

Causes of Delay in the Administration of Civil Justice: A Look for Way Out in Bangladesh Perspective

Muhammad Sazzad Hossain*

Mohammad Imam Hossain**

Abstract

An essential requirement of justice is that it should be dispensed as quickly as possible. It is a well-known adage that, “justice delayed is justice denied”. However, delay in litigation is equally proverbial and though it may sound paradoxical, the fact remains that the very provisions of the Code, which are designed to facilitate smooth and speedy trial of cases, are misused and abused which causes delay in disposing cases indefinitely and ultimate success in the cause often proves illusory. The result is obvious, that cases pile up and huge arrears accumulate in all courts. Since no law intends to increase difficulties, but to ameliorate them; loopholes in law cannot be said to be only responsible for delay in disposal and increases number of suits but may be said to be responsible for expanding scope of technicalities which in essence, influence the parties to take advantage of such technicalities with intent to cause delay in the disposal of suits. The present procedure with existing loopholes is not able enough in coping with the present difficulties arising out of technicalities and of intentional delays and practical barriers. So there is an urgent need to moderate the present procedure of administration of civil justice. Moreover, procedure is the handmaid of justice; it is to be used so as to advance the cause of justice and not to thwart it. This paper aims at identifying these causes for delay in disposal of civil cases and suggests remedial measures.

Key words: ADR, Civil justice, *Ex parte*, Dual Jurisdiction, Adjournment, CRO Mechanisms, *Ad interim*, Procedural law, ACR.

Introduction

A glance through the figures of cases filed in the courts over a number of years would clearly show that litigation has been increasing phenomenally in the country. Whatever may be causes of this increase, and it would be beyond the scope of this paper to go into them the fact remains that the courts are overflowed with cases and though more and more courts are being set up, the increase in their number is not sufficient to keep pace with the increased number of cases. Under the present procedural system, people very often get injustice in the name of justice. To come off this ticklish situation, an urgent elucidation has become necessary to overcome the complexities arising out of the case management system. So, suitable recommendations and suggestions are expected with a view to finding out a framework of effective administration of civil justice and a uniform system for speedy disposal of cases. This article goes over the issues arising out of

*Assistant Judge, Chandpur

**Lecturer, Department of Law, ASA University Bangladesh

procedural loopholes that inspire virtual difficulties in the speedy disposal of suits and concentrate possible way out in order to overcome those issues.

Roots behind the Reasons for Delaying in Disposal of Suits

The volume of backlog of cases, the loopholes and complexity in the procedural law and case management system and widespread corruption and malpractices are among a number of factors which delay and deny access to justice for many. The court machinery is overloaded, slow and not readily accessible to all.ⁱ The delay in civil cases can be addressed from two standpoints: one unintentional and the other intentional. Compulsory or unintentional delay occurs out of our age-old legal system. There is a fertile field in the Code for a clever lawyer to prolong and protract proceedings to any length of time.ⁱⁱ It is an unbreakable elastic piece of legislation, which enables all piecemeal dealings in litigation. Our adversarial system of trial is mostly responsible for the delay in civil cases. On the other hand, intentional delays take place mostly by the persons who are instrumental in administration of justice and more specifically the lawyers and parties to the suit. Both the Bar and the Bench are two arms of the same machinery and unless they work harmoniously justice cannot be properly administered.ⁱⁱⁱ The Law Commission of Bangladesh anxiously observed that due to delay in justice, people are starting to lose their confidence in the Judiciary, foreign investment are cutting down.^{iv}

Here, we find following grounds responsible for delayed, denied and deferred case management system in the disposal of civil suits. The grounds indicated are though not exhaustive but worth mentioning.

Defects in the procedural law

Much of the delay occurs because the provisions of the Code of Civil Procedure are not properly observed and leaves room to escape speedy disposal. After filing the plaint, the process fee is not paid for a long time so that the summons to the defendant is not served in time. After the defendant files his appearance, his advocate often seeks long adjournments to file written statement. After the pleadings are closed, there comes the stage of producing documentary evidence before issues are settled but nobody bothers to produce documentary evidence at this stage.

Little use is made of the provisions for discovery and inspection of documents and for serving interrogatories. If these provisions are properly used, the controversy between the parties can often be narrowed before the cases go for trial. However, what usually happens is that when the suit comes on for trial, the advocates sit down in the Court, open their brief case, probably for the first time, and begin laboriously to prepare lists of documents, etc. All the while the poor judge sits idly on the Bench, helplessly looking on. Countless hours are wasted in this way.

Delays in service of Process or Summons

The present system of service of process or summons is defective. After filing the plaint it takes at least three to four months to issue summons or process to defendant or witness. If the defendant is clever enough and has determined to evade service of summons, he can successfully prolong the case by following up the dates and not appearing in the case for a long time to avoid the summons. A clever defendant can easily avoid service of summons by greasing palms the process-server. Under the present procedural system, the process-server is the most powerful person without being responsible for his failure to serve summons in time. This makes him shirking his work; as a result, more often summons are returned with endorsement of 'party not found', 'address not known' and most of such endorsement are bogus and not genuine.

Summons is also returned for some technical reasons e.g. initial of the defendant's father does not tally, the house number or the road numbers differ etc. Nezarat section and bench clerk (Peshkar) are mainly responsible for these unfair practice. These are supposed to be monitored by the concerned judges, but they seem to be more keen for trial ignoring this sort of procedural matters.

Presentation of Plaint without Documents

Order 7, Rule 14 of the Code of Civil Procedure, 1908 provides that where plaintiff relies upon documents in his possession or power as evidence in support of his claims, he shall produce them in Court when the plaint is presented and shall at the same time deliver the documents to be filed with plaint. But it is observed that when the summons is ordered to be served upon the defendant a copy of plaint only without copies of documents is served upon him. As a result, defendant appears in response to the summons, he seeks adjournment for filing his written statement on the ground that he has to make inspection of the documents and other issues relied upon by the plaintiff in his plaint and this usually causes unusual delay in disposal of the proceedings.

Intentional Delay caused by the Defendant to submit Written Statement

- (a) Once the defendant is served with summons, he appears before the Court. On the first appearance, the engage lawyer of the defendant prays for time on the plea that he has just received the copy of the plaint and he has not yet gone through the concerned documents of the suit. The case is adjourned and on the next dates, the defendant's pleader prays for time on different pleas to file written statement. The request for time is repeated until the judge interferes personally and expresses concern and this causes delay of proceedings.
- (b) Order 8, Rule 1 of the Code of Civil Procedure, 1908 binds the defendant to submit the written statement 'at or before the first hearing or within time not exceeding two months as the Court may permit'. But in most cases, the defendant intentionally does not comply with the time-limit provision for filing written statement. It is observed that numbers of frivolous applications are filed at this stage before filing written statement, which causes unnecessary delay in the disposal of proceedings.
- (c) Where the defendant has no defence, he is naturally interested in prolonging the trial with a view to put off the evil day as long as possible. It is the ingenuity of the advocates in taking advantage of technicalities, which helps the defendant in such cases.

Delay in interim matters

Practical experience shows that these sorts of evil practice are done by the bench clerks in collusion with advocates clerks at the connivance of the judges and lawyers and in most cases they have tacit consent. Dearth of effective mechanism to monitor these activities is mainly responsible for these.

- i. It is the fact that relief in injunction matters 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 injunction. Even in ordinary land dispute, when his possession thereof, has been in the hands of opposite party, comes forward with an injunction prayer with affidavit and by showing relevant papers obtains an *ex parte* injunction or show cause notice and then the chapter of fight ensues. After appearance of the defendant, written objection is submitted assailing the averments of the plaintiff. Then without adhering to the spirit under Order 39 of the Code, evidence starts in a regular fashion. During evidence hearing, adjournments of different pleas set forth by the parties. After a prolonged fight, the matter is disposed of. The aggrieved party prefers appeal and in this way, the duration 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 benefit he accrues by fighting for the injunction matter.
- ii. In many cases, where the plaintiff has obtained *interim* or *ad interim* relief, he is naturally interested in delaying the proceeding so that stay or injunction is continued as far as possible.
- iii. It has been observed that temporary injunction lingers the suit for a long time and the party who obtains such an order often becomes disinterested in getting the original suit decided in merit and goes on enjoying fruits of such an order at the cost of other party. This long drawn battle is nothing but waste of money, time and energy.

Dual Jurisdictions of the Judge

According to the Civil Courts Act, 1887 as amended in 2001 the Civil Courts are i) District Judge, ii) Additional District Judge, iii) Joint District Judge, iv) Senior Assistant Judge and v) Assistant Judge. Under the present legal system of Bangladesh, the District Judge, Additional District Judge and Joint District Judge simultaneously exercise civil and criminal functions, which is one of the most important reasons for delay in disposal of cases. It is observed that the Judge often prefers to deal with criminal cases rather than to civil matters. The reasons may be found as follows:

- a. It is easy to deal with criminal matters than with civil matters, as criminal matters are less time consuming and less formal whereas civil matters very technical, formal and time consuming.
- b. It has become practice that if a government witness e.g. Investigation Officer (I.O.) comes to attend criminal cases, the Court should take his evidence adjourning civil proceedings at the day.

- c. The Judge has to prepare and submit to his superior authority monthly or weekly statement of judicial functions which must include a certain number of disposals irrespective of civil or criminal and failure to reach that number makes him accountable. This prompts him to fulfil the number of disposals even with mere criminal cases. This is not rare to find a District Judge has not disposed of a single civil suit during his judgeship in the district level. Lack of guidance and monitoring on the part of High Court Division is partly responsible for this undesirable situation.

Financial interest of Lawyers

Financial interest of the advocates is crucial factor that facilitates delay in disposal of suits. Some advocates instead of setting fee on lump-sum basis prefer to settle it on daily basis i.e. 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 adjournment on one pretext or the other which caused accumulation of arrears. It is worth mentioning that some advocates take up a lot of works, which is not physically possible for them to attend, that results in seeking adjournment of cases facilitating in accumulation of arrears. As already mentioned these sorts of unfair practice are done by Peshkars and lawyer's clerks collusively at the connivance of the concerned lawyers and judges.

Frequent Adjournment of Hearing

One of the reasons for delay in disposal of suits is readiness to grant adjournment either for Court's own advantage or for the convenience of the parties. The liberal attitude of the Court in respect of adjournment is one of the main causes for inordinate delay as every such adjournment takes months together. As for example, at the stage of hearing and recording of deposition of the witnesses, if adjournments are frequent on the pretext of one after another, the litigant who has come to the Court with number of witnesses on number of dates would fail to get his witnesses recorded of deposition due to unexpected adjournments. This causes unusual financial loss to the litigants.

Delay in Execution of Decree

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

Dilatory Practice by the party in Possession

It has become a popular belief that a civil suit can be continued almost for indefinite period, if so desired. Specially, the party who is in possession of the suit property applies this dilatory practice so that it cannot be finally disposed of. There is a fertile field in the Code for a clever party to prolong and protract to any length of time. For example, in any suit, application may be filed for

(i) calling for particulars and interrogatories; (ii) application for issuing commission for local inspection or recording the deposition witness; (iii) application for temporary injunction; (iv) application for appointment of receiver etc. which may cause unusual delays, some are intentional and others are unintentional.

Delay caused by the Limitation Act

The Limitation Act, 1908 creates delay as it allows condonation of delay under section 5 of the Act. Though section 3 of the Limitation Act says that every suit instituted, appeal preferred, and application made, after the period of limitation shall be dismissed, although limitation has not been set up as a defence. But there are some exceptions to this provision that are contained in sections 4 to 25. It is pertinent to mention here that section 5 of the Limitation Act is not applicable in institution of suit. Condonation of delay is mainly granted on the ground of 'sufficient cause'. This term 'sufficient cause' is so elastic that many factors can be brought within its ambit. So this provision of the Limitation Act needs to be addressed to make it time befitting.

Inefficiency of Governmental Machinery

The inefficiency of the governmental supervision has naturally been responsible for considerable delay in disposal of cases where the government is a party. The term 'government' includes State Government, statutory corporations, nationalized banks, universities and any authority which is an instrumentality or agency of the government.^v There is a soaring rise in litigation and also a rapid rise of writ proceedings against the government with the result that today the government is probably the biggest litigant in the country. The Judiciary is often criticised for mourning arrears of cases. What is forgotten, however, is the fact that the government itself is responsible for the major portion of delay.

Causes pointed by the Law Commission of Bangladesh

The Law Commission of Bangladesh established under the *Ain Commission Ain*, 1996 (Act No. XIX of 1996) pointed out some reasons for the delay in disposal of civil cases in the subordinate Courts, which cover both procedural as well as practical loopholes. These are as follows:

- (a) Abundant number of cases in the Subordinate Courts;
- (b) Absence of specialized Court;
- (c) Defects of procedural law;
- (d) Lack of dutifulness of the Judge;
- (e) Lack of effective monitoring in the judicial system;
- (f) Non-cooperation of the lawyer;
- (g) Problems in serving process e.g. summons, warrant etc., chance of amendment of plaint and submission of supplemental written statement and chance of prayer of unconditional interlocutory orders;
- (h) Scarcity of logistics of the judges.

Suggested remedies

Under the present judicial system, the door of litigation is open as soon as our legal system is adversarial. Due to this system, the fruits of justice could be enjoyed only by those who could afford its costs. The Court accordingly spends its time delivering judgments on matters regarding the interests of those who are well-off. Now it has become necessary to make the administration of civil justice congenial for haves and have-nots. Some suggestive measures are given below to be taken in to account for a healthy administration of civil justice in Bangladesh perspective:

Administration of Civil Justice should be separated

As stated earlier, dual jurisdiction of the judges causes considerable delay in disposal of cases. A separate administration of civil justice may be a panacea in coping with the present backlogs of civil suits. This may happen in any or more of the following ways:

- a. District Judge Courts should be separated from Sessions Courts. A District Judge (including Additional and Joint District Judge) should exclusively deal with civil matters and the administration of civil justice of the District should be regulated under the superintendence and control of the District Judge.
- b. It is possible to reduce the burden of cases on regular courts by exploring the possibilities of setting up other forums where the disputes between the parties can be settled more informally and speedily. In this regard sufficient specialized Courts i.e. family Courts, commercial Courts, environmental Courts, etc. should be set up. Family courts shall have jurisdiction over the disputes arising out of matrimonial and family matters and succession of any religion. The present family Courts established under the Muslim Family Court Ordinance, 1985 should be separately formed with separate judges and sufficient numbers and it should be accessible to people of all religious faith. On the other hand, commercial Courts shall deal with company, partnership, Contract, Sale of goods, Carriage of goods, insolvency, negotiable instruments, etc. Labour Courts should deal exclusively with disputes relating to labour relations.
- c. Separate branch of High Court Division may be set up where civil appeals etc. can be speedily disposed of. Justice Kazi Ebadul Hoque in his treatise 'Administration of Justice in Bangladesh'^{vi} gives a statistics of work load in the Appellate Division. He says that in 1982 there was 166 civil appeals and in 2000 number of pending civil appeal rose to 3051.
- d. Number of judges should be increased and remuneration of the judges of the subordinate Courts should be increased to attract the meritorious persons to this profession.

Effective Procedure for Service of Summons etc.

Under the present procedural system, service of summons or process is not properly effected due to procedural technicalities. Under the system, the process-server is the most powerful person in serving the summons and there is no check and watchdog over the work of process-server. Moreover, the postal system of our country is not effective enough in providing its service in time. So there is glaring need to change the present system and to incorporate a new dimension of service of summons or process. Any or more of the following steps may be taken into consideration:

- i. Provisions should be incorporated to make the process-server responsible for failure of service within the time prescribed.
- ii. A separate sell for service should be set up i.e. a separate department of service may be established in the *nezarat* branch which is to deal with all functions in respect of service of summons or process.
- iii. Similarly a separate branch or sell for service should be set up in every *Union Parishad* wherefrom summons or process may be effectively served to the defendant or witness residing in the Union.
- iv. Courier service and internet or cyber network access should be adopted in every stage of the service of summons or process.
- v. Process fees should be increased to a reasonable amount in consonance with present day communication expenditure.
- vi. Postal department should be instructed to give special treatment in delivering courts summons, letters, etc.

Abolition of the Provision of Process Fee

Under the rules, the Court may make order for dismissal of suit if the plaintiff does not duly deposit the process fees.^{vii} The dismissal of suit for non-deposit of process fees leads to unnecessary delay as the party often applies for restoration of the suit and for deposit of process fees. Very often the defendant's lawyer raises objection as to the valuation of the disputed property and payment of court fees. Much time is spent on hearing of the issues relating to valuation, amount of court fee and jurisdiction of the Court. Pre-trial procedure should be simple. Therefore, in order to avoid delay in issuing of process and for earlier disposal of the suit, the provision of deposit of process fees for summoning to the defendant and witnesses should be deleted. Process fees should be either to be included in the Court fees at the time of filing the suit or provided by the government.

Opportunity for Amendment of Pleadings and of Adjournments should be Limited

There should be a demarcating time within the period of which pleadings may be amended, and put a limit of stage beyond which no adjournment may be granted. No amendment should be taken place at the trial stage. No adjournment should be granted at the trial stage except on unavoidable grounds. The grounds for granting adjournment should be specified by the Supreme Court.

Mandatory Time Limit for Written Statement

The time limit for filing written statement specified by the Code should be strictly followed. The Code of the Civil Procedure provides that the defendant shall present his written statement at or before the first hearing or within such time not exceeding two months as the Court may permit.^{viii} But in fact, the Court grants times to file the written statement as the rule is directory. A strict time limit of two months is to be fixed for filing written statement or reply after the first date of hearing. Compliance with these provisions should be made mandatory.

The reasons underlying the above two proposals (3.4 & 3.5) may be found on the principles of *public policy* and *expediency*. To secure the quiet and repose of the community, it is necessary that the title to property, and matters of right in general, should not be in a state of constant uncertainty, doubt and suspense. The old maxim of law is *interest reipublicae ut sit finis litium*—that the interests of the State require that there should be an end of litigation. Another consideration is that a party who is insensible to the value of civil remedies and who does not assert his own claim with promptitude has little or no right to require the aid of the State in enforcing it:— *Vigilantibus et non dormientibus jura subveniunt*; the law assists the vigilant, not those who sleep over their rights. This is the main object of the Limitation Act.

Early Disposal of Interlocutory Matters

Appeals or revisions against interlocutory orders which hold up the progress of suits or proceedings in lower Courts should be given precedence over all civil works other than that of an especially urgent nature, and every endeavour should be made to dispose of such appeals or revisions quickly. A separate list should be kept of these appeals or revisions so that they may not be lost sight of. Delay in the disposal of appeals or revisions in the High Court Division are not due to any defects in procedure. The delay is mainly due to congestion of work, which is not in any way connected with the procedure prescribed by Order 41 of the Code. Hence disposal of interlocutory matters should be given priority.

Framing of Issues in Presence of Both Parties

Framing of issues is Court's duty and is also the responsibilities of the lawyers of both parties. It is a matter of regret that both the Court and the lawyers of the parties handle this important matter very lightly. The trial judge should fix a date for settlement of issues on which lawyers of both parties should remain present. Whatever objection is to be taken about the form and framing of issues, must be raised at the time when the Court proceeds to settle the issues in the open Court. On this date parties should be called upon to admit documents and give exhibit numbers to the documents, which are admitted. The party aggrieved by the decision of the Court in framing issues one way or other may have a right to prefer appeal and the decision of appellate Court in such appeal should be final. Before framing issues, it is necessary for the Court to have clear picture of real nature of the disputes between the parties. Issues are the particular or specific matters in dispute. If the defendant admits plaintiff's claim there is no issue, if denies partly or wholly then issues arise which need to be examined. If the issue is of law, the courts themselves,

will settle with the assistance of the lawyers and if the issue is of fact it should be settled by evidence. Producing evidence taking a long time needs to be addressed properly.

Examination and Cross-examination on the Same or Consecutive Day

The witnesses in attendance must be examined on the same date and that no witness should go unexamined. The examination-in-chief of a witness shall be recorded on affidavit. There should be clear-cut provision that examination-in-chief and cross-examination of a witness must be completed on the same day or on the consecutive day. Care must be taken that irrelevant and inadmissible evidence should not be recorded as it hampers expeditious disposal of the case.

Separate Court for Execution of Decree

Trial Courts are very busy with trial proceedings and they have no time to expend in the proceeding of execution case. So a separate Court for execution of decree or order should be established in every District. To establish courts having exclusive jurisdiction of execution the relevant laws need to be amended.

Compulsory ADR Mechanisms

The Code of Civil Procedure adopts Alternative Dispute Remedy (ADR) mechanisms in Sections 89A to 89C as mediation and arbitration. There are however, more other methods of ADR mechanisms e.g. negotiation, conciliation etc. which are not included within its ambit. It is observed that the parties to the suit are quite ignorant of ADR mechanisms and the advocates are not keen to encourage their clients about ADR owing to loss of their financial interest. ADR has been adopted in many countries with wide acceptance which facilitates early disposal of suits out of formal judicial process. But through the adoption, ADR has become a part of judicial process. The ADR experiment in many countries reveals that ADR is the only mechanism, which settles down the dispute at the early stage of proceedings and prevents lingering of suits before entering into trial stage. ADR works like an anti-biotic against the long process of disposal of suits. For effective ADR mechanisms, following suggestions are given:

- a. Initiation of ADR should be made mandatory for the judge at the pre-trial stage and before the framing of issues.
- b. Separate ADR enactment with all its aspects would help the users to adopt it with full importance.
- c. An ADR committee may be set up under the chairmanship of the District Judge which shall also comprise of a panel of advocates, legal aid workers, NGO personalities etc. An advocate should be rewarded for each ADR disposal conducted by him.
- d. Advantages of ADR should be disseminated among peoples through mass media.

CRO Mechanisms

As stated earlier, Civil Rules and Orders (CRO) regulates the official as well as private conduct of the judges and to some extent of the advocates. CRO regulates the procedures and the working system of the subordinate Courts. CRO can play an effective role in facilitating speedy and early

disposal of suits. Where the disposal of suits remains hanged for long time due to statutory loopholes and amendment of statute is a time consuming formality, the CRO through its appropriate provisions may facilitate the disposal expeditiously. Because, CRO is not formulated through enactment of parliament; the Supreme Court takes the task of formulating appropriate provisions in the CRO directing proper measures for speedy disposal of suits. CRO may be the mechanism in coping with the existing loopholes and evil technicalities in the way of early disposal of suits.

Accountability of Judges

A judge is accountable to his superior authority. The hierarchy of the Courts indicates the accountability of the judges of the subordinate Courts. The High Court Division has superintendence and control over all Courts and tribunals subordinate to it.^{ix} The subordination of the Courts indicates that the District Court is subordinate to the High Court Division and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court Division and District Court.^x Every Judge has to prepare and submit a monthly or weekly statement of his judicial functions which includes a column of disposal of suits. Any misconduct committed by a judge makes him liable to departmental proceedings under relevant service rules. The accountability provisions of a judge may be said to be good if it is properly implemented. Recommendation may, however, be considered in the following perspective:

- a. Judge having dual jurisdiction i.e. civil and criminal should include a certain number or percentage of disposal of civil suits in his monthly or weekly statement, failure to which makes him liable.
- b. Judge's monthly or weekly statement should include a column of disposal of suits through ADR.
- c. Regular and timely visit by the superior judicial officer over the inferior Courts may ensure the accountability of the judges of the subordinate Courts.
- d. Annual Confidential Report (ACR) should be made main basis for promotion of a judge. It may also be suggested that, ACR should be considered fundamental basis for promotion for the administrative judicial posts, e.g. District Judge, Chief Judicial Magistrate, and Chief Metropolitan Magistrate etc. Ranking of merit list of a judge should not be the only basis for promotion.

Accountability of Advocates

Unlike judges, there is little accountability provisions for advocates. The Bangladesh Bar Council is the controlling and supervisory authority which gives advocacy certificate and supervises professional conduct of the advocates. According to the Bangladesh Legal Practitioners and Bar Council Order- 1972, an advocate may be reprimanded, suspended or removed from practice if he is found guilty of professional misconduct, and the Bar Council may refer such an allegation of misconduct to the Tribunal constituted by it.^{xi} There are however, the little instances where an advocate had been reprimanded or suspended or removed from practice for his professional misconduct. Although there is a soaring feeling among the people that the advocates are free from accountability and once a case is handed over to them, they may conduct the case whatever way

they like. In fact, there is no strong and transparent watchdog mechanism to ensure accountability of the advocates. The Bar Associations are doing nothing but to help preserve financial interests of the advocates. So, strong accountability mechanisms over the advocates are quite expected to ensure effective administration of justice. The following recommendations may be considered for that purpose:

- i. The Bar Council should be the centre for ensuring transparency and accountability of the advocates. It should be reformed and institutionalized as watchdog machinery, and its functions should not be confined only to issue bar certificates.
- ii. The Council should be as institutionalized as a board or university which would regulate and approve the curriculum and administration of the law colleges of the country.
- iii. The bar associations should be brought under the administrative control of the Bar Council.
- iv. After obtaining bar certificate, an advocate should go in for a number of efficiency tests on the basis of which, his gradation and category is to be determined.
- v. An advocate should prepare and submit a monthly statement of his professional works to the Bar Council through the president of his Bar Association, which must include disposal of suits in the month conducted by him and which must also include a column of disposal of suits through ADR.
- vi. The provisions of professional misconduct should be scrutinized and made effective in consonance with time and necessity.
- vii. Since administration of civil suits are complicated, involve different branch of laws and many cases of delay occur due to mistakes or ignorance of the advocates, an advocate who attains a certain period of experience and who obtains a specific grade standard should be permitted to conduct civil suits.
- viii. A certain amount of fee for each category of civil suits should be fixed, and a time limit for disposing of every suit by an advocate should be specified by the Bar Council.

Land Survey Management should be updated

Most of the civil suits arise from land disputes, and in many cases it is found that, land disputes arise due to defective record of rights, land registration management etc. Differences of land portions between Cadastral Survey (C.S.), State Acquisition (S.A.), Revisional Survey (R.S.) and Bangladesh Survey (B.S.) records often raise causes of land disputes. So it is suggested to update the records which should be made by settling all claims of land records by a competent body consisting of *inter alia*, judicial personalities, even if it may take a considerable time.

Common people should have an easy access to justice

Almost all would agree that justice must be cheap and expeditious. However, in order to provide cheap and expeditious justice, it is necessary to appoint competent judges from the higher court to the lower courts. It is a matter of mortification that, the judges of the higher court are often appointed on political considerations. The judges of the lower courts are not sufficient in number. Moreover, they are not justified enough with their academic qualification. Earlier, graduates having degree from different schools had to fulfil the posts of judges. As a result, the present emoluments of judges are so meagre that they do not attract competent people to the Bench. If

society wants cheap and expeditious justice, it must also reward properly the competent judges. The principle that “justice must be cheap but judges expensive” is, though universally recognised, never acted upon.

Conclusion

Judiciary is the pivot of distributing justice among the people. A man comes to the judiciary not to lose his rights but to establish it. When a man loses his rights, he tries to recover as well as establish it by any means. Judiciary is the last resort for establishing rights of an aggrieved person. But the judiciary is not proficient enough in delivering justice because of existing defective administration of justice due to procedural as well as practical loopholes. For, people often lost their trust upon the judiciary and such a distrust creates social disorganizations. Effective attention has not yet been drawn over the deteriorating backlogs of cases derived from such social disorganizations. On the above, it should be convenient to quote Charles Dickens, “Jarndyce and Jarndyce drones on. The scarecrow of a suit has, in course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have been married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce, without knowing how or why..... Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out.....but Jarndyce and Jarndyce still drags its dreary length before the Court, perennially hopeless.”^{xii}

Unless and until the administration of justice is not framed out of complications, people will remain getting injustice in the name of justice. Huge backlog of cases is really a concern for all. If it is true that justice delayed, justice denied, it is also equally true that ‘justice hurried, justice buried. So for the sake of speedy disposal of civil suits in particular nothing should be done without giving proper thought over its true perspective. For this purpose interaction among the judges, lawyers, academicians and other stake holders may be done occasionally in the form of seminars, symposium, workshop, round table conference etc. Because the more heads are put together, the better results are likely to come.

References

- Abraham, Henry J. (1993), *The judicial Process*, New York
 DLR (1986), *The Law on Injunction*, Dhaka Law Reports.
 Hoque, Kazi Ebadul (2003), *Administration of justice in Bangladesh*, Asiatic Society of Bangladesh.
 Islam, Mahmudul & Neogi Probir (2006), *The Law of the Civil Procedure*, Dhaka.
 Jain, M.P. (1972, reprinted 1976), *Outlines of Indian Legal History*, Bombay.
 Kamal, Justice Mustafa (1994), *Bangladesh Constitution, Trends and Issues*, Dhaka
 Kulshreshtha, V. D. (1968, reprinted 1981), *Landmarks in Indian Legal and Constitutional History*, Lucknow.
 Miah Siddiquir, Rahman (2001), *Commentary on civil rules and orders*, Dhaka.
 Morley, William H. (1958, reprinted 1976), *The Administration of Justice in British India*, New Delhi.

Narayan Swamy, (1987) “The Procedural Law in India Requires through Change”, AIR 1987 Jour 85

Patwari, Mofizul Islam (1991), Bangladesh Legal System, Dhaka.

http://www.bombaybar.com/events/seminar_on_civil_justice_reforms.php, last visited on 12.02.2012

http://www.bcjusticereview.org/working_groups/civil_justice/civil_justice.asp, last visited on 10.02.2012

http://www.bangladesh.gov.bd/index.php?Itemid=137&id=58&option=com_content&task=view, last visited on 12.02.12

<https://www.litigationessentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype>, last visited on 10.02.2012

Case References

Central Inland Water Transport Corpn. Vs. Brojo Nath Ganguly, AIR 1986 SC 1571.

Moazzem Hossain Vs. State (1983) 25 DLR (AD) 290.

Rajasthan Electricity Board Vs. Mohanlal, AIR 1967 SC 1857;

Sukhdev Sing Vs. Bhagat Ram, AIR 1975 SC 1331;

Endnote

ⁱ Justice Mainur Reza Chowdhury, speaking at the Second Regional Conference on *Access to Justice and Penal Reform*, held in Dhaka, december 2002.

ⁱⁱ Narayan Swamy, “*The Procedural Law in India Requires through Change*”, AIR 1987 Jour 85.

ⁱⁱⁱ *Moazzem Hossain Vs. State* (1983) 25 DLR (AD) 290.

^{iv} Bangladesh Law Commission’s (established under the *Ain Commission Ain*, 1996) Thirteenth Report on “*Proposal for Disposal of Suits and Cases in Subordinate Courts in Bangladesh*”, pare-2.

^v *Rajasthan Electricity Board Vs. Mohanlal*, AIR 1967 SC 1857; *Sukhdev Sing Vs. Bhagat Ram*, AIR 1975 SC 1331; *Central Inland Water Transport Corpn. Vs. Brojo Nath Ganguly*, AIR 1986 SC 1571.

^{vi} Published by Asiatic Society of Bangladesh, 2003 Edn. p -112.

^{vii} See Order 9, Rule 2; Order 17, Rule 3.

^{viii} Order VIII, Rule 1(1)

^{ix} Article 109 of the Constitution of Bangladesh.

^x Section 3 of the Code of Civil Procedure.

^{xi} Articles 32, 33 of *the Bangladesh Legal Practitioners and Bar Council Order*, 1972.

^{xii} Charles Dickens; *Bleak House*.