op., cit.*, 370

[9]. Zahir, Dr. M., '*Delay in Courts and Court Management*' (Dhaka: Bangladesh Institute of Law and International Affairs ,1988),17

[10] *Ibid*

of these interrelated resources in a manner designed to achieve a smooth and continuous flow of case through the court.[11]

During the time of field study it is seen that most courts have achieved remarkable cohesion and effectiveness despite the judges' wide diversity of views. This observation is surprising because it contradicts the idea-often advanced by judges and others that judges are such '*prima donnas*' that it is hopeless to try to get them to work together. Although the difference observed in system of governance do not explain any great part of the statistical differences observed. It is often asserted that certain district courts functions poorly because communication among the judges is poor. Issues purportedly are left unresolved for long periods, management of court is poor, and these courts are thought to function like rudderless ships. During the field study it was further observed that in most of the courts the performance was poor. On the other hand, one court chosen for its generally superior statistics works fairly well in most respects relevant to case processing, despite the fact that the poor relationships among some of the judges cause obvious difficulties. The visit of the researcher to the pilot district courts showed that a great deal of time and emotional energy are lost. Productivity and speed in that court, however, are both satisfactory, apparently because an effective case management system has been in operation for some time. This machinery does not appear disturbed or threatened, in this instance, by the weak-policy making machinery of the court. But that court does have difficulty taking effective action or initiative in new matters of court wide policy.

[11] *Ibid*

In some courts, weak system of court management appeared to seriously impede needed effective action. For the most part, these courts have lost control over their dockets. Because the judges have no tradition of regular meeting or other systematic communication on matters of court policy; there is no machinery, occasion, or opportunity for the court to agree on and enforce policies that might improve matters. In the study area most of the judges remarked that "we rarely see each other", and that "each judge operates as a separate court". They further added "statistics are the last thing on our mind we are trading water."

The weakness of policy-making machinery appears, in itself, to impede action, separate from the difficult questions of determining what action is appropriate. Commenting on problems of this type former Chief Judge of the northern District of Alabama of the United States Seybourn H. Lynne observed, "Nothing is more unfortunate than poor communication among the judges."[12] Former District Judges of Dhaka, Gazipur, and Comilla have given a good deal of thought to this question, and, in their courts, have successfully established traditions and machinery that allow open communication leading to effective policy making. Poor communication and policy making are disastrous when decisive action is needed though some courts seem to have "coasted" successfully for sometime on policies of the past.[13]

The study again reveals that meetings with the judges by the District Judges are not frequently held. Obviously, in the interest of conserving judges time, there should be a presumption in favour of relatively infrequent

[12] Flanders, Steven, *Case Management and Court Management in United States District Courts*, District Court Study Series, (Washington: Federal Judicial Center,1977), 8
[13] *Ibid*

meetings, through a fortnightly meeting of some sort seems desireable. The project districts[14] had achieved success in respect of holding meetings regularly on cross-cutting issues and issues like court administration and case management techniques. The researcher observed great differences in the scope of court-wise policy on administrative matters and case management, and in the extent to which court-wide policy was enforced. Most of the project district courts make a determined effort to ensure roughly comparable practices among judges in such matters as standards of preparation for pre-trial orders, discovery, inspection and interrogatories and expectations regarding stipulations. To establish a set of principles and/or guidelines to manage court and cases by the judges, District Judges can play a vital role. In addition to his diverse management and judicial responsibilities and his position as chief of the district judiciary it is his noble business to prepare the agenda and often determine what issues should be brought to the judges subordinate to him. Sometimes, the Judge-in-charge *Nazarat* helps the District Judge in fixing the agenda relating to court administration and case management.

2.3.1 Elements of Case Management

It has been observed that everyone plays a role and has a responsibility in assuring timely disposition of cases. The judges, who participate actively in case progress decisions; the clerk who maintains the records necessary to track case progress and the lawyers, who are intimately familiar with the details of the case have a set of goal-directed responsibilities to discharge within the concept of case flow management. Through empirical research and observations the American Bar Association

[14] Five pilot district courts namely, Dhaka, Gazipur, Comilla, Rangpur and Khulna are known as project districts.

identified seven operationally oriented elements that are fundamental to a courts' ability to effectively manage case flow. [15] They are:

(a) **Judicial Commitment and Leadership**

Instituting and sustaining a successful case flow management system requires the commitment and effort of the presiding judges. The judges of the court, particularly the chief or presiding judge, set the tone for the organization. If these judges are not committed to the philosophy of court responsibility for case progress, then little will be gained by devising systems for establishing deadlines and tracking cases. Further, it is becoming clear that Supreme Court leadership and support of delay reduction programmes (including programmes to prevent delay) can be of major state wise benefit. Local courts are unable to initiate or sustain such a program on their own may be able to do so with Supreme Court support.[16] Now it is clear that leadership of one or more key judges in the development of case management and delay reduction is essential.

(b) **Consultation with the Bar**

Development and maintenance of an orderly, predictable, and effective caseflow management system that minimizes delay is of mutual concern to the court and the bar. In fact, in some jurisdictions, impetus for development of such a system comes from the organized bar. While final responsibility for development and operation rests with the court, the bar should be an active participant in development and evaluation of the caseflow system.[17]

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[15] Maureen Solomon and Douglas K. Somerlot, '*Case flow Management in the Trail Court: Now and For the Future,*'(Chicago: American Bar Association ,1998) 7
[16] *Ibid*
[17] *Ibid*

(c) Court Supervision of Case Progress

This is an important fundamental principle in case flow management. In practice it means that the court is cognizant of case progress from the time of filing and provides appropriate disposition plans for all cases. These plans comprise events (such as status conferences, mediation, and settlement conferences) appropriate to the characteristics of the individual case: deadlines-associated with completion of key activities or events-long enough to provide sufficient time for completion. In this concept it is said that the Court must actively supervise the progress of all cases from filing to disposition is the foundation of effective caseflow management. It flows logically from the philosophy that the Court is responsible for assuring timely disposition and equally of access to Court processes for all cases. Only through early and continuous oversight of case progress can this responsibility be discharged effectively.[18]

(d) Standards and Goals

Successful case flow management systems have explicit goals and performance standards. The most widely adopted standards are those governing the time for disposition of cases. The system must incorporate three types of standards and goals: overall time standards governing case disposition for each major case classification; intermediate standards governing elapsed time between major case events; and system management standards, concerning such issues as continuances or the annual disposition rate.[19]

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[18] *Ibid*, 11-12
[19] *Ibid*

(e) Monitoring and Information System

A management information system that provides relevant information and demand is a critical component of an effective case flow management system. It is needed for evaluating the performance of the case flow system. Goals, for example, are useless in the absence of an information system that allows easy determination of whether or not they are being achieved.[20] Case flow management information may be categorized as follows:

(i) **Information about case activity** - Usually this consists of aggregate statistics about case filings, volume of motions, dispositions, etc. It is useful descriptively but is not very useful for managing case progress or for evaluating problems or their sources;

(ii) **Information about the case inventory**-This is one of the most important categories of information. The size, status, and age of the case inventory are meaningful measure of the effectiveness of the case flow system.

(iii) **Information about case scheduling** - Since trial date credibility is a key to successful case flow management, it is most important that measures be readily available to show how well the scheduling system provided firm trial dates. This information also shows such things as the volume of continuances requested by the lawyers, rates of settlement of trial date, and the amount of delay caused by continuances.

(iv) **Individual case progress information** - This is the heart of a case flow management information system. A court must be able to track the progress of each case. In particular, it must

[20] Hays, Steven W. and Graham, Jr.(ed.), Cole Blease, '*Handbook of Court Administration and Management*', (New York: Marcel Dekker, Inc.,1993), 376

be able to readily determine the status of each pending case, monitor compliance with event deadlines, detect cases in which delay is accumulating and identify cases that do not have future action dates set.[21]

(f) Scheduling for trial date credibility

One of the most important things in case flow management system is the behavior of the advocates. The court obtains advocate cooperation with the system by making it reasonable, fair rational, and predictable. It is in the area of predictability that trial and hearing date scheduling is critical. Busy advocates have much competing for their time. They give their attention to those cases in which they perceive an immediate need. The court provides the immediacy by setting deadlines and hearing dates that it can enforce and that the lawyers know are credible.[22]

There is no credibility and no sense of immediacy in a system in which lawyers repeatedly are noticed for hearing dates that must be continued because too many cases have been scheduled. Eventually the extent of preparation becomes a matter of playing the odds that the court will be able to 'deliver' on its promise of a trial date or enforcement of a deadline. Obviously, under such circumstances, the system is eroded and eventually is unable to prevent delay. Thus, planning court calendars requires careful evaluation of two things: the number of scheduled cases that will survive to the schedule date; and the number of cases the judges or hearing officers can be expected to handle. Court scheduling of more cases than can reasonably be accommodated is a prime reason why attorneys are

[21] *Ibid.*, 376-377
[22] *Ibid*

unprepared on scheduled dates and why settlements occur much later in the process than desirable. When faced with these situations, wise court managers reduce the size of calendars to give lawyers absolute certainty of being reached as scheduled. This is powerful incentive for preparation.[23]

(h) Controlling Continuances

The proposition that the court must scrutinize continuance requests, grant them only under extraordinary, unforeseeable circumstances and control their length is an essential corollary of the principle of providing credible trial dates. Leniency in granting requests to continue scheduled dates destroys the most carefully conceived case management system. A court that adopts the philosophy of court responsibility of case progress loses control when continuances are obtained easily. As with trial date credibility, the courts' posture on continuances conditions lawyers' expectations and perceptions. This turn affects their propensity to prepare in response to court notices or deadlines. Accordingly, providing trial date certainly and controlling continuances are two of the most important components of an effective case flow management system.[24]

Barry Mahoney, an expert in case flow management, in his book '*Changing Times in Trial Courts*' identifies additional feature that characterize courts that avoid delay. These essential organizational elements are:

(i) effective communication within the organization and between the court and the other justice agencies;

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[23] *Ibid*, 377
[24] *Ibid*

(ii) a detailed set of case flow management procedures that are documental and distributed for reference by system participants;
(iii) a high level of administrative staff involvement in managing and monitoring the case flow system to assure that responsibility for effective case management does not rest solely with the judges;
(iv) education and training for judges and court support staff about the philosophy and techniques of effective case flow management; and
(v) explicit mechanisms for accountability.[25]

2.3.2 Techniques of Case Management

Beyond the philosophical commitment to court responsibility for management, successful courts use specific proven techniques to operationalize the fundamental elements of effective case flow management. Among the techniques that have been most effective for civil cases are the following:

(a) The court creates a monitoring record for each case at the time of filing and monitors timely completion of pleading activity;
(b) An early conference is held (often called a status conference) between a judge ... and the advocates in each case;
(c) Cases are screened for complexity and the time needed for disposition and appropriate events and activities are identified. This is the starting point for 'differential case management'.[26]

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[25] Cited by Hays, Steven W. and Graham, Jr.(ed.), Cole Blease, '*Handbook of Court Administration and Management*', 378

[26] The newest technique for case management whether civil or criminal is '*differentiated*' or '*differential*' case management. Differential case management is an approach to court supervision of case management that recognizes that cases very significantly in the resource requirements (both court and attorney) and time required to reach a just disposition. It facilitates the use of appropriate alternative dispute resolution mechanisms. Early evaluation will disclose suitability for early neutral evaluation mediations, arbitration, or judicial settlement conferences. The earlier a case can be referred to one of these alternatives, the earlier a resulting disposition will occur. By that definition, differential case management requires early determination by the court of two

(d) Deadlines are set for completion of the events or activities. The most effective approach is joint agreement by the judges and lawyers on the amount of time required to complete the activity or prepare for the schedule event;

(e) Cases always have a future action date assigned for a specific activity or event. No case will be delayed due to inactivity because advocates' failure to take required action will be known to the court;

(f) Calendar size is tailored to the number of cases a judge or judges can reasonably expect to dispose of on the scheduled date;

(g) Trial dates are set late in the process, generally after reasonable settlement possibilities or other disposition possibilities have been executed. This offer two benefits:

  (a) it helps keep emphasis on reaching a non-trial disposition; and

  (b) it helps assure trial date credibility because by this time there are for fewer cases left needing to be assigned at trial date, which facilitates calendar planning.

(h) The court continuously monitors the age of the pending inventory.[27]

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things: the level of attorney effort required to prepare the cases for disposition and the amount of court supervision needed for timely and appropriate disposition. The major components of differential case management are:

i. Criteria that differentiate among cases;
ii. Different processing tracks for cases that meet specified criteria with respect to the amount of time and resources needed to resolve them;
iii. Early screening of the cases to determine the processing track to which a case should be assigned; and
iv. Assignment of the case to the track and specification of deadlines for completing the required activities.

[27] Solomon, Maureen M. , *op .cit.*, 378-379

2.4 Case Management in Some Selected Countries

2.4.1 USA

In the United States of America, delay reduction has been one of the primary focuses of twentieth century court reform efforts. To reduce and avoid delay, the United States courts have developed a set of principles and techniques since the 1970s that they refer to as 'case flow management'.[28] Case flow management involves the entire set of actions that a court takes to monitor and control the progress of cases from initiation through trial or other initial disposition to the completion of all post-disposition court work to make sure that justice is done promptly.[29] Case flow management is more than just a way to reduce or avoid delay. In fact, case flow management is the conceptual heart of court management in general. In managing a court, judges should focus first on case flow management. Case management addresses problems of delay or backlog, but more importantly because it is the very foundation of court management. Even if a court is current and has no problem of delay, it should have an effective case flow management program, both as a means to achieve successful general court management and as a key aspect of successful overall court management.

The centrality of case flow management to court management is apparent from a brief review of American court reform efforts in the twentieth century.[30] Not coincidentally, the principle of case flow management were first articulated and tested in the 1970s and 1980s, when court management emerged as distinct profession in the USA.

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[28] Steelman, David C., (*et al*), '*Case flow Management: The Heart of Court Management in the New Millennium*', (Williamsburg Va.: National Center for State Courts, 2004),), xi

[29] *Ibid*

[30] See, Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*, (Williamsburg, Va: National Center for State Court, 1999), Chapters 6-9

The Dean of Harvard Law School Roscoe Pound was the father of court reform in America. In 1906 he presented an article titled ***"The Causes of Popular Dissatisfaction with the Administration of Justice"*** to a convention of the American Bar Association and noted "a wide spread feeling that the courts are inefficient."[31] The most direct causes of dissatisfaction he said had to do with archaic judicial organization and procedure resulting in "uncertainty, delay and expense" that "have created a deep- seated desire to keep out of court, right or wrong."[32] Pound saw the court system as archaic in three aspects:

(a) having a multiplicity of courts,

(b) preserving concurrent jurisdictions, and

(c) wasting judicial resources that could be used to reduce court backlogs.[33]

According to Pound, judicial power may be wasted in three ways: (i) By rigid districts or courts or jurisdictions, so that business may be congested in one court while judges in another are idle, (ii) by consuming the time of courts with points of pure practice, when they ought to be investigating substantial controversies, and (iii) by nullifying the results of judicial action by unnecessary retrials.[34]

Pound was a leading proponent for the creation of the first court reform organization 'the American Judicature Society' in 1913. Although the society focused more on issues such as judicial selection and tenure than on court operations, it helped initiate the movement to create judicial councils as planning and policy bodies for court systems. In addition, the society

[31] Steelman, David C., (*et al*), *op. cit.*, xi
[32] *Ibid*
[33] *Ibid*
[34] *Ibid*

encouraged broader court exercise of rule making power to faster greater coherence in court operations and procedures.[35]

According to Roscoe Pounds' famous recommendations in 1906 to the American Bar Association for court reform came in 1909 from a study committee – ***Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation*** constituted by the American Bar Association and it identified four 'factors' in court reshaping:

- judicial organization ,
- the law of procedure ,
- the means of selecting and tenuring judges, and
- the organization and training of the Bar. [36]

In its report the special committee said:

> "The business, as well as the judicial administration of the court, should be thoroughly organized so as to prevent not merely waste of judicial power but all needless clerical work, duplication of papers and records...thus obviating expense to litigants and cost to the public."[37]

Former President and Chief Justice of the United States William Howard Taft played a steady and important role in judicial improvement by advocating a series of reforms to advance procedural, administrative and caseload solutions. As President Taft had endorsed the judicial code of 1911 that recognized the federal courts. When Taft was the Chief Justice of the

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[35] Robert Tobin, *An Overview of Court Administration in the United States*, Williamsburg, Va: National Center for State Courts (1997), pp.15-16

[36] Cole Blease Graham, Jr., '*Reshaping the Courts: Traditions, Management Theories and Political Realities*' in Steven W. Hays (*ed*), *op. cit.*, p.11

[37] *Ibid*

Supreme Court of USA, the Judges Bill was proposed by him including basic reforms for better caseload management.[38] Later on, the 'Judges Bill' was passed creating the 'Judicial Conference of the United States' with the purposes:

(a) to survey the conditions of business in the federal courts in order that judges may be reassigned according to need;
(b) to submit suggestions to the federal courts for purposes to uniformity and expedition of business; and
(c) to conduct a continuous study of federal judicial practice in order that procedure may be simplified, administration made more fair, and unjustifiable expense and delay eliminated.[39]

As the US President Taft in 1914 in a Law School commencement criticized the federal judicial system and praised the simplicity and flexibility of English court procedure. To remedy the problems of the system, he recommended that reduction of court cases and authority for federal court leaders to redistribute judges to help eliminate backlogs is a must for proper running of the courts.[40] After becoming the Chief Justice of the Supreme Court in 1921, Taft took affirmative steps to reduce backlogs in the court.[41]

The third great leader of court reform in the USA was Arthur T. Vanderbilt who became President of the American Bar Association in 1938 and who created a section on judicial administration. Calling on the leaders of this new section to develop national standards for judicial administration,

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[38] *Ibid*
[39] *Ibid*, 12
[40] See Larry Berkson, '*A Brief History of Court Reform*' in Berkson, Hays and Carbon, *eds*, "*Managing the State Courts: Text and Readings*", (St. Paul Minn: West Publishing, 1977), 8-9.
[41] *Ibid*

he directed that such standards be guided by certain fundamental needs and rights of litigants:

(a) Prompt and efficient treatment of ones' case;
(b) At a reasonable cost;
(c) Represented by a competent attorney;
(d) Before an impartial, experienced judge;
(e) With the privilege of review.[42]

After Taft resigned as Chief Justice of the Supreme Court, Charles Evans Hughes succeeded him who recognized the need for administrative reorganization. In 1939, at his request, congress created the Administrative Office of the United States Courts, which took control from the Department of Justice of all administrative functions for the federal courts, including the compilation of statistical data on the work of the federal judiciary.[43]

When Arthur Vanderbilt became Chief Justice of the New Jersey Supreme Court shortly after World War II, he was able to implement many of his ideas about judicial administration, including establishment of an administrative office with authority from the Chief Justice to carry out the state Supreme Courts' administrative policy. Among the first steps he took, was the appointment of Edward B. McConnell as Americas' first state court administrator in 1948.[44] Other states soon followed this idea.

Although many activities involving the oversight of day-to- day trial court operations were performed by court clerks in eighteenth and nineteenth century America, the idea of a court manager was unheard of

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[42] *Ibid.*, 9-10
[43] *Ibid*, 10
[44] David C. Steelman (*et al*), *op. cit.*, xii-xii

until well into the twentieth century. Ms. Rita Prescott was probably the first person in the country with the title of court administrator of a trial court.[45] The further development of court management profession was stimulated by factors such as uneven trial court performance and growing problems of delay:

> "The issues that gave rise to the still-emerging court management and to recent development in state-level funding and increased state oversight of trial courts were not merely changes in scale (increased caseloads) and procedural complexity. Rather, the accelerated development of the court management profession as a field of practice, with serious intent, resulted from uneven trial court performance within and across states; the chronic under funding of trial courts by municipal and county officials; weak and even corrupt local court management, ever-worsening backlogs, times to disposition and waiting times; and undue and inappropriate interference in trial court functions by local executive and legislative agencies and personnel, many of whom were the primary litigants in the trial courts."[46]

In 1940, Roscoe Pound published '*Principles and Outline of a Modern Unified Court Organization*'. The Institute of Judicial Administration was created in 1952 at the New York University Law School. Its purposes were to pursue academic research on court administration.[47] Reformers often focused on congested court calendars and

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[45] *Ibid.*, xiii

[46] Geoff Galas and Edward Galas, *'Court Management Past, Present and Future: A Comment on Lawson and Howard'*, Justice System Journal 15, No. 2 (1991), 605 at 609

[47] Cole Blease Graham, Jr., '*Reshaping the Courts: Traditions, Management Theories and Political Relations* in Steven W. Hays and Cole Blease Graham, Jr. (*ed.*), *op.cit.*,14

costly, lengthy litigation as targets for change. In 1952, a court administration arbitration program for small claims was established in Philadelphia as a way of reducing unnecessary delays. This program pioneered the case management approach now known generally as alternative dispute resolution.[48]

In 1969, Warrant Burger took office as Chief Justice of the US Supreme Court and took major steps to address the problems of congestion and delay in the courts.[49] First, he called distinguished officials together to plan the training of court managers. The result was establishment of the Institute for Court Management (ICM). Then Chief Justice Burger arranged for the first national conference on the judiciary to be convened in Williamsburg, Virginia in 1971.[50] The immediate result of that conference was the creation of the National Centre for State Courts (NCSC) to promote research aimed at improving court administration in state and local courts.

Court reform was boosted through '*Task Force Report: The Courts*', a report of the Presidents' Commission on '*Law Enforcement and the Administration of Justice*'. The report includes disposition without trial, court proceedings and administration of the courts.[51] The Judges' Bench book was published in 1969 by the Federal Judicial Center. The bench book is a manual that instructs judges on desirable procedures.[52] By the early 1970s, virtually every state in the US had adopted some recommendation of the court reform literature. One of the first studies to confirm the value of a case flow management approach to court delay was a 1977 study based on

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[48] *Ibid.*, 14-15
[49] David C. Steelman, John A. Goerdt and James E. McMillan, *op. cit.*,xiii
[50] See, National Conference on the Judiciary, '*Justice in the State*,' (St. Paul, Minn: West Publishing, 1971), 5
[51] Cole Blease Graham, Jr., *op. cit.*,15
[52] *Ibid*

data from US district courts for fiscal years 1974 and 1975 by the Federal Judicial Center. In that study, the researchers concluded that strict monitoring system on pleadings and discovery within a reasonable time can diminish delay.[53]

The first comprehensive and rigorous national study of delay in state courts was conducted by the NCSC. Thomas Church and his fellow researchers examined civil and criminal cases of 21 State trial courts of general jurisdiction disposed of in 1976. They concluded that:

> The speed of disposition of civil and criminal litigation in a court cannot be ascribed in any simple sense to the length of its backlog, any more than court size, caseload, or trial rate can explain it. Rather, both quantitative and qualitative data generated in this research strongly suggest that both speed and backlog are determined in large part by established expectations, practices and informal rules of behavior of judges and attorneys. For want of a better term, we have called this cluster of related factors the "local legal culture." Court system becomes adapted to a given pace of civil and criminal litigation. That pace has a court backlog of pending cases associated with it. It also has an accompanying backlog of open files in attorneys' offices. These expectation and practices, together with court and attorney backlog, must be overcome in any successful attempt to increase the pace of litigation. Thus most structural and caseload variables fail to explain interjurisdictional differences in the pace of litigation.[54]

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[53] Steven Flanders, *Case Management and Court Management in United District Courts*, Washington D.C.: Federal Judicial Center (1977),1

[54] Thomas Church (*etal*), *Justice Delayed: The Pace of Litigation in Urban Trial Courts*, (Williamsburg, Va.: National Center for State Courts, 1978), 83

As the number and complexity of civil suits filed in the United States has increased, so too has the expense and delay associated with resolving those disputes through the normal processes of the judicial system. In an attempt to reduce the excessive cost and delay of civil litigation, courts throughout the United States are taking a more active role in managing their cases. The United States Congress endorsed this approach in adopting the Civil Justice Reform Act of 1990, when it referred repeatedly in the legislation to the importance of "litigation management" and instructed the courts to manage their cases on an individualized, case specific basis. In response, a number of courts in the United States have established formal case management programs with new rules and procedures which govern virtually all civil cases filed before them.[55]

The basic concept behind "case management" is for the court to become actively involved, early in the case, in analyzing the specific issues presented by a particular lawsuit and to work with counsel and the parties to "manage" the structure of future proceedings to achieve the fastest and most cost effective resolution of the dispute. The process ordinarily begins with the court requiring that counsel for the parties schedule a meeting with one another shortly after the lawsuit has been filed. Counsel are directed to discuss the merits of the case, identify key legal issues, explore ways in which the case can be resolved using non–traditional dispute resolution mechanisms, and explore ways in which the parties can exchange information as efficiently as possible. Counsel are then required to file a written statement summarizing the results of their meeting and to make any

[55] Taylor, Stephen E., '*Case Management in the Federal Courts of the United States of America*', paper presented in the Seminar on 'Case Management and Mediation' on 3 and 4 April, 2000 at the Judges' Lounge of the Supreme Court of Bangladesh organized by the American Center, Dhaka, Bangladesh.

case management suggestions they wish to the court. After that statement has been filed, the court presides over a 'case management conference', at which time the court and counsel attempt to focus on the most important issues presented and determine the most effective and expeditious way of proceeding to resolve them. At this 'case management conference', the court ordinarily will also impose deadlines for the assertion of new claims, the naming of additional parties, the informal exchange of factual information before trial, the filing of motions, and address other procedural matters that routinely occur before trial.[56]

One of the goals of the case management approach is to structure the pretrial proceedings of a particular case in a way that will compel the parties to exchange additional information on key issues as early as possible, so the parties are in continually better position to evaluate those key issues as the case proceeds. By structuring the case in this manner, it is hoped that the case management process will facilitate and promote earlier out-of-court settlements. For those cases where no such settlement is reached, the effective use of case management techniques will enable the court to eliminate frivolous issues and streamline the case so that it may proceed to trial as efficiently and cost –effectively as possible.[57]

The practice of active judicial case management in combination with the utilization of alternative dispute resolution programs has substantially reduced excessive litigation costs and undue delay in the resolution of civil cases in the federal trial courts in the United States. Ninety five percent (95%) of civil cases are resolved without trial. While some cases are

[56] *Ibid*
[57] *Ibid*

disposed of by dismissal or summary judgment under the Federal Rules of Proceeding most of the cases are resolved by settlement. Effective case management tailored to each particular case enables the parties to evaluate their positions sooner and less expensively. The average time from filing to disposition in most federal management the court would be hampered in achieving the just efficient and inexpensive resolution of civil disputes.[58]

Judge J. Clifford Wallace of US Court of Appeals in an international conference suggested that there are three tools for successful reduction of backlog of cases:

The first is to add more judges. The argument is that there are more cases so more judges are needed. As logical as that seems, the argument ordinarily fails. One response is that in many cases it would be far better to train judges to do their work more effectively. But more important, legislatures ordinarily are slow to respond to requests for more judges. And even if it were otherwise, it is doubtful that this tool can be used alone to solve the problem. According to Judge J. Clifford Wallace, the two remaining tools have been successful in combating backlog in all parts of the world-without exception. They are removing cases from the courts and speeding disposition of the cases remaining. These tools are usually referred to as 'alternative dispute resolution' (ADR) and 'case management.'[59] It will be easier to overcome backlog in the court by removing cases from the courts, that is, by resolving disputes pending in court without trial (ADR)

[58] Intante, Edward A., *'Judicial Case Management in the Federal Trial Courts of the United States of America'*, Paper presented in the Seminar on 'Case Management and Mediation' on 3 and 4 April, 2000 at the Judges' Lounge of the Supreme Court of Bangladesh organized by the American Center, Dhaka, Bangladesh.

[59] Wallace, J. Clifford, *'How to Overcome an Unacceptable Backlog'* , Paper presented at the International Judicial Conference, Prague, Czech Republic, May 17-19, 2006, 1

which necessarily reduce the backlog. Thus, by emphasizing ADR society is served in two ways. Firstly, the parties leave more satisfied and relationships can be healed. Secondly, by removing cases from the court, backlog is decreased and more time is available for the cases which must go for trial.[60] The next tool for reducing backlog of cases is case management. Traditionally, the pace of litigation has been determined by the lawyers representing the parties. But too often, it is to the advantage of one or more parties to delay. The lawyers representing the client delay. This is counter productive to court efficiency. Case management transfers determination of the pace of litigation from the lawyers to the judge. In this process, the court takes the charge of the case when it is filed. It sets the schedule for the various case management tasks. The first is a 'status conference.' There, the judicial officer determines what is necessary to prepare the case for an efficient trial. A litigation schedule is filed in the form of an order. A date is set for the next event: either another status conference or a 'pre-trial conference', depending on the complexity of the case. Discovery and motions are regulated and are to be completed at the earliest time. [61] At the pre-trial conference, the parties stipulate to facts and list all facts and issues of law which are in dispute. All foundation questions for exhibits are resolved. A list of witnesses is submitted, including experts. The pre-trial order, which then takes the place of the pleadings, is entered. It sets the date of trial, lists the trial time allotted, lists all witnesses and exhibits, etc. At each event in the case management process, the judicial officer encourages the parties to consider mediation. Merely calling mediation to the attention of the parties often encourages the beginning of successful settlement discussions. If additional assistance is needed, the judicial officer is in a

[60] *Ibid*, 2-3
[61] *Ibid*,4

position to offer suggestions about the use of a mediator.[62] In many jurisdictions, judicial officers and lawyers are voluntarily performing their duties as mediators. But two requirements have proven important. Firstly, it should be court annexed mediation- that is, the mediation is tied to and used by the court. Secondly, mediators need training- whether they are judicial officers or lawyer mediators.[63] Describing the effectiveness of case management in reducing backlog of cases Judge J. Clifford Wallace in his lecture further said that courts now generally have trials in less than ten percent of the case filed. That is for every ten cases filed, one goes to trial.... By the disappearance of 90% of case filed, case management techniques speed up the litigation process of the remaining cases."[64]

2.4.2 UK

In the United Kingdom a Civil Procedure Rule Committee was established according to section 2 of the Civil Procedure Act, 1997, with the power to make rules governing the practices and procedure of the courts. The committee is required , by section 1(3) to exercise its power to make rules 'with a view to securing that the civil justice system is accessible, fair and efficient.' Pursuant to this power, with effect from 26 April, 1999, civil proceedings in England and Wales have been governed by a unified set of procedural rules, the Civil Procedure Rules, 1998.[65] These rules brought

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[62] *Ibid.*,5
[63] *Ibid*
[64] *Ibid*

[65] The objectives of the Rules are:
1) To enabling the court to deal with cases justly.
2) Dealing with a case justly includes, so far as is practicable –
a) ensuring that the parties are on an equal footing;
b) saving expense;
c) dealing with the case in ways which are proportionate –

i) to the amount of money involved;

into effect the proposals for reform of the civil justice system set in the final report on 'access to justice' compiled by Lord Wolf. They embody the most radical reform of civil litigation since the judicature Acts 1873 to 1875.[66] In his interim report published in June 1995 Lord Wolf noted that ...the key problems facing civil justice today are cost, delay and complexity. These are interrelated and stem from the uncontrolled nature of the litigation process.[67]

The important changes constitute the most sweeping and fundamental redesign of civil process in over 100 years. According to the new Civil Procedure Rules, there are three main aspects to the reforms:

(a) Judicial Case Management

The judge is the manager in the new regime. He will be centre stage for the whole action. Previously, lawyers from either side were permitted to wrangle almost endlessly with each other about who should disclose what information and documents to whom and at what stage. Now the judge is under an obligation to 'actively' manage cases. This includes:

- encouraging parties to cooperate with each other;
- identifying issues in the dispute at an early stage;
- disposing of summary issues which do not need full investigation;

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ii) to the importance of the case;
iii) to the complexly of the issues; and
iv) to the financial position of each party .

d) ensuring that it is dealt with expeditiously and fairly ; and
e) allotting to it an appropriates share of the courts' resources while taking into account the need to allot resources to other cases.

[66] Plant, Charles (*ed.*), *Blackstone's Civil Practice*, Fifth ed. (Oxford: Oxford University Press , 2004),2

[67] Access to Justice , Interim Report, 1995, p.5 cited in Slapper, Gary & Keily, David, ' '*The English Legal System*', (London: Cavendish Publishing Limited, 2001), 258

- helping the parties to settle the whole or part of the case;
- fixing time tables for the case hearing and controlling the progress of the case;
- considering whether the benefits of a particular way of hearing the dispute justify its costs.[68]

If the parties refuse to comply with the new rules, the practical directions or the protocols, the judges will be able to exercise discretionary powers. These include:

(i) Using 'orders for wasted costs' against parties (that is, refusing to allow the lawyers who have violated the rules to recover their costs from their client or the other side of the dispute);

(ii) Striking out – parts of the claim;

(iii) Refusal to grant extension of time;

(iv) Refusal to allow documents not previously disclosed to the court and the other side to be relied upon.[69]

(b) **Pre-action Protocols**

Pre-action protocols contain detailed rules for stating the allegations being made and the reason for any denial of liability, and for disclosure of documents. The protocols are intended to enable parties to obtain relevant information at an early stage, and to promote settlement of the dispute.[70] Pre- action protocols have been formulated for clinical negligent, disease and illness, personal injury, construction and engineering, defamation, professional negligence and judicial review claims.[71]

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[68] Slapper and Kelly, '*The English Legal System*', 4th edn., (London: Cavendish Publishing, 1992), 92

[69] *Ibid*

[70] Plant, Charles(ed), *Blackstone's 'Civil Practice*,4

[71] *Ibid*

(d) **Alternatives to Going Courts**

The Civil Procedure Rules, 1998 requires the courts as a part of its 'active case management', to encourage and facilitate the use of Alternative Disputes Desolation (ADR). It is open to the parties, at any stage, to agree to take the dispute (or any part of the dispute) to mediation or some other form of ADR. Furthermore, any party at any stage can refer the dispute, or any part of it to an ADR agency for mediation or some other form of ADR. When approached by a party or an ADR agency with a proposal that ADR be used, the other party or parties should respond within 14 days agreeing to the proposal or stating that they agree that ADR will be or may be appropriate, that they believe it has been suggested prematurely. They should state when they expect it would be appropriate. Alternatively, the other party or parties may agree that ADR is appropriate, but not the form of

ADR proposed (if any). In this case they should state the form of ADR which they believe to be appropriate. If a party does not accept that any form of ADR is appropriate, they should explain why they have adopted that view. This letter should be copied to the other party or parties and can be disclosed to the court on the issue of costs.[72]

Case management of civil litigation is one of the central planks of the Civil Procedure Rules in the UK. In exercising their powers to manage cases, the courts will be seeking to secure the overriding objective of the Civil Procedure Rules of ensuring that case are dealt with justly. Rule 1.1(2) provides that dealing with cases justly includes ensuring they are dealt with expeditiously and fairly, allotting to them an appropriate share of the court'

[72] *Ibid*

resources, and ensuring they are dealt with proportionately bearing in mind factors such as the importance and complexities of the issues and the monetary value of the claim.[73]

Keeping the principles of case management in mind, in the UK, the allocation of the case is determined by taking a number of factors into consideration for disposal of the cases quickly, including:

- the financial value of the claim;
- the nature of the remedy sought;
- the likely complexity of the facts, law or evidence;
- the number of parties or likely parties;
- the value of any counterclaim;
- the amount of oral evidence which may be required;
- the importance of the claim to persons who are not parties to the proceedings;
- the views expressed by the parties; and
- the circumstances of the parties.[74]

Considering the above principles the case are then divided into following tracks:

(a) **Small Claims Tracks:** Any claim which has a financial value of not more than £5,000, except:

- claims of personal injuries over £1,000;
- claims by residential tenants against landlords requiring repairs or other work to the premises with an estimated cost of over £1,000;
- claims for a remedy for harassment or unlawful eviction relating to residential premises whatever the financial value of the claim.

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[73] Plant, Charles (ed.), *Blackstone's 'Civil Practice*, 448

[74] Fafinski, Stefan and Finch, Emily, *English Legal System*, (London: Pearson Education Limited, 2007), 112-113

(b) **Fast Track**

Any claim which:

- falls outside the scope of the small claims track;
- has a financial value of not more than £15,000;
- is likely to be tried in one day.

Claims in the fast track also limit oral expert evidence at trial to two expert fields, with one expert per party in relation to each field.

(c) Multi-track

Any claim which falls outside the small claims track or the multi-track. Therefore, the multi-track is generally used for higher value, more complex claims, (with a value of over £15,000). Most commercial cases will fall within the multi-track.[75]

The exact procedural steps that a case will follow depend on the track to which it is allocated. However, in each of the tracks, the court will provide standard directions relating to disclosure and inspection of documents relating to the case, exchange of statements from the witnesses that each side intends to call to give oral evidence and any reports from experts. The directions in multi-track cases are likely to be more complex and could involve pre-trial reviews or case management conferences.[76]

2.4.3 Singapore

The goal of access to justice forms the cornerstone of judiciaries around the world. In 2006, the Singapore was able to clear 375,000 existing

[75] *Ibid.*,113
[76] *Ibid*

matters out of a volume of 377,000, *i.e.,* a clearance rate of 99%. In 2007, 8046 civil and criminal cases (including appeals) were filed in the Supreme Court. In the same year the number of matters which were disposed of was 8,319. This meant that the Supreme Court clearance rate in 2007 was 103.4% or, in other words, there was no backlog of cases because the number of cases disposed of was greater than the number of new matters filed.[77]

The current situation is far cry from the state of affairs in the past. By the early 1990s the courts had a massive backlog of cases waiting to be disposed of. In the Supreme Court there were more than 2000 pending cases which had been set down for trial but for which trial dates were only available 3 years or more later. There were more than 10,000 inactive cases, some of them more than 10 years old. About 44% of cases took between 5 and 10 years from commencement of disposal. Appeals took a further 2 to 3 years to be heard. Added to these delays were delays in the handing down of judgments.[78]

The problem was tackled decisively and resolved by the Singapore judiciary within 2 to 3 years by the introduction of following measures:

(1) Appointing more judges;

(2) Changing the rules of procedure to empower the courts to be proactive in the management of cases;

(3) Denying adjournments;

(4) Giving hearing dates to moribund cases; and

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[77] Prakash, Justice Judith, '*Making the Civil Litigation System More Efficient*', Paper presented to Delegates at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on January 21, 2009,1

[78] *Ibid.*,2

(5) Expanding the jurisdiction of the subordinate courts in terms of subject matter and the size of monetary claims, and transferring pending cases to them.

As a result of the combined effect of these measures the backlog of cases awaiting trial dates in the High Court was reduced from 2059 in 1991 to 175 cases in 1993. The backlog of cases in the Court of Appeal was similarly reduced from 275 to 71 appeals.[79] Since then, they have introduced many other measures to continue to ensure the efficient deposal of civil cases.

Courts around the world increasingly formulating benchmarks and performance indicator to measure their performance. Singapore is not exception. They recognize not only the importance of maintaining target timelines and benchmarks, but also the importance of having timelines and benchmarks which are in line with international norms. There are three key performance indicators by which they monitor their cases. These three indicators are known as "clearance", "disposal" and "trial date availability."[80]

In Singapore, the courts monitor their clearance rate closely. By clearance rate they mean the number of pending matters disposed of during a period of time as a percentage of the number of new matters filed during the same period. This measures the number of cases entering and exiting the system. The idea clearance rate is 100% annually. In the Supreme Court they were able to obtain a clearance rate of 97% in 2005 and over the last

[79] *Ibid*
[80] Ibid., 3

two years, they improved it to 104% in 2007. This means that the number of cases disposed of in 2007 was greater than the number of new cases filed.[81] They also monitor the clearance rates of the individual categories of cases, for example, writs of summons, bankruptcy applications and civil appeals to the court of Appeal. This allows them to ascertain if there are trends towards a rising number of cases in each of these categories and provides them with early warning signs so that they can take remedial action.[82] Secondly, the Singapore judiciary measures the lifespan of cases. While clearance rate give a quick snapshot view of the overall efficiency of the courts, they do not indicate how long each case takes to clear the system. Therefore, they monitor the development of each case from inception to ensure that the cases which have entered the courts do not remain there for too long before they are disposed of.[83] Thirdly, they set a target of providing trial dates within 8 weeks from set down. One of the causes of their judiciary in the past was the inability of the courts to provide early trial dates for cases. Long trial dates have adverse consequences for everyone. The target of providing trial dates within 8 weeks ensures that cases which are ready for trial have trial dates which are not too far in the future.[84]

2.4.4 India

With a view to keep speedy disposal of cases within the fixed time frame and with a view to implement the recommendations of Justice Malimath Committee, 129th report of the Law Commission of India and the recommendations of the committee on subordinate legislations the Government of India had introduced CPC (Amendment) Act, 1999 (46 of

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[81] *Ibid*
[82] *Ibid*
[83] *Ibid*
[84] *Ibid.*, 4

1999) for amending the Code of Civil Procedure, 1908 keeping in view, among others, that every effort shall made to expedite the disposal of civil suits and proceedings so that justice may not be delayed.[85] The Civil Procedure (Amendment) Act, 1999 was enacted in December, 1999. Thereafter, the Code was again amended in 2002. Some of the important changes introduced by these two amendments are as follows:

(a) One-year time limit for disposal of civil cases;
(b) Only three adjournments to be allowed in a case, costs to be levied on party that tries to adopt delaying tactics;
(c) Empowering courts to fix a time limit for oral arguments, asking parties to file written submissions, if necessary;
(d) Time limit for judges so as to make him accountable- the judges will have to give their rulings within 60 days of the completion of hearing;
(e) Allowing the service of summons through private couriers and the use of fax, e-mail, etc;
(f) Clause to pre-empt avoidance or refusal to accept summons by providing that the person to whom it was issued shall be presumed to have received it even, if the summons is returned with an endorsement that the party is refusing to accept it.

2.4.5 Bangladesh

To examine the most prominent drawback in the present judiciary of Bangladesh that is, lack of proper case management and delay in justice delivery, a number of committees and commissions have been set up and large number of recommendations are lying for implementations in the

[85] Sarkar, Sudipto, (*et al*), *Code of Civil Procedure*, Vol. 1, 11th edn., (New Delhi: Wadhwa and Company, 2008), vi

government records. Even the British rulers of this sub-continent were quite conscious of the seriousness of this problem. They set up a Civil Justice Committee, headed by Sir George Clause Rankin, one of the most eminent judges of the country, as early as 1923, to inquire into the causes of delays in disposal of civil litigation and suggest remedies. After an elaborate examination of the problem, the Committee made its report in 1925. The Committee observed:

> "Improvement in methods is of vital importance. We can suggest improvements, but we are convinced that, where the arrears are unmanageable, improvement in methods can only palliate. It cannot cure. It is patent that, when a court has pending work which will occupy it for something between one year and two years or even more, new-comers have faint hopes. When there is enough work pending at the end of 1924 to occupy a subordinate Judge till the end of 1926, difficult contested suits instituted in 1925 have no chance of being decided before 1927. Whatever be the improvement in methods alone cannot be expected in such circumstances to produce a satisfactory result even in a decade." [86]

The Committee further observed:

> "Until this burden is removed or appreciably lightened, the prospect is gloomy. The existence of such arrears presents further a serious obstacle to improvement in methods. It may well be asked...is there much tangible advantage gained by effecting an improvement in process serving, pleadings, handling of issues and expediting to the stage when parties are in a position to call their evidence when it

[86] Cited by Nawaz, Chaudhary Hasan,, PLD (2004), Journal,12

> is a certainly that, as soon as that stage is reached, the hearing must be adjourned to a date eighteen months ahead or later, to take its place in its turn, for evidence, arguments and decision? Unless a court can start with a reasonably clean state, improvement of methods is likely to tantalize only. The existence of a mass of arrears takes the heart out of a presiding officer. He can hardly be expected to take a strong interest in preliminaries, when he knows that the hearing of the evidence and the decision will not be by him but by his successor after his transfer. So long as such arrears exist, there is a temptation to which may presiding officers succumb, to hold back the heavier contested suits and devote attention to the lighter ones. The turnout of decisions in contested suits is thus maintained somewhere near the figure to the institutions, while the really difficult work is pushed further into the background."[87]

This is suggestive of the surmise that the problem is fairly old and being faced by many other countries with similar conditions and system of justice. But the fact of its being old and all embracing by no means derogates anything from its gravity in terms of far-reaching adverse effects on the civil society. Despite this aspect, however, it must be confessed that no genuine effort seems to have been made to eradicate this evil and, whichever the place, people are still suffering from this malaise. Where sincere efforts have been made with commitment and dedication, like Singapore, the pendency is well under control.

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[87] *Ibid.*, 13

It is universally recognized that the object of court administration and case management is to decrease the delay from the court and in Bangladesh the problem of delays in disposal of cases is as old as its inception and it has taken serious social dimensions with the passage of each day. It has grown in magnitude to an extent that it is not only a cause of serious concern but a problem which, it may be said without exaggeration, is eroding the very system of administration of justice. It has undercut the public confidence in the judiciary and must be dealt with on top priority basis.

After independence from the British, this problem engaged the attention of the successive governments. In 1958, Mr. Justice S.A. Rahman, a Judge of the Supreme Court of Pakistan was appointed as the Chairman of the Law Reform Commission.[88] The terms of reference of the Commission were *interalia* announced as to suggest how justice may better and more speedily be done and to that end to examine the hierarchy of courts and their powers; the procedural law; the *Panchayat* system and their extension to suitable areas; the cost of litigation and other relevant matters.[89] Later on, another Law Reform Commission was set up by notification of the Ministry of Law and Parliamentary Affairs (Law Division), Government of Pakistan, and bearing No. F.12 (13)/67-Legis, dated May 27, 1967 under the Chairmanship of Justice Hamoodur Rahman, a former Chief Justice of Pakistan, to ascertain the causes of delay to which the disposal of cases are known to be subject, and to recommend efficacious remedies for the removal of such cause; in ascertaining the causes and making recommendations on the following matters:

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[88] See, *Gazette of Pakistan*, Extraordinary, Dated 23 November, 1958

[89] See, *the Report the Law Reform Commission 1958-59*, (Karachi: Manager of Publications, Government of Pakistan, 1959),1

(vi) the ways and means by which competent legal aid could be brought within the means of poor litigants.[91]

The Committee submitted its report on October 31, 1976 and observed that there are so many factors which hinder the administration of justice at different stages of a suit.

Delay reduces the chance that justice will in fact be done, and often imposes severe emotional and financial hardship on litigants. It is from this realization that reforms commissions have been established, study and research made, laws amended and various steps taken from time to time to fight the problem. But the problem has not only remained but seems to be overgrowing. Since 1982 structural changes have been initiated by the government in the field of judiciary and laws enacted providing for time-limit for disposal of cases, both civil and criminal. With a view to improving the case management system and minimizing delay, the Code of Civil Procedure was amended in 1983. But the condition has been remaining unchanged. The need to find a solution to this growing problem has engaged the attention of law-makers, judges and all other people connected with the administration of justice and keeping the situation in mind, the Chief Justice of Bangladesh constituted a Committee in 1988 with the chairmanship of Justice ATM Afzal, a Judge of the Appellate Division (later on the Chief Justice of Bangladesh) of the Supreme Court of Bangladesh. The terms and conditions of the Committee, among others, were to find out the causes of delay and to recommend the means and methods of better court management in Bangladesh. The Committee visited different judgeships to make an on the spot diagnosis as to the general and

[91] *Ibid*

(i) factors inside and outside courts that are responsible for the delay;

(ii) the attitude of the litigant public and lawyers towards litigation and its effects on the disposal of cases;

(iii) ways and means by which a continuous check may be exercised over the manner and the speed of disposal of cases; and

(iv) steps in the way of 'organization and method' that are needed to improve efficiency in offices of courts.[90]

The Commission was also empowered to recommend on such causes and suggest measures to simplify the court proceedings.

After the independence of Bangladesh, the Law Committee was constituted by Resolution No. 312-Law, dated April 5, 1976 under the Chairmanship of Justice Kemaluddin Hossain (later on the Chief Justice of Bangladesh) to consider the following:

(i) the factors responsible for delay in the disposal of cases ;

(ii) the attitude of the litigant public and lawyers towards the disposal of cases;

(iii) the ways and means to ensure exercise of continuous check over the disposal of cases;

(iv) the measures, the useful adoption of which, would remove duplication in court proceedings;

(v) the enlargement of the jurisdiction of courts to try cases summarily; and

[90] See, *Report of the Law Reform Commission, 1967-70*, (Karachi: Manger of Publications, Government of Pakistan, 1970), 1-2.

common causes of delay in disposal of cases. To that end, the Committee examined and scrutinized the diaries and records of various courts, particularly, the records of more than one year old pending cases.[92] It also interviewed the judicial officers and members of the Bar Associations concerned and subsequently filed its report on 30 June, 1989 with a set of recommendations. The report was an exhaustive one and prepared on practical experiences but the government did not take any positive steps to implement those recommendations.

Law Reforms Commission was set up on 15 January, 1990 with the Chairmanship of Barrister Asrarul Hossain. The Commission in its report stated that delay causes in the subordinate courts as because the judges do not follow the provisions laid down in the Civil Rules and Orders (Volume I) in respect of rising *ejlash* and arrangement and maintenance of cause list and court diary.[93] The Commission felt necessity of increasing number of judges and filing up of vacant posts of judges immediately for quick disposal of cases.[94] The report further discloses that the Code of Civil Procedure is itself responsible for causing delay in the disposal of civil suits. The provisions relating to production of documents, commission report, filing miscellaneous cases, preparation of the cases for peremptory hearing etc. are causing delay everyday.[95] Referring example of the United Kingdom, the Law Reforms Commission in its report mentioned that there is no need of recording deposition of the plaintiff after filing the plaint. The plaint must be accompanied by affidavit and if the defendant fails to show

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[92] See, *Report on the Causes of Delay in Disposal of Cases and Recommendations for their Elimination and Better Management of Courts*, (Dhaka: Government Printing Press, 1989), 2
[93] *See*, Unpublished Report of the Law Reforms Commission, 1990, Vol. I, 26
[94] *Ibid*
[95] *Ibid*., 52

sufficient reasons of his defence the court instantly pronounce judgment.[96] If any party filed false affidavit then the court has ample jurisdiction to punish the said party. In the existing traditional system both the plaintiff and defendant are examined, that is, their examinations- in- chief and cross examination are being recorded by the courts. It causes huge backlog of cases. To simplify the procedure, the Commission in the report recommended that actually there is no need of recording the examination- in -chief of the plaintiff and defendant as because their statements have duly explained in their respective pleadings. To shorten the procedure, the Commission suggested only to record the cross examination of the plaintiff and the defendant.[97] To make the Civil Procedure Code up-to-date it needs a thorough revision. The Commission in the report stated that there is no need of keeping the existing provision of drawing of decrees. According to them it takes a lot of time to execute the fruits of the judgment. In the report it is stated that in the UK, the system of drawing up of decree has been abolished. If the legislature takes positive steps to abolish the present system then the decree holder will be able to execute his judgment quickly.[98] Finally, the Commission recommended simplifying the provisions of Order XXI of the Code of Civil Procedure which takes a long time to execute a decree.[99]

The Law Commission of Bangladesh was set up in 1996 with the objectives *inter alia* to recommend necessary reforms for modernization of the judicial system and to recommend modernization of various aspects of court management, such as, distribution of works among judges, supply of

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[96] *Ibid.*, 53
[97] *Ibid*
[98] *Ibid.*, 52
[99] *Ibid.*, 55

copies, transmission and preservation of records, service of notices and other relevant matters etc. In 1998 the Law Commission conducted a research work for speedy disposal of civil cases in the subordinate courts. The main causes of delay in the eye of Law Commission are short listed as follows:

(a) Absence of specialized courts;
(b) Weaknesses of procedural laws;
(c) Absence of devotion of judges to duty;
(d) Absence of effective superintendence over the judicial system; and
(e) Absence of sincere co-operation by the lawyers.

However, the Commission does not propose any mechanisms for disposal of the civil cases smoothly.

On 3 and 4 April, 2000 the American Centre, Bangladesh in collaboration with the Supreme Court of Bangladesh organized a 2- day long seminar on '*Case Management and Mediation*'. In that seminar, the Chief Justice of Bangladesh, Minister for Law, Justice and Parliamentary Affairs, Judges of the Supreme Court, distinguished Judges of USA and other experts in the field participated. In the closing ceremony the seminar made deep understanding and appreciation of and consensus on the following:

1. Bangladesh desperately needs an alternative way out of judicial delay and backlog.
2. Judiciary sponsored ADR especially mediation is a possible way out of delay and backlog.

3. To make any program of pre-trial ADR by early judicial intervention successful or to expedite the trial itself, greater emphasis must be laid on modern techniques of court administration and case management.

4. Trial judge is to play more active role in the preparations of the case and in steering it forward, whether for ADR or for trial, and exercise greater control over the parties in compelling them to move.

5. New laws and rules would be required to enact in order to make case management and judiciary sponsored ADR more comprehensive and all-embracing, but pending that pre-existing rules can be activated and used to manage the cases better.

6. To use the techniques of case management and to have better recourse to ADR for the settlement of family disputes in Bangladesh, a pilot project can be started, assigning 2/3 family courts for the purpose. These courts would basically operate on pre-existing rules.

7. Modern techniques of case management and judiciary sponsored ADR which have been very successfully employed in many countries including the USA have great potentials for fighting delay and backlog in Bangladesh. But that can only be done slowly, phase by phase, demonstrating their great potentials by pilot projects, organizing and motivating concerned people for the task, and ultimately making necessary changes in the law.[100]

With the assistance from the Supreme Court of Bangladesh a special pilot project was then launched in May 2000 to strongly activate the

[100] See, Resolution of the Seminar on *'Case Management and Mediation'* organized by the American Center, Bangladesh at the Judges Lounge of the Supreme Court of Bangladesh on 3 & 4 April, 2000

conciliation clause of the Family Court Ordinance of 1985, the operation of which was to be monitored by an expanded Bangladesh Legal Study Group (BLSG) headed by Justice K. M. Hassan, a Judge of the Appellate Division of the Supreme Court of Bangladesh (later on the Chief Justice of Bangladesh). Pilot family courts were set up initially in the metropolitan cities of Dhaka, Chittagong, Rajshahi, Sylhet, Barisal and Khulna, and later extended to some other major district towns. Special training was arranged for the judges and lawyers as mediators. Extra credits were provided for successful mediation. There were also arranged special motivation and awareness programmes for the judges and the lawyers. In the first two years pilot project brought spectacular success. 83% of the pending cases at the highest and 35% at the lowest were settled by mediation by the family pilot courts, bringing the total number of mediated and settled family cases to 1322, and realising Tk. 4,85,00,309/- from the defendants for the plaintiffs. This is very high success rate by the prevailing standard. Unfortunately, pilot project gradually slackened, due to paucity of judges for exclusive pilot family courts and squeezing of training facilities for the judges and lawyers, this being partly explained by lack of funds and initiative of the authorities.

Pilot family court project has proved that given objective and subjective conditions, proper implementation plan, motivation and guidance, court-sponsored ADR can achieve targeted goals in Bangladesh. Gradual disappearance of the exclusive family pilot courts leading to degeneration of the use of conciliation clause of the 1985 Ordinance to pre-2000 state is also proof enough of the need for conditions to be created for the success of court sponsored ADR.

Primarily inspired by the success of court-sponsored ADR in other countries, and immediately by the success of our own family pilot courts

project, Section 89A was inserted in the Civil Procedure Code in 2003 to introduce court-sponsored mediation in our civil justice system in general. Although there was good initial response from the Bar and the Bench, and some success achieved, ultimately it did not yield expected results. Overall exact statistics are not available, but number of cases referred to mediation and success rate in the mediation is negligible. Field surveys in Dhaka and Gazipur district courts show the number to vary from 0% to 2.5% of the total cases disposed of (field survey reports of these two courts are in detail discussed in Chapter VII of this thesis). Mediation clause was also incorporated in 2003 in Money Loan Court Act with further amendment in 2010 to make the reference to mediation mandatory. Results of ADR inclusion in Money Loan Court were better, and are expected to improve further, after the latest amendments.

It is abundantly clear that section 89A of the Code of Civil Procedure is not achieving its goal due to voluntary nature of both the reference by the judge to mediation and the acceptance by the parties of the mediation option as well as the absence of planned and targeted national plan for mediation and the institutional arrangement for its implementation. It is also observed that though different steps have been taken by the government to expedite the trial procedure in Bangladesh, but in the long run the reports do not see the light of the day. Neither the Bar nor the judiciary is still aware of the advantages of mediation. Today, in the prevalent justice delivery system, something has to be done to overcome the delay in disposal of cases, clear the backlogs and reduce the costs of litigation. ADR is now accepted to be a tool for speedy resolution of civil cases at less cost with a win-win outcome for all the parties involved.

2.5 Computerization of Courts and Case Management

The traditional justice delivery system and the legal procedures in the court of Bangladesh are very complex and it has made the whole judicial system to be a delayed one. If one takes a sincere and impartial look at the alarmingly high rates of case flow and the backlog of cases in the courts of this country one will see a situation that can only be described as 'pathetic'. Although there are a number of reasons behind this mammoth problem, the real culprit is the age old and inefficient management system. The whole management system is captured by intricacy. Lack of adequate resources and misuse of available resources are two major reasons behind administrative mismanagement in the courts. Delays and backlogs are caused by a variety of other reasons including cumbersome and abused court procedures, snail paced investigation process, lack of proper case load and case flow management system and most importantly an outdated office technology that does not support using of modern management information system.[101] Therefore, it is inevitable to introduce the modern information technology based court management system to strengthen and reinforce the justice delivery system.

2.5.1 Installation of Court Management Information System (CMIS) and Case Management and Court Administration (CMCA) Reforms

In its fifth five year plan (1997-2002), Bangladesh recognized the significance of a well functioning legal and judicial system and the government then made it an issue to make the civil justice system more effective, efficient and accessible. A six- year reform project called the 'The

[101] Parvin, Khaleda, *'Court Management Information System (CMIS) in Bangladesh: IT as a Tool of Justice'*, in JATI Journal, Vol. VII, May 2008, 70

Legal and Judicial Capacity Building Project' (LJCBP) was launched in January 2001 to upgrade country's civil justice system with the help of World Bank and other international development agencies. An important objective of LJCBP was to provide the judiciary a Computerized Court Management Information System (CMIS) along with upgrading its office technology.[102] In order to overcome the existing challenges of the judiciary and to modernize the judicial administration it is vitally required to provide for a Court Management Information System (CMIS). The CMIS consists of 'case management module' to facilitate case filing, monitoring, scheduling and tracking as well as caveat matching; to facilitate planning and budgeting, financial management, staff-related information and reporting, court inspection, statistics gathering and records management. The CMIS is also consisting of 'Law and case-law retrieval module,' to facilitate access to the legislation and the case law database.

Under the LJCBP a CMCA model for the Supreme Court and five pilot district courts namely Dhaka, Gazipur, Comilla, Rangpur and Khulna were introduced. Three new sections, IT, Liaison and Court service were established in the Supreme Court and Local Area Network (LAN) were also set up in the Supreme Court and five pilot districts. In the stage-I, a central filing office was established in each of those five pilot districts and all civil cases were being filed in one place. Filing case records as well as daily cause lists were regularly being entered in the computers till the end of 2008. Five judicial administrative officers (JAO) were also appointed to look after the works of the central filing sections.[103] In the stage- II, it was

[102] *Ibid.*,71

[103] It is to be noted here that for filing of the civil suits smoothly and systematically in one place, Justice Hamoodur Rahman Commission and Justice Kemaluddin Hossain Committee in their

proposed to roll out the CMCA reform in 19 districts. At the beginning, five resident information technology experts were posted in five districts, namely, Rajshahi, Chittagong, Sylhet, Barisal and Mymensingh. LAN was set up in those district courts and resident information technology experts worked on data entry and inventory for CMIS software for a couple of months. In the stage- III, by 31 December 2008, when the project ended, LAN was setup in 24 districts under the supervision of the Ministry of Law, Justice and Parliamentary Affairs. New computers were also supplied in those courts but not all the judges were provided with one. An IT expert was in charge of setting up the LAN and train the staffs who would be responsible for entering daily cause lists and other data's into the database in those districts. Things had been going well as long as those experts were there and for a limited period of time after their departure.

According to the plan and objectives of the LJCBP, this automation process was designed to develop a CMIS that would upgrade the capacity of judiciary in regard to case load management and ensuring fast access to records. It was also intended to open new horizons of information technology to judges and their staffs of the Supreme Court and the district courts. The system was expected to dramatically increase the pace of the case management and court administration system.

2.5.2 Present Scenario of CMIS and CMCA Reforms

The LJCBP was ended in 2008. No evaluation report has been published yet by the World Bank. To follow the implementation process and the impact of this extravagant project on the judiciary, each and every

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reports recommended to appoint an officer not below the rank of Subordinate Judge (now Joint District Judge)

court had to be contacted separately and information about the present condition of the LAN set up and other equipments in those courts had to be gathered by asking the officers, mostly the district judges. The present picture of the so called automation of the case and court management system of the judiciary in Bangladesh is really frustrating. Nowhere in the pilot districts is the CMIS or CMCA working presently. Not a single district has been found except Gazipur, where the system continued to work till the end of the project. All the project activities were stopped at the end of 2008 and the post of JAO was also abolished. Nobody seems to know whether the LAN setups in those districts are still in working condition or not. A lot has been said about installing the CMIS in the Supreme Court. The only visible change is that the Supreme Court now has a website of its own albeit very little useful information to offer. There are only four judgments in the judgment archive of the website. The links for the cause lists for both the divisions are grossly inadequate as well. Considering the number of cases and the workload, the website has virtually nothing to offer to a concerned lawyer or a client. Thus, it can be fairly said that the apex court of this country has also failed to meet the expectations to become a pioneer in establishing a functioning court and case management information system.

Although the much hoped legal and judicial capacity building project has miserably failed to establish a functioning CMIS and CMCA system in the Supreme Court and the subordinate courts, another ambitious project titled 'SICT' has already been started to build a country-wide ICT infra-structure to ensure access to information by every citizen to facilitate empowerment of people, under the supervision of the planning division of the Ministry of Planning, Government of Bangladesh. The Supreme Court is also included in it as a sub-project and the implementation of the project

has already begun. All eyes are eagerly set to the successful completion of the project and to see a meaningful change in the present hapless situation regarding automation. But, for now, the much talked about automated CMIS and CMCA in the courts of Bangladesh is nowhere to be seen. Now we want to discuss some other factors relevant to the activities of the project which are given below:

(a) Project Activities in the Pilot Districts

Dhaka, Gazipur, Comilla, Rangpur and Khulna were under the Capacity Building Project of the World Bank. Several trainings and field study were conducted from 2001 in these districts. The project activities truly ran from 2007 and continued at the end of 2008. Within these two years a central filing system was developed where all cases were first instituted centrally. An officer in the rank of Joint District Judge was appointed as Judicial Administrative Officer (JAO). He was responsible to supervise the central filing system. All records were preserved under his custody till filing of written statement. After filing of written statement those were distributed to different courts.

The system somehow expedited the service of summons. However, it did not work well because JAO was overloaded with lots of duties, as he was in-charge of copying department and *Nazarat*. Another difficulty was that JAO was not authorized to deal with any interlocutory matters. Thus if the party files any injunction petition before filing the written statement, the record was transferred to a court of competent jurisdiction and after disposal of that petition the record was sent back to JAO. Eventually it delayed the proceedings like earlier system.

Another activity was to insert the daily cause list in computer and hanging up the list on the door of each court daily. Besides this logistic support *i.e.* supplying computers and other accessories, development of infrastructure was made under the project. No separate family courts were established under the project. Assistant Judges were dealing with the family cases as well as civil cases. LAN was instituted though it was not activated. All the project activities were stopped at the end of 2008 and the post of JAO was also abolished.

Apparently disposal rate of cases was increased under the project. The reason was that the district was under close supervision and all the post of judges remained filled up whenever those were vacant. Sometimes cases were outright dismissed or rejected in order to show the higher disposal rate though many of those were restored after the end of project. Ultimately total number of cases or ratio of cases remained same before and after the project. Except the structural development, no significant change occurred under the project.

(b) Reasons behind the Failure of the Project

There are a number of reasons behind the monumental failure of installing the CMIS and CMCA segments of the Legal and Judicial Capacity Building Project but these are the most crucial ones:

(i) Absence of proper condition

The way the CMIS and CMCA were introduced in the courts of Bangladesh can be compared with opening a state of the art Cyber Cafe in a remote village of a third world country. Where the majority of the litigants and even the lawyers, judicial officers have no basic knowledge of

computer technology, let alone using it for their benefit, the very idea of introducing these modern systems before educating the potential users was anything but logical. Inadequacies were everywhere. From the training of the staffs, officers and lawyers to building a capable technical support staff who will look after the system and keep it functional. The training of the judicial officers, some staffs and lawyers, conducted by JATI was also flawed in respect of design and method. Keeping the technicality of the newly introduced system in mind, the training courses should have been designed to create a group of people with necessary technical know-how to use the system in a productive way and also takes the responsibility to keep it running. The training courses should have been exclusively CMIS/CMCA oriented; instead it was designed as a part of the syllabus of the regular courses and therefore proved to be useless. The lack of a comprehensive training course played a major part in the demise of this milestone project. What really inexplicable is the failure of implementing such an important objective like training of the judges and staffs to ensure the proper functioning of the newly introduced CMIS/CMCA, even though it was a vital part of the implementation plan.

(ii) Lack of follow up and supervision

There have been no follow up whatsoever from the part of the authority after installing the LAN in the pilot districts and the running of the CMIS. The moment the IT personnel responsible for setting up the networks left, the systems simply ceased to work. No permanent IT personnel were appointed in the pilot districts to look after the system except in the Supreme Court. Therefore, in the absence of proper supervision and permanent technical staffs, the system embraced the inevitable death right at its inception.

(iii) Lack of Accountability

Like many other failed projects in this country, the failure of establishing a functioning CMIS/CMCA system, an integral part of LJCBP is still remained unaccounted for. Nobody seems to care or to have realized the magnitude of the failure. Any official inquiry has not been started yet and more interestingly, there has been no effort from the part of the authority to get a report on the present status of the expensive equipments that were installed in the district courts. The enthusiasm displayed in the beginning promised a lot but the very absence of will and the drive to materialize this ambitious project played a major part in its failure.

2.6 Study of Questionnaire

Replies to questionnaire to the judges, lawyers, academicians, legal researchers, members of the civil society, NGOs, paralegals and many other stakeholders as well as consultations with specialists on the subject and empirical research indicate many causes of delay in the disposal of suits. Major causes of delay and some suggestive remedies are stated below in brief:

1. 52% of the respondents think that lawyers' reluctance is the main cause of not holding trial in time. About 30% who think the parties themselves are not interested attribute this disinterest mostly to lawyers' negative attitude and influence over the parties. More than 60% of the respondents think the apprehension of the lawyers' income being decreased is the reason of their negative attitude towards early disposal.

2. While merely 22% think the lack of initiative and want of case management techniques of the trial judges is the main reason of causing delay. More than 75% think that most of the judges are constantly found reluctant in abiding by the mandatory provisions of Civil Rules and Orders (Vol. I). According to them judges are frequently late in attendance; do not generally sit for judicial work timely; do not deliver judgments in time; hardly takes interest in inspection work; and make delay in submitting statement regarding cases disposed of by them etc.

3. 97% of the respondents think that adequate knowledge, awareness and motivation of the judges, lawyers and parties about the merits and benefits of early disposal of cases accompanied by a strong message convincingly conveyed to all that in the long run everybody would gain in terms of income, or cost of litigation, or time required, and professional excellence, if ADR system be introduced more effectively.

4. 80% of the respondents think that adequate fees for the lawyer-mediators and mediators, and proper incentive for mediation-judges in the form of giving them extra credit or otherwise need to be provided for.

5. Generally mentioning the voluntary character of recourse to mediation as one of the causes of failure, more than 70% of the respondents have suggested not only mandatory reference of the case by the trial judge to mediation, but also mandatory taking of concrete procedural steps by the parties to make the mediation successful.

6. 75% respondents think that there is a need of bringing amendment in the procedural laws for expeditious disposal of cases. According to their opinion for smooth running of the courts, as well as, for case management the provisions of Civil Rules and Orders (Volume I) should be followed by the judges, lawyers and court support staffs.

7. 95% of the respondents think that considering the weekly holiday's court time should be re-arranged and accordingly necessary amendments should be brought in the relevant rules of the Civil Rules and Orders (Volume I).

2.7 Examination of Case Records and Court Diaries

During visits to different judgeship like Dhaka, Chittagong, Rangpur, Gazipur, Comilla, Sylhet, Rajshahi, Barisal and Khulna the researcher examined few case records and diaries of the courts visited and found that five to six suits are fixed for peremptory hearing on each date in the courts of Joint District Judge, Senior Assistant Judge and Assistant Judges Courts. On many dates in a month, such five or six suits are not taken up for hearing and all are adjourned. The grounds for adjournments are always noted in the relevant column of the diary. It is noted that the adjournments are granted on the prayer of the parties or on the ground of the engagement of the court otherwise. But on scrutinizing it is found that actually the court was not engaged otherwise. On few days though several suits/cases were fixed for peremptory hearing virtually no wok was done in *ejlash.*

It is also found that two to four or more than that suits/cases are fixed for *ex parte* disposal by many of the courts but most of them are adjourned

without any explicable reason. Suits/cases are found to be fixed for *ex parte* disposal for even years together; one suit was dragged for more than six years from the date it was first fixed for *ex parte* disposal. It is again observed that after *ex parte* deposition was taken final order was not passed for years together in several cases in Dhaka Judgeship.

Suits and cases are fixed for peremptory hearing without any planning. Mostly, the *Peshkars* fix the date. Courts do not give any personal attention in fixing peremptory hearing dates and as such mismanagement happens in the planning of diaries of courts. Number of witnesses examined in each day is not noted in the diaries of several courts. The *Peshkars* or even the presiding officers are not aware of the rule of notice of this fact in the diary.[104] Trial and hearing are taken up in a piecemeal manner. Ready suits/cases adjourned after examining only one or two witnesses. During the study the researcher found that in an Assistant Judges' Court at Dhaka the court has been taking the deposition of PW-1[105] since 2006 and always adjourning the hearing of the suit without any cogent grounds. Judgments are not always delivered within seven days from the date of hearing arguments.[106]

During the time of examination of records it was found by the researcher that some columns of the diaries of few courts were found blank and the presiding officer put his signature in spite of these blank columns. It was also observed that in some cases, unusual delay is caused at the service

[104] Rule 12(6) of the Civil Rules and Orders (Volume I) provides that the number of witnesses examined in each case shall appear in the appropriate column of the Court Diary
[105] 'PW' stands for plaintiff witness
[106] Order XX of the Code of Civil Procedure,1908 provides that the court, after the case has been heard, shall pronounce judgment in open court, not beyond seven days, of which due notice shall be given to the parties or their pleaders

of summons stage and dates after dates are fixed for service return. Even two/three years passed for service return. The courts do not take any measure to check this. In some cases, summonses are not returned from *Nazarat* to the issuing courts for month's even years together though the returns were received in *Nazarat* within reasonable time.

The Researcher interviewed the District Judges and other Judges of Judgeships visited. According to them, delay caused mainly due to adjournments taken by the parties and their lawyers for their own interest. Bar becomes hostile if the judge is strict as regards granting of adjournments and sometimes bar takes resort to boycotting the court. Lawyers and parties attend court at 10.00 -11.00 am and as such judicial work cannot be taken up at 9.30 am.[107] Lawyers are reluctant to attend court after recess. Interlocutory matters increased manifold and a considerable time is spent for the hearing of such matters and as such no sufficient time can be made available to take up hearing of the regular suits and cases.

They further said that filing also increased and it is not possible to cope with the increased number of cases with the present strength of judges and as such supporting staff is to be increased. Stenographers are provided to all judges including Assistant Judges. There is scope for improvement of service condition. In order to give incentive to the judges to do more work the service condition in general should be improved.

The researcher interviewed some of the senior advocates and according to their views the main reason for the decrease in the disposal of

[107] Rule 1(i) of the Civil Rules and Orders (Volume I) provides that the ordinary hours of sitting for all courts on week days except Fridays and Saturdays, shall be from 9.30 am to 4.30 pm with an interval (not exceeding half an hour) at about 1.30 pm

cases is in non-utilization of the full working hours by courts. Judges work in the *ejlash* for mostly only two to three hours on the average instead of six hours as fixed under rules of Civil Rules and Orders (Volume I). The Judges normally take their seat for judicial work at about 11.00 am and continue up to 1.00 to 2.00 pm. In most cases, judges do not take up any work in the *ejlash* after recess *i.e.* after 2 pm. The senior advocates opined that judges are over-burdened with their files. The number of judges should be increased in proportion to the number of cases. The advocates opined that besides this efficiency question, courts' work decrease due to lack of proper and effective supervision. Many deficiencies can be removed if the District Judge regularly supervises the works of the courts of his judgeship and if the Judges of the High Court Division periodically supervise the works of subordinate courts. Delay at summons stage and at other stages prior to the stage of peremptory hearing can be effectively checked if the presiding officer takes the pain of regularly supervising the work of *Nazarat* and other departments and if they scientifically arrange their diaries and hear the matters pending before them accordingly. At the peremptory hearing stage the delay is mainly due to adjournments which are granted too leniently. The tendency of seeking adjournments can be checked if the judges are stricter on this point. The Bar will appreciate such strict policy regarding adjournments. According to them, there exists lack of experience and efficiency both in the judges and in the staff. The number of staff should be increased. Efficient Stenographers are to be provided to all the judges. Besides the above, service conditions of the judges should be improved and accommodations and other facilities be provided to them.

From the above discussions it is evident that case flow management is the process by which courts move cases from filing to disposition. Court management of case progress as part of an organized, predictable system should assure:

(a) equal treatment for all litigants by the courts;

(b) timely disposition consistent with the circumstance of the individual case;

(c) enhancement of the quality of the litigation process; and

(d) public confidence in the court as an institution.[108]

Therefore, in the conclusion, it may be mentioned that 'case management' has major implications for case processing operations. It requires that the court assume an active role in decisions concerning the progress of cases. At the same time it emphasizes the joint responsibility of court and advocates assuring that all cases are processed promptly for the benefit of the citizens who are the true consumers of courts services. It creates and maintains an orderly, reliable and predictable system designed to facilitate the ends of justice, including prompt and affordable resolution of each case brought to the attention of the courts. So, by accepting the generic principles of case management and mediation and adapting them in our legal system and legal culture, we can successfully attack the backlog of cases.

[108] Solomon, Maureen M., and Somerlot, Doglas K. ,'*Case flow Management*,' *op. cit.*,5

CHAPTER III

3. Lack of Case Management and Internal Causes of Delay

3.1 Justice and Delay

The term 'justice' is not defined under the Constitution or in any statute of Bangladesh. The concept and content of 'justice' has been very aptly and succinctly stated by one of the leading American jurist Hans Kelsen. According to him:

> "Justice is social happiness. It is happiness guaranteed by a social order. The happiness that a social order is able to assure cannot be happiness in a subjective individual sense; it must be happiness in an objective collective sense, that is to say, by happiness we must understand the satisfaction of certain needs, recognized by the social authority, the law givers, as needs worthy of being satisfied, such as the need to be fed, clothed, housed and the like."[1]

The ultimate object of courts being to do real and substantial justice to the parties who appear before them, the law constitutional, statutory, procedural or judge-made is only a means or instrument to arrive at the truth of the cause and do justice by not an end in itself. Justice must not only be done; it must be seen to be done. A court of law is a temple of justice where people go with the hope and belief that justice will be done to them. Justice must be done within a reasonable time as justice delayed is justice denied. However, it should not be hustled, for hustled justice is no justice.[2]

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[1] Quoted by Kondaiah, Justice C., in *'Making Justice Speedy, Effective and Substantial'*, AIR 1976 Punj. (Journal), 98

[2] *Ibid*, 99

In any democratic society, the rule of law has to prevail and it is the *sine qua non* to do the *summon bonum* to the people of the society. Without an appropriate system for administration of justice, of course through the courts of law, the developing efforts of a nation towards social or cultural advancement would not yield tangible results and thereby its economy would surely be forced to stagnate.[3] Nowadays, it is said that the democracy and development go side by side. But in the absence of strong, impartial, independent, quick and dynamic judicial system neither democracy nor development can flourish and sustain.[4] 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 the 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 cases.

'Justice delayed is justice denied' and another maxim 'justice hurried is justice buried' are 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 seems to be denied.

Long drawn pendency of court cases frustrates the litigants and provokes them to be impatient, leading to the tendency to take law in their own hands knowing fully its legal consequences. To find out the causes of

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[3] Badruddoza, AKM, 'Scrutiny of Labour Laws for Speedy Trial of Labour Cases' in Shahdeen Malik (ed.) '*Lacunae in Labour Laws: Towards Timely Disposal of Labour Cases*' (Dhaka: Bangladesh Legal Aid and Services Trust, 1999), 24

[4] *Ibid*

delay in civil suits though is the main aim of the present study, in spite of that to some extent instances of criminal cases will also be discussed to give the study a good shape. Delayed justice in both civil and criminal cases frustrates the consumers of litigation. The researcher on August 17, 2009 was presiding over as a Judge of Metropolitan Special Tribunal No.13, Dhaka and has been hearing Special Tribunal case No. 263 of 2006. The case was filed against the accused under section 19A and 19(f) of the Arms Act, 1878. Before August 17, 2009, on several dates of hearing, the only accused of this case touched the mind of the Judge to hold speedy justice and requested the court to close the trial of the case within the shortest possible time. The court accordingly tried its level best to examine the witnesses. The fact of the case is that the case was started in 2006 but within a span of 4 years time the prosecution side examined only one witness. On August 17, 2009 the prosecution side again filed time petition for calling witnesses. The court allowed the petition. At this stage the accused started to shout demanding quick disposal of his case and without considering the consequences within a moment started to cut his belly and other parts of his body with a small piece of blade very secretly carried by him and tried to commit suicide in presence of the court. The matter was published in '***The Daily Jugantor***' and '***The Daily Amader Samoy***' newspapers on 18.08.09 with great importance. It is to be noted here that the court sent summons and non-bailable witnesses' warrants through the Inspector General of Police to produce the witnesses of the case on the date fixed for hearing. But it is an irony of fate that the police authority did not take any step in this case to make execution of the processes issued by the court. In such situations the court becomes helpless to establish justice and accordingly adjourned the case. In this case the same thing happened.

Right to get speedy justice is the fundamental right of the people of this country but this right is now at stake due to prolonged delay. Therefore, to ensure the rule of law and facilitate the enjoyment of basic human rights, quick dispensation of justice and speedy disposal of cases must be ensured.

In the present chapter, factors inside the courts which are responsible for delay in the disposal of civil suits will be discussed. Since delays are caused at every stage of the litigation, the study shall deal with each stage commencing from the institution of the suit to the passing of the judgment. These stages are:

(1) filing of the plaint;
(2) issue of summons on the defendant and appearance of the defendant, if any;
(3) filing of written statement by the defendant;
(4) framing of issues;
(5) discoveries, inspection, interrogatories, etc.;
(6) settling date for fixing the date of final hearing;
(7) final hearing including production of evidence by the parties and arguments;
(8) delivery of judgment; and
(9) drawing up of the decree.

An uncontested suit need not, however, pass through all the above stages.

A civil miscellaneous case mainly passes through the following stages:-

(1) filing of the application;

(2) issue of notice on the opposite party and appearance of the opposite party, if any;

(3) filing of written objection by the opposite party and fixing the date of final hearing;

(4) final hearing which includes production of evidence by the parties and arguments; and

(5) delivery of judgment.

In the appellate court a civil appeal, whether an appeal from a decree or an appeal from an order is ordinarily required to pass through the following stages:-

(1) filing of memorandum of appeal;
(2) issue of notice on the respondent calling for records from the trial court and appearance of the respondent, if any;
(3) fixing the date of final hearing;
(4) final hearing; and
(5) delivery of judgment.

We want to find out the causes of delay in each of these stages of a particular suit or case and discuss them in some detail.

3.2 Filing of Plaint and Delay

According to the provision of section 26 of the Code of Civil Procedure every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed, and Order VII rule 1 of the same Code deals with particulars to be contained in the plaint. Ordinarily as per provisions of Rule 47 of Civil Rules and Orders (Volume I) the

Sheristadar[5] or in his absence the officer acting as a *Sheristadar* is authorized to receive the plaints. In respect of examination of plaint by the *Sheristadar* in Rule 55(1) of the Civil Rules and Orders (Volume I) it is stated that on presentation or receipt of a plaint, the *Sheristadar* of the court shall examine it in order to find out whether all the requirements of law have been complied with. This examination should be particularly directed to ascertaining, among other things the following:

(i) whether the plaint bears full court fee stamps in accordance with the valuation put upon it;

(ii) whether it has been properly signed and verified (Order 6, rules 14 and 15);

(iii) whether it complied with the requirement of Order 7, rules 1,2,3,4,6,7 and 8;

(iv) whether it is accompanied by the necessary copies of plaint and process fees and draft forms of summons (amended Order 7, rule 9(1-A);

(v) whether the documents attached to the plaint (if any) are accompanied by a list in the prescribed form [Order 7, rules 9(1) and 9(4)];

(vi) whether it is accompanied by the parties address as required by Order 6, rule 14-A and contains the necessary particulars (vide rule 21);

(vii) whether in the case of minor plaintiffs and defendants the requirements of Order 32, rules1 and 3 have been complied with and the necessary application supported by an affidavit

[5] *Sheristadar* is the Chief Ministerial Officer of a Civil Court.

verifying the fitness of the proposed guardian *ad litem* of the minor defendant(s) has been filed;

(viii) whether the suit is within the pecuniary and territorial jurisdiction of the court;

(ix) whether the *Vakalatnama* has been properly accepted and endorsed the Advocate [vide rule 822, and in particular sub-rule (6) of the rule], and whether in the case of illiterate executants, the provisions of rules 821 and 822(4) of the Civil Rules and Orders (Volume I) have been complied with.

Rule 55(2) of the Civil Rules and Orders (Volume I) further describes that the officer examining the plaint is required to certify on the left hand margin of the first page of the plaint the sufficiency or otherwise of the stamp borne and to note the amount of deficiency, if any. A second certificate is to be appended if and when the deficiency is collected. The officer examining the plaint under Rule 55(3) of the Civil Rules and Orders (Volume I) should refer to the presiding judge if he thinks that it should be returned or rejected for any reason it will then be for the judge to deal with the matter.

Paragraph 1 of the *Manual of Practical Instructions for the Conduct of Civil Cases*[6] (*hereinafter* Civil Suit Instructions Manual) states that as soon as the plaint is filed, it should be examined with special reference to ascertain whether:

(i) the requirements of Order 7 rule 1 have been followed;

(ii) the subject matter of the suit has been properly valued; and

(iii) the plaint has been properly stamped.

[6] Issued by the High Court of Judicature at Fort William in Bengal (Appellate Side),1935

If the plaint is defective in any of these respects, the orders of the court must be taken by the *Sheristadar* and the plaintiff should be required to remedy the defects within a period not ordinarily exceeding seven days. Undue latitude should not be allowed to plaintiffs in allowing extensions of time and presiding officer should not hesitate in suitable cases to reject plaints under Order 7 rule 11(c) and (e) of the Code of Civil Procedure in case of non-compliance with their order.[7]

These principles, in fact, are not strictly followed by the courts. Plaintiff does not pay court fees as soon as the plaint is filed. Plaintiff applies for time. Sections 148,149,151 and Order VII rule 11(c) of the Code of Civil Procedure, contains provisions for enlargement of time in respect of payment of the court fees and Paragraph 37(1) of Civil Suit Instructions Manual provide period of time to be allowed. Proviso of Order VII rule 11 allows 21 days to the plaintiff for the correction of the valuation or supplying the requisite stamp paper but paragraph 1(2) of Civil suit Instructions Manual allows 7 days and no time limit is provided in section 148, 149 and 151 of the Code of Civil Procedure in this behalf. In this situation the question is why there are separate time limits for the same purpose? It is for the ends of justice and for the reasons Judges are not rigid to provide time. Experience shows if they become rigid, the plaintiff may apply under section 8 of the Court Fees Act. Under these circumstances, each and every judge moves in their own way. The courts having many cases for trial become very relaxed to provide time and considering the facts and circumstances in few cases they become rigid. Thus the act of one court differs from that of another. A judge, who is rigid, sometimes face boycott of court by the advocates. So, they are reluctant to reject the petition which

[7] *See*, Rule 1(2) of the Civil Suit Instructions Manual

ultimately causes delay in the suit. It has been noticed that after securing *ad-interim* orders like injunctions, etc. the plaintiff is often reluctant to file requisites for service of summons on the defendants.

From the above it appears that due to filing of plaint with insufficient court fees and/or proper requisites for service of summons and then grant of adjournments for payment of deficit court fees causes' negligible delay at the very initial stage of a suit. There are different ways to overcome the problem. First of all the presiding officers should rigorously implement the provision of Order IV of the Code of Civil Procedure. Secondly, more than one adjournment for correcting valuation and/or payment of deficit court fees should be strictly discouraged and in no case, time exceeding the period mentioned in the Proviso to Rule 11 of Order VII of the Code of Civil Procedure should be allowed for the purposes. It is also told by the Interviewees that action should be taken under clauses (b) and (c) of rule 11 of Order VII of the Code of Civil Procedure in case of failure to correct valuation and/or pay deficit court fees in time.

3.3 Service of Summons and Delay

The second stage of a suit is service of summons. A considerable delay is caused at this stage. Section 27, Orders V, XXIX and XXX of the Code of Civil Procedure and Chapter III and IV of Civil Rules and Orders (Volume I) and Paragraphs 5 and 6 of the Civil Suit Instructions Manual deal with the procedure of service of summonses. The procedure itself is all right. The duties of serving summons/processes upon the defendants or opposite parties are entrusted with the process servers of a court. But process servers always do not perform their duties sincerely. It is observed some of the process serving peons submit their report as to service of

summons concealing the facts. In case of service of summons upon the defendants residing in district which has fallen out side the territorial jurisdiction of the trial court, the court is to wait for months together even years together for return of summons because most of the summons comes back without service. In the service of summons of these types the process servers and even Judge- in -charge of *Nazarat* of that district do not show their interest and/or sincerity. For the reason the fate of service of summons depends upon the mercy of *Nazir* [8]or *Naeb Nazir*[9] of the said outside districts. In addition to this, delay in service of summons on the defendant may also be attributed to the following factors:

(i) delay in depositing process fees and filing of copies of the plaints;

(ii) failure of the court's staff to send the summons promptly as required by rules to the *Nazarat* for causing service;

(iii) failure of the *Nazir* to distribute the processes promptly as required by rules among the process-servers for causing service on the defendant;

(iv) disinclination of the process-serving personnel of the courts' administration to proceed for effective service of summons promptly and tendency to return the summon unserved without any ground or on flimsy ground;

(v) the tendency of the defendant to avoid service of summons;

(vi) lack of good communication;

(vii) large number of defendants in certain kinds of cases, such as, partition suits;

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[8] *Nazir* is an upper division clerk and responsible for supervision of the works of process servers regarding service of summons.

[9] Assistant *Nazir* who is a lower division clerk

(viii) lack of attention on the part of the management to serve summons received from other courts;

(x) failure of the *Nazir* to return the summons promptly to the court.

Undue delay in the service of summons due to one or more of the above factors has been one of the causes of slow progress of suits in almost all courts barring very few.

During the course of investigation it was found that no actions were taken by the trial judge or the Judge- in- charge of the process serving establishment against the *Nazir* or process servers to ensure timely steps for proper and prompt service of summons. Regarding the role of *Nazir* in the process of service of summons at Rule 93 of the Civil Rules and Orders it is stated that *Nazir* will be held responsible to the presiding judge of each court at every station for the due and regular service of processes entrusted to him for service by him and his subordinates. The *Sheristadars* of each court have also equal obligation for transmission of received summons from the plaintiff to the *Nazir*. In this respect at Rule 99(1) of the Civil Rules and Orders it is mentioned that the processes in the office must be made over to the *Nazir* if possible, on the same day on which they are filed and not later than two days after their receipt.

Paragraph 5 of the Civil Suit Instructions Manual deals with the obligation of the presiding judges in respect of service of summons. According to this paragraph presiding judges should take steps to ensure that processes are ordinarily sent to the *Nazarat* on the day on which formal orders for their issue are passed and any delay due to the defective

organization of the process serving department should be promptly brought to the notice of the officer- in- charge of the *Nazarat*.

In practice many *Sheristadars* intentionally ignored the above principles of law. Most of them kept those summonses under the heap of bundles of records or in the drawer of their table or any unnoticed corners or even in the waste boxes. If the plaintiff comes to them and made *tadbir*[10] then they take steps for sending those summonses to the *Nazarat* or they shelve those in the dark for an indefinite period. The presiding officers of each court are also reluctant to make any casual or sudden inspections of their *Sheresta* (office) though Rule 887 of the Civil Rules and Orders empowers them to inspect their office suddenly. In 2002, the researcher was posted as a Senior Assistant Judge at Sadar Court of Naogaon district. He was informed from some quarters about the mismanagement of summonses in the *Sheresta* of that court. The researcher made a casual inspection in the *Sheresta* and found, among others, summons of the cases were yet to be sent to the *Nazarat* for service upon the defendants or those which were served but yet to be tagged with the respective case records. Those cases were filed about 8-10 years back. The *Sheristadar* was asked to show cause why he should not be punished for this matter, then he begged unconditional apology. Finally, all of these summonses were disbursed but those cases had been delayed for 8-10 years at the very initial stage of the cases only for the insincerity of the *Sherestadar* and also partly for that of the presiding judges who worked in that court. When this matter was reported to the District Judge, he transferred the *Sherestadar* to another office of the Judgeship without taking any disciplinary action.

[10] *Tadbir* stands for request

Rule 69 of Civil Rules and Orders (Volume I) discourages to serve the summons according to the provision of Rule 17 of Order V of the Code of Civil Procedure. But almost in every case, the process servers serve the summons affixing a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain. Actually the process servers, with some exceptions, without going to the spot prepared reports about service of the summons sitting inside the court premises and almost all the persons connected with the administration of justice know about the fact. Sometimes they engage other persons for this purpose. Though everybody know it, in spite of that, no judges except the District Judge has power to take action against them. If some courageous officers think over the matter and report the same to the District Judge, experience shows that the District Judges become annoyed of the matter and ultimately take no action against that process server or the *Nazir*. Most of the District Judges, as the interviewees reported, thinks that the process serving staffs are their exclusive staffs and the presiding officers of other courts have no authority to take action or to report to him regarding their activities.

In most of the cases presiding officers allow miscellaneous cases filed under Order IX rule 13 of the Code of Civil Procedure for non-service of summons upon the defendant, ordered to set-aside the *ex parte* decree and revival of original suit in its previous file and stage. This kills a lot of time and delays the disposal of original suit and this happens due to the evil work of process servers. But generally it has been observed that no action was taken by the District Judges against the process servers. We have already noticed that except the District Judge other Judges have no power to control and manage the process servers. Even the Judge- in- charge of process

serving establishment has no power to take effective action against the disobedient process servers save and except to issue a show cause notice. Most of the District Judges are very much reluctant to take actions against them due to the fear of mismanagement of staff, though they are under his direct administrative control.

The service of process servers is very important in the scheme of administration of justice. The process server thus plays an important role. A great deal depends on him for safe and speedy dispensation of justice. If he performs his duties honestly, occasions for disputing decisions on the ground of non-service of summons will be rare and this will eliminate delays.[11]On the other hand, if the process server is dishonest and submits false returns in respect of service of summons, the parties proceeded against will be seriously prejudiced and proceedings for restoration of suits and cases on account of non-service of processes will necessarily prolong litigation.[12] It can, therefore, be easily imagined how important the function of a process server is. Unfortunately, the process servers by and large are said to be corrupt. Effective supervision of the work of process servers is, therefore, essential not only for ensuring fair justice but also for expediting disposal of cases. It is generally complained and we have also found on investigation that supervision of the work of the process serving agency is practically negligible.[13] The Judge-in-charge of *Nazarat*, who is also the presiding judge of a court, hardly finds time either to supervise the distribution of processes or to examine the returns submitted by process-servers. He devotes barely a few minutes everyday to this very important item of work and his supervision consists just of signing periodically the

[11] *See,* Report of the Law Reforms Commission, 1967-70, 341
[12] *Ibid*
[13] *Ibid*

Process Register, the Beat Register, the Process Servers Attendance Register and Diaries. This important work is, in fact, left to the *Nazir*.[14] The researcher as Judge-in-charge of Sylhet Judgeship gathered experience when he was Joint District Judge of the most busiest and important court of that Judgeship. The researcher also talked to the Judge-in-charge of *Nazarats* of Dhaka and Chittagong Judgeships and they frankly admitted that their supervision and control over the *Nazarat* was only superficial.

For the unsatisfactory service of processes, the process servers alone are not to be blamed. There are also practical difficulties in effecting proper service of processes in many areas which are not within easy reach. The service of processes is often delayed on account of the long distances to be covered by process servers on foot for want of proper or sufficient means of transport. A process server who performs such an important role is not given any bicycle or transport allowance. There has since been vast development of roads and transport facilities have also increased. Even where public transport is available, he does not get any daily allowance, nor does he get any uniform in summer or winter, although he is frequently required to cover long distances in every kind of weather. The existing rule of hiring boats by the process servers to serve the summons is hardly sufficient to cover the actual cost spent by them.

As process servers are generally notorious to be corrupt and as the general complaint is that they submit incorrect returns in many cases without actually effecting service and for this reason in 1983 the Code of Civil Procedure was amended. According to Rule 19B of Order V of the Code the court shall, in addition to, and simultaneous with personal service

[14] *Ibid*

also direct the summons to be served by registered post with acknowledgment due addressed to the defendant or his agent empowered to accept the service. This has received almost universal approval. As it appears that the postal peons are equally corrupt. In many cases the postal peons in collusion with the parties returned the registered summons with the remarks- "Receiver is found absent and returned," "the receiver is out of his house/ he is not available," " the receiver is in abroad," "the receiver refused to receive," etc. However, simultaneous service in the usual mode appears to be a check on each other, for it is not to be expected that the process server and the postal peon will be ordinarily in a position to collude with each other.

It is, therefore, evident that for proper service of summons following steps may be taken:

(i) The *Sheristadar* of the court must meticulously observe Rule 55 of the Civil Rules and Orders (Volume I) and ensure that order IV of the Code of Civil Procedure is strictly complied with by the party when plaint is filed.

(ii) Processes filed in the courts' office must be sent to the *Nazarat* on the same day and in no case later than two days as enjoined by Rule 99 of the Civil Rules and Orders (Volume I) and Paragraph 5 of the Civil Suit Instructions Manual. The presiding judge must act as per instructions in Paragraph 5 of the Civil Suit Instructions Manual. The *Sheristadar* should often hold casual and sudden inspections to see whether the above rules are followed and bring cases of default to the notice of the judge who shall take suitable action against the defaulter.

(iii) Distribution of processes to the process servers at the *Nazarat* should take place as promptly as possible within a week.

(iv) *Nazir* and the Judge-in-charge should ensure that processes are invariably returned by the process servers within the returnable date. The *Nazir* should report cases of default to the Judge-in-charge who will immediately take disciplinary action against the defaulter.

(v) Trial judge should report cases of return of summons without service on flimsy grounds to the Judge-in-charge of the *Nazarat* and the latter should take appropriate and in suitable cases, drastic action against defaulting process-servers.

(vi) *Nazir* should promptly send back the processes to the issuing court as soon as these are received back from the process servers strictly according to Rule 105 of the Civil Rules and Orders (Volume I) and Paragraph 5 of the Civil Suit Instructions Manual.

(vii) *Sherista* Assistant should at once, and in every case before the date fixed, place the processes received from the *Nazarat* with the record and the presiding judge should be absolutely certain when recording order to the effect "S.R. not received" that in fact S.R[15] has not been received.

(viii) Lastly, *Sheristadar* and the presiding judge must take active interest in ensuring that service of processes of his court is not unnecessarily delayed and for this the presiding judge must seek cooperation from the Judge-in-charge of *Nazarat*. The presiding judge must

[15] 'S R' stands for service returned

always keep in mind that all *Nazirs* are under Rule 93 of the Civil Rules and Orders (Volume I) directly responsible to him for the due and regular service of processes entrusted to them by him.[16]

(ix) Service conditions of process servers need improvement. They should be given proper uniform, conveyance allowance, and other reasonable facilities to meet the extra-expenditure and the rates of process fee can be safely increased.

(x) The Judge-in-charge of *Nazarat* should ensure timely steps for proper and prompt service of summons.

(xi) Remaining the procedure in its present form, power to take effective action against the process servers shall be imposed on each and every judge of the station. Process server of one court shall be separate and independent from process servers of other courts. Annual Confidential Report (ACR) of them shall be given by the court concerned and not by the District Judge.

(xii) In case of unusual delay in the service of summons by post or irregular or illegal service the court should bring the matter to the notice of the local postal authority.

In addition to above steps the Law Committee of 1976 in its report opined that there should be some provision in the Code of Civil Procedure empowering the court to allow a party to serve personally the notice on the other party and if the court is satisfied with the manner of service showing

[16] *See*, 'Report on the Causes of Delay in Disposal of Cases and Recommendations for their Elimination and Better Management of Courts',1989, 8

proof of receipt of such notice it may accept such service of notice, on the party swearing an affidavit of service in this regard.[17] It has been noticed that the Judge-in-charge of *Nazarat* in addition to his regular judicial work performs the duty of the *Nazarat* and for the reason he has no excess time to spend for the effective management of *Nazarat*. Considering the position Justice Hamoodur Rahman Commission in its report suggested appointing an administrative judge for performing various functions including proper control and supervision over the *Nazarat* and the work of the process servers. Such an officer will be in a position to devote more time to this important item of work and to exercise effective control which is likely to produce better results in the matter of service of processes.[18] Similarly, Justice Kemaluddin Hossain's Committee in its report felt necessity of appointing such type of an officer. The Committee opined:

> "We are of the view that there should be one Judge-in-charge, instead of several of them at present, who will look after all the affairs of process serving, accounts, copying, records etc., and he shall be a whole-time officer so that he can devote his time for proper control and supervision over the work of *Nazarat* and the work of the process-servers and all concerned departments."[19]

Rule 15 of Order V says that in the absence of the defendant, service may be made on any adult male member of the family. Under this rule even the wife of the defendant cannot legally receive summons. However, the wife of the defendant or any adult female member is likely to be available at home when summons has to be served during working hours. The

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[17] *See*, Report of the Law Committee, 1976, 81
[18] See, *Report of the Law Reforms Commission, 1967-70*, 342
[19] *See*, p.81, *op. cit.*

ineligibility of the female to receive summons delays the process of its service as the process server has to return the summons unserved, if the defendant or any adult male member of his family is not available. This rule appears to discriminatory against women, and there is no reasonable ground for its existence to-day. [20]

It is, therefore, recommended that Rule 15 of Order V can be amended by deleting the word 'male', thereby including any adult member of the family who is permanently residing with the defendant to be eligible to receive summons. The words 'member of the family' needs clarification. There is already an 'Explanation' under the same provision which excludes the servant as member of the family. The existing note of explanation can be further clarified by inserting a specific definition of the member of a family, which will include any person residing permanently with the defendant except servants.

Rule 19B of Order 5 of the Code of Civil Procedure provides simultaneous issue of summons for service by post in addition to personal service. Service by post includes only government institutions responsible for postal service. However, the courier service may be considered for inclusion as this kind of service has become popular and trustworthy nowadays. The District Judge of each district can be empowered by the law to make a list of agents of such courier service available in his particular district. The courier service can be approved as an alternative to government postal service.

The other alternative service may also be fax message or electronic mail (e-mail). This is very useful where the defendant is an employee/employer in a public or private organization or business enterprise or resides in places outside the jurisdiction of the court. The soft

[20] See, *Report on Recommendations for Expediting Civil Proceedings*, Dhaka: The Law Commission, December 30, 2010, p.1

copies of plaint or petition can also be served along with the process in this way. Courier service and service through fax and e-mail has already been recognized in India by the Code of Civil Procedure (Amendment) Act, 2002.

The advantage of fax, e-mail and courier service is that these services will be made at the expense of the plaintiff and he will be responsible to make the service on his own initiative. Thus it will ease the workload of the process-servers as well as the courts, and will at the same time expedite the service. Another aspect is that it will reduce the scopes for malpractices in the service of summons.[21]

A new rule can be inserted right after Rule 19B of Order V introducing the above alternative methods, or alternatively some changes can be made in Rule 19B of Order V or Rule 9 of Order V. There should be clear provisions as to what kind of proof needs to be submitted to satisfy the court that the process has been duly served by the plaintiff; as to who will bear the expenses; and how long the court needs to wait to declare that the process has been served. The main emphasis must be on the satisfaction of the court that the summons has been served in one or any of the different modes, which would enable the court to take the next steps. It has to be made clear that these services will be alternative to the postal service[22]

A minor change should also be made in Rule 1 of Order IV, indicating that in case of alternative service a petition on behalf of the plaintiff stating that he wants to serve the summons through courier service or fax message or e-mail within the date mentioned by the court is sufficient.[23]

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[21] *Ibid.*, p.2
[22] *Ibid.*, p.3
[23] *Ibid.*

3.4 Filing of Written Statement and Delay

Order VIII of the Code of Civil Procedure and Rules 17 to 26 of the Civil Rules and Orders (Volume I) along with Paragraphs 8(4) & 10 of the Civil Suit Instructions Manual deals with filing of written statement by the defendant. The procedure is not defective but in spite of that considerable delay takes place at the stage of filing of the written statement. In Bangladesh, in almost every suit, the defendant asks for an adjournment on the first date of hearing for filing the written statement. Defendant goes to the lawyer at a later stage not prepared with his defense. The documents sought to be relied on by him are not also produced before the lawyer. Therefore, of necessity, the defendant invariably has to take an adjournment for filing his written statement. The court also readily grants adjournment on the first date. Thereafter, the defendant often goes on asking for successive adjournments on one pretext or the other for filing the written statement. The time thus taken in filing the written statement is responsible to a great extent for delaying the preparation of the suit for hearing. During scrutiny of records of different courts the researcher has found to his utter surprise that sub-rule(1) of Rule 1 of Order VIII of the Code of Civil Procedure requiring the defendant to file written statement within a time not beyond two months from the date of his appearance is more obeyed in disobedience. The researcher in some case has observed that adjournments have been granted for years for filing written statement, particularly when the government is a defendant. When asked about the reasons for such flagrant non-compliance with the above provision, the invariable answer from the presiding judges had been that they had to accommodate the prayers made and compliance with the said provision would give rise to dissatisfaction among the lawyers.

Inordinate delay, as we have observed, occur in filing written statement in a suit in which the government or a statutory corporation is a defendant. The Code of Civil Procedure makes a special provision in Order XXVII rule 5 as regards fixing of time for the appearance of the government to answer the claim made in the plaint. Rule 5 requires that the court should allow a reasonable time to the government for enabling it to complete inter-departmental communication and to issue necessary instructions to the Government Pleader to appear and answer the claim on behalf of the government. This rule is justified inasmuch as considerable time is taken in consultations with the concerned departments but that does not mean that the government can go on taking time after time to file written statements which unfortunately have become the usual practice. It has been found from experience that government is perhaps the worst defaulter in this regard. Many an excuse is put forward before the court in support of the prayer for an adjournment for filing written statement on behalf of the government. The Government Pleaders sought a lot of adjournments stating that he has not got the summarized facts (S.F) of the disputed matter from the concerned Ministry/Departments. In disputes, like land, the office of the Assistant Commissioner (Land) and Additional Deputy Commissioner (Revenue) are held responsible for delay in sending of S.F to the Government Pleaders and accordingly delay occurs in filing written statement by the government. There are a lot of mismanagements in those offices particularly among the office staffs in preparing statement of facts. After writing written statement the Government Pleader submits it to the Additional Deputy Commissioner (Revenue) or Assistant Commissioner (Land), as the case may be, for signing it on behalf of the government. Again in this stage delay occurs in a considerable scale because the officials are busy in other administrative works. In Government Pleaders' office

there is lack of facilities. There is no type writer or computer to compose the written statement and other petitions. Government generally appoints experienced lawyers as Government Pleader; practically older persons hold this chair. But reality is that they are not provided with stenographers or steno typists or typists. Even they are not provided with either telephone or cell- phone to contact with government offices to obtain S.F. For these reasons delay happens in preparing the written statement.

A lot of excuses or causes are forwarded before the court to obtain an adjournment for filing written statement on behalf of the government, but it may be reasonably argued why the court should not be equally strict in granting adjournments applied for on behalf of the government. In this connection, the court should not, however, overlook that section 80 of the Code of Civil Procedure requiring the service of two months notice on the government before the institution of a suit is no longer compulsory and for this reason in many cases plaintiff does not serve any notice under the above provisions of law upon the government. As a result, government takes many adjournments in the suits and these types of suits ultimately create frustration among the litigants.

From the above discussions it is evident that delay in filing written statement is created by the insincerity of the presiding judges and non-cooperation of the advocates. If the defendant is in a better position, he desires to delay the disposal of the cases. So, the presiding judges must see that the written statement is filed strictly according to sub-rule (1) of Rule 1 of Order VIII of the Code of Civil Procedure. Rule 10 of Order VIII provides that where any party from whom written statement is so required fails to present the same within the time fixed by the court, the court may

pronounce judgment against him, or make such order in relation to the suit as it thinks fit. But this provision is not followed by most of the judges and defendants took lots of adjournments causing delay in the suit. Therefore, for avoiding delay presiding judge should proceed under the above provisions of law of Order VIII. In case of failure of defendant to file written statement within the time fixed by the court, the suit must be disposed of *ex parte*.

3.5 Delay in Framing of Issues

The next and important stage of a suit after presentation of the plaint and filing of written statement is the framing and settlement of issues. The framing and settlement of issues has important bearing on the trial and adjudications and, therefore, it is essential for the right decision in a suit that appropriate issues should be framed. The purpose of framing of issues is to ensure that the main points of controversy and questions to be determined at the trial are defined with clarity and precision. Order XIV of the Code of Civil Procedure cast a duty on the court itself to frame issues in the suit on the basis of the allegations contained in the pleadings, and after such examination of the parties as may appear necessary within fifteen days from the date of first hearing of the suit or the date of filing of the written statement, whichever is later. The framing of issues is so important that any irrelevant issues or want of a proper issue may ultimately cause delay apart from frustrating the proper adjudication of the cause, and for this reason Order XIV of the Code of Civil Procedure directs the presiding judges to frame issues by themselves. There is no scope of framing issues with the help of the lawyer under the provisions of the said Order. But in practice the lawyers of both sides in many cases filed several time petitions on the date of framing of issues for filing draft issues and courts are normally allowing

those petitions. In this respect Rule 132(1) of Civil Rules and Orders (Volume I) described that issues must be framed by the presiding judge himself after examining the parties as the court seems necessary. These rule further states that parties or their advocates may make suggestions as to the issues to be formed, but it is illegal to leave the framing of issues to them. It is observed that issues are to be framed within fifteen days from the date of filing of written statement or hearing of the parties. But the presiding judges in most of the cases do not care to do so. They left it to the Bench Assistants (*Peshkars*). The Bench Assistants normally put up the record stating 'Issues are not framed; To... framing of issues' and the judges are signing on the case records reluctantly killing considerable period of time which ultimately delays the suit. If the judges have a look on the record, then this delay can easily be removed. There is no scope of shifting the date of framing of issues for months or years together. Order XIV of the Code of Civil Procedure made it mandatory to frame the issues within 15 days from the date of filing of written statement by using the word 'shall' in Rule 1(5) of the said Order.

As per provisions of above law every issue should form a single question as because the correct decision of a suit depends to a large extent on the correct determination of the points in controversy and the utmost care and attention is, therefore, needed in ascertaining the real matters in dispute and in fixing the issues in precise terms. Regarding the necessity of framing of issues by the presiding judge himself within the stipulated time, Paragraph 12 of the Civil Suit Instructions Manual describes that 10 to 15 days should be fixed for framing of issues. Issues should be settled on the date fixed for the purpose by the presiding judge himself on the basis of pleadings. The parties or their pleaders may suggest or file draft issues but

the duty of framing of issues under the law must be performed by the judge himself. In our country, there is a common practice that parties' lawyers occasionally filed draft issues to the court. In doing so, they instead of bringing out the real issues in the suit, generally try to concentrate on such issues as are considered by them to be less burdensome for their clients to prove. The court can, no doubt, look into the draft issues but the draft issues do not relieve the court of its judicial duty to frame issues itself. It has already been noticed that in filing draft issues the advocates of the parties obtained several adjournments causing delay in the suit.

It is stated in Rule 132 of the Civil Rules and Orders (Volume I) that every issue should form a single question and, as far as possible, should not be put in an alternative form. Again in Paragraph 12(5) of the Civil suit Instructions Manual it is mentioned that framing of unnecessary issues should be avoided. During the time of investigation it reveals that issues are framed and written by the Bench Assistants and the judges are only putting their signatures on it without going through the record. They know it that it is strictly prohibited. So, vague questions are frequently inserted in those issues which lead to confusion and waste of time. If the suit is disposed of on such vague issues then on appeal, appellate court has had to remand suits for want of proper issues or absence of issues on relevant points. Such orders of remand eventually cause delay in the disposal of the suits. If the issues are framed depending on the draft issues supplied by the lawyers of the respective parties or the issues framed by the Bench Assistants, the real issues in the suit may escape altogether. Again, the issues framed without carefully going through the pleadings are likely to be general, too vague and indefinite with the result that when the parties come to trial the evidence which is led is not always relevant to the real points at issue and the

presiding judges, having no correct idea of the real points calling for determination, fails to exercise effective control or to determine the relevancy of the questions put to witnesses.[24] The futility of raising a number of unnecessary issues often dawns on the court at the time of writing its judgment, for not infrequently one finds that in the judgment all issues are dealt with together. Again it is noticed that at the time of trial quite a number of issues are abandoned by the parties and these are decided as not pressed.[25] It was found that instances of framing issues on the first date fixed for the purpose were rare even if the parties had filed *haziras*. In most of the cases the date of framing issues were found to have been adjourned 20/25 times or even more on the grounds of either absence of the lawyer of the parties or failure to file draft issues by them or pre-occupation of the presiding judge with other work although their diaries revealed that they had not performed any substantial judicial work on those days. There is absolutely no reason to shelve framing of issues the very first date fixed for it.

From the foregoing discussions it can be easily said that to avoid unusual delay in the framing of issues the role of judges are very important. This research reveals that the presiding judge should shed the lethargic attitude of depending upon the lawyers and/or the Bench Assistants of their courts regarding framing of issues and should from the very beginning acquire a firm grasp of the essential points in disputes so that it can lead and not be led by the lawyers in the case. It is further felt that the presiding judge shall invariably frame issues on the very first date fixed for it and the date of framing issues shall not be adjourned for absence of lawyers or for

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[9] *See,* Report of the Law Reforms Commission, 1967-70, 348
10 *Ibid*
[25] *Ibid*

failure to file draft issues or for pre-occupation of the presiding judge. The District Judges, in course of their inspection of subordinate courts, should also give definite instructions to the judges working under him to frame issues themselves after going through the materials mentioned in Order XIV of the Code of Civil Procedure and the date of framing of issues is not adjourned by the presiding judge as a matter of course and without unavoidable reasons.

3.6 Delay in Examination of Parties by the Courts and Referral to ADR

After the disputants have been brought together for the purpose of trial, the preparation of the suit for trial begins. The provisions of examination of parties by the courts at the first hearing have been enumerated in Rules 1-4 of Order X of the Code of Civil Procedure. Under Rule 1 of Order X, at the first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are stated in the plaint or written statement of the opposite party and the court shall record such admissions and denials. Under Rule 2 of Order X, at the first hearing of the suit, or at any further hearing any party appearing in person or present in court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the court and according to the provision of Rule 3 the substance of the examination shall be reduced to writing by the judge, and shall form the part of the record. Under Rule 4 of Order X if the court is of the opinion that any party may answer any material question relating to the suit if he is interrogated in person, the court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day. If such party fails without lawful excuse to appear in person on the day so appointed, the court may pronounce judgment against him, or

make such order in relation to the suit as it thinks fit. If the case is rejected under this Rule, it will be termed as a decree. As a result, a new suit cannot be filed on the same reason. Appeal has to be preferred against that rejection order under Order XLIII Rule 1(e).

From the above discussions it can be said that the primary objectives of Order X are:

1) to get a comprehensible idea about the nature of the suit;

2) to minimize the issues of the dispute;

3) to determine the matters in dispute;

4) to save time; and

5) to exclude the unnecessary matters and to start the trial by determining the real, legal and factual issues.

For effective implementation of the above purposes the court has been given power to examine the parties to the suit at the very early stage. The purpose of the provision is to eliminate unnecessary matters and to ascertain the real bone of contention between the parties. It has been observed during the investigation that this salutary provision is hardly ever observed. The parties also are reluctant to submit themselves to oral examination at the first hearing of the suit as they want to keep their secrets up their sleeves till the suit is taken up for final hearing. Under section 89A of the Code of Civil Procedure (Amendment) Act, 2003 it is now mandatory to refer the suit for ADR in some cases because the matter in controversy remains in an abridged form. But there is a little application of Order X of the Code of

Civil Procedure in the courts of Bangladesh. Generally steps are being taken at the subsequent stages ignoring the provisions of Order X. This Order confers the court massive power to condense the case before it. By complying with the provisions of Order X, it will be possible to reach a satisfactory stage even at the first hearing without any complexities which will promote the conciliation of the case. For the same reason importance is given to this provision in Chapter Seven of the Civil Suits Instructions Manual by the compulsory accomplishment of which the litigants are expected to be protected from the pecuniary and mental loss as well as from the complexities and prolixity of the case. In respect of examination of parties by the court at the said Paragraph it is stated that if the allegations of fact made in the plaint or written statement are not admitted or denied in the pleadings expressly or by clear implication, the court should at the first hearing proceed to question the party or his pleader and record categorically his admission or denial of those allegations. Examination of the parties is especially useful in cases in which illiterate litigants are concerned or in which vague and irrelevant statements have been made. Many irrelevant or inaccurate allegations are frequently made in the pleadings, but once the parties are examined by the court it will often be found that the real matters in controversy lie within a very small compass. The discovery of the real points in issue at an early stage of the suit will facilitate speedy disposal. Rule 367 of Chapter Seventeen of the Civil Rules and Orders (Volume I) prescribes that during the pending of the suit the award declared by the arbitrator and the conciliation application by the parties shall be stated in part 'A' of the records of the case. It means that the provisions of Rule 367 give hints of disposal of the suit at the very early stage by way of alternative dispute resolution mechanisms.

So, it can be concluded that under the provisions of section 89A of the Code of Civil Procedure (Amendment) Act, 2003 and Paragraph 16 of the Civil Suit Instructions Manual the parties at the pre-trial stage of the suit may submit application for conciliation or try to resolve the dispute by arbitrator.

3.7 Delay in Discovery, Inspection and Admission

Another important delaying stage of a suit is the stage of discovery, inspection, interrogatories etc. After framing of issues under section 30 of the Code of Civil Procedure the court should fix a date for steps. This section enables the court to make an order for discovery which is necessary or reasonable.[26]Order XI of the Code of Civil Procedure relates to discovery, inspection and production of documents. Rule 1 of this Order deals with discovery by interrogatories. The plaintiff or defendant with the leave of the court may deliver interrogatories within ten days from the date of framing of issues. In the case of ***Abbas Ali*** v. ***Sekender Ali***[27] it was held by the High Court Division that the time limit of ten days is mandatory and the answer given beyond that period cannot be allowed. But subsequently the Appellate Division of the Supreme Court of Bangladesh in the case of ***Biseshwar*** v. ***Shantimoy***,[28] however, held it to be directory. The purpose and object of this rule is to enable a party to require information from his adversary for the purpose of maintaining his own case or to destroy the case of the adversary. The procedure is to be used liberally whenever it can shorten litigation and serve the interest of justice.[29] In the case of ***Bhakta***

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12 *BC Insurance Co.* v. *Haji Adam*, 6 DLR 544
[27] 1988 BLD 330
[28] 52 DLR (AD) 124
[29] *P. Balan* v. *Central Bank*, AIR 2000 Ker 24

Charan v. ***Natber***[30] it was held by Orissa High Court that by judicious use of the procedure, the proceedings in the trial may be shortened and save time and expense. But the power should be carefully exercised to prevent abuse of the procedure. Same opinion is delivered by the Nagpur High Court. In the case of ***Ramlalsao*** v. ***Tan Singh***[31] the Court observed that the provisions of the above rule must be exercised liberally so as to shorten the litigation and save expenses and serve the ends of justice.

Regarding interrogatories at Paragraph 19(9) of the Civil Suit Instructions Manual it is stated that it should be ascertained whether the parties wish to deliver interrogatories under the provisions of Order XI of the Code of Civil Procedure, for the purpose of extracting information as to facts material to the questions in issue or for the purpose of securing admissions as to such facts.

The object of inserting provisions relating to interrogatories in the Code of Civil Procedure is noble. But reality is different. In 100% written statements defendants stated that the plaint is lack of defect of parties, lack of mis-joinder or non-joinder of parties and/or cause of action etc. In those situations plaintiff put interrogatories to the defendant to answer those questions mentioned in the petition to eliminate such defects. Under Order XI the time limit for answer to interrogatories is ten days. But in practice, the defendant takes several adjournments. The courts are allowing those adjournments very leniently and as such months after months even in some cases years or more time are consuming to observe the formalities under this Order. This gives rise to the age of the suit.

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[30] AIR 1991 Ori 319
[31] AIR 1952 Nag 135

The next stage during which delay occurs is the stage when the law requires documentary evidence to be filed. Great delay occurs here. The presiding judges and the members of legal profession do not appear to have awakened to the fact that there is a "law of discovery," still less to a realization that it is a highly important and not altogether easy branch of law, based on important principles, and that without a thorough knowledge of those principles and a steady application of them, none but a simple case can be properly prepared or tried. [32]

Under Order VII rule 14, the plaintiff is obliged to produce in court at the time the plaint is presented any documents in his possession or power upon which he sues. The plaintiff is further required at the time of the presentation of the plaint to furnish a list of all the documents whether in his possession or not on which he proposes to rely as evidence in support of his claim. The defendant is not required under provisions of Order VIII to file any documents with his written statement. Order VII or VIII do not lay down a rule as to when documents are to be produced and for these reasons when a party files application for discovery and inspection of documents of other side, then the said party started to kill time in filing those documents seeking a lot of adjournments. It is already noticed that the judges as well as the lawyers are not well conversant about the procedure regarding discovery and inspection and for the reason both of them passed lazy time in this important stage of a civil suit. It is mainly with regard to these matters that the practice of the subordinate courts is defective and unbusiness-like. The rules and practices with regard to these points are still imperfectly understood and seldom followed. Many cases are allowed to drift to trial

[32] *See*, Civil Suit Instructions Manual, 33

without any preliminary preparation with the result that time and money is wasted.

Under Order XII, a party to the suit may serve a notice on the other calling upon him to state whether he admits the truth of the whole or any part of the case of the other party. The object of enacting provisions regarding admission in the Code of Civil Procedure is to enable a party to obtain a speedy judgment at least to the extent of the admission of the defendant. An order passed under the present Order is appealable. Giving emphasis on the judgment pronounced on the basis of admission, the then Dhaka High Court in the case of ***Salamat Ali*** v. ***Md Siddique***[33] observed that the appellate court will not interfere with the exercise of jurisdiction of the court below unless it is shown that the court has gone wrong in principle or is otherwise unjust.

The steps which are required to be taken under Orders XI and XII are essential preliminaries to the trial of a suit designed for shortening its duration and narrowing down the issues. In this respect the former Chief Justice of Allahabad High Court Sir Cecil Walsh narrated the advantages of discovery and inspection at the very beginning of preparation for trial of a suit and said:

> "The thoroughness with which cases in England are prepared before they come to court, and the preliminary skirmishes which take place in Chambers over interlocutory applications in most cases of any importance, result in the settlement of many of those subsidiary points

[33] PLD 1952 Dac 137

which arise in the majority of cases, before the trial begins. It has been truly said that cases are often won or lost in Chambers. The machinery of " Discovery," if rightly understood and utilised extracts from either side all the material documents in its possession, and with the aid of inspection and the supply of copies, enables both sides to go to trial fully equipped with all the relevant documents relied upon by either party. Nearly all questions relating to the relevance of the documents have already been determined in Chambers before the trial begins. Facts within the knowledge of one party, but unknown to the other have been disclosed, and elucidated, by admissions and interrogatories. Thus nearly all the cards are on the table, and the risk of "surprise" is reduced to a minimum."[34]

Chief Justice Sir Cecil Walsh further opined:

> "The value of perfecting your tackle in this way before the real struggle begins cannot be over-estimated. Not only is each side fully armed at all points which foresight, judgment and experience can suggest, but the hearing is concentrated on the main issue or pivot of the dispute, and is confined within limits which eventuate in a saving to the parties of time and money- the one essential in all litigation if the administration of the law is to merit and maintain the confidence of the commercial public. Moreover, the exhausting and embarrassing

[34] Referred to in the Civil Suit Instructions Manual, 7

> struggles over side issue and technical objections are wholly eliminated."[35]

Unfortunately it has been found on investigation that provisions of the above Orders are neither understood nor followed. It is true that it is mainly for the parties themselves to take the steps envisaged in these Orders, but they generally do not take any interest and avoid them either willfully or due to ignorance. The court also does precious little in this regard in the erroneous belief that it is no part of its functions.[36] But we have observed from our discussions that to make ready of a suit for trial, the provisions contained in Order XI and XII have to be followed by the court for the ends of justice. The presiding judges have no scope to escape from those formalities. Under the provisions of Rules 130-131 of the Civil Rules and Orders (Volume I) the above steps in connection with discovery, inspection and admissions should of course be taken into consideration by the judges before the case comes on for hearing. We have observed from the investigation of case dockets of different trial courts that either parties of a suit are taking times on free style for answering the interrogatories or to file documents ignoring the time limit of ten days or bypassing the order of the court. They are virtually ignoring the courts' order. Rule 21 of Order XI states that where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall if a plaintiff be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, struck out, and to be placed in the same position as if he had not defended. An Order under this rules whether dismissing a suit or striking off a defence is appealable under Order XLI, rule 1(f). The presiding judges, as it observed, in most of the cases, do not

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[35] *Ibid*

[36] *See*, Report of the Law Reforms Commission, 1967-70, 347

apply the principles of Order XI rule 21 because of ignorance of law or fear of boycotting of their courts by the advocates. But experience shows that by an intelligent and judicious use of the powers under section 30 and other provisions of Code of Civil Procedure, it would be possible for presiding judges with the co-operation of the Bar to initiate a systematic practice as regards the preparation of cases before trial. The judges have every scope of taking *suo motu* action at suitable times under section 30, Code of Civil Procedure, even when parties or their pleaders fail to do so.

3.8 Delay in Settling Date

The Code of Civil Procedure itself does not provide for any settling date, but there are detailed rules in Chapter seven of the Civil Rules and Orders (Volume I) and Paragraph 18 of the Civil Suit Instructions Manual. As soon as the requisite steps in connection with the preparation of cases for hearing have been taken a date should be fixed for settling the date of final or peremptory hearing called the 'settling date'. On the settling date, the presiding judge should himself fix the date for final or peremptory hearing with due regard to the state of the file, the nature of the contest, the age of the suit, the time estimated to be taken in its hearing and the convenience of the parties and their lawyers. The purpose of fixing 'settling date' is to determine the date of peremptory hearing for smooth running of the suit. The period that must elapse before the settling date can be fixed must naturally vary in different courts according to the state of the file and the nature of the case. This 'settling date' should be fixed in such a way that the date for peremptory hearing is not likely to be more than one hundred and twenty days from the date of framing of issues.[37] The duration of this time will depend upon the nature of the suit and the volume of judicial work

[37] *See,* Rule 8 of Order XIV of the Code of Civil Procedure,1908

already fixed in the diary. The peremptory hearing date to be fixed in such a way as to enable the parties to get their witnesses summoned well in time keeping in mind the settling date which has already been fixed. In fixing peremptory hearing dates, all ready suits should, as far as practicable, be brought to trial chronologically according to the dates of their institutions. But a departure may be made if the suits to be posted for hearing are simpler in nature and require little time for disposal.[38]

On the settling date the court should insist on the parties filing their lists of witnesses and applying for any commission (if not already done before) that may be required for examination of witnesses, arranging for requisitioning any further records and documents that may be required, or taking any other steps that may still be necessary for bringing the case to trial. Parties failing to take any such steps on this day will do so at their risk any application for the purpose made at a later stage will be dealt with on its merits.[39] Presiding officers should exercise the greatest care in not settling a peremptory hearing date for a case unless they are satisfied that all requisite steps have been taken to ensure that the case will really be ready for hearing on the date so fixed.[40] It has been observed that in fixing 'settling date' judges do not apply their judicial mind and threw it on their *Peshkars* (Bench Assistants). Presiding judges think that it is the duty of their *Peshkars*. But according to the provisions of section 20 of the Code of Civil Procedure (Amendment) Act, 2003,[41] Rule 124 of Civil Rules and Orders (Volume I) and Paragraph 18(6) of Civil Suit Instructions Manual, the presiding judge should himself decide number of suits for peremptory

[38] *See*, Report of the Law Reforms Commission, 1967-70, 356
[39] *See*, Paragraph 18(5)(i) of the Civil Suit Instructions Manual
[40] *See*, 'Note,' annexed to Paragraph 18(5)(ii) of the Civil Suit Instructions Manual
[41] Act LX of 2003

hearing from the list of suits kept in the stage of 'settling date' considering the age of the suit. The practice of leaving the fixing dates to the *Peshkars* leads to abuse and results frequently in confusion of work. Sometimes the clerical staffs without considering the existing principles and age of the suits fixed so many suits at ' settling date' stage stating grounds on the order sheet of the case record as 'Diary being congested... To ... for settling date' and the presiding judges carelessly putting their signatures on it on the belief that it is not his duty and it is the duty of his *Peshkar*. Sometimes either party to the suit makes *Tadbir (request)* to the *Peshkars* to fix the suit at 'settling date' stage and try to obtain a long date to delay the hearing of the suit. As a result, old cases are remaining in dark causing sufferings for the litigants as well as backlog of cases. It has been learnt that sometimes the *Peshkars* being biased by the parties to the suit cares to withdraw a suit from peremptory hearing stage to 'settling date' stage without any reason, cunningly obtaining the signature of the presiding judge on the order sheet and thus a ready case went out of list of hearing causing delay and suffering of the parties. It is already pointed out that dates should be fixed, as far as possible, with reference to the state of the file, the nature of the contest, the convenience of the parties and their pleaders and also after reference to the courts' diary. It has been found during visits to different courts that compliance with the provision of Rule 8 of Order XIV of the Code of Civil Procedure and actual disposal of the suit on the date of final hearing fixed according to the said Rule is possible only where the file is rather light. It is not possible to stick to the firm date of final hearing fixed under this Rule and dispose of the suit on that date where the file is heavy, such as, in almost all district head- quarters.[42] In the stage of settling

[42] *See*, Report on the Cause of Delay in Disposal of Cases and Recommendations for their Elimination and Better Management of Courts (1989),10

date, parties occasionally file adjournment petitions to shift the date. It is to be noted here that when a suit fixed for 'settling date' then the parties have nothing to take steps. Usually after completing all the formalities, a suit turned into this stage to be ready for trial. And if the parties feel necessity of applying for any commission, then they can file appropriate petition. We have observed that huge number of suits is fixed at this stage for months' even years together having no reasons stated on the order sheet by the presiding judges. This study observed that these are happening due to indifference of the judges, their dependency on the *Peshkars* and also for lack of their knowledge.

Therefore, it reveals from the above study that for proper management of cases at this stage the presiding judge is required to enforce that the parties take all necessary steps for final hearing during the interval between the 'settling date' and the date of final hearing. There should be no adjournment of the settling date. Suitable amendment of Rule 8 of Order XIV of the Code of Civil Procedure may be considered to bring it in conformity with the rules in Chapter 7 of the Civil Rules and Orders (Volume I) and Paragraph 18 of Chapter IX of the Civil Suit Instructions Manual.[43]

3.9 Delay in Valuation of Suits

The court is under legal obligation to make an enquiry under section 8(c) of the Court Fees Act, 1870 to ascertain and determine the valuation of the suit. It is a settled principle of law that the court is to hold an enquiry and determine the valuation where there is objective standard of valuation of the suit. The objective standard of valuation is the consideration money

[43] *Ibid*

of the '*Kabla*'[44] or market price prevailing at the time of institution of the suit which is less....The ... enquiry should be made by the trial court under section 8(c) of the Court Fees Act to determine the correct valuation of the suit after giving sufficient opportunity to both the parities.[45] Under section 26 and Rule 1 of Order IV every suit shall be instituted by the presentation of a plaint to the court or such officer as it appoints in this behalf. As soon as the plaint is presented, it is the duty of the court to examine it and to see if the relief claimed has been properly valued and the requisite court fees have been paid on the plaint. The usual practice is that the initial examination of the plaint is done by the '*Sheristadar*' of the court and his report at the back page of the plaint in red ink is placed before the presiding judge. Under paragraph 4 of the Civil Suit Instructions Manual presiding judges are responsible for the performance of important fiscal duties under the provisions of the Court Fees Act, 1870 and the Stamp Act, 1899. And they are expected to make themselves thoroughly acquainted with the provisions of those statutes. But the reality is that most of the presiding judges are not well acquainted with the provisions of Suits Valuation Act, 1889, Court Fees Act, 1887 and Stamp Act, 1909.[46] For the reason, they do not show their interest in considering the valuation of the suit and totally depends on the *Sheristadars*. After presentation of the plaint *Sheristadar* placed his report in red ink and state 'the valuation of the suit seems to be correct and the suit may be provisionally accepted' for consideration of the presiding judge. On the basis of this report, the presiding judge accept the plaint and direct the *Sheristader* to note the particulars of the suit in 'Suit Register' and also direct him to issue summons. And in doing so, the judges put their signatures on the order sheet very reluctantly as a normal routine

[44] *Kabla* means deed of sale
[45] *Ahmed Kabir* v. *Hazi Mazhar Ahmed and others*, 43 DLR (1991) 500
[46] The Syllabus of Law Faculties of the Universities is also not well covered with those laws

work ignoring the existing principles of law. In the very rarest cases, they fix the suit for valuation hearing.

It is a matter of common knowledge that, especially in suits relating to land, deliberate attempts are frequently made to undervalue the subject matter of the suits with the connivance of all the parties concerned, in order to reduce the costs of litigation and to evade the payment of government revenue. It is the duty of all presiding officers to check this practice.[47] It should be clear in every plaint how the valuation has been calculated. Where this is not so or where it appears to the officer receiving and examining the plaint that there is manifest undervaluation, the plaint shall be placed before the presiding judge for Orders.[48] In order to deal effectively with this matter it is the duty of the presiding judges to instruct their *Sheristadars* properly. With this object in view, *Sheristadars* should be instructed to record a brief note on the back of the plaint summarizing such information as may be available therein as to the description, class and area of the land claimed and draw the attention of the presiding officer to any obvious undervaluation.[49] The presiding officer should, if he is of the opinion that additional court fees should be paid, call upon the plaintiff to pay such fees or to supply any additional information that may be required, and if necessary, should initiate *suo motu* the requisite proceedings under the Court Fees Act.[50] It is experienced that due to lack of knowledge the presiding judges are not conversant about initiating such proceedings to solve the matter of undervaluation of the suit.

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[47] *See*, Paragraph 4(1) of the Civil Suit Instructions Manual
[48] *See*, Rule 25 of the Civil Rules and Orders (Volume1)
[49] *See*, Paragraph 4(2) of the Civil Suit Instructions Manual
[50] *See*, Paragraph 4(3) of the Civil Suit Instructions Manual

Sometimes parties to a deed very intentionally registered the same showing less value (hiding the real value) to reduce the registration fees. It is often practiced in the municipal areas and to some extent in the rural areas also. In collusion with some corrupt officials of registration office it is happening. The problem arises when such deeds are challenged in a court of law. After obtaining certified copies of those deeds, plaintiff filed suit and he states the valuation of the suit on the basis of deed value. The defendant in his written statement raises the question of under valuation. Then the court fixes the suit for valuation hearing and occasionally calls for statement of valuation of land of respected locality from the Sub-Registry office. But almost in all cases, the Sub-Registry office delayed to submit its report which ultimately causes delay in the suit. Where sufficiency of the valuation is not apparent on the face of document, the procedure to be observed is that laid down in ***Julekha Bibi*** v. ***Danis Mohammad.***[51] Again it should be state here that important law books and journals are not available in the Court and to some extent it also helps to cause delay in the suits.

Order VII Rule 11(c) of the Code of Civil Procedure confers ample power on the court to correct the valuation and to realize proper court fees. In that rule it is stated that the plaint shall be rejected where the relief claimed is properly valued, but the plaint is written upon a paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamp paper within a time to be fixed by the court fails to do so. The proviso to this rule provides that the time fixed by the court for the correction of the valuation or supplying the requisite stamp paper shall not exceed twenty-one days. In the case of ***Mohammad Ishaque*** v.

[51] 33 CWN 952

Rupali Bank [52] the High Court Division of the Supreme Court of Bangladesh held that where a plaint is insufficiently stamped, the court has to allow some time to the plaintiff to make good the deficiency and if it is not done within the time allowed, the plaint has to be rejected. The question of valuation of the subject-matter of a suit arises frequently. If the court does not examine the plaint at the initial stage to correct the valuation, the question of valuation comes before it at a later stage as one of the issues in the suit, and such a question is, at times, taken even up to the Supreme Court for revision. The result is that while the suit remains idle, the parties go on fighting on the question of valuation which eventually causes delay. The court should, therefore, properly exercise its power at the appropriate time, so that delay may not occur on the ground of undervaluation of the subject matter of a suit[53] So, careful attention should also be paid to the matter when suits relating to land come before the court on appeal and at this stage, it may sometimes be found necessary to remand the case to the lower court for a finding with reference to the correct valuation of the subject matter of a suit.[54]

3.10 Delay in Verification of Pleadings

Rule 15 of Order VI of Code of Civil Procedure and Rule 17(2) of the Civil Rules and Orders (Volume1) deal with verification of pleadings. According to Rule 15 of Order VI every pleading shall be verified at the foot by the party or by one of the parties to pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own

[52] 11BLD (1991) 489
[53] *See*, Report of the Law Reforms Commission, 1967-70, 338
[54] *See*, Paragraph 4(4) of the Civil Suit Instructions Manual

knowledge and what he verifies upon information received and believed to be true. It is further stated that the verification shall be signed by the person making it and shall state the date on which and the place at which it was signed. Present practice is that the verification, though signed by the maker, is not verified on oath. The statements so verified are not treated as evidence on which a decree can be passed in case of non-appearance of the defendant to answer the claim. It is for the reason that the plaintiffs' evidence is necessary for passing a decree even in a case where the defendant appears, but does not defend the suit or where the defendant does not appear in spite of service of summons on him. In taking evidence in such *ex parte* cases, the court spends considerable time.[55] In the case of ***Nambiar*** v. ***India***[56] the Supreme Court of India opined that the object underlying the provision is to fix upon the party verifying or on whose behalf the verification is made the responsibility for the statement that it contains, and to prevent as far as possible disputes as to whether the suit has been instituted or defended with the knowledge or authority of the party who has verified or on whose behalf the verification has been made. In order to save courts' time Justice Hamoodur Rahman Commission suggested that pleadings should be verified on oath so that a decree may be passed without the necessity of taking further evidence where the defendant does not appear or does not defend the suit.[57] The Commission further suggested that every written statement should also be verified on oath, because, such verification may be a deterrent against the defendant making reckless denials or false assertions.[58]

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[55] *See*, Report of the Law Reforms Commission, 1967-70, 337
[56] AIR 1970 SC 652
[57] *See*, Report of the Law Reforms Commission, 1967-70, 337
[58] *Ibid*

3.11 Delay in Presentation of Plaint with Deficit Court Fees

A suit does not become a proper suit until the court fees payable on the plaint have been paid in full. But the practice has grown up of presenting plaints with deficit court fees. In some occasions plaintiff or his advocate intentionally did it. Sometimes due to non-availability of court fee stamps of high denomination but more often to gain time for collecting the amount for the payment of court fees even after the expiry of the limitation period prescribed for the suit. Having presented the plaint with deficit court fees, the plaintiff goes on taking time after time from the court. Rule 11 of Order VII of the Code of Civil Procedure provides twenty one days for filing deficit court fees. But some occasions, it has been observed that the presiding judges do not carry out this time schedule and it happens mainly when they depend upon their *Peshkars*. During the time of investigation it has been observed that delay in filing deficit court fees comes when the *Peshkars* put the record before the presiding judges stating *'To... for deficit court fees'* and the judges are blindly signing on it. Though law allows only twenty one days but in the above circumstances courts are consuming months after months time in some cases for depositing deficit court fees. This again causes inexcusable delay. Where the government files suit in that case it is found that government is equally at default in depositing deficit court fees.

Sections 4 and 6 of the Court Fees Act stipulates that no document for which court fees is to be paid will be entertained unless it is accompanied by payment of court fees. Section 149 of the Code of Civil Procedure empowers the court to give time for payment of deficit court fees but that power should not be exercised to suit the convenience of the

delinquent plaintiff.[59] The power under the said section should be exercised sparingly on genuine grounds of hardship or *bonafide* mistake in calculating the amount of court fees.[60] In the case of ***Venkanna*** v. ***Atchutaramanna***[61] the Madras High Court held that enlargement of time to make up the deficiency of the court fees is in the discretion of the court and no party can claim enlargement of time to pay court fees as a matter of right. Again in the case of ***Abdus Salam*** v. ***Fazlul Quader***[62] the High Court Division of the Supreme Court of Bangladesh opined that section 149 clothes the court with the power to give time to make up the deficiency of court fees in proper case and should be read with the provision of Order VII Rule 11(c).

So, from the above it can be said that in many cases presiding judges are allowing adjournments for the purpose of enabling the plaintiff to put in the deficit court fees on plaints. This indeed amounts to undue indulgence being given by the court to defaulters. This undue indulgence does not reflect to the credit of the judicial officer in the matter of the exercise of his discretion judicially. He has ample power to reject a plaint for non-payment of deficit court fees.[63] In this regard the Civil Justice Committee in its report mentioned:

> "Too many and undue long adjournments are often granted as a matter of course for filing deficit court fees on plaints, process fees, processes, cost of Commissions, etc., without an enquiry as to whether there are sufficient legal grounds for the exercise of

[59] *See*, Report of the Law Reforms Commission, 1967-70, 339
[60] *See*, Report of the Law Committee, 1976,79
[61] AIR 1938 Mad 542
[62] 9 MLR (2004) 265
[63] *See*, Report of the Law Committee, 1976, 79

> the Courts' discretion. This discretionary power under section 149, Civil Procedure Code, to make up deficiency of court fees is not intended to be used in cases of deliberate attempt to delay payment to suit the convenience of party or in plain cases of default."[64]

3.12 Delay in Impleading Unnecessary Parties

Rule 3 of Order I of the Code of Civil Procedure states that all persons may be joined in one suit as defendants against whom any right to relief in respect of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise. In the case of ***Amir Ali*** v. ***Abdur Rahim*** [65] it was decided that the object of the above rule in allowing joinder of defendants to avoid multiplicity of proceedings. The rule enables the plaintiff to join all persons as defendants against whom any right to relief in respect of the same cause of action arising against them involves a common question of law or fact.[66] In most of the cases it has been observed that the advocates of the plaintiff side reluctantly include a multitude of parties, most of them unnecessary, and put them in a separate category as *proforma* defendants.[67] A large number of parties are thus brought on record against whom no relief is asked for. For example, it can be mentioned here that it is a common habit of most of the lawyers to include wife, her father

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[64] Cited in Civil Suit Instructions Manual, 31

[65] 9 DLR (1957) 102

[66] *Bangladesh Railways* v. *Chartering & Shipbreaking Corporation,* 37 DLR (1985) (AD) 47

[67] The expression '*proforma*' defendant does not appear in any provision of the Code of Civil Procedure. A party though described as '*proforma*' defendant in a suit would be bound by the decree passed in his presence after he has contested the suit by filing a written statement. However, non-contesting '*proforma*' defendant would not be bound by the decree if he was not a necessary party and no relief is sought against him.

and mother as defendants in a suit filed for restitution of conjugal rights by the husband. The wife is only necessary party here. If this type of suit decreed then it will be the duty of the wife to perform conjugal life with her husband. Other defendants are not held responsible for this. Again, in a suit for dower and maintenance the husband is the only necessary party. But husbands' parents and other relatives are impleaded easily in these types of suits. The presiding judges of family courts have full knowledge about these things but without examining the plaint at the time of filing the suit, they are taking cognizance of those suits and ordering to issue summons upon them. In a partition suit all co -sharers are necessary parties. In such a suit, persons who are not essential or strangers are in most of the cases impleaded as defendants or *proforma* defendants. In a suit for specific performance of contract the necessary party is the executor of the *Bainapatra*. But sometimes strangers or unnecessary parties are impleaded as defendants. In a suit for permanent injunction relief is available only against the person who has threatened to dispossess the plaintiff from the disputed land and others are not connected with this suit. Again, in a probate proceeding, the heirs of the testator are necessary parties, but persons not claiming any interest in the property through the testator or claiming adversely to, or independent of, the testator are not entitled to be added as a party. During his tenure as Joint District Judge, Sylhet the researcher has had an opportunity of adjudication of probate cases as district delegate and observed that a few number of probate cases filed in the 1970s' or 1980s' are still pending in that judgeship due to, among others, impleading unnecessary parties. The inclusion of *proforma* defendants or unnecessary parties is one of the main causes of delay. Because a lot of times has consumed in making futile attempts to serve the summons or for their substitution in case of death.

Rule 16 of Order VI of the Code of Civil Procedure empowers the court to strike out any pleading which may be unnecessary, scandalous, and frivolous or vexatious, or tend to prejudice, embarrass or delay the fair trial of the suit. It has been experienced that it is the presiding judge who at the initial stage of a suit can strike out the names of unnecessary defendants from the plaint to save time and to expedite the trial. For example, in family suits, the Judge of the Family Court can exercise ample jurisdiction in striking out the names of defendants except the name of wife or husband as the case may be. In other suits, by applying judicial mind, proper court management techniques and proper guidance of his subordinate staffs, presiding judges can split up the names of the unnecessary parties. Rule 10(2) of Order I of the Code of Civil Procedure also provides for striking out unnecessary parties and addition of necessary and proper parties. Sometimes financial institutions filed *Artha Rin* (Money Loan) suits and included unnecessary parties as defendants. The inclusion of those parties delays the preceding and ultimately frustrates the object of passing the statute. Observing the situation the Appellate Division of the Supreme Court of Bangladesh in the case of ***Sonali Bank*** v. ***Sirajul Haque*** [68] held that in a suit before the *Artha Rin Adalat*, the loaned and the guarantor are the necessary parties and the names of other parties should be struck off. So, from the above discussions it is evident that for the expeditious disposal of cases as well as for the quick service of summons upon the defendants there is no alternative but to strike out the names of unnecessary parties whether or not objection is taken by the defendant.

[68] 9 MLR (2004) (AD) 270

3.13 Delay in Production of Documents

As regards production of documents by the parties on which they intend to rely, specific provisions have been made in the Code of Civil Procedure. Under Order VII, rule 14, it is incumbent upon the plaintiff to produce before the court the basic documents upon which the suit is brought and shall deliver the documents to be filed with the plaint. The same rule further provides that the court may return such documents on their being substituted by Photostat or true copies attested by the plaintiffs' pleader on the undertaking that they will be produced at the time of hearing or whenever asked for by the court. Rule 14(3) of Order VII also provides that where the plaintiff relies on any other documents not in his possession or power in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint and state in whose possession or power they are. Basically none of these provisions in most of the cases are followed by the plaintiff or his pleaders. In not a single case it is found that the plaintiff followed the principles of rule 14(3). After appearing at the court defendant filed adjournment petition stating to see the documents of the plaintiff which have been mentioned in the plaint. The court allowed those petitions directing the plaintiff to submit the documents or of their attested photocopies on which he wants to rely upon. But sometimes the plaintiff ignores the order of the court. Sometimes obtains several adjournments to file those documents. The court is frequently allowing adjournment petitions. Thus a considerable delay occurs at this stage. At rule 18 of Order VII it is stated that if the documents sued upon was not produced and the documents relied upon were not entered into the list of documents, such documents would not be admissible without the leave of the court. It is experienced that ignoring the entire provisions plaintiff file the documents at a very belated stage of the suit without seeking leave of the court. Under Rule 3 of Order XIII, the court has ample jurisdiction at any stage of the

suit to reject any document which it considers irrelevant or otherwise inadmissible. But in practice it is found that these provisions are not followed in a single case by the presiding judges. It may happen for their ignorance. Attaching the irrelevant documents with case record creates complexity at the time of trial which consumes time and put so many barriers in smooth functioning of the court. In the case of ***Dwijen*** v. ***Naresh***[69] the Calcutta High Court observed that it is the courts' duty to exclude all irrelevant and inadmissible evidence even if no objection is taken by a party. The object of the provision is to shorten the proceeding and to overcome the delay. The researcher learnt that in some cases plaintiff challenged the decision of any bank and at the same time filed petition calling for the original ledger of the Bank. The courts, in some cases, also allowed those petitions killing a lot of time directing the plaintiff or the concerned bank to produce the above ledger. This can easily be cured if the presiding judges carefully follow the provisions laid down at Rule 5 of Order XIII of the Code of Civil Procedure. Similarly under section 4 of the Bankers' Book Evidence Act, 1891 a certified copy of any entry in a bankers' book shall be received in evidence of existence of such entry and shall be evidence of the matters therein recorded. A certified copy' is a copy certified by the principal accountant or manager of the bank under section 2(4) of that Act and in such a case no further certification by the courts' officer under rule 5 of Order XIII is necessary. No doubt it is an excellent provision to expedite the suit. But calling for the main ledger is unnecessary and time consuming orders of the presiding judges. It is already mentioned that courts are unduly lenient in accepting documents not filed at the appropriate time as provided in the Code of Civil Procedure. In many a case, documents are accepted as a matter of course even during the hearing

[69] 49 CWN 791

of suits. The provisions as regards production of documents at the initial stage of the suits are intended not only to minimize the risk of fabrication of documentary evidence but also to prevent surprise by giving the earliest possible notice to each party of the documentary evidence on which the other party seeks to rely. The production of documents at the appropriate time also facilitates their inspection by the party against whom these are intended to be used. Moreover, the production of documents by the parties well in time may narrow down issues, for one party or the other may, after inspecting documents; admit all or some of them. In this manner the requirements of Order XI and XII may also be satisfied and their main purpose namely, the elimination of unnecessary delays achieved. As regard late production of documents, the fault does not lay the rules of procedure, but rather with the court itself for not securing compliance with the rules. Any undue leniency on the part of the subordinate courts in accepting documents at a belated stage can be controlled only by effective supervision by the superior courts.[70]

3.14 Delay in Filling Further and Better Statement or Particulars

Rule 5 of Order VI of the Code of Civil Procedure empowers the court to call for a further and better statement of the nature of the claim or defense, or further and better particulars of any matter stated in pleadings. In the case of ***Faqir*** v. ***Thakur***[71] it was held that the object of the above rule is to enable the opposite party to know what case he has to meet at the trial so that he may not have to go to the trial embarrassed by vagueness or incompleteness of the cause he has to meet. Thus if the pleadings of a party is too vague, the court may direct him to file a further and full statement. Under Order VIII Rule I, the court may permit the presentation of

[70] *See*, Report of the Law Reforms Commission, 1967-70, 345
[71] AIR 1941 Oudh 457

subsequent pleadings either by the plaintiff or the defendant after presentation of the original plaint and the original written statement. The provisions permitting subsequent pleadings can not be availed of by any of the parties as of right. In this respect Madras High Court opined that neither the plaintiff nor the defendant can, without the leave of the court, file pleadings after the written statement.[72]

The researcher observed that in the name of filing further and better statement the defendant side in most of the cases consumed a lot of time though the law allows both the parties to submit further and better statement of the nature of the claim or defense. Basically plaintiff does not take any steps under this provision of law. In the second scene, the defendant again seeks further adjournments to file additional written statement. In the case of ***Golbanu*** v. ***Uma Rani***[73] it was held that a defendant is entitled to file additional written statement when new pleadings are added by the plaintiff. But in practice this direction is not followed by the defendant. We have seen that in many cases plaintiff does not amend his plaint but the defendant files additional written statement by adding new defense at a very belated stage of the suit even during the time of peremptory hearing of the suit. The courts are also accepting those additional written statements without considering the existing provisions of law and delaying the suit. Rule I of Order VIII invests the court with a wide discretion and enables it to accept written statement even after issues are framed. The High Court Division of the Supreme Court of Bangladesh in the case of ***Mostafa*** v. ***Md. Alamgir*** [74] opined that additional written statement was allowed to be filed when it was alleged that necessary information and necessary documents were not available at the time of filing the written statement. But adding new cause

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[72] *Venkataswami* v. *Uppilipalayam*, AIR 1935 Mad 117
[73] 38 DLR (1986) 175
[74] 1BLC (1996) 501

of action or defence in the pleadings by either party at the time of trial stage of the suit may frustrate and delayed it. It is restricted in law. Therefore, the High Court Division of the Supreme Court of Bangladesh in the case of ***Fatick Chand*** v. ***Deepak Kumar***[75]observed that the purpose of filing further and better statement was to elucidate the pleadings and not to amend the same by adding new cause of action or defence which was not in the pleadings.

It has been noticed that the provisions as regards filing of additional pleadings by the parties is misused and its main purpose frustrated. In many a case, whenever the plaintiff or the defendant is in need of taking an adjournment but no valid ground therefore is available, he asks for time to file a replication and thereby manages to get an adjournment. It appears that the court also readily grants time to file replication.[76] If any further or additional written statement is proposed to be filed by any of the parties under Order VIII rule 1, it should be permitted only where the court itself, after examining the original pleadings of the parties, is satisfied that there is real necessity for the same.[77] The court, however, not having any time to scrutinise the pleadings thoroughly agrees to allow the prayer for filing a replication, more or less, as a matter of course. Order VI rule 7 provides that no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleading of the party. In view of this provision, the necessity for a replication should normally not arise if the pleadings are well drafted and all material facts set out therein. In our country, each party knows his case very well and is in a position to state all the material facts in the original

[75] 47 DLR (1995) 556
[76] *See*, the Report of the Law Committee, 1976, 84
[77] *Ibid*

pleading in support of his claim. Occasions sometimes arise for an additional written statement. If however, any occasion arises for stating further facts before the court, either by the plaintiff or the defendant, the courts' permission is obtained for amending the plaint or for filing an additional written statement by the defendant but replications, which appear to be nothing but repetitions of the same pleadings are not resorted to. This practice should be discouraged as the same is responsible for unnecessary delay.[78] The power under rule 5 of Order VI and rule 9 of Order VIII is an enabling power of the court and is intended to be exercised only in the interests of justice and for the purpose of satisfying the convenience of the parties. Unless the courts exercise this power intelligently, the parties will always like to take advantage of those provisions and go on filing replications one after another irrespective of the delay resulting from their own actions.[79]

3.15 Delay in Disposal of Interlocutory Matters and Stay of Proceeding

In many suits, applications for temporary injections, attachment before judgment, local investigation, appointment of receivers, or seeking experts' opinion are generally made at the initial stage. Section 75 and Order XXVI of the Code of Civil Procedure, Rules 234 to 279 of Chapter 11 of Civil Rules and Orders (Volume I) and Paragraph 17 of Civil Suit Instructions Manual deal with appointment of commissions. In some cases under section 75 of the Code of Civil Procedure, it becomes an unavoidable task for the court to appoint a commissioner aimed at performing some special type of works like recording of evidences on commission, local investigation, and examination of accounts, partition of land etc. with a

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[78] *See*, Report of the Law Reforms Commission, 1967-70, 346
[79] *Ibid*

purpose and intention of speedy disposal of a suits. But what do we see in reality, we see that in most of the cases ignoring the provisions of Paragraph 17(2) of Civil Suit Instructions Manual parties filed petitions for commission at a belated stage of the suit only to delay the proceeding. Moreover, in filing such types of petitions parties do not follow the provisions laid down in Rule 235(1) of Civil Rules and Orders (Volume I) and Paragraph 17(4) of the Civil Suit Instructions Manual in respect of contents and structure of the petition. Most of the petitions thus appear too vague and ambiguous. When the defect is detected then they prayed another petition for amendment of the local investigation petition. Sometimes the presiding officers disallow those petitions against which the aggrieved party prefers revision petition before the Court of District Judge or the High Court Division, as the case may be. Therefore, a considerable delay occurs at the very beginning of the suit.

In many a case, delay occurs in execution of commissions particularly when the commission is one for the examination of witnesses residing beyond the courts' jurisdiction or is one for local investigation. After prayer for issue of such commission has been accepted, the parties take time in some cases to deposit the commissioners' fee and file the requisite documents. This eventually causes delay. Whenever a commissioner is appointed, *inter alia,* at the instance of the court or at the instance of the party concerned to perform any of the works mentioned in section 75 of the Code of Civil Procedure, the commissioner does not submit his report within the time prescribed by the court despite repeated reminder. It is needless to say that there are some parties and advocates who are always reluctant to dispose of a suit and they know all the arts and strategies of delaying the disposal of a suit. In such cases, generally they

file a petition for the recording of evidence on commission appending a well managed medical certificate from a registered medical practitioner to show illness of a particular witness. If the court rejects the prayer considering the overall circumstance of the case, then it becomes a blessing in disguise to them as they intended so. They get a chance to prefer a civil revision before the Court of District Judge or the High Court Division of the Supreme Court of Bangladesh against that order of rejection and can prolong the disposal of the suit gratifying their ill-intention to some extent. On the other hand, if the petitions are allowed then they can fulfill their cherished desire in collusion with the commissioner. The researcher experienced in a suit that the commissioner had taken adjournments after adjournments on different plea in the face of silence of the party at whose instance he was appointed for recording of evidences. When the appointment of that commissioner was cancelled after giving him opportunity to show cause on that behalf the party concerned had preferred a civil revision before the High Court Division against that order which ultimately brought no fruitful result to them.

Commissions for local investigation usually take a long time for execution. The reasons for this delay are more than one. Firstly, the presiding judges do not always exercise due care in drawing up the order for local investigation. It has already been mentioned that the points on which local investigation is required are not always precisely stated in the order and the writ of commission issued by the court. Such incomplete or vague instructions are responsible for delay and confusion with the result that objections to commissioner's report become inevitable. Even if the writ of commission is issued with proper instructions, one party or the other goes on taking time from the commissioner on one pretext or another and

thereby delay the execution of the commission. The commissioners themselves also take repeated extensions of time for completion of the investigation. However, when the commissioner submits his report then another tragedy starts. In most of the cases the other side of the suit becomes dissatisfied with the commission report and prays for submitting objection to the report and consumes a lot of time to this effect casing unnecessary delay in the suit. Thereafter the objection regarding commission report fix up for hearing and at this stage the presiding judges very nakedly avoid to hear the same. They shift the date of hearing on very flimsy grounds like 'the court is otherwise busy etc.' We have observed that in some occasions judges kill months after months even years together for hearing the same. However, after hearing of the objection they put the record for order and again it takes long time for passing of the order. Sometimes the presiding judge ordered that the commission report and objection thereto would be considered at the time of delivering the judgment which is clearly illegal. This type of order delayed the whole trial. Because the order of rejecting the objection to the commission is a revisional order and the aggrieved party has liberty to prefer a revision petition at the proper forum. It is a cardinal principle of law that every interlocutory matter should be adjudicated before the trial begins. So the orders to consider the commission report and objection at the time of trial vitiates the proceeding. The presiding judges have no scope of considering the same at that time of trial and for this reason the trial judges usually order to shift the trial or judgment and takes the record for passing order in respect of objection to commission report. Then the aggrieved party prefers revision before the appropriate court which ultimately stayed the operation of the original suit. It has been observed that for some practical difficulties the presiding judges try to avoid the hearing of the objection to commission

report. In case of local investigation the survey knowing advocates submit their report which needs technical knowledge. In measuring the land under local investigation, the measurement units used in the commission report are technical and a considerable number of judges are not well conversant with those technical words as because most of the presiding judges do not get training on survey and settlement. The Ministry of Land organizes these types of training. But there is a lack of coordination between the Ministry of Land and Ministry of Law, Justice and Parliamentary Affairs in selecting the judges for this purpose.

In Bangladesh alluvial lands are formed in the bed of rivers which are called chars. There are also cases in this country where the question of reformation *in situ* is involved. Moreover, in the district of Sylhet where records of rights are yet to be made and finally published, there local investigations are more necessary for the purpose of finding out the exact position of disputed land after survey, relay and measurement. We have shortage of survey knowing advocates and for want of trained survey knowing advocates, local investigations are in many cases inordinately delayed.

The services of survey knowing advocates are also frequently needed in partition suits to effect the partition of the land by *mets and bounds* in accordance with the preliminary decrees made in the suits. The passing of final decrees in such suits is again delayed on account of non-availability of the services of survey knowing advocates. Over and above, the fees usually given to such advocates are not attractive with the result that few advocates are now willing to learn survey and settlement.

It is evident from the above discussion that among many reasons, parties consume some time for depositing the expense of commission. If any application is made on the day fixed and the court decides that a commission should issue, it should immediately cause to be drawn up an estimate of the expense of the commission with due regard to the provision of Order XXVI Rule 15 of the Code of Civil Procedure.[80] When the requisite order has been made, the court should fix a date, ordinarily not more than 10 days ahead, to enable the party at whose instance the commission is being issued to deposit the estimated amount of the expenses of the commission and to file the requisite documents.[81] The court should insist upon strict compliance with orders made with regard to the deposit of the commissioners' fees and the filing of the requisite documents and, except on strong and cogent grounds to be recorded by the court, time should not be extended. The deposit of costs in installments should be strenuously discouraged. Default in compliance with the orders of the court should ordinarily be penalized by cancellation of the order for the issue of the commission. In appropriate cases defaulting parties should be made to pay adjournment costs under Order XVII Rule1 of the Code of Civil Procedure....[82]The presiding judges are under obligation to assess the necessity of local investigation in a particular suit. This research work reveals that very frequently they issued writ of Commissions at any stage of the suit. In this respect at paragraph 17(3) of the Civil Suit Instructions Manual it is stated that after issues have been framed, the court should, in all suitable cases, ascertain whether a local enquiry is required and cases in which such enquiry may be necessary should be adjourned to a date not

[80] *See*, Paragraph 17(5) of the Civil Suit Instructions Manual
[81] *See*, Paragraph 17(7) of the Civil Suit Instructions Manual
[82] *See*, Paragraph 17(8) of the Civil Suit Instructions Manual

more than 14 days ahead to enable the party, at whose instance the commission will be issued, to apply for such commission. Practically this provision is not followed by the presiding judges. This researcher feels the necessity of applying the above law for effective reduction of delay at pretrial stage of a suit.

Among the judges, some are very frequently allowing the petition for examining witnesses on commission. In most of the cases the necessity of examining such witnesses under Order XVI Rule 19 of the Code of Civil Procedure on commission no longer exists. In order to obviate delay due to examination on commission of witnesses residing at a distance of more than two hundred miles from the court, it is recommended that such witness should now be examined by the court itself.[83] It is further recommended that commissions for examination of witnesses should be issued only in a case where the witness ... is a *Pardahnashin* lady or is unable to attend the court on account of sickness or infirmity or is otherwise exempt from appearance in the court. Where a writ is issued for examination on commission of a witness residing outside the courts' jurisdiction, the court should after the laps of a reasonable time remind the court receiving the writ, from time to time, for its early execution.[84] It has already been mentioned that even if the writ of commission is issued with proper instructions, in that case the commissioners themselves also take repeated extensions of time for completion of the investigation or of recording the deposition of witness. In this regard Justice Hamoodur Rahman Commission suggested that this habit of procrastination can be arrested only if the court becomes vigilant and

[83] *See*, Report of the Law Reforms Commission, 1967-70, 348
[84] *Ibid.*, 348-349

insists upon the completion of the investigation within the time allowed. [85] Regarding shortage of trained survey knowing lawyers, as it is noticed earlier, local investigations are in many cases inordinately delayed. This problem can be tackled satisfactorily if the services of government Surveyors and *Kanungos* are made available to courts on requisition from the appropriate department of the government.... We therefore, recommend that the service of government Surveyors and *Kanungos* should be lent as and when their services are required by courts....[86] To implement the above suggestion, this research study felt necessity of framing appropriate rules in this regard by the High Court Division of the Supreme Court of Bangladesh.

In some suits, it becomes necessary to seek the opinion of a handwriting expert for arriving at a correct decision as to the genuineness of thumb impression or signature put by the alleged executants of a suit deed. When a suit is filed for cancellation of deed alleging that the thumb impression put in the deed as well as in the Thumb Impression Register (TI Register) preserved in the office of the Sub-Registrar concerned are not put by the executants and if it becomes a deciding factor of the suit then it will be sent to the expert. But if a case is sent to the expert for opinion as to the genuineness of thumb impression, then it does not generally come back to the court in its usual course. Rumour goes that opinions of experts with some exceptions, go infavour of the party which can make undercover payment for it, otherwise it remains pending for months together. Although the opinion of an expert does not carry any unquestionable probative value

[85] *Ibid.* 349
[86] *Ibid.*

yet the court is to wait for it and in such way, the timely disposal of a suit is retarded.

Expert's opinion is not automatically considered by the court unless it is supported by the expert himself making deposition before the court. At this stage another tragedy begins in almost all cases the experts are reluctant in appearing before the court. They are entitled to get fees from the parties concerned.[87] As per government rule, the parties deposit the proper fees through *Chalan* in the government treasury. They know it. But on repeated reminders from the court their presence is very slow. In many cases, it is observed that due to examination of expert, the suit is pending for years together. While making enquiry, the concerned department informed that there is a huge shortage of manpower in the Criminal Investigation Department (CID).[88] They also informed that for shortage of modern technical facilities in the Laboratory, it takes time to give opinions. The CID, Dhaka office further told that they are giving opinions with their limited resources and for shortage of manpower the experts are not in a position to appear before the court as and when called for by the courts. According to them, only 18 persons are working for giving opinions regarding handwriting and thumb impression at the CID for the whole of Bangladesh.[89]

It is well known that court is the expert of all experts. But sometime it is also to be borne in mind that it is not possible to decide by the judges

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[87] Rule 2(2) of Order XVI of the Code of Civil Procedure, 1908 provides that in determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

[88] CID is responsible for giving expert opinion regarding hand writing or thumb impression in Bangladesh

[89] Data obtained on 9 August, 2010. Among the 18 persons 7 for handwriting and 11 persons are working for thumb impression.

on every matter. Sometimes experts' opinion is inevitably required. For example, if in a suit the prime consideration is to find out the legitimacy of a baby, then report of DNA test is very much essential. In that case, the court after receiving the DNA report can consider the matter on the basis of oral evidence deposed by the witnesses. So, to reach a concrete decision by the Court on a disputed matter, experts' opinion is urgently needed. It has already been mentioned that there is a shortage of manpower in the concerned department. So, it can be recommended that sufficient manpower should be recruited and modern facilities should be made available in the laboratories by the concerned department.

3.15.1 Temporary Injunctions

By injunction we mean a judicial remedy by which a person is ordered to refrain from anything or do a particular act or thing. Temporary injunctions are such as are to continue until a specific time, or until the further order of the court. They may be granted at any stage of a suit, and are regulated by Order XXXIX of the Code of Civil Procedure.[90] In dealing with applications for temporary injunctions the court should be guided by the following principles:

(i) Plaints and affidavits should be critically examined and the courts should satisfy themselves that there has really been an invasion of rights sufficient to justify interference.

(ii) The courts should appreciate that an interlocutory injunction should be granted *ex parte* only in very exceptional

[90] Mohsin, AFM, *'Equitable Relief's under the Civil Justice System in Bangladesh: An Analytical Study,'* unpublished Ph.D. Thesis, Department of Law & Justice, Rajshahi University, Bangladesh June, 2008,49

circumstances, and ordinarily only in cases in which the applicant establishes that by no reasonable diligence on his part, could he has avoided the necessity for making the application. Rule 3 of Order XXXIX, Code of Civil Procedure directs that notice "shall" be given unless the emergency is so grave that notice will defeat the object of the injunction. Particular care should be taken in dealing with applications for temporary injunctions against local bodies and similar institutions.

(iii) Temporary injunctions when granted should ordinarily be limited to hold good only for the minimum time required for the defendant to appear before the court to show cause against the injunction.

(iv) When granting such an injunction the greatest care should be taken to state in precise terms the particular acts which are forbidden. A vague and general order that the application for injunction is granted should never be recorded. Without such specific direction injunction orders are frequently drawn up by coping out a long rambling statement from the plaint or application for injunction.

(v) The defendant should be served with copies of the plaint and affidavit and should be allowed a few days thereafter within which to appear and object. The presiding judge should ordinarily dispose of the application on the date so fixed and adjournments should be very sparingly granted. It is of the

> utmost importance that injunction applications should be heard and determined with the greatest expedition.[91]

All applications for injunctions or other interlocutory orders in which an appeal is allowed should be heard independently of the proceedings for the preparation of the suit for trial....[92] It must always be borne in mind that interlocutory applications are usually of an urgent nature, and delay in their disposal may cause unnecessary hardship to the parties and may sometimes render the proceedings infractuous. They should ordinarily be heard on the first date fixed for appearance and hearing, and certainly on the next succeeding date, if a short adjournment is necessary in exceptional circumstances.[93]The law is clear about considering a temporary injunction petition that temporary injunctions should not be granted unless very strong and cogent grounds are made out. At Rule 283 of Civil Rules and Orders (Volume I) it is stated that as a general rule notice should invariably be given to the other side before granting an injunction. But we have experienced that interlocutory injunction are sometimes granted too freely and without sufficient care to impose terms. The object of such care is not to place a plaintiff or in appropriate cases, the defendant, in a position of unfair advantage by the injudicious issue of an *ex parte* order.[94] It has been observed during the time of study that such injunctions are sometimes granted so reluctantly without regard to the principles governing the grant of interlocutory injunctions or the special conditions under which it is right to grant them *ex parte*. Injunctions of these types cause great hardship to the opposite party particularly where it has the effect of stopping the execution of some project or construction work or a development scheme. Over

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[91] *See*, Paragraph 31(2) of the Civil Suit Instructions Manual, 1935
[92] *See*, Paragraph 20, *Ibid*
[93] *Ibid*
[94] *See*, Paragraph 31(1), *Ibid*

zealousness in granting interlocutory injunctions without weighing carefully the balance of inconvenience may cause incalculable injustice[95] and may retard national development work.

Development work depends on a combination of national planning and availability of external assistance. Any disruption in such work not only causes a dislocation of the national development programme, it may even scare away the foreign donor, causing permanent harm to the growth of national economy.[96] It has already been noticed that in our country interlocutory injunctions are granted much too freely and without sufficient care to impose terms. There is moreover especially noticeable freedom in the granting of such orders *ex parte*. Having regard to the congestion in many courts one can readily see that a plaintiff by such an order is put at once into a strategic position. Indeed a lax practice in granting such orders is an open invitation to blackmail.[97] The cause of the evil is, however, complex. The first cause is that the junior presiding officers are not always able to appreciate the business consequences of the orders they make. For the purposes of an *ex parte* application they are far too uncritical of plaints and affidavits. They do not appreciate the unfair advantage which plaintiffs constantly seek to get by lying by pretending that they have just heard of an invasion of their rights and by putting forward ludicrous suggestions of irreparable damage. Experience shows that the great majority of affidavits with the word 'irreparable damage' are proof of little save the absence of irreparable damage. In many cases the plaints and affidavits fail utterly to explain that any thing has happened in the last few days to justify a sudden claim to interference with the defendant from behind his back. They

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[95] *See*, Report of the Law Reforms Commission, 1967-70, 351
[96] *See*, Report of the Law Committee, 1976, 89-90
[97] *See*, Appendix IV of Civil Suit Instructions Manual, 1935

frequently show that the plaintiff might and should have brought his suit long before and proceed on the assumption that so long as it is conceivable that the plaintiff's right is being infringed the court is bound to restrain the defendant until the distant day when the question shall be tried out. Thus, we think that the main cause of the bad practice is inexperience and weakness on the part of officers. [98] Another cause we believe to be that courts are too apt to look merely at the rules in Order XXXIX of the Code of Civil Procedure. These rules are a statement of the general conditions under which interlocutory injunctions may be granted. They are a statement that is to say of the powers of the court. By rule 3 of this Order the Court is required before granting an injunction to direct notice to be given of the application to the opposite party, in all cases except where it appears that the object of granting the injunction would be defeated by delay.

The recklessness with which injunctions are sometimes granted *ex parte* is a special evil in a country where rights and interests in land are apt to be complicated and uncertain. It is, for example, a heavy drawback to industrial progress if a firm is buying land to build a factory, however careful it may be to get a good title and, however, good in fact be the title which it gets, should run a great risk of having expensive building operations stopped for weeks by an injunction granted by a junior presiding officer at the instance of a plaintiff claiming a small and fractional interest in a portion of the land. Again we understand that in recent times the ordinary operations of local bodies are being constantly interfered with by *ex parte* injunction at the suits of plaintiffs whose grievance is in no way commensurable with the damage which interlocutory injunction is bound to do. There can be no greater encouragement to blackmailing and malicious

[98] *Ibid*

suits. The serious interruption of public business in the interest of a protagonist in a local quarrel is by no means unknown.[99]

In some cases, the plaintiff with *malafide* intention files suit against the government and statutory public authorities and submits temporary injunction petition only to hamper or stop the development activities of the government. Though there is no hard and fast rule in granting *ad interim* or temporary injunction against the Government under Order XXXIX of the Code of Civil Procedure but then the government passed the Court (*Ad interim* Injunction Order) Act, 1989[100] and made it mandatory to issue show cause notice upon the government where development work or foreign donation is involved. We have experienced that sometimes the presiding judges intentionally or ignoring the provisions of the said Act was frequently granting *ad interim* or *ex parte* injunctions stopping the development activities of the state. The government and the other concerned departments gained bitter experiences which inspires the government to amend the Code of Civil Procedure in 2003. At section 5A of the Code of Civil Procedure(Third Amendment) Act, 2003[101] it is mentioned that court shall not, without serving reasonable notice to the Government Pleader, pass *ex parte* any order of *ad interim* or temporary injunction at the instance of a private party against the government or any statutory public authority, if such order is likely to prejudice or interfere with any measure designed to implement any development programme, or any development work or otherwise harm public interest. The word ' shall' used in this section made it mandatory to the presiding judges not to issue any kind of injunction against the government in the above circumstances without serving notice.

[99] *Ibid*
[100] Act XXXII of 1989
[101] Act XL of 2003

After enacting Act XL of 2003, the situation is a little bid improved. But due to ignorance of law some junior judges are to some extent granting *ad interim* orders hampering the development activities of the government.

In respect of granting *ad interim* or temporary injunction against a private party section 5A of Act XL of 2003 states that the court shall, in all cases where a private party makes an application for *ad interim* or temporary injunction against another private party, direct notice of the application to the opposite party, unless it appears that the object of granting the injunction would be defeated by the delay.

Delay more frequently occurs if either the parties get an order of injunction. This party then started to play dilatory tactics. We have experienced that for this reason the hearing of original suit is delayed for years together, even decades or even more. Observing the reality the legislature takes step for quick disposal of injunction matter. Section 5A(3) of the Code of Civil Procedure (Third Amendment) Act, 2003 provides that if any order of *ad interim* or temporary injunction is passed *ex parte* at the instance of a private party against another private party, the court shall hear and dispose of the matter on merit within seven days of appearance of the opposite party, unless the period is extended further at the instance of the opposite party, and any such order of *ad interim* or temporary injunction shall stand vacated, if the party at whose instance it was passed, prays for adjournment, on being called upon by the court, fails to attend hearing.

The above provisions of law have specified the time limit for hearing of the injunction matter and there is no scope of causing delay in this regard. But practically we observed that the principles lay down at section

5A (3) are not strictly followed by the presiding judges. It may happen due to lack of knowledge of the presiding judges. It is not rare that lawyers of both sides agree on the matter and contentiously obtain adjournment. The opposite party in most of the cases does not refer the above provisions of law before the presiding judges. The judges also for their heavy work load occasionally shift those records as their routine work and thus delay is caused. Section 5A (4) of the Act further provides compensatory costs for the advantageous party for whom delay occurs. In that section it is laid down that if the suit ultimately is decided against the party at whose instance an *ad interim* or temporary injunction is granted, and it appears that on account of such injunction the other party has suffered loss, the court, while deciding the suit shall award such compensatory cost not exceeding ten thousand taka in favour of the other party, in addition to other cost as he may be entitled to. So, if the above provisions of law are strictly followed then it can be said that the petitions seeking injunction with vague and frivolous grounds may to some extent be stopped. The order of issuing *ad interim* or temporary injunction is an equitable relief. This inherent power should be judicially applied by the judges. But again it comes to our notice that for lack of knowledge the presiding judges, particularly the new entrants in the judiciary, do not in a position to apply the law properly and granting *ad interim* orders easily without weighing the established principles of considering a temporary injunction matter. The party against whom an interlocutory order is made almost invariably files an appeal against that order and obtains a stay of further proceedings in the suit till the disposal of the appeal. The appellate court cannot usually dispose of the appeal within a reasonable time because of its pre-occupation with other urgent judicial work with the result that the suit in which the interlocutory order was made remains suspended. Even after the disposal of the appeal,

the losing party invokes the revisional jurisdiction of the High Court Division or the District Judge, as the case may be, and if the revision is admitted for hearing, proceedings of the connected suit are stayed till the disposal of the revisional application. Great delay occurs in the disposal of the revisional applications in the High Court Division. In the meantime, the suit remains further suspended. We have come to know that suits remaining stayed for years together by reason of such orders of stay passed by the appellate or revisional courts. Such stay of proceedings under the orders of superior courts is responsible for inordinate delays. Even if the appellate or revisional court does not pass any order staying proceedings of the suit, the trial court can not always proceed with the case inasmuch as the record of the suit is almost invariably called for in connection with the appeal or revision. A majority of the appeals and revisions against interlocutory orders lack substance. The resourceful litigant invariably adopts this course to tire out his adversary by protracting the litigation even at the interlocutory stage.[102]

In appeals and revisions from interlocutory matters, it should not always be necessary to call for the record of the trial court. The party invoking the appellate or revisional jurisdiction should instead be asked to file certified copies of pleadings and other relevant documents from the record on which he wishes to rely along with the certified copy of the order complained of. This will obviate the necessity of calling for the trial courts' record. The plaintiff and the defendant may even be required to file two extra-copies of their respective pleadings in the trial court so that the same may be easily available for being sent to the appellate or revisional court if so required for the disposal of an appeal or revision from an interlocutory

[102] *See*, Report of the Law Reforms Commission, 1967-70, 350

matter. If the necessity of calling for the trial courts' record can be dispensed with by following the above procedure, then, the trial court, unless a stay order has been granted by the appellate or revisional court, will be in a position to proceed to take all necessary preliminary steps for the preparation of the suit for hearing and the suit will not remain moribund merely because of the pendency of the appeal or revision from the interlocutory order. Even in non-appealable interlocutory orders, such as, orders allowing amendment of plaint, orders for substitution, orders for addition of parties and orders with regard to valuation and court fees, etc. one party or the other invariably invokes the High Courts' revisional jurisdiction against such orders. Again, in connection with such revisional applications the records of the trial court are automatically called for if the revision is admitted for regular hearing and proceedings of the connected suits are stayed. The result is that appeals and revisions from interlocutory orders delay the preparation of the suits for hearing and consequently their disposal. The remedy lies in adopting the procedure indicated above which would eliminate the necessity of calling for the records. Besides, the appellate and revisional courts should exercise greater care in staying proceedings of suits. Order for calling up the records or staying proceedings should not be made as a matter of course. Only in exceptional cases where stay of proceedings is absolutely necessary such orders should be made and records called for. The offices of the superior courts should not call for the records unless a specific order has been made in that behalf by the court.[103]

The research work reveals that *ad interim* and temporary injunctions are sometimes granted too freely without regards to the principles governing the grant of interlocutory injunctions or the special conditions

[103] *Ibid*

under which it is right to grant them *ex parte*. In granting *ad interim* or temporary injunction, great care should be exercised not to place a plaintiff in a position of unfair advantage by the injudicious issue of such an injunction. Injunctions of these kinds cause great hardship to the defendant particularly where it has the effect of stopping the execution of some project or construction work or a development scheme. Over-zealousness in granting interlocutory injunctions without weighing carefully the balance of inconvenience may cause incalculable injustice.... Before granting an interlocutory injunction the presiding officer should take particular care when dealing with applications for interlocutory injunctions against the government, a local body or a corporation so that no dead-lock is created in the process of the development schemes of such bodies.[104]

The most devastating aspect of temporary injunction is that parties normally consume most of their time and strength in fighting the injunction matter. Age limit of injunction matter in most of the cases runs several years. The ordinary litigants are fighting year after year leaving the main suit in a standstill position.

It is a trite fact that relief in injunction matter is consequential and is branded as the off-shoot of the main suit. The ordinary litigants, with the least knowledge of law are emotionally encouraged in law courts with two important terms 'warrants' and 'injunction'.[105] Even in ordinary land dispute, when his possession thereof, has already been in the hands of the opposite party, comes foreword with an injunction prayer with affidavit and by showing relevant papers obtain an *ex parte* or show cause notice and the

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[104] *Ibid*

[105] Choudhury, M. Rahman, 'Is Injunction Hearing Responsible for the Inordinate Delay in Disposing the Main Suit?', AIR 1982 Gouhati (Journal), 87

chapter of fight ensues. After appearance of the defendant or defendants, written objection is submitted assailing the averment of the plaintiff. Then, without adhering to the spirit under Order XXXIX, evidence starts in a regular fashion. During evidence hearing adjourns on different pleas set forth by the parties. After a prolong fight, the matter is disposed of. The aggrieved prefers an appeal. In this way the longevity of injunction continues unabated. Even assuming for the sake of argument, the plaintiff wins in the injunction matter and the main suit is decided against him, what benefits he accrues by fighting the injunction matter. This emotional long drawn battle is nothing but waste of money and time and energy. Moreover, in a land dispute if the plaintiff is crowned with success, he may be entitled to compensation from the defendants' aggressor.[106]

This short cut method *i.e.* by affidavit or otherwise, as envisaged in Order XXXIX of the Code of Civil Procedure in disposing the injunction matter has not been followed in majority of the cases. In order to check the emotional type of remedy as adopted by the ignorant litigant specially in land disputes, some appropriate measures should be sorted out. This long drawn battle in an injunction between the parties may be held responsible for delay in disposing the main suit.

It is observed that many people with small tenure holder lose everything at their disposal by fighting the civil cases in the aforesaid fashion. The victim normally spends his last life with extreme poverty, frustration and repentance.

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[106] *Ibid.*, 87-88

In the above circumstances, it is now high time for the jurists, reformers and political thinkers to think about the plight of the ignorant litigants and this research work felt necessity in changing the relevant provisions of the Code of Civil Procedure, 1908.

3.15.2 Attachment before Judgment

If at the time of filing a suit or at any stage afterwards an application is made by the plaintiff for the attachment of property of the defendant before judgment, the court should proceed to consider the application with due regard to the provisions of Order XXXVIII, rule 5 of the Code of Civil Procedure. It is known to all that the provision for attachment before judgment has been made to prevent any attempt on the part of the defendant to defeat the realization of the decree that may be passed against him.[107] So, great caution should be followed in order to consider the matter by the court. In the case of ***Renox Commercial*** v. ***Inventa Technologies*** [108] Madras High court observed that in order to obtain an order of attachment before judgment, the plaintiff shall have to satisfy the court:

(a) that the defendant is about to dispose of the whole or any part of his property; or

(b) that the defendant is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court; and

(c) that the defendant is intending to do so to cause obstruction or delay in the execution of any decree that may be passed against him.

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[107] *Padam Sen* v. *U.P,* AIR 1961 SC 218

[108] AIR 2000 Mad 213

It has been observed that in granting the petition for attachment before judgment the presiding judges usually consider the contents of affidavits attached to the petition and submissions made by the advocates. The above mentioned principles are rarely taken into consideration. The order of this nature is often passed *ex parte* when the affidavit merely repeats the words used in Rule 5 of Order XXXVIII of the Code of Civil Procedure. The remedy relating to attachment of property before judgment is an equitable remedy and the jurisdiction of the court with reference to this matter should be carefully and sparingly used and *ex parte* orders should only be passed in very exceptional circumstances. Again great caution should be exercised when movables are sought to be attached or when the attachment will have the effect of closing down a business.

The order of allowing this type of petition is subject to revision. The aggrieved defendant may prefer a revision petition before the High Court Division or the District Judge, as the case may be, and obviously obtains an order of stay of further proceedings in the suit till disposal of the revision matter. The revisional court can not usually dispose of the revision petition within a reasonable time because of its own pre-occupation with other urgent judicial work. The economically solvent defendant invariably tries to tire out the plaintiff by protracting the litigation at this stage.

The power under Order XXXVIII of the Code of Civil Procedure is not meant to exercise lightly. Vague or general allegations that the defendant is about to abscond or to remove the whole or any part of his properly from the local limits of the jurisdiction of the court are easily made and may often be disregarded. The court must be satisfied not only that (a) the defendant is about to abscond or dispose of him property or remove it

from the jurisdiction of the court, but (b) that his object is to obstruct or delay the execution of any decree that may be passed.

In some special circumstances, the presiding judges made 'conditional order' of attachment before judgment but we have observed that in many cases no final order is recorded. This also causes harm to the defendant which ultimately give him opportunity to challenge the order before the revisional court and thus a considerable delay occurred.

3.15.3 Appointment of Receiver

Order XL Rules 1-5 of the Code of Civil Procedure and Rule 285 of the Civil Rules and Orders (Volume I) deals with appointment of receivers. According to Rule 1 of Order XL, the court for any just and convenient cause may by order

(a) appoint a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits there of, the application and disposal of such rents and profits, and the execution of documents as the power himself has, or such of those powers as the court thinks fit.

The object and purpose of appointment of receiver may generally be stated to be the preservation of the subject matter of the litigation pending

judicial determination of the rights of the parties.[109] The receiver is appointed for the benefit of all concerned; he is a representative of the court and of all parties interested in the litigation wherein he is appointed.[110] He is supposed to be an impartial person appointed to manage the property in suit during the pendency of the suit when the court is satisfied that none of the parties to the suit should be allowed to manage it.[111] In the case of ***Humayun Kabir*** v. ***Dasimuddin***[112] the High Court Division of the Supreme Court of Bangladesh decided that a receiver should not be appointed unless the plaintiff *prima facie* proves that he has very excellent chance of succeeding in the suit. Since it deprives the opposite party of possession of the property before a final judgment is pronounced, it should only be granted for the prevention of manifest wrong or injury.[113]

An appeal lies from an order granting or refusing an application to appoint a receiver. Therefore, either party to a suit has liberty to proceed to the appellate court challenging the order relating to appointment of receiver. In practice, the appellate courts generally stayed the operation of the original suit and thereby caused delay. So, it can be concluded that the court should look at the conduct of the party who makes an application for appointment of a receiver. He must come with clean hands and should not have disentitled himself to this equitable relief by latches, delay or acquiescence.

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[109] Islam, Mahmudul & Neogi, Probir, *The Law of Civil Procedure* (Volume-2),1st Edition, (Dhaka : Mullick Brothers, 2006)1618
[110] *Narayandas* v. *Taraben*, AIR 1998 Guj 12
[111] *Jagat Singh* v. *Bhavani Singh*, AIR 1993 SC 1721
[112] 13 BLD (1993) 253
[113] *Benoy Krishna* v. *Satish*, AIR 1928 PC 49

3.16 Delay in the Disposal of Miscellaneous Cases and Restoration of Original Suits

Miscellaneous judicial cases are filed for restoration of original suits to its earlier stage and file. Instances of willful default of the parties are not rare to delay the disposal of suit by taking recourse to these proceedings when other devices have failed. Rule 774 of the Civil Rules and orders (Volume I) shows the cases which are to be entered under the head "Miscellaneous Judicial" cases. Order IX of the Code of Civil Procedure is basically enacted for providing necessary guidelines for appearance of parties and consequences of non-appearance in a particular suit. The Appellate Division of the Supreme Court of Bangladesh in the case of ***Jaytirghanada*** v. ***Deputy Commissioner***[114] held that it is an accepted rule of judicial procedure that the court shall decide a civil action in presence of the parties concerned. But if a party fails to be present before the court, the court shall decide the case in his absence yet there is another rule of judicial procedure that the party in whose absence the case has been disposed of may get the order of disposal recalled and get his case restored to file on satisfying the court that his absence was neither willful nor negligent and that he was prevented by certain circumstances from being present in court for which he can not be held to be responsible. The provisions of Order IX have been enacted to give effect to these rules of judicial procedure.

Order IX of the Code of Civil Procedure relates to hearing after service of summons and the object of enacting the provision is to give justice to a *bonafide* defaulting party. Applications under Order IX Rules 4 and 9, of the Code of Civil Procedure for restoration of suit dismissed for

[114] 28 DLR (1976) (AD) 158

default and application under Order IX rule 13 for setting aside *ex parte* decree are not infrequent. But the court is generally lenient in restoring such suits after setting aside the order such leniency should not be shown merely for providing the parties with an opportunity of having the suit decided on merits. But before setting aside the dismissal order and restoration of the original suit in its previous file and number, the court must be satisfied that there was sufficient ground for the plaintiff's non-appearance on the date fixed for hearing. Negligent of careless defaults should not be condoned lightly.[115] If a suit is decreed *ex parte* after the defendant has appeared and filed a written statement, an application for setting aside the decree is almost invariably made on the ground that the defendant failed to attend the court for sufficient reasons. In some cases, such applications are made on the ground of non-service of summons, if the suit is decreed *ex parte* before the defendants' appearance. Such proceedings under Order IX of the Code of Civil Procedure do not usually come to an end with the final order passed by the trial court as there may be appeals and revisions there from. If the suit is ultimately restored after the disposal of the appeal or revision, the suit gets a renewed file and eventually takes a longer time for its disposal. Applications under Order IX rule 13 for setting aside *ex parte* decrees are not always *bonafide*. A defendant who has a weak case may intentionally allow the suit to be decreed *ex parte* by non-appearance in spite of service of summons and there after come with a petition under Order IX rule 13 for setting aside the *ex parte* decree and thereby abuse the process of law. Before 2006, no effective remedy was available against such abuse, but the court was in a position to minimize it if it takes care before a suit is dismissed for default or is decreed *ex parte* and deals with applications for

[115] *See*, Report of the Law Reforms Commission, 1967-70,.351

restoration of suits strictly on merits. For huge backlog of cases in our courts, practically it was not possible for the judges to take care or to apply due attention in the above circumstances. There was a dire need of necessity to amend the provisions of Order IX for disposal of miscellaneous cases. Accordingly Parliament enacted the Code of Civil Procedure (Amendment) Act, 2006 and inserted Rules 9A and 13A of Order IX for directly setting aside dismissal order or *ex parte* decree if the concerned party files an application supported by affidavit, praying for setting aside the order of dismissal or *ex parte* decree within thirty days of the date of passing the impugned order. The court under rule 9A or 13 of Order IX of the Code of Civil Procedure may, in order to avoid delay and expedite disposal, directly set aside the dismissal or *ex parte* decree without requiring the plaintiff or defendant to adduce evidence to satisfy it about sufficient causes as required under rule IX but requiring him to pay such cost not exceeding one thousand taka as it may deem appropriate. Dismissal order or *ex parte* decree should not be set aside more than one under the above provision of law.

If a plaintiff or defendant dies during the pendency of a suit, it is necessary to substitute his legal representative which takes on unusually long time. Under Rules 3 and 4 of Order XXII parties are allowed to substitute the legal representatives of the plaintiff or defendant in the suit. The plaintiff can not always be blamed for this. If a defendant dies, the plaintiff may not always be aware of his death or of the names of the persons left behind as legal representatives. Nor is it easy for the plaintiff to gather the correct addresses of the legal representatives of the deceased addresses of the legal representatives of the deceased defendant. The plaintiff generally comes to know about the death of a defendant only after

some process is retuned unserved with a report that the person is dead. After getting this report, plaintiffs' lawyer writes letter to the plaintiff asking him to take steps for substitution of the legal representatives of the defendant who has been reported to be dead. It is in this manner that the plaintiff usually gets information about the death of the defendant. If a defendant is a resident of a place far away from the place of residence of the plaintiff, the ascertainment of the deceased and their addresses becomes all the more difficult. It is not uncommon for applications for substitution being made in some cases even two or three years or more after the death of the defendant. Plaintiff's failure to apply for substitution within time in the above circumstances results in the abatement of the suit.[116] If the suit has abated the plaintiff under the provisions of rule IX of the Code of Civil Procedure files miscellaneous case for impleading the legal representatives of a deceased within ninety days from the death of the deceased defendant as provides in Article 177 of the First Schedule of the Limitation Act. Notice of such an application is required to be served on the legal representatives of the deceased and other defendants, if any. This again consumes time before the miscellaneous case becomes ready for hearing. Usually, the legal representatives contest such an application. The fight with regard to abatement and substitution is so persistent that the matter is challenged by the aggrieved party in the form of revision before the High Court Division or District Judge, as the case may be. The revisional courts, as usual, take a longer time to dispose of the matter due to heavy work-load. Therefore, the suit can not proceed till the question of abatement and substitution is finally disposed of, and when finality has been reached in this regard, in most of the cases, it is found that the suit has already been lying idle for several years. Sometimes, the advocates file an ordinary petition to implead the

[116] *See*, Report of the Law Reforms Commission, 1967-70, 354-355

legal representatives of the deceased besides filing miscellaneous case. It happens because of lack of knowledge. The advocate seeks a lot of adjournment for hearing of the above petition. When the same is disallowed then, if the limitation period of filing miscellaneous case permits, he again filed miscellaneous case killing some times. Delay in the disposal of this type of miscellaneous case also occurs due to the presiding judges. Some of the judges, particularly, the new entrants are not well conversant about the provisions of Order XXII of the Code of Civil Procedure and thus they feel it hard to dispose of the matter. Resultantly, they frequently ordered to shift the date of hearing of the above miscellaneous case stating 'the court is otherwise busy etc.' in the order sheet. In doing so, they wholly depend upon the *Peskars* (Bench Assistant) of their courts. Interested parties try to bias the *Peskars* to fix a long date to harass the other party or to delay the proceeding. We have already stated that if the defendant dies, then the plaintiff usually does not show his sincerity in impleading the legal representatives of the deceased person. So, the failure to substitute legal representatives of a deceased defendant is thus greatly responsible for inordinately delaying the disposal of the suit.

In order to obviate delays resulting from the failure to substitute the legal representatives of a deceased party in time, Justice Hamoodur Rohman Commission has recommended that the parties to a suit should along with their pleadings, submit a list of the persons, who should be substituted in the event of their death during the pendency of the suit or proceeding as also nominate another person, who may be from amongst the presumptive heirs as a person who would be responsible for intimating the court about the nominators' death and supplying the correct particulars of his legal representatives. In case of failure of the nominee to give such

intimation to the court, the court should be competent to proceed with the suit and the orders passed in the absence of the nominee or the legal representatives should be binding on the parties, unless set-aside by the court for good reasons. The nomination made by each party should remain operative even in appeal, revision and other civil proceedings arising out of the suit unless varied by the party concerned.[117]

We have noticed that the proceeding under Rule 9 of Order XXII of the Code of Civil Procedure is time consuming. Inordinate delay occurs in disposing of the said proceeding. To overcome the situation the Parliament amended the Code of Civil Procedure, 1908 in 2006 and inserted Rule 9A in Order XXII for early disposal of this type of miscellaneous cases. The *non-obstante* clause of the rule states that where the legal representative of a deceased plaintiff or the assignee or the receiver of any insolvent plaintiff files an application for setting aside abatement or dismissal, the court may, in order to avoid delay and expedite disposal, set aside the abatement or dismissal without requiring the applicant to adduce evidence to prove sufficient cause as required under Rule 9, but requiring him to pay such cost not exceeding three thousand taka as the court may deem appropriate.

So, from the above study, it can be said that before the enactment of the Code of Civil Procedure (Amendment) Act, 2006 there were many scopes of causing delay in the disposal of miscellaneous cases. When a party finds that he has some problem or he has a weak case then he tries to delay the case in many ways. But after inserting Rule 9A and 13A in Order IX and rule 9A in Order XXII this practice has been changed. Now there is no need of filing miscellaneous cases and the parties by filing an ordinary petition supported by an affidavit can get the remedy very quickly. This

[117] *Ibid.*, 355

system, no doubt, save time and contributes in the disposal of cases more expediently.

3.17 Delay in the Disposal of Petitions filed under Section 24 and 115 of the Code of Civil Procedure, 1908 and Section 25 of the Family Courts Ordinance, 1985

There is no scope of suspicion that each and every section of an enactment is enacted with good purpose and intention. But the application and exercise of all sections are always not done with good purpose if exercised by a party of a suit. Section 24 of the Code of Civil Procedure and section 25 of the Family Courts Ordinance, 1985 were enacted enabling the High Court Division and the District Judge to transfer a suit from one court to another court of competent jurisdiction. It leaves no scope of suspicion that these sections are exercised with all cardinal virtues and core values by the courts. But it appears that sometimes, these two sections appear like impending unsheathed sword to the presiding judges of a trial court by either the parties to a suit with *malafide* intention. Both the sections have given a draconian power to the unscrupulous litigants who want to serve their purpose of delaying the disposal of a suit. The unscrupulous barraters do not hesitate to insert some objectionable, reprehensible, arrant lie and unfounded statements regarding the presiding judge of the court in the petition for transferring the suit supporting by an affidavit. To gratify their ill intentions, the barraters exercise the power given in these sections making the presiding judge of the court scapegoat of their misdeeds. It is needless to mention here that sometimes, section 115 of the Code of Civil Procedure is exercised by the litigants with an intention to delay the disposal of the suit.

3.13 Delay in Summoning and Attendance of Witnesses

After the issues have been framed in a suit, the contending parties are in a position to make up their minds as to the persons who should be summoned by them to substantiate or disprove the issues on facts.[118] But the parties do not generally file the lists of their witnesses and take steps for issuing summons on them until the suit approaches the stage for finally hearing. After the lists of witnesses have been filed, there remains little time for service of summons on them through court. Non-service of summons on witnesses well in time, necessitates shifting of the final hearing date of the suit or its adjournment. This causes delay in the disposal of the suit, besides dislocating the courts' diary and programme of judicial work.[119] Order XVI of the Code of Civil Procedure incorporates the necessary rules in the matter of enforcing the attendance of persons to give evidence or to produce documents provided for in sections 30 and 32. Rule 1 of Order XVI provides that at anytime after the suit is instituted, the parties may obtain, on application to the court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents. In the case of ***Nawshad Alam*** v. ***Hedayet Ali***[120] the High Court Division of the Supreme Court of Bangladesh said that this rule authorizes the court to compel attendance of a person by issuing summons to give evidence or to produce documents. A party is entitled as of right to obtain summons even at a later stage as it will be issued at the risk of the party and the court may refuse adjournment of hearing on the date fixed.[121] Taking advantage of this provision, the parties take steps for issue of summons on witnesses at a belated stage and it has been experienced that a considerable portion of time is spent for this purpose which ultimately causes delay. To overcome the situation, at page 90 of its

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[118] *Ibid.*, 352
[119] *Ibid*
[120] 8 BLT (2000) 219
[121] *Kandru* v. *Tara*, AIR 1926 Cal 364

report, the Law Committee, 1976 headed by Justice Kemaluddin Hossain recommended:

> "An amendment may be made by adding a provision that no party who has begun to call his witnesses shall be entitled to obtain process to enforce the attendance of any witness filed in court after the framing of issues, without an order of the court made in writing and stating the reasons there for."

A witness is entitled to traveling expenses at any time even after he has been examined as a witness and it is the duty of the party summoning witness to pay for the expenses of the witness. Rule 2 of Order XVI provides that the court shall fix in respect of each summons such a sum of money as appears to the court to be sufficient to defray the traveling and other expenses of the person summoned in passing to and from the court in which he is required to attend, and for one days' attendance. Experience shows that this provision of law is not practically followed by the parties. Most of the judges and lawyers are not well known about this. As a result, the lawyers do not advice their clients to deposit the expenses of the witnesses in court timely. The practice is that the parties concerned somehow manage the witnesses to be appeared before the court. Sometimes the lawyers at the time of cross examination put questions to the witnesses whether his expenses is borne by the party to whose instance he appears. This type of question throws the witnesses in an embarrassing situation. The qualified witnesses felt embarrassed and they refused to depose before the court. To tackle the situation, the presiding judges adjourned the proceeding. These are happening due to lack of knowledge of the concerned lawyer about the provisions of law.

Rule 2(2) of Order XVI states that in case of any person summoned to give evidence as an expert, the court may allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case. In practice, it is observed that the presiding judges misspend many times to give decision on the petition filed by the parties in this regard. In deciding the above petitions, in many cases, they depend upon the *'Sheristadars'*. They waste lot of times for fixing the amount of expert fee. *'Sheristadars'* or *'Peskars'* are advised to put a certain amount and then the presiding judges allowed the petition directing the party concerned to deposit the amount through *Chalan* in the government treasury. Accordingly, the party deposits it. But complexity arose when the experts remain absent on repeated issuing of summons. The experts are doing so because of insufficiency of remuneration deposited in this behalf. In most of the cases expert's opinion is sought from the Criminal Investigation Department (CID) of Bangladesh Police. And for the reason, the presiding judges can easily solve the problem if they make a phone call to the Superintendent of Police of the district and ask him about the amount of remuneration. Where the court rightly fixes the amount, in those cases adjournments taken for depositing the amount of fee of expert witnesses are not infrequent. All these factors are responsible for considerable delay.

The above mentioned causes put constraint in smooth running of a suit. In order to eliminate delays on these score it is suggested by Justice Hamooduur Rahman Commission that a rule should be provided in the Code requiring the parties to file list of witnesses within one week of the framing of issues in a suit. The rule should further provide that all necessary steps for the issue of summonses on witnesses who are required to be

summoned through court should be taken at least a fortnight before the date on which the final or peremptory hearing date of the suit is fixed. If any party neglects to apply for summonses or makes default in depositing process fees and expenses of witnesses within the above time limit, no summonses on any witness should be permitted to be served through court unless the defaulting party satisfies the court that there was sufficient cause for his failure to take the required steps in time.[122] The Commission further recommended that in civil litigations it would be more convenient and efficacious if the parties themselves are made responsible for procuring the attendance of their witnesses in the first instance. The parties themselves may take summonses from the court for service on their witnesses. If, however, any witness refuses to attend the court on receipt of the summons from a party (such a case may be rare), the party concerned may apply for service of summons on that witness through court in which case the summons should be served through the process serving agency.[123] In our country the usual practice under rule 7A of Order XVI is that the parties themselves take summonses from the court for service on their witnesses and procure their attendance in court. In rare cases, private persons cited as witnesses are served with summonses through the process serving agency. Service of summons by the party has the same effect as service by the process servers of the court where the witness can not be served personally; the party may apply to the court for reissue of the summons to be served in the manner summons is served upon a defendant. Expert and official witnesses are, however, exceptions and in their cases summonses are almost invariably served in the same mode in which summonses on defendants are served.

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[122] *See*, Report of the Law Reforms Commission, 1967-70, 352-353
[123] *Ibid.*, 353

3.19 Delay in the Disposal of Suit at First Hearing

Rule 1 of Order XV provides the court to pronounce judgment at the first hearing if the parties are not at issue. In the case of ***BSI Ltd.*** v. ***CRISTISAN-C***[124] Bombay High Court opined that the stage of first hearing is the date after filing of the written statement and before the framing of issues. According to rule 2 of that Order where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants. A defendant is not at issue with the plaintiff only if before or during the framing of issues he comes and tells the court either by filing written statement or orally that he does not pick up any issue with the plaintiff. Thus in a money suit a defendant may come and tell the court that he admits the claim, but only wants instatement. To treat a defendant as one who is not at issue he must appear and say so.[125] This law is enacted for disposal of a suit at its very early stage. But practically it has no use. The defendant or his lawyer does not come before the court with such an application. The presiding judges are also in a position to inspire the parties to dispose of the case in the above way. In a suit for maintenance and dower, and money suit, the defendants sometimes show their eagerness orally to realize the money by installments. In those cases also the presiding judges, in fact, due to non-attention and/ or lack of knowledge about Order XV of the Code of Civil Procedure avoids to pass any order and on usual course fix the date for framing of issues. If the lawyers and presiding judges

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[124] AIR 1999 Bom 320

[125] Islam, Mahmudul and Neogi, Probir, '*The Law of Civil Procedure*' (Vol.1), 1st Edition, (Mullick Brothers: 2006, Dhaka),740

strictly follow the principles laid down in Order XV then it will possible to dispose of some of the cases very expeditiously.

3.20 **Delay in Immediate Examination of Witnesses**

The Code of Civil Procedure provides many scopes for expeditious disposal of cases if the parties avail those opportunities and presiding judges apply those laws intelligently. Sometimes parties to a suit or witnesses appear so old aged or sick that he may die at any moment but he is an important witness of the suit or he is about to leave the jurisdiction of the court, in such situation Rule 16 of Order XVIII provides power to the court to examine witnesses immediately. The court upon the application of any party or of the witness, at any time after the institution of the suit, may take the evidence of such witness. This rule is an enabling provision for the benefit of the parties to the suit. It is experienced that in many occasions party to a suit files petition in this regard which is opposed by the opposite party and then the same is rejected by the presiding judge. It is observed that in the result, the important witnesses of the suit leave the jurisdiction of the court. It frequently happens when a party or a witness of a suit resides abroad; this scene is very often found in greater Sylhet and some other districts where the number of wage earners is larger. In those situation parties face troubles and the race of the suit halted for an indefinite period till his arrival in this country. In the meantime their lawyers on several occasions and on several grounds sought adjournments in the suit and thus basically on no substantial grounds the suit delayed. If the judges judiciously apply this provision of law then the above mentioned delay can be minimized.

3.21 **Delay in Final Hearing**

After all steps necessary for the preparation of a suit for hearing have been taken by the parties, it is the duty of the court to fix a date for its peremptory or final hearing. If the suits that have become ready are fixed for peremptory hearing at random without regard to the number of cases already posted in the diary and the time likely to be consumed by each of such suits, the presiding judge may not be in a position to dispose of all the cases fixed for hearing on a particular day with the result that adjournment of some of the cases may become inevitable. After a suit has been fixed for peremptory hearing, it is necessary for the parties to take steps for summoning their respective witnesses, whether these are to be served by them or through court. We have stated earlier that the parties are not usually diligent in taking out summonses on witnesses. This results either in the shifting of the date of hearing of a suit or its adjournment on the date fixed. The court must be very strict in granting adjournments after the suit has been fixed for final hearing, what ever may be the ground for an adjournment.[126] If any party or his lawyer thinks that it may not be possible for him to attend the court for any reason on the date fixed for hearing in that case the party must apply in advance to the court for shifting the hearing date. During the course of investigation it is found that adjournments are granted as a matter of routine work in almost all contested suits although the diary revealed that the presiding judge had sufficient time at his disposal to hear the matters. Some apparently plausible ground is put forward for an adjournment, but the real purpose of the adjournment is either that the lawyer is otherwise engaged or the party concerned has some

[126] Proviso of Rule 2 of Order XVII of the Code of Civil Procedure provides that when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

other business to attend to. This is the stage where the court must be very strict in granting an adjournment. To adjourn a suit fixed for hearing is to dislocate the courts' own diary and programme of work. Many instances have been noticed where a number of adjournments have been given in suits fixed for final hearing. It revealed from diaries of different courts that granting of adjournments in almost all cases fixed for the day was a routine exercise leaving no work to be done at all during many of the days of the month. But the presiding officer endorsed in the diary a full days work. At rule 1 of Order XVII of the Code of Civil Procedure it is stated that 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. It is further provided that when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded. According to Rule 124(1) of the Civil Rules and Orders (Volume I) the presiding judges are duty bound to the fixing of dates for peremptory hearing. But practice is different. Almost in all cases, the presiding judge left it upon the *Peshkars*. The practice of leaving the fixing of dates of final hearing to the clerical staff leads to abuses and results frequently in confusion of work and un-manageable court atmosphere. Dates should be fixed, as far as possible, with reference to the state of the file, the nature of the contest, the convenience of the parties and their pleaders and also after reference to the courts' Diary by the judge himself. It is noticed that once commenced suits are not heard day to day until hearing is concluded as required by rule 1 of Order XVII but are adjourned for several days and months for further hearing in contravention of the spirit of the law. It is also observed that sometimes the presiding judges after

examination of one or two witnesses adjourned the suit without any apparent reason or on flimsy grounds. Previously, there exists no hard and fast rule regarding fixing of number of cases for final hearing. Observing the horrible conditions in the management of civil suits in Bangladesh, the Legislature enacted the Code of Civil Procedure(Third Amendment) Act, 2003[127] and thereby inserted sub rules (3), (4), (5), (6), (7) in rule (1) of Order XVII. The *non-obstante* clause of the provisions provides specific time limit for adjournments. The new amendment states that the court shall not grant more than six adjournments in a suit before peremptory hearing at the instance of either party to the suit, and any adjournment granted to a party beyond the aforesaid limit shall make such party liable to pay a cost of not less than two hundred taka and not more than one thousand taka to the other party, within time to be specified by it. Non compliance with which, by the plaintiff shall render the suit liable to be dismissed and by the defendant shall render the suit liable to be disposed of *ex parte*. The amendment further provides that the court shall not grant more than three adjournments to a party even with cost. Adjournments during the final hearing the amendment further states that the court shall not grant any adjournment at the peremptory hearing stage. If for the ends of justice any adjournment is granted to a party the court shall direct that party to pay a cost of not less than two hundred taka and not more than one thousand taka to the other party within time to be specified by the court. Non-compliance with which by the plaintiff shall render the suit liable to be dismissed and by the defendant shall render the suit liable to be disposed of *ex parte*. In this stage the court shall not grant more than three adjournments to a party even with cost. Sometimes both the parties pray for adjournments at

[127] *See*, Bangladesh Gazette, Extraordinary 22 November, 2003

peremptory hearing stage and the presiding judges in that case have nothing to do but to allow those petitions. Sometimes both of them collusively file adjournment petitions to delay the suit. To prevent it, the Code of Civil Procedure (Third Amendment) Act, 2003 provides that where applications are made by both the parties for any adjournment and the applications are allowed with costs, the court shall direct each party to pay such cost as revenue to the State. In our country, definite instructions are issued by the High Court Division to the subordinate courts emphasizing the importance of day to day hearings. Rule 125 of the Civil Rules and Orders (Volume1) states that on the date finally fixed for the hearing of a suit, the trial shall begin and the evidence of witnesses shall be recorded from day to day until the trial is completed. Under exceptional circumstances adjournment may be given after recording reasons necessitating such adjournment. But practically this provision is rarely complied with. After recording some deposition either party file time petition or the court shift the date of further hearing usually not on the next day but are adjourned for several days and months in contravention of the spirit of the rule. If the above provision of rule 125 is practiced by the court, it will be very helpful in not only eliminating unnecessary delays but also relieving the parties of trouble and expenses of attaching court, from time to time, with their witnesses.

Practically a large and unmanageable number of ready suits are fixed each day for peremptory hearing. The parties in all these suits come to court with their witnesses. As a large number of suits are fixed for the day, it is not possible for the presiding judges to complete the hearing of any of them. He accordingly examines one or two witnesses in each of these finally fixed suits and adjourns them to a future day. It causes unnecessary expense and harassment to the parties. On the adjourned dates, the parties again attend

with the remaining witnesses. In the meantime, some new ready suits are fixed on the dates to which the part heard suit stands adjourned. On the other adjourned dates, the presiding judge is faced with the same situation and adopts the same measures. In view of the frequent adjournments of suits under the above practice, the parties also are not always diligent in attending with all their witnesses in the belief that all of them can not be examined.

Adjournment is a matter entirely in the discretion of the court which should be exercised judicially on a consideration of the interests of all the parties and the particular circumstances of the case.[128] It has come to the notice of all concerned that very few presiding judges take their seat punctually at 9.30 am and rise at 4.30 pm and hardly any presiding judge works after lunch. Most of the judge does not perform actual judicial work on an average of two or three hours a day at the *ejlash* and this has been so because of lack of accountability and supervision. The result is colossal wastage of public time on the one hand and consequent delay in disposal of cases on the other hand and also inspires the lazy judges to adjourn the suits on flimsy grounds or stating in the order sheet of the respective suit as 'the court is otherwise busy.'

Observing the above situations prevailing in our country, the Law Committee of 1976 in its report recommended that the balance in respect of granting adjournment can best be drawn by making some general and flexible provision in the Code of Civil Procedure but providing more rigid rules in the Civil Rules and Orders and Civil Suit Instructions Manual.[129]

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[128] Rule 126 of Civil Rules and Orders (Volume I)
[129] *See*, the Report of the Law Committee,1976, 93

Considering the vulnerable condition of management of ready suits for hearing the Parliament has inserted rule 20 in Order XVII of the Code of Civil Procedure in respect of fixation of suits in the daily cause list.[130] The new enactment provides that court shall not fix more than five suits, including two part heard suits, in the daily cause list for peremptory hearing, and more than one hundred suits in the peremptory stage comes down to less than seventy, the court shall then bring in more suits in the peremptory stage, generally in the order of dates of institution of suits.

No doubt section 8 of the Code of Civil Procedure (Third Amendment) Act, 2003 introduces a new and practical venue for the proper case management at final hearing stage. The aim of the enactment is to rescue the litigant public from uncertainty of examining their witnesses on the particular date of hearing of the suit. For fixing only five suits in a day for peremptory hearing, the presiding judges have scope to record the deposition of all of the witnesses present. This will also rescue them from extra psychological pressure put on them for huge burden of cases. If this provision is properly followed it will help to eliminate the delay. But we have noticed that some of the presiding judges are not following this provision and fixing more than five cases for peremptory hearing. When interviewed, they replied that the parties do not always bring their witnesses on the date fixed for hearing and for the reason they are failing to dispose of required number of suits prescribed by the District Judges. If they fix more than five suits, then it will be possible for them in recording deposition of witnesses in one or two cases. The argument may be to some extent true. But proper application of law provides in Orders XVII and XVIII as stated above this problem can easily be removed. If the presiding judges devoted

[130] Section 8 of the Code of Civil Procedure (Third Amendment) Act, 2003

themselves for disposal of suits and if they strictly and tactfully apply the latest provisions of law and if they seat and rise to *ejlash* in time then they can easily dispose of more suits as targeted by them and required by the District Judges.

In our civil courts a considerable number of old cases are pending for years after year's even decades after decades. Those are becoming voluminous for long time and most of the presiding judges are trying to avoid those cases. They left the cases on the mercy of *Peshkars* for shifting the date of hearing and sometimes instruct them to fix a long date. Getting this opportunity the comparatively weak party of the suit shakes hands with the *Peshkar* and becomes able to manage a very long date to harass the other party. This is a complete violation of law. It helps to deny the civil right of the party. At rule 124(2) of the Civil Rules and Orders (Volume I) it is stated that as far as practicable, all cases should be brought to trial in order of their age no matter what may be their comparative length or complexity. The object of providing this rule is to dispose of the old cases at the earliest opportunity. But there are no barriers in disposing of urgent cases in addition to old cases. The *Note* annexed to rule 124(2) provides that the hearing of cases in chronological order may be relaxed in case of suits of an urgent nature, the speedy disposal of which is required for the convenience of litigants.

During the time of scrutiny of some records and diaries of various courts the researcher observed that the courts have developed a general practice of adjourning suit and cases fixed for *ex parte* hearing without any ground or on the ground of their pre-occupation with other works although their respective diaries revealed no such pre-occupation. The researcher also

experienced that suits and cases in which the plaintiff appeared ready with witnesses for months and even years together but could not get his suit or the case, as the case may be, heard by the presiding judge. When interviewed, some of the presiding judges told that they are reluctant about disposal of *ex parte* suits or cases as because the District Judge or the High Court Division do not give any credit to them in this regard. So, they are busy with disposal of only the contested suits and cases. Sometimes the presiding judges recorded *ex parte* deposition of the plaintiff but left the suit for order months after months causing unnecessary delay. It will also create doubts among the litigants about the credibility of the judges. He moves here and there and knocked the *Peshkar* or other staffs of the court to have his decree at any cost consuming a lot of time. Surprisingly enough, this research work reveals that the inspecting authority of these presiding judges, *i.e.* the District Judges did not think it necessary to take steps to rectify this unwholesome practice by the courts to leave uncontested suits pending for years together without any reasonable ground.

From the above discussions this can be easily concluded that granting adjournments is, among others, treated as the main hindrance in the disposal of a civil suit. Therefore, the practice of granting liberal, repeated and wholesome adjournments at the cost of public time must be stopped. Adjournments of suits fixed for final hearing and, particularly, the suits which are more than one year old should be rigorously discouraged. Once hearing of a suit commences the hearing should continue from day to day until hearing is concluded except where adjournment becomes necessary for unavoidable reasons and in exceptional circumstances, otherwise delay and harassment to the litigant public cannot be avoided. Uncontested suits must be heard and disposed of invariably on the first date

of *ex parte* hearing and no adjournment should be allowed on the ground of engagement of the presiding judge with any other work and tendency to adjourn *ex parte* suits on parties' prayer should be rigorously discouraged. It will be helpful if the presiding judges should follow the instructions laid down in paragraph 7 of Chapter I of the Civil Suit Instructions Manual. Contested suits should be fixed in such a way and in such number as it prescribed by the Code of Civil Procedure (Third Amendment) Act, 2003.

Existing practice of taking evidence at the time of peremptory hearing is time consuming. At the beginning of the trial, the plaintiff with the help of his lawyer states the whole plaint, which was written in accordance with his advice and submitted before the court. Similarly the defendant has to state whatever was written in his written statement. This oral repetition of what was already stated and submitted in written form can be dispensed with.

In India the provision of recording evidence has been changed by CPC (Amendment) Act, 2002[131] The amended relevant provision of Indian CPC says that examination-in-chief of a witness shall be on affidavit and either the court or the commissioner appointed by the court will take evidence only in cross-examination or re-examination. It also empowers the court to make an order as to the admissibility of documents filed along with affidavits. This kind of changes in taking evidence will save time of the court causing no harm to any party in any way. So, certain amendments can be made as regards to Rule 4 of Order XVIII and Rule 1 of Order XIX of the Code of Civil Procedure.

[131] Act 22 of 2002 (w.e.f. 01.07.2002) vide Notification No. S.O. 604 (E) dated 06.06.02

3.22 Delay in Arguments

The Code of Civil Procedure does not provide any provisions as to hearing of arguments. However, Rule 129 of Civil Rules and Orders (Volume I) and Paragraph 28 of Chapter XIII of Civil Suit Instructions Manual, 1935 direct the presiding judges to hear arguments. In this respect in Rule 129 of Civil Rules and Orders it is stated that arguments should be heard immediately after the evidence is closed and a case should not as a rule be adjourned for arguments after all evidence has been given, unless it is long and complicated. If any adjournment is necessary, reasons should be recorded by the presiding judge and it should never be for any but a very brief period. Arguments when once commenced shall be heard from day to day and through the day until completion. *The rule is not observed by* devoting only a small portion of each day to the purpose. [132] But practically, in some cases, much time is wasted in hearing arguments. The parties lawyers take time for preparation of arguments which ought to not normally be necessary unless the case is of a very complicated nature and the evidence both oral and documentary, is voluminous. Such cases are, however, rare but the lawyers, busy as they are with other cases, invariably manage to take time from the courts on the pea of preparation of arguments. In some cases, if the presiding judge thinks that the case is very old and again it is complicated, then he himself shifts the date of hearing arguments of the same stating *'the court is otherwise busy'* for indefinite period. The researcher while working at Sylhet Judgeship got two cases. An arbitration case was fixed for arguments in 1984 and another simple partition suit was fixed in 1993 for the same purposes. Both of them were disposed of by the researcher in 2008. Thus it appears that an arbitration case was in argument

[132] *See*, Note 1 of Rule 129 of Civil Rules and Orders (Volume I)

stage for about 24 years and the partition suit got 15 years time to be heard. The records of both the cases were become voluminous. The order sheet of both the cases does not disclose any specific cause of shifting the date of hearing arguments. During the time the court was inspected several times by the Judges of the High Court Division and the District Judge. But it was not detected by them. The court, if it has heard the evidence from day to day, ought to be familiar with the evidence and should be in a position to control prolixity in arguments and keep them within bounds. So, any tendency to deviate from the practice of hearing arguments continuously or shifting the dates after the conclusion of the evidence should be checked and controlled by the District Judges in course of inspection of subordinate courts. As regards arguments, the habits of lawyers differ. Some are prone to lengthen arguments while other confines themselves to the relevant points. There is another practice adopted by the presiding judges of delaying the hearing of arguments. If they feel that the particular lawyer habitually takes long time or the case is complex or voluminous, then they tendered written arguments from the lawyers. The lawyers get opportunity and comparatively weaker party of the case tries to kill time. The presiding judges also reluctantly allow adjournment prayers. The parties also face troubles. They have to pay extra for preparation of written arguments. Sometimes one side files the same and other side does not. It ought not to be necessary to require the advocates to submit written notes of their arguments. It is the duty of the judge to take such notes of the arguments as he thinks fit. If in some exceptional case, it becomes necessary for the judge either to require or to receive notes of the advocates' arguments, such notes ought not to be submitted to the judge by the advocates on one side without being first submitted to the advocates of the other side.[133] This provision is

[133] Note - 2 of Rule 129 of Civil Rules and Order (Volume 1)

seldom practiced by the lawyers as well as the presiding judges. Arguments should be heard immediately on conclusion of evidence.

3.23 Delay in Delivery of Judgment

The specific rule and longstanding practice in the civil courts are that judgments in *ex parte* suits and cases are recorded forthwith and never later than the morning following the conclusion of hearing. It will be enough to cite only one instance, among innumerable cases... of leaving judgments in *ex parte* suits pending not only for months but even for more than a year and for no explicable reason whatsoever.[134] In our country, many suits are lying pending or judgment after conclusion of *ex parte* hearing and in many of them adjournments are granted *suo motu* by successive presiding judges for writing out the final order which would not normally take more than few minutes in each of these suits. During the course of investigation, it observes that the presiding judges in some cases are found to have left the place of posting on transfer and even on promotion leaving these suits pending for recording the final orders.

So far as contested suits are concerned, Order XX rule 1 of the Code of Civil Procedure provides that the court, after conclusion of the hearing of the suit shall pronounce judgment in open court, either at once or on some future day, not beyond seven days, of which due notice shall be given to the parties or their pleaders. In practice, however, it is found that the subordinate courts to some extent reserve judgments and not able to pronounce judgments immediately after the close of arguments. The general complaint is that judgments are not always pronounced within the time prescribed by law. The presiding judges of those cases construed the time

[134] *See*, Report of the Causes of Delay in Disposal of Cases and Recommendations for their Elimination and Better Management of Courts, 1989,12

limit as directory and not mandatory. At paragraph 28(3) of the Civil Suit Instructions Manual it is stated that judgments should be written and delivered without undue delay. Long periods should not elapse between the hearing of argument and delivery of judgment.[135] Any unusual delay on the part of the presiding judge in writing out judgments is fraught with many adverse consequences. He may forget the facts of the case, the issues involved, the substance of the oral and documentary evidence, the demeanour of the witnesses and the arguments advanced by the party's lawyers. If this happens, he is obliged to go through the records again in order to refresh his memory and to be conversant with all the materials necessary for the purpose of preparation of the judgment. This not only means extra-labour and wastage of time but also the non-consideration of the points argued.[136] Every judge proceeding on leave or transfer must write judgment in all cases and appeals heard up to and including the stage of arguments, unless the inability is due to illness or sudden making over the charge. In such cases, the judge should before his departure, submit statement in form No.(S)3 with reasons in the remarks column for not being able to write judgment.[137] Some provision is laid down at Paragraph 28(3) of Civil Suit Instructions Manual also. The researcher observed that without stating reasons in some instances presiding judges have left their place of postings leaving judgments pending after conclusion of hearing for their respective successors-in-office in violation of Rule 141 of the Civil Rules and Orders (Volume I). Such conduct does not only exhibit utter indolence and callousness on the part of the presiding judge concerned but also casts serious reflection on his integrity. In the case of ***RC Sharma*** v. ***Government***

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[135] *See,* 'Note' annexed to Rule 140 of the Civil Rules and Orders (Vol. I)
[136] *See,* Report of the Law Reforms Commission, 1967-70, 359
[137] Rule 141 of the Civil Rules and Orders (Volume 1)

of India [138] the Supreme Court of India held that an unreasonable delay between conclusion of hearing and delivery of judgment, unless explained by exceptional circumstances, is highly undesirable and the delay shakes the confidence of the parties in the result of the litigation.

To sum up, it can be said that to ensure quick delivery of judgments and observance of various rules in this regard by the subordinate courts, strict supervision should be exercised by the Supreme Court as well as by the District Judges. Judgments in uncontested suits must be recorded and delivered immediately on conclusion of hearing and in no case later than the following day. Judgments in contested suits must be written and delivered invariably within seven days from the date of conclusion of arguments. The District Judges must insist on submission of statements in Form No.(5)3 from all courts subordinate to them and take suitable action in cases [139] in which hearing of arguments and delivery of judgments have been left pending for long period. Drastic action should also be taken against presiding judges who deliberately withhold submission of statements in Form No. (S)3. We have observed that there are some procedural defects in law and for the reason parties have opportunity to cause delay in a suit. There is a scope for amendments which has come into existence because of the famous words of Justice Holmes that life of law is not logic or commonsense but it is experience. Our experience has taught us that our Civil Procedure Code needs radical amendments.

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[138] AIR 1976 SC 2037

[139] *See,* Report on the Causes of Delay in Disposal of Cases and Recommendations for their Elimination and Better Management of Courts, 13

CHAPTER IV

4. Deficiency in Case Management and External Causes of Delay

4.1 People and Delay

In any civilized country people want to live in peace and they would always prefer that any dispute between citizens or between citizens and the state should be settled within the shortest possible time. The system of administration of justice as obtained in Bangladesh was planned and planted by the British Government. Because of procedure, among others, the administration of justice in our country has been facing serious criticisms. The most common criticism is that to go to the civil court with any dispute means putting the matter in cold storage for years to come and by the time final decision of the dispute is available, the decree holder and the judgment debtor both become equally indifferent. A civil suit from the date of its institution till its final disposal often takes years or even decades together. Consequently, people are becoming apathetic towards the courts and they try to take law whenever possible in their own hands. This attitude of the people in making the court the last resort for the weak persons only, more for psychological satisfaction than for any material gain.

It has been repeated *ad nauseam* that to delay justice is to deny justice, that to make justice costly is to place it beyond the reach of the common man and that to indulge in legal quibbling in the enforcement of a law whose object is fairly plain is to make a mockery of justice. Courts of law, as they are constituted today, however, well intentioned and honest they may be- get themselves lost in the thick jungle of rules of construction and precedents that they have built around themselves and the judgments

delivered months or years after the institution of the respective proceedings, discussing at inordinate length, abstruse questions of law, afford neither relief nor solace to the poor litigant who wants speedy, adequate and easily understood justice. Complaints are also often heard that the courts are merely for the rich and beyond the reach of the ordinary litigant who has to be helped. The number of cases pending for years in the superior courts of the country is legion and no remedy appears to be in sight. Voices are often heard that the solution lies in strengthening the judiciary both in number and in quality, but this is unlikely to achieve success for reasons not far to seek.[1] Various suggestions have been made from time to time for reducing litigation, for affording relief to the courts by removing the congestion of cases therein and for securing rough and ready justice acceptable to the common man.

There is no gainsaying that there is delay and often unbelievably inordinate delay in the disposal of civil suits. The question needs to be examined whether this delay in civil litigation is due to procedural reasons or due to some other factors. At is also to be examined whether this delay can be removed without impairing justice. The delay in the disposal of suits and cases not only defeats justice but also creates fends and other complications among the citizens affecting their life and living. The imperative need of the day is to find out how best justice may be administered without defeating justice itself. It is an admitted fact that delay do occur at almost every stage of the litigation. In Chapter-III the procedural causes and causes of delay inside the courts have been discussed. In this Chapter, we shall examine certain factors outside the

[1] Rajagopaul, G.R., *'Laws' Delay and Some Suggestions for Reform'*, AIR 1981 Delhi (Journal), 75

courts which appear to have contributed towards the retardation of the progress of the work of the civil courts.

4.2 **Delay for Inadequate Number of Judges**

Judiciary is not less responsible for delay. Several factors knowingly or unknowingly contribute to this delay. The first and the foremost is inadequacy of judges in comparison to the load of litigation pending in the courts. But it is not a correct position to say that if there are more judges, quicker will be the disposal. Firstly, on the basis of the Parkinson's theory, if there are more judges there is, in course of time, bound to be an increase in litigation.[2] Inordinate delay in disposal, though undesirable acts by itself to some extent as a brake on the speed of litigation because many a person avoids going to courts in view of the delay and settles the matters outside even at a loss. But nevertheless, it is a fact that inadequacy of judges results in saturation of cases. It is, no doubt, true that judges are not every time appointed in proportion to the number of cases pending. A judge once appointed becomes, generally, a permanent financial liability and government cannot increase its liability on this account permanently. It is also not desirable to appoint *ad hoc* judges frequently as that would give birth to several abuses. In short, it may be said that government must see that there are a sufficient number of judges to meet the existing situation and as this is not done many a time there is stagnation in the disposal of cases.[3]

The first factor, as we have mentioned earlier, responsible for efficient disposal of cases is the shortage of judicial officers in each district. Sanctioned posts for the civil courts in Bangladesh is 1546 but at present

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[2] Divekar, G M, '*Law's Delay*', AIR 1981(Journal), 90
[3] *Ibid*

total 1137 judges of different tiers are working and 409 posts are lying vacant for several years.[4] The existing number of judges is not sufficient to cope with the progressively increasing work. This increase has been due to various factors. Gradual increase in the institution of cases is due to the growth of population and the development of trade and industry. Moreover, scarcity of land creates a considerable portion of land litigation in Bangladesh. Local influential persons, in connivance with the corrupt revisional settlement officials, are able to grab the properties of others. Hereditary factors, exchange of property through '*Saf-Kawla'* and *'Awaz-Kawla*', forged documents, vested property etc., are the main causes of land litigation in Bangladesh.[5] The number of cases is increasing day by day but the vacant posts are not filled up rapidly.

When a judge is transferred from one station to another the vacancy caused thereby remains unfilled for a considerable length of time. In some cases the posts remain vacant for indefinite periods due to shortage of judicial officers. The shortage of judicial officers thus causes accumulation of judicial work and consequent delay in the disposal of such work.

The causes of shortage of judicial officers are also due to working deputation by the judges. A number of judicial officers are sent on deputation to different departments of the government and to tribunals and other organizations. At present total 116 judicial officers have been working in the Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Supreme Court and other Ministries or Divisions.[6] The

[4] Data obtained from the Ministry of Law, Justice and Parliamentary Affairs on 1 January, 2010
[5]. Barakat, Abul and Roy, Prosanta K, '*Political Economy of Land Litigation in Bangladesh: A Case of Colossal National Wastage*', (Dhaka: 2004), 243
[6] Data obtained from the Supreme Court of Bangladesh on 7 January, 2011

conventional deputation period of three years is not maintained. In most of the cases, the officers are not allowed to return to their parent department on the ground of their indispensability and the result is the continued absence of a good number of experienced officers from court work. Moreover, temporary vacancies, occasioned by periodical leave, deputation or retirement of judicial officers, usually remain unfilled for long periods, although the judicial cadre should have an adequate leave and deputation reserve. Shortage of officers results also from delay in recruitment against the sanctioned strength.[7]

To remove the above mentioned problems the Law Committee headed by Justice Kemaluddin Hossain recommended:

> "In order that the disposal of judicial work may not be hampered for shortage of officers, we recommend that recruitment to judicial posts should be made in planned manner so as to maintain the cadre strength at all times, and that care should be taken to fill up vacancies as soon as they occur, not later than two months. Revision of the cadre strength has also become necessary and the cadre should now be fixed on a reasonable ratio between the total work load and a quantitative yard-stick of disposal for each officer. Provision should also be made for adequate or even enhanced deputation, leave and casualty reserves"[8]

[7] *See*, Report of the Law Committee 1976, 71
[8] *Ibid*

Observing the service conditions of the Judges Justice Hamoodur Rahman Commission at page 329 of its report stated that the cadre should be revised to cope with the increase in the volume of work. Pay scales should be re-examined and better conditions of service provided to make the judicial service as attractive at least as other comparable branch of government service. Justice Kemaluddin Hossain's report also spoke on the same point. Transparency International Bangladesh, in its report sent to the Chief Justice of Bangladesh also suggested that the number of judges should be increased at all tiers of the judiciary, and its institutional structure recast and capacity enhanced.[9]

4.3 **Delay for Unattractive Terms and Conditions of Service**

A sound and satisfied judicial service is the *sine qua non* for successful functioning of democratic institutions. The survival of rule of law depends upon the effective functioning of the judiciary. The pivotal role a judge plays in a democratic State and the reason why he should be paid an adequate remuneration are best expressed by Sir Winston Churchill while introducing the bill in British Parliament for increasing the salaries of judges:

> "The Judge has not only to do justice between man and man. He also... and it is one of the most important functions considered incomprehensible in some large parts of the world...has to do justice between the citizen and the State. He has to ensure that administration conforms to the law and to adjudicate upon the legality of the exercise by the executive of its powers.... Perhaps only those who have led the life of a judge can only know the responsibility which rests upon him....The services rendered by judge demands the highest qualities of learning, training and

[9] *See*, The Daily Star, February 19, 2011

character. Those qualities are not to be measured in terms of pounds, shillings and pence according to the quantity of work done."[10]

Right man for the right job is essential for any job. If any government wants justice for its people it will have to improve the working conditions for the judicial officers. It is observed that recruitment of suitable candidates is becoming more and more difficult due to the unattractive terms and conditions of service offered to judicial officers in the lowest grade. First class law graduates or candidates who have done PhD or have acquired specialized knowledge and experience in any branch of law do not wish to become Assistant Judge, for more profitable avenues of employment are now open to them. Transparency International Bangladesh suggested fixing salaries, allowances and other benefits of the judges in consistence with their ranks, experience, competence, and their standard of living. It also recommended appointment of honest, talented and competent people as judges and their promotions through a transparent process.[11]

Our country has enough ingenuity for devising ways and means to grant largesse to the past and present law makers, but the judges who are silent lot without spokesman for them lead miserable lives of penury. Their fall from the pinnacle is compounded by the contemptuous way legislatures in many States treat them dragging them individually and *en masse in mud.* Some judges feeling obliged to make farewell speeches tell all and sundry that only mediocre talent is attracted to the Bench because of the poor pay thus justifying the stand to the political denigrators of this institution that our judges deserve only a pittance as they are not talented.[12] In this

[10] Rao. Shri K. Ramachandra, *'Judicial Service-The Case for Reforms'*, AIR 1984 (Journal),73
[11] *See*, The Daily Star, February 19, 2011
[12] Fernandez, M. Stanley. *'Salary of Judges'*, AIR 1986 (Journal), 42

connection it is interesting to note that a small country like Trinidad pays its judges is not because of its opulence but respect for the institution of judiciary whose deities should be above the crowd in all respects including finance.[13]

The work-load of each and every judicial officer is heavy. They recorded the deposition of witnesses by their own hands and give decisions quickly on the *ejlash* regularly. In addition to that writing judgments and orders in interlocutory matters is their day-to-day business and in doing so, they have to work till night and on the holidays also at their homes. Hard work embraces them frequently. But the working conditions and facilities rendered to them are not satisfactory. As a matter of fact there is the need for equal distribution of advantages between the branches of the government. This need becomes pressing in view of the bold discriminations shown to the judicial branch in the matter of working conditions and terms of service as compared to their counterparts in the executive branch. The District and Sessions Judges have been drawing the salary in the national pay scale equivalent to that of Joint Secretaries to the government. In this sense they are getting higher salary in the district in comparison to other district level officers. But reality is that they are not getting status and facilities like the Joint Secretaries to the government. A single notification of the government can change their status but the government due to pressure given by the members of the administrative service does not give attention to this matter. It does not require any financial involvement of the government. Observing the reality the Judges of Bangladesh filed a writ petition before the High Court Division to enhance their status. The High Court Division made the Rule absolute

[13] *Ibid*

enhancing their status but the government preferred leave to appeal before the Appellate Division which is now pending.

The office rooms and residence of the District and Sessions Judges are not well furnished. The Deputy Commissioner, Police Super and other officers of the district level are enjoying more facilities than the District and Sessions Judges. The office and *ejlash* of the District and Sessions Judges are not air conditioned. So, in the summer it becomes difficult for them to work smoothly. They are not getting sufficient fund for maintaining their office. As a result, he is unable to provide stationeries to other officers' subordinate to him. Even pen and papers which are necessary everyday does not adequately supplied by the Government Stationary Office. It is already cited that the government provides small budget to meet up the contingencies and as a result, the judges sometimes depends upon their *Peshkars* and *Sheristadars* to buy papers and stationeries to run their offices. It is, no doubt, unfortunate. For the reason, the staffs involve themselves in corruption.

Prescribed Forms used in day to day work in the office of the presiding judges are also not sufficiently supplied by the stationery office of the government to the District Judges office. But at the same time many of those Forms are more than sufficiently supplied to the Deputy Commissioners' office or Police Supers' office. Practically it has been found that the prescribed order sheets, deposition forms, summons and warrant forms are occasionally managed to purchase by the *Peshkars* and *Sheristadars* of the judgeship from some of the corrupt staffs of the Deputy Commissioner's Office.

4.4 Delay for Lack of Infrastructural Facilities and other Paraphernalia of Courts

The next thing for consideration is the working conditions. A friendly environment inspires every body to work efficiently. The century-old court buildings in most of the old districts are outmoded with no proper facilities even for sufficient air and light. They are mostly dingy, dirty and congested. The researcher during his short span of service tenure has experienced to work in some of those old buildings. He has also gathered experiences in residing two century old government residence in two stations. The deplorable conditions of those buildings disappointed him. The damped residential quarters are not in a position to live in. Sometimes the judges install Tin on the roof of their one story pucca building to escape them from rain and plasters. The unusual falling of plasters from the roof of building was dangerous. But the judges are working and living in those situations also. The lives of presiding judges and their families are at risk in those situations. The Public Works Department, it seemed, had long forgotten that they existed. They are hardly ever repaired or renovated. The items of furniture used in courts and offices also appeared to be as old and as dilapidated as the buildings themselves.

There is a serious scarcity of *ejlash* and chambers of the judges. A proper court-room (*ejlash*) is essential for maintaining the dignity of the judges. The storerooms, verandas of courts, stair-rooms, witness sheds and even bath-rooms of courts have been converted into *ejlash* to meet up the scarcity. Our courts are still anchored in an anachronistic system. In some districts, new court buildings are constructed. But even then, these building are not constructed considering the needs. Those were not constructed keeping in mind the number of judges of that judgeship. As a result, the

shortage of *ejlash* still remains. There is no provision of conference rooms and waiting rooms for the litigants with bath room facilities. The office chamber of District Judge in some districts is very small. Consequently, it becomes hardship for him to conduct meetings and conferences in his chamber. Such appalling working conditions are neither in keeping with the dignity of a Court nor can they be considered to be congenial for the efficient functioning of a court.

Comparison is always odious but it appears that the court rooms of District Magistrates, which are rarely used, generally better constructed, better ventilated, better maintained and better furnished than the court rooms of District Judges. The judges are not provided with residences. But the members of the executive services have the advantage of getting government residences, transport perks, and every other facility even though the pressure of work they confront is far less as compared to the judicial officers. Only at a few places the residences are earmarked for the judges while the rest of the places the judges are at the mercy of the executive who exploit their position in many ways and even look down upon the members of the judiciary whenever any one of them approaches with an application for allocation to them of the available accommodation. This causes serious blow to the smooth working of the judges. Such invidious distinction must be removed forth with and civil court buildings should be renovated and over hauled and, where necessary should be replaced by entirely new buildings with sufficient accommodation and facilities.

It has already been mentioned that there is a shortage of furniture in the District Court. The courts are running with some broken or half-broken

or repaired chairs and sofa used in the *ejlash* room. Those are not even sufficient. There are no available rooms for sitting of the advocates and litigants in the *ejlash* room. In the chambers of the presiding judges the condition of furniture is almost same. Now-a-days in most of the districts, this problem is rapidly growing. The Legal and Judicial Capacity Building Project (LJCBP) constructed some new buildings in 30 districts and provides furniture and computers. To some extent it has fulfilled the needs. It is usually said that due to budget constraint it is not possible to purchase new furniture or repair the old ones. The budget is at the hands of the Ministry of Finance and is allocated through the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs. Although the LJCBP has provided some computers in every district, they are not sufficient. A greater number of judges are yet to get computers. However, the computers which are given are not good for want of operators and proper servicing. During the project period the LJCBP supplied toners and other accessories to run the computers smoothly but after the closing of this project in 2007, many of those computers have gone out of order. The Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs has been allocating poor budget for maintenance of computers and for purchasing toners; but with that small amount it is not possible to purchase the required number of toners. In this situation the computers are repaired or kept in working condition in a judgeship with the supply of money from unknown sources. No doubt, it is an ominous sign, but situation compels it to persist. Sometimes presiding judges dictate the judgment at times to their stenographers but due to want especially of toners of computers it is not possible to print the judgment. As a result, delay is caused.

For the extreme paucity of funds the courts are suffering from adequate number of Photostat machines and as a result, facing problems to supply attested copies of judgments to the litigants although they pay fee which go to the government fund. Some specious sheds should have been constructed for litigants, witnesses and other court people, like clerks or peons or lawyers and other people. The Record Room, the *Nazarat* and other important offices of the judgeship are not well spaced. Old offices need to be renovated immediately. There is no arrangement for drinking water, nor even a water fountain in any judgeship. Dhaka is the capital of the country; the courts situated here should reflect the desire and aspiration of the government for its administration of justice. But the situation is otherwise; this is reflected by the extreme poor working conditions of the courts and their shabby surroundings. Before, the construction of eight-story Dhaka court building in 2008 funded by LJCPB, most of the presiding judges of Dhaka Judgeship has to share the *ejlash* everyday. In many judgeships of the country, this system is still going on. Speedy and better justice become a mockery when judges and lawyers sweat profusely in unbearable heat sitting in a court-room without good ventilation and electric fans. Electric load shedding frequently happened during the court hours. This undoubtedly hampered the work of the presiding judges to dispose of the cases speedily. In this system and in that situation, the presiding judges practically can work for half of a day, and as a result, inordinate delay occurs in those districts.

Earlier we have mentioned that sometimes the courts also face the lack of adequate papers, pens and other stationeries. There is an immediate need for the amelioration of the working conditions of the subordinate judiciary. There is a lot of truth in the following statement:

"While dealing with the question of trial of cases, it would be unfair not to take note of conditions in which most of the subordinate courts function. In order to enable presiding officers of these courts to do their work properly and efficiently, it is necessary to give to the rooms occupied by them the look of a law court. In most cases, the rooms are small which during summer months at any rate cause congestion and suffocation. Some courts are held in rooms improvised by closing parts of verandahs, record rooms, etc. There is hardly any court which has more than three or four broken chairs for the use of the lawyers and litigants, and in several rooms there is only one electric fan which covers only the presiding officers' table. There being no seating arrangement for litigants, they all huddle up in the court rooms. The courts are not supplied even with proper stationery. It is most creditable for the officers to keep their heads cool in such trying situation and to do their work. Although we have provided several facilities, concessions and privileges to the superior judiciary, yet reforms in the subordinate judiciary where the litigation originates have more or less been ignored. In this respect, it would be worthwhile to mention that the post of Additional District and Sessions Judge is the only office whose emoluments were reduced in 1972. We should therefore provide an immediate relief to the members of the subordinate judiciary both on civil and criminal sides and at least take care in providing reasonable furnished court rooms as well as residential accommodation. In this respect, the provincial governments which are primarily responsible for administration of subordinate judiciary should take immediate remedial measures."[14]

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[14] PLD 1994 (Journal), 57-58 as quoted from paragraph 8 of the Summary for the Federal Cabinet of Pakistan dated 21.10.1992

In relation to facilities in subordinate courts, the observations made by Pakistan Federal Cabinet are relevant to our courts. Congenial working conditions, modern technological and typing facilities are essential for speedy disposal of cases. In some courts, the stenographers are using the old-aged typewriters because they are not provided with computers.

The bulk of litigation in our country is handled by the members of the subordinate judiciary. But the unattractive service conditions, pay and promotion fails to attract the meritorious law graduates to this service. Now- a- days first class law graduates and even the PhD degree holders are choosing judicial service as their first choice. But after joining they learnt and found the lack of facilities in this service. Accordingly these talented persons are leaving the job. The government appointed 390 persons as Assistant Judge/Judicial Magistrates on the basis of selection and recommendation of the Bangladesh Judicial Service Commission and they joined service on 22 May, 2008.[15] But after joining, 70 Assistant Judges out of 390 quit the job for joining other public services or universities or the private jobs. When contacted, some of them informed that they left the service because of poor salary, transport facilities, housing and other unattractive service conditions. However, the government again appointed 211 people as Assistant Judges/Judicial Magistrates.[16]

The judicial officers, to some extent, are always neglected. The government shows least interest for improving the service conditions of the judiciary. Promotion in the subordinate judiciary is very slow. Like appointments, in case of promotion they also face bureaucratic

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[15] *See*, Bangladesh Gazette, Extraordinary 11 May, 2008
[16] *See*, Bangladesh Gazette, Extraordinary, 13 September, 2009

complexities. The members of administrative service get their promotion more quickly. But when the file of the judges put up before the bureaucrats, then they started to kill time. The panel of promotion of the judges is traditionally initiated by the Ministry of Law, Justice and Parliamentary Affairs. Then the matter is placed before the Supreme Court for confirmation and again this matter is submitted before the Prime Minister through the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs. In this process huge time is consumed by the executives. It takes at least one year for promotion of judicial officers in any tier. As a result, they become psychologically weak and losses their strength in disposal of cases. They used most of their times to contact with the officers working in the Law Ministry and Supreme Court to expedite their promotion matter. In addition to that there are a lot of problems connected with their status which ultimately put barriers on the disposal of cases. Observing the reality, Justice Kemaluddin Hossain in his report remarked:

> "The bulk of litigation in this country is handled by the members of the subordinate judiciary. It is desirable that the judicial personnel should be men of talent and efficiency. However, perfect the laws may be, the proper application of these laws must depend on the proper application of these laws must depend upon the officers who are called upon to administer them. Unless the officers are of good caliber, the administration of justice cannot be expected to be satisfactory.... Law graduates with good academic careers are not available for appointment to the judicial service. Unattractive service conditions of subordinate judicial officers discourage them from joining the judicial service. Their prospect of promotion is not bright either. In any event, their conditions of service compare unfavorable with those of the executive. Their service conditions, both as regards pay

and promotion, should be improved in order that suitable candidates may be attracted to the judicial service. It is learnt that the vacancies occurring in listed posts reserved for judicial officers are not always filled in due time. Keeping these vacancies unfilled for a long time causes resentment and frustration. We find no justifiable reason why these vacancies should not be filled well in time by the selection of suitable persons from amongst the members of the subordinate judiciary. We also think that the number of the listed posts should be adequately increased."[17]

4.5 **Delay for Lack of Proper Accommodation**

Residential accommodation for judicial officers in cities and towns has indeed become a serious problem. In most of the cases no government quarter or requisitioned house is earmarked for judicial officers. Even the official residences of District Judges are not well furnished. Government has created some posts in the rank of District and Sessions Judge to dispose of special cases and they are working in every district. But government does not provide any residence for them. In such a situation, whenever an officer is transferred to a city or town, he has immediately faced with the problem of accommodation and it takes him a long time to find a suitable living place within his means[18] and that also is not always possible today. In big cities like Dhaka, Chittagong and Sylhet judicial officers seriously face this problem. Sometimes, they had to take shelter in the Chamber attached to his court or Circuit House or Government Dormitories leaving their families in another city or town. Deputy Commissioners' office always put pressure on them to leave the Circuit House or Government Dormitory. No doubt it is a mental agony for them. In the situation he becomes desperate to hire a

[17] *See,* Report of the Law Committee, 1976, 73-74
[18] *See,* Report of the Justice Hamoodur Rahman Commission, 330

private house. Even when the judges manage to find accommodation, the places where such accommodation is available are usually for away from the court buildings with the result that they have constantly to face transport difficulty. In big cities, it is not easy to get a seat in a public transport in peak hours.[19] When the judges always facing the above difficulties then how they will ensure justice for others? Side by side, it can be mentioned that other officers of the district, especially those are in the administrative or police service have been living in government quarters. Almost in every cases ear-marked houses are available for them. Deputy Commissioners and Police Supers are enjoying more facilities than the District Judges within the lawful means. There official residences are also well furnished. Observing the worst living conditions of the judges, Justice Kemaluddin Hossain in his report further observed:

> "We feel that residential quarters for judicial officers should be built near the court-buildings as far as possible. The quarters should be rent-free and placed at the disposal of the District Judges who should allot them to his officers. Judicial officers where they have to live at a distance should be provided with transport for attending court. The District Judge should get rent free official residence and whole-time transport on payment of usual charges."[20]

4.6 Delay for Lack of Library Facilities

Each civil court should have a working library of its own and the name of the court should be included in the distribution list maintained by the government printing press so that copies of laws, rules, official Gazettes are supplied to the court as soon as these are printed. Virtually in most of

[19] *Ibid*
[20] See, Report of the Law Committee, 1976, 73

the judgeships no court has library of its own with adequate number of law books. There is a serious dearth of necessary law books, and whatever books are available are mostly old editions. New laws are quickly made and as quickly amended and so also rules and regulation but copies of such new laws, rules and regulations or their amendments are not supplied to all judicial officers who are expected to interpret and implement them. Civil Rules and Orders (Vol. I and II) which are so essential for the day to day working of the court are not available in almost all courts. This book is out of print since 1981. The Supreme Court of Bangladesh has not taken any steps for printing the book. The Civil Suit Instructions Manual containing very useful instructions for the guidance of judicial officers and management of courts. This Manual has also been out of print till independence of the country and has almost disappeared now. Bare Acts are not available in the courts. Allocation of budget by the government is poor. Nowadays government is not providing fund for purchasing books in the civil courts. Sometimes judges make *tadbir* to the Ministry of Law for allocation of budget in this behalf and successful candidates get budget accordingly. Those who gets budget naturally do not select essential law books in their purchase list. They have been influenced by the publishers to purchase books of those publishers. As a result, less important and unusable and old or back-dated law books are sometimes purchased by some of the judges. Sometimes those lists contained books other than law books. Not a single library including the library of District Judges is equipped with latest books, gazettes and law journals. Bangladesh Gazette contains with latest amendments of law, but this Gazette is not timely sent to the respective judges. Government has amended the Code of Civil Procedure, Registration Act, Specific Relief Act and Limitation Act in between 2003 to 2006. Those amendments are very much necessary for smooth running of the court everyday. It is not possible to work in the civil courts without latest amendments of these laws. The researcher experienced that these types of

necessary books are not available in the judges' libraries. So, the presiding judges have to collect important law books personally spending a part of their poor salary.

In every judgeship the conference room or any other room has been converted into a library room. There is scarcity of spaces. Books and journals in the library are not properly managed or taken care of. The post of librarian has not been created by the government. As a result, the District Judge has posted one of the office Assistants as librarian having no knowledge on library and information science; so he is unable to catalogue the books. There is no seating arrangement in the library room; as a result the presiding judges can not use the library. There is also shortage of annotated copies of the various Acts from where the presiding officers can get valuable guidance. The efficiency of the judges, as the study reveals, suffers to a great extent for want of necessary law books and library facilities. In this respect the relevant portion of the report of Justice Kemaluddin Hossain is worth quoting:

> "We would suggest that a working library be attached to each court containing annotated copies of important Acts, standard law books, statutes of Bangladesh, a set of current law journals of decided cases. The names of all civil courts should be included in the Distribution List maintained by the Government Printing Press so that copies of laws, rules and regulations and Official Gazettes may be supplied to each court as soon as these are printed."[21]

After the above recommendations, Government has enlisted all the courts in the Distribution List of Bangladesh Government Press. But again

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[21] *Ibid*

the reality is that the Press authority does not regularly send the copies of printed materials. So, the judges are remaining in darkness with regard to the latest position of law and policy of government. There is an urgent need for change of this situation.

4.7 Delay Caused by Trial of Civil and Criminal Cases by the same Courts

In Bangladesh at present the District Judges, Additional District Judges and Joint District Judges are exercising both civil and criminal jurisdiction. That is, Sessions Judges are at the same time adjudicating civil cases. Such joint trial of civil and criminal cases by the same judges acts as an impediment in the way of speedy disposal of suits, cases and appeals. According to the established practice, the Sessions' Judges transfer sessions' cases after fixing the dates of hearing to Additional Sessions' Judges and Joint Sessions' Judges. Sessions' trials are given priority over civil matters and so transfer of sessions' cases in this matter causes postponement of the civil cases already fixed and ready for hearing. This sudden dislocation of civil work causes delay, besides hardship and inconvenience to the parties, their witnesses and lawyers.[22] Such dislocation of work could be avoided if the sessions' Judges in transferring sessions' cases to other judicial officers fix the date of appearance of the accused, without fixing the date of hearing and thus allowing the transferee officers to fix the date of trial having regard to the position of their respective civil files.[23]

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[22] *Ibid.*,74
[23] *Ibid*

Practically judges empowered with session's powers are interested to dispose session's cases other than civil cases. Sessions' cases are comparatively easier and take little time to dispose of. Moreover, they get more credit in disposing of criminal cases than that of the disposal of civil cases. Besides this, a civil suit takes long time and energy. So, after getting sessions' power, the presiding judges always try to dispose of sessions' cases leaving aside civil cases, and consequently they cause delay. There are some practical problems in the disposal of civil cases by the above judges. Sometimes the Sessions' Judges and Additional Sessions' Judges are involved in trying sensational murder cases or other cases of same type. Besides this, they have been acting as Special Tribunals and for that reason they have also been engaged in some other important criminal cases. In that situation they try to spend their court time in the hearing of those cases and fail to try the civil cases. For these reasons, trials of civil cases are delayed. In order to avoid delay the Law Committee of 1976, suggested that total number of Sessions', Additional Sessions' and Joint Sessions' Judges Courts should be taken into consideration and thereafter the distribution of criminal work among them should be so made than there might be sufficient number of courts available for disposing civil cases all the time. It is most undesirable that all courts should at any particular time be occupied in dealing with sessions' cases only, keeping the civil litigants hanging around all day. If the pressure of criminal work is so heavy as to occupy the full time of all the Sessions', Additional Sessions' and Joint Sessions' Judges who are also District Judges, Additional District Judges and Joint District Judges, the number of courts of that district will have to be so increased that disposal of civil cases may not suffer. All we may emphasis here that the trial of criminal and civil cases must proceed with every day *pari passu.* Of course, disposal of criminal cases may have priority, but the District Judges

under the direction of the High Court should so distribute the work among the courts as would achieve the twin purpose of priority of criminal cases and the functioning of the civil courts every day.[24]

Trials of criminal offences are conducted according to the provisions of the Criminal Procedure Code, 1898. There are two broad categories of criminal courts- Courts of Sessions' and Courts of Magistrates. Magistrates are exclusively criminal courts unlike Courts' of Sessions'. Sessions' judges are basically civil judges who simultaneously hold criminal courts on additional charge basis.

Same persons simultaneously performing as judges of both civil and criminal courts is an impediment to the efficient dispensation of justice. They cannot pay undivided attention to the trial of either civil or criminal cases. This is a drawback of the system of administration of justice. It needs to be properly addressed and immediately removed. Legislation may be necessary for that purpose. Provision will have to be made that if two or more Courts of Additional District and Sessions' Judges, as well as of Joint District and Sessions' Judges do function conjointly, the government may, if it deems expedient, declare one or more of such courts to be exclusively Court of Additional Sessions' Judge or Joint Sessions' Judge, as the case may be. All civil matters pending in such courts shall stand stopped and be transferred to the Court of Additional District Judge or Joint District Judge, as the case may be. The District and Sessions' Judge may be statutorily entrusted with the duty of such transferring of civil cases to other appropriate civil court within his administrative jurisdiction.

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[24] *Ibid*., 75

Civil and criminal courts mixed at the stage of District and Sessions' Judge need not be separated. In consideration of utility such separation may not be justified. That may involve enormous revenue expenditure which may not be cost-effective. Sixty four new posts of Sessions' Judges and related huge auxiliary posts as well as establishment shall have to be created. But the proposed scheme does not require creation of new posts. It can be affected through internal arrangement, and by executive orders authorized under law. The proposition is exemplified below for easier understanding.

Suppose, Dhaka judgeship has ten Additional District Judges and twelve Joint District Judges who are at the same time Additional Sessions' Judges and Joint Sessions' Judges respectively. Six, out of ten, Additional District Judges may be appointed as Additional Sessions' Judges to deal with criminal cases exclusively and the rest four as Additional District Judges to deal with civil matters only.

In the same way suppose Dhaka judgeship has twelve Joint District Judges. Four, out of them, may be appointed as Joint Sessions' Judges to deal with criminal cases exclusively and the rest eight as Joint District Judges to deal with civil matters exclusively. The ratio of Joint District Judges compared to Additional District Judges, should be kept more for civil matters, since Joint District Judges are always required to deal with more civil matters than criminal.

The predominant merits of the proposition are that judges in both civil and criminal courts will be able to pay undivided attention to civil and criminal cases. Owing to receipt of exclusive treatment, out put in both civil and criminal courts is likely to improve substantially. If the judges are to

gather experiences in both civil and criminal courts by working alternatively with the beginning of each year, it will certainly help to minimize delay.

4.8 Delay Owing to Insufficiency of Advocate Commissioners

Riverine Bangladesh is subject to alluvion and diluvion or periodical inundation. Disputes over river-side land often require the lands to be relayed or surveyed. This could only be done by survey trained Advocate Commissioners. There is now a serious shortage of such trained commissioners as young lawyers are not attracted to this kind of specialized practice.[25]

Under Order XXIX Rule 7 of the Code of Civil Procedure, the civil court may, on the application of any party to a suit, and on such terms as it thinks fit make an order for the detention, preservation or inspection of any property which is the subject matter of such suit, or as to which any question may arise therein to the court.

Needless to mention that the task requires to be undertaken by any advocate commissioner is very important and his report to the court plays a vital role in the subject matter of any suit. So right from the stage of inspection of any matter in dispute till the submission of the report, the commissioner requires a general skill and aptitude on the concerned subject. But sadly enough, barring exceptions, most of the advocates whose names appear on the panel, being maintained by different courts do not have the required skill simply for the reasons that the said advocates are fresh from the universities and do not undergo any professional training before being

[25] In Bangladesh there are 64 District Courts and only 403 persons are working as advocate commissioners for whole of Bangladesh. This data is obtained from the Office of the Registrar of the Supreme Court of Bangladesh on 11 August, 2010.

appointed as commissioners for local inspection. Consequently, they could hardly develop the idea how to inspect the matter within the framework of the scheduled points for inspection. In fact, lack of knowledge on the subject often compels them to depend either on the lawyer of the plaintiff or the defendant to submit report and in the process the honesty of the commissioner becomes questionable and their reports get biased as well as do not reflect the correct position of the suit property.

It is ridiculous to think that the presiding officers are not aware of the magnitude of the problems, but they express their helplessness by referring to the inherent defect in the system. Actually, the whole crux of the problem lies in the payment of the fees to the advocate commissioner which is kept not only abnormally low but also so irregular in nature that it could hardly attract the lawyers of minimum standing. As the payment of fees is not released immediately after filing of commission report, this has a far reaching effect on the commissioners who in order to meet with their various expenses have to depend on the litigants and the latter take the advantage of the circumstances by prevailing upon the needy junior advocates and drag the proceedings to meet their desired end.

In view of the above circumstances it can be said that the authorities concerned must take positive steps in amending the laws relating to the appointment of the advocate commissioner. A system should also be introduced for imparting training to the advocates and the rate should be drastically revised so as to commensurate the same with the nature of the commission, otherwise, the genuine litigants will continue to suffer at the hands of the newcomer advocates in the profession.[26]

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[26] Gupta, Arun, *'Suggested Reforms in the Appointment of Advocate Commissioner'*, AIR 1990 Cal (Journal), 8

4.9 Delay for Lack of Education and Training of the Judges and Court Support Staffs

The task of administering justice is very arduous and highly delicate. It requires persons of foresight, integrity, imagination and total commitment to justice. The common man comes into contact with the judiciary at the district level. To him law is what the judges say it is.[27] Under an adversary system of dispensing justice it is not enough if a judicial officer is intelligent and honest; he should be in a position to successfully face the many challenges he encounters in the discharge of his duties. He should avoid friction with the Bar and the witnesses, and at the same time dispose of cases expeditiously without sacrificing justice. He should exercise effective control over the staff without engendering a feeling of hostility in them. It is therefore necessary to impart training to a judicial officer to enable him to run his court smoothly and effectively.[28]

The inordinate delay in the disposal of cases is causing anxiety; law abiding citizens will lose interest in approaching courts for legal remedies. There is a real risk of unscrupulous litigants and touts employing the court for their private advantage. Expeditious disposal of cases would become possible if the judicial officer is trained how to control prolixity of arguments and citation of unnecessary and irrelevant case law by counsel bent upon procrastinating the litigation. Seeking unnecessary adjournments, filing applications calling for unnecessary documents, prolonging the pendency of even interlocutory applications, sometimes by summoning the deponents of affidavits for cross-examination are some of the common

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[27] Rao. Shri K. Ramachandra, *'Judicial Service-The Case for Reforms'*, AIR 1984 (Journal), 74

[28] *Ibid*

methods employed to cause laws delay. Therefore, the training to be imparted to judicial officers should be imaginative and pragmatic. Judicial officers undergoing training is a familiar feature in the United States and several European countries. Our judicial officers at all levels need practical training and periodic refresher courses to enable them to update their knowledge. The quality of justice reflects the quality of the judge.[29] Transparency International Bangladesh suggested regular training of the judges on writing judgments, interpretation of laws and judgments, case management, and other related issues to improve professional efficiency of the judges.[30]

Legal education in Bangladesh comparatively is now in its worst shape. There is a mushroom growth of law colleges under the National University and law faculties of private universities which are being run on commercial basis. The skills needed for advocating cases in the courts keeping in view the modern requirements are not being taught to law graduates. The unacquaintanceship with legal ethics, traditions and methods have brought about a chaos. Empirical method of teaching, whereas introduced in business schools has not been introduced anywhere in the country in a Law School. The Faculty of Law of some universities though has introduced clinical methodology of studying law, yet they are not so effective and practical because of many reasons. Therefore, the Law Schools are not training prospective law graduates for making them successful practitioners or judges. The Law Schools only teach theories without preparing the graduates for facing the field situation. The case-law

[29] *Ibid*
[30] See, *Proposals for Better Judiciary*, The Daily Star, February 19, 2011

is hardly discussed in the class-rooms. All this has brought about professional decadence and has endangered the whole judicial system.[31]

The lack of proper training facilities for judicial officers is responsible in no less a degree in contributing to the inefficiency of the officers. Whatever little training they receive during their probationary period is hardly sufficient. If training is necessary for an executive officer, it is still more necessary for a judicial officer, who has to safeguard the rights of the citizens from violations. A judicial officer must not only know the law but also the technique of administering law expeditiously and efficiently. This needs both training and experience.[32]

The history of institutional training of judicial officers of Bangladesh is not so old. Nowadays they can impart their professional training at the Judicial Administration Training Institute (JATI). But they are expected to learn their work by the process of trial and error on the job itself. The new entrants in the subordinate judiciary are asked to watch a senior judicial officer at work for few days or weeks before they start deciding cases themselves. This lack of training has contributed, in no small measure, to the inefficiency and delay in the disposal of cases. There is not only ignorance of the procedural laws, but also instability to plan and organize the court work on proper lines. A large number of presiding judges are either not conversant with case law or are unable and reluctant to apply the same for want of proper training in this behalf. It is evident that many of the causes of delay and of dissatisfaction in the disposal of judicial work would

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[31] Chowhan, Ali Nawaz, *'Judicature in the Trichotomy of Power with a Focus on Subordinate Judiciary'*, PLD 1994 (Journal) 47 at 61

[32] *See*, Report of the Law Reforms Commission, 1967-70, 331

disappear if proper arrangements for the training of judicial officers are made. In this respect the Law Committee in its report observed:

> "we believe that it is most essential that one who chooses a judicial career for himself must be given, right at the outset, a thorough initiation into the application of substantive and procedural laws, both civil and criminal, interpretation of statutes, together with the techniques of planning and organizing judicial work for sufficient familiarization with a good deal of other matters relevant to its efficient performance."[33]

Like the judicial officers, the training of court support staff is badly needed for updating their knowledge and for the modernization of the system. This is not going to cost too much. In -service training of the staffs is essential in areas like time management of court, management of *Nazarat*, preservation and destruction of records, correspondence procedures, different rules and circulars issued by the government and Supreme Court, accounts rules and budget making etc. Later they should be given training in computers for effective management of Court. Now, JATI has been conducting training courses for them on the similar matters, but it is yet to organize training courses for all court support staffs. Moreover, this research study observed that the training organized by it is not fruitful as because it does not include practical matters rather on theoretical matters. Sometimes JATI organized training courses on computer literacy for both the judges and court support staffs but the reality is that they are not provided with computers.

[33] *See*, Report of the Law Committee, 156

4.10 Delay for Lack of Research and Reforms

A Judge is a very busy person. He needs assistance for research and location of the latest case-laws for updating himself as well as for writing judgments. But due to his day-to-day job it is often not possible for him to conduct research work. It needs institutional training. Only the training institute can initiate comparative studies in judicial procedure and techniques employed by other countries to expedite the disposal of court cases. There is a research and publication section at JATI. But till today it has not done any substantial work in the field of administration of justice, delay reduction and court management. Comparative studies in judicial procedure and techniques adopted by other countries and induction of new ideas and methods including use of modern technical appliances in court proceedings would enrich our judicial administration and facilitate speedy disposal of court cases if the JATI conduct proper research on relevant field.

Most of the major laws, both substantive and procedural, applied in the courts were enacted in the British period. Some of them are more than 100 years old. While occasional attempts have been made for reforming procedural laws, like the Code of Civil Procedure, 1908, most of the substantive laws like the Transfer of Property Act, 1882, Specific Relief Act, 1877, many of the land laws, laws relating to Hindu inheritance etc. have remained unattended. So, many of these laws or provisions thereof are not sufficient to cope with the necessity of the present day needs. These factors increase the number of unnecessary cases and the resultant delay. The administrative work of the courts is still being conducted on traditional lines. Reform of procedural law and the increase of the number of judges can, to a limited extent, ease the delay problem, but it can not do any considerable or permanent improvement. Substantive laws also need serious attention so as to find out the provisions which has direct and indirect

impact. Therefore, continuous research and law reforms with a view to avoiding unnecessary cases, without substantially curtailing the rights of the people, must be undertaken.

4.11 Delay for Non-attendance of Witnesses

It is the duty of the witnesses to appear before the court if they got summons to abide by the law of the country and to make useful contribution in the administration of justice. It is not possible on the part of the presiding judges to decide a case without examining witnesses. But instances of non-attendance of witnesses in court in spite of service of summons are not rare. The witnesses attending courts are required to wait for hours together and in some cases even for the whole day if the relevant suit is not taken up for hearing or is adjourned at the end of the day. In almost all places where the courts are situated, no waiting rooms or other ordinary amenities are provided with the result that the witnesses experience great inconvenience and are reluctant to attend court. The problem is more serious so far as female witnesses are concerned. Apart from the difficulties faced by them for want of waiting room and lavatory etc, they cannot even maintain privacy. In view of this unwholesome atmosphere prevailing in the court premises witnesses, particularly of the respectable family, prefer to be examined on commission instead of being examined in court. This problem does not upper to have been considered by the authorities with any degree of seriousness.

Under Rule 2 of Order XVI it is the duty of the party summoning witness to pay for the expenses of the witness.[34] A witness is entitled to

[34] *Ata* v. *Haraam*, AIR 1927 Lah 845, Rule 2(1) of Order XVI of the Code of Civil Procedure provides that the party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into court such a sum of money as appears to the court to be sufficient to defray the traveling and other expense of the person summoned in passing to and from the court in which he is required to attend, and for one day's attendance.

traveling expenses at anytime even after he has been examined as a witness.[35]When summoned by the plaintiff, he is entitled to the traveling expense from the plaintiff, though examined by the defendant.[36] Sometimes, witnesses are not willing to accept any payment from the party direct. But the traveling and diet expenses as admissible to witnesses under the rules are not sufficient to cover their actual expenses. These rates were fixed long ago and these are no more comparable with the rising costs in every sphere of life. So, it is felt that these rates should be reasonably increased keeping in view the rising costs.

At present, the system of paying expenses of the witness is suspended. The parties are not depositing this money to the court. It happens because of ignorance of law by the advocates and judges. As a result, sometimes, it is difficult to bring the witnesses and for the reason delay also occurs in the disposal of the suits. Sometimes the opposite party put threat or social pressures on the witnesses or able to bias for not attending the court. The contending party seeks adjournments in this regard for bring those witnesses. This is another ground of causing delay in suits.

4.12 Delay Consequent to Frustrations among the District Judges

We have already discussed that there is an immediate need for the amelioration of the working conditions of the judges of all tiers. Moreover, it is observed that the District and Sessions' Judges are also facing many problems both economical and psychological. The District and Sessions' Judge is the pole star of his district. The reinforcement and strengthening of his position through upgradation and providing him with adequate facilities are bound to have an impact which will boost the system and the desired

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[35] *London & Co.* v. *Mohammad*, ILR 4 Bom 619

[36] Islam, Mahmudul and Neogi, Probir, '*The Law of Civil Procedure*', (Volume I) First Edition, (Dhaka: Mullick Brothers, 2006), 744

result will show immediately.[37] The Court of District and Sessions' Judge is only a step below the High Court Division. In several civil and criminal matters to some extent, it enjoys concurrent jurisdiction with the latter. This court performs multifarious functions. In early days, a very handsome salary was paid to the District and Sessions Judges. At present, they are drawing salary equivalent to that of the Joint Secretaries of the government. But government is not upgrading their status like the Joint Secretaries of alike position. This causes psychological effect on them. For the reason, in official capacity, they are not getting proper protocol. The enhancement of official position will not cost the exchequer a single farthing. Because, they are already drawing salaries equivalent to that of Joint Secretaries. Only an official circular can upgrade the position and this decision will bring a tremendous and worth while change. It will provide an incentive for attracting the best on this side of the government. It must be admitted that allurement for promotion always encourages people to work doubly; and in the judiciary it will help in removing backlog of cases.

After years of hard work and observance of high standards of honesty and intellectuality a District and Sessions' Judge earns a *locus standi* for elevation to the High Court Division of the Supreme Court of Bangladesh which is an incentive for them. Unfortunately, at the twilight stage of the career, uncertainty is always there for his elevation on account of several seen and unseen factors. The present system of elevation from amongst the District and Sessions' Judges to the High Court Division is very poor. Sometimes one-third or one-fourth of total appointment considered from them for elevation in the High Court Division. The Judges

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[37] Chowhan, Ali Nawaz, *'Judicature in the Trichotomy of Power with a Focus on Subordinate Judiciary'*, PLD 1994 (Journal) 47 at 58

of the subordinate courts are demanding to remove this *de facto* quota system. They are also pressing for elevation to 50% from the Bench and 50% from the Bar. Transparency International Bangladesh, the anti- graft watchdog has placed a host of recommendations to the Chief Justice of Bangladesh concerning development of the judiciary, delivery of justice and enhancement of people's trust in it. According to it, a quota (at least two-thirds) should be fixed for appointment of lower court judges as High Court judges.[38] The present system of elevation to the High Court Division is frustrating the District and Sessions' Judges. Only a few persons are getting the chance. As a result, most of them become frustrated and loose the urge to work whole heartedly. There is, therefore, immediate need for considering the matter, which will provide a tremendous incentive and improvement in this service besides meeting the ends of justice.

4.13 Delay for Non-existence of Separate Family Courts

Civil court is overworked and encumbered with the procedure. There is huge backlog of cases in civil courts. Before promulgation of Family Courts Ordinance, 1985,[39] disputes arising out of family matters were disposed of by civil and criminal courts. But for quick disposal of those cases, government established family courts under the above mentioned Ordinance. Under section 4 of the Ordinance all courts of Assistant Judges have been made family courts which have to entertain suits of various types. Family court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of, all or any of the following matters, namely:

(a) Dissolution of marriage;

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[38] *See*, The Daily Star, February 19, 2011
[39] Ordinance No. XVIII of 1985

(b) Restitution of conjugal rights;

(c) Dower;

(d) Maintenance;

(e) Guardianship and custody of children.[40]

Under the complexity of modern life the number of family cases is increasing. Thousands of cases arising out of family disputes are pending in different courts Bangladesh. The number of civil suits is also increasing. In the absence of separate family courts the cases filed in this court gets less important. The District Judges do not give credit to his subordinates for disposal of family suits and appeals. So, they feel reluctant and always acquainted themselves with the disposal of civil suits. It is very important that cases relating to above matters should be disposed of as quickly as possible in the interest of the contending parties. But the judicial officers being already overburdened with other suits are not able to dispose of the cases relating to these matters expeditiously with the result that both the husband and wife and sometimes the children go on suffering from suspense. They have been roaming in the veranda of courts for years together. In order that cases relating to these matters may be disposed of quickly, it is desirable to set up full time family courts presided over by experienced judicial officers. The researcher feels necessity of setting up full time family courts by amending the Family Courts Ordinance, 1985 or enacting new legislation, if necessary.

4.14 Delay for Shortage of Full-time Rent Controller

Wherever a particular category of work has increased to require a full time judicial officer, a separate officer should be appointed exclusively

[40] Section 5 of the Family Courts Ordinance, 1985

for the work. Similarly, appointment of full-time Rent Controllers for Dhaka, Chittagong, Narayangong, Syhlet, Rajshahi, Khulna and other big cities and towns which has become necessary for the disposal of rent cases more quickly.

4.15 Delay for Non-existence of Separate Commercial Courts

Trade and commerce including international trade are fast developing all over the world including Bangladesh. With the progressive increase in commerce and trade, disputes arising therefrom are also on the increase. A judicial officer dealing with commercial disputes must have expert knowledge of all commercial laws and technicalities involved therein. A judicial officer who is trying commercial disputes should have a clear grasp at the Contract Act, Sales of Goods Act, Negotiable Instruments Act, Railways Act, Merchant Shipping Act, Carriage of Goods by Sea Act, Private International Law and Banking and Insurance Laws. The Chambers of Commerce representing the business community made complaints about the difficulties they have to face in the trial of such commercial cases by judges who are often unfamiliar with even the commercial terms in common use and demanded the setting up of some commercial courts exclusively for the purpose of adjudication of commercial disputes in large commercial centers. Their main grievance is that trade and commerce are adversely affected because of the ordinary courts' inability to dispose of commercial cases within a reasonable time. Their further grievance is that the different judicial officers coming on transfer to commercial cities having no background of commercial laws find it difficult to appreciate the points of law involved and in consequence wrong decisions are generally given and, that too, after inordinate delay. This eventually causes frustration in the minds of the business community who are obliged to seek relief in the High Court Division frequently. Indeed, the delay in the disposal of

commercial cases has so perturbed the business community that the chambers of commerce of this country always pressing the matter before the government for full-time commercial courts presided over by judicial officers trained in commercial laws. Government sometimes sent few judicial officers abroad for training in commercial laws, the practices is that after their return to the country on completion of the training, their services are not, however, utilized for the purpose of adjudication of commercial disputes but they are put on different jobs. Considering the necessity of establishing this type of courts, the Law Committee of 1976 in its report observed:

> "...we are of the view that a number of judicial officers should be selected and given specialized training in commercial matters. Training inside the country should be in the... judicial academy and also on the job training. A few among them may also be given training in foreign countries. These selected and specially trained officers should be posted in those centers where there are concentrations of commercial cases. In our view, this arrangement, keeping the normal service structure undisturbed, would achieve the purpose without any serious dislocation in the working of civil courts."[41]

Therefore, the study reveals that commercial courts presided over by specially trained senior judicial officers should be set up in important cities like Dhaka, Chittagong Narayangonj, Gazipur, Sylhet and Khulna.

4.16 Delay for Non-Cooperation of Lawyers

Historically, legal profession is an acclaimed profession. It emerged to build fairness and impartiality in system of justice. While legal

[41] *See.* Report of the Law Committee, 1976, 122

profession may have been articulated with innate characters and influences of respective societies they have been developed in, it is believed with no skepticism that the legal profession of each society follows some universally adhered principles. These principles are regarded as 'commandments' for legal professionals in all societies irrespective of their cultural diversity and differences of standards regarding socio-economic development.[42]

The profession of law is noble and dignified one. An honest and sincere advocate could afford to administer the justice if he does not accept the brief in which cases are not fair and will result in agony without any legal remedy. The litigant public badly requires the services of lawyers in respect of legal advice, legal aid and aid in connection with legal proceedings and lawyers are part and parcel in the administration of law and dispensation of justice.[43] Advocates can also assist the judicial officers in liquidating the delay in disposal of cases. An unnecessary complication should not be created for delaying speedy disposal of the cases.[44]The lawyer is an integral part of the judicial process. It is desirable that no advocate should accept a case which seems to be false, antedated, fabricated and ultimately kills the time of the court. While making a joke Joseph H. Choate, a great American lawyer in a dinner speech had said:

> "Every man in the community owes a duty to our profession; somewhere between the cradle and the grave,

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[42] Sangroula, Professor Dr. Yubaraj, *'Legal Ethics- A critical analysis of the understanding of legal education and professionalism in developing countries, with special references to South Asian Scenario'*, Paper presented at the seminars on 'Ethics in Legal Profession and Legal Education in South Asia' organized by the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) in Dhaka on 15 and 16 January, 2011, respectively, p.1

[43] Shamsuzzoha, Syed, *'Role of Advocates in the Administration of Justice'*, 44 DLR 1992 (Journal), 39

[44] *Ibid*

> he must acknowledge the liability and pay the debt ....It was one of the brightest members of the profession, you remember, who had taken his passage to Europe... and failed to go. He said one of his rich clients died and he was afraid if he had gone across the Atlantic, the heirs would have gotten all the property."[45]

The allegation often is that lawyer makes a law-suit complicated and confusing. Fred Rodell, an eminent Professor of Yale University, USA once said that while law is supposed to be a device to serve society, a civilized way of helping the wheels go round without too much friction, it is pretty hard to find a group less concerned with serving society and more concerned with serving themselves than the lawyers.[46] Most of our lawyers are fairly honest, more or less upright and, in the main, quite decent men; but that is not relevant. Karl Marx once said that money annuls all human relationship. After all, this profession has become an industry. The interest of the lawyer lies in a protracted litigation. He is not a Kalidas who would cut the branch of the tree on which he is sitting by making litigation short lived.[47]

Courts and lawyers are inseparable just as there can not be also a court without litigants. It is a bitter truth that many lawyers have a delusion that quick justice is their adversary in interest. It is an obligation cast on them to make concerted efforts with the courts to ensure quick disposal of cases. But in most of the cases they are not performing this holy obligation. They are very much interested in giving petition for adjournment of the

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[45] Cited by Sinha, Justice Birendra Prasad, *'Need for Speedy Disposal of Cases'*, AIR 1980 (Journal), 115
[46] *Ibid*
[47] *Ibid.*, 115-116

cases. There are, of course, some reasons for granting adjournment prayers frequently. The weak party to the litigation adopts policy of seeking adjournments and again for harassment. If the prayer is rejected and the case is disposed of *ex parte*, then the defendant shall invariably file miscellaneous cases under Order IX Rule 13 of the Code of Civil Procedure, 1908 causing further delay in disposal. So, it does not help the judges to conclude the matter. For that reason, the presiding judges are reluctant to reject the time prayers. It is the common attitude of the lawyers that civil litigation takes a long time to be disposed of. So, they take adjournments frequently bearing in mind that it is the normal practice.

Lawyers are often reluctant to ready their cases timely and they usually come in court room after two or three hours from the beginning of court time. Sometimes they become hostile if adjournment is not granted and try to boycott the court or threatened to transfer the case under section 24 of the Code of Civil Procedure to another court. Some of them try to linger the suit to receive fees from the litigants. It is also to be mentioned that number of lawyers in civil side is limited in comparison to lawyers practicing in criminal cases.

There is a fertile field in the Code of Civil Procedure for a clever lawyer to prolong and protract proceeding to any length of time. It is an unbreakable elastic piece of legislation which enables all piecemeal dealings in litigation.[48] To quote few instances or illustrations, application may be filed for the following, among, other reasons:

(a) Calling for particulars;

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[48] Swamy, V. Narayana, *'The Procedural Law in India Requires Thorough Change'*, AIR 1987 Raj (Journal), 85 at 86

(b) Interrogatories;

(c) Appointment of commissioner for local inspection etc.;

(d) Temporary injunction;

(e) Arrest or attachment of movables before judgment;

(f) Appointment of Receiver;

(g) Suit by indigent person.

Each application requires an opportunity to be heard and disposed of on its merit. The aggrieved party has an opportunity to file a miscellaneous appeal or civil revision before the High Court Division or the District Judge, as the case may be. After filing miscellaneous appeal or revision, there is scope of seeking leave to appeal to the Appellate Division of the Supreme Court of Bangladesh as the last resort. Each application may take at least a year for disposal. If we calculate the time on each application and add it on to the life and age of the litigation then we can easily understood that how much time does a civil suit takes.

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. On that date the advocate files *Vakalatnama* and seeks time to file written statement. This request is repeated until the judge loses his patience. At last the written statement is filed. The case is posted for framing of issues. The lawyers of both the parties take time to file the draft issues. After the draft issues are filed the judge frames the issues.[49] The burden of proving the issues lies on either parties. Sometimes the advocate of either party files application

[49] Practically Advocates are not habituated with filing of issues in the courts though they sought several adjournments in this regard

seeking amendment of the issues. On the application objection is called for and after hearing an order is passed. The aggrieved party prefers a revision to the High Court Division or the District Judges' Court. A considerable time is spent in this process. If revision is admitted and further proceedings are stayed, it rests there for over four to five years. That is how we have to calculate the time at each stage of the proceedings.

In the process at any stage a party may die. Then his legal representatives are to be brought on record, for which purpose an application furnishing the names, age and address 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. The legal representatives are given an opportunity to file their objections. If the proposed guardian refuses to be the guardian then another application requesting the court to appoint a court guardian is to be filed. Normally the court appoints an advocate (preferably a junior advocate) to act, as guardian. After the legal representatives are heard the court orders to bring up the legal representatives on record consequently the plaint is to be amended. Each of the above stages is heard on different dates of the proceedings. This process consumes many times. By the time the suit reaches the stage of peremptory hearing. So also there is lot of and any number of opportunities for the parties to file applications after applications for one or the other reason like filing of documents, list of witnesses, summoning the documents and witness etc. This process consumes another at least two years. Even while examining the witnesses, the examination -in -chief is done on several occasions and not at regular intervals. Then the cross-examination is done not on one occasion but in several prolonged installments. The re-examination is also done in installments and in piecemeal. The stage of

argument also takes considerable time. The arguments of the parties are heard in piecemeal on several dates and the case is posted for pronouncement of the judgment. In each and every case the lawyer obviously files petitions seeking adjournments whether it is necessary or not.

Senior advocates have worked for many years to attain their status and reputation. Litigants want senior advocates to handle the peremptory hearings of their cases. This is a major cause of delay in courts' today; when a senior advocate has pending matters in several courts, he will send a junior to seek an adjournment or postponement of the matter until the senior can be present.[50] It has been held by the Calcutta High Court that a case cannot be adjourned on ground that senior lawyer is absent or engaged elsewhere.[51]

It is to be noted here that one of the goals of civil case reforms is to change the practice of law in Bangladesh to prevent delay arising from the same advocate to multiple matters at the same time. This situation will not be grounds for adjourning or postponing the consideration of a scheduled matter.

Judges need to insist that senior advocates train their juniors to handle such matters on their merits themselves and to familiarize them with the junior with the particulars of cases so that they can represent the clients of the chambers. Having more advocates handling civil cases will reduce and improve the level of professionalism within the Bar.

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[50] Mathur, V.K., *'Early Disposal of Court Cases'*, 1st edn. (New Delhi: Deep & Deep Publications,1996), 32-33

[51] AIR 1984 Cal 184

Then come to the legal profession which is in no small measure contributing to laws' delay. It is a matter of great regret that the legal profession as a whole has ceased to be a noble profession. In fact it has ceased to be a profession and has become a learned business. Just as politics is no longer a social service but is a means to earn power and money by all possible and even unscrupulous methods so is the case with an almost all professions including that of lawyers. To an average lawyer, small or leading, money is the only aim and when that becomes the only aim, it is no wonder all types of methods are adopted to earn money. The result is that litigation is conducted without scruples and without dignity.[52] If some of the so-called leading lawyers indulge in getting unaccounted fees why the small ones cannot do so, and so the rot has started. This factor has a definite effect on the conduct of litigation. Few lawyers have the courage to nip litigation in the bud by advising the client that his case is hopelessly weak, even if in fact it is. By advising he loses his prospective income and the lawyer also feels that if he so advises, the client will go to some other advocate who will advise him otherwise and earn his fees; then why not he should do it himself? After the litigation starts, the lawyer will not prevent the client from taking a false stand or making false statements, on the other hand, he will suggest all dubious and devious defences with a view to prolonging the litigation and earn more fees. The longer the litigation the more chances of getting fees. Sense of relevancy is a very rare virtue among the lawyers in general, and all possible irrelevant defences are taken, irrelevant issues are raised and irrelevant authorities are cited. Against almost every decision even on an interim application, appeal or revision is advised and no judgment of a lower court is accepted in general although it may be a

[52] Divekar, G.M., '*Law's Delay*', AIR 1981 (Journal), 89 at 92

correct judgment. In fact all sorts of ways are adopted to delay the litigation particularly on the part of the defence[53]and all are happening very frequently because of lack of professionalism among the lawyers. The violation of universally adhered principle of legal profession renders the work of a lawyer unethical and thus unacceptable. The major goal of legal professionalism is related to defend rights and protect liberties of persons and thereby preserve the peace and order in the society. The failure of any lawyer to this responsibility results in corruption of justice, and will cause the breakdown of peace and order in the society.[54] It is therefore rightly said that 'an unethical act of doctor may result in a death of an individual but an unethical work of lawyer destroys the entire society.'[55]

It is observed that lawyers generally take time to process claim and for the drafting of the petitions, suits and complaints, notice to the opposite party. Courts allow time for needs which are incidental to the main proceeding, issues are formulated in order to avoid surprises, evidence is collected and complexity of the matter may determine the quantum of evidence and these are sufficient reasons in taking considerable time, as such, sometimes, it is held that the time consumed by the lawyers in processing the claim cannot be said to be improper delay. It is the duty of the lawyers to see that the disputes are resolved quickly and this vital service to the society by the lawyers is their paramount consideration.[56]

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[53] *Ibid*

[54] Sangroula, Professor Dr. Yubaraj, *'Legal Ethics- A critical analysis of the understanding of legal education and professionalism in developing countries, with special references to South Asian Scenario'*, Paper presented at the seminars on 'Ethics in Legal Profession and Legal Education in South Asia' organized by the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) in Dhaka on 15 and 16 January, 2011, respectively, p.1

[55] *Ibid*

[56] Khurshid, Syed Muhammad Kalcem Ahmad, *'Whether Justice Delayed is Justice Denied'*, PLD 2000 (Journal), 122

From the above it is evident that lawyers' cooperation is urgently needed to dispose of the suits quickly. For that purpose it is the duty of the presiding judges to take their seats timely at 9.30 am. If some of them do not follow it, lawyers' attitude will be such that it is normal practice for every court. To prevent threat of transferring cases from one court to another by the lawyers, District Judge should discourage transfer petitions unless there is a sufficient reason for it. Non- cooperation of lawyers is really a great problem of disposing of suits. Though they are court officers and it is their noble duty to assist the court but instead of rendering assistance they in most of the occasions try to delay the proceedings. Keeping this in mind, the rules may be framed by the Bangladesh Bar Council to control the negligent dealing or intentional delaying in the suits. Effective performance and full cooperation of the lawyers in the court room are essential to hold effective trial and give proper decision.

4.17 Delay for Low Literacy Rate and Public Attitude

The present apathetic attitude of the public of this country that the civil litigation takes a long time is a pointer to a lurking danger, the danger of total loss of confidence in the usefulness and competency of the judiciary. Their lack of demand for speedy disposal of suits and cases is aggravating the present situation. As most of the litigating public is illiterate and ignorant about the court procedure, they some times can not take proper initiative on their part and remain absent. Sometimes others are miscommunicated as to the next steps of their cases. Sometimes peoples are misleading by the so-called legally literate people and touts. People are induced to avoid summons, to punish the opponents by falsely implicating them in false and frivolous cases, etc. The prevailing social attitude is that it

is an indignity for any person to stand on the dock of the court whether as a party to a case or as a witness. This causes delay in the disposal of suits.

4.18 Delay for Touting

Most of the litigants of Bangladesh are poor and illiterate. For help and guidance and even for engaging a lawyer, they go to touts. Touts are responsible for dragging on the litigation and delaying the process of law, as by so doing they enhances their chances of extracting money from the poor and illiterate litigants. Lawyers, in some cases, are also employing or dealing with touts instead of bringing them to book which is painfully frustrating the smooth running of litigation. It is, therefore, said that three evils, namely, toutism, perjury and corruption have occupied a place now- a –days in judicial system and obviously delay are caused because of these three evils.

4.19 Delay for Absence of Expertise

The procedures applied in the civil court are dilatory and cumbersome and in the changed situation of the society the civil court is found to be inadequate to cope with the demand of speed and the need of expertise. Modern social legislations and problems arising therefrom call for expert knowledge which falls outside the experience of the lawyers or of the civil courts which also contribute to delay.

4.20 Delay for Experts' Report

There are many causes requiring reports of the finger print or thumb impression experts. In some cases, it become vital and necessary to seek opinion from handwriting and thumb impression expert for taking presumption as to the genuineness and veracity of the disputed signature

and thumb impression put by the alleged executant's of the suit deed. But it is the reality that the expert opinion does not come to the court on its normal and natural course. It is, no doubt, disappointing and frustrating for the courts to dispose of the cases timely.

In Chapter- III of this research work it is mentioned that the number of experts in this field are limited and they have been taking long time in submitting reports. They are not generally available for examination as witnesses until several dates of hearing pass off.

4.21 Delay for Over Population and Scarcity of Land

Over population with severe scarcity of land of the country leads to over increasing land disputes and court cases. The prime causes of land litigation, in short, are of two folds: opaque and inconsistent laws relating to land management, and malfunctioning of the authority responsible for land management. And the belated factors accountable for land litigation are either due to complex process under judicial or quasi-judicial system and ignorance of the people about land laws, in addition to their obscurity and inconsistency. Corruption of all sectoral people regarding land dispute resolution irrespective of their nature and type is an important contributing factor in intensifying litigation in Bangladesh. Neither the officials nor the peoples' representatives nor the elites are sincere and careful about the ways of mitigating the dispute that leads the innocent people in the long run to ruin.[57]Conflict regarding possession, in fact, lies with the registration of land, record correction and record up-dating. The second cause lies with the sale-purchase registration. The third is related with the record of rights, preparation and maintenance of record and title of land. In fact, irregular

[57] Barakat, Abul and Roy, Prosanta K, '*Political Economy of Land Litigation in Bangladesh*', 284

correction leads irregular enjoyment and possession; irregular correction and both lead irregular possession that finally causes litigation of three types: in revenue for revision of record update/ mutation, in criminal court due to riot; and in civil court for cancellation of wrong deeds. Thus three cases/suits have come into action with one piece of land between two parties. These three factors are complimentary to each other.[58]

The scarcities of land and population issues are complex socio-economic problems. There is no short-cut solution. Only the socio-economic development of the country can curtail the problem. Diversification of economic activity will reduce pressure on demand for land and thereby reduce number of land disputes and this will put in positive contribution to the delay problem. Streamlining the land disputes by way of other means, like land reforms and updating related laws may be considered.

4.22 Delay for Lack of Strict Vigilance, Monitoring and Accountability of Judges

Lack of strict vigilance and monitoring of pending cases in general, monitoring of the entire court administration is another cause of delay. Non-vigilance starts from the very beginning of filing of cases. Many judges and their staffs do not adhere to the rules of filing and allow undue time for filing documents and other requisites.

Monitoring at the district level is almost absent. Judges mostly remain satisfied with the disposal of adequate number of cases required by

[58] *Ibid*

the High Court Division. The Circular[59] of the High Court Division that minimum 6-8 cases should be disposed of in a month is another reason causing delay on the following grounds:

(a) In some courts the number of cases is limited. The presiding officer thinks that if more than six cases are disposed of next few months he will be seating idly or he can be in difficulties in disposing of cases less than six in a month.

(b) If the number is fixed no need to dispose more than six cases though it may be possible for him to dispose more than that number.

(c) Complicated and cases of large volume, such as, partition suits, remain pending as they took much time, which may disable the judge to dispose of six cases.

(d) Many times the presiding judges instead of giving preference to decide old cases chose to decide easy cases with an eye to completing their quota as per norms fixed by the High Court Division for disposal of cases. As a result, old cases are remaining pending for years together.

To remove the aforesaid causes, it is suggested that the number of adequacy of disposal of cases by a particular judge should be determined by the District Judge considering the number, volume and nature of cases in a particular court.[60] Many old cases are pending in

[59] Circular Letter No. I(General), Issued on November 20, 1988 by the Registrar, Supreme Court of Bangladesh, High Court Division

[60] The Chief Justice of Bangladesh issued Circular No.14 A on March 19, 2009 canceling previous circulars and directed the District Judges to write the annual confidential reports of the judges subordinate to them on the basis of quantity and quality of works done by the presiding judges.

different courts of Bangladesh. Observing the volume of those cases most of the presiding judges are reluctant in disposing of the same. The rate of disposal of long pending cases suffered for lack of mindset of the judges as well as lack of vigilance and monitoring of the higher authorities. It is the District Judges who can take proper initiatives in this regard. A specific and practical criterion should be introduced by the District Judges for identifying and disposing of long pending cases. Specific statistics in this regard should be maintained and the judges should strictly try to dispose of those cases. Frequent inspection of subordinate courts by the High Court Division may help in reducing delay in the disposal of cases. In addition to that the backlog of pending cases for years has to be cleared up by some special measure. The Chief Justice of Bangladesh on November 4, 2010 issued Circular No.22625 for disposal of long pending cases on priority basis. It is suggested that the number of long pending cases should be determined and earmarked for disposal of these cases quickly as per direction of the Chief Justice.

The High Court Division of the Supreme Court of Bangladesh is responsible for the administration of justice and have unbounded power to supervise and ensure the quality of justice in the subordinate courts.[61] If some of the judges of the High Court Division are earmarked by rotation and entrusted with the sole responsibility of carrying out intensive monthly inspections of the subordinate courts without any prior notice at least 50% of the delay in disposal of cases by these courts can be curbed by picking up case-files at random, analyzing them for the speed of disposal and communicating the speed of disposal and communicating the result to the

[61] Article 109 of the Constitution of the Peoples' Republic of Bangladesh provides: The High Court Division shall have superintendence and control over all courts and tribunals subordinate to it.

judges concerned. Good results are bound to ensure if such inspections are backed with ruthless administrative action to shake the subordinate judiciary out of the smugness of judicial protection.[62] In this connection it is pertinent to refer to the judgment of justice S.B Wad of the Delhi High Court delivered in ***Bhori Lal, New Delhi*** v. ***3rd Additional Rent Controller, Delhi.***[63] This case brings out piquantly what all is happening in the District Courts of Delhi under the very nose of the Delhi High Court. It touches only the tip of the iceberg. It also high-lights haw even senior judicial officers are disposed to push serious aberrations of the judicial apparatus under the carpet when called upon to enquire into malpractices. The spirit to resist throwing mud on their own organization in public compels them to do so. Justice Wad has surely done a much needed service to the public cause through the said judgment. But the effectiveness of the judgment will be seen only out of the action actually taken by the High Court to clean the Augean Stables. Justice S B Wad in this respect observed:

> "The District Judiciary in Delhi is required to perform its functions and duties under a greater strain than its counterparts elsewhere. It is a recent experience that even ordinary criminal cases acquire great public importance. They sometimes involve important constitutional issues. The Presiding Officers are expected not only to have good knowledge of criminal law but of constitutional law and other area of public law. Simple civil cases like injunctions and evictions have acquired larger implications because of the authorities and personalities involved. There are greater chances of temptation on the part of the political and financial heavy-weights to influence administration of justice. An

[62] Gupta, D.N., '*The Quality of Justice*', AIR 1984 Raj (Journal), 65 at 66
[63] AIR 1983 Delhi 418

impression is likely to be created that a helpful Presiding Officer or Administrative Officer would get undue reward and a person not so helpful is likely to be neglected, if not punished. There are growing complaints about the Presiding Officers and Advocates practicing before them. An unfortunate impression prevails that this Court is not taking sufficient steps to control this situation. The same is equally true about the Bar Council, the disciplinary body of the Peers in relation to the Advocates. Such examples, as we find in the present case if not checked, will tarnish the good name of the entire subordinate judiciary. A strong action is, therefore, necessary so as to save and encourage honest, efficient and conscientious officers, both Judicial and Administrative. The leaders of the Bar and indeed every member of the Bar should render positive cooperation in this endeavour."[64]

It is found that lack of effective monitoring system, application of court management principles and coordination between lawyers and judges are also causing delay. Supervision and monitoring system can certainly remove delay and by adopting this theory honest and sincere officers can be rewarded and corrupt officers be punished. Recently a series of complaints are lodged against some of the judges of Dhaka Court for corruption and mismanagement in their respective courts. This matter was widely circulated in some of the dailies and weeklies. Dhaka is the capital city of Bangladesh and Dhaka Judgeship is the mirror of judiciary which is located very near to the Supreme Court of Bangladesh. The above mentioned complaints have no doubt lowered down the prestige and dignity of the whole judiciary. Accordingly the Chief Justice of Bangladesh entrusted a Judge of the High Court Division to enquire into the matter. The Judge

[64] *Ibid*

made a fruitful enquiry and submitted the report to the Chief Justice. Thereafter, the Supreme Court decided to take actions against the reported officers and sent its decision to the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs. On the basis of this report the Ministry transferred those officers from Dhaka Court to some other remote stations. The Ministry, in the meantime, also started departmental proceedings against them.

4.23 Delay for Lack of Coordination Among Different Agencies of Government

Another cause of delay, particularly delay in service of summons by the postal department is alarming. Now-a-days some of the employees of postal department in collusion with the parties to the suit submitting false reports regarding service of summons/processes by post causing delay in the suits.

In case of disposal of suits where government is a party it is difficult to proceed in the suit. In cases where the government or a department of the government is a defendant, delay caused from the stage of service of summons. Deputy Commissioner of the district represents the government. At the time of sending summons a copy of statement of cases in which government is a party is sent to the respective Deputy Commissioner for taking necessary steps. But in every case government did not file written statement in time. Government issued instructions upon all concerned departmental heads to attend to the notices of the court and to file written statement in time. Even then Government Pleaders frequently sought adjournments stating that they could not get ready because of non-availability of statement of facts from the concerned departments. It has

been observed that Government Pleaders are always very eager to have adjournments on one pretext or the other. At numerous times even after half hearing of the cases government has asked for long adjournments on the usual ground of '*Seeking Instructions* either from the Ministry or the Department. Compensation cases, acquisition cases and other matters involving employees are kept pending skillfully because *prima facie* the decision seems to be against them.[65] Here there is clear cut discrimination and a breach of the 'due process and equality' clauses. Before the judiciary government and citizen are alike. The rules must be followed by both of them. Government has the greater responsibility to strictly follow the rules because they are the creators of the said rules of procedure and administration. Just because they are governments, they are not entitled for extras. If they try to find, as they have been more so recently, out of way to give a go-by to the rules, then there is the end of the matter. Good is not good where better is expected.[66]

4.24 Delay for Economic Interest of the Lawyers

Some advocates instead of setting fee on lump-sum basis prefer to settle it on daily basis. It means that the fee of an advocate is directly proportional to the number of hearings. An unscrupulous lawyer tries to stretch a case to as many hearings as are possible by seeking adjournments on one pretext or the other. Thus resulting in accumulation of arrears. Even in cases where advocates settle fee on lump-sum basis, advocates adopts all sorts of delaying tactics to serve his clients personal interest and to strengthen self economic interest in limitation. Some advocates take up a lot of work which is not physically possible for them to attend. It results in

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[65] Madhusudan, B. Mor, '*Delay in Courts and Justice*', AIR 1970 (Journal), 69 at 70
[66] *Ibid*

seeking adjournments of cases resulting in accumulation of arrears.[67] In the case of ***Pijush Kanti Guha*** v. ***Smt. Kinnari Mullick***[68] it was held by his Lordship Justice M N Roy of the Calcutta High Court that a case cannot be adjourned on ground that senior lawyer is absent or engaged elsewhere.

4.25 Delay for Lack of Professional Commitment and Motivation of Judges

In many cases it has been revealed that the presiding judges are not committed enough to uphold the lamp of justice. Many young judges opined that this is not an attractive service which subsequently influences their skill and performances in negative way. Besides this, there are many judges who simply do not pay proper attention to the case at his hands. Lack of motivation is one of the main reasons for delay in the disposal of suits. There should be incentives and pay for nature of judicial work to motivate the judges.

4.26 Delay for Corruption

It is to be pointed out that complaints of corruption amongst the judicial officers dealing with civil matters are not infrequent. But this does not mean that their subordinate staffs are free from this taint. The integrity of the ministerial and process-serving staff of the civil court is equally doubtful. It is said that papers and petitions are not put up to the presiding officers unless the *Sheristadar*, the *Peshkar* or other office staffs of the court is well looked after. The *Nazirs* and the process-servers also extract money from parties for service of processes. The copying section also does not move until the silver-tonic is applied. It is generally complained that the

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[67] Mathur, V.K, '*Early Disposal of Court Cases*', 32-33
[68] AIR 1984 Cal 184

process-servers do not move out from the court-premises unless their tips are paid in advance to them or settled by the parties. If they are not approached by any party, the process-servers are apt to file false service returns. During the time of collecting data the researcher was surprised to find that service of summons upon the defendants of many cases could not be effected for about a year on the plea that the defendants were not available in their houses though they appeared before the court receiving information about the cases from other sources. According to the provisions of Rule 108 of the Civil Rules and Orders (Volume I) *Nazir* shall be held responsible for periodical physical verification of the service of processes but he seldom goes out to interior areas for checking the service of processes. Lack of supervision and control of the work of the *Nazir* and process-serving staff by the Judge-in-charge *Nazarat*, and also the District Judge is, this research reveals, responsible for corruption in them.

Nowadays, common scenario is that some of the District Judges do not take necessary steps against the corrupt employees. If the presiding officer takes steps against staffs subordinate to him and refers the matter to the District Judge for approval or further action, in those cases it has been observed that they become annoyed upon the presiding officers for sending the matter to him. If any action is taken by the presiding officers against the corrupt staff in most of the cases the District Judges come forward to save the said staff. As a result, the above mentioned staff, in the long run, will engage him in more corruptions ignoring the orders of his controlling officer.

To remove the problem it is suggested that judicial officers should not leave to their *Peshkars* or *Sheristadars* the function of fixing or adjourning cases. Experience shows that whenever this work is left to the

subordinate staffs of the court, the door for corruption is opened. As far as possible, every function in which members of the subordinate staff come into contact with the litigant public should either be performed by the presiding officer of the court himself or under his direct supervision. This would be really helpful in minimizing the incidents of corruption in courts.

The Law Reform Commission of 1958-59 in its report had recommended the placing of petition boxes in courts throughout country. The Punjab High Court Rules and Orders of Pakistan allowed the system. In this system petitions filed in court were ordered to be placed in locked boxes by the litigant public, which were opened twice or thrice a day by the presiding officers themselves. Then they passed relevant orders personally on to them and thus made sure that the court officials did not retain papers with them without taking necessary action in time. The Law Reform Commission then suggested that if the system be introduced it can help to eradicate corruption.[69] This study felt necessity of introducing the above recommendation considering the situation prevailing in our country. Moreover the Judge-in-charge *Nazarat* should exercise proper supervision and control over the work of the *Nazir* and the process-serving staff. It is also suggested that the service conditions of the process-serving staff should be improved. Fixation of cases should not be left by the presiding officers of the courts to their *Sherestaders* and *Peshkars*.

4.27 Delay for want of Prescribed Forms

Insufficient supply of prescribed forms cause harm to speedy disposal. Filing Register, Suit Register, Statistical Register etc. are not

[69] See, Report of the Law Reform Commission,1958-59, (Karachi: Government of Pakistan Press, 1959),101

supplied by the government. The staffs are preparing those by their own hands dropping some of the important columns which would create a lot of problems in future in supplying some of the necessary information regarding the particular suit/ case. Moreover, it is time consuming. Many working hours are spent for this which consequently causes delay in the disposal of suits. There is a dire need of supplying prescribed forms from the government side.

4.28 Delay Imputed to the Legislature

The Legislature makes laws which are administered by the courts. The laws are made to regulate human relations on the basis of the policy adopted by the government or the political party in power in a democratic set up. The plethora of legislations that is occupying the statute books of the government is itself contributing to the laws' delay in no small measure. Our statute books are not only full of the basic laws but are also getting more and more burdened with laws that are required to be passed to bring into effect the policies laid down by the fundamental principles of our Constitution and the ever changing policies of the government of the ruling political party. Although therefore new laws are required to be brought into existence to meet the situation or to carry out certain objects and policies, the inevitable result is the increase in more and more litigation. In a capitalist or neo-capitalist economy or social order there is always a conflict of interest between the rulers and the ruled. Our Constitution which prescribes both fundamental rights and fundamental principles has itself contributed and is contributing to the rise or creation of enormous litigation. There is a constant tendency on the part of the public to assert one or the other fundamental right which is sought to be taken away by executive or legislative action and it is the constant policy of the government to bring in

more and more laws for curbing such fundamental rights with an avowed object to bring into existence an egalitarian social order and which conflict is absent in a really socialist or communist State.[70] This is very evident when one looks to the several law reports and books on constitutional law in our country. Recently this type of litigation has grown into boundless proportions and will continue to abound so long as our social order continues to remain as it is. It is common knowledge that the more the laws the more the litigation, and the more the congestion in courts. Apart from this basic reason, related to legislatures, there are also several subsidiary reasons for judicial delay for which the legislature is squarely responsible. One of course, is the bad drafting of laws for which our legislation has become notorious.[71] In this respect Justice P.N. Bhagwati observed:

> "Bad or defective drafting of laws breeds litigation and this is exactly what is happening in our country. Now it is understandable that when the Legislatures are producing legislation on a mass scale, as is being done, and that also in haste, drafting is bound to be defective.... Those responsible for drafting cannot be perfect and to err is human. But is it not the duty of the Legislature to correct the mistakes as soon as they come to their knowledge or to those who are in charge of framing laws? If this is done quickly and with alertness much of the inevitable litigation will be saved. But this is not done or is rarely done in time. Hundreds of instances can be cited where courts have pointed out the defects in drafting a particular section or a piece of legislation but the Legislature does not

[70] Divekar, G.M., *'Laws' Delay'*, AIR 1981 Bom (Journal),89
[71] *Ibid*

> immediately step into to correct the mistake and then a mass of litigation grows up which could have been averted by timely action on the part of the Legislature concerned."[72]

Justice P.N. Bhagwati further said that difference of opinions will no doubt continue even in regard to a properly drafted law but the continuation of such difference arising out of defective wording cannot be justified and the legislatures are squarely responsible for the increase in litigation on this account. According to him, it is possible for the legislatures to install watchdog machinery whose function would be to ratify mistakes coming to light as early as possible and thereby avoid adding to the mass of litigation arising due to several other reasons. But this is not being done or rarely done.[73]

Hurried and ill-drafted statutes and orders on diverse topics enacted by the law makers, to some extent, contribute to the inflow of cases in courts. Many of the defects in legislation can be avoided, if they are made after making due and proper publicity of the proposed bills and laws and after ascertaining the enlightened public opinion and in particular, the opinion of the legal profession which consists of lawyers and judges. Laws must always be simple and effective but not cumbersome and the language employed must be simple but not ambiguous and complex. Proper implementation of the laws in force by the executive is needed before thinking of enacting new laws.[74]

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[72] AIR 1980 SC 1789 at 1823
[73] *Ibid*
[74] Kondaiah, Justice C., *'Making Justice Speedy, Effective and Substantial'*, AIR 1976 Puni. (Journal), 99

The present judicial system of Bangladesh is an adversarial one, where the role of the judges in regulating the course of a proceeding is passive. This passive role is another factor leading to delay. Refreshingly enough, no one seemed to find fault with our laws of evidence and procedure. In this respect the observations made by Lord Lane, Lord Chief Justice of England is remarkable:

> "One would like to return to simple laws, simple procedure speedy hearing and free representation for all who required it. However, in the increasingly complex world in which we live, such a hope is nothing more than a pipe dream."[75]

Therefore, procedural law should be amended so as to make the role of the judges active.

We have examined the law of evidence as contained in the Evidence Act, 1872 (Act I of 1872) with a view to finding out whether the rules contained therein are in any way responsible for delay in the disposal of cases.

With this background in view, we have included certain questions in the questionnaire. The first important question was whether the provisions of the Evidence Act tended to cause delay in the disposal of cases or not. This was an all embracing question. The other questions on this subject related to detailed provisions, such as production of certified copies of public documents, admissibility of secondary evidence of such documents and the like.

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[75] Jain, M.L., '*Solutions Regarding Court Disposal and Funding,*' AIR 1984 (Journal), 89

In the respondents opinion it is not correct to say that the provisions of the Evidence Act tend to cause delay in the disposal of cases. We have examined the history sheets of various civil cases pending in different courts of the country. We have not come across any instance worth mentioning which would show that the provisions of the Evidence Act are responsible for delay in the disposal of cases.

It has, however, been suggested that since our law of evidence is based on the English Law, therefore, quite apart from the question of delay, it does not suit our genius. This research study reveals that such a proposition is fallacious. No doubt the principles followed in the Act I of 1872 are derived from the English Law of evidence but these have been suitably amended to suit the peculiar circumstances prevailing in our country. The Evidence Act has worked satisfactorily in this country for more than a century. The members of the legal profession, the judges and the general public have sufficiently assimilated the principles of law laid down in the Act. It is no longer foreign to us. In this respect the Law Reforms Commission of 1967-70 in its report stated that the rule contained in the Evidence Act neither cause delay in disposal of cases nor are unsuited to the genius of our people.[76]

The next question is whether relaxation to some extent of the present rule against the admission of hearsay evidence would improve the position in so far as disposal of cases is concerned. Almost all authorities concerned with the administration of justice have opined against the relaxation of this rule.

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[76] See, Report of the Law Reforms Commission,1967-70, 395

Difficulties are sometime experienced while proving certain documents. For instance, a plaint, a written statement, a memorandum of appeal, petitions and affidavits filed in judicial proceedings are required to be proved as private documents. At present, these documents are not considered to be public documents. The parties have to summon either the executants or the scribe to have these documents proved. Again, files have to be summoned from the record-rooms or the courts concerned. Case has to be adjourned for want of records or non-attendance of the witnesses concerned. This involves unnecessary expense and also causes delay in the disposal of cases. There cannot be two opinions about the fact that in a vast majority of cases the authenticity of these documents is beyond question. There may be stray instances in which the execution of such documents may be denied or the identity of the executants may be disputed. Such instances are, however, extremely rare. In such cases, the party concerned may adopt the existing course. Observing the situation Justice Hamoodur Rahman Commission opined:

> "We are of the view that a plaint, a written statement, a memorandum of appeal, petitions and affidavits filed in judicial proceedings should be included in the list of public documents and proof of such documents should be permissible by secondary evidence. The definition of public documents as contained in section 74 of the Evidence Act should be enlarged so as to include all documents required to be maintained under any statute or statutory rule or forming part of the records of judicial proceedings."[77]

[77] *Ibid*, 398

The position of registered documents is not very much different from the documents mentioned in the preceding paragraph. In some cases, the original registered document is not forthcoming. It is either in the possession of the opposite party or is produced in some other case. In such case, delay does take place in summoning the document from the opposite party or summoning the record from another court. Again, the executants or the scribe has to be summoned for proving the document. The Registration Act, 1908 is a statute against frauds. At the time of registration of the document the identity of the executants is verified and the registering officer satisfies himself about the execution of the document. The document is copied in a book maintained under the registration rules. In view of these precautions, it is hardly necessary to insist upon the proof of these documents through primary evidence. The registration department issues certified copies of registered documents which should, therefore, be admissible to prove registered documents unless the execution of the document is disputed.[78]

Section 90 of the Evidence Act lays down that where any document purporting or proved to be 30 years old is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that persons' handwriting and in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to be executed and attested. This provision raises a presumption of correctness in respect of a document which is 30 years old. There is no reason why a similar presumption should not be raised in respect of a certified copy of such a document if the copy

[78] *Ibid*

itself is 30 years old. Such a copy should also be admissible irrespective of the provision of section 65 of the Act relating to secondary evidence.[79] In respect of scope of public document the Law Reforms Commission further opined that the definition of public document as contained in section 74 of the Evidence Act should be enlarged so as to include all documents required to be maintained under any statute or statutory rule or forming part of the records of judicial proceedings.[80]

Now the question whether the provisions regarding court fees contained in the Court Fees Act, 1870 and the provisions regarding limitation contained in the Limitation Act, 1908, are in any way responsible for delay in the disposal of cases. We would first like to deal with the provisions contained in the Court Fees Act. Our inquiry is, however, confined to the question whether the provisions contained in the Court Fees Act are dilatory. This research work is not concerned with the fiscal aspect of the Act. The most important provision of the Act as it reveals is section 7 which deals with computation of court fees payable in various classes of suits. In so far as money suits are concerned, the position is very simple. The court fee is payable *ad valorem* on the money claimed. In such cases, adjournments are sought only where the plaintiff is unable to purchase court fee stamps before the institution of the suit. Otherwise, such cases present no difficulty. Sub-clause (c) of clause (iv) is very important in so far as the courts are concerned. These cases present some difficulties. Usually, the plaintiffs try to bring their suits under this clause in order to save court fee. They seek declarations in respect of properties which they claim are in their possession and as consequential relief they claim perpetual injunctions for

[79] *Ibid*
[80] *Ibid*

restraining the opposite parties from interfering with their frame of the suit as well as to the value put there on for purposes of court fee and jurisdiction. The practice has always been that a preliminary issue is framed to determine whether the plaintiff is in a possession of the property or not. The parties lead evidence on this issue. This results in postponement of the trial of the suit on merits.[81]

The position is much the same in the case of suits covered by clause (d) of section 7(iv) *i.e.* suits for injunctions pure and simple. For this delay, Court Fees Act is not in any way responsible. If the presiding officer of the court is alert to the situation then it is possible to dispose of the preliminary issues expeditiously. In land suits, copies of rent receipts and *Khatians*[82] are usually placed on the record by the parties to show as to who is in possession of the land in dispute. Similarly, voluminous evidence is not required to prove the possession of houses or other immovable properties. Thus, if a certain amount of delay does take place we cannot attribute it to sub-clauses (c) and (d) of section 7(iv) of the Court Fees Act.

In so far as clause (v) of this section is concerned, the position is slightly different. This clause covers suits for possession of lands, houses and gardens. As regards the suits for possession of houses and gardens, the market value is the value for purposes of court fee. The plaintiff assesses the value according to his estimate. It is naturally on the low side. The defendant objects to the value. The court frames a preliminary issue and calls upon the parties to lead evidence. Usually, local commissioners are appointed to assess the market value of the property. They submit their

[81] *Ibid.*,402
[82] *Khatian* stands for 'Record of Rights'.

reports which are invariably objected to by the parties thus causing considerable delay. But for this also the Act is not to be blamed. The responsibility for delay lies with the presiding officers. Whatever evidence the parties lead, they should be able to consider it and take a decision quickly.

We have gone through the provisions contained in the Limitation Act and have come to the conclusion that these are not dilatory. In this respect the Law Reforms Commission of 1967-70 remarked:

> "We have ... examined section 48 of the Code of Civil Procedure and Article 183 of the Limitation Act and have recommended that these should be amended so as to reduce the period of limitation for execution of decrees from twelve to six years. We have also recommended that Article 182 of the Limitation Act should be amended so that it may not be necessary for a decree-holder to make an application for execution of a decree within three years from the date of decree or from the date of the last application for execution of the decree. Besides that no amendment in the Limitation Act is necessary."[83]

The next question which arises for consideration is whether 'arbitration' causes delay or the converse is true *i.e.* is it helpful in the expeditious disposal of cases.

The first important question is whether the provisions contained in the Arbitration Act[84] cause delay in the disposal of suits. The obvious

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[83] *Ibid.* 403

[84] In Bangladesh 'Arbitration' is governed by the '*Shalish Ain, 2001*'(Arbitration Act, 2001)

answer to this question is in the negative. Arbitration is governed by the special procedure laid down in the above Act but, where no specific provision is made; the Code of Civil Procedure has to be looked into for guidance.[85] We have not come across any instance where the delay is due to the provisions contained in the Arbitration Act. No doubt, Delay take place in arbitration case also but such delay are usually occasioned by the same causes which have been discussed in Chapter- III while dealing with the question of internal causes of delay in the disposal of civil suits. In so far as arbitration itself is concerned, it is a speedy remedy. The parties choose their own forum and agree that they would abide by the decision of that forum.

The next question is whether it is helpful in expediting the disposal of cases. Is it more expeditious than the ordinary procedure laid down in the Code of Civil Procedure, 1908? No doubt, the procedure is more expeditious than the ordinary procedure laid down in the Code.

4.29 Delay Caused by Court Holidays

Annual vacations in civil courts are also considered for causing delay in the disposal of civil suits. As per provisions of section 15 of the Civil Courts Acts, 1887 the judges of the subordinate courts enjoy one month vacation each year. At that time Supreme Court appoints some Sessions/Additional Sessions Judges to hear the urgent criminal matters. There is no bar to appoint civil judges to hear and dispose of civil matters for the vacation period. In this respect section 36 of the Civil Courts Act provides that the government may invest with the powers of any civil court under this Act, by name or in virtue of office after consultation with the

[85] Section 89B of the Code of Civil Procedure deals with matters relating to 'Arbitration'

High Court Division any officer serving in any part of the territories to which this Act extends and belonging to a class defined in this behalf by the government. But till today government has not been exercising this power. The matter was challenged by Advocate Monzil Morshed, the President of Human Rights and Peace for Bangladesh, a voluntary human rights organization. The short case leading to the writ petition No. 6795/2005 is that the petitioner No.7 of the petition in 2004 went to District Judges Court, Dhaka to file a civil suit with an application for temporary injunction when the civil court vacation was going on. The petitioner failed to submit the suit. Then he filed civil petition No. 5479/2004 before the High Court Division under section 107[86] and Order XXXIX Rules 1, 2 along with section 151 of the Code of Civil Procedure. The Chief Justice of Bangladesh constituted a Division Bench for hearing of the petition and after hearing; the petition was disallowed by the Bench with an observation that the petition is not maintainable. Being dissatisfied the said petitioner along with other six persons filed the above writ petition under Article 102 of the Constitution of the Peoples' Republic of Bangladesh and the High Court Division on 03.09.05 issued Rule *Nisi* calling upon the respondents to show cause as to why a direction should not be given upon the respondents to constitute vacation courts for civil cases during civil court vacation of the subordinate judiciary in every December. The government appeared in the case and after hearing, the Division Bench comprising of their Lordships Justice ABM Khairul Haque[87] and Justice Abdul Awal, on December 2007 made the rule absolute and opined that there is no bar to constitute civil courts by Joint District Judges for accepting suits and hearing urgent matters in the month of December every year when the subordinate

[86] Section 107 of the Code of Civil Procedure provides general provisions relating to appeals
[87] Mr. Justice A B M Khairul Haque is now the Chief Justice of Bangladesh

judiciary enjoys civil court vacation. The court directed the government to establish such types of court in each district or in alternative one Joint District Judge for several districts to ensure litigants civil rights.[88] The court further ordered to send the copy of the judgment to the Secretary, Ministry of Law, Justice and Parliamentary Affairs and the Registrar, Supreme Court of Bangladesh for taking necessary steps. This judgment is not challenged by the government before the Appellate Division. But the government is yet to constitute such type of vacation court. If the order of the High Court Division be implemented by the government, then it can be said that a considerable number of interlocutory matters will be disposed of by the vacation judges who in turn will help to expedite the hearing of the civil suits.

4.30 Delay due to Court Boycott by partisan Lawyers

Non-cooperation of lawyers is really a great problem in disposing of suits. It is a common attitude of them that they will get adjournments and/or orders relating to interlocutory matters as a right and if they fail to get the same then they made misbehaviour with the courts and become hostile and give threat to boycott. To some extent, presiding judges are also responsible to embrace such situation. Boycotting courts, no doubt, causes delay. While posted at Tangail district in 1994 as Assistant Judge, the researcher observed that the lawyers had been boycotting one Senior Assistant Judge and two Joint District Judges Courts on the allegations of taking bribe and misbehaviour by the judges. It was reported that a senior lawyer was moving a temporary injunction petition before the Senior Assistant Judge Sadar Court and at one stage of his submissions the lawyer technically threatened the presiding judge on the point that his court would be

[88] *Monzil Morshed and others* v. *Bangladesh and another*, 61 DLR (2009) 94 at 96

boycotted if the court would not pass an order on the basis of his submissions. It was further reported that the presiding judge had thrown the case record on the face of the lawyer. Subsequently the lawyer went to the Bar, discussed the matter with the members of the executive committee and finally boycotted the court. Other two courts were boycotted on the allegations of corruption and misbehaviour. The researcher found that those three courts were boycotted for about a year causing sufferings for the litigant people and gave birth of backlog of cases.

4.31 Delay for Cost of Litigation and Free Legal Aid

All civilized legal systems have recognized the duty of the State to provide free legal service to the indigent and needy. Right to secure justice found a place in the *Magna Carta*[89] in 1215. This right has now attained universality. Indeed, it could be said to be a part of the social contract. Man had suppressed and given up his natural impulse to use violence to retain his possessions and safeguard his individual honour in favour of the alternative forum, namely, the court of law, where he would have an equal opportunity like his adversary to establish his right. His inability due to economic or other reasons to have a counsel to represent his cause in the forum renders the equal opportunity farcical.[90] And that shatters his faith in the system. Lyman Abbot, Editor of '***Outlook***' wrung the warning bell in 1901 in his address at the 25th Anniversary Dinner of the Legal Aid Society in New York:

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[89] Article 40 of the *Magna Carta* provides: To no one will we sell, to no one will we refuse or delay, right or justice.

[90] Rao, Shri K. Ramachandra, '*Judicial Service- The Case for Reforms*', AIR 1984, A.P. (Journal), 73 at 75

> "If ever a time shall come when in this city only the rich man can enjoy law as a doubtful luxury when the poor who need it most cannot have it. When only a golden key will unlock the door to the court room, the seeds of revolution will be sown, the firebrand of revolution will be lighted and put into the hands of men and they will almost be justified in the revolution which will follow."[91]

Reginald Herber Smith, the American legal aid pioneer warned his countrymen that "equal justice was not merely a goal for the legal aid movement but a prerequisite for the survival of American democracy." Reflecting pragmatism he said:

> "It is a fundamental tenet of Marxian Communism that law is a class weapon used by the rich to oppress the poor through the simple device of making justice too expensive. According to this view, lawyers are simple the mercenaries of the property class. The danger of this attack lies in the fact that it awakens a response in all those who feel they have been denied their rights. Nothing rankles more in the human heart than a brooding sense of injustice. The illness we can put up with; but injustice makes us want to pull things down. This has always been true because it is human nature."[92]

In our country the illiterate poverty-stricken villager is scared of judicial system. The prohibitive court fee, lawyers' fee and the excessive formalism of our law courts snuff out his hopes of securing justice. Free legal aid is therefore assured by a mandate of the Constitution. Moreover,

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[91] Quoted by Rao, Shri K. Ramachandra, *Ibid*
[92] *Ibid*

the Legal Aid Act, 2000 provides free legal aid in order to ensure that opportunities for securing justice are not denied due to economic or other disabilities. The entire legal aid scheme in our country is entrusted to the judiciary. Mostly through the members of the subordinate judiciary, the legal aid and advice to the indigent and needy are channeled. But the movement has not yet received adequate publicity in the country. Large segments of our population for whose benefit the legal aid and advice schemes are intended are not aware of them. The success of the programme is solely depends upon the enthusiasm exhibited by the judges and the sense of dedication with which they administer it. Indeed, the very survival of our legal system and rule of law depends on the success of the legal aid movement.

4.32 Delay for Political Unrest, *Hartals*, Strikes etc.

Political unrests, *hartals* and strikes now-a-days are sometimes treated as the causes of making delay in the disposal of suits. In our country, when political parties call *hartals* or strikes, the whole country becomes collapsed. Then it is not possible for the litigants and lawyers to attend the court. Due to political unrests, parties to the suit file time petitions; and observing the situation courts frequently allow those adjournments.

An issue which has assumed importance not only on political grounds but also on the basis of contractual obligations in a civil society, is the frequent paralyzing of judicial administration by lawyers resorting to strike and boycott of courts. [93] By resorting to strike for whatever reasons, the lawyers, in fact, cause immense problems for the general public besides

[93] Menon, Dr. N.R. Madhava, 'Law and Ethics', in Rahman, Dr. Mizanur, ed., *Human Rights Summer School Manual*, (Dhaka: ELCOP, 2000), 18

positive harm to the interests of their clients. It is contended that by frequent resort to prolonged strikes and boycotts, the advocates are holding the society to ransom contrary to all principles of professional ethics. Strikes aggravate the problems of delay and contribute to the further weakening of an otherwise tottering judicial system.[94]

In most of the districts another culture exists, when a member of the local bar dies, the District Advocate Bar Association arranges condolence ceremony to show honour to the departed soul. But the thing is this that, the Bar decides not to appear before the court in most of the occasions for two days or one day and a half consecutively. This practice, in fact, causes hardship to the litigant peoples and also causes delay.

4.33 Delay Induced by the Executives

The executive is also not less responsible for increasing litigation by taking hasty, unjudicious and even dishonest actions, by-passing palpably wrong orders, acting arbitrarily or capriciously, creating discriminations among members of the public, changing its policies frequently. The more efficient is the administration, the less scope exists for litigation, and the more inefficient, corrupt, dishonest, high-handed or indolent the administration, the more the litigation; and to repeat, the more the litigation, the more the congestion in courts.[95] So long as this situation subsists there is no scope for removing or mitigating the congestion and any amount of modifications in procedural laws, appointment of more judges etc., are not likely to remedy the situation. Even the establishment of more and more courts or tribunals by the executive will create more and more litigation. In

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[94] *Ibid*
[95] Divekar, G.M., '*Laws' Delay*', AIR 1981 Bom (Journal), 89 at 90

fact, today, the government is the biggest litigant.[96] Section 80 of the Code of Civil Procedure which requires a party, desirous of suing the government giving two months' notice is rarely availed of by any government to consider dispassionately the claim and settle the same; and as a result, the spirit of the section almost lies buried. Most of the litigation, against government is due to the universal tendency on the part of government officers, high or low, not to take a bold and quick decision in respect of any claim and the general attitude is to shirk the responsibility and force the party to get the claim decided by a court of law. This is mainly due to the most suspicious atmosphere which prevails in all government departments which is a peculiar feature of the present day government functioning[97].

Thoughtless and *malafide* orders give rise to many cases, especially the writ petitions in the High Court Division. Many of them may be disposed of at the preliminary hearings but, in spite of best efforts, proper instructions are not sent to the counsel of the government by the executives. They say that the files in the Secretariat and the government offices have no legs to come of their own; they have to be moved and it takes time for the files to walk down from one table to the other. Those who can make it walk succeed, but in the process, the matter gets delayed.

The government has become the single biggest litigant for its inefficient and corrupt bureaucrats. It is common knowledge that the criteria for the appointment of counsels is anything but merit. But heartless bureaucrats have neither ears nor eyes. Even if they have, they cannot see beyond their own nose. They are trained in a different manner and most of

[96] *Ibid*
[97] *Ibid*

their time is consumed in protecting themselves and pleasing their politician masters.

4.34 Delay for Litigating Public

Another important factor contributing to the congestion in courts is the litigating public itself. Democracy is always preferred to autocracy. But the foundation stones of a democratic structure are discipline and honesty; unfortunately, these very basic requirements are lacking in our country, not only among the political leaders but also among a large section of the public. Indiscipline and dishonesty breed litigation and a major part of the litigation emanates from indiscipline and dishonesty of the litigant public. To create false litigation and to tell more lies in courts of law is a general tendency of the most of the litigant public. Instead of admitting immediately and forthwith the liability which subsists in them, there is the tendency to postpone the evil day by making false claims and taking false defences. All sorts of dilatory tactics are deliberately adopted by several litigants to delay the decision.[98]

Even all the tears are shed for the litigants; but do all of them want that their cases be disposed of quickly? The plaintiff who seeks relief may like to have quick justice, but what about the defendant? Even the plaintiff after obtaining an order of stay or injunction from the court, sometimes gets interested in delaying the process of its execution. A tenant in an eviction suit never wants the litigation to come to an end; as once evicted, he may not get a similar accommodation at the same price.[99]

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[98] *Ibid.*, 92

[99] Sinha, Justice Birendra, '*Need for Speedy Disposal of Cases*', AIR 1980 Bom (Journal),115

In short, the object of the above discussion is to point out that in present days, human psychology and interest are playing a very prominent part in the disposal of suits. It is not the procedure as laid down in the Code of Civil Procedure and other Acts and Rules which is responsible for the delay in disposal of suit. There are things beyond this procedure which is beyond any comprehension. Basically there is nothing wrong with the procedure. The Code of Civil Procedure was amended in 2003 and 2006 for quick dispensation of justice but the amendments do not seem to have made any dent in the situation. In a country where the tendency to tell lies is more predominant, it would be purely imprudent to make such changes like abolition of cross examination or the like. It is our societal weaknesses, the erosion of the national character that is responsible for delay in the administration of our civil justice.

4.35 Delay due to Incompetency and Dishonesty of the Judges

So far as the judiciary is concerned one other factor in the disposal of cases is the incompetency and dishonesty of some of the members of the judiciary. It must be admitted that the standard of competency and honesty in the Bangladesh judiciary particularly at the level of the Supreme Court is very high, in spite of the most deteriorating moral values existing outside the courts but in the subordinate judiciary situation is otherwise. This does not appear to be so, and it also adds to some extent to the delay in the disposal of cases. Incompetency and dishonesty among judges result in the increase of appeals and revision applications. Apart from these factors, there is another grave contributory factor which increases the litigation and for which our judges are squarely responsible. Now-a-days, litigation has not only become a luxury of the rich, it has also become a resort of most of the litigants, high or low, to settle accounts between them. It should be the

normal policy of a judge not only to discourage litigation but to put it down with a heavy hand. It has now become almost a proverb to say that there is no other place where more lies are told and stated than in a court of law. A majority of our litigation is the result of sheer dishonesty on the part of one party or the other or of both. To make downright false pleadings and affidavits or to give nakedly false and untrue evidence is almost a commonplace practice. Such cases where both the parties are justified in coming to the court and honest in their contentions are very few, and they do not deserve a courts' decision. In most of these cases, the pleas of one party or the other and sometimes of both are not true and the pleas which are taken and facts which are alleged are either frivolous or dishonest. A judge while deciding such cases realises that one or the other party has told lies, many a time he disbelieves a pleading or an affidavit or oral testimony of a party or witness, but rarely he sanctions the prosecution for giving false evidence or making false statements. Rarely does a judge award exemplary costs against a party who has come to court with a false case or plea. This unpardonable condonation of or indifference to falsehood of the judges is rampant in courts of law is a substantial factor in encouraging present day litigation. Today we have reached to such a stage that a litigant can shamelessly take false pleas or make false statements with the only risk that he may lose his case; but in all probability he is not punished with any order of costs. He on the other hand continues the litigation without any compunction by filing an appeal and maintains the *status quo* for a few more years. One can say with some audacity that our judges in general have almost become unallergic to untruth that is told before them and have come to take it for granted that his only function is to decide the case as it is presented before him and leave the matter at the hands of lying lawyers and their clients. He forgets that he has also social responsibility as a member of

the society beyond his status as a judge. If the judge takes serious notice of every falsehood that is told before him and punishes those who are found to have told patent lies, much of the false and frivolous litigations will disappear or will at least become less in number. He may also discourage false and untenable litigation by imposing heavy cost on dishonest litigants.

Weakness or incompetency of some judges is also responsible for the increase of litigations. If the judge has the capacity to understand quickly the questions involved and his sense of relevancy is keen enough he can dispose a matter more quickly than a judge who does not posses this virtue. In the latter case, the judge allows advocates to go on arguing questions of law or fact almost *ad nauseam*.[100] It is not uncommon that even interim applications for injunction or receiver are heard for days together. Many times irrelevant arguments are allowed to be advanced and solemnly heard by the judges and irrelevant authorities are allowed to be cited one after the other by a deceiving lawyer and prolong the disposal of cases. Again a judge takes pride or feels it necessary to show the depth and quality of his learning, to cite judgments of several Benches of the High Court Division in his own judgment and these kills time in the preparation of judgments. Many judges are not bold enough or have no courage or confidence to stop the advocates from citing decisions or advancing arguments even if they themselves feel that they are irrelevant. This also results in long trials, long judgments and consequent delay. It seems to believed that the longer a judgment, the wiser or more learned the judge, or the vice versa.[101] Usually fools never feel themselves fool; but the clever always think themselves clever.

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[100] Divekar, G.M., '*Law's Delay*', AIR,1981(Journal), 90
[101] *Ibid*

4.36 Delay for Want of Punctuality in Courts' Sitting

In Rule 1 of the Civil Rules and Orders (Volume I) it is laid down that the ordinary hours of sitting for all courts on week days except Fridays and Saturdays, shall be from 9:30 am to 4:30 pm with an interval of half an hour at about 1:30 pm. Punctuality in attendance and departure which the presiding officers have to note in their diary is very important aspect of court management. There is always a general complaint that the presiding officers of the subordinate judiciary do not sit punctually. This complaint is not without justification. The litigants come to the courts, wait endlessly for their appearance in the *ejlash* and most of them go back disappointed because the judges could not attend to their cases for want of time which the they have really wasted. This research study reveals that the judicial officers do not come to the office timely, spends early hours in their chambers with their colleagues in gossiping, receiving visitors and rise to the court lately. They are said to do also miscellaneous work. The result is that hearing of cases and examinations of witnesses are delayed causing untold hardship to the litigant public. This laxity could only be checked through proper supervision by the District Judge and the Supreme Court.

From the above discussions it is seen that the contributing factors for laws' delay are numerous. It is the lack of properly trained and sufficiently knowledgeable judges as also the limited time available to the existing courts for disposing of the cases that are being agitated in the various courts. The system which is in vogue is one of that facilitates filing of numerous proceedings under the procedural law of the land. No serious attempts have been made by the Legislature, Judiciary, Executive or members of legal profession for tackling the problem of laws' delay. The Code of Civil Procedure, 1908 was amended in the year 1983, 2003 and

2006 for the avowed purpose of speeding up the disposals. However, the amendments made are such as would further delay matters, and the amendments did not contribute to speeding up of the disposals; on the other hand, the backlog continued to rise steeply and again the cry is on for speedy disposal. Moreover, for ensuring peoples' access to justice and fair trial, court of civil and criminal justice must be separated at the trial level, and the concept of specialized justice system must be introduced.[102] Legal education and training must be revitalized to meet the standards of justice recognized by the international community.[103]

[102] Sangroula, Yubaraj, 'Concept of Rule of Law, Human Rights and Good Governance: Mutually Reinforcing Concepts' in Rahman, Dr. Mizanur, *ed. 'Human Rights and Good Governance'* (Dhaka: ELCOP, 2004), 39
[103] *Ibid*

CHAPTER V

5. Want of Case Management and Delay in Appeal, Revision and Review

5.1 Appeal

After a decree has been passed in a suit, the aggrieved party has a remedy by way of an appeal, revision and review. The number of appeals available and the Courts competent to hear them depend primarily upon the value of the subject matter of the suit. An appeal lies either to the District Judge or the High Court Division of the Supreme Court of Bangladesh according to the value of the suit. The District Judge has jurisdiction to hear an appeal from a suit valued up to 5 lacs taka whereas an appeal to the High Court Division lies in cases where the valuation of the suit exceeds 5 lacs taka. At present under the Code of Civil Procedure there is no scope of filing a second appeal. If any party aggrieved by an order of appellate Court and if the order is passed by the lower appellate Courts then he can prefer a civil revision before the High Court Division. In case of appeal disposed of by the High Court Division in that case the aggrieved party has remedy to prefer an appeal before the Appellate Division of the Supreme Court of Bangladesh if a leave was granted earlier. In every case there is scope of filing review petition to review the judgment.

The expression 'appeal' has not been defined in the Code of Civil Procedure. An appeal is a continuation of the suit filed. It is a judicial examination of the decision of a lower Court by the higher Court. It is a complaint made to the higher Court that the decree passed by the lower Court is unsound and wrong.[1] A right to appeal is not inherent in a litigant

[1] *Nagendranath* v. *Suresh Chandra*, AIR 1932 PC 165,167

but a creature of statute. Sections 96, 97, 100 and 104 of the Code of Civil Procedure provide for substantive right of appeal. Section 100 having been repealed in 1978, there is no scope for filing a second appeal. Order XLI of the Code of Civil Procedure and Rules 286 to 309 of the Civil Rules and Orders (Volume I) provide for the procedural aspects of appeal. The right to appeal vests in a litigant from the date the suit is filed though it can be exercised only when an adverse judgment is passed in the suit. On the other hand, section 115 of the Code of Civil Procedure deals with civil revision whereas section 114 and Order XLVII is related to filing of review petition in a suit or case.

5.1.1 Delay for Shortage of Appellate Courts

Accumulation of civil appeals in many Judgeships has become alarming. The ratio of institution of appeal is much more than that of disposal in a year. The problems in unusual delay in the disposal of appeals relate to insufficient numbers of appellate Courts where the appeals are being piled up day by day with no scope for giving sufficient time for the disposal of appeals in the midst of crowd of multifarious cases. As a result delay cannot be brought under control if special measure is not taken. It may now be considered that in each district, there should be one or two earmarked Additional District Judges' Courts for hearing and disposal of appeals exclusively. If such temporary measure is taken, unmanageable situation in those Judgeships may be brought under some control.

5.1.2 Delay for Service of Notice

In the case of ***Dayawati and another*** v. ***Inderjit and others***[2] Justice Hidayatullah of Indian Supreme Court said that an appeal is a continuation

[2] AIR 1966 SC 1423 at 1427

of the original suit. The only difference between a suit and an appeal is that an appeal only reviews and corrects the proceedings in a cause already constituted but does not create the cause.[3] An appeal is filed by presentation of a memorandum containing the grounds of objection on which judicial examination is sought. Rule 11 to 15 of Order XLI deal with service of notice in respect of appeal. In the case of ***Abdul Wahab Biswas*** v. ***Abdul Matin Mia & others***[4] a single Bench comprising of Mr. Justice Mahfuzur Rahman of the High Court Division of the Supreme Court of Bangladesh opined that an appeal cannot be allowed without serving any notice on the respondent. In deciding the appeal the Court ordered to issue notice upon the respondent to appear and defend the appeal. In this respect the Court further observed:

> "As no different procedure has been provided in appeals against orders we find that learned District Judge in clear violation of the mandatory provision of law passed the impugned order allowing the appeal on the date fixed for admission of the appeal. After admission of the appeal he should have served notice upon the respondents fixing a date for hearing giving sufficient time to allow them to appear and answer the appeal on such day and his decision to the contrary cannot be sustained in law and is liable to be set aside. There is no provision of law allowing appeal without serving any notice to the respondents."[5]

In deciding the case the High Court Division also commented that the legal position is quite good. But the reality is that the notices are not

[3] *Ibid*
[4] 53 DLR (2001) 196
[5] *Ibid.*, 198

served within time and the Court fixes date repeatedly for appearance of the respondents. The process servers neither serve notices in time nor do they return those notices after service. It causes delay in making the appeal ready for hearing.

5.1.3 Delay for Remand

Any decree passed by a civil Court after termination of evidence is appealed under section 96 of Civil Procedure Code. The procedure of the appellate trial is provided under Order XLI and its related rules. Upon rule 22 of Order XLI, there is a formal procedure to entertain the appeal. The pregnant provision to decide the fate of appeal is entirely stated by rule 23. This rule provides remand of the case by the appellate Court and this provision is distinguished as an easy provision as no labour is to put on the whole judgment of the original Court except that the remand is to be effected by setting aside the judgment after holding some points in the original judgment repugnant to any legal or factual recourse. The resort of this provision indeed makes no end of the litigation. Actually this provision is to be exercised in exceptional cases when finding that the decision recorded by the civil Court is rare on preliminary point. Rule 24 makes the appellate Court to give judgment when evidence on record is sufficient and only the issues are to be resettled but the same evidence is to be used for the ultimate conclusion. Under rule 25, the appellate Court, if realizes insufficiency of the issues or omission of any material issue then such issue is to be framed by the appellate Court, which will refer the case for trial to the Court from whose decree the appeal is preferred. In these circumstances the judgment or decree is not to be made set aside but to postpone until such proposed issue is being tried by the same Court along with findings of that Court thereon. Under rule 26, either party has been allowed to prefer

memorandum of the objection on that finding for which time is to be fixed by the appellate Court.

The intention of the framers of law was purely that whatever evidence or documentary references relied upon or referred to, by the parties on the original side were absolute and conclusive and no room was left for the appellate Court to accept the subsequent evidence, if offered by any of the parties, unless the lower Court has declined to admit that evidence. The discretion is left with the appellate Court under clause (b) of Rule 27 to invite for any document or evidence from either party in the fitness of things to deliver the judgment in its entirety or for another substantial cause. Under rule 28, the appellate Court alike an original Court has been made to take such evidence by itself or direct the original Court or some other Court subordinate to it, to take such evidence and then send the case papers back to it. On the additional evidence the appellate Court has to define or specify the points on which the evidence is to be got recorded. If all these legal provisions are taken to the hilt then it will become clear that an appeal is to be decided with reference to all the reasonable measures with such a comprehensive finding by which all the lapses of civil Court may be rectified. That judgment in appeal could be guideline to the concerned civil Court for the future. All these applicable rules of Order XLI would definitely show the intention of law that the litigant public may not suffer for their long trials. It will be useful to note that the previous age of the suit goes away with an order to effect the remand of a suit by making the judgment set aside, recording on all the issues. The case is renumbered with the original Court. The same Court in most of the cases feel itself confused to pass new and isolated findings that already recorded in its earlier judgment or order. Experience has shown us that even more than once the

suits are being remanded to the same Court on mere technicalities. Many cases are being remanded on the legal points to be tried afresh by the subordinate civil Court. In these circumstances what would be the fate of litigants who has merely to change the Court without any progress or ultimate results in their cases. There are a number of examples with us that provision of remand is being exercised by the appellate Court with all exception and without touching prevailing merits available in the case. The purport of remand is nothing but to cancel the civil Courts' judgment with a simple narration that some necessary aspects were left by the original civil Court which warrant opening of the case with fresh evidence. Some additional issues are also to be framed for fresh adjudication. New evidence is also advised to be adduced but the judgment is to be made set aside with directions to record the judgment again. If all the previous issues are to be retired and fresh judgment is to be given then what was the legal impediment on the way of appellate Court to pass the judgment by itself when judgment of the civil Court was found deficient. Likewise the effective measure over the interlocutory orders passed by the subordinate civil Court which go for scrutiny through the process of circulars, the decisions on appeal containing remand of the suit with an order of set aside, be also made for scrutiny. It may be appreciated that the decision of remand does not go to the eyes of superior Courts as the parties are again made to approach the same civil Court for fresh proceeding. The age of civil suit is likely to be decreased if the provision of Rule 23 of Order XLI is only taken into applicable circumstances and remand of the case while setting aside the judgment is avoided.

Lenient exercise of power of remand is another cause of delay and the delay may virtually lead to denial of justice in appeal. An appeal in the

district Court now-a-days normally takes four to five years. The provision of filing second appeal is not available now. But an aggrieved party has liberty to file a revision before the High Court Division against the order of appellate Court and at this stage again five to ten years time will consume. After hearing of the appeal or revision both the district Court and the High Court Division has power to pass an order of remand. If any party rush to the Appellate Division against the order of High Court Division then it will kill another couple of years. As a final Court of appeal the Appellate Division has also power to send back the case for retrial in the original Court. If the High Court Division passed an order of remand, which is unfortunately is too frequent, both to the lower appellate Court or the trial Court, the suit gets a fresh lease of life and the earlier procedure is started over again. Even if an order of expedition is passed and priority given to remanded cases, they all tend to come over again to the High Court Division and the period covered is another five years, if not more. A litigant runs after the mirage of finality of his suit without ever getting any.[6] It is observed that Order XLI Rule 27 authorise the appellate Courts to take additional evidence, very seldom this reserve power is invoked, and appeal is remanded too readily, oblivious of the fact of delay and the hardship to the appellant. Most often appeals are remanded to the lower Court for revising its decision because of its error in the process of reasoning which amounts to only re-writing the judgment. The reason of such remand could hardly be justified.[7]

From the above discussion it can be safely said that unless there is a question of re-trial on fresh evidence, there should not be any order of

[6] *See*, Report of the Law Reforms Commission, 1976, 113
[7] *Ibid*

remand and if one or two witnesses on minor points are required to be examined, the Court should not be hesitate to take additional evidence and dispose of the appeal finally.

5.1.4 Delay for Transmission of Lower Courts' Record

Unusual delay in the disposal of appeals also occur in case of transmission of lower Courts' record to the appellate Courts as because parties are generally took back their original documents from the lower Court after drawing up of decrees. Under rule 13(1) of Order XLI of the Code of Civil Procedure appellate Court issues notice to the Court from whose decree the appeal is preferred and under rule 13(2) of the above Order the lower Court shall send with all practicable dispatch all material papers in the suit, or such papers as may be specially called for by the appellate Court. But in practice these provisions are not strictly followed by the lower Courts at all. There are many causes which justify it. *Firstly*, notice of such types is not dispatched quickly by the Appeal Assistants of the District Judges' Court. They are habituated of sending those notices at a very belated stage. Even sometimes they dispatched those notices just before one day or the date fixed for hearing appeals. *Secondly*, *Sheristadars* of respective Court from which the appeal is preferred are held responsible for causing delay in sending the lower Courts' records. After receiving the intimation from the appellate Courts they usually do not put up the matter before the presiding Judges. They usually keep it in dark rooms and after getting repeated reminders from the appellate Courts they press the matter before their presiding Judges with lame excuses. However, the presiding Judges always direct the *Sheristadars* to send the record at once to the appellate Courts. Again the *Sheristadars* kill time to carry out those orders. Sometimes the appellate Courts issue show cause notice to the respective

presiding Judges to explain the matter of not sending the lower Courts' record and at that time the *Sheristadars* very hurriedly send those records. *Thirdly*, the presiding officers of the lower Courts are also partially responsible in sending those records and thereby subsequently part of delaying the hearing of appeals. It is among others the duty of the presiding Judges to carry out each and every order of the appellate Courts and also to supervise the performance of his subordinate staffs. If he frequently asks and orders the *Sheristadars* and other staffs to produce the accounts of their pending works and compliance reports of appellate Courts, then it become very easy to observe the performances of his staffs. Side by side it will help to eradicate delay and mismanagement in sending the records to the appellate Courts.

5.1.5 Delay for Poor Evaluation of Disposal of Appeals by the Supreme Court

Disposal of 3-4 title appeals or 6-7 miscellaneous appeals are deemed to have disposal of one title suit. This leads the presiding judges to be reluctant in disposal of appeals.

5.1.6 Delay for Pre-occupation of Courts with Criminal Cases

Sudden transfer of sessions cases by the Sessions Judge to the Additional Sessions' Judges and Joint Sessions' Judges dislocate the disposal of civil suits and appeals. In our country Sessions' Judge and Additional Sessions' Judges are empowered to try civil appeals whereas Joint Sessions' Judges have simultaneous jurisdiction of hearing and disposal of civil suits and appeals. When the Sessions' Judge transfers criminal cases to the Additional Sessions' Judges or Joint Sessions' Judges then they are habituated to fix the date of hearing sessions' cases quickly.

As sessions' cases are given priority over civil suits and appeals, the transferred sessions' cases eventually cause postponement of the civil suits and appeals already fixed and ready for hearing. This unusual dislocation of civil cases causes great delay.

5.1.7 Delay in the Supply of Certified Copies of Judgment, Orders etc.

When a suit or case is decided after full hearing then appeal lies against such decree or order. The appellate Court have jurisdiction to decide the appeals both on the point of facts and law. But in filing appeal unusual delay occurs when certified copies of judgment, orders and other necessary documents are not quickly supplied to the aggrieved parties. Rules 543 to 583 of Civil Rules and Orders (Volume I) prescribe detail provisions of supplying certified copies to the parties systematically. But practically getting certified copy of those papers are not easy task. According to Rule 566 of Civil Rules and Orders (Volume I) urgent copies should be furnished on the day of the application, if possible, but not later than the following day. But in rare occasions the provisions of this rule is followed. There are some practical problems in supplying certified copies. Serious shortage of manpower in the copying department is the main cause of supplying certified copies in time. Moreover, lack of supervision by the Judge-in-charge of this department to is some extent, responsible to cause delay. For example, in case of supplying copies in Rule 566 it is stated that if the granting of other copies is likely to be much delayed, an extra copyist when available, may be temporarily appointed by the Judge- in- Charge for the number of days actually necessary. In big judgeships huge numbers of Office Assistants are working. But in case of supplying certified copies quickly to the parties, the provisions of Rule 566 of the Civil Rules and

Orders (Volume I) are not exercised by the Judge-in-Charge. As a result, parties make *tadbir* to the staffs of copying department to have their copies violating the serial number of application to be disposed of. There are lots of allegations against the copying department. So, persons who fail to make *tadbir*, are not getting copies timely. As a result, they are unable to prefer appeal timely.

There are some other practical problems lying in the district Courts. The certified copies are type written. There is a huge shortage of typewriters. The existing typewriters are working in a critical condition. We have discussed in the previous chapter that till today all the Courts are not provided with computers and those who are provided there is also lot of problems because of budget constraints. If the government provides computers to all Courts and supplied adequate budget or equipment with toner of computer, then it can be easily possible to supply certified copies of judgment, decree and orders after getting prints of those documents from the computer at the least possible times. This study further reveals that time has come when some of the methods prevailing in Courts require to be modernized by taking aid of modern science and technology. Due consideration ought to be given taking all aspects of the matter for the introduction and use of modern scientific apparatus in Courts so that the pace of the proceedings is accelerated without overburdening the exchequer. Taking into consideration of these questions, we are of the view that the system of Photostat or thermostat copies in place of handwritten or typewritten copies may fruitfully be introduced. The Photostat or thermostat copies of course will be accurate reproduction of the original as the rules shall provide. The initial capital cost will in the long run prove to be small and the process expeditious and economical.

5.1.8 Delay for Non-Vigilant of Lawyers in Hearing Appeals

The lawyers in most of the cases are not vigilant in disposal of appeals. Delaying tactics followed by some of the practicing lawyers and sometimes parties to the appeal is another cause of delay. Seeking undue adjournments, transfer of appeals from one Court to another Court under section 24 of the Code of Civil Procedure, seeking amendments of pleadings at the appellate stage, lawyers not yet ready for hearing, lawyers' engagement in other Courts etc. are instances of such tactics followed by the lawyers to avoid the hearing of appeals which consequently cause delay.

5.1.9 Delay for Lengthy Arguments

Rule 16 of Order XLI of the Code of Civil Procedure provides that on the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if the appeal is not dismissed at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

According to the above provisions of law the appellant has the right to begin the argument. The procedure itself, no doubt, is exhaustive and on a plain reading of the said law one can easily say that why there is a delay in the hearing of appeals where there is no need of submitting any written objections to memorandum of appeals? But the answer to this question is not simple. Practically the above provisions of law are not smoothly followed by the parties. The lawyers in some cases continue their arguments for days together in the subordinate Courts and months together in the Supreme Court. So, one of the causes for the mounting arrears is the unduly long time taken up by the counsel for their arguments. At times, preparation is inadequate; arguments are not confined to the relevant points; often

arguments are repeated. Far too many decisions are quoted when it is sufficient to quote just the latest. It is also said that sometimes arguments are prolonged to earn an extra days' fee. There are instances where cases have been heard for several days. At times, the Judges themselves find it difficult to stop the counsel prolonging their arguments. Fixing a reasonable time for oral arguments will go a long way in disposing of more cases.[8] If a time limit is fixed for arguments, one may as well complain that justice hurried is justice buried and that counsel may not be able to cover all the points within the fixed time. A remedy can be found in introducing a system of filing written arguments, followed by oral arguments.[9] Robert L. Stern and Eugene Gressman in their book titled 'Supreme Court Practice' gives more details as to how the system of time limit or oral arguments is working in the Supreme Court of the United States. They stated that under Rule 44 of the Supreme Court Rules maximum time for argument is one hour for each side unless the Court has granted more time except that in cases on the summary calendar 30 minutes is allowed for each side.[10] In that book it is also stated that the Court will generally allow more than one hour per side only on application of counsel. Such an application need not be formal; it is sufficient to submit a letter to the clerk indicating the reasons why more than one hour is thought necessary. It is desirable for counsel seeking more time to ascertain the wishes of the other counsel prior to submitting the application so that the clerk will be able to advise the Court of the total time required. Counsel arguing should keep track to his own time when he has started and how much he has left. A note on the counsels' table admonishes

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[8] Reddy, P. Ram, '*Time Limit and Time Table for Hearing of Cases in the Supreme Court*', AIR 1978 SC (Journal),70

[9] *Ibid*

[10] Quoted by Reddy, P. Ram, in '*Time Limit and Time Table for Hearing of Cases in the Supreme Court*', AIR1978 SC (Journal),70 at 72

counsel not to ask the Chief Justice what time remains. When counsel has only five minutes left a white light on the lectern immediately in front of him goes on. When the time has expired, a red light goes on. The Chief Justice is likely to stop counsel immediately, seldom allowing him to do more than to finish the sentence. The red light also marks the time for recess for lunch at noon and the end of the day's session at 2.30 p.m. Counsel should not feel obliged to consume all the time available. Many cases can be and are, argued in considerably less time. Even five minutes arguments are not unknown, when that is all that the case requires. When counsel has finished covering the important parts of his case, he should sit down.[11]

This system which is exercised by the US Supreme Court in respect of hearing argument necessarily results in more work on the part of the Judges because they would be burdened with studying the records and to come well prepared. There is already a heavy work load for the Judges. The advantage in this system of time-limit and time -schedule is that justice will be swifter and cheaper. Justice will be swifter because the Courts will be able to dispose of more number of cases; justice will be cheaper because the clients do not have to pay the counsel as much as they pay now. The fee paid today is mostly on a day basis, for senior lawyer.

5.1.10 Delay for Adjournments

The principle of Order I rule 10 of the Code of Civil Procedure is applicable to appeals and no appeal shall fail on the ground of non-joinder of any party and the Court will deal with the matter in dispute so far the parties are before the Court. In adding party under Order I Rule 10 some

[11] *Ibid*, 72

time has been consumed and thus delay also has been caused. Rule 20 of Order XLI empowers the Court to adjourn hearing and direct persons interested to be made respondent for appearing. Chief Justice Murshed in this respect stated that Courts have ample jurisdiction under this rule to add persons as parties to an appeal who were left out by mistake even after the period of limitation for filing an appeal against them is over.[12] Taking this advantage appellant feels very reluctant in adding the left out parties in the appeal. But in the case of ***Mohammad Jamil*** v. ***Chairman, Industrial Court, West Pakistan and another***[13] it is decided by Mr. Justice Fazle Akbar that power to add parties in the appellate Court is the discretion of the Court which should not be exercised in case of extreme neglect. About the necessity of adding parties Chief Justice Amin Ahmed opined that under this rule only the persons who were parties to the suit and have not been made party in the appeal can be added as parties to the appeal.[14] Thus where a party to the suit died before the filing of appeal, but was made a party to the appeal, the heirs of such a party may be added as party to the appeal if the Court is satisfied that the ends of justice require it.[15]

Like the original suits delay is also caused at the appellate stage due to frequent adjournments. The procedure fixed for hearing is not always followed by the parties, their lawyers and/or by the Court. In the case of ***Abul Bashar Toha*** v. ***Sujayat Ali and others***[16] Chief Justice Kemaluddin Hossain observed that the burden of showing that the judgment appealed against is wrong is on the appellant. Justice K C Das Gupta of the Indian Supreme Court while deciding an appeal stated that when the appellant

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[12] *Mohendra Nath Roy and others* v. *Sushila@ Susho Dasi and others*, 17 DLR (1965) Dhaka 643
[13] 16 DLR (1964) (SC) 386
[14] *Hali Mondal and another* v. *Khiroda Bala Debya*, 12 DLR (1960) 745
[15] *Ibid*
[16] 31 DLR (1979) (AD) 326

appears at the hearing but does not address the Court, the appellate Court is not bound to decide the appeal on merits of the materials on record; it can just dismiss the appeal.[17] According to Rule 16 of Order XLI of the Code of Civil Procedure the appellant has the right to begin the argument. The mere fact that the respondent calls in question the right of the appellant to appeal did not give the respondent the right to begin. He can only reply the appeal when the appellant argued the appeal.

Rule 17 of Order XLI of the Code of Civil Procedure provides that where on the day fixed, or any other day, to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed. In many occasions it is found that the appellant is absent but the appellate Courts are shifting the dates of hearing of the appeal for the ends of justice. When the appeal is called for hearing the Court finds that the appellant is absent on repeated calls. The appellant neither files *hazira* nor takes any steps but the Courts are forwarding the dates of hearing without dismissing the appeal for default. Sometimes appellate Court think that the appeal will be dismissed after 4.30 pm as because within that time the appellant has right to take steps. After 4.30 pm most of the Judges of the appellate Courts feel reluctant to dismiss the appeal because of their dependency on their *Peshkars* which creates backlog of cases. But in the case of ***Abdul Mannan & others*** v. ***Abdul Aziz***[18] a single Bench of the High Court Division of Supreme Court of Bangladesh consisting of Mr. Justice Mohammad Ansar Ali opined that where the appellant fails to appear on the date of hearing, the appeal may be dismissed for default; but to pass an order of dismissal

[17] *Thakur Sukhpal Singh* v. *Thakur Kalyan Singh and another*, AIR 1963 SC146
[18] 46 DLR 477 at 481

for default, the Court need not wait till the end of the day. If the appellate Courts follow this principle then a considerable portion of appeal shall be dismissed for default and as such the clearance rate of backlog of cases can be high to some extent.

Rule 17(2) of Order XLI of the Code of Civil Procedure provides that where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*. In the hearing of *ex parte* appeal it is experienced that the appellant files several adjournment petitions and Courts are also frequently allowing those petitions. Sometimes the appellant though files time petition but lenient to move the same. These petitions are put up by the *Peshkars* and the appellate Courts without going through the record just write *'allowed'* on the order sheet of the record causing delay in the appeal as well as helping backlog of cases. If the Judges are vigilant and avoided the habit of dependency on their *Peshkars* then those *ex parte* appeals could have been disposed of quickly after hearing *ex parte* or dismissing for default.

Time taking by both the parties in an appeal is a common practice in civil litigation. Adjournment kills lot of time raising age of appeal and it also increases cost of litigation. It also destroys moral courage of the parties. Parties begin to become psychologically weak. They do not know when the appeal will be disposed of. Rule 12 of Order XLI of the Code of Civil Procedure does not prescribe any time limit for hearing and concluding the appeal. Taking the advantages or lacunae of this rule the party to the appeal, who is comparatively in a better position, tries to delay the appeal stating various reasons. Thus hearing of an appeal is delayed for years together. For overcoming the situation Rule 13A of Order XLI of the

Code of Civil Procedure was inserted by the Code of Civil Procedure (Amendment) Act, 2006. In this new rule restriction is put on allowing frequent adjournments. It is stated in the rule that the appellate Court shall not grant more than three adjournments for hearing of an appeal at the instance of either party to the appeal, and any adjournment granted to a party beyond the aforesaid limit shall make such party liable to pay such cost which shall not be less than two hundred taka and more than one thousand taka to the other party as the Court may deem appropriate and determine, non-compliance with which, by the appellant, shall render the appeal liable to be dismissed, and by the respondent shall render the appeal liable to be disposed of *ex parte*.

If any appeal is dismissed for default under rules 11(2), 15A, 17 or 18 of Order XLI the question of restoration of the same arise. Rule 19 gives discretion to the appellate Court to re-admit an appeal dismissed for default on showing of sufficient cause and the discretion has to be exercised in a judicious manner having regard to the facts and circumstances of the case and also subject to the limitation. The practice of disposal of miscellaneous cases filed under rule 19 of Order XLI for restoration of appeal is also lengthy. Time has been spent for years' together for disposal of these cases. To improve the situation and to save time and money of the litigants the Legislature has inserted Rule 19A in Order XLI for direct re-admission of appeal and stated that the Court may, in order to avoid delay and expedite disposal, directly re-admit without requiring the appellant to adduce evidence to satisfy it about sufficient causes as required under Rule 19. The rule further provides that the appeal under this rule shall not be re-admitted unless an application, supported by affidavit, praying for such re-admission is made to the Court within thirty days of the date on which the appeal is

dismissed for default. It is again provided that no appeal shall be re-admitted more than once under this rule.

Rule 21 of Order XLI provides that where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

The provision of Rule 21 applies where the judgment is passed *ex parte* against the respondent and the respondent has only remedy to file miscellaneous case against that decree. In deciding miscellaneous cases we have bitter experiences. Parties on several occasions file time petitions to shift the date of hearing of the case. Sometimes Courts are *suo motu* transferring on the ground of being busy with hearing of other criminal cases or civil suits or appeals. The appellate Courts in our country are burdened with heavy case load and as a result they show their disinclination in hearing and deciding those miscellaneous cases. As a result these types of cases are pending in our Courts for years together. For quick disposal of these cases the Code of Civil Procedure was amended in 2006 and Rule 21A of Order XLI is inserted. In the new Rule it is stated that the Court may, in order to avoid delay and expedite disposal, directly rehear an appeal which is heard *ex parte* without requiring the respondent to adduce evidence to satisfy it about sufficient cause required under Rule 21, but requiring him to pay such cost not exceeding three thousand taka as it may deem appropriate and determine. The rule further provided that an appeal

under this rule shall not be re-heard unless an application, supported by affidavit, praying for such re-hearing is made to the Court within thirty days of the date on which the *ex parte* decree is passed against the respondent. Rule 21A of Order XLI further provides that no appeal shall be re-heard more than once under this rule.

So, from the above discussions it can be easily said that in the Code of Civil Procedure there are lot of scopes in delaying the disposal of appeals. Parties have unlimited scope of taking time for adjournments. But rule 21A of Order XLI has put some barriers on the parties to take time repeatedly. If the parties and Courts follow this rule, appeals can be heard and disposed of expeditiously. When an appeal is dismissed for default or disposed on *ex parte*, then the aggrieved party may file miscellaneous cases under rules 19 and 21 where huge time is generally consumed. But after insertion of rules 19A and 21A in Order XLI new venue for direct re-admission or direct re-hearing of appeal is opened and after proper application of these provisions delay in hearing of miscellaneous cases can be avoided.

5.1.11 Delay for Appeals on Flimsy Grounds

Appeals are also filed by the parties, to some extent, on flimsy grounds. This attitude is observed when the position of aggrieved party is comparatively very weaker or he has no legal foundation. In that situation they want to prolong the matter in different ways. Sometimes they prefer appeal after expiry of limitation period with an application of prayer for condonation of delay. The governments in most of the cases file this type of appeals without perusing the case dockets and considering the consequences. This matter is randomly observed in case of opinion given by

the government officials at a very belated stage specially by the Ministry of Law, Justice and Parliamentary Affairs and other Ministries and Department of the government. The government being the greatest litigant should also be a model client. In the case of ***State of Punjab and another*** v. ***Gurdial Singh and others***[19] arising out of an unsuccessful appeal by the Punjab Government against the judgment of the High Court below holding the acquisition of property *malafide*, Mr. Justice Krishna Iyer of the Indian Supreme Court, in the context of Court delay in deciding appeals observed:

> "Every meritless petition for special leave commits a double sin and here we are scandalized that the sinner is the State itself when thousands of humble litigants are waiting in queue hungry for justice and the docket-logged Court is desperately wading through the rising flood, 'every lawless' cause brought recklessly before it is a dubious gamble which blocks the better one from getting speedy remedy."

Basically the corrupt officials of the government in many ways try to keep the files in their custody and finally give opinions of preferring appeal by the government. In most of the cases they forward their opinions after expiry of limitation. In those cases they intentionally also left some of the documents/papers necessary for hearing of appeal being biased by the opposite/interested parties. In the result, government fails. This matter is common in some other countries also.

The brief facts of the case of ***Rajsthan State Road Transport Corporation*** v. ***Jhami Bai Kanhaiyalal and others***[20] are that a rickshaw-

[19] AIR 1980 SC 319, 320
[20] AIR 1987 Raj 68, 72

puller Kanhaiyalal, was knocked down by the State Roadways Corporation bus in an accident. Rajsthan State Road Transport Corporation is a public undertaking of the State of Rajsthan. The Corporation has got separate funds for the payment of compensation as they are exempted from insurance of the vehicles. The Corporation instead of making payment of compensation to the widow of rickshaw-puller and his kids entered into litigation and dragged poor widow to the Motor Accident Claims Tribunal for filing claim petition. The case finally came before the High Court for disposal. Observing the situation and conduct of the employees of the Corporation Acting Chief Justice of Rajasthan High Court Mr. Justice G. M. Lodha while awarding exemplary cost to the government functionaries opined:

> "...it is not only unfortunate but a matter which requires prompt attention of the State as to why the poor peoples' money which fills the coffers of the public exchequer should be allowed to be wasted in such avoidable litigation. In addition to the wastage of money, the time of the Court and the Law Officer is wasted in filing such appeals."

In another place of the judgment Mr.Justice G. M. Lodha said:

> "In order to exhibit apathy, annoyance and displeasure of the judiciary against the public sector undertakings contesting such claims from one forum to the other forum and thus violating solemn and pious places made in the preamble of social justice and making mockery of the directive principles, I would award additional exemplary costs of Rs. 100/-to the claimants. Now the situation has come when this Court is compelled to direct the

> Corporation to realise the aforesaid exemplary costs of Rs.100/- from the functionaries who opined to contest the claim by filing appeal in the High Court so that in future, before giving such advice, due care should be taken to realise that one should not burn his fingers by striking against the wall and running contrary to the spirit of the social welfare legislation."[21]

Justice D P Modan of the Supreme Court of India in the case of the ***Comptroller and Auditor General of India & another*** v. ***K. S. Jagannathan and another***[22] observed that where in an appeal by the government which was ultimately dismissed by the Supreme Court, the respondents had been compelled to come to new Delhi to appear before the Court time and again, and also had to spend money on their boarding and lodging, the appellant *i.e.*, the Government was to be directed to pay to each of the respondents a sum of Rs. 1500/- by way of costs of appeal.[23]

5.1.12 Delay in Delivering Judgment

In Rule 30 of Order XLI it is stated that the appellate Court, after hearing the parties or their pleaders shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders. A definite date should be fixed for delivery of judgment if not pronounced after conclusion of argument and notice of the date should be given to the parties or pleaders. The practice of reserving judgment without fixing a certain date for its pronouncement is not permissible. Appellate Courts should examine the records of cases coming

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[21] *Ibid*, 72-73
[22] AIR 1987 SC 537
[23] *Ibid*

before them on appeal or revision in order to satisfy themselves that the lower Courts have complied with the provisions of the law and instructions of the High Court on this subject.[24]

Practically, it has been seen that in the delivery of judgments in appeal, the above mentioned provisions of law are not followed. Most of the appellate Courts do not deliver the judgments in appeal. It has now become established among the litigants that the appellate Courts always deliver the judgments when they wish. After hearing arguments they left the record for uncertain period. Before 1983, no time limit was set for pronouncement of judgment after completion of hearing. In this respect Mr. Justice M H Beg of the Indian Supreme Court in the case of ***RC Sharma*** v. ***Union of India***[25] held:

> "The Code of Civil Procedure does not provide a time limit for the period between the hearing of arguments and delivery of judgment. Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But which is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to have been be done."

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[24] *See*, Paragraph 29(2) of the Civil Suit Instructions Manual, 1935
[25] AIR 1976 SC 2037

Delay shakes the confidence of the parties in the result of the litigation. By an amendment in the Code of Civil Procedure, 1908 made in 1983, a time of seven days has been set. But the time limit, as it is construed by the superior Courts, will have to be considered as directory and not mandatory and no consequence will follow if the judgment is not delivered within the time prescribed.[26] So, taking these advantages, appellate Courts are reluctant in the delivery of judgments in appeal. They thought that it is their additional duties, as because they are entrusted with more important sessions' cases. But in Rule 148 of the Civil Rules and Orders (Volume I) it is stated that the practice of reserving judgment without fixing any specific day for its delivery and pronouncing it on any day not previously fixed and intimated by recording an order then and there that parties or their advocates do take notice that judgment will be delivered on that date, is not a compliance with the rule in the Code of Civil Procedure and must be discontinued. If the judgment is not ready on the day fixed, it should be adjourned to another fixed date of which due notice should be given to the parties or their advocates and dates for cases adjourned for judgment shall be entered in column 2 of the Daily Cause List.[27]

Another reason for the delay in the disposal of appeals is that nowadays the judges have taken fancy in writing long judgments. 'Brevity is supposed to be the soul of the wit'. This maxim is no less applicable to a Judge: "Words are like leaves and where they most abound. Much fruit of sense beneath is rarely found."[28] Regarding shape and size of judgments in Rule 138 of the Civil Rules and Orders (Volume I) it is laid down that

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[26] Islam, Mahamud and Neogi, Probir, *Law of Civil Procedure* (Vol. I), 788
[27] *See*, Civil Rules and Orders (Vol. I), 40
[28] Quoted by, Justice Mohd. Shamim, Delhi High Court, in '*How to Clear the Backlog of Arrears of Cases in Court*', AIR 1994 (Journal) 129,131

judgment should be written in language plainly to be understood. They shall not be too long and too laboured. The case should be stated in a few words so as to bring out its nature. The details of contest are found in the issues. The concise statement of the case should set out all the material averments of the pleadings and decision on each of the points for determination should be distinctly noted. Similarly, the grounds of decision should be set forth as concisely as is consistent with the introduction and elaboration of all important matters.[29] And according to the provisions of Rule 140 judgments should be pronounced in open Court and dated and signed in open Court at the time of pronouncing it. Long periods should not elapse between the hearing of argument and the delivery of judgment.[30]

In the past the Judges wrote very brief judgments. A litigant is more concerned with the dispensation of justice than with the quality of the judgment. A Judge is not required to write a thesis except in those discerning few cases where he is required to lay down the law. Verbosity in judgment should be avoided at every cost. It will facilitate the disposal of the case.[31] Therefore, regarding the practice of pronouncing judgments, some changes have to be brought. The practice of reading the full judgment in Court should be given up. It will be sufficient if the operative portion is read out.

5.1.13 Delay due to Shortage of Prescribed Forms

Like the trial Courts, there are huge shortages of prescribed forms in the appellate Courts. In Rule 761of Civil Rules and Orders (Vol. I) it is

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[29] *See*, Civil Rules and Orders (Vol. I), 39
[30] *Ibid*
[31] Justice Mohd. Shamim, Delhi High Court, '*How to Clear the Backlog of Arrears of Cases in Court*', AIR 1994 (Journal), 129,131

mentioned that register of appeals shall be maintained in the Courts of District Judges and in Courts in which appeals are preferred under section 21(4) of Act XII of 1887. The records of appeals transferred to the Courts of Additional District Judges and Joint District Judges for disposal, shall, as soon as possible after the appeal has been disposed of and the copies of judgment and decree sent to the lower Court, be returned to the Court of the District Judge for the purpose of having columns 8-10 of the latter's register filled in his office. After this is done, the records shall again be sent to the Court disposing of the appeal for transmission to the record room in due course.[32] The register of miscellaneous appeals shall be maintained for only appeals from Orders under section 104 of the Code of Civil Procedure and appeals in miscellaneous judicial cases.[33] Applications to withdraw or transfer an appeal under section 24 of the Code of Civil Procedure, for the re-admission or re- hearing of an appeal under Order 41 rules 19 and 21 and for review under Order 47 rule 1 not being appeals but of the nature of original applications though made to an appellate Court, should be entered in the register of miscellaneous cases kept in that Court. When, however, an appeal is remanded, revived or reviewed, it will of course be shown in its proper place in the register of appeals.[34]

The provisions of Rules 761 and 762 indicate that the day to day functions of the appellate Courts should be maintained in prescribed forms. The results of the appeal, drawing up of decrees and other various matters are kept in the registers. But in fact, the registers are not supplied by the government for long time. The Court support staffs are maintaining those registers by purchasing papers from their pocket money and preparing with

[32] *See*, Rule 761, Civil Rules and Orders (Volume I), 247-248
[33] *See*, Rule 762, Civil Rules and Orders (Volume I)
[34] *Ibid*

their own hands leaving some columns of registers vacant or omitted. Making registers with hands is a troublesome job. Many working hours are spent for this purpose. Sometimes Court support staffs try to avoid making those registers with a fear that the cost of register will not be borne by the government.

5.1.14 Delay in Disposal of Appeals filed against Interlocutory Orders

Sections 104 to 108 and Order XLIII of the Code of Civil Procedure deal with appeals from orders. Unless there is an order within the meaning of section 2(14) which falls within the list of appellable orders, no appeal shall lie. However, appeals against interlocutory orders are always delayed on various grounds. The psychological cause is that disposal of 6-7 miscellaneous appeals by the presiding judge are deemed to be the disposal of one title suit. This leads the judges to be reluctant in disposal of these types of appeals. Another cause of delay is that the appellate Courts are usually overburdened with sessions' cases, original trials of suits (by the Joint District Judges), trials of title appeals, interlocutory matters and other multifarious works. As a result, they give less time for hearing and disposal of miscellaneous appeals.

5.1.15 Delay due to lack of enhancement of pecuniary jurisdiction of District Judges to hear appeals

At present District Judges can admit title appeals with an amount of taka five lacs and in case of *Artharin Adalat* case the amount is taka fifty lacs. Other appeals exceeding the above amounts shall be filed in the High Court Division of the Supreme Court of Bangladesh. It is well known to every body that the High Court Division is overburdened with huge appeals,

revisions, writs and other important business. Therefore, the civil appeals exceeding taka five lacs are become pending in this Court in some cases for decades after decades. It is a matter for reconsideration that when the District Judge can admit and able to try an appeal of *Artharin Adalat* case with an amount of taka fifty lacs, then, what is the harm of admitting and hearing of civil appeals with such amounts? At present the money-value of taka has fallen very heavily. So, it reveals in this research study that if the pecuniary jurisdiction of the District Judges be enhanced up to taka fifty lacs, it will certainly be helpful for disposal of appeals in the district level and for that reason, to some extent, it will also relieve the burden of the High Court Division. The litigants will get speedy justice with inexpensive cost.

5.1.16 Lack of personal attention of the District Judges in the transfer of appeals

Lack of strict vigilance and monitoring of pending appeals in general and supervision of the entire court administration in particular is regarded as the cause of delay in appeals. Non-vigilance starts from the very beginning of filing appeals. Many Judges and their staffs do not adhere to the rules of filing appeals and allow unnecessary times for filing documents and other requisites. As a result, delay occurs at the very beginning of the filing of appeals. As soon as the appeal is ready for hearing, the attention of District Judges is required for the transfer of appeals proportionately among the appellate courts working under him. Sometimes, they transfer a huge number of appeals to certain court, and the result is that other Courts remain passing lazy times. If the District Judges are vigilant and they take necessary steps in transferring appeals equally among the appellate courts taking the statistics of appeals pending before other courts earlier, then the

rate of disposal of appeals will be geared up. Monitoring is also needed in the disposal of long pending as well as old appeals. The District Judges can easily overcome this problem following the principles laid down in the Civil Rules and Orders (Volume I).

5.2 Delay in the Disposal of Revision

Originally formulated in 1908, section 115 of the Code of Civil Procedure gave power to the High Court to keep the subordinate Courts within the bounds of their jurisdiction. The underlying object of this section, according to Justice Shah of the Indian Supreme Court, is to prevent the subordinate courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. It clothes the High Court with the powers to see that the proceedings of the subordinate courts are conducted in accordance with law within the bounds of their jurisdiction and in furtherance of justice.[35] It enables the High Court to correct, when necessary, errors of jurisdiction committed by the subordinate courts and provides the means to an aggrieved party to obtain rectification of a non-appellable order. In other words, for the effective exercise of its superintending and visitorial powers, revisional jurisdiction is conferred upon the High Court.[36] Revision could be filed against non-appealable orders and against a decree from which no appeal lay as in the case of a decree under section 9 of the Specific Relief Act, 1877. A decree passed by a Court of Small Causes is not appealable and under section 25 of the Small Cause Courts Act, 1887 a revision can be filed before the High Court Division of the Supreme Court of Bangladesh.

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[35] *Major S.S. Khanna* v. *Brigadier F.J. Dillon,* AIR 1964 SC 497, 505
[36] *Ibid*

By an amendment in 1978, the District Judges were given the power of revision with provision for further revision before the High Court Division against the decision of the District Judge. Later on by the amendment in 1983, the provision relating to the revisional power of the District Judges was repealed. By the amendment of 1978 and 1983 section 115 became, as Justice Qazi Shafiuddin of the High Court Division of the Supreme Court of Bangladesh considers, a substitute for second appeal and a revision would lie against a decree on the grounds on which previously second appeal was maintainable. In the case of ***Bangladesh*** v. ***Md. Aslam and others***[37] his Lordship further observed:

> "With the repeal of section 100 and re-enactment of section 115 in its new garb, the power of the High Court Division has increased to a large extent. The strict binding effect of concurrent findings of fact has been diminished to a large extent by introducing the words 'error' in the decision occasioning failure of justice"

So far in respect of non-appellable decrees and orders, the scope of revision, freed from the limitation of jurisdictional error, has been widened leading to vast increase in the number of revisions against non-appellable orders, which has affected quick disposal of suits. The Code of Civil Procedure (Amendment) Act, 2003 has again conferred revisional power on the District Judges against orders not only of the Assistant Judges but also of the Joint District Judges. This has given rise to the question regarding jurisdiction to entertain and dispose of revisional applications. This amendment has provided for second revision in the High Court Division

[37] 44 DLR (1992), 69

against an order passed by the District Judge and Additional District Judge in revision where the High Court Division grants leave. According to the new amendment revision against all appealable decrees and against orders passed by the District or Additional District Judge lie with the High Court Division, while revision against the non appealable orders passed by the Assistant Judge, Senior Assistant Judge and Joint District Judge lie with the District Judge and revision against such orders may be heard by the Additional District Judge when these are transferred to him by the District Judge. Apparently the District Judge can now exercise revisional power against a non-apealable order passed by a Joint District Judge even in a case where the appeal from an appealable decree or order lies in the High Court Division.

One of the potent causes of delay is that revision be taken to the High Court Division from an interlocutory order. It is to be mentioned here that section 105 of the Code of Civil Procedure says, *inter alia*, that where a decree is appealed from, any error, defect of irregularity in any order affecting the decision of the case may be set forth as a ground of objection to the appeal. In practice, however, very little thought is given to it when admitting an application under section 115 of the Code of Civil Procedure. It may be, and sometimes it turns out, that an interlocutory order could better have been challenged alongwith other cognate orders and its challenge in isolation could not produce the result expected but in the meanwhile the revision has caused delay.[38] Interference with interlocutory orders invariably causes delay in the disposal of suit, because either the proceedings are stayed or records of the subordinate Court are called for by

[38] *See*, Report of the Law Committee, 1976,114

the High Court and thus the proceedings are *de facto* stayed even if no stay order is passed.[39]

Experience has shown that a large number of interlocutory revisional applications are admitted but in the final hearing a good number of them are dismissed and the rule issued earlier discharged. No exact percentage has been calculated but a rough estimate indicates that it would be around 75%. This high percentage of Rules being discharged speaks of the laxity or leniency with which the revisional applications are entertained. The High Court, it is expected, should be more judicious in the exercise of its discretion. It is to be noted that whereas revision petitions ought ordinarily to be disposed of within three months, it now takes two to three years for their disposal. The pendency of revisional cases over three years old in the High Court is not rare.[40]

Again, while issuing Rule under section 115 of the Code of Civil Procedure stay order and calling for the records are also made as a matter of course. It has become a routine affair. In this respect the Law Committee of 1976 in its report said:

> "We must emphasize that neither stay order be passed nor records called for without sufficient reason to be recorded in writing. This will have two effects: first, it will require the High Court to ponder on the necessity of stay or calling for the record, and secondly, the adverse party will have an opportunity to controvert the reason for stay at any time before the final hearing. We think in revision from

[39] *Ibid*
[40] *Ibid*

> interlocutory order no record need also be called for. Whatever little papers or parts of the record are necessary; they may well be supplied by the party by production of their certified copies. The importance of this suggestion may be appreciated if we remember that it takes months, sometimes year for the records to come and then to go back to the trial Court."[41]

Another fruitful source of delay is the practice of making all the parties to the proceeding, parties to the revisional application and the service of notice on them all. Virtually, a second trial is supposed to take place on an insignificant interlocutory order. Revision on interlocutory matter shall not be treated on the analogy of appeal. The Code is silent in this regard and thereby has given a wide discretion to the revisional Court to make such order as the justice of the case demands. The High Court should see whether all or some of the litigating parties are necessary for the disposal of the matter and whether all the parties are not so necessary and it is time-killing either to make them parties or to serve them with notices of the revision. It is the design of a defaulting party is to take an interlocutory order to the High Court in revision and then get the suit hung in abeyance by first getting stay and then calling for the records and next by serving notices on unnecessary parties most of whom are either non-contesting or their interests have already been represented by the contesting party. The High Court in revision for interlocutory order is concerned with the validity of the order only and if two sides are present or could be made present before it, there is absolutely no necessity for the appearance of any other parties. We think a provision should be added in the Code providing for

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[41] *Ibid*

notice on actual disputant in the Court below or if there was no such disputant, then on those parties are to be served with notice who are likely to be affected by the proposed order.[42]

5.3 Delay in the Disposal of Review Petitions

Section 114 of the Code of Civil Procedure empowers a Court to review its own judgment or order on the grounds stated in Order XLVII Rule 1. Review is available only upon exceptional circumstances such as the discovery of new and important evidence which could not have been discovered earlier even after the exercise of due diligence or the detection of some mistake or error apparent on the face of the record or some other similar reason. The provisions with regard to review have withstood the test of time and no change in those provisions is called for, it is in the public interest that there should be an end to litigation at some stage. Any enlargement of the scope of review will militate against this salutary principle and make litigation unending.

Rule 774(a)(4) of the Civil Rules and Orders (Volume I) provides that the matter of review should be proceed with by filling a miscellaneous case. But experience shows that most of the judges and lawyers do not know this principle and for the reason many advocates file a simple petition of reviewing the judgment or order. These types of petitions, no doubt, be rejected by the courts and thereafter the respective party rushed to the higher court for filling revision against the above rejection order and of they able to get an order of stay it will certainly cause delay of the suit.

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[42] *Ibid.*, 114 -115

A review application is maintainable if an appeal has been filed after filling of the application for review and the Court is bound to proceed with the application for review. But in the case of ***Safran Bewa*** v. ***Soleman Ali Mondal and others***[43] it was held that the Courts' have power to hear the review application so long as the appeal is not heard. In this respect his Lordship Justice Amin Ahmed has discussed the scope of section 114 of the Code of Civil Procedure and said:

> "Having regard to the terms of the section and the cases referred to above, we are of the opinion that the Court has and in fact is bound to proceed with the application for review not withstanding the fact that an appeal has been subsequently filed in the case. But the power exists so long as the appeal is not heard, the decree on appeal is final decree in the case and the application for review of judgment of the Court first instance can no longer be proceeded with."[44]

Review of a decree or order is permissible on the ground of discovery of new or important matter or evidence which after due exercise of diligence was not in the knowledge of the petitioner or could not be produced by him when the decree or order was passed, error apparent on the face of the record, or any other sufficient cause. Once a Court passes a decree, it becomes *functus officio.* The decision cannot be re-opened and the matter cannot be re-heard by the same judge or his successor, except on review. Discussing the matter a Division Bench of the High Court Division of the Supreme Court of Bangladesh comprising of the their Lordships

[43] 3 DLR (1951) 210
[44] *Ibid.*, 213

Justice Abdul Mannan and Justice A K Badrul Huq in the case of ***Muzaffor Hossain*** v. ***Md. Shahidullah and others***[45] has stated that decision recorded by a court can be set aside or reversed not by the same court but by the superior court. The same court cannot sit on appeal on its own decision. Sometimes it is presumed that the power of review exercised by the courts is an inherent power. But in the case of ***Sultan Alam @ S A Badal*** v. ***Rupali Bank Ltd. and others***[46] their Lordships Justice Mohammad Golam Rabbani and Justice Syed Amirul Islam observed:

> "It is also well settled that the power to review is not an inherent power. It must be conferred by law either specially or by necessary implication. There is along line of decisions of the superior Courts of this Sub-continent where it has been suggests that a right has to be conferred specifically."

In the case of ***Mia Lutfil Hossain Khasru and others*** v. ***Bngladesh and others***[47] it is decided by the Appellate Division of the Supreme Court of Bangladesh that a power of review should not be linked with the appellate power which enables a Court to correct all errors committed by the subordinate court. In deciding the matter his Lordship Justice Mohammad Fazlul Karim stated that a review is by no means an appeal in disguise whereby an erroneous decision is reheard or corrected but lies on patent error.

The researcher was working as 3rd Additional District Judge, Kishoregonj Judgeship and in his court; he found that a large number of

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[45] 51 DLR (1999) 400
[46] 14 BLD (1994) 297

[47] 55 DLR (2003) (AD) 74

review petitions were allowed by his one of the predecessor by setting-aside the judgments pronounced by the same Additional District Judge Court. After scrutinizing some of the records the researcher found that the Assistant Judge or Senior Assistant Judges by their judgments dismissed the suits. Most of those suits were filed against the government where a large quantity of land was involved. Being aggrieved by those judgments, the plaintiffs preferred appeals to the District Judge, Kishoregonj who subsequently transferred the appeals to the 3rd Additional District Judge for disposal. Most of the appeals were disallowed on contest and the 3rd Additional District Judge; Kishoregonj confirmed the judgment and decree of the learned court below. The aggrieved parties did not file any revision petitions against the judgment passed by the Additional District Judge before the High Court Division. After transfer of this court, the new judge assume his office and then the plaintiffs- appellants of those cases filed review petitions and the Additional District Judge ignoring the established principles of law illegally allowed those petitions and set-aside the judgments of 3rd Additional District Judge, Kishoregonj and set the appeals for re-hearing and for this reason a considerable number of appeals are pending in that court.

From an overall discussion it may be concluded that in deciding appeal there shall be no remand unless the court thinks retrial on fresh evidence is necessary. The court shall, as far as possible, dispose of the appeal finally, if necessary by taking recourse to the provision of section 103 of the Code of Civil Procedure and Order XLI, Rule 27 by taking additional evidence. No record should be called for in revision from interlocutory orders. Parties may require filing certified copies of relevant papers and orders. The appellate jurisdiction of the District Judges should be raised.

CHAPTER VI

6. Need for Case Management in the Execution of Decrees

6.1 Hardships to Execute a Decree

The expression 'execution' signifies the enforcement of decrees and orders by the process of court, as to enable the decree holder to realize the fruits of the decree.[1] The object of execution is effected in one or more of the three following ways: by the seizure and sale of personal property of the defendant; by the seizure of his real property, and either selling it or detaining it until the issues and profits are sufficient to satisfy the judgment; and by seizing his person and holding him in custody until he pays the judgment or is judicially declared insolvent.[2]

There is a saying among legal circles that the real trouble of a plaintiff starts after he has obtained a decree.[3] Troubles are caused in the service of processes, issuances of proclamation etc. During the course of investigation it has been noticed that adjournment in execution cases are frequently allowed causing great hardship to the plaintiff. There are long drawn-out execution proceedings, in which judgment-debtors resort to all sorts of evasive tactics to avoid meeting their obligations, with the help of members of the legal profession.[4] Over a century ago, as far back as 1872, the Privy Council in the case of ***General Manger of the Raj Darbhanga*** v. ***Moharaj Coomer Ramput Sing***[5] observed that in India 'the difficulties of a

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[1] *Sreenath Roy* v. *Radhnath Mookerjee*, (1882) ILR 9 Cal 773
[2] Bouvier, John, *Law Dictionary and Concise Encyclopedia*, (New York: Willam S. Hein Company, 1984), 1113
[3] See the *Report of the Law Reform Commission*, Ministry of Law, (Karachi: Manager of Publications, Government of Pakistan Press, 1959), 67
[4] *Ibid*
[5] 14 MIA 612

litigant begin when he has obtained a decree.' This observation is still today as true as it was when made. Therefore, in this Chapter an attempt will be made how some of the provisions of the Code of Civil Procedure in respect of execution of decrees have been used to cause delay, or otherwise created difficulties, to the decree-holder in the execution process, and thus question the feasibility of the inclusion of those provisions.

6.2 **Existing Procedure**

Presently parties need to file a separate execution case to execute a decree, although it is the continuation of the original suit. The decree holder needs to obtain certified copy of the decree to file the execution case, and the court usually calls for the records of the original suit for the purpose of verification. All these cause delay in execution process and unnecessary burden on the litigants. During the course of collecting data from the respective courts it has been observed that execution cases and other miscellaneous cases arising out of execution cases are frequently allowed to drag on almost indefinitely and this fact causes great hardship to the decree-holder. Generally, delay is caused in execution proceedings on account of the natural desire of the judgment-debtor to avoid the decree. Again, there are some lacunae in the Code of Civil Procedure itself in relation to execution proceedings which require to be removed.

Section 51 of the Code defines jurisdiction and powers of the court to enforce execution. This section lays down the different modes of execution of decrees. A decree can be enforced by delivery of property specified in the decree or by attachment and sale or by sale without attachment of property or by arrest and detention of the judgment-debtor in civil prison or by appointing a receiver. In the case of ***Umakanta*** v.

Renwick & Co. Ltd[6] Calcutta High Court observed that it is for the decree-holder to decide in which of the above mentioned modes he will execute his decree. But execution is subject to the conditions and limitations prescribed by the Code and discretion of the courts.[7] Among the said modes, the Code provides two modes for the execution of money decree, namely (i) by the arrest of the judgment-debtor and his detention in civil prison, and (ii) by the attachment and sale of his property, moveable and immovable.

Order XXI rules 37 to 40 of the Code make detailed provisions as to arrest and detention in civil prison. When an application is made for execution of a money decree by the arrest and detention of the judgment-debtor in civil prison the court under the provisions of Order XXI rule 37 shall first issue notice calling upon the judgment-debtor to appear and show cause why he should not be committed to the civil prison in execution of the decree unless for very exceptional circumstances it is dispensed with under the proviso. A decree-holder may also seek execution of his decree by the attachment and sale of the property of the judgment-debtor as provided for by Order XXI rules 41 to 54. These provisions require a summary inquiry to be made into any claim or objection raised to the attachment of any property by the judgment-debtor. If the executing court, after hearing the claim or objection raised by the judgment-debtor, disallows his petition, the attached property may be ordered to be sold either by public auction or privately by the judgment-debtor and the sale-proceeds be paid to the decree-holder subject to the claims of other decree-holders to ratable distribution. Before actual sale of the property under rule 66 of Order XXI a sale proclamation has to be published mentioning the details as per sub-rule (2) thereof and

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[6] AIR 1953 Cal 717
[7] *Ibid*

fixing a date and time for such sale. An application for setting aside the sale may be made within thirty days from the date of the sale under Article 166 of the Limitation Act, 1908, by depositing the amount mentioned in the proclamation of sale plus five percent of the sale proceeds for payment to the purchaser. Besides, such a sale can also be set-aside on the ground of material irregularity or fraud in publishing or conducting the sale provided substantial injury has resulted by reason of such irregularity or fraud.

In each and every stage, as mentioned above, judgment-debtor sought adjournments on flimsy grounds and the courts frequently allowed those petitions. This happens in most of the cases because of lack of knowledge of presiding officers in managing the execution cases.

6.3 **Adjudication of claims or objections to attachment**

In course of conducting research and collecting data it reveals that many objections filed with reference to execution filed under Order XXI rules 2(2), 58, 90, 99 and 101 are of a frivolous nature and are made with a view to delaying execution proceedings. Rule 58 of the Order XXI deals with the investigation of claims and objections to the attachment of property attached in execution of a decree on the ground that such property is not liable to such attachment. The court has to investigate into such claim or objection and pending this inquiry, sale of the property has to be postponed. Rules 59 to 61 provide for a summary investigation into possession of the property as distinct from adjudication of title. It is not always possible to separate the question of possession from that of title in such proceedings. Rule 63 empowers a party aggrieved by an order passed under Rules 58 and 59 to institute a suit to establish title to the attached property. Besides these, rule 103 gives power to a party other than a judgment-debtor against whom

an order is made under rules 98, 99 or 101 to institute a suit to establish the right which he claims to present possession of the property. In each and every stage of claim cases or objections filed against the claims, there is a chance of causing delay if the presiding officers fail to put their attention on it. In this respect the Civil Justice Committee in their report observed:

> "Presiding Officers must give their personal attention to these matters at the time of admitting them, and, if it is found on the first date fixed after such applications have been filed that the petitioner has not taken the requisite steps in the matter they should consider the propriety of rejecting such applications, for default. Further, they should regard applications for the execution of decrees as urgent matters and remember that the courts may be brought into discredit if the decree-holders are put to unnecessary difficulty and harassment in the execution of decrees which they have obtained."[8]

In an execution case, if the presiding officer finds that the record is voluminous or there arose a claim case, in that situation most of the Judges invariably try to avoid the case and orders the *Sheristadar* to prepare an order and the Judges quickly put their signatures on the order sheet without considering the consequences of the case or considering the hardship of the decree-holder. Under the provisions of rule 58 of Order XXI of the Code of Civil Procedure third parties or even the parties to the suit may put objection to an attachment made in execution of a decree and in that case separate miscellaneous case is to be started. During his professional life, the researcher observed that in those situations most of the presiding officers

[8] Cited in Civil Suit Instructions Manual, 27

feel nervous about disposing of the claims or objections due to lack of procedural knowledge. Managing execution cases needs practical training and/or knowledge. But unfortunately presiding officers without going through the record try to avoid that complicacy. Therefore, without any cogent reasons delay occurs in the disposal of execution of cases. Observing the said picture of disposal of these cases the Civil Justice Committee in its report further remarked:

> "Presiding Officers must understand that their efficiency will be considered not merely in the light of statistical returns relating to disposals of original suits but great attention will also be paid to the manner in which they dispose of the important interlocutory work in their courts and to their method of disposal in execution cases and miscellaneous cases."[9]

Sometimes claim cases are filed at a very belated stage which in the long run delays the execution case. In this respect the Civil Justice Committee in its report stated that the court should not hesitate to deal with claims which have been filed after an unreasonable delay.[10] It is generally said that a good number of these types of cases are frivolous and the respective parties file those cases only to kill time to delay the execution of the decree. Considering the situations the Civil Justice Committee in its report again stated:

> "Many of the witnesses before us have stated, and we think their view is substantially correct, that very many of these petitions are frivolous ones put in at the instance of the judgment-debtor himself to defeat or delay his creditor.

[9] *Ibid*
[10] *Ibid.*, 29

> One object with which such petitions are filed is the gaining of the time taken by the investigation of the claim."[11]

6.4 Execution of Decree by Arrest and Detention of the Judgment-debtor

Section 51(c) of the Code of Civil Procedure empowers the court to order execution of decree by arrest and detention of the judgment-debtor in the civil prison. But there are various obstacles faced by the decree-holder, if he desires to execute his decree, by virtue of his arrest and detention of the judgment-debtor. It has been observed that following obstacles, among others, are considered as the main obstacles in this regard:

(a) Requirement of affidavit and notice

It is stated in rule 37 of Order XXI of the Code of Civil Procedure that when an application is made for execution of a money decree by arrest and detention of the judgment-debtor in civil prison, the court shall first issue notice calling upon the judgment-debtor to appear and show cause why he should not be committed to the civil prison in execution of the decree. In the proviso it is laid down that such notice shall not be necessary if the court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the court. Before issuing warrant the court must be satisfied that notice was personally served. In respect of service of notice, the study reveals that in most of the cases the process serving staffs in collusion with the judgment-debtor submits report like 'the judgment-debtor is found absent', 'the judgment-

[11] *Ibid*

debtor changed his address', 'served notice upon the elder member of his family', 'affixing the notice in some conspicuous part of the house in which the judgment-debtor resided' etc. The spirit of law is that the notice to be personally served upon the judgment-debtor. But when the notice served other than personal service, a considerable delay occurs and the judgment-debtor took the benefit of such types of service of notice. The research further reveals that in respect of service of notice, the presiding officers do not pay their due attention and for the reason the execution cases are pending years to years. The order sheet of the record of execution cases is in almost every case, written by the *Sheristadars* and without going through the record the presiding Judges are putting their signatures on it as a routine work.

Under the provisions of rule 39 of Order XXI of the Code of Civil Procedure, before issuing a warrant for arrest, subsistence allowance needs to be deposited by the decree-holder. Sometimes without observing the legal requirements of the above rule, presiding officers sent the judgment-debtor to jail. It is totally unlawful. It is an established principle of law that in a criminal jurisdiction, the expenses of jail is carried out by the Government but the cost of detaining the judgment-debtor in jail must be carried out by the decree-holder. Rules 174, 222, 223 and 226 of the Civil Rules and Order (Volume I) provides detail discussions in this regard.

Due to the ignorance on the part of the Judges and/ or lawyers, parties deposit subsistence allowance in lump sum through *Chalan* in Government treasury or in the executing court through peremptory receipt. This is not lawful. From experience, it is observed that sometimes the jail authority refused to receive the arrested judgment-debtor on the ground of

not depositing the subsistence allowance in the proper head of deposit. Then the decree-holder is directed to deposit the subsistence allowance in proper way at the rate fixed in rule 223 of the Civil Rules and Orders (Volume I). So, causes of delay simply take place at different stages on various grounds.

(b) Bankruptcy

Under sub-sections (3) and (4) of section 55 of the Code of Civil Procedure the court will not order arrest in cases where the judgment-debtor, on being served notice to explain as to why he should not be arrested, appears in court and proves to the courts' satisfaction, that he has no property moveable or immovable out of which to pay the decree-holder. Where the judgment-debtor is arrested and produced before the court, the court is required to inform him that he may apply to be declared bankrupt. He has to then file an application to be declared bankrupt and produce a copy of such an application before the executing court. It will take time for the Bankruptcy court to decide whether the judgment-debtor is actually bankrupt or not, but till then the execution proceeding will be stalled. If he is adjudge to be a bankrupt, and then an official receiver will be appointed, to look into all the liabilities of the bankrupt.

The judgment-debtor very often tries to file such kind of application to delay the execution proceeding knowing that the provision of section 55 is mandatory. The mere absence of any note in the record that this provision has been complied with does not necessarily indicate that the court has failed to inform the judgment-debtor.[12] If the judgment-debtor expresses his intention so to do, the court may release him upon his furnishing security to the effect that he will within one month apply to be declared bankrupt and

[12] *Haq Dad Khan* v. *Mul Raj*, AIR 1930 Lah 736

will appear before the court, whenever called upon, in any proceeding upon an application for execution or upon the decree in execution of which he has been arrested. After furnishing surety the judgment-debtor in different ways started to kill times to harass the decree-holder and delayed the proceeding.

The executing court is bound to inform the arrested judgment-debtor that he may apply for bankruptcy.[13] Failure to inform so does not invalidate the warrant of arrest.[14] The judgment-debtor though tries to delay the execution proceeding on the ground of pendency of the bankruptcy proceeding in spite of that the executing court has no bar to proceed against him. In the case of ***Kishan*** v. ***Sassoon***[15] it was held that the pendency of bankruptcy proceeding does not divest the court of the power of committing the judgment-debtor to prison. According to the provisions of sub-section 4 of section 55 of the Code of Civil Procedure, the judgment-debtor will get only one month time for filing of application to be declared him as a bankrupt. Time of one month cannot be extended under section 148 of the Code of Civil Procedure.[16] But in practice, it is seen that the judgment-debtor has been seeking adjournment of the execution case stating of filing bankruptcy case. The courts also reluctantly allowing those adjournments causing delay in the execution proceeding. The law is so clear that in the event of the judgment-debtors' failure to be declared bankrupt of failing to appear before the court, it is in the discretion of the court to proceed against the surety or arrest the judgment-debtor.[17] An order under this section against the judgment-debtor or the surety or an order against the decree-holder refusing simultaneous execution against the person or property of the

[13] *Ram* v. *Mackenzie*, 50 PLR 1909
[14] *Baburam* v. *Hariram*, 42 PLR 374
[15] 83 PWR 1910: 7 IC 351
[16] *Narasimha* v. *Rangachari* AIR 1926 Mad 689
[17] *Satya* v. *Mahabir*, AIR 1937 Pat 476

judgment-debtor is revisionable order and as such sometimes the aggrieved party files civil revision before the higher courts. At the time of hearing of the revision, the revisional courts in many occasion stay the execution proceeding and thus causes delay.

(c) Non-payment of decretal amount

The proviso to section 51 of the Code of Civil Procedure further lays down that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons to be recorded in writing is satisfied:

(i) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree, (a) is likely to abscond or leave the local limits of the jurisdiction of the court, or (b) has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or

(ii) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(iii) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Regarding the above provisions of law, Justice Krishna Iyer in the case of ***Jolly George Varghese*** v. ***Bank of Cochin***[18] observed:

[18] AIR 1980 SC 470

> "The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal on demand, verging on dishonest disowning of the obligation under the decree. Here considerations of the debtors' other pressing needs and straitened circumstances will play prominently.... It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling."

Therefore, the burden is very heavy to prove that the circumstances specified in the proviso to section 51 of the Code of Civil Procedure exist.[19] Further the court must record reasons for the committal of the judgment-debtor to civil prison. In absence of reasons, the order is liable to be set aside.[20]

In the case of ***Anowar Hossain*** v. ***Rupali Bank Ltd.***[21] a Division Bench consisting of their Lordships Mr. Justice Mohammad Abdur Rashid and Mr. Justice Hasan Foez Siddique of the High Court Division of the Supreme Court of Bangladesh held that the court shall order execution by arrest and detention of the judgment-debtor after giving opportunity of hearing to the judgment-debtor and on being satisfied that any of the conditions mentioned in the proviso is fulfilled. According to them:

> "The law does not authorize to send one to civil prison on an assumption that the judgment-debtor will not be able to satisfy the decree. Payment of money under a decree by arrest and detention in civil prison can only be resorted to after fulfillment of the conditions as provided under the proviso to section 51 of the Code."

[19] *I.K. Merchants Ltd.* v. *Indra Prakash*, AIR 1973 Cal 306
[20] *Ranganatha Padayachi* v. *Mayavaram Financial Corporation*, AIR 1974 Mad 1
[21] 22 BLD (2002) 153

In ***Jolly Gorges'*** case, as it observed, the Supreme Court of India held that when a judgment-debtor's capacity to pay is not decided with reference to the date of decree, the order for arrest is vitiated. Merely because a judgment-debtor is running a business, it does not mean that the business is running for a profit and so has means to pay the decretal amount.[22] The High Court Division of the Supreme Court of Bangladesh in the case of ***Chairman, Bangladesh Telegraph and Telephone Board*** v. ***Abdul Aziz***[23] observed that simple default by the judgment-debtor in paying decretal amount is not enough for ordering arrest; it must be shown that the judgment-debtor is having funds and he is purposely delaying payment. According to Allahabad High Court[24] a court cannot arrest a judgment-debtor unless concealment of means is satisfactorily proved and the judgment-debtor is given opportunity to pay in installments.

From the above discussions it is evident that there are several barriers in executing a decree and there are also a lot of provisions of law to escape the judgment-debtor in case of non-payment of decretal amount. It is the plaintiff who obtained the decree after winning a long battle consuming time and money but the above discussion reveals that in case of arrest and detention of judgment-debtor some scope should be given to him for his defence and/ or to protect his fundamental right. Accordingly it is said that while the burden imposed on the decree-holder to get the judgment-debtor arrested and detained for the execution of his decree may seem too heavy and cumbersome, it is certainly not unwarranted or baseless. The reason being that getting a person imprisoned means deprivation of his liberty and is very serious matter. Arrest and detention of persons for failure to meet

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[22] *Viswanathan* v. *Karnataka Bank*, AIR 1988 Ker 274
[23] Civil Revision No. 5267 of 2000 (Unreported)
[24] *Mathaura* v. *Parmeshthi*, AIR 1971 All 433

contractual obligations should not be ordered lightly, especially in those cases where imprisonment is to be ordered for the failure of the person to meet some contractual liability. In this respect Mr. Justice Krishna Iyer in ***Jolly Georges'*** case clearly opined that in cases where the failure of the judgment-debtor to pay, is on account of his poverty because to do so would be a gross violation of his rights guaranteed under Article 21 of the Constitution.

(d) No order of detention when decree amount is fifty taka only

Section 58(1) of the Code of Civil Procedure provides that no order for detention can be passed where the total amount of the decree does not exceed fifty taka. This flows from the same reasoning of the Legislature in not providing for arrest lightly, like *in this case*, where it is felt that the amount is too small to warrant arrest.

This clearly restricts the decree-holders' right to get the decree executed by means of arrest and detention. However, the provisions in respect of taka fifty needs to be amended in practical sense.

(e) Premature release of arrested judgment-debtor

In section 59 of the Code of Civil Procedure it is stated that at any time after a warrant for the arrest of a judgment-debtor has been issued the court or Government may release him on his serious illness. This premature release of the judgment-debtor on account of illness would interfere in the execution of the decree also though the provisions of section 59 are based on purely humanitarian grounds and cannot be dispensed with.

6.5 **Payment out of Court to the decree-holder**

Rule 1 of Order XXI of the Code of Civil Procedure prescribes, among others, the modes of payment of money payable under a decree out

of court to the decree- holder. According to the said rule, payment may be made into the court executing the decree or out of court directly to the decree-holder or otherwise as the court passing the decree directs.

Rule 2 of the same Order provides that in cases of out of court payment to the decree-holder, towards whole or in part satisfaction of the decree, there has to be documentary evidence for the same. In the case of ***Md. Ishak Ali*** v. ***Hiralal Seraogi***[25] it was held by Mr. Justice Hasan that the object of rule 2 of Order XXI is to ensure that the executing court shall not be troubled with any dispute between the parties respecting any payment or adjustment unless the same has been duly certified or recorded. No doubt this is a nice provision to adjust the decree in a very simple way. But in practice, this provision has been misused by the judgment-debtor, who can produce forged documents before the court, to the effect that he has made such payment to the decree-holder. Then the court has to look into the genuineness of the document and ascertain the veracity of the judgment-debtors' assertions. This takes up a lot of time and delays the execution of the decree. But in a true sense, there is a necessity of this rule. Because, in case, the judgment-debtor has actually paid the decree-holder, but the latter denies it, then the same can be proved by the production of documentary evidence and the judgment-debtor is not made to pay twice. Also it prevents judgment-debtor from randomly approaching the courts and asserting that they have paid the decree amount outside court, because without documentary evidence the court will not consider their claims.

It has been observed that the most common objection to execution is a plea of payment or discharge of the decree out of court. The judgment-

[25] 16 DLR (1964) 73

debtor making such a plea generally produces oral evidence in support thereof and fails to produce any documentary evidence. It is also observed that in a large number of cases such pleas are not made *bonafide* and considerable time of the executing court is wasted in taking evidence and deciding such pleas which have ultimately to be rejected. Therefore, this research reveals that some restrictions should be placed upon the mode of proof of such payment for adjustment in execution for curing the problem. The Law Committee of 1976 in its report said:

> "We think that the executing court should insist on documentary proof of payment for satisfaction of a decree by one of the recognized modes of payment. The object can be achieved by amendment of Order XXI, Rule 2 of the CPC providing that the plea of payment of the decretal amount out of court can be entertained only when such payment is shown to have been made by a written document or through a Bank or by postal money order."[26]

6.6 Deposit of decretal amount or sufficient security as condition precedent to filling objections

It is observed that a large number of frivolous applications/objections are made against execution of decree, such as, under Order XXI, rules 2(2), 58 and 90 with a view to causing delay in the execution. In most of the cases courts are allowing such applications frequently at the request of the parties. The present study reveals that to put a stop to such frivolous applications, the judgment-debtor should not be allowed to raise any objection to the execution of a decree unless he either deposits the decretal

[26] *See*, the Report of the Law Committee, 1976,106 at 107

amount or furnishes security to the satisfaction of the court. Execution proceedings are also delayed by reason of stay orders granted under Order XXI rule 26 of the Code of Civil Procedure. This rule empowers the court to which a decree has been sent for execution, upon sufficient cause shown, to stay the execution of the decree for a reasonable time and only relates to limited stay of execution and for specific purpose. But in practice it is seen that once stay is granted by the appellate court never vacated quickly and the order of stay continued years after year's even decades after decades. Sometimes a third party interferes into the proceeding, prefers appeal or revision and obtained order of stay and causes delay. As for example, it can be stated here that a lady filed a suit for dower and maintenance before the Family Court at Rangpur being Family Suit No.13/2000. The suit was decreed *ex parte* on 15.01.2001. Then the decree-holder filed Family Execution Case No. 107/2001 at the same court. Subsequently the defendant judgment-debtor filed an application under section 9(6) of Family Courts Ordinance, 1985 and the same was registered as Family Miscellaneous Case No. 7/2001. The Judge of the Family Court by his order stayed the operation of the Family Execution Case and finally allowed the Family Miscellaneous Case by its order dated 20.05.02 setting aside the *ex parte* decree and restored the family suit. The suit was renumbered as Family Suit No.151/2002. Finally the plaintiff succeeded in the suit and filed petition for execution of the decree. The executing court in course of execution of the decree ordered the judgment-debtor to realize the decretal money but he fails to carry out the order of the court. Then the court under the law took necessary steps for selling the scheduled property of the judgment-debtor through auction. No one was interested to purchase the property. Thereafter, the decree-holder filed an application under section 16(3) (a) of the Family Courts Ordinance to purchase the judgment-debtors'

property described in the schedule of the execution petition. As per provisions of Family Courts Ordinance, 1985, the court ordered the decree-holder to purchase the land of the judgment-debtor. She after observing the formalities deposited the stamp papers for preparation of Sale Certificate. The court signed on it and ordered to send it to the concerned Sub-Registry office for registration. But in the meantime, a third party prefers a Civil Revision No.44/2004 under section 115(1) of the Code of Civil Procedure challenging the order of executing court in respect of allowing the decree-holder to purchase the land. And the District Judge, Rangpur admits the civil revision staying the further proceedings of the execution case. It is to be mentioned here that under section 17 of the Family Courts Ordinance, 1985 all orders passed by the Judge of the Family Court are appeal able and there is no scope of filing civil revision. But the District Judge, Rangpur ignoring the above provisions of law erroneously admitted the Civil Revision and illegally stayed the operation of the execution case. Moreover, in the case of ***Aftab Ahmed*** v. ***Moinuddin Zaigirdar and another*** [27] it was held by Justice Bimalendu Bikash Roy Chowdhury that a person who is not a party to the decree has no *locus standi* to maintain an application for stay. Family Execution Case No. 107/2001 was filed by a wife against her husband. But the third party filed Civil Revision No. 44/2004. Finally, the District Judge, Rangpur disallowed the same on 24.04.05 with a cost of Tk. 2000.00 and vacated the order of stay granted earlier. The irony of fate is that the presiding Judge of the Family Court (who was reputed to be corrupt) intentionally left the record for orders on many occasions without recording grounds, and delayed the execution proceeding and managed to give chance to the third party in preferring the above mentioned civil revision. Being aggrieved by the order of the District Judge, this party with

[27] 46 DLR (1994) 173

ill motives (based on village politics) instigated the judgment-debtor to rush to the High Court Division so that the decree-holder fails to obtain registration of the Sale Certificate. Accordingly, the judgment-debtor filed Civil Petition No. 656(Con)/2003 with a prayer for condonation of delay. This court again stayed all further proceedings of the execution case and condoned about two years delay in the filing of civil revision without considering the future of the lady and her minor sons. Here the researcher found that humanity got no value. The plaintiff-respondent does not get any scope to contest Civil Petition No.656 (Con)/2003. Thereafter, the defendant judgment-debtor filed Civil Revision No.1884/2005. In this case, the High Court Division again ordered to continue the stay of the execution case which is pending till 2011 and for the reason the decree-holder lady is not able to realize only one lac taka for eleven years and she has been roaming in the court premises for the above period of time.

In our country it is a common practice that when the opposite party prefers appeal or revision before the higher courts he tried heart and soul to obtain an order of stay and in most of the cases the higher courts without considering the consequences of the judgment and order of the original suit or execution case stayed the operation putting the decree-holder in a great hardship. Stay of execution of decree granted in appeal or revision ends with the disposal of the appeal or revision. This research work reveals that in deciding appeal or revision, the higher courts are reluctant and even in case of petition filed by the decree-holder to vacate the stay order, those courts either summarily rejects the petition or orders to keep the petition with record with an observation of disposing of the same at the time of disposal of the appeal or revision depriving the decree-holder from enjoying the fruits of the decree. There may be some genuine cases where the

judgment-debtor or a third party may have a real and substantial grievance against the decree. In such cases, stay of the execution may be necessary and the delay occasioned thereby is inescapable. Legal experts and beneficiary of decree holders considers that the matter of stay of execution in the above circumstances needs rethinking. Arguments pointed out by them that section 144 of the Code of Civil Procedure incorporates the '*Doctrine of restitution*' which requires that on reversal of a decree or order, the law imposes an obligation on the party to the suit which received the benefit of the erroneous decree or order to make restitution to the other party for what he lost. Discussing the matter Justice Latifur Rahman of the of the Appellate Division of the Supreme Court of Bangladesh in the case of ***Shahana Hossain*** v. ***AKM Asduzzaman***[28] observed the grant of restitution is not discretionary with the court, but law imposes an obligation on the party who gets the benefit of a varied or reversed decree to make restitution to the other party for his loss. And it was also decided by the Indian Supreme Court in the case of ***Binayak*** v. ***Ramesh***[29] that it is the duty of the court to enforce the obligation unless it is shown that the restitution would clearly be contrary to the interest of justice.

From the above discussion it is evident that in many cases delays are occurring in the execution of decrees for filing frivolous applications by the judgment-debtor or third party. In admitting these types of petitions the attention of the presiding officers are utmost necessary. In this respect the Civil Justice Committee in its report observed:

> "Presiding Officers must give their personal attention to these matters at the time of admitting them, and, if it is found on the first

[28] 47 DLR (1995) (AD) 55
[29] AIR 1966 SC 948

> date fixed after such applications have been filed that the petitioner has not taken the requisite steps in the matter they should consider the propriety of rejecting such applications, for default. Further, they should regard applications for the execution of decrees as urgent matters and remember that the courts may be brought into discredit if the decree-holders are put to unnecessarily difficulty and harassment in the execution of decrees which they have obtained."[30]

During the time of taking interview for the purpose of conducting the present study, the learned authorities recommended that, in cases of money decrees and decrees for maintenance and dower, restrictions should be placed on the right of appeal by requiring the appellant judgment-debtor to deposit or at least to give security for the decretal amount as a condition precedent to the admission of an appeal. In this respect the report of the Law Reforms Commission, 1967-70 observed:

> "After careful consideration of the views expressed by various witnesses, we are of the view that there should be a specific provision in the Code requiring the deposit of the decretal amount or the furnishing of security by the judgment-debtor for the satisfaction of the decree as a condition precedent to the filing of any objection to the execution of the decree."[31]

6.7 Restrictions on the decree-holder regarding attachment of property

Attachment of property of the judgment-debtor is one of the modes of execution of decree but this is subject to section 60 of the Code of Civil

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[30] Quoted in Civil Suit Instructions Manual, *op. cit.*, 27
[31] *See*, the Report of the Law Reforms Commission, 1967-70, 378

Procedure. Section 60 declares what properties are liable to attachment and sale in execution of a decree and what properties are exempt there from. Under Order XXI rule 12 of the Code of Civil Procedure, when the decree-holder makes an application for attachment of movable property, belonging to the judgment-debtor, but not in his possession, he has to also annex with the application, an inventory of the property to be attached, containing a reasonably accurate description of the property. Where the inventory required by this rule is not annexed to the application for execution, the application cannot be said to be one 'in accordance with law' within the meaning of Article 182 of the Limitation Act.[32] Further it has been held by the Kerala High Court that the provisions of this rule are mandatory and require strict adherence.[33] But practically it has been observed that in most of the cases the decree-holder fails to comply with these provisions and as a result complexity arose in deciding the execution proceeding.

Again Order XXI rule 13 requires that where an application is made for the attachment of any immovable property of the judgment-debtor, it should contain an accurate description of such property including its boundaries or numbers and the interest or share of the judgment-debtor in this property. In the case of ***Govind*** v. ***Pawan***[34] it was held by the Privy Council that the provisions of rule 13 are mandatory. Madras High Court in the case of ***Venkata Rao*** v. ***Koodalur***[35] observed that an application not furnishing the particulars required by this rule is not one 'in accordance with law' within the meaning of Article 182 of the Limitation Act. Further in the case of ***Kalidas*** v. ***Prasanna Kumar***[36] the Calcutta High Court

[32] *Abdul Rafi Khan* v. *Maula*, ILR 37 All 527
[33] AIR 1985 Ker 83
[34] AIR 1943 PC 98
[35] AIR 1950 Mad 2
[36] AIR 1920 Cal 354

observed that Clause (b) imposes a duty on the decree-holder to specify the judgment-debtors' share or interest, to the best of his belief.

If any defect is detected in the application that can be rectified by way of an amendment under Order VI rule 17 of the Code of Civil Procedure then delay automatically occurred. When the decree-holder filed a petition for amendment of the execution petition, subsequently the judgment-debtor filed written objection, even though he has no cogent ground of filing the same. The judgment-debtor thinks it as his right and most of the cases the presiding officers are reluctant in disposing of those objections which halt the execution case for indefinite period.

From the above, it is evident to us that Order XXI rules 12 and 13 impose too harsh a burden on the decree-holder, in expecting him to find out all the necessary details of the property to be attached, though he can make changes, by way of amendment in his application for attachment. This is one of the provisions, which can probably be amended to make it more conducive to the interests of the decree-holder.

6.8 Resistance to delivery of possession to decree-holder or purchaser

Section 74 and rules 97-103 of Order XXI of the Code of Civil Procedure deal with resistance to delivery of possession to decree-holder and auction purchaser. Under rule 97, where the decree-holder or auction purchaser of immovable property is resisted or obstructed by any person in obtaining possession of such property, he may make an application to the court complaining of such resistance or obstruction. Under rule 99 any person other than the judgment-debtor, if dispossessed by the decree-holder

or auction purchaser, may make an application to the court complaining of such dispossession and this rule empowers the court to dismiss an application if it finds that the resistance or obstruction was occasioned by a person other than the judgment-debtor claiming to be in possession of the property on his own account or on account of some other person. The court shall on application under rule 97 or rule 99 proceed to adjudicate upon it as per rule 101. The court will hold full fledged inquiry and not just a summary inquiry and determine upon all questions, including the questions of right, title and interest in the property under attachment. Accordingly the Court shall either-

(a) order the auction purchaser or decree-holder to be put in possession, where it is satisfied that the resistance or obstruction was occasioned without any just cause, by the judgment-debtor, or by some other person at his instigation or on his behalf or by any transferee, where such transfer was made during the pendency of the suit or the execution proceeding. And if the applicant is resisted or obstructed even thereafter in obtaining possession, the court may at the instance of the applicant under rule 98 orders the obstructer to be detained in civil prison for a term which may extend to thirty days;

(b) order the dispossessed person to be put back into possession; and

(c) pass such order as in the circumstances of the case deems fit.

From the above discussions it is observed that in course of execution of a decree the court can interfere in matters concerning execution. But problems lie when execution is resisted by the judgment-debtor. Many times executing court issued writ to give possession of the land to decree-

holder. The *Nazir* and process server go to carry out the writ. In many occasions they faced barriers by the judgment-debtor. Judgment-debtor with his musclemen attacked them. Sometimes their life falls at risk. Then the *Nazir* and process server returned from the spot and file a report in this respect. Thereafter, the decree-holder file application under Rule 226(1) of the Civil Rules and Orders (Volume I) praying for police help in execution. The decree holder shall state the full reasons thereof, supported, if required, by an affidavit. The court may further examine the decree-holder or such other person as it thinks fit touching the necessity of police help. If upon consideration of all the facts and circumstances, the presiding Judge is of the clear opinion that there are reasonable grounds to suppose that execution, he may, after recording his reason for so doing, under the above provision of law, make a request to the Superintendent of Police of the district for such police aid. The requisition to the Superintendent of Police should state in brief the need for such aid, number and rank of men required, the nature of the process and the place where it is to be executed. It is experienced that in most of the cases the letter addressed to the Superintendent of Police for requisition of police help is drafted by the *Sheristadars* of the respective courts where a lot of defects appear. In most of the petitions the exact address of the place where the writ is to be executed and number of police personnel are not mentioned. In those defective letters police does not response and the matter fall in dark and for non-application of judicial mind of the Judges the execution case become pending for a long times having no real causes. These things are happening basically on the part of presiding officers for their dependency on the *Sheristadars*. The procedure of requisitioning police by the courts basically delays delivery of possession or execution proceeding. This research work reveals that much of the delay can be avoided if the executing court is

empowered to call for police assistance by writing to the officer-in-charge direct with intimation to the Superintendent of Police of the district. For giving effect to this recommendation, Rule 226 of the Civil Rules and Orders (Volume I) should be amended.

In the execution of decrees with the aid of police, sometimes judgment-debtor put serious constraints and for the reason it needs help of the Magistrate to observe law and order situation. Decree-holder again file petition for deploying Magistrate in addition to police force. The court after receiving report from *Nazir* about justification of the said petition allowed it and write letter to the District Magistrate to appoint a Magistrate to help the police force and also to tackle law and order situation. But the reality is that, District Magistrates are reluctant in replying those letters, because of their psychological fight with the Judges (though not frequently happened) and though replied, mentioned that there is scarcity of Magistrates to help the police forces or Magistrates are engaged with protocol duties or any other emergency duties and thus try to avoid the matter. For this reason, delay, to some extent, also occurs in the disposal of execution cases. But the existing law is that all the departments of the Government are bound to extend their cooperation to execute the decree of the courts. Giving emphasis on the matter and to clarify the position of law his lordship of the Appellate Division of the Supreme Court of Bangladesh Justice Debesh Chandra Bhattacharya (as he was then) in the case of ***Maksud Ali and another*** v. ***Eskandar Ali***[37] observed:

> "In a country which is to be governed under the rule of law, it is the duty of all the administrative functionaries of the State to act in aid of the judicial organ of the State and to

[37] 28 DLR (1976) (AD) 99,108

> see that all the judicial orders are duly carried into effect.... It is expected that both the civil courts as well as the other functionaries of the State should be more conscious about their respective responsibilities for carrying a solemn decree of a court into effect."

6.9 Time limit for execution of decrees

Under section 48 of the Code of Civil Procedure, a decree holder is entitled to execute a decree within twelve years from the date of obtaining the decree by the decree-holder. As he can execute his decree at any time during this long period, he does not generally file any application under Order XXI rule 11 for execution unless he has a reasonable expectation of obtaining full or partial satisfaction of his decree. But Article 182 of the Limitation Act, 1908 requires him to start execution proceedings within three years of passing of the decree. A decree-holder has, therefore, to make in succession a number of applications for execution of the decree and then within three years of the final order passed on each application, if the judgment-debtor has not the capacity to satisfy the decree. He has to make these applications only to take what are known as steps in aid of execution within the meaning of Article 182. This privilege of decree-holder ultimately creates the scope of filing many cases on the same issue which in the long run weighted the bundle of pending cases. Observing the worst condition of pending execution cases the Law Reforms Commission in its report observed:

> "Public opinion is in favour of omitting Articles 182 and 183 of Schedule I to the Limitation Act and leaving the decree-holder to execute his decree at any time within the period prescribed under section 48 of the Code. It is also

> unanimously in favour of reducing the period of limitation for execution of decrees prescribed by section 48 of the Code read with Article 183 of the Limitation Act from twelve years to six years, provided Article 182 of the latter Act is so amended as to make it unnecessary for a decree-holder to make an application for execution of the decree every three years. We therefore, recommend that section 48 of the Code and Article 183 of the Limitation Act be amended to reduce the period of limitation for execution of decrees from twelve years to six years and Article 182 of the latter Act be amended so that it may not be necessary for a decree-holder to make an application for execution of the decree every three years".[38]

6.10 **Stay of Execution**

Under Order XXI rule 26 of the Code of Civil Procedure, the executing court can stay execution of decrees only for a reasonable time and particular purposes, so as to enable the judgment-debtor to approach the court which passed the decree and to:

(a) get the decree amended;

(b) show that the decree is satisfied or is not existing;

(c) get the decree passed against him *ex parte* set aside;

(d) get the decree passed against him set aside on the ground that it was obtained by fraud;

(e) show that the decree is barred by limitation.

In addition to above grounds, the judgment-debtors are also to file stay petitions stating that they have filed civil revisions, appeals or miscellaneous cases and prayed for stay of execution proceeding till

[38] *See*, the Report of the Law Reforms Commission, 1967-70, 377- 378

disposal of those cases. Once they are able to get an order of stay, they do not further appear before the court and do not try to take any steps to dispose of those civil revisions, appeals and miscellaneous cases.

During the course of investigation it was observed that in the Second Court of Joint District Judge, Sylhet about three thousands execution cases were pending in 2009 out of which a considerable number of those cases are stayed for a long time. Among the pending execution cases statistics of some of the oldest cases are given below:

Figure No. 1

Sl. No.	**Nature of execution case with number**	**Reasons for stay**
1	Title Execution 20/1961	Civil Revision 1333/1962
2	Title Execution 22/1961	Civil Revision 1337(F)/1962
3	Title Execution 20/1970	Civil Revision 12(S)/1984
4	Money Execution 7/1971	Misc. Case 03/1984
5	Money Execution 7/1965	Civil Revision 2407/1967
6	Title Execution 5/1968	Civil Revision 1791(7)/1968
7	Title Execution 01/1978	Misc. Case 14/1979
8	Title Execution 10/1976	Misc. Appeal 210/1977 in the District Judges' Court
9	Title Execution 7/1978	Title Appeal 104/1978
10	*Artharin* (Money Loan) Execution 30/1995	Civil Revision 732(F)/1999
11	Small Causes Execution 6/1989	Civil Revision 5/1998
12	Title Execution 13/1980	Title Appeal 35/2001
13	Title Execution 12/1968	Title Appeal 271/1974
14	Small Causes Execution 4/1984	Misc. Case 71/1984

From an investigation and analyzing data shown in Figure No.1 it appears that Civil Revision Case Nos. 1333/1962, 1337(F)/1962 and 12(5)1972 are still pending in the High Court Division of the Supreme Court of Bangladesh. As a result, Title Execution Case Nos. 20/1961 and 22/1961 are being stayed for 50 years and Title Execution Case No. 28/1970 is pending for 40 years. On the other hand, Title Execution Case No. 5/1968 is pending for 42 years due to non-disposal of Civil Revision No. 1791(7)/1968. Miscellaneous Case No. 3/1984 has been pending for 26 years and Miscellaneous Case No. 14/1979 is pending for 31 years staying money execution case No. 7/1971 for 39 years and Title Execution Case No. 7/1978 for 32 years. Miscellaneous Appeal No. 210/1977 has been pending in the Court of District Judge, Sylhet for 33 years which stayed Title Execution Case No. 10/1976 for about 34 years. Accordingly Title Appeal No. 271/1974 is pending in the same court for 26 years and as a result, this stayed the operation of Title Execution Case No. 12/1968 for about 42 years.

In respect of quick disposal of small cause courts case in Rule 313 of the Civil Rules and Orders (Volume I) it is stated that suits under the Small Causes Courts Act should be disposed of as expeditiously as possible and great caution should be exercised in the matter of granting adjournments. If a Small Cause Court suit is allowed to be dragged on for a long period like other suits on the original side, the very object of the enactment is defeated. It is highly unsatisfactory that a contested suit under the Small Causes Courts procedure should remain undisposed of after three months from its being filed. Uncontested suits should be disposed of much earlier. But denying these provisions of law, Small Cause Execution Case Nos. 4/1984 and 6/1989 are being stayed for 27 years and 22 years respectively due to pending of Miscellaneous Case No. 71/1984 and. Civil Revision No. 5/1990.

The Government of Bangladesh enacted Money Loan Court Act, 1990 (Act 4 of 1990) to dispose of Money Loan Cases more quickly. This Act was subsequently re-enacted in 2003 with the same objectives. But it appears from Figure-1 that *Artharin* Execution Case No. 30/1995 has been staying for 15 years by Civil Revision No. 732(F)/1999 which are still pending before the High Court Division.

From the above discussions, it can be easily said that granting stay orders by the High Court Division and pending of civil revision petition in that court for years after years and even decades after decades is, among others, the main hindrance in the disposal of execution cases causing delay in those cases which in turn frustrated the decree-holders in getting fruits of the decrees.

Rule 29 of Order XXI provides for stay of execution, pending disposal of suits between judgment-debtor and decree-holder. In the case of ***Shaukat Hussain*** v. ***Bhuneshwari Devi***[39] the Supreme Court of India observed that for this rule to apply there must be two simultaneous proceedings in court:

(i) a proceeding in execution of the decree at the instance of the decree-holder against the judgment-debtor; and

(ii) a suit at the instance of the judgment-debtor against the decree-holder.

In the case of ***Anop Chand*** v. ***Hirachand***[40] it was held by Rajasthan High Court that the provisions of Rule 29 are not mandatory, but discretionary. Gouhati High Court in the case of ***Quazi Touhidur Rahman***

[39] AIR 1973 SC 528
[40] AIR 1962 Raj 223

v. ***Nurbanu Bibi***[41] held that the above discretion must be exercised judicially and in the interests of justice, and not mechanically and as a matter of course. It cannot be exercised so as to allow a party to abuse the process of law. But practically it is observed that some of the presiding officers on very flimsy grounds are staying execution cases. For example, if on the basis of an exparte decree, an execution case is started by the plaintiff decree-holder, in most of the cases defendant judgment-debtor files petition to stay the operation of the execution case on the ground of filing miscellaneous case by him. Courts are allowing those petitions more frequently and have been passing orders in respect of stay of the execution case. This practice is very bad and injurious for decree-holder. In Bangladesh, like other original suits, trials of miscellaneous cases are also delayed for long time for different reasons. We have noticed from Figure No.1 that miscellaneous case No. 71/1984 and 14/1979 are pending in the Court of Joint District Judge, Second Court, Sylhet for several decades. Stay of execution case on the basis of miscellaneous case is not a proper practice. It is the duty of the court to execute the decree as far as possible to give justice to the decree-holder. It is a cardinal principle of law that executing court cannot go behind the decree. For the reason, first of all, the court will execute the decree and if the miscellaneous case be allowed and in the long run subsequently defendant won the original suit, then he has every opportunity to take proper steps under section 144 of the Code of Civil Procedure. Observing the situation, Justice Mitra, in the case of ***Judhisthir*** v. ***Surendra***[42] said:

> "The fundamental consideration is that the decree has been obtained by a party and he should not be deprived of the fruits of that decree except for good reasons. Until that

[41] AIR 1976 Gouhati 39
[42] AIR 1969 Orissa 233

> decree is set-aside, it stands good and it should not be lightly dealt with on the off chance that another suit to set aside the decree might succeed... The decree must be allowed to be executed, and unless an extraordinary case is made out, no stay should be granted. Even if stay is granted, it must be on suitable terms so that the earlier decree is not stifled."

6.11 **Transfer of Decree**

A decree-holder starts an execution case by an application made under Order XXI rule 10 of the Code of Civil Procedure for executing his decree against a judgment-debtor or his legal representative. According to the existing provisions of law, a decree may be executed by the court that passed it or by a court to which it is transferred for execution. The court which passed a decree may, on the application of decree-holder, send it for execution to another court. The transferee court has to certify to the court which passed the decree the fact of such execution or if it fails to execute it, the circumstances under which it failed to execute it. Under section 42 of the Code of Civil Procedure, the powers of transferee court to execute a decree are the same as those of the court which passed the decree and are subject to the same limitations, but its jurisdiction is limited to the execution of the decree only and extends to no other matter. The transferee court has no power under section 39 to transfer a decree to another court if the judgment-debtor leaves the jurisdiction of the transferee court or to substitute the legal representatives of the judgment-debtor dies in the mean time. In such a situation, the transferee court cannot execute the decree and is obliged to return it to the court which passed the decree with a certificate of failure of execution. The decree-holder has to apply again to the court which passed the decree for transfer of the decree to the court within whose

jurisdiction the judgment-debtor might be residing or for substitution, as the case may be. The absence of the powers in the transferee court causes delay in the disposal of execution cases. Though section 42 contemplates conferring on the transferee court the powers of which passed the decree, in spite of that in practice for want of adequate powers, the transferee court cannot take further steps for expeditious disposal of execution cases. This matter was fully considered by the Law Reforms Commission headed by Justice Hamoodur Rahman through structured questionnaires and after obtaining opinions the Commission found that opinions generally held in favour of investing the transferee court with some additional powers. The Commission summarized those opinions and finally in its report at page 381 disclosed that the transferee court should be invested with the following powers:

(a) adding legal representatives of a deceased judgment-debtor under section 50(1) of the Code;
(b) recognition of assignment of decrees under Order XXI rule 16 of the Code;
(c) transfer of the decree to some other court under section 39 of the Code; and
(d) grant of leave under Order XXI rule 50(2) of the Code.

In respect of giving above additional powers to the transferee court the Law Committee headed by Justice Kemaluddin Hossain in its report submitted in 1976 also recommended that the above powers be conferred upon the transferee courts by necessary amendments of section 42 of the Code of Civil Procedure to eliminate some delay in the execution proceedings.[43]

[43] *See*, the Report of the Law Committee, 1976,105

From an overall discussion it is evident that the expeditious disposal of execution cases depends on the application of judicial mind and serious attention of the judges of the subordinate courts. As there is hardly any legal justification for delay in the satisfaction of a decree after adjudication, and as the majority of litigants are of limited means, undue delay in the disposal of execution cases has the effect of placing the redress obtainable through court beyond the reach of many. Further, delay in the disposal of execution cases shakes the confidence of the public in the administration of justice. The court should give equal importance to the expeditious disposal of execution cases. The litigant public should be allowed to enjoy the fruit of the decree. It is also noticed that the presiding officers do not show their interest in the disposal of execution cases. Disposal of execution cases, at present, does not give them any credit in comparison to disposal of contested suits. For expeditious disposal of *Artharin* execution cases the High Court Division of the Supreme Court of Bangladesh on 23.6.2003 (vide Memo. No. 59(Kha)G) notified that the presiding Judges of *Artharin Adalat* will get one point in their credit for disposal of one *Artharin* execution case like disposal of a contested suit. Accordingly, these cases are now disposing of by the presiding officers more quickly in comparison to other execution cases. As a result, except the above mentioned cases, thousands of other execution cases are still pending in different courts of Bangladesh. This research work reveals that for timely disposal of all types of execution cases there is a need of issuing other circulars by the High Court Division like Memo. No. 59(Kha)G of 23.06.2003 so that the presiding officers can show their interest in the disposal of those execution cases. Observing the critical condition of execution cases the Law Committee of 1976 at page 108 of its report mentioned that the High Court should issue a circular letter to all courts stressing on the necessity of

expeditious disposal of execution cases, if possible, within four months of their institution. Alternatively, it is suggestible that a party be allowed to submit a petition in the original suit (as a part of it) to start an execution of a decree. There is no need to file a separate case in this respect and thereby there is no need to call for the records or submit any other document to start execution process. However, the other party must be duly informed about the petition of the decree holder and the start of the execution process. In order to introduce this process certain changes can be made in the relevant rules of the Order XXI of the Code of Civil Procedure and the Civil Rules and Orders (Volume I).

CHAPTER VII

7. Delay Reductions and Case Management

7.1 Delay and Administration of Justice

Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility.[1] But even these are not the worst of what delay does. In the case of ***Southern Pac. Transport Co.*** **v.** ***Stoot***[2] it was observed:

> "The most erratic gear in the justice machinery is at the place of fact-finding and possibilities for error multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit. If we do not get the facts rights, there is little chance for the judgment to be right."

Judicial delays, court congestion, legal costs, and other delays in the justice dispensation system are the problems most often complained about by the public in Bangladesh to the fact that the judiciary in this country is overwhelmed by a flood of litigation. Delay invites cost, thus making the justice untenable and stagnant leaving the poor in the land of nowhere but to crave for justice only to God.

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[1] Nawaz, Chaudhary Hasan, '*Delay Reduction with Effective Court Management*', PLD (2004) Journal, 12

[2] 530 SW 2d 930, 931 (Tex. 1975)

7.2 Lack of Case Management: Observations on Some Selected Civil Suits

We have observed that there are lots of causes of delay in the disposal of suits. It can take place at any stage of the suit. The judges, lawyers, court support staffs and to some extent, the litigants are also responsible for delay and for the reasons most of the suits are awaiting for trials for years or decades together. Following are some of these selected cases:

(a) Title Suit No. 57/1963

This case was filed in the 1st Subordinate Judges' Court (now Joint District Judge), Dhaka on 01.04.1963 for declaration of title with recovery of possession and partition. As per plaint, the case of the plaintiff, in short, is that on an amicable partition with his co- sharer one Abdul Gofur got the suit land and subsequently he sold away the same to the defendant nos. 1-4 by a registered deed of sale dated 31.10.1932 and made over possession of the same to them. On 22.7.1942 defendant no.4 transferred his share of the suit plot to his wife Safatun Nessa Bibi by a *Hiba-bil Ewaz* deed and since then the said transferee was in possession of the suit land which is the subject matter of this suit. Safatun Nessa Bibi possessed the suit land till 22.01.1953 when she sold the same to the plaintiff by a registered deed of sale and made over possession of the same to the plaintiff. Thereafter, the defendant No.1 filed a pre-emption case for the suit land against the plaintiff by Miscellaneous Case No. 62/1956 in the First Court of *Munsif* (now Assistant Judge), Dhaka under section 26 of the Bengal Tenancy Act, 1850. But the said miscellaneous case was disallowed. Meanwhile, he dispossessed the plaintiff from the suit land and has kept him out of possession there from. This ouster compelled the plaintiff to file the suit.

We have seen that the plaintiff filed the case on 01.04.63. Summonses were duly served upon the defendants but they did not turn up. Then the Court fixed for *ex parte* hearing of the suit on 24.6.63 which date defendant No.1 appeared and sought adjournment for filing written statement. The court allowed the petition with costs. Finally, written statement was filed on 03.10.63. Issues were framed on 07.12.63 and the Court fixed 01.02.64 for peremptory hearing. At this stage the presiding judge was transferred. The new presiding judge withdrew the case from peremptory hearing fixing the same at the stage of settling date on the ground that the diary being congested. Two dates were passed for the same. Then on 23.7.64 the case was again fixed for peremptory hearing. At this stage, plaintiff on 16.07.64 filed a petition to serve interrogatories upon the defendant No.1 to be answered by him. The defendant on 18.07.64 replied to the interrogatories. Then on 23.07.64 plaintiff prayed for amendment of plaint for adding new defendant as mentioned in the petition of the defendant No. 1. The prayer was allowed and the plaint was amended accordingly. Then the court on 23.07.64 ordered to take off the suit from peremptory hearing and also ordered the plaintiff for serving summons upon the newly added defendants. Defendant No.1 on 16.05.66 filed additional written statement. Some summonses were served and some unserved. The suit was adjourned as many as 33 times for service of summons upon the newly added defendants. Then the suit was fixed for settling date on 08.04.66 and subsequently fixed for peremptory hearing on 25.05.66 but on 23.05.66 defendant No.1 filed a petition for shifting the date of peremptory hearing. Prayer was allowed and 27.06.66 was fixed for peremptory hearing. Again the defendant obtained three adjournments. On 21.11.66 defendant No.1 filed a petition under section 4 of the Partition Act, 1893 and prayed for directing the plaintiff to receive the purchased amount

or his claimed amount. On 23.11.66 plaintiff filed objection to the above petition. Plaintiff obtained three adjournments for peremptory hearing. At this stage, in pursuance of District Judge, Dhaka's Order No.7G conveyed by Memo. No.167 (6) E dated 22.2.67 transferred the suit from the Court of 1st Subordinate Judges' Court to the 5th Subordinate Judges' Court, Dhaka for disposal.

The new court fixed 07.03.67 for peremptory hearing renumbering the case as Title Suit No. 22/1967. Again two adjournments were sought by the defendant No.1.The court allowed those petitions with costs. Again the plaintiff sought four adjournments continuously and the defendant sought three. Finally on 05.03.68 the case was opened and three PWs[3] and three DWs[4] were examined and cross examined. The evidence was closed on that day and argument was heard. Then the suit was fixed for delivery of judgment on 30.03.68. The suit was decreed against the defendant No.1 with costs and *ex parte* against the rests without costs in preliminary form. But before drawing up of decree the defendant No.1 on 06.04.64 filed a petition praying for stay of execution case though the plaintiff did not file any execution case. About seven months time was killed for the defendant No. 1. On 11.04.68 decree prepared.

Being aggrieved and dissatisfied with the judgment and decree defendant No.1 preferred an appeal. The appeal was registered as Title Appeal No. 185/1968 which was disposed of on 16.7.92 by the Additional District Judge, First Court, Dhaka long after 24 years of passing the decree in original suit. The appellate court diallowed the appeal with costs and

[3] PW stands for plaintiffs' witness
[4] DW stands for defendants' witness

upheld and confirmed the judgment and preliminary decree. Thereafter the defendant No.1 rushed to the High Court Division and filed a Civil Revision which was registered as Civil Revision No. 2335/92. A Single Bench of that Division on 13.05.1997 made the rule absolute and also set-aside the judgments and decrees of the courts below. Being aggrieved, the heirs of the plaintiff of the original suit preferred Civil Appeal No. 270/2002 before the Appellate Division of the Supreme Court of Bangladesh. The Appellate Division allowed the appeal with costs. But the court allowed the defendants' prayer to buy the share of the plaintiff under section 4 of the Partition Act. Thereafter the record was sent back to the trial court on 10.07.08. On 14.07.08 the heirs of both the parties filed separate petition to implead them as plaintiff and defendant respectively. The court allowed those petitions and amended the plaint on 14.08.08. On 14.07.08 plaintiff side filed another petition under Order 26 Rule 1 of the Code of Civil Procedure for appointing a survey knowing lawyer to make the preliminary decree final. The court posted the petition on 25.08.08 for hearing on which date it allowed and directed the respective party to deposit commission fees on 05.09.08. It was a government holiday on 05.09.08 and then the record was put up on 07.09.08 on which date the plaintiff sought adjournment. He deposited the commission fees on 11.09.08. Then the court appointed a Commissioner for holding local investigation and also directed him to submit his report on 07.10.08. The Commissioner did not file his report on 07.10.08, 27.10.08, 18.11.08, 04.01.09, 16.2.09, and 29.3.09; and on 02.04.09 he filed his report. The defendant did not file any written objection though he got sufficient opportunity. In the circumstance, the court on 02.06.09 made the preliminary decree final.

The story of the above case proves that the suit was filed in 1963 and disposed of in 2009 taking 46 years time due to latches of the Courts and the parties.

(b) Title Suit No.104/1964

This suit was filed on 29.07.64 for partition in the 1st Subordinate Judges' Court (now Joint District Judge), Dhaka. On 01.08.64 the plaintiff filed a petition praying for an order of maintaining *status quo* against the defendants and also prayed for appointing an advocate commissioner to cause a local investigation. The prayers were allowed and the court directed the plaintiff to deposit the commission fees on 07.08.64. The court also directed the parties to maintain *status quo* in respect of disputed land. On 19.08.64 plaintiff deposited the commission fees. Defendant No.7 appeared on 02.09.64, whereas defendant Nos. 1-3, 6-7 and 9-10 appeared on 24.09.64. This day defendant Nos. 5, 9 and 10 entered appearance and prayed time for filing written statement. The court allowed the petition and fixed 12.11.64 for filing written statement. Again, defendant Nos. 5, 8 and 9 filed separate petitions praying time for filing written statement. The case was fixed for filing written statement on 07.12.64 which date they again sought adjournment. The defendant No.8 on 23.12.64 filed written statement, whereas defendant No. 8 and 9 sought adjournments. The court allowed the petition and fixed 11.01.65 for the same. Again on 11.01.65 defendant No.9 filed time petition and the court allowed time fixing 13.02.65 for written statement. It appears that on 14.01.65 defendant No.9 filed a petition for submitting written objection against the commission report and it was rejected. On 19.01.65 this defendant filed an application under section 151of the Code of Civil Procedure supported by an affidavit with a prayer to vacate the order of 14.01.65. The court after hearing the

parties allowed the petition and vacated the above order by its order No. 16 dated 06.02.65. This day plaintiff filed an application for amendment of the plaint for adding one person in the suit as defendant and for the reason the court allowed 19 adjournments. The defendant No.5 and 9 did not file written statement and the court fixed 16.11.65 for settling date and 23.12.65 for peremptory hearing. But this day the plaintiff sought adjournment and subsequently took 9 adjournments. On 18.07.65 the plaintiff filed another petition for directing the defendant Nos.4, 6, 8 and 9 to produce their respective deeds. The court allowed the petition on 21.02.66 and directed them to produce those deeds on 10.03.66. The defendants filed the deeds accordingly. At the peremptory hearing both the plaintiff and defendant again obtained several adjournments. Plaintiff took 5 adjournments for examining witnesses whereas defendant obtained 4. Again both the parties started to seek adjournments and at this stage the case was transferred to 5th Subordinate Judge Court as per District Judges' order No. 10(g) of 4.5.68.

Accordingly on 27.05.68 the case was renumbered as Title Suit No.10/1968. In this court ,defendant side again filed petition for issuing summons upon the witnesses. Both parties again sought several adjournments and those were also allowed. Finally on 14.01.70 PW.1 was partly examined, defendant side did not take part in cross examination and the suit was fixed for further hearing on 21.01.70. After some adjournments sought by the parties the defendant Nos. 3, 11 and 12 filed a petition for answer to interrogatories. The petition was allowed and fixed 28.05.70 for answer to the interrogatories. On 08.08.70 plaintiff filed answer to the interrogatories. It appears that on 06.03.71 and 27.04.71 no one appeared in the case. According to the provisions of Order 9 of the Code of Civil Procedure it was the duty of the court to dismiss the suit for default of the

plaintiff but ignoring the provisions of law the court *suo motu* shifted the date of the suit causing delay. Again on 19.05.71 plaintiff took no steps in respect of defendant No.18 but the court again without showing any reasons shifted the date of the case and directed the plaintiff as last chance for taking steps on 04.06.71. On this day plaintiff was absent and the court without dismissing the suit again fixed for steps and fixed 18.07.71 for hearing of the case and on this day the plaintiff was absent. Thereafter on 09.08.71 plaintiff took steps and an order of issuing summons upon the defendant No.18 was passed. The suit was then withdrawn from peremptory hearing list and fixed for return of summons. Total 11 adjournments were granted in this way for no valid purpose. Finally, the case was fixed for peremptory hearing on 02.09.72. At this stage defendant Nos. 8 and 9 again sought 9 adjournments. On 26.04.73 one Morshed Ali Khan Majlish appeared and filed a petition praying for being added as a defendant. The prayer was allowed. Again, defendants took 3 adjournments. It appears that from 26.04.73 to 20.01.75 only the defendant side took 26 adjournments and on 12.02.75 witnesses were examined and the court on 29.04.75 delivered judgment. The preliminary decree was prepared on 11.07.75. Then on 05.08.75 the plaintiff side filed a petition for appointing an advocate commissioner to make the preliminary decree final. After a lapse of one year the advocate commissioner was duly appointed on 05.04.76. But the defendant side on 05.05.76 filed a petition seeking stay of suit on the ground that they had filed a civil revision before the High Court Division but they failed to submit any stay order from the High Court Division after consuming 29 years time. The court frequently allowed this long time to submit the stay order without considering the consequence of the suit as well as the hardship of the plaintiff side. After a gap of 29 years on 23.08.05 the advocate commissioner submitted his report and no one filed written objection against the advocate commissioners' report but the

court again without any valid reason consumed almost one year time and on 23.04.06 made the preliminary decree final on the basis of commission report.

After drawing up of final decree Mohammad Hossain and others on 10.06.07 filed a petition under Order 1 Rule 10 of the Code of Civil Procedure for adding them as defendants in the suit. Neither the plaintiff nor the defendant of the suit filed any objection against the above petition but a third party on 05.07.07 filed an objection against the said petition. The court fixed o5.11.07 for order in respect of the petition on which date petitioner Mohammad Hossain filed another petition for setting aside the preliminary and final decree of this suit. Actually there is no provision for challenging a decree of the court by filing such types of petition. Any aggrieved party may pray for setting aside a decree by filing a fresh suit in the court of a competent jurisdiction and in the present case it was the duty of the court to summarily reject the petitions filed by petitioner Mohammad Hossain. But very reluctantly the court posted the petition for hearing on 21.01.08 and adjourned 16 times for further hearing. The suit finally fixed for hearing on 29.7.09 which is still pending.

The history of the case indicates that it has been pending for 46 years without any reasons. After passing the final decree the suit is pending for 4 years only to dispose of two petitions. The research study reveals that it is caused due to non application of judicial mind of the judge himself.

(c) Title Suit No. 220/1967

This suit for declaration and cancellation of deed was filed on 07.08.1967 in the 1st Court of Subordinate Judge, Dhaka. It appears from the order sheet of the record that in between 15.08.67 to 12.05.69 the court

allowed 30 adjournments for service of summons, steps of the plaintiff and appearance of defendant side. Though summons was served upon the defendant but they did not turn up in time. On 17.06.69 the Court fixed the suit for *ex parte* hearing when the defendant appeared through *Vokalatnama* and sought adjournment for filing written statement. The prayer was allowed. This side took 3 adjournments for filing written statement and after two years of filing of the suit the defendant on 11.08.69 filed written statement. Issues were not framed in time. Court adjourned the suit for 4 times for hearing of this matter and on 12.01.70 the issues were framed. The suit was fixed for peremptory hearing on 01.06.70. Plaintiff obtained 4 adjournments and the defendant 2 adjournments. In this stage the case was transferred to the Subordinate Judge, 4th Court, Dhaka in pursuance of District Judges' Order dated 21.06.72 as per memo. No.11 (G). The suit was renumbered as title suit 38/1972 in the new court. The court fixed the suit for peremptory hearing on 14.08.72. Again the defendant side obtained 8 adjournments. Thereafter on 26.11.73 the court decreed the suit *ex parte*.

Miscellaneous Case No. 70/73 was filed on 03.12.73 under Order 9 Rule 13 of the Code of Civil Procedure by the defendant side for setting aside the *ex parte* decree. This case was allowed on 21.8.74 and the original suit was revived and the same was again fixed for peremptory hearing but the defendant further sought 5 adjournments. Suddenly on 13.6.75 the guardian of defendant No.5 (who was a minor) filed a petition on behalf of him for filing written statement and contesting the suit. The court disallowed the petition. But on 28.07.75 he filed another petition to treat the defendant No. 5 as minor and to allow him to contest the suit. For hearing and disposal of this petition court shifted 6 dates and on 21.08.75 allowed the petition. This added defendant took 24 adjournments for filing written

statement and on 19.08.76 filed written statement. The defendant sides further sought 9 adjournments. But the suit again transferred on 07.12.77 to Subordinate Judge, 5th Court, Dhaka for disposal as per District Judges' order of 05.12.77. The case was renumbered as title suit No. 99/1977. Both parties again sought adjournments. On 23.02.78, 24.02.78 and 27.02.78 PWs were examined and on 14.03.78 only the evidence of DW.1 was examined. Thereafter defendant side further took 8 adjournments. The trial was concluded on 06.04.78 and the court adjourned it 5 times for hearing arguments. Finally on 18.04.78 the judgment was delivered. Decree was prepared on 25.04.78.

The defendant side filed First Appeal No. 84/1979 before the High Court Division and the High Court Division by its judgment dated 22.05.84 disallowed the appeal. It is a matter of great sorrow that the High Court Division consumed about 23 years time in sending back of the original record to the trial court. Thereafter, the plaintiff on 20.05.07 filed a petition to the trial court for sending the order of judgment to the respective Sub-Registrar for making note of cancellation of the disputed deed in the *Balam* (Deed Registration Register). Defendant no.2 filed written objection on 28.01.08 against that petition. The court allowed 15 adjournments for disposal of the matter and finally allowed the petition of the plaintiff on 11.01.09.

From the study of the case it appears that for disposal of the above case 42 years time was consumed.

(d) <u>Partition Suit No. 424/1974</u>

This partition suit was filed on 09.09.74 by the plaintiff Pagal Chandra Das & another in the First Court of Subordinate Judge, Dhaka

against defendant Umesh Chandra Das & others. The defendant no. 15 filed written statement on 13.06.75 after more than one year of service of summons. On 15.02.75 plaintiff filed a petition under Order 39 Rule 1 and 2 of the Code of Civil Procedure against the defendant Nos. 6-9 seeking temporary injunction. The court issued show cause notice upon the defendants and also directed the parties not to change nature and character of the disputed land till disposal of the temporary injunction petition by an order of *status quo*. The defendants took 4 adjournments for filing written objection against the temporary injunction petition. In the meantime on 08.05.75 defendant No. 17 filed another petition praying for temporary injunction against plaintiff and defendant Nos. 6-13. The court did not pass any order regarding this petition. Defendant No. 17 of the suit filed written statement on 14.06.75. One Habibur Rahman on 11.06.75 filed a petition under Order 1 Rule 10 of the Code of Civil Procedure praying for impleading him as a defendant in the suit. The court fixed 15.06.75 for hearing of the petition but it has been observed from the order sheet of the case record that on that day the record was not put up before the Judge. On 13.06.75 defendant No 1 and 15 filed separate written statements. On 20.07.75 plaintiff filed a miscellaneous case under Order 39 Rule 2(3) of the Code of Civil Procedure for violation of the injunction order. The court took cognizance of the case and fixed 01.09.75 for filing written objection. The opposite party obtained 5 adjournments but finally failed to submit written objection. Thereafter the court allowed the miscellaneous case on 15.01.76 *ex parte*. At the same time the court directed the plaintiff petitioner of this case to file requisites by 30.01.76. It appears that the plaintiff petitioner took 5 adjournments for filing requisites. In the meantime the defendant- opposite party Nos. 6-9 filed a petition for reviewing the *ex parte* order. The court disallowed the petition. It appears

further from the order sheet of the record that the defendant- opposite party filed a Civil Revision under section 115 of the Code of Civil Procedure and for the purpose the High Court Division on 01.10.76 as per its office memo No. 1392/F called for the record of the miscellaneous case.

In the original suit a lot of adjournments were sought by the defendant side. The court reluctantly allowed those adjournments. On 19.12.75 the suit was fixed for framing of issues. On 21.11.75 defendant No. 18 filed written statement. It appears that on 21.11.75 no order was passed in respect of framing of issues. It is not clear from the record when or which date the issues were framed. The court then ordered to take steps by the plaintiff under section 30 of the Code of Civil Procedure and fixed 24.01.76 for this purpose and on 24.01.76 no steps were taken by the plaintiff. Again it appears that without any consistency in the record suddenly the court fixed 25.10.76 for peremptory hearing and on this date no order was passed. It appears from the order of 23.11.76 that the court shifted the date of peremptory hearing of the suit on 31.01.77 on which date plaintiff sought adjournment and it was allowed by the court. The suit was again fixed for peremptory hearing on 30.05.77 and it was a public holiday. The case was then put up on 31.05.77 and it was shifted to 05.09.77 for peremptory hearing. In the meantime on 26.08.77 one Jharna Rani Das filed a petition under Order I Rule 10 of the Code of Civil Procedure adding her as a defendant in the suit which was allowed instantly. On 05.09.77 plaintiff prayed for adjournment. The court allowed it and fixed 14.11.77 for peremptory hearing on which date the presiding judges was on leave and the acting judge shifted the date of peremptory hearing oo 19.12.77. On 19.12.77 the suit was not heard because of both parties sought adjournments. Petitions were allowed and the next date for peremptory

hearing was fixed on 03.04.78. It appears that on this day no order was passed but surprisingly on 07.07.78 the record was put up for hearing when the presiding Judge was on leave. It is evident that there are a series of irregularities in this record regarding the date of put up and hearing of the suit. On 07.07.78 again the suit was not put up but on 08.07.78 one Gopal Chandra filed a petition under Order I Rule 10 of the Code of Civil Procedure for adding him in the suit as defendant. Four dates were fixed for hearing of this petition and in one date the presiding Judge was on leave. The petition was finally allowed on 23.11.78. It is very interesting to note here that between 1978 and 10.09.09 the suit was adjourned on several times due to leave of the presiding judge, or judge being busy with other business and for boycott of the court. On 28.08.79 the suit was withdrawn from peremptory hearing stage and fixed 21.09.79 for filing written statement of the added defendants. The added defendants on different dates filed written statements. The court on 29.12.86 framed the issues of the suit. It is not clear why the court framed issues on that day when the suit was earlier fixed for peremptory hearing? However, after framing of issues the suit was fixed for settling date on 22.02.87 and subsequently it was fixed for peremptory hearing on 30.07.87 on which dates none of the parties were present. But the court without dismissing the suit for default shifted the date of hearing for the ends of justice. On 23.08.87 plaintiff filed a petition under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint and it was allowed on 28.09.87. Thereafter the suit was again fixed for peremptory hearing on 01.01.88 and this day the heirs of defendant No.16 filed a petition for substituting them in the suit stating that their predecessor in interest died. Subsequently it was allowed on the same day. The suit was again withdrawn from peremptory hearing stage and fixed for taking steps. The substituted defendants obtained a series of adjournments

for filing written statement from 16.2.88 to 26.6.90. The court reluctantly allowed those petitions. Finally, on 26.09.90 they did not file written statement and the court seeing no other alternatives again fixed 05.08.90 for settling date. At this stage the suit was transferred to 4th Court of Subordinate Judge, Dhaka by the notification of the Ministry of Law, Justice and Parliamentary Affairs per SRO No. 183- Law/90/227- Justice-4/C-16/84 dated 02.02.90 and the suit was renumbered as Title Suit No. 85/1992. The new court fixed 10.09.90 for settling date but on 27.08.90 a petition was filed by the plaintiff under Order XXII Rule 4 of the Code of Civil Procedure for substituting the heirs of the deceased defendant No.13 and this petition was heard on 10.09.90 and allowed by the court. The suit was again fixed for taking steps. That after a long gap of 4 years neither the plaintiff had taken steps nor the substituted defendants filed written statement. Finally the suit was fixed for peremptory hearing on 13.02.94. On this day the suit was again withdrawn from peremptory hearing stage due to death of defendant No. 20. The suit was again fixed for steps and it killed 6 years time for taking steps by the parties. Considering the case as a long pending case the Court as per its order of 10.09.99 directly fixed it for peremptory hearing and on 04.01.2000 neither the parties nor their engaged lawyers were found present on repeated calls before the court. The court dismissed the suit for default.

Being aggrieved by the dismissal order of 04.01.2000 the plaintiff under Order IX Rule 4 of the Code of Civil Procedure filed miscellaneous case No. 6/2001 and it was allowed 04.07.2001.

On the basis of result of miscellaneous case No. 6/2001the original suit No. 85/92 was revived and fixed for taking steps by the plaintiff. The

plaintiff filed summons and after service of summons it suit was then fixed for peremptory hearing on 01.08.01. At this stage both the parties sought a lot of adjournments and thereafter parties examined witnesses. The suit was then fixed for hearing arguments on 08.11.06, 22.11.06, 28.11.06 and 15.01.07. At this stage defendant No. 21 filed an order of the High Court Division in respect of staying all further proceedings of the suit for a period of 6 months. The stay order was vacated subsequently and the suit was again fixed for hearing of arguments. In the mean time, defendant No. 5 died. The heirs of this defendant were substituted on 10.09.09 and resultantly the suit was withdrawn from argument hearing stage. Since 1974 the suit is still pending for further peremptory hearing.

(c) Title Suit No. 363/1983

The above suit for declaration of title and recovery of possession was filed by the plaintiff Hamida Begum against the defendant Shamsul Huda @ Babul in the 2nd Court of Subordinate Judge, Dhaka on 22.11.83. After service of summons the suit was fixed for *ex parte* hearing on 14.02.87. At this stage on 02.03.87 defendant filed written statement and the suit after observing formalities was fixed for settling date with an observation that the diary of the court being congested. The suit was then fixed for peremptory hearing on 19.03.91. Both the parties sought a lot of adjournments and at this stage on 05.02.95 plaintiff filed a petition for local investigation under Order 26 Rule 9 of the Code of Civil Procedure. The prayer was allowed. The deposition of the parties was recorded and the suit was fixed for hearing of arguments on 18.08.98. But on 06.10.98 defendant No.1 filed a petition for withdrawal of the suit from argument stage. The prayer was allowed and the suit was fixed for peremptory hearing on 10.11.98. Again both the parties sought a lot of adjournments. Then the

deposition of the defendant side was recorded. After closer of examination of witnesses the suit was then fixed for argument hearing on 15.05.07. The suit was again withdrawn from this stage on 18.06.07 following an application of the plaintiff and fixed for further peremptory hearing. Both the parties again sought several adjournments and till 06.01.2010 the suit is pending for further hearing.

(f) Small Cause Suit No. 05/1986

According to the provisions of Rule 313 of the Civil Rules and Orders (Volume I) suits under the Small Causes Courts Act, 1887 should be disposed of as expeditiously as possible and great caution should be exercised in the matter of granting adjournments.

But due to various reasons the above provisions of law in many cases are not followed and on different occasions the Small Causes Court suits are delayed. The above mentioned suit *i.e.* 05/1986 was filed by on 03.04.86 by the plaintiff in the Sadar Assistant Judges' Court, Naogaon for eviction of the defendant from the disputed premise and also for recovery of arrear money amounting to Taka five hundred and sixty only for the rent of two small rooms of a house. The monthly rent of the rooms was fixed only at Taka 20.00 per month. The defendant hired the rooms in the year 1962 from the father of the plaintiff. The monthly rent of the rooms was subsequently increased to Taka 25.00 only. Summons was duly served upon the lone defendant in time but the defendant did not appear before the court. As a result, the court fixed the suit for *ex parte* hearing on 31.07.86 on which date the defendant appeared and sought adjournment for filing written statement. Thereafter the suit was shifted to 13.11.86, 01.01.87, 19.03.87, 11.04.87and 30.04.87 for this purpose. Each of the days defendant sought

adjournments. Then the defendant on 01.06.87 filed written statement. But the court without fixing the date for peremptory hearing settled it for settling date and in the meantime defendant on 15.07.87 filed a petition for amendment of his written statement which was rejected by the court. Thereafter he prefers civil revision No.191/1987 in the High Court Division of the Supreme Court of Bangladesh which was disallowed on 02.01.88. The trial Court received the case record from the High Court Division on 08.07.88 and fixed 10.8.88 for peremptory hearing. The suit was in the peremptory hearing stage for about 4 years. During this period the plaintiff sought only 10 adjournments but the defendant obtained more than 100 adjournments. This is a matter of great concern that the presiding officers of Sadar Senior Assistant Judges Court, Naogan did not take any positive steps of preventing the defendant from seeking adjournments.

It appears from the record that on 05.03.92 the deposition of plaintiff Gour Gopal Roy was partly recorded and on that day defendant filed time petition stating that he will file a civil revision before the High Court Division and again started to file time petition without filing the civil revision. The suit was then decreed *ex parte* on 03.09.92. Being aggrieved and dissatisfied, the defendant Kala Chand Pramanik filed a miscellaneous case on 20.09.92 which was allowed on 07.04.92 and the original suit was revived. The suit was then settled for peremptory hearing on 20.08.97. Defendant again filed time petitions. Thereafter, it was fixed for peremptory hearing on 23.10.98, 19.10.97, 02.07.98, 06.08.98, 29.10.98, 01.01.99, 25.04.99, 15.06.99, 20.09.99 and 01.11.99. Each of the days defendant filed time petitions which were allowed by the court without imposing any costs.

It is very interesting to note here that on 01.11.99 defendant filed another petition calling for the record of title suit No. 104/1991. This title suit was filed by Kala Chand Pramanik against Gour Gopal Roy claiming title of the disputed two rooms. The said petition was rejected by the court and the suit was again fixed for peremptory hearing on 13.01.2000, 09.03.2000, 20.04.2000, 21.06.2000 and 02.08.2000 but the hearing was not held because of the defendant.

As a presiding judge, the researcher, found from the order sheet of the record that on 13.09.2000 the suit was fixed for *ex parte* hearing and on that day the defendant filed a petition under section 151 of the Code of Civil Procedure for withdrawing the suit from *ex parte* hearing and also prayed for fixing the suit at peremptory hearing stage. The court allowed the petition and it was again fixed for peremptory hearing on 29.11.2000, 31.01.01, 28.03.01, 16.07.01, 31.07.01, 30.08.01, 05.09.01, 25.09.01, 01.11.01, 08.11.01, 05.01.02, 04.02.02, 09.03.02, 11.04.02, 23.05.02 and 30.06.02. It is again observed that each of the days defendant sought adjournments. It is further observed that following an application of the defendant the court for the ends of justice shifted the suit to 06.07.02 for peremptory hearing which date the defendant filed an additional written statement stating some irrelevant matters. It is a cardinal principle of law that if the plaintiff made any amendments to his plaint only in that cases the defendant can file additional written statement. But ignoring the principles of law the defendant filed the above mentioned additional written statement after 16 years of filing his original written statement. In this situation, the court, for speedy disposal of the suit, summarily rejected the petition and fixed 30.07.02 for peremptory hearing. The defendant again started to kill times and for the reason it was not possible for the court to conclude the

trial. The defendant again filed a Civil Revision in the High Court Division and this petition was rejected after laps of another one year time. The suit then comes back to the trial court on 06.05.03. At last, after examining the parties the court decreed the suit on 20.03.04 with a cost of Taka 20,000/-.

After getting decree, the plaintiff-decree holder filed an execution case for evicting the defendant- judgment debtor. During this time the defendant filed a civil revision under section 25 of the Small Causes Courts Act, 1887 against the judgment and decree. The High Court Division admitted the revision and stayed all further proceedings of the execution case. The civil revision is still pending before the High Court Division. As a result, the plaintiff of Small Cause Suit No. 05/1986 has been roaming in the court premises for about 26 years for getting possession of two rooms and for recovery of Taka five hundred and sixty only.

The study of above mentioned case indicates that the case is delayed in the trial court mostly for the latches of the presiding judges and to some extent for the defendant who was a clerk of an advocate.

(g) **Miscellaneous Case No. 27/85**

This miscellaneous case arising out of original suit No.158/1974 was filed in the Sadar Senior Assistant Judge Court, Naogaon under section 9 of the Specific Relief Act, 1877 for eviction of the defendant from the disputed land.

The short case, leading to the plaint, was that the plaintiff Chanchala Rani Biswas was the owner (as it was stated in the plaint) of the disputed property. Defendant Jalaluddin along with his members of family on 12.06.74 dispossessed her from the land and constructed a hut on it. The

plaintiff then on 10.11.74 filed the case. Summons was duly served upon the defendants. The defendant side appeared on 15.08.78 and filed a petition for filing written statement. They took many adjournments and finally on 31.08.82 filed written statement. The court adjourned many dates for framing of issues without stating any cogent grounds. It subsequently framed issues on 31.03.83. Both the parties sought adjournments for taking steps under section 30 of the Code of Civil Procedure. Thereafter the suit was fixed for peremptory hearing on 15.08.84, 20.10.84, 18.11.84, 30.11.84 and 01.01.85. Each of the dates defendant filed time petitions which were allowed by the court. Having considered the attitude of the defendant side the court allowed the defendant for the last chance to appear for peremptory hearing on 15.01.85 and on this day they again filed time petition. The court rejected the same and fixed 25.10.85 for *ex parte* hearing of the suit. On this day after recording the deposition of the plaintiff, the court decreed the suit *ex parte*.

Being aggrieved with the *ex parte* decree, the defendant filed miscellaneous case No. 27/1985 in the same court under Order IX Rule 13 of the Code of Civil Procedure on 11.02.85. It was observed by the researcher, as a presiding judge of the court, that so many dates were fixed for service of summons upon the plaintiff-opposite party of the case but finally she appeared on 26.07.01 after laps of more than 16 years of filing the miscellaneous case and filed written objection on 22.11.01. Then the case was fixed for peremptory hearing on 30.11.01, 02.01.02, 17.02.02, 25.04.02, 30.05.02 and 18.06.02. Both the parties obtained adjournments. Considering the age of this case as well as the original case, the researcher took initiative to dispose of the case quickly and accordingly the opposite party *i.e.* the plaintiff of original suit on 01.07.02 filed a petition under

Order XII Rule 6 of the Code of Civil Procedure.[5] The court allowed the petition instantly.

As per direction of the court, the original suit was restored on the same day and fixed for peremptory hearing on 18.08.02. On this day the defendant filed time petition. The suit was subsequently fixed for peremptory hearing on 29.10.02, 19.01.03, 06.06.03, 27.08.03. On 30.09.03 the deposition of the plaintiff Chanchala Rani Biswas was recorded. The plaintiff on this day was ready with other witnesses but the defendant side filed time petition for shifting the date of hearing. The suit was then shifted to 26.10.03. The defendant again filed time petition. The court further ordered to shift the date of hearing and on 01.01.04 and also ordered the parties to settle the case through mediation[6]. The learned Advocate of the plaintiff side Mr. Sochin Bagchi was quite enough to appreciate the courts' initiatives and filed time petition for sitting with the defendant to settle the case. The court allowed the petition fixing 15.01.04 for hearing of the suit and on that day the court sat with both the parties and personally heard them and their lawyers. It was an informal sitting which took place at the chamber of the presiding judge. After a thoughtful discussion, the parties agreed to dispose of the case through mediation. The court then ordered them to file a *solenama* (deed of compromise) under section 89A of the Code of Civil Procedure. The parties on 18.01.04 filed the same. Being satisfied with the terms and conditions of the *solenama* the court accepted it and disposed of the suit for ever. This was the first court sponsored ADR in Naogaon Judgeship conducted by the researcher himself.

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[5] Order XII Rule 6 of the Code of Civil Procedure provides that any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment, as the Court may think just.

[6] The Code of Civil Procedure, 1908 was amendment in 2003 by Act 40 of 2003 inserting section 89A and 89B which provides settlement of disputes through mediation and arbitration. For details, *see*, Bangladesh Gazette, Extraordinary, Dhaka November 11, 2003

It transpires that the original suit was filed in 1974 and disposed of in 2004 taking 30 years time. On the other hand, a miscellaneous case has been taken about 18 years time to finish it and in both the cases it was then possible to settle the matter due to initiatives taken by the researcher.

7.3 Case Management in Bangladesh

Bangladesh has long tradition of established legal and judicial system. But the system has failed to live up to meet the demand of the litigant public in the changed national and global reality. Gradually the judiciary is loosing confidence of the people as an efficient and component mechanism to deliver justice. This declining trend of peoples' trust in the country's judiciary is largely due to the traditional legal frame work, backdated court procedure, poor case management and limited institutional capacity including inadequate human resources both in terms of efficiency and number.[7]

7.3.1 Case Management in the Supreme Court of Bangladesh

The Supreme Court of Bangladesh has established its computerized sections for processing the cases. Institution of cases takes place at the filing counter with the support of computerized system. As the advocates or parties in person tender the cases on the counters, the data-entry-operators enter the preliminary details of the cases into the computer, such as names of the parties, advocates' details etc. required for the purpose of registration. This process will make the information regarding filing of cases, court fees, formal defects and limitation thereof automatically. This also will provide the filing information and the like to the parties on the Internet. There are

[7] Kamal, Justice Mustafa, 'Delay in Disposal and Case Management in Bangladesh' in Waliur Rahman and Mohammad Shahabuddin (*ed.*) '*Judicial Training in New Millennium : An Anatomy of BILIA Judicial Training with* difference', (Dhaka: Bangladesh Institute of Law and International Affairs, 2005),105-106

two different cause lists for the Appellate Division and the High Court Division of the Supreme Court of Bangladesh. The daily cause lists for the Appellate Division is issued on its own arrangement day before date fixed. On an average 20 cases are filed at the Filing Counter of the Appellate Division everyday and the same number of cases are listed in the Daily Cause List on an average. The Registry generates 200 copies of the Daily Cause List using cyclostyle machines for copying and distribution among the advocates. On an average 250 cases including petitions are filed at the Filing Counter of the High Court Division. The Daily Cause List is generated by the respective Court clerks sent to the Listing Section for getting it published by the Bangladesh Government Printing Press. Since the backlog of cases had increased alarmingly in the Supreme Court of Bangladesh, various general and special techniques and approaches were adopted to improve the Court efficiency resulting in the reduction of pending cases in the Appellate Division and increase the rate of disposal of cases in the High Court Division. As result, the rate of disposal has increased considerably. For the purpose of easy and speedy disposal of cases in the High Court Division, the Chief Justice of Bangladesh constituted many Benches in the year 2010. The Chief Justice constituted Vacation Benches in both the Divisions for hearing the urgent matters. A large number of cases were heard and disposed of by the Vacation Benches. Necessary steps were also taken for the disposal of old cases and cases of public importance with the shortest possible time.

Bearing the principles of case management in mind, the present Chief Justice of Bangladesh A B M Khairul Haque has introduced digital cause list in the Supreme Court so that all the people connected with the administration of justice can access to the cause list and thus get all the

information from it. A recent statistics shows that the High Court Division has disposed more than 50,000 cases over the last four months following the chief justice's initiative to speed up the disposal of cases. The backlog of cases has now come down to 3.03 lakh from 3.55 lakh four months ago, shows a study report of the Supreme Court.[8] On assumption of office in September, 2010 chief justice took measures for quick disposal of more than one lakh criminal cases pending with the High Court Division. The Court disposed 14,172 cases in January, 2011 while the figure stood at 5,587 in December, 2010. In recent months, more cases have been disposed of than filed, says the report. If the present trend continues, the backlog of cases will gradually come down.[9] At least 3, 17,475 cases remained pending with the High Court Division till January, 2011.On the other hand, at least 9,141 cases remained pending in the Appellate Division. The chief justice's close monitoring and supervision of case management has helped hasten the disposal rate of case. The chief justice also assigned two High Court benches for prompt disposal of the cases filed in 2010. According to eminent jurist Dr. Shahdeen Malik, disposal of over 50,000 cases in four months is a significant achievement of the High Court Division. It clearly justifies the chief justice's initiative that was criticized by a section of lawyers. Dr. Malik further observed that if this trend continues, the backlog of cases will be reduced to a very tolerable level by the end of this year, and the litigants won't have to wait for years to get their case disposed.[10] The chief justice's initiative to speed up disposal of cases had showed good results with some 8,389 cases disposed of in the month of February, 2011.[11] In a statement the chief justice said that if the present trend continues, the backlog of cases will gradually come down.[12] During the last five months,

[8] *The Daily Star*, February 8, 2011
[9] *Ibid*
[10] *Ibid*
[11] *The Daily Star*, March 5, 2011
[12] *Ibid*

with the initiatives of the chief justice some 60,000 cases were disposed of, reducing the number of pending cases to 2.97 lakh.

The chief justice in a full court meeting with the judges of the High Court Division on February 19, 2011discussed about amendments to High Court rules for updating the 1973 version. Different committees of the High Court judges carried out studies on the rules for over five years. In the proposed amendments the Supreme Court is going to include provisions for its judges and lawyers over dealing with cases. Chief Justice ABM Khairul Haque stressed on amending the rules for smooth and effective functioning of judicial and other related units of the court.[13] The rules accommodate publishing daily cause list in the Supreme Court website. The Bench Officers of High Court Division will deliver the following day's list to the bench section before 5.00pm everyday. The rules recommended that the office hours of the court staff will be from 9.00am to 5.00pm, which is now from 9.45am to 5.00pm.[14] It is to be mentioned here that most of the provisions are now followed as tradition which will be include in the rules for giving those a legal shape.

7.3.2 Statement Showing Institution, Disposal and Pendency of Civil Cases in the Appellate Division of the Supreme Court of Bangladesh (2005-2009)

The court management evolved keeping in view the formulation of strategies, statistical data analysis, causes of delay and case flow management. Case flow management is strictly a management process, encompassing all functions that affect movement of the case towards disposition. It encompasses planning, organizing, directing, and controlling these functions. It brings together many resources and functions usually

[13] The Daily Star, February 20, 2011
[14] *Ibid*

thought of as independent entities such as the judge himself, the lawyers appearing before the court, the court support staffs, post office, the bar associations, and the legal culture of the country over which the court exercises jurisdiction. If all the components work together then the rate of disposal will certainly increase. The following data indicates that by applying techniques of court management the Appellate Division has been able to reduce the rate of disposal of cases.

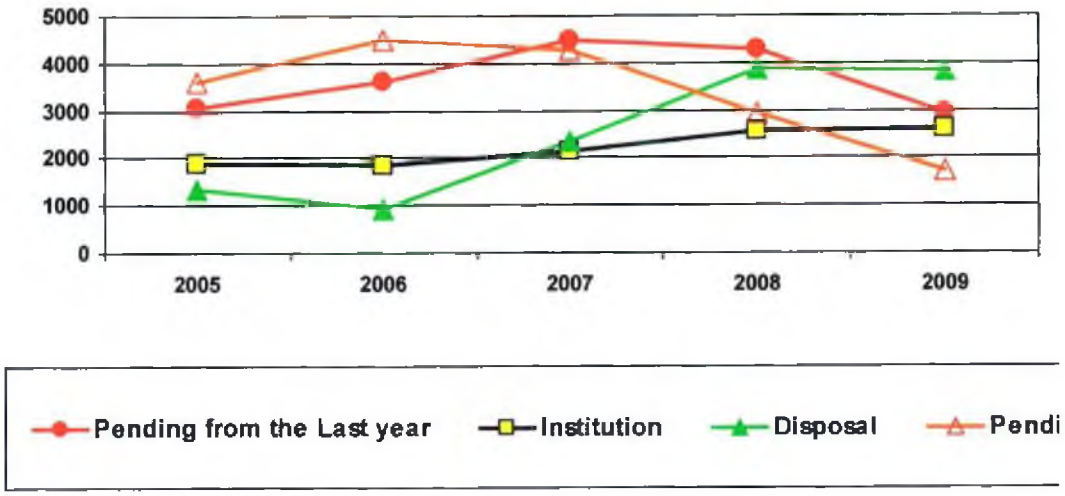
Year	Nature of cases	Total pending at the beginning of the year	Total filing of cases during the year	Total of column 3 and 4	Total disposal of cases	Total pending at the end of the year [Column (6-7)]
1	2	3	4	5	6	7
2005	Petitions (Civil and Civil Review)	3067	1907	4974	1360	3614
	Civil Miscellaneous Petitions	487	583	1070	405	665
	Civil Appeals	1713	284	1997	218	1779
2006	Petitions (Civil and Civil Review)	3614	1836	5450	934	4516
	Civil Miscellaneous Petitions	665	1016	1681	173	1508
	Civil Appeals	1779	184	1781	207	1574
2007	Petitions (Civil and Civil Review)	4516	2122	6638	2351	4287
	Civil Miscellaneous Petitions	1508	757	2265	475	1790
	Civil Appeals	1574	234	1808	626	1182

2008	Petitions (Civil and Civil Review)	4287	2569	6833	3886	2947
	Civil Miscellaneous. Petitions	1790	936	2726	174	2552
	Civil Appeals	1182	326	1508	139	1369
2009	Petitions (Civil and Civil Review)	2947	2604	5551	3810	1741
	Civil Miscellaneous Petitions	2552	324	2876	546	2330
	Civil Appeals	1369	627	1996	377	1619

7.3.3 Year-wise Consolidated Statement of Civil and Civil Review Petitions in the Appellate Division of the Supreme Court of Bangladesh

Year	Pending from the last year	Instituted during the year	Total	Disposed of	Pending
1	2	3	4 (2+3)	5	6
2005	3067	1907	4974	1360	3614
2006	3614	1836	5450	934	4516
2007	4516	2122	6638	2351	4287
2008	4287	2569	6833	3886	2947
2009	2947	2604	5551	3810	1741

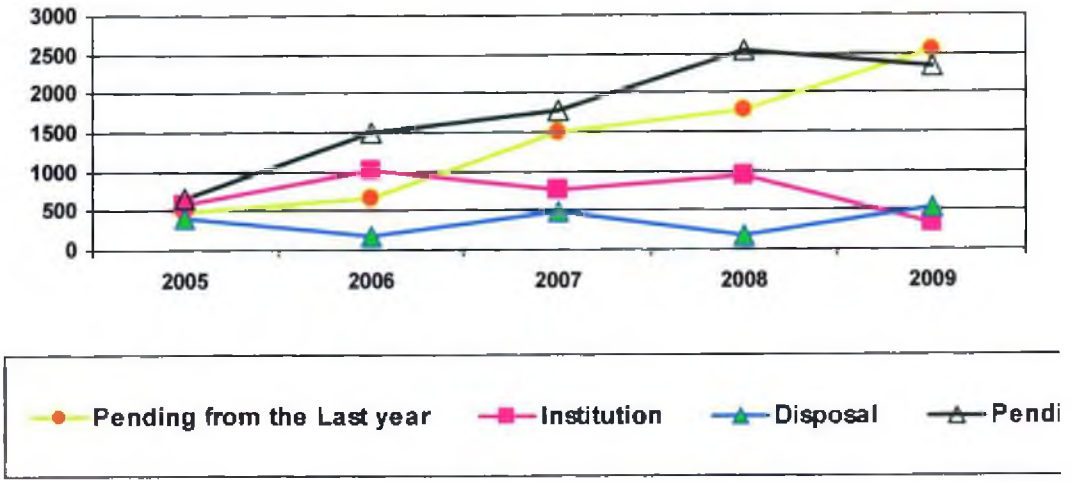
Figure 1: Line Graph of institution, disposal and pending of Civil and Civil Review Petitions in the Appellate Division



(b) Year-wise consolidated statement of Miscellaneous Petitions

Year	Pending from the last year	Instituted during the year	Total	Disposed of Pending from last year	Pending for disposal
1	2	3	4	5	6
2005	487	583	1070	405	665
2006	665	1016	1681	173	1508
2007	1508	757	2265	475	1790
2008	1790	936	2726	174	2552
2009	2552	324	2876	546	2330

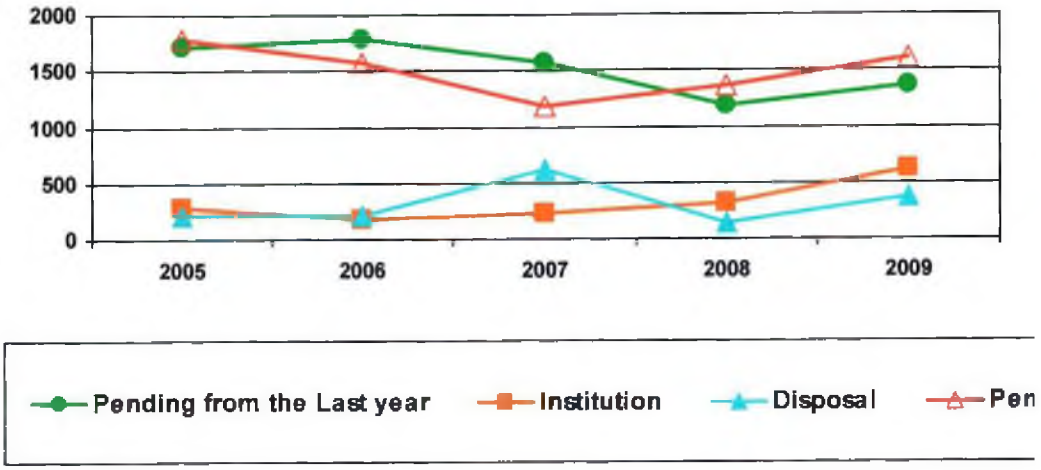
Figure 2: Line Graph of institution, disposal and pending of Miscellaneous Petitions in the Appellate Division



(c) Year-wise consolidated statement of Appeals

Year	Pending from the last year	Instituted during the year	Total	Disposed of	Pending for disposal
1	2	3	4	5	6
2005	1713	284	1997	218	1779
2006	1779	184	1781	207	1574
2007	1574	234	1808	626	1182
2008	1182	326	1508	139	1369
2009	1369	627	1996	377	1619

Figure 3: Line Graph of institution, disposal and pending of Appeals in the Appellate Division



7.4 Ratio of Pending Cases for Disposal at the end of 2009

The ratio of pending cases for disposal shows how long the court will take, at the current rate of disposal to dispose of the balance of cases pending at the end of the year.

The ratio can be calculated from the data provided in the table. The calculation is as follows:

$$\frac{\text{Pending balance for the year} \times 100}{\text{Cases disposed of during the year}}$$

A ratio result of '100' means one year, '50' means six months and '25' means three months and so on.[15]

Thus, if the number of pending cases were 15000 at the end of the year, while those disposed of were 10000, the calculation will be as follows:

$$\frac{15000 \times 100}{10000} = 150$$

This means, it will take the court one year and six months to dispose of the balance.

[15] Annual Report on the Judiciary, (Dhaka: Supreme Court of Bangladesh, 2007), 73

7.4.1 Ratio Table of Civil and Civil Review Petitions

The ratio when applied to these cases provides the following results:

Pending from the last year	Instituted during the year	Total	Disposed of	Pending for disposal	Pending cases to disposal (Ratio)
2947	2604	5551	3810	1741	45.7

The ratio result of civil and civil review petitions is **45.7**, which indicates that the Appellate Division will take approximately additional five months time to dispose of all the pending petitions at the current rate of disposal. This does not include the new petitions to be filed during the period. Therefore, the word 'additional' is used.

7.4.2 Ratio Table of Miscellaneous Petitions

The ratio when applied to these cases provides the following results:

Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal	Pending cases to Disposal (Ratio)
2552	324	2876	546	2330	426.74

The ratio result of miscellaneous petitions is **426.74**, which indicates that the Appellate Division will take approximately additional four years three months and one week time to dispose of all the pending miscellaneous petitions at the current rate of disposal. This does not include the new cases to be filed during the period.

7.4.3 Ratio Table of Appeals

The ratio when applied to these cases provides the following results:

Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal	Pending cases to Disposal (Ratio)
1369	627	1996	377	1619	429.44

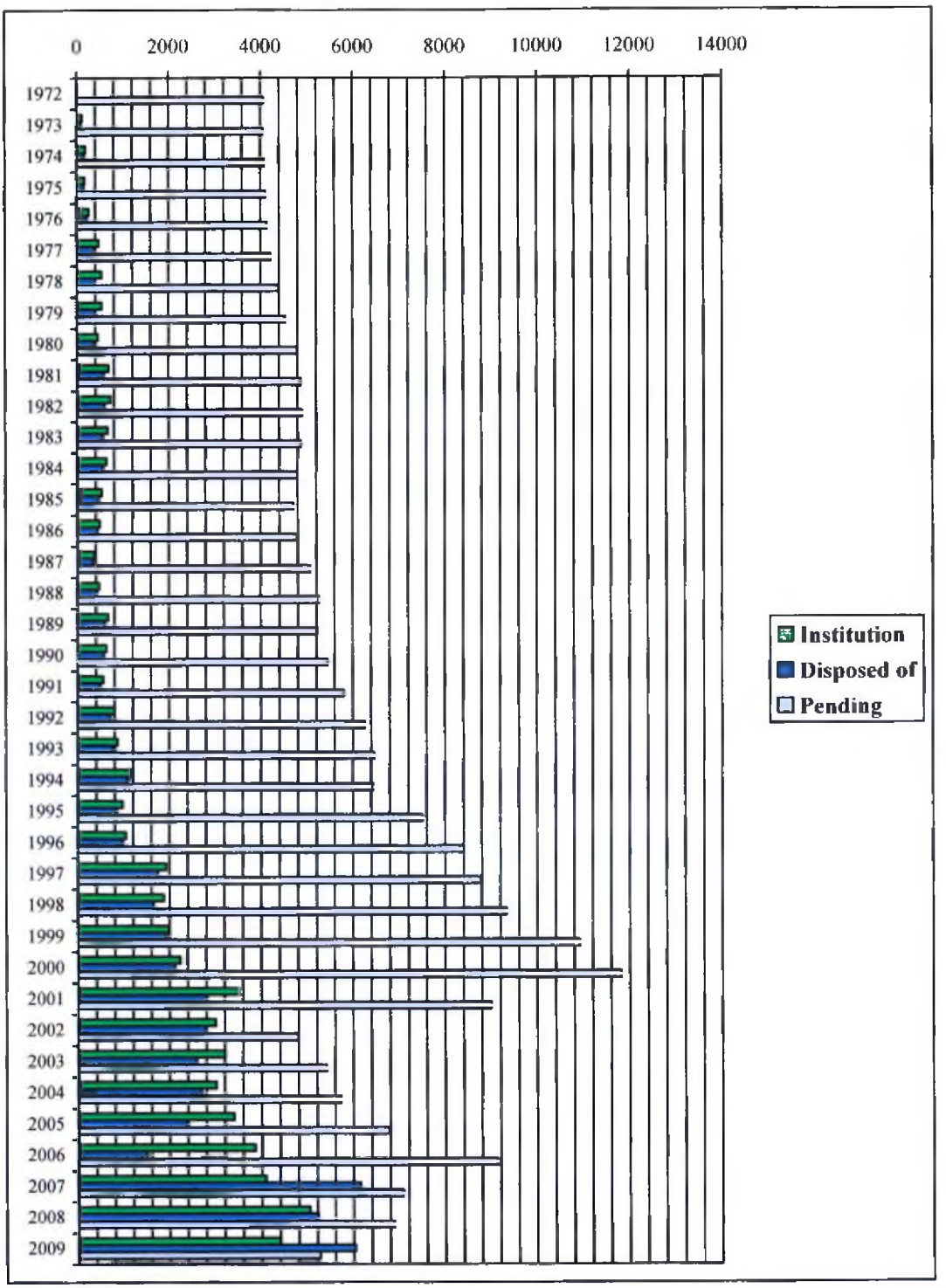
The ratio result of appeals is **429.44**, which indicates that the Appellate Division will take approximately additional four years, four months and nineteen days time to dispose of all the pending appeals at the current rate of disposal. This does not include the new appeals to be filed during the period. Therefore, the word 'additional' is used.

7.5 Statistical Data Analysis of Institution, Disposal and Pendency of Cases for the Appellate Division of the Supreme Court of Bangladesh from 1972 to 2009

Years	Institution	Disposed of	Pending
1972	14	11	4056
1973	113	91	4062
1974	185	153	4094
1975	168	150	4112
1976	257	224	4145
1977	471	386	4230
1978	530	400	4360
1979	540	400	4535
1980	454	372	4790
1981	683	583	4870

1982	723	596	4909
1983	663	565	4875
1984	635	565	4802
1985	531	469	4706
1986	492	444	4736
1987	373	334	5064
1988	474	424	5255
1989	662	597	5214
1990	625	575	5440
1991	556	497	5820
1992	801	709	6254
1993	859	765	6462
1994	1161	1070	6433
1995	973	850	7511
1996	1041	970	8410
1997	1928	1746	8751
1998	1869	1649	9330
1999	1987	1918	10929
2000	2228	2116	11816
2001	3517	2819	8997
2002	3003	2789	4781
2003	3212	2587	5406
2004	3021	2690	5737
2005	3405	2372	6770
2006	3855	1501	9124
2007	4093	6146	7071
2008	5041	5220	6892
2009	4403	6035	5260

Figure 4: **Horizontal Bar Chart of Institution, Disposal and Pending Cases in the Appellate Division of the Supreme Court of Bangladesh from the year 1972 to 2009**



7.6 Increase in the number of Judges in the Appellate Division from the year 1972-2009

Period	Judges including Chief Justice
1972	3
1973	4
1974	5
1975	5
1976	5
1977	5
1978	4
1979	5
1980	5
1981	5
1982	5
1983	5
1984	5
1985	4
1986	5
1987	5
1988	5
1989	5
1990	5
1991	5
1992	5
1993	5
1994	5
1995	4
1996	5
1997	5

1998	5
1999	6
2000	5
2001	5
2002	5
2003	7
2004	8
2005	7
2006	7
2007	6
2008	7
2009	11
[illegible]	6

The shortage of judge is considered as one of the important causes of inordinate delay in the adjudication of cases. The ratio of judges to population in Bangladesh is 1:200,000, and it is one of the lowest in the world. Delays and backlogs are caused by a variety of other reasons as well, including cumbersome and abused court procedures, lack of proper caseload and case flow management system and an outmoded office technology that does not support using of modern management information system. It reveals from paragraph 7.5, Figure- 4 and paragraph 7.6 that if the number of judges increased then the rate of disposal should be enhanced.

7.7 Statement Showing Institution, Disposal and Pendency of Civil Cases in the High Court Division of the Supreme Court of Bangladesh (2005-2009)

Year	Nature of cases	Total pending at the beginning of the year	Total Filing of the Cases	Total restored cases	Total of column 3,4 and 5	Total disposal of cases	Total pendency at the end of the year [Column (6-7)]
1	2	3	4	5	6	7	8
2005	Petitions (Civil Appeal and Revisions)	65112	6913	340	72365	3723	68642
	Writ	27177	9554	74	36805	4433	32372
	Original (Admiralty and Company)	2649	840	00	3486	406	3083
2006	Petitions (Civil Appeal and Revisions)	68642	6669	198	75509	3693	71816
	Writ	32372	12571	122	45065	4129	40936
	Original (Admiralty and Company)	3083	749	00	3829	307	3525
2007	Petitions (Civil Appeal and Revisions)	71816	7424	297	79537	4881	74656
	Writ	40936	11019	147	52102	11122	40980
	Original (Admiralty and Company)	3525	889	00	4411	651	3760
2008	Petitions (Civil	74656	5846	411	80913	5275	75638

	Appeal and Revisions)						
	Writ	40980	11402	187	52569	8915	43654
	Original (Admiralty and Company)	3760	882	00	4642	403	4239
2009	Petitions (Civil Appeal and Revisions)	75638	6240	216	82094	6305	75789
	Writ	43654	8745	102	52509	6369	46140
	Original (Admiralty and Company)	4239	792	00	5031	380	4651

7.7.1 Ratio Table of Civil (Appeal & Revision) Cases in the High Court Division of the Supreme Court of Bangladesh

The ratio of pending cases for disposal shows how long the court will take, at the current rate of disposal to dispose of the balance of cases pending at the end of the year.

Total pending at the beginning of the year	Total filing of the cases	Total restored cases	Total disposal of cases	Total pending at the end of the year	Pending cases to disposal (Ratio)
75638	6240	216	6305	75789	1202.04

It appears from the above table that the ratio result of civil cases is **1202.04** which indicate that the court will take approximately additional twelve years three months time to dispose of all the pending cases at the

current rate of disposal. This does not include the new cases to be filed during the period.

7.7.2 Ratio Table of Writ Cases

Total pending at the beginning of the year	Total filing of the cases	Total restored cases	Total column 1,3 & 4	Total disposal of cases	Total pending at the end of the year [(Column (4-5)]	Pending cases to disposal (Ratio)
43654	8745	102	52509	6369	46140	724.44

The above calculation proves that at the current rate of disposal, the court would take approximately additional seven years and three months time to dispose of all the pending writ cases at the current rate of disposal.

7.7.3 Ratio Table of Original (Admiralty and Company) Cases

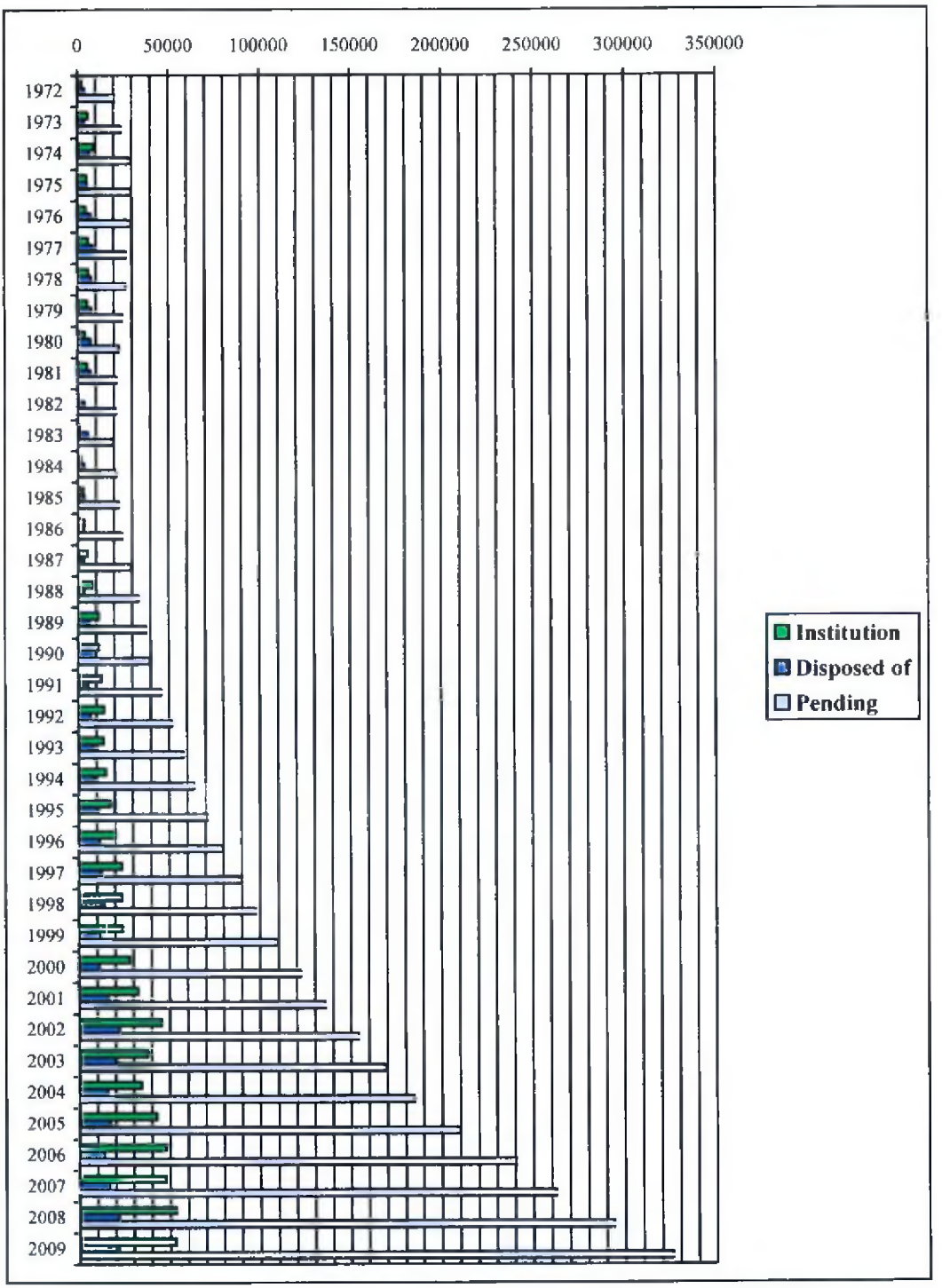
Total pending at the beginning of the year	Total filing of the cases	Total restored cases	Total column 1,3 & 4	Total disposal of cases	Total pending at the end of the year [(Column (4-5)]	Pending cases to disposal (Ratio)
4239	792	00	5031	380	4651	1223.95

At the current rate of disposal the court would take approximately additional twelve years three months and one week time to dispose of all the pending original cases. This does not include the new cases to be filed during the period.

7.8 Statistical Data Analysis of Institution, Disposal and Pendency of Cases for the High Court Division of the Supreme Court of Bangladesh from 1972 to 2009

Years	Institution	Disposed of	Pending
1972	2461	3873	20567
1973	5654	3657	24063
1974	8844	6402	28186
1975	8496	5190	29545
1976	4515	7241	28287
1977	5656	8195	26676
1978	5765	7309	26620
1979	5145	7597	24716
1980	4026	7032	22779
1981	5054	6950	21652
1982	919	3615	21061
1983	1550	5456	19115
1984	1891	3556	21159
1985	2960	3529	22460
1986	3558	3360	24468
1987	5187	3272	28810
1988	8220	3564	33289
1989	11381	6099	37739
1990	11583	9789	39261
1991	12809	5565	45681
1992	14098	6543	51764
1993	13775	7799	57749
1994	15061	8401	64281
1995	17326	10844	70990
1996	21045	11526	79457
1997	23838	12337	88388
1998	23909	13744	97574
1999	24143	11863	108323
2000	27931	11049	122178
2001	32328	16014	135879
2002	45627	22048	154168
2003	37734	20331	168447
2004	34217	15581	184811
2005	42900	16894	208389
2006	48056	13839	240483
2007	47555	16578	262345
2008	53220	21664	293901
2009	52820	21150	325571

Figure 5: **Horizontal Bar Chart of Institution, Disposal and Pending Cases in the High Court Division of the Supreme Court of Bangladesh from the Year 1972 to 2009**



It appears from the above Chart that the rate of disposal of cases in the High Court Division is poor than the rate of filing. The rate of pending cases is gradually increasing since 1972

7.9 Number of Judges in the High Court Division from the Year 1972-2009

Period	Judges including Chief Justice
1972	10
1973	8
1974	12
1975	12
1976	13
1977	18
1978	17
1979	16
1980	19
1981	18
1982	18
1983	18
1984	24
1985	24
1986	21
1987	25
1988	29
1989	29
1990	29
1991	28
1992	25
1993	31

1994	38
1995	35
1996	30
1997	36
1998	36
1999	39
2000	43
2001	48
2002	55
2003	48
2004	54
2005	72
2006	71
2007	68
2008	67
2009	75
2010	85

7.10 Case Management in the Subordinate Courts

There are 64 districts across the country. In each district Court at least one District Judge, Additional District Judges, Joint District Judge, Senior Assistant Judge and Assistant Judge are working. The courts are under the dual control of the Ministry of Law, Justice and Parliamentary Affairs (Law and Justice Division) and the Supreme Court.

In terms of caseflow, the situation of the subordinate courts is horrible. There is a huge backlog of cases in each of the district courts in Bangladesh. Because of weak case management, frequent adjournments due to various reasons, corruption, traditional legal framework, cases are not

7.10.2 Number of Civil Cases Pending for Disposal in the Divisional Level District Courts

(a) Dhaka (Up to 30th May, 2010)

Duration of Cases	Number of Cases Pending for Disposal
0-2 years	13872
2-5 years	17317
5-7 years	3539
7-10 years	1635
10 +	1064
Total	37427

(b) Chittagong (Up to 30th April, 2010)

Duration of Cases	Number of Cases Pending for Disposal
0-2 years	21499
2-5 years	14332
5-7 years	10749
7-10 years	75166
10 +	7361
Total	129107

(c) Sylhet (Up to 31st March, 2010)

Duration of Cases	Number of Cases Pending for Disposal
0-2 years	5479
2-5 years	2851
5-7 years	708
7-10 years	622
10 +	362
Total	10022

(d) Barisal (Up to 31st March, 2010)

Duration of Cases	Number of Cases Pending for Disposal
0-2 years	4168
2-5 years	4098
5-7 years	1804
7-10 years	2055
10 +	132
Total	12257

(e) Rajshahi (Up to 30th April, 2010)

Duration of Cases	Number of Cases Pending for Disposal
0-2 years	6707
2-5 years	4044
5-7 years	2490
7-10 years	1232
10 +	51
Total	14524

(f) Khulna (Up to 31st March, 2010)

Duration of Cases	Number of Cases Pending for Disposal
0-2 years	4378
2-5 years	4159
5-7 years	1132
7-10 years	551
10 +	368
Total	10588

(g) Rangpur (Up to 31st March, 2010)

Duration of Cases	Number of Cases Pending for Disposal
0-2 years	20528
2-5 years	6759
5-7 years	15245
7-10 years	11249
10 +	1328
Total	55109

From the above discussions, it is evident that 'case management' has major implications for case processing operations. Case management requires that the court assume an active role in decisions concerning the progress of cases. At the same time it emphasizes the joint responsibility of court and advocates assuring that all cases are processed promptly for the benefit of the citizens who are the true consumers of courts services. It creates and maintains an orderly, reliable and predictable system designed to facilitate the ends of justice, including prompt and affordable resolution of each case brought to the attention of the courts.

Case management is the process by which courts' move cases from filing to disposition which among others, includes, timely disposition of cases consistent with the circumstance of the individual case and to enhancement of the quality of the litigation process. There is growing awareness by the Bench, Bar and public that litigation frequently takes too long and costs too much. Case flow management is a proven response to the first of these concerns. People have a right to timely resolution of their disputes by judges committed to the proposition that prompt disposition is a fundamental attribute of justice.[16]

[16] *Ibid.*, 54

But the statistics presented in this paragraph indicates that case management system in Bangladesh is far from satisfactory. Judges hardly look to the management of cases before they come for trial. The court distribution process in the country somewhat is faulty. The number of courts must be proportionate to the number of pending cases. Judges should be motivated in the disposal of old cases. The causes of non-disposal of old cases should be sorted out and suitably addressed. Case calendar for timely disposal of cases should be maintained by each of the courts. Even though the fact remains that all cases are not of same nature and of same complexities, yet some standard based on practical analysis must be evolved out so to bring reasonable equilibrium in the hierarchy of the court system of Bangladesh.

7.11 **Alternatives to Disposal of Cases and Case Management**

The existing trial system of Bangladesh is mostly dependant on the system applied in the Indian Sub-continent by the British Government. Now the then existing laws are exactly or with some changes also applies in Bangladesh. Owing to the lack of the reforms of the political institutions, our legal system could not come out of the clutches of the legacy of the British rule. The adversarial trial systems, feeble court management, shortage of man power are the main reasons to make the litigants bewildered. Delayed justice is the cause of injustice. Prolixity is the major backlogs of our judicial system. Because since 250 years the nature of existing trial system in this Sub-continent is adversarial, competitive, inimical, conflicting and win-loss resulting.[17]

[17] Quoted from the speech given by former Chief Justice of Bangladesh Mustafa Kamal in a training program organized by the Judicial Administration Training Institute, Dhaka.

Again Bangladesh is not the only country which faces backlog of cases. It also existed in the developed countries like USA, UK, Canada and Australia. But by introducing the Alternative Dispute Resolution (ADR) system the countries have become able significantly to solve the problems. Facing this crisis of judiciary, the Supreme Court of India in the case of ***PN Duda v. P. Shiv Shankar and others***[18] commented:

> 'It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalizing remarks made by politicians or ministers but the inability of the court of law to deliver quick and substantial justice to the needy. Many today suffer from remediless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a criticism which the judges and lawyers must make about themselves. We must turn the search light inward.'[19]

The Court of Appeal of England thinks that the adversarial trial is mostly responsible for the excess expenses and uncertainty to ensure administration of justice. The system also creates fear and confusion in the mind of the litigant people. In the case of ***Burchell v. Bullard***[20], Lord Justice Ward commented:

> 'As we have expected, a horrific picture emerges. In this comparatively small case where ultimately only about £

[18] AIR 1988 SC 1208
[19] *Ibid*
[20] (2005) EWCA Civ 358

> 5000 will pass from defendant to claimant, the claimant will have spent about $65000 up to the end of the trial and he will also have to pay the subcontractor's costs of about £70,000... The defendants' costs of appeal £13,500 for the appellant and over £9,000 for the respondents. A judgment of £5,000 will have been procured at a cost of the parties of about £185, 000. Is that not horrific?'

The above mentioned observations of the Court of Appeal of England indicate how traditional systems waste money and time in conducting cases before the court. In our country, some cases even consume 40/50 years for disposal. The petty cases like the preemption or probate cases sometimes take 30/35 years.

Eminent Jurist, best Law Teacher of South Asia and Chairman of the National Human Rights Commission of Bangladesh Professor Dr. Mizanur Rahman, in his article titled ***"Alternative Dispute Resolution"*** mentioned that the theory of Confucianism evolved in China is the basis of ADR and inspired by this, the ancient Chinese started to resolve the disputes amicably among themselves. According to him:

> "The Philosophy of Confucius was, in essence, one of harmony, of peace, and of compromise resulting in a win-win combination. The Confucian view is that the best way of resolving a disagreement is by moral persuasion and compromise instead of by sovereign coercion ... These are based on the strong belief that laws are not the appropriate way to regulate daily life and hence should only play a secondary role."[21]

[21] Rahman, Dr. Mizanur, "Alternative Dispute Resolution", in *Human Rights Summer School Manual*, September, 2007,148

The ancient system of settlement of disputes between or among the parties in lieu of the traditional judicial system is called ADR. In such system, the parties, personally or through their representatives, find the amicable settlement of disputes. In the perspective of Bangladesh ADR is a process of dispute settlement outside the formal judicial system where the parties represent themselves personally or through their representatives and try to resolve the dispute through a process of mutual compromise. It is a non-formal settlement of legal and judicial disputes as a means of disposing of cases quickly and inexpensively."[22] ADR is not a panacea for all evils but an alternative route to a speedier and less expensive mode of settlement of disputes. It is a voluntary and co-operative way out of the impasses.[23]

The main advantage of ADR is that like the normal court system it does not consume huge time which helps to resolve the disputes speedily and cheaply. The ADR system is simple, fast, cheap and not conflicting. The statements of the parties remain surreptitious. The persons who are expert in the concerned disputes are engaged in the settlement process which is more helpful for the parties to get the probable relief. So, both the parties win and the enmity between them comes to an end. The parties get the benefit of expressing their respective statements freely before the mediator which facilitates the quick disposal of the dispute. The plaintiff gets back the court fees which is impossible in the normal court system.

The primary goal of case flow management is to encourage the lawyers to prepare their cases early in the litigation process. Early evaluation of the strengths and weaknesses of the case presumably paves the way to more informed, fruitful and efficient settlement negotiations and

[22] *The Daily Star*, 29 April, 2007
[23] *Ibid*

Table V

Institution and disposal of civil suits of Joint District Judge, 1st Court, Dhaka (2005-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal rate by ADR in context of total disposal (%)	Disposal rate by ADR in context of total suit (%)
2005	1241	506	1747	399	10	1348	2.50	0.57
2006	1348	503	1851	125	7	1439	5.60	0.37
2007	1439	484	1958	257	9	1701	3.50	0.45
2008	1701	387	2088	394	7	1694	1.77	0.33
2009	1694	664	2404	423	13	1981	3.07	0.54

- Rate of disposal in context of total suit is very poor as it is below 1%
- Rate of disposal in context of total disposal varied from 1% to 4%

Table VI

Institution and disposal of civil suits of Joint District Judge, 2nd Court, Dhaka (2005-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal rate by ADR in context of total disposal (%)	Disposal rate by ADR in context of total suit (%)
2005	1739	476	2215	258	-	1801	0	0
2006	1801	519	2320	238	-	1956	0	0
2007	1956	573	2529	507	19	1988	3.74	0.75
2008	1988	470	2458	426	29	1888	6.8 0	1.17
2009	1888	916	2804	366	25	2358	6.83	0.89

- Rate of disposal in context of total suit is very poor as it is below 2%
- Rate of disposal in context of total disposal relatively high though it is low in the sense that the total disposal decreased a lot.

narrows the issues that remain to be tried, thereby reducing the demands on the courts' resources. One means to stimulate early case readiness is to offer or require participation in an ADR procedure within a relatively short time of the filing of the written statement by the defendants. This approach fills into the case flow management scheme of systematically scheduling deadlines, such as, discovery, pre-trial conferences.[24] The court cannot, however, simply insert an ADR procedure into the litigation process and expect it spontaneously to benefit the court and the litigants. To implement and administer ADR procedure or programs effectively the court must apply several other principles of case flow management as the following:

Firstly, although authority for ADR programs may emanate from a statute or Supreme Court rule, the success of a program ultimately depends on the leadership and commitment of the dourt and the cooperation of the bar. As in case flow management initiatives, the ADR program will wither if the court does not devote adequate attention and resources to it. Likewise, the program will have little chance to achieve the goals set for it if the court implements the program without consultation and collaboration with the bar.

Secondly, the court should supervise the progress of cases. Differentiated case management is appropriate because not all cases filed in the court require the same treatment; but like cases must be treated similarly. In the content of an ADR program, this case flow management principle requires the court to identify and refer all cases that meet the criteria established for the program.

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[24] Keilitz, 'Susan L., *Alternative Dispute Resolution in Courts*' in Steven W. Hays and Cole Blease Graham, Jr., *op. cit.*, 389

Thirdly, the court must provide adequate notice of events. For the ADR program, this principle translates to accurate and timely correspondence with lawyers and litigants, reliable scheduling of ADR hearing and sessions, and maintenance of a sufficient pool of mediators, arbitrators or other ADR professionals.

Finally, the court must monitor the status of cases that are referred to the ADR procedure. A tracking system should register whether hearings and sessions are held within the established timelines, whether decisions or agreements are filed with the court in a timely fashion, and whether unresolved cases are placed back on the trial docket.[25]

7.11.1 Observations on Disposal of Cases through ADR

The ADR practices in Bangladesh initially were praiseworthy. At that time the judges of the Family Courts, Money Loan Courts and other civil courts put their due attention in resolving the cases through ADR. But the following charts regarding ADR in context of civil and family suits will show the poor rate of disposal by the judges through ADR.

Table I
Institution and disposal of family suits of 5th Family Court, Dhaka (2000-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal rate by ADR in context of total disposal (%)	Disposal rate by ADR in context of total suit (%)
2000	X	290	290	91	27	199	29.67	9.31
2001	199	559	758	355	62	403	17.46	8.17

[25] *Ibid.*, 389-390

2002	403	482	885	535	73	350	13.64	8.24
2003	350	518	868	485	90	383	18.55	10.36
2004	383	495	878	629	128	249	20.34	14.57
2005	249	652	901	540	91	359	16.85	10.09
2006	359	625	984	568	110	414	19.36	11.17
2007	414	648	1062	586	126	475	21.50	11.86
2008	475	397	872	547	141	325	25.77	16.16
2009	325	1330	1655	828	116	827	14.00	9.00

- Rate of disposal in context of total suit is impressive as it is within 9 to 15%. Rate of disposal suddenly decreased in 2009 by 9% but the reason is that the number of total suit increased twice compared to the number of previous year.

Table II

Institution and disposal of civil suits of Assistant Judge Court, Keraniganj, Dhaka (2005-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal rate by ADR in context of total disposal (%)	Disposal rate by ADR in context of total suit (%)
2005	1184	533	1717	427	12	1278	2.81	0.69
2006	1278	531	1809	721	19	1069	2.63	1.05
2007	1069	565	1634	499	17	1118	3.40	1.04
2008	1118	264	1382	419	25	938	5.96	1.80
2009	938	617	1555	345	9	1201	1.80	0.57

- Rate of disposal in context of total suit is very poor as it is below 2%.
- Rate of disposal by ADR in context of total disposal is increased by 6% suddenly in 2008 and decreased in 2009 by 2%.

Table III

Institution and disposal of civil suits of 4th Senior Assistant Judge Court, Dhaka (2005-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal rate by ADR in context of total disposal (%)	Disposal rate by ADR in context of total suit (%)
2005	726	420	1246	384	15	747	3.90	1.20
2006	747	382	1129	378	17	734	4.49	1.50
2007	734	492	1226	289	12	925	4.15	0.97
2008	925	450	1375	607	17	751	2.80	1.23
2009	751	896	1647	173	3	1471	1.73	0.18

- Rate of disposal in context of total suit is very poor as it is below 2%
- Rate of disposal in context of total disposal is decreased in 2009.

Table IV

Institution and disposal of civil suits of 6th Senior Assistant Judge Court, Dhaka (2005-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal Rate by ADR in context of total disposal (%)	Disposal Rate by ADR in context of total suit (%)
2005	905	334	1239	294	21	924	7.14	1.69
2006	924	402	1326	319	11	996	3.44	0.82
2007	996	348	1344	302	11	1031	3.64	0.81
2008	1031	156	1187	157	11	1019	7.00	0.92
2009	1019	470	1489	434	4	1051	0.92	0.26

- Rate of disposal in context of total suit is very poor as it is below 2%
  Rate of disposal in context of total disposal is suddenly decreased in 2009

Table VII

Institution and disposal of civil suits of Joint District Judge, 4th Court, Dhaka (2005-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal rate by ADR in context of total disposal (%)	Disposal rate by ADR in context of total suit (%)
2005	1162	354	1516	247	2	1269	0.80	0.13
2006	1269	517	1786	167	4	1619	2.39	0.22
2007	1619	406	2025	258	20	1667	7.75	0.98
2008	1767	362	2129	273	5	1856	1.83	0.23
2009	1856	733	2589	321	9	2268	2.80	0.34

- Rate of disposal in context of total suit is very poor as it is below 0.5%
- Rate of disposal in context of total disposal varied from below1% to 3%. Only in 2007 it sharply raised to 7.75%. This unusual rate is not countable.

Table VIII

Institution and disposal of civil suits of Joint District Judge, 5th Court, Dhaka (2005-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal rate by ADR in context of total disposal (%)	Disposal rate by ADR in context of total suit (%)
2005	1030	278	1308	295	14	1013	4.74	1.07
2006	1013	303	1316	206	6	1110	2.91	0.45
2007	1110	327	1437	242	1	1195	0.40	0.06
2008	1195	248	1443	201	-	1242	0	0
2009	1242	270	1612	230	17	1382	7.39	1.05

- Rate of disposal in context of total suit is very poor as it is below 2%
- Rate of disposal in context of total disposal is increased by 7% suddenly in 2009 but the reason is that total disposal decreased a lot.

Table IX

Institution and disposal of civil suits of Joint District Judge, Additional Court, Dhaka (2005-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal rate by ADR in context of total disposal (%)	Disposal rate by ADR in context of total suit (%)
2005	909	325	1234	177	-	1057	0	0
2006	1057	80	1137	271	-	856	0	0
2007	856	97	953	169	-	784	0	0
2008	784	526	1310	91	-	1219	0	0
2009	1219	131	1350	88	-	1262	0	0

- Rate of disposal through ADR is 0.

Table X

Institution and disposal of money suits of 3rd Artha Rin Adalat (Money Loan Court), Dhaka (2005-2009)

Year	Opening balance	Instituted and received	Total	Total disposal	Disposal through ADR	Pending at the end of year	Disposal rate by ADR in context of total disposal (%)	Disposal rate by ADR in context of total suit (%)
2005	154	343	497	335	8	154	2.38	1.60
2006	154	269	423	170	10	243	5.88	2.36
2007	243	164	407	171	5	231	2.92	1.22
2008	231	179	410	126	-	284	0	0
2009	284	146	430	186	10	234	5.37	2.32

- Rate of disposal in context of total suit is poor as it is below 3%
- Rate of disposal in context of total disposal sharply increased in 2009

From the above data it appears that the rate of disposal through ADR is significantly poor and it happens mainly for lack of non-application of case management techniques by the presiding officers of the courts.

There cannot be two opinions that delays in courts cause hardship to the litigant public and result in miscarriage of justice. It brings our judicial system and courts into disrepute and generates feeling that justice may in the final analysis, be denied, because by lapse of time evidence may deteriorate, memories may fail, witnesses may vanish or die, thus resulting the case into dismissal or forcing the parties to enter into unfair settlements. Delays in disposal of guardianship and matrimonial cases cause irretrievable hardship and miseries. Small children are shuttled from one court to another court and their custody is handed from the one parent to the other in the long drawn litigation and in that process they do not fully develop and acquire confidence. In a case for dissolution of marriage, unfortunate young woman has to wait for relief for such a long period that her hair turn grey and by the time the litigation is finally terminated, she passes marriageable age.

According to the views passed by the judges of different judgeships, the reason behind the poor rate of ADR in civil cases lies in the fact that in the context of Bangladesh ADR is not suitable in civil cases. The lawyers refused to solve their civil cases through ADR as they are in fear of losing their income. Litigants are also not willing to settle their dispute through ADR as they relied on the advice of their lawyers more than the advice of judges. Moreover, inexperienced young lawyers having no knowledge of mediation are included in the list of mediators who cannot play a vital role in mediation.

However, this research study conducted by the researcher finds that 90% of the total civil cases do not have strong merit to be continued. Those are based on petty matters and more frequently on flimsy grounds. Most of the judges opined that a separate mediation centre is not a good solution in

present context, because people are not willing to hear anyone rather than the judge. They are afraid of judges. If there is a separate mediation centre where a mediator (who is not a judge) conducts mediation, litigants will not go there or may go there with *malafide* intention to delay the disposal of suits.

The judges who are interviewed suggested that two or three courts can be identified as mediation court where the judges will play the role of mediator. That judge will not conduct any trial and he will be trained up with the techniques of mediation. In that court regular lawyers will not be allowed to practice. There will be separate lawyers well trained up in mediation, and they will act on behalf of each party in the litigation. Mediation Judge will appoint those lawyers in each case from the panel of lawyers. The panel of lawyers must be prepared without any political pressure. This plan can be initiated on experimental basis in only two or three district judges' court.

Litigants can predict the fate or the result of the family case at the very beginning of the case. Thus the plaintiffs are willing to mediate case to avoid the payment to their lawyers and the defendants are ready to pay money for maintenance and dower before the judgment as they can have some concession if they negotiate. In family cases the court is bound to fix the date for mediation at two stages. This double chance (before trial and after trial) and mandatory fixing of the date also increase the rate of mediation in family disputes.

In order to increase the rate of disposal through mediation, the mediation judge should not be too young. They should be experienced and equipped with the techniques of mediation. Success rate of ADR mainly

depends on judges' initiative and their capability to conduct mediation. The involvement of NGOs in the mediation process is not good, because the lawyers engaged from different legal aid NGOs are mostly young and inexperienced.

Good court administration and especially efficient case management are two necessary pre-requisites for the success of ADR. Good court administration implies systematic filing of the cases and proper record-keeping; subject wise classification of the cases; good monitoring to classify the cases on the basis of the stages they have reached; clearing the docket of 'dead' or moot matters to prevent them from clogging the schedules; monitoring and case-flow tracking to know the status of each case, to know its procedural position, to locate documents and records more easily and to reflect everything in transparency plate; and finally, attaining the above goals by efficient judicial administrators using modern technological facilities like computerization with the assistance from technical hands. Court administration is necessary for efficient case management which is vitally important for disposal of the suits by trial as well as for settlement of the disputes by ADR.

On the other hand, case management gives detailed scheduling of the life and history of the case, after written statement has been submitted, drawn by an early judicial intervention *i.e.* sitting judge's order, forcing active participation of the parties and strict observance of the schedule under the court's supervision. Its primary features are the early identification of disputed issues of fact and law, the establishment of a procedural calendar for the life of the case, and a triggering device for available consensual processes aimed at the resolution of the case other than through a court trial. After the identification and narrowing down of the

main issues following the separate and then joint case management statement by the parties, with the participation of the trial judge, if and when necessary, the judge will send the case to one of the modes of available ADR.

The basic concept behind case management is for the court to become actively involved, early in the case, in analyzing the specific issues presented by a particular lawsuit and to work with counsel and the parties to manage the structure of future proceedings to achieve the fastest and most cost effective resolution of the dispute. One of the goals of the case management approach is to structure the pre-trial proceedings of a particular case in a way that will compel the parties to exchange additional information on key issues as early as possible, so the parties are in a continually better position to evaluate those key issues as the case proceeds. By structuring the case in this manner, it is hoped that case management process will facilitate and promote earlier out-of-court settlements. Case management establishes "judicial responsibility for the otherwise substantially party-controlled adversarial preparations of civil cases....[It] is designed to reduce dilatory, frivolous, inefficient and protracted litigation practices and to replace party controlled litigation processes with judge-controlled sequential steps in the life of a civil proceeding."[26]

7.12 Case Management in Reducing Backlog of Cases

The courts require managerial technique in adopting methods for getting the case adjourned and have to act with great care and caution. It will be the responsibility of the court to ensure that a temporarily fixed case

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[26] Alam, Dr. M. Shah, *Enforcing Court-Sponsored Alternative Dispute Resolution (ADR) in Bangladesh*, unpublished discussion paper, prepared for Bangladesh Law Commission

is not adjourned by the court for its own inability to hear the case except in exceptional circumstances. For disposing of peremptorily fixed cases and old ones, the daily cause list of the court will have to be planned in a manner that a peremptorily fixed case is not adjourned on the ground that the court is left no time to hear the case. This research study finds that for proper case management and court administration, all cases of the courts should be classified chronologically in different heads, like-

(a) peremptorily fixed cases;
(b) cases where arguments have been heard in part;
(c) old cases;
(d) cases where parties have arrived at compromise or there is a formal contest;
(e) miscellaneous cases;
(f) execution cases;
(g) interlocutory matters.

For hearing each class of case, a reasonable time schedule should be drawn up by the presiding judges and the court should try to maintain the time schedule. In case the case is not taken up in the fixed time schedule, it should be ruled that it will be taken up next day in the same time schedule. This system will ensure disposal of cases. The litigant and lawyer will know as to when his case is to be taken up, which will avoid unnecessary waiting for whole day by a litigant; he may attend the court only for the fixed time schedule. This system will facilitate disposing of peremptorily fixed cases, old cases, miscellaneous cases and execution cases on priority basis. As a part of case management, the chief justice on November 4, 2010 issued Circular No. 22625 for disposal of cases pending for 10 years or more in the district courts on priority basis and sent it to all the District Judges of

Bangladesh for taking immediate action in the matter. Thereafter, the District Judges directed their subordinate officers to dispose of the old cases on urgent basis and at present judges of the subordinate courts are trying to carry out the directions of the chief justice and also to clear the backlog of cases.[27]

We have noted earlier that almost in every court of Bangladesh the cause lists are not maintained properly and for this reason it become difficult for the presiding judges to maintain any time schedule causing waste of time. As a result, they are unable to put emphasis on peremptorily fixed cases, old cases and execution cases. But while preparing a cause list in scientific manner, same type of cases where a common question of law is involved or facts are similar, can be grouped together and can be listed for disposal in a group. In the High Court Division of the Supreme Court of Bangladesh and in the district courts every case is filed on its own facts. The facts of two cases never tally unless the cases have been consolidated for disposal of common issue. Considering the changed circumstances and heavy backlog of cases, new methods and technology of case management are to be adopted. The facts involving common question of law may be grouped together and after stating the principle of law many miscellaneous matters may be decided together on the basis of documentary evidence and affidavits. On the other hand, by applying computer technology the entire judiciary can be computerized and simply by pressing a button in any part of the country where the Supreme Court computer system is connected with satellite, one can know that when a particular case pending in the Supreme Court will be heard. Likewise, if all the decisions of the Supreme Court will be computerized, then the litigants can get the information by pressing a

[27] For further information, *see*, Circular No. 22625 dated November 4, 2010 issued by the Registrar, Supreme Court of Bangladesh

button only. The introduction of computer connectively in the district courts will be immensely helpful in the reduction of court congestion. If this technology be adopted in the district courts, then the District Judges can monitor the position of every case every day pending in his judgeship. The Chief Justice of Bangladesh by sitting at Dhaka can also observe the position of cases as well as the disposal rates of a particular judgeship or a judge at any time by pushing a button of the computer. All this require investment of money. It is suggested that government should come forward and consider with necessary funds to sort out the problem of arrears which will ensure rule of law and human rights in Bangladesh.

7.13 Use of Information Technology (IT), Case Management and Disposal of Cases

For providing speedy and timely justice to the litigant, Information Technology was first time introduced in this sub-continent by Justice G.C. Bharuka in the year 1991 in Patna High Court of India. After his transfer to Karnataka High Court, it was a boon in disguise for the people of Karnataka where he had done extensive work for introduction of IT in the Indian judiciary and was conferred a doctorate degree. His famous treatise ***"Rejuvenating Judicial System through E-Governance & Attitudinal Change"*** was published in the year 2003. Appreciating the outstanding work done by him in the field of IT, the Union Government constituted an *e*-Committee under his chairmanship. In June 2006, the Union Cabinet declared the project to be one of the Mission Mode project under the National *e*-Governance plan in February, 2007 accorded sanction to the budgetary requirements for its implementation. The *e*-Courts project is to be implemented in three phases over a period of five years, has already commenced by providing laptops to all the judicial officers throughout the

country and three months training would be provided to each and every judicial officers.

In the first phase, the goals that are sought to be achieved, *inter alia*, are, capacity building of the judges for delivery of speedy and quality justice, availability of ICT modules for assessing work performance and caseflow management of all courts in the country, online accessibility of order, judgments and case related data, instant availability of status of cases, judgments and orders of all courts through Internet and Judicial Service Centers, facility for *e*-filing in the Supreme Court and High Courts.

In the second phase, the steps intended to be adopted are facilities of video conferencing at all court complexes, *e*-filing in all district and subordinate courts.

In the third phase, online information between the courts, prosecuting and investigation agencies, prisons and scientific tools to help in identifying habitual criminals, professional witnesses and litigants and in resolution of complex factual disputes would be available.[28]

7.13.1 International Practices of IT in Courts

Courts in the United States of America have been extensively using Information Technology for several years. In United Kingdom, software development for computers at the subordinate court level has been developed extensively, for example, the Local County Court Management System (LOCCS) is used in England has a data base system which is part of a package called CASEMAN supporting various judicial applications.

[28] *The Hindu* (India), May 4, 2008

In Australia "Cyber Courts" use technology in the legal arena extensively at all stages and has demonstrated considerable reduction in delays as a result.

In Singapore the courts manage their time and resources optimally to achieve an active, efficient and effective case management process. The use of technology in Singapore courts goes beyond the use of computers. Occasions for transporting of accused and witnesses in criminal cases within the country and from outside are greatly reduced by the use of video cameras in jails and court premises. Video conferencing is a common feature both within and outside the judiciary. A key board is provided in each court to the lawyers to make their written submissions on a real time basis. Their Differentiated Case Management (DCM) System assigns different management tracks to different cases in subordinate courts in accordance with the nature and complexity of each case. The public who visit the courts have also access to the status of various cases. This practice promotes transparency and improves accountability.[29]

7.13.2 IT as a Tool for Speedy Disposal of Cases

Technology can play an important role in all spheres of human activities. Administration of justice is one of the most important activities of man kind. Due to delayed disposal of cases in courts, people had started losing faith in administration of justice. Now information technology (IT) has emerged as harbinger to rejuvenate the faith of people in the judicial institution. The *Report on Strategic Plan for Implementation of Information*

[29] Paper presented by Bismal, Akhya on *Speedy Justice by Use of Technology* in All India Seminar on 'Judicial Reforms' held on February 23-24, 2008 at Vigyan Bhawan, New Delhi, India. The Seminar paper was published in a Souvenir, pp. 36-37

Communication Technology (ICT) in the Indian Judiciary[30] justifies the need of introduction of technology in a systematic way in courts by explicitly stating that. "It needs no emphasis that Indian judicial system is facing an appalling state of affair. It is apprehended that court congestion and delays in adjudication may require a perennial nature. Its functional credibility, both in domestic and international world is at stake. There is an urgency to take immediate steps to enhance its quality, productivity, accountability and transparency." Use of technology can help facilitate the judiciary in bringing greater access transparency, and ultimately help in reducing backlog and delays in courts.

The Shetty Commission[31] Report formulated a specific question on application of IT in court system and commissioned Indian Institute of Management (IIM), Bangalore to enquire whether the introduction of computers had brought about any sea-change in the work and efficiency in various activities of the courts. The IIM in its report recommended that information technology is necessary for improvements in operational efficiency, coordination, accessibility and speed in the administration of justice.

There are various reasons for delay and backlog in courts. The most important reason perhaps is the sheer numbers of cases that are filed in the courts and which are increasing every day making it difficult for the disposal rate of the courts to keep pace with the fresh filing or institution rate. Moreover, there exist huge vacancies in courts and they are

[30] This Report was prepared, among others, by the E- Committee under the Chairmanship of Justice G C Bharuka, former Judge, States of Patina and Karnataka. The Report was presented to the Chief Justice of India on May 11, 2005. For detail, see Report of the Supreme Court of India (2005)

[31] The Commission was the thefirst National Judicial Pay Commission of India

consistently lying vacant. There is an urgent need to increase the judge-to population ratio.[32] There are huge procedural delays caused by lack of case management as well as case flow management. Technology can provide great deal of assistance at this level. For example, one of the typical problems faced in the court is to bring witnesses for appearance in the courts. Despite all the efforts on the part of the witnesses to attend a court hearing, sometime court adjourned for another reasons *e.g.* absence of lawyers and judges. But in all these circumstances, the witness and parties is the sufferer.

Technology have a solution in the form of tools like video conferencing which can greatly reduce the hardship both financial and in terms of time for the witness in particular for those who are from outside the jurisdiction. There are various other ways through which computerization can improve efficiency in legal services and administration of justice. Statutes and judgments can be electronically stored and provided through internet. Law libraries can be connected through internet and thus legal research can become more easy and accurate finding of law which consume less time, effort and expense. By computerization, registry and record rooms of the court and litigants can be provided direct access to it. Through computerization, lawyer chambers and court rooms can help best to speedy process of the judicial administration. Petitions and affidavits can be filed from the lawyers' chamber at any time during day or night. Trial can be organized through video conferencing without the parties and witnesses being present in the court. Service of summons, procuring copies of documents connecting parties in far flung areas for quick resolution of issues will all become far more efficient and cost efficient once electronic connectivity is established and style of judicial functioning is changed.[33]

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[32] *All India Judges Association* v. *Union of India*, (2002) 4 SCC 247

[33] Sing, Dr. S K, *E- Enabled Judicial Administration in India*, AIR 2002 SC (Journal),100-101

Video conferencing is a medium by which two or more persons can hold conference using audio video capability, though being physically located at two different places. E-committee[34] and various other studies have given importance to the use of video conferencing in quick disposal of cases.

7.13.3 Applicable Areas of IT

The problem of the congestion in courts, arrears and backlog are partly overcome if a sound judicial management information system is introduced. Case management, file management and docket management will be vastly improved by resorting to the use of computers.

Judicial systems around the world are recognizing that computers can aid decision-makers by providing them with up to date information on all aspects of a case before them. Judicial support systems can include anything from judges having access to computers and laptops, the Internet, CD Rom services and primary research materials through an internet.

The following are areas where use of computer will result in enhanced productivity and reduction of delays:

(a) Legal information data bases;

(b) One line query system of precedents, citations, codes, statutes etc.;

(c) Generation of cause list and on line statistical reports;

(d) Online caveat matching;

(e) Online updating of data, monitoring and "flagging" of events;

[34] *E- Committee* was set up officially in India on December 28, 2004 for assisting the Chief Justice of India in formulating a National Policy on Computerization of the Indian Judiciary

(f) Pooling of orders and judgments;

(g) Daily cause list generation with historical data of each case;

(h) Word processing with standard templates including generation of notices/processes;

(i) Access to international data bases;

(j) Feedback reports for use of various levels.[35]

Computerization should be supplemented by the use of Fax, E-mail, Video conferencing and other facilities for higher productivity and speedy decision-making at all levels.

The main goal of the courts computerization is introducing IT Tools in all areas, which are routine and time critical in nature, streamlining the judicial administration and bring about transparency of information to the litigants.

The following areas may be identified for computerization in courts:

(a) Case Filing

At present, the cases are manually filed by the Advocates. Sometimes, advocates stand on queue for filing the cases, the *Sheristadar* or *Sherista Assistant* enters the details required for registration of a case. This takes a long time, by way of computerized filing, the filing process is made easy and the advocates need not wait for long time for filing the case. However, courts do not establish standards for collection of information and review their processes to be effective in the information age. Electronic filing has obvious benefits to advocates, litigants and courts. This system

[35] *See*, seminar paper of Bismal, Akhya on *Speedy Justice by Use of Technology, op. cit.*, pp. 36-37

can be made possible to file cases from Advocates chamber if necessary steps be taken by the government.

(b) Preparation of Daily Cause List

Courts took a lot of time for manual preparation and supply of cause list to the advocates and the parties and the process is also very costly. In India Supreme Court and High Courts have been fully computerized and they prepare cause lists from the computer servers installed by National Informatics Centre (NIC), Ministry of Information and Technology. The feature of the cause list generated by NIC is as follows:

(i) It is available on internet;

(ii) Cause lists of Supreme Court and State High Courts can be accessed at *indiancourts. nic.in* ;

(iii) Advocates can generate their own cause list consisting of his/her own cases;

(iv) Cause list can generated judge wise, court wise and case number wise etc.

(c) Digitally Signed Certified Copies

Parallel to the signing of the daily orders on hard copies, judges would sign digitally on electronic copies using digital signatures. The digitally signed orders would be made available on the court web site. Litigants can download the electronic copies, with self-contained proof of authenticity of the documents. Every judge will be provided with his/her digital signature.

When digitally signed orders are available on server, the certified copy section simply accepts the application from the litigants, downloads

the relevant order from the server, takes a printout, checks the authenticity and integrity of the document, when satisfied simply signs and serves to the litigant on the spot. As the digitally signed copies need not be cross checked with the original file, it can be served to the litigant on the spot without time delay. The benefits of digitally signed orders may briefly be summarized as follows:

- A large number of certified copies can be issued in a single day without keeping any application in pendency.
- One person can handle the entire certified copy section.
- As there will be no delay in issuing the certified copy, the dealing clerk has to provide the copy on the spot.
- The litigant can even download an electronically certified copy from the net without contacting the court.[36]

For proper functioning of the courts and to overcome the backlogs and to improve court management system following steps can be taken:

(i) **Digitization of old records** - Considering the space problem in the record rooms it is suggested to go in for digitization of all records stored in the record room, so as to make space available for the fresh records. This process enables the courts in preventing loss of records, saving storage space, to manage records easily, to find documents quickly, to make the scanned documents available on internet and to eliminate the need for file cabinets centrally.

[36] Lahoti, Justice R C, Speech delivered on November 26, 2004 on *Law Day*, published in (2005) 2 SCC (Journal), 13-14

(ii) **Digital display boards on Internet** - Court wise progress of the cases, as they are being heard, is available on internet for the advantage of lawyers and litigants who need not necessarily reach the courtroom for watching the progress of the case.

(iii) **Automatic delete/shifting of excess matters and proposing next listing date** - This software module would help to exclude the possibility of manual manipulation.

(iv) **Pending status of cases** - The filing counter and other at the reception with touch screening facility providing information as to pending status of a case, the latest order delivered by the court, cause list, judgments, Supreme Court web site, filing defects and so on.

(v) **Interactive voice response system (IVRS)** - Any litigant can access and ascertain the status of his case in the court concerned by dialing the relevant telephone number if it so provided.

(vi) **Video conferencing facilities**- Establishment of video conferencing facilities can enable the judges to interact with other judges of the country, Ministries of Government (if required) or any organization based outside the country.

(vii) **Electronic self-operating facilitation counter**- For providing easy information and access to the litigant public, a facility consisting of few computers, printers and internet will enable the users to access the required information on their own.

The installed technology, if applied efficiently in the courts, will help the judiciary in making available case, including all the data, documents, evidence and legal reference materials more efficiently to the people and to whom it matters. The computer will help to improve the speed, cost and fairness of decisions. However, if not applied properly it will only create more chaos and confusion.

From the above discussions it can be concluded that 'case flow management' has major implications for case processing operations. It requires that courts assume an active role in decisions concerning the progress of cases. At the same time it emphasizes the joint responsibility of court and advocates assuring that all cases are processed promptly for the benefit of the citizens who are the true consumers of courts services. It creates and maintains an orderly, reliable and predictable system designed to facilitate the ends of justice, including prompt and affordable resolution of each case brought to the attention of the courts. By accepting the generic principles of case management and mediation and adapting them in our legal system and legal culture, we can successfully attack the backlog of cases. No longer need justice be denied by justice being unnecessarily delayed.

CHAPTER VIII

Conclusion

Today the entire civilized world has awakened to the necessity for the rule of law, justice, equity and human rights. No country is considered civilized and democratic without quick dispensation of justice to those who come and crawl before the courts. Our litigants are generally poor. They come to the lawyers and the courts by selling their lands or cow or domestic utensils.

If the civil cases are not expeditiously disposed of it has a disastrous effect on the society. Sloth and tardiness in disposal of the civil cases breed criminal propensity. Those who wait for years together for result of their cases in civil courts ultimately take to violence giving rise to criminal cases. In this respect his Lordship Justice Bimalendu Bikash Roy Chowdhury, Acting Chief Justice of Bangladesh (as he was then), told a story an April 27, 2000 as the Chief Guest in the Certificate Awarding Ceremony to the trainee Assistant Judges at the Judicial Administration Training Institute, Dhaka . The story is, one day a murderer was brought before the court. He pleaded guilty. When the judge asked him "Why did you commit the murder?" The accused replied, "Sir the path of redress in a civil court is so tortuous that I have taken the short path cutting the neck of my rival. I found that was easier to eliminate my enemy than to sue him in a court of law." This story gives massage that if the judges fail to dispose of civil cases quickly, crime and criminal cases will multiply. So the responsibility of judges and lawyers in this respect is great.

Delay in dispensation of justice erodes the confidence of the litigant public in the court system. One major cause of delay, as we observed, is the incident of adjournments which every court confronts. It is a very serious issue and must he handled with due diligence. Adjournments are sought and granted unless the judges and the lawyers make concerted efforts to avoid the phenomenon of adjournments; the goal of expeditious dispensation of justice will remain illusory. Pace of trial proceedings in civil cases must be quickened. Judges must spend more time in the courtrooms, in conducting trials and resolving disputes. Equally the members of the legal profession must extend their fullest support and cooperation in the dispensation of justice.

Ever since the time of Shakespeare there have been interminable complaints about delays in litigation, calculated to break the strongest nerves and the stoutest resistance. Unjustifiable delays in the disposal of our cases in the law courts of the countless people and, as has been pointed out by Earl Warren, Chief Justice of USA, while addressing the opening session of the American Bar Association on 25 August, 1958, imperceptibly corrodes the very foundation of the constitutional Government. It is revolting to the sense of justice and to the fundamental principles of liberty. Our Constitution guarantees personal liberty and protection against arrest and detention in certain cases and possession of one's property and every one has to be conscious of such fundamental rights. And, to the extent that is so, there is created disrespect for our law when people sense that all these guarantees are not adequately enforceable with promptitude and effectiveness.[1] It was this very concept which the Chief Justice of the Court of Appeals in USA. John J. Parker emphasized and said:

[1] Mehta, L.S., *'Delays in Courts'*, AIR 1959 SC (Journal),.36

> "If democracy is to survive... it must be able to demonstrate its efficiency; and nowhere is this efficiency more important than in the fundamental matter of administering justice. The administration of justice is the lawyer's business; and to see that that business is conducted with efficiency is one of the most important duties that confront him." [2]

Nearly 60% of all the civil cases are subject to undue delay, varying from one to ten years between the dates of their institution and disposal. The disposal of civil cases in England, according to Lord Denning, takes between 3 and 4 months.[3] For this delay in Bangladesh, the Judges individually cannot be blamed. They are working, yet there was no way of distributing the work so that judge- power might be better utilized. Some managed their calendars well, others badly. Some require lawyers to be expeditious in the trial of their cases, others operated on a laissez faire basis. At many places calendars or cause lists are filled with a mass of cases, which are never destined to come to trial. The result, quite candidly, is that our judicial system is largely barren of the modern concepts of administration, which are so familiar in the executive departments of Government. The courts are burdened with anachronisms and a large number of them have over-lapping jurisdictions and others with outmoded procedures, though, of course, somewhere there are bright spots on an otherwise dim horizon and several courts have taken concrete steps to improve the business of the courts. Former Prime Minister of India Moti Lal Nehru while addressing the World Jurists said on January 5, 1959 that now the changes were going on at a terrific pace in this Jet age or space

[2] Quoted by Mehta, L.S., *Ibid.*,36-37
[1] *Ibid*

travel age, bringing in new problems and yet it might be that in the changing society the Judge might be left a little behind and might not quite represent that mood which happened to be the mood of society, which perhaps represented reality more than the statute law which the Judge administers. These observations are pregnant with meaning and are eye – opener to all of us. The judiciary has to cater to the vital needs of the people from hour to hour and day to day.[4] Chief Justice Arthur Vanderbilt of America was never tired of saying that the problem of delay could be solved. The practical solution of this problem he said is much simpler than most people suspect. It is not the knowledge of ways and means. It is the will to put them into effect.[5]

One must learn from the past and refrain from repeating the mistakes. There is a general tendency that the judiciary as well as the lawyers are being criticized and said to be responsible for the delay in the process of justice. The developed societies and overcrowded countries have highly complexed laws, thus, causing delay in the disposal of the cases even then this aspect of the matter has never been held to be the main hurdle in the process of justice. Even in civilized societies the court system is provided by the States to its citizens for resolving their disputes and in our society the dispute resolving apparatus which the State provides and if we take the view that justice delayed is justice denied then this view will affect the society and may cause hardships without appreciation of the real matter.

According to the provisions of Article 35 of the Constitution of the Peoples' Republic of Bangladesh it is the fundamental right of the people to

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[4] *Ibid.*,37
[5] *Ibid*

get inexpensive and expeditious justice. It is proverbial that justice delayed is justice denied. Hence, an emphasis on 'expeditious justice' is understandable and responsibility in this respect is primarily on the State, the Judiciary and the individual Judge.

An ever-increasing backlog of cases in different courts of our country is a cause of grave concern to all concerned. The State, in its turn, cannot be absolved of its failure in discharging its constitutional responsibility in this respect. Generally it is stressed that unless the number of judges does not commensurate with the number of pending cases the backlog cannot be cleared.

We have observed that different commissions and studies have reported various ways of coping with this problem but, unfortunately, nothing significant has been practically done or achieved in this regard so far. It is no doubt true that the quantity of judges needs to be increased substantially for disposal of maximum number of cases but experience has also shown that mere quantity is not enough and that quality of judges cannot be ignored. It is experienced from the present study that cases suffered from repeated and long adjournments because for lack of proper assistance from the lawyers or otherwise, the judge concerned wants more hearings of the case before making up his mind. During the field study it is noticed that often the disposal results of some judges far exceed that of many other judges put together. The difference, obviously, lies in the ability to decide and not in the caliber or competence. No more needs to be said in this regard except that a judge who cannot judge (expeditiously) is no judge however fair and intelligent he may otherwise be. Therefore, the State, apart from increasing the number of judges and appointing them on merit, must look for this attribute in all the problems under consideration if it wants to

ensure expeditious dispensation of justice in fulfillment of its constitutional responsibility on this behalf. The State also takes immediate steps in furtherance of this constitutional duty by providing better facilities and job conditions for the judges. It must be appreciated that only a judge who is comfortable and at peace with himself can attend to his work in a satisfactory manner and produce results. A judge who is hard pressed for his financial needs is never in a proper frame of mind to settle others' problems or disputes. Besides, he is likely to develop an aversion towards rich litigants and wealthy lawyers apart from becoming vulnerable to temptations himself. It is not surprising that the salaries of the judges in the past actually enabled them to live smoothly. The developed countries know the importance of freedom from financial worries and its bearing upon dispensation of justice. Even the salary of Judges of India and Pakistan is better than that of Bangladesh. It is felt from the study that the authority concerned must also look into it and take immediate remedial steps in this respect. If millions of monies can be spent on different projects, like importing luxury items, then why cannot the State invest properly on dispensation of justice which is the most important duty of it?

The role of the judiciary, as the organ of the State, primarily responsible not just for dispensation of justice but also for ensuring expeditious disposal of cases. Notwithstanding the limited and insufficient number of judges provided to it by the State, the judiciary must still strive to fulfill its constitutional responsibility in this regard. The first thing that needs to be done in this context is to recognize itself, redefine the priorities and brace itself for systematically and effectively clearing the backlog of cases pending before it on a war footing. The example of Singapore judiciary in successfully achieving the self-same object within a short period of time can always be usefully considered.

Expeditious disposal of cases or clearance of the backlog is essentially an organizational and managerial challenge than anything else and the Chief Justice of Bangladesh as the head of that institution can play a pivotal role in this regard. All it needs is good captaincy or helmsmanship on his part for proper planning and effective execution. The entire process from preparation of cause lists to final hearing of cases by individual judges needs his personal attention. Cases relating to one category can be bracketed and listed for hearing together.. This enables a judge to decide more cases with a case as they relate to the same or similar subject.

Some other steps that the judiciary as an institution can consider for minimizing delays in disposal of cases include improvement in the mode of service of parties in a case, availability of better and trained staff in the courts as well as introduction of computers for quicker access to legal data.

Coming now to the third, and by far the most important party involved in the matter of dispensation of justice, i.e. the individual judge it can be stated without any contradiction that expeditious justice is primarily the concern of the State and the organ or institution concerned and not that of the individual judge. An individual judge is surely to be conscious of expeditious justice but not to be obsessed or overwhelmed by it. It is sometimes said that if justice delayed is justice denied then justice rushed is justice crushed. For a judge what is of paramount importance is quality of justice and not its quantity or speed. A judge is to make every effort to conclude a case put up before him without any unnecessary delay but at the same time he is also expected not to sacrifice justice at the altar of celerity or rapidity as the same would be counter-productive. Creating and maintaining a balance in this respect is the mark of a fine judge.[6] But a

[6] Khosa, Asif Saeed Khan, '*High Court and Expeditious Justice*', PLD1993 (Journal), 97 at 100

Judge who displays careless disregard of the constitutional and statutory requirement of expeditious justice and allows cases put up before him to linger on unnecessarily needs to be taken to task at different levels as he not only violates the constitutional mandate in this respect and betrays the public's confidence reposed in him but also fails to justify the public money spent on him. The Chief Justice, like a good captain, should intervene and try to bring his responsibility home to that judge.[7] Richard M. Nixon, a former President of the United States of America, had once remarked that "An effective administrator has to be a good butcher." If need be, some butchery may also be resorted to here in larger public interest for sending a strong signal to all concerned.[8]

Lawyers generally take time to process claim and for the drafting of the petitions, suits and complaints, notice to the opposite- party. Courts allow time for needs which are incidental to the main proceedings, issues are formulated in order to avoid surprises, evidence is collected and complexity of the matter may determine the quantum of evidence and these are sufficient reasons in taking considerable time, as such, the time consumed in processing the claim cannot be said to be improper delay. But it is the duty of the lawyers to see that the disputes are resolved quickly and this vital service to the society by the lawyers is their paramount consideration.

The recent publicity in respect of undue delay in the process of justice is highlighted by the executive but it reflects a long standing failure by the lawyers to inform the public of its judicial purpose, skill and services provided by the legal profession to the litigants for resolving their disputes.

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[7] *Ibid*
[8] *Ibid*

Unless and until the delay is not appreciated in its true perspective we cannot say that the justice delayed is justice denied. Generally delay is caused by the courts due to overwork because the cases are fixed before the courts after many years in such circumstances the executive is responsible for such delay but the delay which is incidental to the proceedings, in order to enable the parties to settle the issue to collect the evidence, cannot amount to improper delay and the time consumed in such matters will not amount to "justice delayed is justice denied." The lawyers are not solely responsible for improper delay in the process of justice. The working of the courts, case load, the complexity of the litigation and quantum of evidence is the relevant material for the speedy justice and the decision of cases cannot be equated with treatment of a patient. Thus, without providing full opportunity or the production of evidence to the opposite-party, the decision of suit in hurry and haphazard manner will amount to denial of justice and the real purposes of administration of justice may be flouted by speedy disposal which amounts to "justice hurried is justice buried."[9]

The improper delay can be avoided by simplifying the present procedural laws and legislation can be said to be responsible for improper delay because there are different types of courts, different types of legislation for different subjects thus resulting in delaying the justice.

This research study is clearly of the view that the pace of disposal of cases is more the result of the "local legal culture" than court structure, procedures, case-load or back-log. This means that it is the shared commitment of judges, lawyers and support staff to reducing delay that is the most important requirement for improvement.

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[9] Khurshid, Syed Muhammed Kaleem Ahmad, '*Whether Justice Delayed is Justice Denied*', PLD 2000 (Journal), 122

Lack of commitment and dedication on the part of the judges is noticeable in their day to day work as reflected in the diaries and records of the courts. Barring some exceptions, it has been found to be the uniform practice in all subordinate courts of the country that not more than two or three hours' judicial work has been done each day in any court. Granting of liberal adjournments leaving no work to be done appears to be the main preoccupation of the court. They say that they feel helpless to refuse lawyers' prayers. They sign their orders written by their Bench Assistants without caring to know the position of the case. And thus run the proceedings in the courts.

Given the best of laws, the quality of justice and out –turn as well can never be better than the quality of the persons who administer it. During the field study it has been noticed hat there has been generally serious erosion in the quality of the presiding judges raring a few exception. Falling standard of legal education, large scale appointment, lack of adequate and practical training and experience and lack of accountability have contributed to the deterioration in quality.

This research study observed alarming lack of supervision at all stages in the subordinate courts; the default made by the District Judges in this respect being the most disturbing. There has been practically no inspection, no accountability, and indiscipline seem to plague most of the original courts. The judges –in- charge of individual courts and department do not exercise effective supervision over the work of their staff as provided in the rules. The mandatory provisions of Rule 887of the Civil Rules and Orders (Volume I) requiring inspection of the courts by the judges every year and Rules 937and 939 of the Civil Rules and Orders (Volume I) requiring inspection of the courts by the judges every year are not followed.

The District Judges are required to hold inspection of all courts and offices at the district headquarter once every year and at out- lying stations once in two years and submit notes of such inspection to the Supreme Court, High Court Division, as required by Rule 927 of the Civil Rules and Orders (Vol. I).This is not being done. For proper administration of courts and easy movements of cases from filing to disposal it is recommended that:

(a) There should be incentive in the form of better service conditions etc.
(b) There should be necessary training facilities for all grades of judges considering their needs and the curriculum of the training should contain modern techniques of court management and case flow management.
(c) There should be strict supervision at all stages- staff of the court by the Judge concerned, all categories of judges by the District Judges concerned and ultimately all the subordinate courts by the High Court Division .

The research study further noticed that lack of experienced supporting staff such as *Sheristader*, *Nazir* and *Peshkars* (Bench Assistants) is also greatly responsible for deterioration in the administration of courts. With the creation many courts at a time in 1983 and 1984, many of the above responsible and important posts had to be filled up by giving promotion to inexperienced hands. It is recommended that there should be training facilities for supporting staff specially *Sheristadar*, *Nazir* and *Peshkars*.

There is need for motivating the lawyers to co-operate with the programs and procedures of the court concerned for quicker disposal of cases. To that end, the District Judge may arrange for occasional meetings between the representative members of the bar and the bench and thus enliven "the local legal culture" for promoting the pace of litigation.

Necessary instructions may be issued for exercising greater discretion in the matter of granting adjournments, for ensuring full days' work in court and timely sitting and rising of courts by the High Court Division as well as by the District Judges.

There is a perceptible imbalance in the case loads in the original courts which needs correction, because, such imbalance accounts for colossal wastage of manpower and time on the one hand, and loss of efficiency on the other. While the Sadar Assistant Judges Courts are generally congested with heavy filing and back-log, many Assistant Judges Courts have very little cases. In order to rationalize the situation, the District Judge, may be invested with power to enlist the services of Assistant Judges, within his jurisdiction to work at the courts with heavy files for such period as may be necessary. There is need to appoint more Additional District Judges and Joint District Judges at congested judgeships.

In the trial court the management personnel, i.e. the Bench Assistant, the *Sherista* Assistant and the *Sheristadar* with the assistance of the process-serving establishment, handle a civil suit at filing of the plaint, issue of summons on the defendant and appearance of the defendant, filing of written statement by the defendant, discoveries, inspection, interrogatories, etc., settling date for fixing the date of final hearing, and drawing up of decrees stages under the direct supervision of the judges and the judge has to directly deal with the suit at framing of issues, final hearing which includes production of evidence by the parties and arguments, and delivery of judgment stages. However, the judge himself is responsible for ensuring that delay is eliminated at every stage through

which a suit is required to pass and his basic principle must be kept in mind in looking for remedies for eliminating the causes of delay.

Rules of procedure have been amended from time to time to ensure speedy disposal of cases and accordingly the Code of Civil Procedure (Amendment) Ordinance, 1983 (Ordinance No. XLVIII of 1933) *inter alia*, has set down time limit at all stages of a suit. Subsequently, the said Code was also amended in 2003 and 2006 respectively specifying the time limit of granting adjournments and provision to settle the case through mediation/arbitration. But the research study has not come across one record or one diary in course of its random inspection of the courts where there has been an honest endeavor by any judge to comply with the time-limits provided in the various rules and orders. Rather the study has found unnecessary and unreasonable delay at almost all the above stages of civil suits in the courts visited by the researcher. However, this is not to say that the courts have not had enough ready cases to be taken up for hearing. The research study reveals that diaries almost everywhere with sufficient cases set down for peremptory hearing every day but also then the cases have remained pending for months and years, although for days together there has been practically no work done. The delay in disposal of cases can be substantially reduced if firm measures are taken to tone up at least that part of the malady which has beset practically all the trial courts.

Filing of plaint with insufficient court fees and/or proper requisites for service of summons and then grant of adjournments for payment of deficit court fees and/or for filing requisites is found the primary cause of delay. To overcome the problem, the presiding judges should rigorously implement the provision of Order IV of the Code of Civil Procedure.[10]

[10] Order IV of the CPC reads as:

More than one adjournment of correcting valuation and/or payment of deficit court fees should rigorously discouraged and in no case, time exceeding the period mentioned in the proviso to Rule 11 of Order VII of the Code of Civil Procedure should be allowed for these purposes. Action should also be taken under clauses (b) and (c) of Rule 11 of Order VII of the Code of Civil Procedure in case of failure to correct valuation and/or pay deficit court fees in time.

At the second stage of the suit delay occurs in the service of summons. To diminish this problem the *Sheristadar* of the court must meticulously observe Rule 55 of the Civil Rules and Orders (Vol. I)[11] and

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1. Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf a plaint together with as many true copies of the plaint as there are defendants for service of summons upon such defendants.
(1a) The Court fees chargeable for service of summons shall be paid in the case of suit when the plaint is filed and in the case of all other proceedings when process is applied for.
(1b) A plaintiff shall file, along with the plaint, for each defendant a copy of the summons along with a pre-paid registered acknowledgement due cover with complete and correct address of the defendant written on it.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

[11] In respect of presentation of plaint, Rule 55 of the Civil Rules and Orders (Volume I) provides:

(1) On presentation or receipt of a plaint, the *Sheristadar* of the Court shall examine it in order to find out whether all the requirements of law have been complied with. This examination should be particularly directed to ascertaining among other things-

(i) whether the plaint bears full court-fee stamps in accordance with the valuation put upon it;
(ii) whether it has been properly signed and verified (Or. 6, rr 14 and 15);
(iii) whether it complies with the requirements of Or. 7, rr.1,2,3,4,6,7 and 8;
(iv) whether it is accompanied by the necessary copies of plaint and process-fees and draft forms of summons (amended Or .7,r. 9 (1-4);
(v) whether the documents attached to the plaint (if any) are accompanied by a list in the prescribed form Or. 7, r. 9(1) ;

ensure that Order IV of the Code of Civil Procedure is strictly complied with by the party when plaint is filed.

Processes filed in the courts' office must be sent to the *Nazarat* on the same day and in no case later than two days enjoined by Rule 99 of the Civil Rules and Orders (Vol. I) and Paragraph 5 of the Civil Suit Instructions Manual instruction. The *Sheristadar* should often hold casual and sudden inspections to see whether the above rules are followed and bring cases of default to the notice of the judges who shall take suitable action against the defaulter. Distribution of processes to the process-servers at the *Nazarat* should take places as promptly as possible within a week.

The *Nazir* and the Judge in charge should ensure that processes are invariably returned by the process-servers within the returnable date. The *Nazir* should report cases of default to the Judge in charge who will immediately take disciplinary action against the defaulter. The trail judge should report case of return of summons without service on flimsy grounds to the Judge in charge of the *Nazarat* and the latter should take appropriate and, in suitable cases, drastic action against defaulting process-servers.

(vi) whether it is accompanied by the party's address as require by Or . 6, r. 14-A and contains the necessary particulars (*vide* rule 21);

(vii) whether in the case of minor plaintiffs and defendants the requirements of Or 32, rr.1 and 3 have been complied with and the necessary application supported by an affidavit verifying the fitness of the proposed guardian *ad litem* of the minor defendant (s) has been filed;

(viii) whether the suit is within the pecuniary and territorial jurisdiction of the Court;

(ix) whether the vakalatnama has been properly accepted and endorsed the Advocate [*vide* rule 822, and in particular sub-rule (6) of the rule], and whether in the case of illiterate executants, the provisions of Rule 821 and 822 (4) have been complied with.

(2) The officer examining the plaint is required to certify on the top left hand margin of the first page of the plaint the sufficiency or otherwise of the stamp borne and to note the amount of deficiency, if any. A second certificate is to be appended if and when the deficiency is collected.

(3) The officer examining the plaint should refer to the presiding Judge if he thinks that it should be returned or rejected for any reasons. It will then be for the judges to deal with the matter.

The *Nazir* should promptly send back the processes to the issuing court as soon as these are received back from the process-servers strictly according to Rule 105 of the Civil Rules and Orders (Volume I) and Para 5 of the Civil Suit Instructions Manual.

This *Sherista* Assistant should at once, and in every case before the date fixed place the processes received from the *Nazarat* with the record and the presiding judge should be absolutely certain when recording order the effect ``S.R. not received" that in fact S.R[12] has not been received.

Lastly, the *Seristadar* and the presiding judge must take active interest in ensuring that service of processes of his court is not unnecessarily delayed and for this the presiding judge must seek cooperation from the judge in charge of Nazarat. The presiding judge must always keep in mind that *Nazirs* are directly responsible to him for the due and regular service of processes entrusted to them by him.

During scrutiny of records of various courts it was observed that sub-rule (1) of Rule 1 of Order VIII of the Code of Civil Procedure requiring the defendant to file written statement within a time not beyond two months from the date of his appearance is more obeyed in disobedience. In some cases it was found adjournments had been granted for years for filing written statement particularly when the Government was a defendant. When asked about the reasons for such flagrant non-compliance with the above provision the invariable answer from the presiding judges had been that they had to accommodate the prayers made and compliance with the said provision would give rise to dissatisfaction among the lawyers. To

[12] "SR" stands for 'service return'

overcome the problem it is suggested that the presiding judge must see that the written statements filed strictly according to sub rule (1) of Rule 1 of Order VIII of the Code of Civil Procedure. The presiding judge should also proceed under Rule 10 of Order VIII of the Code of Civil Procedure in case of failure of the defendant to file written statement within the time fixed by the court.

It had been a long standing practice to frame issues after the filing of the written statement on the next hearing date and the date of framing issues was never adjourned on any ground whatsoever. During the study it is found that instances of framing issues on the first date fixed for the purpose were rare-even if the parties had filed *haziras*. In most cases the date of framing issues was found to have been adjourned 15/20 times on the grounds of either absence of the lawyer of the parties or failure to file draft issues by them or preoccupation of the presiding judge with other work although their diaries revealed that they had not performed any substantial judicial work on those days. There is absolutely no reason to shelve framing of issues on the very first date fixed for it. Therefore, it is recommended that presiding judges shall in variably frame issues on the very first date fixed for it and the date of framing issues shall not be adjourned for absence of lawyers or for failure to file draft issues or for preoccupation of the presiding judges. The District Judges, during his inspection must satisfy himself that the date of framing of issues is not adjourned by the presiding judges as a matter of course and without unavoidable reason.

In not more than 5-10% suits the provisions for discovery inspection interrogatories are resorted to. In some cases parties do not care to take the steps they are required to take regarding interrogatories, local investigation,

etc. at the appropriate stage and until at the last stage of the suit. This should not be allowed. Sometimes the presiding judges are reluctant to hear and dispose of objections against the reports of local investigation or partition and as a result, disposal of the suit is unnecessarily delayed. To overcome this problem the presiding judge should insist on filing interrogatories, if any, applications for local investigation, if any, etc. at the appropriate stage and invariably on the first date fixed for the purpose. No adjournment should normally be allowed for this purpose. The presiding judge should also insist on filing of objections against the commissioner reports on the date fixed for hearing such objections.

Rule 124 of the Civil Rules and Orders (Volume I) and Paragraph 18 of Chapter IX of the Civil Suit Instructions Manual deal with the settling date of hearing. Moreover, Rule 8 of Order XIV of the Code of Civil Procedure requiring the court of fixing the date for final hearing of the suit within 120 days for the date of framing of issues. It has been found during the study of various courts by the researcher that compliance with the provision of the above Rule and actual disposal of the suit on the date of final hearing fixed according to the said Rule is possible only where the file is rather light. It is not possible to stick to the firm date of final hearing fixed under this Rule and dispose of the suit on the date where the file is heavy. So, suitable amendment of Rule 8 of Order XIV of the Code of Civil Procedure may be considered to bring it in conformity with the rules in Chapter 7 of the Civil Rules and Orders (Vol. I) and Paragraph 18 of Chapter IX of the Civil Suit Instructions Manual. Moreover, the presiding judges are required to enforce that the parties take all necessary steps for final hearing during the interval between the settling date and the date of final hearing.

The researcher, during scrutiny of records and diaries of various courts observed that the courts have developed a general practice of adjourning cases fixed for *ex parte* hearing without any ground or on the ground of their preoccupation with other work although their respective diaries revealed no such preoccupation. Cases were detected in which the plaintiff appeared ready with witnesses for months and even years together but could not get his case, heard by the presiding judge. Surprisingly enough, the inspecting authorities of these presiding judges including the District Judges did not think it necessary to take steps to rectify this unwholesome practice by the courts to leave uncontested suits pending for years without any reasonable ground. So far as contested cases are concerned it was found that on the first final hearing date hardly any presiding judge had taken up a case for hearing.

To remove the said habit it is recommended that uncontested suits must be heard and disposed of invariably on the first date of *ex parte* and no adjournment should be allowed on the ground of engagement of presiding judge with any other work and tendency to adjourn *ex parte* suits on parties' prayer should be rigorously discouraged. In this respect Para 7 of Chapter I of the Civil Suit Instructions Manual should be strictly followed. And the practice of granting liberal, repeated and wholesale adjournments at the cost of public time must be stopped forthwith and drastic action should be taken to enforce performance of judicial work during courts hours. The district judges must exercise effective supervision so that the time for performance judicial work is not wasted by any presiding judge. Contested suits should be fixed in such a way and in such number as may be practicable and possible for taking up for hearing. Adjournments of suits fixed for final hearing and particularly the suits which are more than one year old should

be rigorously discouraged. Once hearing of a suit commences the hearing should continue from day to day until hearing is concluded except where adjournment becomes necessary for unavoidable reason and in exceptional circumstances. Arguments should be heard immediately on conclusion of evidence and in no case beyond seven days from the conclusion of evidence.

The specific rule and longstanding practice in the civil courts are that judgments in *ex parte* suits are recorded forthwith and never late than the morning following the conclusion of hearing. It will be enough to cite only one instance among innumerable cases found by this study of leaving judgments in *ex parte* suits pending for months together after conclusion of *ex parte* hearing and in many of them several adjournments were granted *suo motu* by successive presiding judges for writing out the final order which could not normally take more than few minutes in each of these suits. In this particular court some Assistant Judges were found to have left the station on transfer and even on promotion leaving these suits pending for recording the final order. So far as contested suits are concerned the usual practice has been incorporated under Order 20 Rule 1 of the Code of Civil Procedure to deliver judgment within seven days from the date of conclusion of hearing. The study, however, found departure in many cases and in a few instance presiding judges were found to have left the stations leaving judgments pending after conclusion of hearing for their respective successors- in- office in violation of Rule 141 of the Civil Rules and Orders (Volume I).[13] An unusual delay on the part of the presiding officer in

[13] In Rule 141 of the Civil Rules and Orders (Volume I) it is stated that every Judge proceeding on leave or transfer must write judgments in all cases and appeals heard up to and including the stage of arguments, unless the inability is due to illness or sudden making over the charge. In such cases, the Judge should before his departure, submit a statement in Form No. (S) 3 reasons in the remarks column for not being able to write judgment.

writing out judgments is fraught with many adverse consequences. He may forget the facts of the case, the issues involved, the substance of oral and documentary evidence, the demeanour of the witnesses and the arguments advanced by the parties' lawyers. If this happens, he is obliged to go through the records again in order to refresh his memory and to conversant with all the materials necessary for the purpose of preparation of the judgment. This not only means extra labour and wastage of time but also the non-consideration of the points argued. To ensure quick delivery of judgments and observance of the rules in this behalf by the subordinate courts, the research study felt necessity that strict supervision should be exercised by the Supreme Court.

The District Judges must insist on submission of statement in Form No. (S) 3 from all courts subordinate to them and take suitable action in cases in which hearing of arguments and delivery of judgments have been left pending for long period. Drastic action should also be taken against presiding judges who deliberately withhold submission of statements in Form No. (S) 3.

The practice of filing of further and better statements by the parties almost in every case as prevailing, should be discontinued and the power under Rule 5, Order VI and Rule 9 order VIII should be exercised sparingly only where the interest of justice so requires.

Order XVI Rule 19 of the Code of Civil Procedure should be amended so that the commission for the examination of witnesses is issued only in a case where the witness is residing outside the courts' jurisdiction

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Note:- District and Additional District Judges should submit the statement to the Supreme Court (High Court Division) and Joint District Judges and Assistant Judges to the District Judge.

or is a *pardhanashin* lady or is unable to attend court on account of sickness or infirmity or is otherwise exempt from appearance in court.

The parties should file lists of witnesses within one week of framing of issues and should take all necessary steps for the issue of summons to witnesses required to be summoned through the court at least a fortnight before the date when the date for final or peremptory hearing of the suit is to be fixed. In case of default no summons on any witness should be permitted to be served through court unless the defaulter satisfies the court that there was sufficient cause for his failure to take the required steps in time

The witness who appears in court but cannot be examined should be asked to furnish a bond for appearance on the date to which the suit is adjourned on the party summoning him depositing the witnesses' expenses and failing this the witness should not be summoned. Necessary facilities like waiting rooms (with facilities of latrine and drinking water) should be provided for the witnesses at every place where a court sits.

The parties should alongwith their pleadings submit lists of persons who should be substituted in the event of their death during the pendency of suits or proceedings also nominate a person who may be from amongst the presumptive heir, as a person who would be responsible for intimating to the court about the nominators' death and supply the correct particulars of his legal representatives. In case of failure of the nominee to give such intimation to court the court should be competent to proceed with the suit and the orders passed in the absence of the nominee or the legal representatives should be binding on the parties unless set aside by the court

for good reasons. The nomination once made should remain operative even in appeal, revision and other civil proceedings arising out of the suit unless varied by the parties.

The practice of issuing notices to the parties and their counsel when their cases cannot be taken up by the court on the date fixed either on account of the date being declared to be a holiday or the presiding officer being absent on account of illness or other cause as prevalent should be discontinued. In such cases the suits or proceedings should be taken up on the next working day as contemplated by section 10 of the General Clauses Act, 1897. If the presiding officer is unable to attend the court on account of illness or any other cause the acting presiding judge or *Sheristadar* should be empowered to fix another date having regard to state of the file as evidenced by the diary and probable date of return to duty of the presiding officer. The lawyers of the parties should put their signature on the margin of the order sheet in token of their having seen the order.

During the study it was observed that the Magistrates are getting Stenographers but the Assistant Judges and Senior Assistant Judges are working without Stenographers. The Additional District Judges and Joint District Judges in some cases also have been facing the same difficulties due to shortage of Stenographers. At the time of taking interview all of them had shown their dissatisfaction in this regard. The researcher as a member of judicial service had also faced this problem. Non- providing of stenographers is, among others, a cause of delaying a suit. Therefore, the research study has felt necessity of providing Stenographers for all judicial officers.

The judicial work of every day should be so arranged that the court may have sufficient work to keep itself engaged throughout the day and that adjournment of a peremptorily fixed suit may not be necessary for want of courts' time. As , however, some cases may fall through on account of compromise, withdrawal or for some other unexpected reason, it is suggested to post suits slightly in excess of the number that is expected to be disposed of in a day.

After a suit has been fixed for peremptory hearing, it is necessary for the parties to take steps for summoning their respective witnesses, whether these are to be served by them or through court. As stated earlier the parties are not usually diligent in taking out summonses on witnesses and depositing the process fees in time. This results either in the shifting of the date of hearing of a suit or its adjournment on the date fixed. The court must be every strict in granting adjournments after the suit has been fixed for final hearing whatever may be the grounds for an adjournment. If any party or his lawyer thinks that it may not be possible for him to attend court for any reason on the date fixed for hearing, that party must apply in advance to the court for shifting the hearing date. The court should not ordinarily entertain such a prayer unless it is made well before the final hearing date and notice of the prayer for shifting the date has been given to the other party. Adjournments of suits fixed for hearing are, at times, granted liberally on the prayer of either party. Some apparently plausible ground is put forward for an adjournment, but the real purpose of the adjournment is either that the lawyer is otherwise engaged or the party concerned has some other business to attend to. This is the stage where the court must be very strict in granting an adjournment. To adjourn a suit fixed for hearing is to dislocate the courts' own diary and program of work. Many instances have

been noticed where a number of adjournments have been given in suits fixed for final hearing. Such frequent adjournments should be discouraged. No adjournment at this stage should be given except on very exceptional grounds and, that too, on payment of such amount of costs is insufficient to compensate the other party.

We have observed that lack of supervision of the subordinate courts is one of the major causes of delay and laxity on their part. On the civil side, the indifference of the District Judges, has led to a situation where there is no day -to -day and immediate control and supervision of the working of the civil courts. There is hardly any check on the hours the subordinate judicial officers actually work, the manner in which they conduct their business and behave towards the litigant public and the quantity and quality of their output. The High Court Division undoubtedly judge the work of subordinate judicial officers by the judgments which come under appeal or revision and by the general reputation enjoyed by these officers in their districts, but this control is not substitute for the direct supervision by their immediate superiors in the districts which appears to be badly needed if there is to be any appreciable improvement in the working of the subordinate judiciary. Elaborate instructions already exist for the regular and surprise inspections of subordinate courts in the Civil Rules and Orders (Volume I). These rules prescribe regular inspection by the District Judge of the civil courts under their control. It is also contemplated that each presiding officer will carry out a periodic inspection of his own court so as to ensure that all the registers are properly maintained by the ministerial staff of the court. There is also a practice for inspection of the subordinate courts by the Judges of the High Court Division, but recently these inspections have not been regularly carried out due to the pressure of work

in the High Court Division and the consequent inability of the judges to spare time for visiting outlying districts. The neglect of this important duty of regular inspection of subordinate courts has had adverse effect on the working of these courts. The research study is of the view that it is imperative that positive steps should be taken to remedy this situation.

All these proposed steps directed towards expeditious disposal of cases will be reduced to naught unless the liberal granting of adjournments to parties and their counsel is not effectively discouraged or cheeked. It is often experienced that the same lawyer has many cases fixed on the same day before many courts and this preoccupation of his cause's adjournment of most of his cases. With the introduction of computers this problem can be substantially tackled by ensuring fixation of a lawyers' cases on one day before one judge only.

It may be stated that grave situations call for hard decisions and tough actions which may incidentally cause hardship, annoyance or frustration to some. Unconscionable delays in disposal of cases with a resultant accumulation of enormous backlog of cases in different courts has already assumed alarming proportions and this situation of crises calls for bold and courageous actions and decisions on the part of those who are concerned. It is said that when the going gets tough, the tough get going. Therefore, for the sake of their constitutional responsibility of ensuring expeditious justice and also for saving the prevalent judicial system from collapse the tough must get going before it is too late.[14]

From the foregoing discussions, in-depth examination of the problem of delay in disposal of cases at various stages, investigation, survey by

[14] Khosa, Asif Saeed Khan, '*High Court and Expeditious Justice*', PLD1993 (Journal), 97 at 100

questionnaire, field study, expert consultation, experiences of other jurisdictions as well as theoretical study and research amply felt necessity that the following recommendations be adopted for effective case management in Bangladesh with a view to minimizing the pendency of old cases and ensuring that the litigation comes to an end by way of an amicable settlement of the dispute, the courts will be entrusted with certain categories of cases in which there is a reasonable possibility of settlement so as to assist the parties in arriving at a reconciliation, whether the cases are at the preliminary stage, or ripe for hearing, or at the execution stage:

1. Cases considered suitable by the trial judge shall be referred to ADR e.g. mediation and the parties shall take prescribed procedural steps to submit the matter to mediation. In the context of Bangladesh, it is suggested that any other form of ADR i.e. early neutral evaluation, pre-trial settlement conference etc. as practised in many other countries, be not attempted in the scheme of mandatory reference to ADR. Bangladesh people are more familiar with mediation. Use of any other methods in judge's referral, whatever their merits, may confuse and complicate the situations.

2. Relevant Code of Civil Procedure provisions e.g. Orders X, XI, XII, XIII and XIV need to be linked with the concept and techniques of case management, and the powers of the judge be enhanced for the purpose. With the active participation, supervision and order of the judge, the parties would be required to submit joint case management statement clarifying, simplifying and narrowing down the issues. This would render judge's work easier to make appropriate referral of cases to mediation.

3. Nature and types of cases need to be normatively sorted out to put them in the category of ADR. Simple or less complicated cases must be

referred to mediation. There is need to definite factual and legal yardsticks or criteria to distinguish between simple and complicated cases. By one estimate more than 80% cases can be referred to ADR. Good examples of simple or mediation friendly cases should be family matters, specific performance of contracts, simple partition, pre-emption, money suit, small cause courts' cases, house rent cases, etc.

4. Powers of the trial court need to be increased to dismiss cases on frivolous and flimsy matters.

5. Initially, the judge himself may have to settle mediation cases. In such cases the judge himself would decide on the procedural course to take in a definite time-frame.

6. Judicial policy would be to ultimately relieve the judges of the mediation matters and gradually refer all disputes to professional mediators. After the reference to mediation, the parties shall be required to take certain definitive measures and steps in a specific time-frame to resolve the dispute by mediation e.g. appointment of mediator or mediators, minimum number of sittings of the parties with the mediators etc.

7. A clear procedure shall be designed to find out whether the parties seriously and sincerely took the steps to make mediation successful. One of the ways of doing it would be to ask the mediators to submit a report for the purpose.

8. In case of reluctance or negligence of any party or parties in the mediation process, adverse cost order can be made by the courts.

9. In case of mediation by the judge, present system of awarding two credits for each successful mediation and one credit for unsuccessful one must be strictly followed and implemented.

10. In case of mediation by the parties through lawyers or professional mediators, minimum fees for the mediators must be fixed, and there should be provision for special fees for successful mediation depending on the value of the suit.

11. Whether it is mediation by the judge, or by the mediators, in case of any failed attempt, a comprehensive report must be prepared stating the causes of failure.

12. Comprehensive awareness and motivational programs on ADR for judges, lawyers, potential mediators and the parties as well as the people at large is an essential pre-requisite for the success of court-sponsored mediation. Media, leaflets, pamphlets, posters, NGOs, public forums, religious institutions, local government agencies and special government drives and campaign need to be used for the purpose. The purpose of any good law on ADR or any institutional arrangement for its implementation can be frustrated due to lack of sufficient awareness and motivation.

13. Time-bound institutional training and education for mediators based on specific course, curriculum, examination and award of certificate must be provided for. Pending the creation of such permanent institutional mechanism, the judges, lawyers and others who would be enlisted or entitled to mediate would better undergo *ad hoc* training programs provided by those who are qualified to do so. The institutions like Judicial

Administration Training Institute, Legal Education and Training Institute of Bangladesh Bar Council, Bangladesh Institute of Law and International Affairs can arrange such training programs, or the government can arrange such programs under their own schemes or projects.

14. A National Mediation Council may be formed by the Government to set the principles, norms and standards of mediation and to ensure the quality of mediation.

15. University and college law curriculum must include compulsory course on ADR with special emphasis on the ethics and techniques of mediation. Bangladesh Judicial Service Commission is also recommended to include in its syllabus for the examination a compulsory full paper on ADR.

16. For the success of court-sponsored ADR, amendment or enactment of the relevant law and its implementation mechanism would need to be supported by adequate government funds to encourage the new system. The greater use of national legal aid program for mediation with substantial increase of the legal aid fund is suggested. Enthusiastic and successful mediators and mediation lawyers need to be officially rewarded both financially and with due recognition.

17. Court-sponsored ADR is to be applied not only in newly admitted cases, but also in old pending cases.

18. Government can also consider on experimental basis the formation of exclusive mediation courts with exclusive mediation judges

with special training on mediation where only specially trained and appointed exclusive mediation lawyers will help the mediation process on behalf of their respective parties.

19. Operation of any law on court-sponsored mediation and working of any institutional mechanism for implementation would require to be constantly monitored by higher echelon of the judiciary on a regular basis and in a specially prescribed format.

20. The potentials and expertise of many national NGOs which have earned credibility in providing legal services to the people in various ways including use of ADR e.g. *shalish*, are to be utilized in the scheme of the court-sponsored ADR by enlisting their activists or lawyers as panel mediators, and by asking for their assistance to organize training for the mediators.

21. Any government move for taking legislative measures to introduce court-sponsored ADR on mandatory basis by amending the existing law or by enacting new law, and for undertaking any action plan for institutionalization and implementation of the new system is to be preceded by the adoption and proclamation of a National ADR Policy. The Policy is to define and enunciate the nature, objective, rationale, merits, advantages of ADR in general and the court-sponsored ADR in particular, initiating a paradigmatic policy shift from adversarial procedure to consensual procedure of dispute resolution within the realm of the judiciary. The Policy would also set the objective of awareness and motivation amongst the stakeholders and the people at large. This would also contain the general principles and guidelines of ADR. Adoption of such a policy

and its planned propagation can launch a well orchestrated national movement for ADR to serve as a good prelude to court-sponsored mediation in Bangladesh.

22. A Judge with greater intention at the pre-trial stage may resolve or mitigate many of the disputes or at least shorten the time for the trial and also lessen the expenses of the litigant. Section 30 and Orders X, XI, and XII of the Code of Civil Procedure enable a judge to weild tremendous power over the proceedings of the case and control the parties. Code of Civil Procedure gives the details on interrogatories, admission of documents and facts and the discovery, inspection and production of documents. They also spell out the consequences of the non-compliance of the orders of the court in these regards. At this stage if the judges are keen enough to have the exact pictures of the cases of both sides, their strength and weakness with the aid of the lawyers of the parties, they may tactfully bring about conciliation between the parties. If most of the facts of the cases are identified and also resolved, very little will remain for the court to decide and good sense may be dawn on the parties to compromise whatever small point is left.

23. Most often delays are caused on account of interlocutory orders. A party who is able to get an order of *ad-interim* or temporary injunction but finds his ultimate position shaky tries to delay the disposal of the case as much as possible by filing petitions for time. To avoid delay, interlocutory matters should be disposed of quickly considering the provisions laid down in Code of Civil Procedure (Amendment) Act, 2003 and Code of Civil Procedure (Amendment) Act, 2006 respectively.

24. The rate of disposal of cases decreases day by day, the main reason for this decrease is non-utilization of the full working hours by the courts. Judges work in the *ejlash* for about only two to three hours on the average instead of six and half hours as fixed under Rule 1 of the Civil Rules and Orders (Volume I). Most of the judges do not follow the rules of rising the court at 9.30 am and leaving it at 4.30 pm with a break of half an hour. The research study found that more than 95%, by touching their heart, can swear upon it. It means the judges are not punctual in rising to the court and spending entire *ejlash* time. The judges normally take their seat for judicial work at about 10.30 or 11.30 am and continue up to 1.30 pm to 2 pm. In most cases, judges do not take up any work in the *ejlash* after recess *i.e.* after 2 pm. If the judges' work full time fixed for judicial work, the rate of disposal can be increased by about 25% to 50% with the present number of judges.

25. Overall efficiency in the court's work decreased due to lack of proper and effective supervision. Many deficiencies can be removed if the District Judges regularly supervise the works of the courts of his judgeship and if the Judges of the High Court Division periodically supervise the works of the subordinate courts. Delay at the summons stage and at other stages prior to the stage of preemptory hearing can be effectively checked if the presiding officer takes the pain of regularly supervising the work of *Nazrat* and other departments.

26. Delay seriously occurs at the summons stage because of disinterest shown by the process servers regarding the facilities given to them. No transport is available for them. The process fees (*talabana*) filed by the parties at the time of filing suit is very poor. Still plaintiffs are

depositing boat fare as *talabana* at a negligible amount. The service conditions of the process serving staffs should be attractively increased.

27. Some suits are unusually delayed due to dearth of Advocate/Commissioners. The present fee for the commissioners is very meager and as such none is willing to do commission work. To attract more lawyers and survey passed hands in commission work, fee should be increased reasonably.

28. Section 26 of the Code of Civil Procedure provides that every suit shall be instituted by the presentation of a plaint. But filing of plaint with insufficient requisites and vague grounds causes delay at the earliest stage of a suit. Plaints are not generally accompanied by valid documents. In the *Artharin Adalat Ain*, 2003 (Money Loan Court Act, 2003) there is a provision of filing plaint with an affidavit and for this reason the judges of the *Artha Rin Adalat*, in appropriates cases, can dispose of the suit *ex parte* without examining the plaintiff. So, if the same types of provision are inserted in the Code of Civil Procedure by amending section 26 and relevant rules then civil suit can be disposed of more quickly.

29. Section 27 provides that where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed. So considering the above complexities if an amendment is brought in section 27 and relevant rules of the Code of Civil Procedure fixing time frame for sending summons to defendants it will certainly be helpful in diminishing delay and summons can be served expeditiously upon the defendant.

30. Section 32 (c) is inserted in the Code of Civil Procedure for the purpose of compelling any summoned person to appear before the court. Unless the penalty is heavy the summoned person may avoid appearing. If the penalty is too small amount, the person summoned may like to pay-up instead of appearing. In that event the evidence required in the case may not be available. Five hundred rupees (Taka) was inserted in section 32 (c) at the time of enactment of the code in 1908 and for the reason it is necessary to amend this provision taking into consideration the depreciation in the money value.

31. Section 58 of the Code of Civil Procedure provides for the detention and release of a person from civil prison in execution of a decree. Since the time provisions of section 58 were made, the value of money has decreased considerably. In this view it is necessary to amend the provisions laid down in clause (a) and (b) of section 58 and also to insert other necessary provision to smoothly carry out the law.

32. Section 148 of the Code of Civil Procedure provides for enlargement of time by the court. Where any period is fixed or granted by the court for any act prescribed or allowed by the Code, the court has discretion to enlarge such period. This discretion in most of the times causes delay. So, there is a need of making amendment in section 148 with the view to minimizing the procedural delay at the instance of either party to suit.

33. The object of furnishing further and better statement or particulars under Rule 5 of Order 6 of the Code of Civil Procedure is to enable the opposite party to know what case he has to meet at the trial so that he may

not have to go to the trial embarrassed by vagueness or incompleteness of the cause he has to meet. This rule does not, however, permit introduction of new materials on different cause of action. But in practice it is found that the parties on many flimsy grounds has been submitting further and better statements only to cause delay in the suit. Therefore, considering the reality if an amendment is brought in rule 5 of Order VI of the Code of Civil Procedure, then this problem to some extent can be solved.

34. It is recommended to establish a fully functional and automated CMIS/CMCA system in the judiciary of Bangladesh. If not in every court, then in those where the number of pending cases, backlogs are among the highest. The equipments and necessary setup are already there, although some of them may have become obsolete. Brining them back in working condition can be done by minor repairing or in the worst cases, replacing them. To enhance and expedite the system, some new equipment needs to be installed also. Following recommendations can be taken into consideration during the reintroduction of the CMIS/CMCA systems in the courts Bangladesh:

(i) For the successful implementation of the job, it is immensely important to form a committee which can be named as 'implementation and monitoring committee' with a group of people who know their job and mean business right from the start. This implementation and monitoring committee must comprise with legal experts, IT experts and skilled executives with proven track record. This committee will do the following:

(a) Appoint IT personnel and other staffs;

(b) Supervise the whole refurbishment process and

(c) Monitor the functioning of the system.

(ii) Getting an up-to-date data about the present condition of the equipments is very important for the successful implementation of the automation process. For this, a team of experts and technicians should be assembled. This team will visit the courts where LAN and other facilities were installed. After conducting a technical survey of the equipments, this team shall prepare a comprehensive report containing the present condition of the equipments in each court with the lists of equipments to be repaired or replaced. The implementation and monitoring committee shall determine the probable cost of refurbishment and sketch a plan of action on the basis of this report.

(iii) The judges are the real implementers of reforms in CMCA. So, proper motivation and training of judges and the court staffs are one of the preconditions for meaningful implementation of CMIS. To prepare a robust IT related planning and curriculum, one or more educational consultant should be appointed. The Judicial Administration Training Institute (JATI), with its present set up of computers and other facilities is quite capable of arranging the training programs on a regular basis.

(iv) Own IT section need to be established in each of the courts with an effective and realistic organo-structure and staffs must be permanently appointed in need basis, who will be responsible for feeding daily data's into the server and keep and run the computerized system actively.

(v) Computers should be supplied to copying section and records room and those sections should be brought under local area network (LAN). A uniform clearance rate should be introduced for all courts.

35. Re-introduction of this automatic system should materially assist reduction of the case backlog efficiently and cost effectively, providing more timely as well as accurate access to be information for the users. It should also improve transparency in the total justice system. In order to establish a modern IT atmosphere, it is high time to think about inter connecting the courts by establishing an appropriate WAN (Wide Area Network).

36. CMIS implementation is not like purchasing a light bulb and then switching it on. CMIS is an inter section dependent activity and no single module can be implemented alone. If any challenge is encountered in the implementation process of CMIS, gradually it would be possible to remove it by close coordination among the judges and court staff and IT experts. After the reintroduction of CMIS for civil justice system, the system, with future enhancement, can be used to cover the criminal justice system as well.

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APPENDIX

Study on 'Factors Responsible for Delay in the Civil Suits and Court Management in Bangladesh'

Respondents' Identity

1. Name-

2. Address-

Questionnaire

(For research purpose only)

1. Do you consider the present system of administration of justice based on the British model suited to our needs?

2. Do you consider our Court structure complicated and in need of simplification? If so, please state suggestions with a view to such simplification.

3. Are you satisfied with present method of valuation of suits? How far can the law relating to court-fees, suits valuation and limitation be modified to ensure speedy disposal of cases without impairing the provisions for ensuring substantial justice?

4. Do you consider that the period actually taken in the disposal of civil proceedings in the subordinate Courts exceeds what you consider to be reasonable in the large number of cases? If so, what, in your opinion, are the main causes of such delay?

5. Is it your view that the delay in the disposal of cases is due not so much to defects in the existing procedure as to other factors, such as:-

(a) the dilatory tactics of the litigants or their lawyers;

(b) the slackness of and the lack of proper training and experience in the Presiding Officers;

(c) the inefficiency and lack of integrity of the clerical and the other process serving staff of the Court;

(d) the lack of proper facilities for work;

(e) the failure of the subordinate Courts to follow the Civil Rules and Orders and the Civil Suits Instructions Manual; and

(f) cases outside Court.

6. Is there a tendency in the lawyers to seek frequent adjournments, on insufficient grounds and are such adjournments frequently granted? Do these adjournments take place because:-

(a) the lawyers being busy in other Courts seek adjournments, or

(b) the cause list is crowded making it impossible for the Presiding Officers to take up the cases listed for the day?

Have you any suggestions to offer to eliminate delays caused in this manner?

7. Do you agree that the hearing of *ex parte* matters is often delayed by reason of these matters being mixed up in the list with contested matters? Would it be helpful to devise a system by which *ex parte* matters should be separately listed and disposed of? Could these matters be disposed of on the allegations made in the plaint without calling oral testimony?

8. Do you consider that the congestion of cases in the subordinate Courts and the delay in their disposal are due to an insufficient number of judicial officers or Courts?

9. What are your views on the proposal to appoint a special officer of the rank of a Additional District Judge or Joint District Judge for the performance of the following functions:-
(a) receipt, scrutiny and correction of pleadings;
(b) issue of processes;
(c) disposal of *ex parte* and uncontested suits and proceedings;
(d) administrative duties at present discharged by the District Judge, and
(e) execution proceedings?

10. What are your views on the vacations at present enjoyed by the Civil Courts? Do you agree that they can be curtailed without adversely affecting the efficiency of these Courts?

11. Do you think that the conditions under which the judicial officers work (e.g. the residential and Court accommodation allotted to them or deficient law libraries attached to the Courts) have affected their efficiency? If so, what suggestions have you to offer to improve these conditions?

12. Are delays caused in legal proceedings by applications for the appointment of guardians *ad litem* and bringing on record legal representatives of deceased parties. If so, can you suggest any measures including exemption from substitution to obviate these delays?

13. Are delays occasioned by miscellaneous proceedings in relation to cases? If so, what remedies would you suggest for:-
(a) obviating such miscellaneous proceedings; and
(b) eliminating delays as a result of such proceedings?

14. Would you approve the setting up of special Courts for the disposal of commercial cases in large commercial centers, such as Dhaka, Chittagong, Narayanganj and Gazipur?

15. Would you favour the extension of Small Causes Court jurisdiction to any case not at present covered by it? If so, to what extend and subject to what limitations and safeguard?

16. Are *Gram Adalat* exercising any judicial functions in any area with which you are familiar? If so, are they working satisfactorily? If not, what are, in your opinion, the principal causes of their ineffectiveness and what measures would you suggest for enhancing their efficiency or usefulness?

17. Are you satisfied with the working of the Conciliation Courts under the Conciliation of Disputes (Municipal Areas) Board Act, 2004 with regard to civil disputes? If not, what measures would you suggest to improve their effectiveness or utility?

18. Would you favour the extension of the pecuniary jurisdiction of the Subordinate Civil Courts? If so, to what extent and in what manner?

19. Would you extend the summary procedure contemplated by section 128(2)(f) and Order XXXVII of the Code of Civil Procedure to the Subordinate Courts? If so, to what extent and subject to what safeguard?

20. Would you consider it desirable in the interest of speedy trial that in the case of suits to recover liquidated amounts and in suits on the basis of negotiable instruments the plaint should be substituted by a special endorsement of the claim on the summons itself?

21. Would you consider it desirable in the interest of speedy trial that the plaint should be accompanied by:-

(a) not only the documents relied upon but also sufficient number of copies thereof for service on each of the defendants in the suit;

(b) list of witnesses whom the plaintiff proposes to call at the trial;

(c) detailed addresses of the defendants;

(d) names and addresses of proposed guardians *ad litem* in the case of minor defendants;

(e) the name and address of the plaintiff's lawyer, and

(f) necessary process fees?

22. Would you agree that written statements should also be accompanied:

(a) the documents relief upon and at least two copies thereof;

(b) list of witnesses whom the defendant proposes to call, and

(c) the name and address of the defendant's lawyer?

23. Would you agree that the dilatory service of process is one of the principal causes of delay in litigation? If so, have you any suggestion to offer to remedy these delays?

24. Would you agree that delays in the service of process are generally due to the inefficiency of, and corruption in, the process serving staff? Is the service of process delayed on account of fraud or negligence on the part of the process servers? If so, what measures would you suggest for remedying this evil and for an effective check and supervision over the work of the process serving staff?

25. Would you debar a party from calling a witness whose name has not been mentioned in the list given by him, except with the special permission of the Court?

26. Would you agree that if the hearing of the case is to be adjourned for the calling of such additional witness then the party, who is permitted to call such additional witness, must pay his adversary's costs for the day?

27. What remedies would you suggest to obviate delays due to non-service of witness summons and the non-attendance of witnesses?

28. Do the provisions relating to examination of parties, and discovery, production and inspection of documents contained in Orders X to XIII of the Code need any simplification to ensure speedy disposal of cases? If so, in what manner?

29. Does the hearing of a suit or proceeding, once begun, generally continue from day to day? If not, what are the causes which contribute to interrupted hearing? What measures would you suggest to prevent such interruptions of hearings?

30. Do you consider that the recording of evidence of witnesses by the Judge in his hand causes delay? If so, have you any suggestions to offer to remedy this?

31. Do you consider that the issue of commissions has been a frequent cause of delay in the disposal of cases? If so, have you any suggestion to make in order to obviate such delay?

32. Would you consider that arguments addressed by lawyers are, as a rule, unduly prolix and that the Courts exercise little or no control over the length of these arguments? If so, can you suggest any method of cutting down or controlling the length of these arguments?

33. Would you be in favour of only the findings and the operative part of the judgment being read out in open Court, the judgment being made immediately available to the parties?

34. Is the delivery of judgments generally delayed in the Courts? If so, would you be in favour of providing that the judgments should, as a rule, be delivered within a fixed period of the close of the hearing? If so, what should this period be?

35. Are you in favour of including appeals or other proceedings (including execution proceedings) within the scope of section 35A, C.P.C.? Do you consider that the present scales of compensatory costs fixed under section 35A, C.P.C. be revised?

36. It is said that the troubles of a decree-holder being with the passing of the decree. Do you agree with this? If so, to what cause or causes are these troubles, according to you, due? What measures would you suggest to obviate these troubles?

37. What changes would you suggest in the existing procedure relating to the execution of different classes of decrees with a view:
(a) to avoid delays, and
(b) to simplify the procedure?

38. Should provisions of section 68 to 70, C.P.C. dealing with transfer of a decree to Collector for execution be retained in their present form or would you propose any amendment in these provisions with a view to avoid delay in execution proceedings?

39. Would you favour the omission of Articles 182 of Schedule 1 of the Limitation Act leaving the decree-holder to execute his decree at any time within the period prescribed by section 48, C.P.C.?

40. Are execution proceedings unduly delayed by stay orders granted by appellate Courts? Are such orders granted as a matter of course? What

measures would you suggest to prevent such a practice and the consequent delays?

41. Would you agree that the setting up of a single executing Court for a particular local area would make for a speedy and effective execution of the decree?

42. Do you agree that the present law leads to a multiplicity of appeals which causes enormous delay in the hearing of the same matter occasionally as many as five times with no tangible advantage to the litigant?

43. Would you agree that as a rule only one appeal should lie in civil cases followed by a revision on the ground of miscarriage or failure of justice.

44. Would you be in favour of omitting any of the items in the list of appealable orders given in Order XLIII, rule 1, C.P.C.?

45. What other measures, if any, would you suggest for expediting the disposal of appeals and revisions?

46. Do you consider that even in the High Court Division and Appellate Division of the Supreme Court of Bangladesh the disposal of cases has been inordinately delayed? If so, to what cause or cause do you attribute this delay?

47. Do you consider that the congestion of cases in the Supreme Court and the delay in their disposal are due to:-
(a) insufficiency in the number of Judges, or
(b) inordinate increase in the volume of work due to the conferment of the writ jurisdiction on the High Court Division?

48. Have you any further suggestion to make to relieve congestion in the Supreme Court to expedite the disposal of cases by them?

49. Do you agree that arbitration is less expensive and more expeditious than litigation? If so, would you make arbitration compulsory in any case? Please indicate the cases or class of cases in which you would like to make it compulsory?

50. Are you of the view that some of the provisions of the Evidence Act tend to cause delay in the disposal of civil and criminal matters? If so, please state the provisions and indicate suitable amendments?

51. It has been stated that our law of evidence needs to be modernized. Do you agree? If so, have you any suggestions to make in that direction?

52. Are delays in the disposal of cases caused by the need for the production of certified copies of public documents?

53. Would you be in favour of permitting parties to give secondary evidence of such documents in some form in order to obviate such delays?

54. Would you favour granting to the Presiding Judge larger powers than those at present exercised to regulate, shorten and refuse the admission of evidence?

55. Would you be in favour of giving summary powers to Courts to punish witnesses who have clearly committed perjury in the enquiry before the Courts? Would the grant of such powers, in your opinion, help to eradicate perjury and reduce the number of false claims or defences?

56. Are you satisfied with the present organization of the offices of the Courts or with their present method of work? If not, what suggestions would you make to improve the same or to remove bottlenecks, if any?

57. Are you satisfied with the present method of supervision of the works of Courts? If not, what suggestions can you offer to improve the system of supervision or to devise better methods of check and control over the manner and speed of disposal of cases?

58. Are you satisfied that certified copies of Courts' orders and judgments are being supplied in time? If not, what steps would you suggest to obviate delay in the supply thereof?

Informed Consent

(Md. Akhtaruzzaman)
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Signature of the Respondent