

Critical Scanning on Civil Litigation: Bangladesh Perspective

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Abstract

Legal rights and status of the citizen in a country is the indispensable source of civil administration. Currently civil administration in Bangladesh legal system is passing a crucial moment. Though it is a half-part of the total legal structure but criticized due to its prolonged procedure and the attitude of its stakeholders. Every stair of a civil litigation itself is creating a scope to elasticize the modus operandi and to evade the litigant. Consequently the number of civil litigations are bulging day by day. In this aspect both the procedure and its practitioners are equally accountable for that prolongation and bulginess. This paper articulates the present scenario of Bangladesh in the administration of civil justice system and opened the wrapping to cause delay. This paper also explores the core hindrances to attain speedy disposal of a civil litigation along with some explicit recommendation to rub out the problem as well.

Preface

First Civil Procedure was enacted in 1859. Afterwards some codes concerning to civil procedure have been introduced but that were not complete and uniform. In the year 1908 the existing code has been incorporated. It is one of the oldest code of this sub-continent as well as one of the best synchronized and systematic mixture of procedural and substantive character. Each and every steps of a civil litigation is compact with the procedure described in the code. Now a days if we analyze the code critically, it may be noticed that unquestionably the code itself and its practitioners are lingering the process to dispense justice and to dispose litigation. On the other hand the code is not completely self-determining in its function because it has to meet the procedure of other laws, e.g. the Evidence Act-1872, the Limitation Act-1908, the Court fees Act-1870, the Suit valuation Act-1887, the Civil Courts Act-1887, the Civil Rules and orders-1935 etc. In the present context of a Civil litigation the law itself is facing some haziness and shortcomings. The procedural protractive system of a Civil litigation not only creating an over burden to the shoulder of Judiciary but also creating sufferings to the litigant people. Thus the litigant fails all of his/her attention as the suits are continuing from generation to generation. The Law Commission of India in its 14th report appropriately observed about the code as follows:

" Although the provisions of the Code of Civil Procedure,1908 are basically sound, it cannot be gainsaid that in view of the appalling backlog of cases which has unfortunately become a normal feature of nearly all the courts of the country, the problem of delay in law courts has assumed great importance." [Ref: *The Law Commission Report of India,(1958)*]

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Objectives

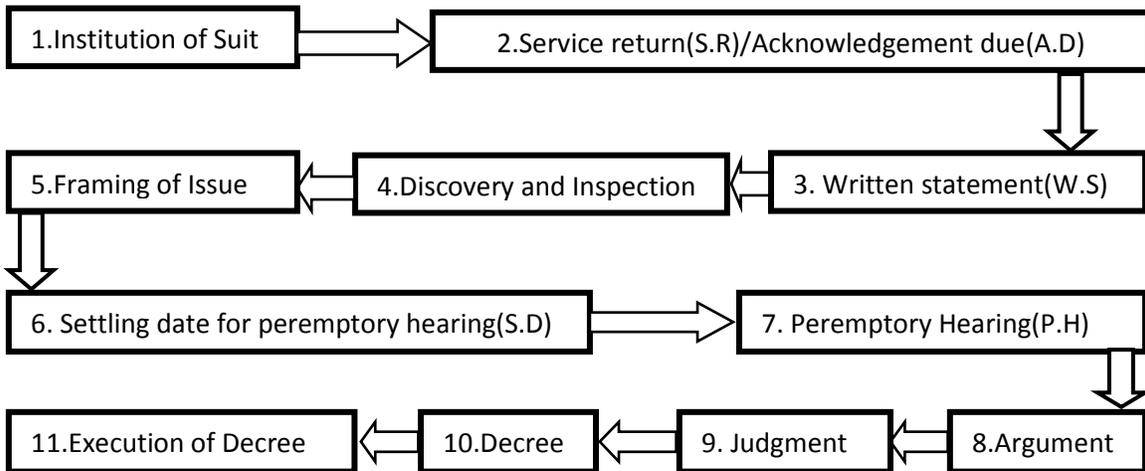
The main purpose of this article is to assess the reasons of delay in civil litigations. Particularly the objectives of the study are to:

- Find out the main causes of delay in civil litigation focusing on the present figure of civil litigations pending in the divisional courts of Bangladesh.
- Discuss about the present trends of appointing Judges as well as the present position of logistic and infrastructural support.
- Criticize on the mind-set of the Judges, Lawyers and Litigant people of Bangladesh.
- Summarize the present steps taken by the Government to reduce delay in civil litigations.
- Recommend specific action for meaningful click in reducing delay of civil litigation.

Methodology

The article mainly depends on the available information at hand in order to obtain a clear picture of the relevant issues because it is more theoretical rather to technical or technological. The sources of secondary data are annual statement and Registers of different Courts, Government Gazettes, High Court Circulars, Law Journals, Law Books, Law Publications like Dhaka Law Reports (DLR) etc, Bangladesh Bar Council Publication and other sources. From the collected data a few recent trends are highlighted and analyzed with numerical data. Besides these, Information was also collected from websites and some Focus Group Discussions (FGD) with the Judges, top lawyer of the countries and legal scholars of different institutions. Apart from these different computerized programs like Microsoft word and Microsoft excel have been taken to analyze the data effectively.

Stages of a Civil Suit at a momentary look



Present scenario of various Civil Courts in Bangladesh

At the time of this writings i.e. December'2012 the breathtaking figure of pending civil cases in the districts of Bangladesh are mounting gradually. Up to December'2012, the total number of civil litigation pending in the divisional districts have given below.

District	Number of suit pending	Number of Court
Dhaka	62,250	38
Chittagong	75,010	39
Khulna	21,118	21
Rajshahi	15,339	17
Shylhet	6,664	22
Barishal	25,760	18
Rangpur	9,228	14

Source-Statement upto December'2012 of Dhaka, Chittagong, Khulna, Rajshahi, Shylhet, Barishal & Rangpur courts

Besides that the cases of vested and abandoned property are presently creating some additional overstrain to the existing Judges of the civil courts as the required number of tribunal and its Judges have not yet been established and appointed accordingly.

Main obstructers to dispose a Civil litigation

Delay is the mother of all obstructers. Presently the most popular axiom of the law of equity" justice delayed justice denied" has become futile although the essential prerequisite of justice is that it should be dispensed as quickly as possible. Almost all the stages of a civil litigation, both the parties tries to take the privileges of adjournment on a fragile ground to linger the procedure and the Judges are also allowing the ground repeatedly though necessary amendments have been introduced in Order-XVII relating to adjournments. The amendments are at a glance:

Order-XVII, rule-1, sub-rule-3: Before fixing a suit for peremptory hearing, the court shall not grant more than six adjournments at the instance of either party to the suit. It is also provided that seeking of any adjournments beyond the above limit, shall make the party seeking the adjournment, liable to pay adjournment cost of not less than two hundred taka and not more than one thousand taka but more than three adjournments cannot be allowed even with cost.

Order-XVII, rule-1, sub-rule-4: At peremptory stage the court, for ends of justice, may grant adjournments subject to payment of cost to the extent as provided in sub-rule (3). The court cannot grant more than three adjournments even with cost. It is also provided that non-compliance with order of making payment of cost by the plaintiff shall render the suit liable to be dismissed and by the defendant shall render the suit liable to be *ex parte*.

Order-XVII, rule-1, sub-rule-7: A suit dismissed or disposed of *ex parte* under sub-rules (3) and (4), cannot be revived unless the party for non-compliance the suit was dismissed or disposed of *ex parte* makes an application in the court within thirty days from the date of such order, together with cost of two thousand taka. [Reference: Code of Civil Procedure (Amendment), Act-2006]

After filing a plaint, the process fee is not paid for a long time so that summons to the defendant is not served in time. After a defendant makes his appearance, his advocate often seeks long adjournment to file the written statement. After the pleadings are closed, there comes the stage of producing documentary evidence before issues are settled out 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 parties go to trial.

[*Reference: Takwani (2006)*]

Presently, Bangladesh Government has appropriately amended the Code of Civil Procedure relating to the provisions of summons, service of summons, written statement, amendment of pleadings, interrogatories and notice for the admittance of any documents at the time of discovery and inspection, adjournment at the time if framing issues and disposal through mediation. The abstract of that amendments are as follows:

The provisions of section-89A sub-section-3, 4, 5 and 6 have been amended as the pleaders, their respective clients and the mediator shall mutually determine the fees of the mediator and the procedure of mediation; If the court mediate the dispute, it shall determine the procedure but shall not charge any fees for mediation; the parties will have to inform the court about the appointment of mediator within 10(ten) days from the date of reference; If the parties fail to appoint the mediator within 10(ten) days, the court will appoint a mediator from the panel within 7(seven) days; the mediation shall be concluded within 60(sixty) days and the time may be extended for a period of 30(thirty) days by the own motion of the court or upon a joint prayer of the parties; the mediator will submit a report of mediation through a form of agreement bearing the terms of compromise and the sign or thumb impression of the parties as executants and the court will pass an order or decree within 7(seven) days upon receiving the said report.

The provisions of Order-V, rule-1 sub-rule-1, rule-9 & 9A, rule-15, rule-20 sub-rule-1A, rule-21, rule-24 and rule-25 have been amended as the summons shall be issued by the concerned court within 5(five) working days; summons can be served through courier service enlisted by the District Judge; summons can be served by means of transmission of documents through fax message or electronic mail service by the plaintiff at his own cost; summons shall be served by the proper officer or the courier service within 30(thirty) days from the date of receipt of summons and shall inform the court; court can permit the plaintiff to effect service of summons for the appearance of the defendant; court can re-issue summons for any reason of non service; summons can be served through a daily newspaper which has circulation in the locality in which the defendant is last known to have actually and voluntarily resides; If the court is satisfied, it shall be deemed that the summons has been duly served; If the court or the proper officer or the courier services fail to serve the summons within the said period of time, that the officer of the court or the proper officer shall be liable for misconduct and the District Judge shall exclude the courier service from the list.

The amended provision of Order-VI provides that no application for amendment shall be allowed after the trial has commenced, unless the court is of opinion that in spite of due diligence, the party could not have raised the matter before the commencement of trial and if the court is of

opinion that the application is made to delay the proceedings, an order for payment of compensation to the objector shall be issued.

The amended provision of Order-VII provides that the defendant shall, within 30(thirty) days from the date of service of summons upon him, present a written statement; If the defendant fails to submit the written statement within 30(thirty) days for reasonable grounds the court can allow the ground but that shall not exceed 60(sixty) working days from the date of service of summons.

The amended provision of Order-XI, XII and XIV provides that the time provided in Order-IX, rule-5 i.e. 3(three) months shall be replaced by 1(one) month; the court shall decide the application filed under Order-XI, rule-2 within 15(fifteen) days from the date of filing application; to admit any documents under Order-XII, rule-2 the time limit is 15(fifteen) days from the date of service of notice and the time limit for adjournment to a day at the time of framing issues under Order-XIV rule-4 is not later than 15(fifteen) days. [*Reference: Code of Civil Procedure (Amendment), Act-2012 dated 24/09/12*]

Despite that the foremost causes of delay may be distinguished as follows:

Position of the Judges

At present, number of Judges is not too sufficient to meet the challenges of civil litigation because the litigation are scattering in a disorderly manner. It is a matter to look forward that Bangladesh Government has recruited a few number of Judges and some are in a pipe line to be appointed. But the recruiting system of Bangladesh Judicial Service Commission is so extensive because it has to search out for the approval of different Ministries of the Government. So the recruitment is not getting optimum consideration to face the current challenges.

On the other hand, according to article 22 of Bangladesh Constitution the state had an obligation to ensure separation of Judiciary from the Executive and thus Judiciary has been alienated from the Administrative on 1st November'2007 by the verdicts of the Supreme Court of Bangladesh in the case of *Secretary, Ministry of Finance vs Masdar Hossain reported in 52 DLR (AD), p-82* and a huge number of Judges have been transferred from Judgeship to the Magistracy. So the vacancy of the Judges in the civil courts have transformed in a cave from the hole.

Side by side Judges are not sensibly scrutinizing and following the provisions of the Code of Civil Procedure and Civil Rules and Orders from the initial stage to all the ad-interim stairs of the civil suits. Thus the suits along with interlocutory petitions are filling in a random basis due to the absence of judicious mind and also propensity to entertain everything.

Nevertheless, Hounourable High Court division has imposed some conditions through some circulars for the Judges of lower division that they must pronounce a minimum number of judgment in a month to obtain adequate point. In that connection, Judges are not paying so much attention to the miscellaneous cases and some other interlocutory petitions as there is no point subsists of those disposal although those are as labourious as a suit of other class. More to the point that some suits are too troublesome to decide since it has to peruse a lot of documents and

evidences but the point of disposal is as like as a simple suit of any class. So it is secure for a Judge to dispose the simplest suits to fulfill the required quota (points) of a month and accordingly the pile of civil litigation is swelling day by day. [Reference: High Court circular memo no. 1(General), 1988/ memo no. 6(G), dated-7.2.01/memo no. 59(ka), dated-23.6.03]

Additionally dissatisfaction in respect of the privileges and salary structure of Judges in comparison with the neighboring countries is also creating a hindrance to dispense speedy justice though the judgment of the Apex court of Bangladesh -

"The civil administrative service cadres have not been given the same independence in the exercise of their executive functions as the Supreme Court or the subordinate Judiciary or the election commission has been given under our Constitution. It is therefore, a negation of the express intendment of the Constitution to lump up the appointment, recruitment and conditions of service including pay etc, of the members of the Judicial service and the holders of Civil administrative posts. The Government has been treating two unequal as equals. There shall be a completely different pay commission to consider the grade and scale of pay of the members of the Judicial service which shall not suffer parallelism with any supposedly corresponding civil administrative post. The very concept of weighing two different classes of persons in the service of the Republic in the same scale and to fix for them corresponding grade and scale of pay is a twisting of the Constitutional scheme and is an anathema to the concept of Judicial independence. Under Article 136 and paragraph 10(2)(b) of the Fourth Schedule of the Constitution the making of any law varying or removing the Conditions of service of a person employed in the service of the Republic has been preserved, but insofar as the Judicial service is concerned, Parliament cannot by law abolish the Judicial service altogether and cannot amalgamate or unify the Judicial service with other civil administrative service cadres or place them at par in respect of their conditions of service, salary and other benefits. That will be doing violence to the separation of powers as contained in the Constitution." [Reference: Secretary, Ministry of Finance Vs Masdar Hossain case, (2000)]

Position of the Lawyers

In the present day, Lawyers are incredibly in a critical position. Different public and private universities and the Law colleges are producing law graduates every year. Consequently the number of law graduates are increasing phenomenally in the country. Amongst them a significant number of law graduates are qualifying in the Bar Council Exam and getting enrolment to practice in to the lower court and thereafter into the Supreme court upon facing a further exam. At present the number of enrolment in the Supreme Court Bar and different divisional Bar Associations are as follows-

Name of the Bar Association	Number of Advocates
Supreme Court	4,771
Dhaka	16,556
Chittaging	3,336
Rajshahi	6,81
Khulna	1,159
Sylhet	1,094
Rangpur	440

Source: Enrolement register of the Supreme Court, Dhaka, Chittagong, Rajshahi, Khulna, Sylhet and Rangpur Bar Association, (2012)

Very few of that number of Advocates are simultaneously practicing both in the Supreme Court Bar and the Local Bar. Some of them are practicing tremendously on the basis of their knowledge, skill and quality and also earnest to their profession. In spite of that some are practicing by their face value, political position and seniority, some are practicing only in the chamber, some are enjoying juniorship of a senior, some are practicing into his ancestor's chamber and some are practicing in some unusual ways. Maximum portion of them are facing challenges to survive and living hand to mouth from their beginning. Hence there is no alternative way to subsist for the practicing Lawyers rather to linger the suit upon causing delay. It is the only technique to make animate of a suit not to go with the grasp of law and fact. The Lawyer knows that if he goes with the law and fact, the suit will die and his earnings will be frozen. That's why a civil practitioner always tries to make the suit multifaceted upon filing diversified ad-interim application and therefore they are deceiving their clients as they are ignorant about the law.

At the moment, Government is the biggest but weakest litigant of civil suits in Bangladesh. The Pleaders appointed on behalf of Bangladesh Government do not handle the suit cautiously and therefore delay in the litigations is taking place indiscriminately. Though the Government Pleaders are taking remuneration from the Government but rarely they render their best effort to protect the interest of the Government. If the court tries to go ahead swiftly, the Government replies as usually or replies with thousand of excuses and limitations. Accordingly, the suit cannot advance furthermore and delay is its ultimate upshot.

Moreover our present Parliament is containing a substantial number of Advocates who have been elected as members. The member of the Parliament in a democratic country always stand on a prime position and their direct or indirect influence is also a cause of delay in civil litigation.

Position of the Litigant

The general attitude of all the litigant people in our country is only to win by the shortest way in the quickest time. In that connection the wealthy people always try to squander their capital for the advocate with an impressive profile to deal their suit successfully and the poor litigant always

search for the advocates whose reputation and charge are not so high to handle their suit in some way. Some feels panic and fear by the name of any litigation due to ignorance of existing legal procedure. Side by side a number of people in our country is litigious in nature and always strive to create some litigation with his surroundings. This sort of people is very treacherous and always try to make hindrance litigation to give a lesson to his opposite. Almost all of them are not aware of any legal knowledge.

Position of Infrastructure of the Civil Courts

The infrastructure of civil courts in various districts of Bangladesh are indescribable because the number of building has not been increased as per the number of Thana. Consequentially, the Judges have to share the Ejlash and they are not getting full opportunity to utilize their time as per the provisions of CRO. Utilizing Ejlash for half or quarter of a day is not sufficient to meet the challenges of civil litigation. After separation of Judiciary the Administrative Magistrates have not left their Ejlash since they also have to deal with some provisions of the Code of Criminal Procedure. As a result, the demand of Ejlash for the Judicial Magistrates have to be accommodated in the premises of civil court. Besides that the post of the civil Judges have also been augmented despite their accommodation in to the court building.

Position of Logistic Support of the Civil Courts

The modern world is living in the age of science and technology and Bangladesh in this view is not in reverse. The vision of the Government is to digitalize all the sectors. Almost all the private sectors have achieved it effectively but the public sectors are not able to optimize the vision due to the lack of effective policy making and ignorance about the useful operation of technology. The Supreme Court of Bangladesh has recently introduced computerized cause list and archive system through LAN (Local Area Network) and web portal through WAN (Wide Area Network) but local courts are still in a super analogous system. A small number of computers have been supplied to the civil courts but they cannot be operated effectively due to the lack of skilled manpower and logistic support and some courts are still computerless. On the other hand Judges are not well trained up to operate computer independently though the scenario is developing day by day.

The scarcity for the Forms and Registers prescribed by the Government for the civil courts are increasing progressively. Government prescribed Forms and Registers are not being distributed towards the district courts regularly in each and every year. Sometimes it has to purchase or to collect from BG (Bangladesh Government) press although it is a very hazardous and troublesome task. So the staffs of the civil courts are managing those Forms and Registers through photocopy or by hand-writing and resultantly some Registers are going astray in the wheel of time. Due to the lack of information of those registers, corruption is making progress and delay in dispensing prompt justice is its ultimate consequence.

Limitations of the article

Limitation of this article is to depend on secondary data analysis only though some Focus Group Discussions (FGD) have been committed amongst the stakeholders but no specific questionnaire has been set for and the discussion has not been committed methodically. When any information is sought from the officials of the court, they become reluctant as there is no benefit and are not aware of the impact of the information. On the other hand the article is completely based on the procedural and practical delay of civil litigation in the trial court but not the appellate courts or the Supreme Court. Time constraints to collect required information is also a limitation of this article. Notwithstanding all these limitations the article has hopefully fulfilled its objectives and indicated the reasons of delay in civil litigation and also provided some specific recommendations to conquer the disaster of civil suit management.

Recommendations

- Mindset of the Judges should be changed and also have to be self-motivated. They have to be well-versed in law and also to be prompt in Marshalling of the fact. They should not be too crazy for his adequate disposal only. On the other hand sufficient points should be allocated for the miscellaneous cases and for the cases which are very difficult to dispose. Furthermore it should be kept in mind of all the Judges that they are the son of this soil, so they have to consider empathically about the scenario of the society and sufferings of the litigant people of this country.
- The Judges should have to follow all the provisions of the Code of Civil procedure along with Civil rules and Orders appropriately. Suppose If any Judge follow the provisions of Order 10 rule 2 and at initial stage and amended provisions of Order-17 rule 3, 4 and 7 at the said stages of a civil suit, it will help him to cut short of litigation in a active way. Simultaneously, section-11, 12, 35-A, 35-B, 47, 88, 99, 99-A, 151, Orde-6 rule-16 &17, Order-7 rule-11, Order-14 rule-1 & 3, , Order-15 rule- 1 to 4, Order-20 rule 1 to 5, Order-41 rule- 3-A,11, 23, 23-A, 25 of the Code of Civil procedure along with the general rules of Court-hours, Cause list, Pleadings, Petitions, etc. as stated in chapter -1, Fixing dates and Adjournments stated in Chapter-7, Preparation of trial, Framing of issues and recording of evidence stated in chapter-8, judgment, decree and cost stated in chapter-9 of the Civil Rules and Orders should also be followed stringently in the court of Original jurisdiction as well as in the court of Appellate jurisdiction. It is a matter to look forward that Bangladesh Government has lately realized the situation and has taken some dynamic steps to amend the Code of Civil Procedure to resolve the problem in 2012.
- Provisions for the suit for mediation or Alternative Dispute Resolution (ADR) i.e. section 89A, 89B and 89C should be exercised intensively by the Judges with the help of the Lawyers. The court will have to pressure both the parties to settle their litigation through mediation and the provisions of mediation should be imposed mandatorily in every stairs of civil litigation.

- Traditional systems of examining and cross-examining the witness should be reformed as it often cause unnecessary repetition and wastage of time.
- Technological evidences should be perused and considered because the man can often tell a lie but the machine can't. On the other hand it saves a lot of time and certainly clears the root of dispute.
- Official accountability and transparency of the court staff i.e. Serestadar, Bench Assistant, Office Pion, MLSS etc. should be ensured by the presiding Judge. Moreover each section of a court i.e. Nezarat, Record room, Accounts Section, Copying Section, Forms and Stationary Section etc, has a Judge-in-Charge and he also has to supervise his concerned section strictly, so unnecessary delay cannot create any phenomena to the delivery of services and to dispense proper justice.
- Latest provisions relating to Order-5 and 6 should be strictly followed by the courts and Order-11 rule-1, 2, 12, 15 & 21 about discovery and inspection of the code should be framed in a definite time limit.
- Sufficient infrastructural and logistic support should be provided in each year as per necessity of the different civil courts of Bangladesh to make the vision of digitalization possible.
- Satisfactory salary and privileges for the Judges should be provided by the Government in comparison with other the countries of current world so that family burden cannot make them anxious and tensed. Side by side sufficient competent Judges should also be appointed in a shortest manner to obtain expeditious Justice.
- Approach of the lawyers should be altered and they also have to be well-versed in law. They should not consider the client as a customer and should have to render their best effort in each and every suit within the periphery of law. The Lawyers will have to assist the court as they are the court officers, not by their influence or pursuance but by the edge of law. A variety of client will come to them but they have to treat them equally. Uniform remuneration for the lawyers as per their proficiency and tenure of practice should be introduced from the Government so that no one feels superior or inferior than others and abnormal fees cannot be charged from the clients. On the other hand, the tout advocates should be boycotted unanimously and also be punished retrospectively.
- It should be ensured both by the Advocates and the Judges that the court compound will be set free from the touts and brokers by implementing the laws related to them like the Touts Act-1879.
- Attitude of the litigant should also be improved and they have to understand the situation of the Lawyers at the same time the position of the Judges concomitantly. They will not be in a haste to meet the litigation in a discriminatory and inequitable way. Time prescribed by law should be facilitated and no one will search neither for the shortcut way nor for the longest way of disposal. Moreover the litigious people should be punished for their uneven activities not only by fine but also by rigorous imprisonment.

Concluding remarks

Though it is tough task to implement all those recommendations over night but if we earnestly desire to eradicate the most vexed and nerve-racking problem in the administration of civil justice i.e. delay, then no option in our hand is there rather than to execute those recommendations immediately by way of making positive strategy by the Government as well as building awareness to all the stakeholders.

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