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Research Monograph

On

"The initiatives for solving the key problems of cost, delay and complexity in civil justice system in Bangladesh."

Research Paper submitted in partial fulfillment of the requirements of LLM (1 years) under Sonargaon University.

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I hereby do solemnly declare that the work presented in this research has been carried out by me and has not been previously submitted to any other institution. The work I have presented does not breach any copyright. I further undertake to indemnify the university against any loss or damage arising from breach of the forgoing obligations.

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SUPERVISOR'S CERTIFICATION

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The dissertation has been carried out under by guidance and is a record of the benefited work carried out successfully.

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Abstract

Our judicial structure owes to the colonial administration for its evolution & is still bearing the remnants of the system it inherited from its predecessor. Our judiciary is still following the adversarial trial system. Though the British legal system has developed to a standard for others we are still on the same footing where they left us. We could not overcome the obstacles associated with the civil justice system. The main problems facing our judiciary are the cost, delay & complexity. Several steps have been taken to solve the problems but deserved success cannot be achieved. The main problem lies probably in the identification of the real problems & providing pragmatic solutions.

In this research I have tried to identify the real problems by interviewing different legal persons & litigants, by analyzing the opinions of different scholars & taking into account the attitude of the society towards the civil litigation social aspects & applying my own reason & experience. I have evaluated the reforms made in some foreign legal systems to compare with our system specially the Woolf's reform in England. Lastly, I have provided some reform & amendment proposals based on the findings.

Keywords: Administration, legal system, society, civil litigation, social aspects.

Chapter-I

1. INTRODUCTION

Justice is one of the fundamental human rights which is dependent upon the fair, speedy & smooth forum to administer the justice. Civil justice is needed when the civil right is infringed. To provide the proper remedy to the litigants the court structure & procedures have developed. However, the problem lies in the fact that the machineries of providing justice are themselves deceitful which causes injustice in the way of delay, complexity & expensiveness. These problems stem from the defects lying within the civil justice system. Many attempts have been taken by different states & some are yet to be taken. But the complete solution of the problems is still a matter of hope. So opting for finding the actual causes & better solution this study has been designed for.

Chapter-II

2. RESEARCH OBJECTIVES:

The title of the study itself expresses the objectives of my study as to critically analyzing the key problems of the civil justice system, finding the actual reasons of the problems & providing the proper recommendations to tackle those obstacles. One of the main purposes of the study is to assess the efficiency of the works already done in this field.

Chapter-III

3. METHODOLOGY

The study is qualitative in nature and is based on both primary and secondary sources such as books, journal articles, government orders, rules, acts, newspaper reports, etc. Relevant literature was also gathered via browsing the Internet. But quantitative data has also been presented in some cases. The study is more of analytical nature though research work has also been done.In conducting the research data & information has been collected from various types of persons including the lawyers, judges & litigants.

Chapter-IV

4. THE BASIC IDEA OF COSTS, DELAY & COMPLEXITY:

To understand the problems relating to costs, delay & complexity, we should have a basic idea about these terms & a clear concept in this respect. In the following discussion, these concepts have been clarified in accordance with the textual views & legal provisions.

4.1. Costs:

Costs is a statutory payment on an action against a party for its expenses incurred in the case. These are in the form of incidental damages allowed by the successful party to reimburse him for the costs of defending his rights in court, where the need for doing so is induced by the violation of the other party's legal duty... They have reference only to the parties and the amounts paid them, and only those expenditures which are by statute taxable and to be included in the judgement fall within the term 'costs' [1].

Oxford Dictionary of Law defines costs as 'sums payable for legal services.' According to Black's Law Dictionary "costs is a pecuniary allowance made to the successful party for his expenses in prosecuting or defending a suit or a distinct proceeding with a suit".

In general, "costs follow the event" for most civil actions. This means that the costs of an action are usually awarded to the successful litigant.

Costs in civil suits may include:

- Fees,
- Charges,
- Disbursements,
- Expenses and
- Remunerations.

In Salem Advocates Bar Association V. Union of India [2], the Supreme court of India held that the costs have to be actual and reasonable, including the cost of the time spent by the successful party, the transportation and lodging.

4.1.1 Costs under the CPC, 1908:

There are three types of costs under the Code of Civil Procedure, 1908 which are as follows:

1. General cost: the amount of which is determined by the court in exercising its discretionary power. The court may give interest on costs at any rate not exceeding six percent per annum [3].

2. Compensatory cost: the highest amount of which shall not exceed taka 20000. This cost is levied against the party who brings a false or vexatious suit [4].

3. Cost for delay: the highest amount of which shall not exceed taka 3000 [5].

4.2 Delay:

There is a famous quotation of William E. Gladstone “Justice delayed is justice denied”. Delay means the length of the proceeding being too much time-consuming. Not only the lengthy procedure, but also other factors are responsible for delay in civil suits. Delay is regarded as one of the laches of the civil proceeding nowadays. It is a curse to the litigants who have to wait for an unreasonable time to get remedy.

4.3. Complexity:

The word complexity denotes the rigid requirements necessary to be followed to run a civil proceeding from the beginning to the end. To get a remedy a litigant has to go through a complex process comprising multiple steps.

This process has been devolved through a long journey from the British period which has accumulated multi-dimensional procedures from various legal systems. As a result, it has been turned into complex machinery. In the next chapter, an idea of the key problems of the civil justice system will be provided for better understanding.

Chapter-V

5. THE PREVALENT SCENARIO OF THE PROBLEMS:

To observe the problems relating to cost, delay & complexity we should have the current scenario or features of the problems in our knowledge. The civil justice system is facing many problems today from which this trio is hindering the justice mainly.

This part is designed to provide a present feature of the problems in the civil procedure in the common law countries, especially in Bangladesh.

5.1. Problems Relating to Costs:

Lord Woolf observed this problem in his report on Britain's civil justice system, in which it was concluded that costs were the most serious problem facing the British civil justice system: The defects I identified in our present system were that it is too expensive in that the costs often exceed the value of the claim; too slow in bringing cases to a conclusion and too unequal: there is a lack of equality between the powerful, wealthy litigant and the under-resourced litigant. Cost causes problems in the civil proceedings in many ways which may be as follows:

5.1.1. Problems in the recovery:

When one finally wins his case, he might expect to be able to recover all of these costs as part of the judgment one obtains against the opposing party, but the reality is just opposite.

One may recover the costs reasonably expected to be incurred in the suit but the actual costs always suppress the reasonable costs. Specially, the lawyer's fees are not included in the calculation of the recoverable costs which comprises a considerable amount.

Citation: Muhammad Ali & Naimul Razzaque (2023).
The Key Problems Facing Civil Justice Today Are Cost, Delay & Complexity:
A Critical Review. Sch Int J Law Crime Justice, 6(8): 438-446.

Rarely, however, do the taxable costs cover all of the prevailing litigant's actual out-of-pocket expenditures, and as a result many of those expenditures are not reimbursed.

As a practical matter, what this means is that when one embark on a lawsuit he need to give serious consideration to the amount of money he will spend on the case, and the likelihood that he will be able to recoup those funds if he wins the case.

Many litigants are surprised to learn that even though they have prevailed and obtained a money judgment in their favor, the amount of their judgment is significantly reduced by the amount of reimbursable costs expended. It's a good idea to get a realistic sense of the financial side of your case right at the outset. Otherwise, you may very well win the battle but lose the war.

5.2. Delay as a Problem:

Justice Iyer rightly says, "Delayed justice is the means of inflicting injustice through the process of law" [6]. Delay in the administration of justice is seen as the major shortcomings in Bangladesh's legal system.

Delay in the handling of cases on the one hand makes justice costly and on the other hand long relianecontributes to a significant change in the subject matter of the litigations and to the lack of oral and documentary proof resulting in justice being either infeasible or invalid which eventually leads to corruption [7].

Delay in disposal of cases makes scope for decreasing the confidence of the people towards the judicial system of the country. Delay has come to a point in our judiciary where it has become a cause of injustice, an infringement of fundamental rights.

The parties, weeping for justice, become part of a long, lengthy and slaughtering cycle, unaware of when it will end. Where a civil action is to be disposed of for one or two years, a case is prolonged for 10 to 15 years, or even more.

5.2.1. Case examples:

1. Case of Fazle Rabbi [8]: Chittagong's Fazle Rabbi had begun legal strug gle in 1992 to secure his ancestral land in Chittagong area of Lohagora. But the issue is still to be settled becaus e of legal complications.

He says that, in 1992 he started the legal battle to make a proper record of his ancestral land. That same year, I received a lower court decree. But the opposing party — Elias Khan and 43 others — filed an appeal with the Chittagong additional court and got a decree in their favour, he said in 2002.

He lodged an appeal with the HCD against the trial court's order. It denied our appeal, and stayed the d ecision of the lower court. Now, he told this reporter the case is pendinag before the HCD for final disposal.

2. Case of Mofizuddin Ahmed [9]:

Unlike Fazle Rabbi, Mofizuddin Ahmed, a My mensingh native, lodged an appeal with the HCD in 198 1 against a trial court order in a territorial dispute agains t him. But the HCD still has to dispose of the appeal, sin ce the parties have often appeared in court in the hearin gs. On 5 July 1989, following the filing of the appeal, the HCD ordered the lawyer of the applicant to prepare eight copies of the case papers. The petitioner's counsel submitted them to the court on September 13, 1989, in compliance with the HCD order. Neither the respondents ' lawyer nor Syed Sarkar and others, the respondents in the case, appeared before the HCD later, on January 3, 1990. Although the HCD took initiatives to hold hearings in the case, they fell through due to the absence of lawyers.

Finally, on 29 March 2004, the HCD directed t he authorities concerned to issue a note against the lawy er of the respondents and to provide two copies of the c ase paper book so that the litigation could be dealt with in accordance with the law. Neither the petitioner nor the respondents had moved before the HCD for the disposal of the case since 2004, reveal the case documents.

5.3. Complexity as a Problem:

Complexity in civil proceedings has now turned into a barrier to access to justice in the way that people feels reluctant to go to court for redress due to the rigorous formalities in the court.

There may be mandatory & directory steps in civil proceedings but the directory steps are mainly responsible for complexity. For example, the step of discovery & inspection under section 30 of the Code of Civil Procedure 1908.

5.3.1. Procedural formalities in civil litigation:

There are some mandatory & directory steps which are to follow from the beginning to the conclusion of a civil proceeding, namely:

Proceeding stage [10]:

1. Institution of the suit by filing a plaint.
2. Issue of process for the appearance of the defendant.
3. Service of summons.
4. Return of summons or filling of written statement.
5. Initiatives for Alternative Dispute Resolution.
6. First hearing & the examination of the parties by the court.
7. Framing of issues.
8. Discovery & Inspection and settling of date for hearing.

Trial stage [11]:

In the trial stage the following steps are to be taken:

1. Opening of the case by the plaintiff.
2. Peremptory hearing or examination in chief.
3. Cross-examination & Re-examination.
4. Closing speech or Arguments from both parties.
5. Pronouncement of judgment.

Besides these steps there are some other activities which contribute to linger the procedure & make it complex, such as:

- Interim orders,
- Adjournments,
- Procedure in case of non-appearance of parties,
- Procedure in case of non-payment fees or costs & so on.

From this discussion it can said that civil proceedings maintains a long & complex procedure in settling the disputes.

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

7 The Lawyers & Jurists,"DELAY IN CIVIL CASES IN BANGLADESH" >https:// www.lawyersnjurists.com/article/delay-in-civil cases-in-bangladesh/ < accessed January 29, 2020

8 Muhammad Yeasin," Over 13 lakh civil suits pending" The Independent (Dhaka, 25 September, 2017)

9 Ibid

Chapter-VI

6. IDENTIFICATION OF UNDERLYING REASONS:

In the previous part, we found the practical scenario of the key problems faced by civil justice system. Now we will be looking forward to identify the causes behind those problems to think about the solutions.

6.1. Causes for cost as problem:

It is quite usual that costs in running a civil suit are very much necessary. Because, without it the machinery of the court cannot run automatically. But the problem lies in the fact that sometimes it seems to be a burden for the litigants & full recovery of costs is not possible.

The reasons for this problem can be as follows:---

6.1.1. Non-implementation of provisions:

Cost provisions were inserted into CPC section 35, 35A & 35B to act as deterrence against frivolous & vexatious claims made. But the operation of the clause demonstrates that many unscrupulous parties benefit from the fact that either the costs are not awarded or negligible costs are awarded to the unsuccessful party [12].

6.1.2. Inappropriateness:

Costs are not always proportionate to the value of the subject-matter of the suit. In case of fixed court fees, sometimes the fees may be higher than the value of the subject-matter of the suit which causes problem.

6.1.3. Calculation process:

There is no definite standard for fixing the costs as section 35 of the CPC has given the court discretionary power to ascertain the costs. The section reads as follows: " Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court".

6.2. Causes for delay:

Delay in the civil suits is one of the most serious problems in the civil justice system. There are many reasons for delay in civil proceedings which are detailed in the following discussion.

6.2.1. Causes pointed by the Law Commission of Bangladesh:

The Bangladesh Law Commission established under the Ain Commission Ain, 1996 (Act No. XIX of 1996) addressed some of the reasons for the delay in disposing of civil cases in the subordinate courts, which cover both procedural and practical loopholes. The reasons 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.

6.3. Causes for complexity:

Civil justice system is complex for the reasons lying within the system itself & for the reasons outside of it. The following reasons are responsible for the complexity in the civil suits, namely:

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10 The Code of Civil Procedure 1908.

11 Ibid.

12 Shaurabh Kumar, “Critical analysis of Provision for 'Cost' under civil procedure code,1908”(2019)1(75) => https://www.researchgate.net/ < accessed January 29, 2020

6.3.1. Adversarial trial system:

One of the reasons for complexity is the adversarial trial system. In this system the judges remain sitting in the court room & everything needs to be brought before the court as opposed to the inquisitorial trial system where the judges proceed to the spot, examine the witnesses & evidences directly & no specified court room is necessary. 6.3.2. Strict adherence to prior system:

The legal system of this country is originated in the hand of the British rulers & from the imitation of their legal system. In spite of passage of a long period our lawmakers & think-tanks could not get rid of the attitude of their Lords. The complicated trial procedure could not be changed up to the mark.

6.3.3. Lack of advancement:

The procedural laws could not be updated keeping compliance with the changing demand of the age. Life has become now very easier with the touch of the modern science & technology but very little influence of it is found in the judicial system.

6.3.4. Lack of digitalization:

Though many sectors of the government have been digitalized, the judicial sector is still out of this process. The analogue systems are still existing which hinders the smooth disposal of the suits.

6.3.5. Complex Court structure:

Our court structure is very complex because the litigants cannot reach the appropriate authority easily. The whole system is manipulated by the nazirs, peshkers & other persons associated with the justice system. No process is done smoothly without the speed money.

6.3.6. Lack of lawyers contributions:

Trials are just the very top of a legal activity pyramid. Most lawyers rarely set foot in court, spending their time drafting memorandums, letters of opinion, interrogations, motions and briefs, as well as counseling, lobbying, taking depositions and negotiating deals. The overwhelming majority of all lawsuits are resolved outside court.

Chapter-VII

7. INITIATIVES TAKEN FOR SOLVING THE PROBLEMS:

The problems relating to costs, delay & complexity are not new, so some steps have already been taken to solve the problems in different times though there is question about their effectiveness. Some of those attempts are remarkable here:

7.1. Lord Woolf's Reforms in UK:

Lord Woolf was appointed by the Lord Chancellor to conduct an extensive review of the system of civil justice in England and Wales. He identified several issues with the old system, and felt it was in crisis. Woolf found that high costs, excessive delays and trial complexities left the Civil Justice System crippled.

He identified the problems in the following words:

The key problems facing civil justice today are cost, delay & complexity. These three are interrelated & stem from the uncontrolled nature of the litigation process. In particular, there is no clear judicial responsibility for managing individual cases or for the overall administration of the civil courts. Just as the problems are interrelated, so too the solutions, which I propose, are interdependent. In many instances, the failure of previous attempts to address the problem stems not from the solutions proposed bot from their partial rather than their complete implementation [13].

7.2 The Civil Procedure Rules 1998:

When he published the report in 1997, Lord Woolf proposed its reform. Following this report, Parliament enacted the 1998 Rules of Civil Procedure mainly as a result of it. These are the detailed rules which the courts in England and Wales now use when dealing with civil matters and proceedings.

Initially, the reforms of Lord Woolf were designed to help reduce the cost and time courts involved in civil litigation. In his original report, he identified that the three key issues the civil justice system faced at the time

were costs, delays and complexity. In order to combat the problems he considered to be prevalent with the system, Lord Woolf suggested changes to the standard procedure law as follows:

1. Litigation to be as often as is possible.

2. There should be an increase in the usage of ADR and similar such alternate methods of dispute resolution.

3. The costs of litigation should be more affordable for the general public which would make it so that those of lower financial ability would be able to pursue a lawsuit on an equal or similar level to those with higher means.

4. Litigation as a process would become less complex.

5. The methods of litigation would become less time consuming, and would, therefore, lead to swifter justice.

7.3. Measures taken in Bangladesh:

In Bangladesh, several steps have been taken to solve the problems relating to cost, delay & complexity which are as follows:

7.3.1. Amendment of the law:

The code of civil procedure, 1908 has been amended several times to prevent the problems.

These are:

Provisions relating to costs: Sections: 35A, 35B.

Provisions relating to ADR: 89A, 89B, 89C.

Provisions relating to absence of the parties: Order 9: RR: 9A &13A.

Provisions relating to adjournments: Order-17: R: 3. Provisions relating to abatement or dismissal of suits: Order- 22: R: 9A.

Provisions relating to pauper suits: Order-33: R: 7A.

Provisions relating to temporary injunction: Order 39: R: 5A.

Provisions relating to appeals from original decrees: Order-41: RR, 12A, 19A & 21A of the Code of civil procedure, 1908.

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13 Lord Woolf, " Access to Justice, Interim Report " 1995

7.3.2. Introduction of ADR:

The system of Alternative Dispute Resolution has been inserted in almost all procedural laws to make the procedure speedier. ADR has been made mandatory in most of the enactments, such as, The CPC 1908, The Labour Act 2006, The Money Loan Act 2003, and The Income Tax Ordinance 1984 etc.

7.3.3. Separation of the judiciary:

The judicial organ of the country has been separated from the executive in 2007 on the way of implementation of the verdict of the Supreme Court in the famous case Secretary, Ministry of Finance v Masdar Hossain [14] under the authority of article 22 of the Constitution of the People's Republic of Bangladesh.

Chapter-VIII

8. ASSESSING THE EFFICIENCY OF THE REFORMS:

8.1. Evaluation of the Woolf's Reforms:

It may be stated in the affirmative before evaluating the reforms that the new CPR's overriding objective was to enable the courts to deal fairly with the cases. Rule 1.1(1) of the CPR reads: these rules are a new Code of Procedure with the overriding objective of allowing the court to handle cases fairly.

The combined effect of the major reforms was to avoid litigation between parties and promote arbitration. The main focus is also on identifying cost reductions and delays [15].

8.1.1. Positive aspects of the reform:

i. Reduction of cases:

New CPR can be described as the most revolutionary change brought about in the civil process for more than 100 years as a consequence of which the civil justice operation has been radically altered. The basic intention was to

avoid litigation and to promote early settlement and early evidence shows success as there was a 25% reduction in the number of cases issued during the period May to August 1999. Further fall of 23 per cent by the end of January 2000 was witnessed. Judicial statistics reveal that the number of claims in 2005 fell to less than 1.90,000, compared to 2.20,000 in 1998. ii. Greater access to justice: Gary slapper commented that overall changes can be seen as a positive step in the right direction as a wider proportion of society can achieve greater access to justice, particularly when the problems at issue are relatively small and can be dealt with in the lower courts quickly and cheaply.

8.1.2. Defects in the reform: i. Increase in costs:

Lord Phillip said the changes proved effective in changing the whole culture of litigation but the litigation is still expensive and there are still issues with the cost of litigation. As far as costs are concerned, it has been recognized that costs have increased due to ' front loading, ' as more work is now required at an earlier stage. In March 2001, the 3rd survey of the Woolf Network survey carried out by the English Law Society found that 45 percent of respondents thought front loaded costs were an issue. 81% of respondents said they did not agree in February 2002 that the new procedures were cheaper for their clients. Lord Justice May was quoted as describing costs as "the greatest problem that could jeopardize the success of the CPR.

ii. Increase of lawyer's work:

One drawback however is that case management will ultimately lead to an increase of about 20 hours in the overall work of lawyers Rand report reflects that case management contributes to front loading problem as it adds to the lawyers working hours with more work needed at an earlier stage and hence more costs.

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14 Secretary, Ministry of Finance v Masdar Hossain (1999) 52 DLR (AD) 82

15 All Answers ltd, 'Woolf Reforms'

(Lawteacher.net, February 2020) accessed 2 February 2020

8.1.3. Criticism:

The major criticism was mounted by Zander who raised the following objections: • There is immense pressure on parties to enter settlement once the case begins which is further outlined in CPR 1.4(2) (e).

• Empirical evidence suggests that it is not necessary that pre-trial hearing will reduce cost and delay.

• Report by T.Goreily suggests that overall time before and after reforms have remained the same. However it may be stated, there are no further empirical data on delay as a result of reforms.

• It was contended that reforms have led to increased judicial discretion in the decision making of pre-trial judges which leads to inconsistent and non-appealable decisions.

• Procedural timetables for the fast track are doomed to failure because of the inability of huge proportion of firms failing to adhere to prescribed timetables for range of reasons. Thus, disproportionate and unjust sanctions will be imposed causing injustice to clients for the failings of their lawyers.

There were others who criticized the reforms and it was argued that out of court settlements creates injustice, because parties usually hold unequal bargaining positions because of their financial background [16].

In conclusion, the Woolf reforms were groundbreaking and brought an overhaul to the criminal justice system. The reforms were far-reaching, fairer to litigants and providing sufficient assistance. By introducing case management, advocating for ADR and creating a simpler system, and encouraging the use of technology, it improved the system. Nevertheless, the CPR was spectacularly unsuccessful in achieving its cost control goal rather than making things more costly, which is likely to alienate low-income people and prevent them from taking action against acts of injustice. Steps to build clarity for the expense system should be taken.

I think the reforms were relatively successful, but it should not be too restrictive to enforce the measures if there are more productive ways to achieve the underlying goals.

8.2. Evaluation of the steps taken by Bangladesh:

As mentioned earlier, there have been taken very few steps in this country to solve the problems relating to civil justice system. However, it is necessary to assess the outcomes of these initiatives to go forward.

8.2.1. Positive aspects:

There are very few positive outcomes of the changes which can be remarked as follows: Reduction of formality through introduction of ADR. Independence of the judiciary to some extent to act freely & without influence from the outside. Speed to some extent by the amendments of the law.

8.2.2. Negative aspects:

Litigants could not be inspired to ADR for which it is not being used properly. Environment of the court couldn't be changed so that backlog can be reduced. The judiciary still cannot act independently from the influence of the other organs in spite of the separation. Very little amendment has been made which did nothing in comparison with the problems. Finally, it can be said that the attempts were not sufficient to solve the problems which is evident from the existing backlog of the suits & other relevant problems.

Chapter-IX

9. FOR BETTER SOLUTIONS:

The existing civil justice system of our country is not efficient enough to reflect the aspirations of the litigants which are evident from the prevalent scenario of the frustration of the all sectors related with the judiciary. Even the measures taken could not change the situation up to the mark. So it is high time to search for better options to solve the problems & making the civil

justice system speedier, cheaper & easier. The writer seeks to find out the further options available from the foreign legal systems as well as the experiment of the native legal system the following way:

9.1. Reform Proposal Based on Foreign Legal System:

As we have some kind of similarity with the English legal system & India is our neighbouring country having advancement in their legal arena we can take recourse to their footsteps in a cautious manner.

9.1.1. Adoption of the Woolf's reform:

Lord Woolf identified the three key problems of the civil justice system to be cost, delay & complexity and provided appropriate solutions which were implemented by the English government enacting the Civil Procedure Rules 1998.

Although there are mixed reactions about the outcome of the reform but a substantial advancement has been ensured curing the key problems. So it is suggested that the Woolf's reform can be introduced in this country to find a better solution.

9.1.2. Report of Indian Law Commission:

Justice P. V. Reddi, Former Judge, Supreme Court of India & Chairman of the Law Commission of India submitted a" Report On Costs In Civil Litigation" to the government of India.

The key recommendations provided by him can be useful for us:

a. Costs in civil suits / proceedings should be such as curbing fraudulent and frivolous lawsuits and avoiding adjournments for frail or ulterior motives. In addition, the costs to be awarded to a successful party should be realistic and reasonable, and the Higher Courts should revisit the rules in vogue to this effect.

b. The idea that costs should accompany the case that requires legislative recognition in Section 35 of the CPC should be followed with all severity by the courts and the exceptions should be uncommon. This point has been underlined by the recent Supreme Court decision in Sanjeev Kumar Jain

(2011, JT (12), 435). Price awarding should not, however, cause undue hardship for the parties.

c. (i) The rules laid down by the High Courts on costs, in particular the fee for advocates, should be thoroughly revised in order to conform to the concept of fair and acceptable costs.

(ii) The laws must be revised and the terminology condensed with a view to clarifying them. Must root out obsolete and outdated laws. The expense bill system needs to be overhauled. The certificate proceeding for filing fees also needs a change.

d. The cost of adjournment should be sufficiently high, and to ensure this, the High Courts may lay down guiding principles by virtue of practice guidelines or circulars. Uniformity of approach on the part of the trial judges should be established when awarding costs for adjournments.

9.2. Reform proposal based on findings:

The following legislative amendments in CPC are suggested:

(i) Section 35A (False or vexatious claim / defense insurance costs) should be amended to better regulate false and frivolous litigation. The thrust of the proposed amendment is to raise the ceiling to Taka One lakh from Taka twenty thousand and to create a Judicial Infrastructure Fund in which part of the costs are required to be deposited; (ii) Amending Section 95 (compensation for arrest, attachment, etc. on insufficient grounds) to raise the ceiling of Taka ten thousand to Taka One lakh; (iii) Amending CPC's Order XXV (Security of Costs) to include the defendant within his jurisdiction; (iv) In order to facilitate the easy recovery of costs, Order XLI must be amended to make it compulsory to file proof of payment of costs before the appeal is lodged, subject to the discretion of the Court of Appeal to dispense with payment to the extent of half of the costs for specific reasons.

Chapter-X

10. RECOMMENDATIONS

On the analysis of different expert opinions & proposals recommended by various sources the author strives to propose some reforms urgent & necessary for the solution of the problems. These proposals are designed to cover the areas of cost, delay & complexity which are as follows:

10.1. Separation of Administration of Civil Justice:

As discussed earlier, the judges of the lower courts specially the District Judge, the Additional District Judge & the Joint District Judge are to act as the Sessions Judge, Additional Sessions Judge & the Joint Sessions Judge simultaneously which causes serious problem in the smooth & speedy disposal of the suits. So there should be complete separation in the civil & criminal justice system.

10.2. Compulsory ADR Mechanisms:

ADR shall be made compulsory in its full face, that is to say, negotiation & conciliation should also be included in the CPC & ADR shall be made mandatory in both pre-trial as well as trial stage.

10.3. Inspiration to ADR:

Litigants should be inspired to ADR mechanisms by creating awareness through media, seminar etc. & providing incentives for invoking ADR methods.

10.4. Amendment of the laws:

The procedural laws should be amended in a large scale keeping compliance with the changing situations of the age. For this purpose the foreign legal experts can be appointed with the domestic experts.

10.5. Digitalization of the courts:

Court digitalization is a broad term and can be understood as referring to both record digitalization and court processing. Not only is the court's digitalization ' environmentally friendly, ' it also ensures that existing cases are disposed of quickly. As like other sectors of the government, the judicial sector shall also be digitalized so that the functioning of the court can be speedier & less complex.

10.6. Changing the attitude of the society:

Attitude of the society towards civil justice system should be changed by educating the people of their right to speedy, cheaper& easier justice. A separate programme can be organized with the initiatives of both the judiciary & the ministry of education to aware the people about their responsibilities, the necessity of their participation in the eradication of the problems & ensuring smooth & speedy disposal of suits.

10.7. Increasing the number of judges & courts:

The number of judges & courts are very insufficient to the requirement. So more courts should be established & more judges should be appointed.

10.8. Easier access to justice:

The right to access to justice of the people should be made easier by decreasing the formalities in the court & ensuring the proper functioning of the government machinery.

10.9. Ensuring transparency & accountability:

The court proceedings should be more transparent & accessible by the public at large. The accountability of the judges, nazirs, peshkers & other persons associated with the justice system should be ensured.

10.10. Increasing logistic support:

The logistic support of the judges & other persons in the judiciary should be increased upto a standard limit so that they can perform their duties properly avoiding any corrupted method & keeping the attention to the point.

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11. CONCLUSION

Our country is developing economically but it is a matter of question that whether the fruit of that development is touching every branches of the human life. 'Right to protection of law' [17] is one of the fundamental rights guaranteed by our constitution. This right includes within its ambit the right to get remedy easily, quickly & cheaply in case of infringement of rights by anyone. But the practical scenario of the judiciary as discussed above is very frustrating.

It is the urgent demand of the society to get full access to justice as a part of the daily life of the people. But the achieving of the goal depends not only upon the state but also the public at large. Simultaneous enterprise from the both sides can solve the problems swiftly. So it is high time we think of ourselves deeply, come forward to see ourselves through the glass of the civilized nations and purify ourselves through the joint venture.

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17 The Constitution of the People's Republic of Bangladesh, 1972, Article 31

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REFERENCES

• Mahmudul Islam & Probir Neogi, THE LAW OF CIVIL PROCEDURE, (2nd edn, Mullick Brothers 2015)

• D.D. Bhashu, Commentaries on The Civil Procedure Code,

• The Code of Civil Procedure, 1908

• Secretary, Ministry of Finance v Masdar Hossain (1999) 52 DLR (AD) 82

• Salem Advocates Bar Association V. Union of India 2005 (6) SCC 344

• Md. Shahin Kabir & Syeda Marufa Yeasmin, "Causes of Delay in Civil Litigation in Bangladesh" (December 2018) 4 (42) 'IOSR Journal Of Humanities And Social Science' (Volume 23, Issue 12, Ver. 6) < www.iosrjournals.org> accessed on February 3, 2020 > accessed 28 January 2020

• Md. Shahin Kabir & Syeda Marufa Yeasmin," Causes of Delay in Civil Litigation in Bangladesh"(2018) 1(42) IOSR-JHSS > http://www.iosrjournals.org< accessed January 29, 2020

• Muhammad Sazzad Hossain &Mohammad Imam Hossain, "Causes of Delay in the Administration of Civil Justice: A Look for Way Out in Bangladesh Perspective"(2012) 3 (103) ASA University Review, Vol. 6 No. 2https://pdfs.semanticscholar.org> accessed on January 31,2020

• Law Commission Report, "240Th Report On Costs In Civil Litigation" (MAY 2012) 55-57 accessed on February 3, 2020

• All Answers ltd, 'Woolf Reforms' (Lawteacher.net, February 2020) accessed 2 February 2020

• All Answers ltd, 'Critical Changes Introduced by the Woolf Reforms' (Lawteacher.net, February 2020) accessed 2 February 2020

• Star Online Report," Judiciary suffering from backlog of 34 lakh cases" The Daily Star (Dhaka, 17 April 2019)

• Muhammad Yeasin," Over 13 lakh civil suits pending"The Independent (Dhaka, 25 September, 2017.