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Research Monograph
On
Civil Justice System in Bangladesh

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Letter of Transmittal

To

Sharmin Jahan Runa

Assistant Professor

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Subject: Submission of Research Monograph on "**Civil Justice System in Bangladesh"**

Dear Madam,

This is a great pleasure to submit the Research Monograph on **"Civil Justice System in Bangladesh"** as a partial requirement for the fulfillment of my LL.M course under the Department of Law of the Sonargaon University (SU).

I have given due efforts to make this Research Monograph as fruitful one and to make it as informative as possible. I hope that this paper will not be the formality of academic course completion rather it will be a source of information for other purpose on this topic.

Yours sincerely

.....

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Declaration

I do hereby declare that the Research Monograph Title **"Civil Justice System in Bangladesh"** prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.M (Master) Degree. This is an original work of nine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

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Supervisor Certificate

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Department of Law, Sonargaon University (SU).

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LL.M. program.

.....

Sharmin Jahan Runa

Assistant Professor

Department of Law

Sonargaon University (SU)

Acknowledgement

***In the name of Allah, the Beneficent, the Merciful".** Praise by Allah & thanks to Allah for patronizing me to finish this Research Monograph. I am very happy to finish it. It is a great Research of my life. It is a long cherished hope of my life to become a great lawyer. That's why I have admitted in the Department of Law in Sonargaon University (SU) to fulfill my dream. But through my whole study life in this field, I did not get much more opportunities to examine and show my knowledge and skill in this wide field. Lastly I have got a great chance to make my study meaningful when I got the chance to prepare a Research Monograph on **Civil Justice System in Bangladesh**

I acknowledge my grateful to respected course teacher **Sharmin Jahan Runa** for instructing me how to prepare a Research Monograph and his famous Books lectures on this subject help me to complete my task sincerely.

I am also thankful to my classmate as they help me to complete the Research Monograph. I am extremely paying my solitude to all the authors and writers whose works help me to draft this original Research Monograh.

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Thank you

Khadiza Begum

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. 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. Every year a large numbers of suits are increasing in the districts courts of Bangladesh. When a person is filed a suit and he precedes it for a long term and he can thing that he will not get the proper judgment. For this reason court lost its important and it is one of the dangerous impacts of delay in Civil Litigation of Bangladesh. This paper aims at identifying these causes for delay in disposal of civil cases and suggests remedial measures.

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CHAPTER 1

INTRODUCTION

1.1Statement of the Problem:

Civil Justice System of Bangladesh is accompanied with numerous troubles. Delay is a very common affair in administration of civil suits in Bangladesh. Time consumed for the final disposal of cases from the date of its institution is too long. 10-15 years in many instances. This delay has been causing serious harassment to the litigant public. It has come to many mind that the present system of administration of justice, a foreign transplant, is unsuited to the genius of our people, its procedures are dilatory and cumbersome, not advancing the cause of substantial and quick justice. The situation is serious indeed and calls for careful consideration of the reasons for this delay. The system of administration of justice as obtaining in Bangladesh, both as regards the hierarchy of courts and the procedures followed by them, is the result of an evolutionary process the present system coming down from hundred years back and the people including the unlettered villagers have become used to its formalities and technicalities. Why then the people are losing confidence in the system is the question of the day. The answer is not far to seek. The procedure delay in disposal of cases, may account for much of the erosion of confidence in the system.

1.2 Importance of the Study:

Delay in the dispensation of justice is regarded as main laches in the judicial system of Bangladesh. The unusual delay in the trial of civil cases has made justice an imaginary matter. Delay in disposal of cases on the one way makes justice expensive and on the other way long dependency contributes to the material change of the subject matter of the disputes and lack of both oral and documentary evidence resulting in justice being either impossible or valueless which ultimately indulges corruption. Delay in disposal of cases makes room for non-confident attitude of the people towards the judicial system of the country. There is no other alternative to make the judicial system meaningful and trustworthy to the people without ensuring speedy and fair dispensation of justice. For finding out the causes of delay in the dispensation of justice and also to ensure speedy and fair justice to the people, several

initiatives need to be taken. This study attempts to find out actually what steps to be taken and how these can be implemented.

1.3 Objectives of the Research:

The main objective of this study is to analyse the problems which hinder the effective administration of civil justice in Bangladesh. In order to achieve this objective the study will be conducted with a view to bring about some specific objectives. The specific objectives of this research are:

(1) To identify the problems of the civil justice system in Bangladesh.
(2) To explore the causes for delays in delivering civil justice.
(3) To focus on the consequence of delay in disposal of civil suits.
4)To find out the ways of avoiding delays in disposal of suits

1.4 Review of related Literature:

To conduct this research the documents have been reviewed in terms of published as well as unpublished research report, books & sections. Documents & report have been **collected** from internet, different daily newspaper, different law journals, and speech of different sufferer. The literatures have been critically reviewed to supplement the information. Systematic approach has been used to review the literature.

Many books have been reviewed in this research. Some of them are outlined below-

I also study on "Law on Civil Suits" by Advocate Md. Abdul Malek. On this book introduce different type of civil suits such as suit for declaration of title, recovery of possession, permanent injunction, suit for family court, suit for partition, suit for mortgage etc.

Civil Procedure by C K Takwan.This book is defines amendment of plaint,summons and written statement. The writer discusses about the all of procedure which is related to my research and it, help me lot.

The Law of Civil Procedure by Mahmudul Islam.This book is defines ADR.Discovery,Transfer of suit,Adjournment.This writer discusses about the all of procedure which is related to my research and it,help me a lot.

And i also study on The Code of Civil Procedure 1908.It also help me a lot to do research which is related to the sections and order.

1.5 Research of methodology:

Every research involves a method by which the desired result can be achieved. Here I have applied analytical method. In this regard I have used primary and secondary sources. To complete my research work. I will follow some critical but effective process and I will follow this process through studying books, newspapers, websites, discussion with Resource Person, basic documents, Government Statics etc.

1.6 Sources of materials:

For this research both primary and secondary data have been used. As said earlier, Questionnaire and Interview have been used to get primary data and Content analysis for secondary data. Moreover, guided interview helped to get in depth understanding of the phenomenon and its relevance with other issues. Professional and knowledgeable persons' thoughtful opinion helped to see the problem in a broader canvass.

1.7 Scope of limitations of the study:

This paper is made on both primary and secondary data, so there have a possibility to get false or incorrect information. The main limitation of this research as are as follows-

a) It is difficult to meet with the well knowledge advocates and judges to get more effective information because of their huge routine work.
b) Due to shortage of time could not get depth knowledge on the relevant subject matter.
c) Sufficient records, facts and figures are not available. These constraints narrowed the matter.
d) Sufficient books are not available on this subject matter.

Due to lack of experience, there is a probability of having mistaken though best effort has been applied to avoid all kind of mistake.

1.8 Tentative structure of the monograph

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CHAPTER 2

PROBLEMS OF CIVIL JUSTICE SYSTEM

1.1 Introduction:

It is a well-known proverb that, "justice delayed is justice denied". This chapter deals analyses the problems in the civil justice system in Bangladesh. Legal rights and status of the citizen in a country is the indispensable source of civil administration.[1] Though it is a half-part of the total legal structure but criticized due to its lengthy procedure and the attitude of its stakeholders. Consequently the numbers of civil litigations are bulging day by day. This paper articulates the present situation of Bangladesh in the administration of civil justice system and opened the wrapping to cause delay.Civil judicial take a large position in Bangladesh legal system.

1.2 Laches in the procedural laws:

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

1.3 Absence of specialized type of courts:

At present different types of cases such as land disputes, family disputes, commercial disputes, disputes relating to loan recovery, specific performance of contract cases are tried by the court of assistant judges and subordinates and additional district judges. But as the present decade is the decade of specialized knowledge so if the existing courts could be earmarked as specialized courts in accordance with the nature and class of pending cases then that would increase the volume of disposal of cases and also make improvement in the quality of justice and the quicker dispensation of justice. In the metropolitan areas the number of cases in the courts is excessively high. In each court of subordinate judge thousands of cases are pending for years together. As such on experimental basis specialized court system

[1] Mahmudul Islam, Code of Civil Procedure, 2006, Shahidul Hasan Mullick C. K. Takwani, Law of Civil Procedure Black's Law Dictionary

may be introduced firstly in the metropolitan areas earmarking each court to try same nature and class of cases. In any case number of cases in one court should not be more than one thousand and where in several courts of assistant judges the number of cases is less than one thousand therefrom by way of administrative order some courts are to be withdrawn and to be transferred to places where the number of cases is excessively high. If courts are located in comparison to cases instead of regions by manning those with the persons having specialized knowledge to try special types of cases then undoubtedly that would ensure speedy disposal.

1.4 Inadequate number of judges:

There is a general feeling that the government is not appointing adequate number of judges to deal with increasing work. It is a common experience that even existing vacancies in various HCD remain unfilled for an unduly long time. Prompt appointment of judges to fill the existing vacancies and creation of additional posts in adequate number would go a long way to solve the problem of delay and arrears.[2]

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 leading case 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.

1.5 Lack of logistics for the judges:

In Bangladesh many courtrooms are dilapidated, many presiding officers are not provided with steno-typist, many courts are functioning without having type machine, many presiding officers are attending courts on foot in absence of transportation facilities and many courts are not yet provided with computer. All those have already been ensured on our neighboring country and regarding Presiding judges all have been made accessible to computer by

[2] Delay in civil litigation, available at: *siddique.yolasite.com/.../The%20Delay%20in%20Civil%20Litigation*

imparting training. In this respect an honest intention on the part of the government can ensure better result with significant improvement in the process of delay.

1.6 Lack of spontaneous presence of witness :

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

In every contested trial of a case, procedure relating to examination of witness plays an important role as the disposal of the case depends on it. It has been observed that the party faces great difficulties in procuring witness and making them in attendance. It has been observed that the witness in attendance are not examined on the same day and then witness hesitate to turn up on the next date, resulting in further delay due to cumbersome process of resuming and procuring witnesses.

It has also been observed at times the witness go unexamined due to the presiding officer is on leave or on non-examination of the witness in attendance or allowed long interval. The cross-examination is also done not on one occasion but in survival prolonged installments. The re-examination is also done installments and in piecemeal all of which cause delay in the proceedings.

1.7 Lack of sincerity on the part of lawyers:

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

1.8 Low rate of disposal through ADR:

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

1.9 Conclusion:

An essential requirement of justice is that it should be dispensed as quickly as possible. It is awell-known adage that, “justice delayed is justice denied”. However, delay in litigation isequally proverbial and though it may sound inconsistent, the fact remains that the veryprovisions of the Code, which are designed to facilitate smooth and speedy trial of cases, aremisused and abused which causes delay in disposing cases indefinitely and ultimate success in the cause often proves illusory.

CHAPTER 3

CAUSES FOR DELAYS IN CIVIL SUITS

3.1 Introduction:

The process of delay in civil suit is equally known to all and nevertheless it may sound inconsistent with due process of law. The fact remains that the very cases are misused and abused in order to delay cases for an indefinite period and ultimate success in the cause often proves false. Now, law is an effective weapon in the hands of the state to mitigate the social needs by ensuring proper justice in time. Such effort of law is liable if justice fails to mitigate the misery of the mass people due to delay in litigation only and the faith in justice can never be instilled in the mass people if the state doesn't ensure the speedy process of justice.

Delay in civil justice in Bangladesh is caused for many reasons. There is a fertile field in the Code of Civil Procedure, 1908 for a clever lawyer to prolong and protract proceedings to any length of time.

Delay in disposal of cases is an alarming issue of the judiciary in Bangladesh.[3] This is also a humanitarian issue all over the world both from social and economic aspects. Now-a-days delay in the justice system has reached a point where it has become a factor of injustice, a violator of human right. Praying for justice, the parties become part of a long, protractor and torturing process. When a case is filed with a court, nobody knows when it will end. Even a small case which should be disposed of within one year, may take 10-15 years to dispose of through all stages.

"It is a general impression prevailing amongst the litigants public that the difficulties of litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree."

3.2 Adversarial system in civil procedure:

In our procedural law although there are provisions for chronological advancement of cases but there is no compulsion for maintaining a timeframe for each chronological step. A case

[3] World report 2014, Available at: https://www.hrw.org/sites/default/files/wr2014_web_0.pdf,

arrived at peremptory hearing after long journey can be brought back again to primary stage by any of the parties without any reasonable excuse by taking the advantage of absence of compulsion.

In Bangladesh Adversary system of trial is enforced the adversary of trial in our country is in vogue.[4] In this system the accused person know the charges taken against him and preserves the right of self defense.

Both the complaint and the litigant have to face interrogations in this system. This system has some inherent weakness because of having a very normal role to play of judges. So it leads to delays and high costs in disposal of cases.

3.3 Defects in the procedural law:

There are many 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 troubles 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.[5]

3.4 Frequent amendment of plaint:

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

[4] Problems of Bangladesh legal system, Available at: *news24flash.blogspot.com/2012_08_01_archive.htm*
[5] Government Pleader AbdusSattar, Supreme Court of Bangladesh

The Court is empowered by Order 16, rule 17 to allow the application for amendment of pleadings at any stage of the proceedings. Generally, the application for amendment of pleading is allowed for the purpose of determining the real question of controversy in between the parties. it is true that there may be cases where amendments are necessary. But there is no time prescribed for seeking amendments relating to a fact after the pleadings were filed.

Experience shows that amendment of pleadings is one of the causes for delay in early disposal of cases. Moreover, the material amendments at a late stage of the case may seriously affect the opposing party in the case. Moreover, other party has every right to counter the every amendment of the pleadings. No doubt, it is a fruitful source of delay in disposal of civil cases.

If the prayer for amendment of pleadings is not granted by the trial Court then the party aggrieved like other interlocutory orders is entitled to go the higher Court, which takes years after years.

3.5 Presentation of plaint without documents:

According to 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.

3.6 Delay for interlocutory orders:

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

3.7 Application for discovery of documents:

Interrogatories and discoveries have been incorporated in the Code to bring down the surprise of trials of the other parties. Interrogatories are not supplied by the parties in time on this or that plea seeking prayer for time. Concerned lawyer must be careful and vigilant in serving interrogatories timely in order to facilitate the speedy trial in the disposal of the suit. In the like manner documents are called for from the concerned Registry Office at the prayer of the parties for the proof of the genuineness of such documents, but the said offices fail to supply the volume book on the plea that the books are not traceable.

Repeated reminders are not complied with in sending such valium books which kills much time in the disposal of the suits in a quicker pace of period. Necessary directives are essential to be issued on the Registration Department to comply with the requisites of the Court by such officers at once. An order under this rules, whether dismissing a suit or striking off defense or refusing to dismiss a suit or strike off a defense, is appealable.

3.8 Application for transfer of suits:

On the application of any of the parties, the High Court Division or the district Court may at any stage transfer any suit or appeal pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same. So, the parties have to apply to the High Court Division or the district Court for transfer of the suit and it takes delay in civil litigation. Where a suit, appeal or other proceeding is transferred from one court to another, such transfer is not limited to those proceedings. All ancillary and incidental proceedings which may arise out of such suit, appeal, etc would also be dealt with and decided by the transferee court.

3.9 Slow process in the service of summons:

Complexity in the service of summons in civil cases and unconditional privilege of filing petitions of amendment of plaits, submission of additional written statements and other interlocutory petitions at any stage of the suit. In the cases of service of summons in civil cases sometimes there is misuse of both money and time.

Without affecting the existing system of service of summons through court and registered post on the basis of consent of the plaintiff summons may be served by publishing the same

in the newspaper like that of commercial courts and where the plaintiff agrees to execute the same on his own initiative there he may be assigned to do the same. However, this would necessitate bringing in amendment in the procedural law.

In addition to that unlimited privilege enjoyed by the parties with regard to filing of different petitions including that of interlocutory, amendment of plaints and written statements affects the usual course of case and unless extreme exigencies arise it is desirable to cut those privileges after passing through initial stage of cases. In special circumstances provision for such permission may be given to the next higher court by amending the necessary provision of procedural law. Apart from that there should be a fixed time frame for each stage of cases by inserting provision that any laches at any stage would adversely affect the interest of the party seeking step beyond the time frame.

3.10 Delay in execution:

After traveling the most tedious way costing much time and money when the plaintiff gets the long cherished decree finally decided by when the plaintiff gets the long cherished decree finally decided by the court, the question of execution of the decree comes in Order XXI contains as many as 103 rules relating to the execution of decrees. The decree holder of a suit gets almost exhausted to get the decree satisfied. In a decree for partition, the decree holder in most of the cases has to move from post to pillar for getting final decree by metes and bounds on completion of the works to be done by the advocate Commissioner.

The entire judicial process in civil suit has been brought to disrepute by the manner and method of executing proceedings protract over decades. In the event of the decree satisfied by auction sale of the property of the judgment debtor, there are provisions for setting aside the sale on various grounds. In view of the unusual lengthy and clumsy procedure many decree holders give up the hope of getting the fruits of the decree and in the execution stage many decrees die or are being foiled or frustrated to the utter disappointment of the unfortunate decree holders.

On the other hand it is found that the executing court may stay the execution so, it also causes delay in Civil justice system. Order 21, rule 26 shows that the executing court shall, on sufficient cause being shown and on the judgment-debtor furnishing security or fulfilling such conditions, as may be imposed on him, stay the execution of a decree for a reasonable

time to enable the judgment-debtor to apply to the court which has passed the decree or the appellate court for an order to stay execution.[6] A transferee court cannot invoke inherent powers to grant stay.

"Because of delay unscrupulous parties to the proceeding takes undue advantage and the person who is in wrongful possession draws delight in delay in disposal of the case by taking undue advantage of procedural complications. it is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time"

The causes discussed above are not the causes, which linger civil litigation. There are other causes that can protract civil suits. For example we can state that want of classification of cases, want of ADR or CDR, centralization of judiciary, weak communication system, in convenience due to same court hearing civil and criminal cases, unwillingness of Government to get the cases decided and appeals by the state without application of mind etc. are causing delay in the disposal civil litigation.

3.11 Delay caused because of law of limitation:

The Limitation Act, 1908 creates delay as it allows Condition 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 defense. 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. Condition 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.[7]

3.12 Delay caused by the judges:

The insufficient number of judges (50%) is found as major causes of delay among the causes from judges.

3.13 Conclusion:

[6] Rule 26, Order-21, CPC-1908
[7] The International Jurnal of Social Science by Mohammad MizanurRahmanChowdhury

Above reasons and conditions exist in a long win or lose battle where the parties fight in a 'do or die' manner with no or little perspective of any consensual settlement move coming from any side which could steer the dispute to win-win resolution. Consequential frustration, desperation and costs become too expensive for any judicial system to sustain. Earlier, moves had been made to clear the procedural blockages of delay of civil suit though success could not be achieved. Mere amendments of the CPC within the existing trial philosophy may not be the best way to look for the gateway in the blind-alley. Before it is too late, innovative approaches are needed to live up to the uphill tasks of reconstructing our judiciary.

CHAPTER 4
IMPACT OF DELAYS IN DISPOSAL OF CIVIL SUITS

4.1 Introduction:

Delay in disposal of suit threatens justice. The lapse of time burns truth, weakness the memory of witnesses and makes presentation of evidence difficult. This leads to loss of public confidence in the judicial process which in itself is a threat to Rule of law and consequently to the Democracy. The rising costs of litigation can also be said to be attributable to delay which in turn causes the litigants to either abandon meritorious claims or compromise for a lesser or unjust settlement out of court.

Besides, expression of society's moral outrage is essential in an ordered society that asks its members to rely on legal process rather than self-help to vindicate wrongs. To avoid anarchy, fairness has to be actually felt by the aggrieved persons and it is the court which provides the systematic outlet. Obedience to law has been described as the strongest of all the forces making for a nation's peaceful existence and progress**.**

4.2 Huge backlog of cases:

Judiciary of Bangladesh is caught in a vicious circle of delays and backlogs. Backlog of cases causes frustrating delay in the adjudicative process, which is eating away our judiciary. While delay in judicial process causes backlog, increasing backlog puts tremendous pressure on present cases and vice versa. This process goes on with no apparent remedy in view. Present rate of disposal of cases and backlog is alarming for justice, rule of law and economic development of the country.

Our judicial and legal system has a rich tradition of common law culture and it can boast of a long record of good delivery of justice. Like any other legal system, common law with its adversarial or accusatorial features, has both its merits and demerits. But in recent years, certain objective and subjective factors have led our judiciary to a situation where its demerits are ruling over the merits, manifesting in crippling backlogs and delays. Delayed justice fails to pay even the winning party of the litigation, for its costs in terms of time, money, energy and human emotions are too high.

Delay in our judiciary has reached a point where it has become a factor of injustice, a violator of human rights. Praying for justice, the parties become part of a long, protracted and torturing process, not knowing when it will end. Where it should take one to two years for the disposal of a civil suit, a case is dragged for 10 to 15 years, or even more. By the time judgement is pronounced the need for the judgement in certain cases is no more required. Moreover, in a society of class differentiation, the lengthy process, which is adversarial and confrontational in nature, puts the economically stronger party at an advantageous position. If the judiciary functions substantively and in accordance with the procedural laws, an existing wide scope for delays, can transform it into a system which becomes procedurally hostile towards marginalised sections of our people, defeating the goals of social justice.

4.3 People become disinterest to go court:

When the parties and the witnesses of a suit frequently appear on the date of hearing but don't get any benefit they became disinterested to go to the court. Peoples go to the court to get remedy but due to the delay in civil litigation they became disinterested to go through the court to get the remedy.

4.4 People harassed in the court:

Harassment in the court is another impact of delay. The lawyers for his personal benefit do not maintain the suit properly but the parties frequently pay money to the Lawyer. On the other hand the suits remains adjourned for a long time and if the parties pay money to the presker then he can short the adjourned time of the suit.[8]

4.5 Lost of valuable time:

There are a lot of suit due to delay in civil litigation, for that the court has to busy for every time and it lost a lot of time. It takes more than 10/15 years to dispose a civil suit, during that times the parties frequently attends the hearing of the suit so it lost the valuable times of the parties and the witnesses of those parties.[9] It is 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

[8] Report of the publishers weekly, Available at: *archive.org/stream/.../publishersweekl03unkngoog_djvu.txt, Accessed on: 16-07-2015*

[9] Judgment on Burley v. stain, Available at: *law.justia.com › ... › California Case Law › Cal. App. 3d › Volume 40, Accessed on: 02-07-2015*

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.

4.6 Lost of valuable money:

For delay in civil litigation, when a person precedes a suit for a long term, he needs a lot of money. It may also happen that the suit is for 5,000/= taka but for delay he/she spends Tk.10,000/=.

4.7 Conclusion:

Above reasons and conditions exist in a long win or lose battle where the parties fight in a 'do or die' manner with no or little perspective of any consensual settlement move coming from any side which could steer the dispute to win-win resolution. Consequential frustration, desperation and costs become too expensive for any judicial system to sustain. Earlier, moves had been made to clear the procedural blockages of our civil justice system though success could not be achieved. Mere amendments of the CPC within the existing trial philosophy may not be the best way to look for the gateway in the blind-alley. Before it is too late, innovative approaches are needed to live upto the uphill tasks of reconstructing our judiciary.

CHAPTER 5
POSSIBLE WAY OUT OF AVOIDING DELAYS IN DISPOSAL OF SUITS

5.1 Introduction:

This chapter deals to explore the ways of solving the problems of delays in disposal of suits.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 delays in disposal of civil suit.

5.2 Possible way out of avoiding delays:

The justice delivery system in our country is time consuming and unaffordable to the poor people to some extent. The existing regime of civil suits in Bangladesh is governed by the Code of Civil Procedure enacted in 1908. Since then little change has taken place. The legal system may very well be described as admirable but at the same time slow and costly and entails an immense sacrifice of time, money and talent. The causes of backlog and delay of disposal of cases are systematic and profound. The legal system's failure to impose the necessary discipline at different stages of trial of cases allows dilatory practice to protect the case life. A case usually takes about ten to twenty years to disposed of. It is learnt that nearly one million cases are now pending in different courts of the country.In this situation some way out of avoiding delays.These are discussed:

5.2.1 Increase the number of judges:

In spite of growing volume of the court work, the strength of judiciary has not been increased proportionately. Now it is necessary to establish additional Courts in all the hierarchy of judiciary. The number of judges should also be increased so as to speed up the disposal of arrears pending in the Courts preferring old suits. The practicing lawyers standing should be

taken up in the judicial service. There are only one thousand or more or less than it, judicial officers in Bangladesh subordinate judiciary. This number is too less in a country like Bangladesh where the total population is about to 16 Crores.

The number of Judges in the High Court Division should be increased. If in a country as small as Hungery, there could be 70 judges in its highest Court, then we should increase the number of judges in the Supreme Court. The number of judges on the Appellate Division of the Supreme Court should also be raised from seven to nine and there should be three Benches consisting of three judges. High Court Division needs at least number of two hundred judges immediately. Normally the Government is very slow in filling up the vacant post of judges.

On the excuse of huge vacancies in the bench, heavy load of work, the judges have become extremely harsh and insensitive to the lot of the common man who happens to approach them occasionally with grievances at huge cost and trouble. The initiative for filling up vacant post of subordinate judiciary as well as in the Supreme Court should be taken up at least 6 months before the date of impending retirement of judges.

5.2.2 Effective procedure for service of summons etc:

Under the present procedural system, service of summons or process is not properly affected 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:

a. 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.
b. 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.

c. Courier service and internet or cyber network access should be adopted in every stage of the service of summons or process.
d. Process fees should be increased to a reasonable amount in consonance with present day communication expenditure.
e. Postal department should be instructed to give special treatment in delivering courts summons, letters, etc.

5.2.3 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.

5.2.4 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. 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.

5.2.5 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.[10]

5.2.6 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.

5.2.7 Make the ADR provision compulsory:

If ADR should be made compulsory for the litigants it may take vital part to reduce delay in Civil Litigation. As we have know that the provision of ADR were imposed in our Civil procedure in the year of 2003 which takes important role to avoid delay in civil litigation. There are three methods of ADR namely- Negotiation, Mediation and Conciliation. 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.

5.3 Conclusion:

If it is true that justice delayed, justice denied, it is also equally true that ‘justice hurried, justiceburied. So for the sake of speedy disposal of civil suits in particular nothing should be donewithout giving proper thought over its true perspective. For this purpose interaction among thejudges, lawyers, academicians and other stake holders may be done occasionally in the form ofseminars, conference, workshop, round table conference etc. Because the more heads are puttogether, the better results are likely to come.

[10]The International Journal of Social Science by Mohammad MizanurRahmanChowdhury

CHAPTER 6

GENERAL CONCLUSION

6.1 Recommendation:

1. ADR process should be compulsory and insured before the filing of the suit. The result of the document of ADR should be submitted before the court.
2. Court working time should be continued within two shifts.
3. The Bangladesh Judicial Service Commission should appoint a number of judges as soon as possible.
4. The document of RS, SA, Porcha, Khatan department should be separate from District Commissioner and include District Court.
5. The Civil Court should be separated from Session Court.
6. The Bar Council should be ensuring transparency and accountability of the advocates on the basis of ACR report.
7. Defect of Party (Interrogative) should be compulsory. That's means within fifteen days after the submission of written statement, the court may order to examine defect of party. After Fifteen days no party can claim about defect of party.
8. 30 CPC, Settling Date of Hearing (SD) is not necessary. These two steps should be abolished.

6.2 Concluding remarks:

Problems of administration of justice in Bangladesh discussed above specially problems of increasing number of backlog and delay in disposal of cases are not the problems of our judiciary alone but are common to administration of justice in many other countries of the world. For solving the problems of the judiciary in many countries law commission, committee etc. are regularly constituted for examining the suggestions of the judges, lawyers, jurists, research bodies etc. for reformation of the administration of justice and on the basis of the considered recommendations of such commission or committee necessary steps are taken and legislation is made for solving the problems of the judiciary. So to make the administration of justice in Bangladesh more effective and fruitful judiciary should be completely separated from the executive branch of the Government;subordinate Judiciary should be brought under complete control of the Supreme Court; standard of legal education should be raised for creating efficient lawyers and judges; salary, allowances and privileges of the judges should be increased to attract competent persons in the service to be recruited through a Judicial Service Commission and training should be given to the newly recruited as well as existing judges to increase their efficiency in case management and disposal.Judiciary is the pivot of distributing justice among the people. A man comes to the judiciary notto lose his rights but to establish it. When a man loses his rights, he tries to recover as well asestablish it by any means. Judiciary is the last resort for establishing rights of an aggrievedperson Innumerable children have been born intothe cause; innumerable young people have been married into it; innumerable old people have diedout of it. Scores of persons have deliriously found themselves made parties in Jarndyce andJarndyce, without knowing how or why..... Fair wards of court have faded into mothers andgrandmothers; a long procession of Chancellors has come in and gone out.....but Jarndyce andJarndyce still drags its dreary length before the Court, perennially hopeless." Unless and until the administration of justice is not framed out of complications, people willremain getting injustice in the name of justice. Huge backlog of cases is really a concern for all.[11]

[11]The International Jurnal of Social Science by Mohammad MizanurRahmanChowdhury

Bibliography:

Book

L.K Takwani, Civil Procedure, 2010, Eastern book company

Mahmudul Islam, Code of Civil Procedure, 2006, Shahidul Hasan Mullick C. K. Takwani, Law of Civil Procedure Black's Law Dictionary

The Law of Civil Procedure by MahmudulIslam and ProbirNeogi.

The Legal System of Bangladesh by Barrister Md. Abdul Halim.

Statute

The code of Civil Procedure, 1908.

The Arbitration Act, 2001

Civil Courts Act 1887

Government of Bangladesh, Civil Procedure Code 1908.

Websites

http:// bangladesh international arbitration centre.htm

http://isfaqulalam.blogspot.com-

http:// lawassignmentpoint.bd

www.assignmentpoint.com

www.wikipedia.com

www.lawagency.com

www.google.com

http://www.wisegeek.com/what-is-a-small-claims-court.htm

www.iosrjournals.org