

Delay in civil litigation, Causes and Injustices Perspective of Bangladesh

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Abstract

Like many other countries, delay in civil litigation is really a burning issue, now in Bangladesh. Due to defective procedural laws, shortage of judges, intention of parties and some other reasons, civil suits become pending years after years. And this practice is really harmful for litigating parties, especially to the plaintiff whose rights have been violated. Some important related steps like adjournment time frame, adjournment grounds, etc are not fixed. So, there is a huge scope of delay in final disposal of civil suits. Legislature inserted the provision for alternative dispute resolution to dispose of civil suits promptly and its effective for that, but, still this system is not well known to many people of Bangladesh. For all these things, a huge number of suits remain pending before different civil courts. So many litigating parties cannot enjoy their rights whenever they actually need to. Ultimately it has a huge negative impact on the public's confidence in the judiciary.

1. Introduction

People file civil suits for the peaceful enjoyment of their civil rights. If someone's right is violated, he or she seeks redress to the court, commonly when they find no other alternative. So the court determines the rights of litigating parties as soon as possible because it is a must for the proper enjoyment of their civil rights. Usually, the litigating parties go to court with a hope to determine their rights as soon as possible because it is a must for them. But in Bangladesh, courts usually take a long time to finally dispose of a case, no matter whether it is civil or criminal. As a result, people around the country cannot enjoy their rights peacefully whenever they ought to. It is really a huge problem especially from the perspective of the socio-economic condition of Bangladesh.

2. Literature review

Delay in civil litigation

As people go to civil courts when their civil rights are violated, the plaintiff or claimant wants the court to decide the matter as soon as possible. But every court has to follow some procedure without which the court cannot come into conclusion. For that reason, the court cannot give a decision on a matter on the day the plaintiff files a suit. Due to this, it is logical that court will take some time, usually a few days or some more. Delay in civil litigation doesn't mean a reasonable delay that the court has to take for determining the disputed facts. "It is worth mentioning that a law suit cannot be decided overnight. Delay in justice refers to the time spent in the disposition of case, extra to the time within which the decision of the court was reasonably expected." (Raza Ullah Shah & others, 2014, P. 48) But, the reasonably expected delay cannot be an indefinite period or years after years, that's really problematic.

"Delay becomes a problem, however, if it can be classified as undue delay." (C. H. van Rhee, 2004, P. 1) When courts take years after years to resolve a civil suit then it becomes just a burden for the litigating parties, especially to the plaintiff. And it creates so many further problems in society and it affects the trust level of people towards the current legal system.

Defective procedural laws- Importantly liable for delay

Courts cannot take time to resolve a civil suit at whims, rather in this regard, courts just follow what the procedural provisions of a certain law permits. Defective procedural laws are most importantly liable for the delay in civil litigation. "Much of the delay occurs because the provisions of the Code of Civil Procedure are not properly observed and leaves room to escape speedy disposal." (Muhammad Sazzad Hossain and Mohammad Imam Hossain, 2012, P. 104) If a country's procedural law leaves room for undue delay by litigating parties or court, none can make the situation better. Because the court will follow the procedure set out by the procedural laws. It is likely that litigating parties, especially defendants will take the full advantage of defective procedural laws, and in this case, the court has almost nothing to do.

Number of judges is closely related with case backlog and delay

It goes without saying the number of judges should be proportionate to the number of cases. In countries like Bangladesh where there is admittedly a huge backlog of cases, the number of judges should be adequate. But in lower and higher judiciary, the number of judges was and is not adequate. "It is a common experience that even existing vacancies in High Court Division remain unfilled for an unduly long time. (Md. Shahin Kabir & Syeda Marufa Yeasmin, 2018, P. 45) For that reason, every judge is overburdened with a huge workload that causes undue delay. "Each lower court judge, on average, is overburdened with around 2,000 cases for their hearing and disposal." (Md. Shahin Kabir & Syeda Marufa Yeasmin, 2018, P. 43) It is just farcical that a judge is overburdened with thousands of cases, and people expect speedy trial from the court. None can work more than his or her capability, so, if every civil court wants to ensure speedy disposal of civil suits it will not be possible in the light of current situation.

Intention of parties and advocates are also liable

Usually, people build an intention based on available scope, and defective procedural laws make a good scope available to the litigating parties to take unusually more time. For a long time, in Bangladesh, due to stay of proceedings, and ad interim orders, the trial of civil litigation becomes pending years after years. Parity's intention is mainly liable for this delay and many researchers have addressed this issue importantly. "In many cases, where the plaintiff has obtained interim or ad interim relief, he is naturally interested in delaying the proceeding so that stay or injunction is continued as far as possible." (Muhammad Sazzad Hossain and Mohammad Imam Hossain, 2012, P. 106) Another thing is that in some cases party's advocates don't want to dispose of a suit soon. "Advocates in many cases play their role in this delay because greater delay ensures more earnings to them." (A B M Asrafuzzaman and Md. Golan Mostofa Hasan, 2021, P. 148) To put it simply, advocates can earn money during the pendency of a suit, usually on every date of hearing or others. But after finally disposal of a suit this earning is stopped for eternity. For that reason, some advocates want to delay, and mainly poor or illiterate people who don't know about legal matters become the victims.

Injustices occasioned by delay in civil litigation

During the pendency of suits people have to spend money and time, that's really a burden to them. "Cases pending for a long-time lead to unnecessary stress and unnecessary costs in litigants, and may result in denial of justice altogether." (Siva Prasad Bose and Joy Bose, 2021, P. 5) Justice requires ensuring a way where people can enjoy their rights

peacefully. But, if a suit is pending for years, the litigating party cannot enjoy the right that he ought to enjoy. So, unusual delay is nothing but a denial of justice though it may sound a bit exaggerated, at first. "The individual hardships occasioned by inordinate delay in the resolution of cases, and the resultant diminution of popular confidence in the judiciary." Jeffrey Falt, 1985, P.90) In the perspective of Bangladesh the effect of delay in civil litigation is so severe as here still many people live below the poverty line. Running a suit for a long time is truly difficult for them. And when they face such a situation where they cannot properly enjoy their rights through the court process, it diminishes their confidence towards the current legal system. And it is likely because the current legal system cannot provide them promptly what they are entitled to. If a party can enjoy the benefit of his property after a long time spending a huge amount of money and time, that should be termed as injustice in the name of justice. And this situation can create a huge negative impact on the mind of general people. Because people see, day after day, the hardship faced by litigating parties and the delayed outcome.

3. Aim of the study

The aim of this study was to find out the causes of delay in civil litigation in Bangladesh. And, in this study, the injustice caused by the delay and how to improve the current situation, has also been looked for.

4. Methodology of the study

4.1 Collection of data

To conduct this study, different provisions of procedural laws in Bangladesh have been examined, which are related to civil litigations. To find the cause of delay in civil litigation the writings of different researchers like C. H. van Rhee, Muhammad Sazzad Hossain, Syeda Marufa Yeasmin, and some others have been mentioned here. To add some other related information here, different reports published in The Daily Star, and The New Age have been taken into consideration.

4.2 Related legal provisions and the unavoidable consequence

In Bangladesh, some procedural laws like The Code of Civil Procedure, 1908ⁱ, (hereinafter referred as CPC), and The Limitation Act, 1908ⁱⁱ, mainly determine different issues and time frames relating to the disposal of civil litigations. These procedural laws set out some unusual provisions and these provisions created a scope of unusual delay in final disposal.

Commonly in a civil litigation, the defendant wants to delay the proceeding, and if the defendant doesn't appear in court, the court may proceed ex-parte, as per order 9 of CPC. In 2006, rule 13A was added in order 9 which provides that the defendants can apply to directly set aside the ex-parte decree just by paying 3000 tk. (not exceeding). That means if the defendant pays the cost, he will not have to show why he was absent in court in due time. And the rate of cost will be the same irrespective of the disputed property value.

Under order 17, rule 1(3) of CPC, the court can adjourn for 6 dates without cost, and with 200-1000 tk. cost, the court can adjourn for 3 dates, in any civil litigation. As per order, 41, rule 12A, court may allow 3 adjournments without cost, and with 200-1000 tk. cost court may adjourn civil appeal for unlimited times. And during the pendency of appeal court may stay execution proceeding under order, 41, rule 5. Court can do so on being satisfied, but what are the grounds for satisfaction is not mentioned in the CPC. According to section 148 of CPC,

the court can also, in its discretion, enlarge the time fixed by CPC. This provision gives the court a power to enlarge time for an indefinite period, and parties take the full advantage of it.

As per section 5 of the Limitation Act, 1908, courts can extend time for filing appeal, application for a revision, review, leave to appeal, and any other application. Though appeal, review or revision is not the original suit, these are considered as the continuation of suit. Under section 5, the court can extend time on being satisfied, for an indefinite period as no period is fixed. All these provisions created scope for delay in civil litigation and different parties are taking such undue advantages. On November 03, 2016, The Daily New Age published a report which states that "the government filed an appeal 19 years after a verdict was delivered by the High Court Division asking the government to surrender 39 kathas of land at Gulshan in the capital to the private claimant."ⁱⁱⁱ

In some courts like labour courts, the disposal time is fixed, but the timeframe is not maintained properly. Except in the case of providing punishment for offenses, labour court is a civil court under section 216 of the Labour Act, 2006.^{iv} "Labour law requires all cases to be disposed of in 60 days. If the cases are not disposed within 60 days, the court can extend the deadline for another 90 days.....10,838 are pending for over six months.....generally a court takes 18 to 24 months to dispose of a case."^v

4.3 Shortage of judges and the current state of delay in civil litigation

Besides the defective undue scope providing legal provisions there is scarcity of judges in civil courts. Regarding land related suits, The Daily Star published a report on Sep 15, 2020 which reads "Less than 1300 judges are expected to deal with more than 3.6 million pending cases."^{vi} This is not only the scenario of land related suits, in the case of family suits the scenario is almost the same. "While more than 57,000 cases of the maintenance of former spouses remaining pending for years."^{vii}

Not only in trial stages, in the appellate stages, there is a huge backlog of cases. In the case of Appellate Division, in the year 2016, 2017, and 2018, the case disposal numbers were 9634, 8591, and 6695 respectively. And in these 3 years the number of pending cases were 13672, 16565, and 20443, respectively.^{viii}

That means the number of case disposal decreases and the number of pending cases increases every year. This is highly alarming because due to the backlog of cases, courts cannot dispose of cases soon.

Due to such delay in civil litigation in 2003, the provision of mediation (ADR- Alternative Dispute Resolution) was inserted in CPC through section 89A. As per section 89A(4), the timeframe for mediation is 60 days, unless court extends for further 30 days. That means within 90 days' mediation has to be completed and now it is mandatory for the court to refer civil cases for mediation. "In the last four years, the legal aid offices have taken initiatives to dispose of 17,929 cases through the alternative dispute resolution (ADR).....Of these, 16,513 litigants got the benefits of peaceful disposal."^{ix} Thanks to this mediation process litigating parties are getting the advantage of speedy disposal of their suits. And the peaceful disposal rate of civil suits through mediation is really commendable. If the alternative dispute resolution process can be made more easy and accessible, then it surely can reduce the burden of civil courts.

4.4 Analysis of current situation

Now in Bangladesh civil litigations are disposed of usually after a long time due to defective procedural laws, shortage of judges, intention of parties, or something like that.

According to CPC, during the pendency of suit in trial court, any party may seek adjournment of hearing 9 times (6 without cost and 3 with cost of 200-1000 tk.). And in the appellate stage any party may seek adjournment for unlimited times because it is not fixed by the CPC. And the time of such adjournment is not also fixed by law rather the court will decide it. So if a litigating party has a fear of losing in the legal battle he may seek adjournment and thus can delay in the final disposal of a civil litigation. But if the achievement cost is higher and the adjournment time is fixed like a court can adjourn a suit only for 7 days or so, then there will be less chance of misusing the adjournment provisions in CPC.

It is true that some advocates don't want to dispose of suits soon for fear of the stoppage of their earnings. But if the court becomes strict in this issue then resolving this problem will be easier. If the court doesn't take into consideration the unreasonable submission for making delay, then prompt disposal of civil integration becomes possible in most of the cases.

It is well known that the number of judges in civil courts is not enough and it's one of the main causes of delay in civil litigation. So the government and other stakeholders should take this issue into consideration immediately and should increase the number of judges in civil courts. It is true that appointing an adequate number of judges in civil court requires some procedure which is not so easy, from the perspective of Bangladesh. This is one aspect but we should take the other aspect into consideration. If an adequate number of judges are not appointed in civil courts then ultimately there will be a huge backlog of cases and it will take 5 to 6 years for disposal of a simple civil case relating to land, family matters, or so. Ultimately it will be severely harmful for Bangladesh because people will lose their confidence in the judiciary because they don't get the relief when actually they need it. On the other hand, the defaulters who are liable for the violation of civil rights will further violate the rights of people because there is no way to prevent them. Ultimately, it will create anarchy which is not desirable, but unavoidable.

5. Major findings

- A. Usually, it takes years to finalize a civil suit due to a huge backlog of suits and shortage of judges.
- B. Civil procedural laws in Bangladesh, especially provisions relating to adjournment in civil suits, are defective. And there is a huge scope of misusing those provisions and making delays in final disposal.
- C. Granting adjournment is dependent on the satisfaction of the court but on which ground court may be satisfied is not mentioned anywhere. And ultimately the parties who want to delay in civil litigations take the full advantage of such provisions.
- D. To promptly dispose of civil litigations, legislature inserted provisions for alternative dispute resolution and it is effective for promptly disposal of civil suits, though, still not so well known.

6. Conclusion with recommendations

From the perspective of Bangladesh, delay in civil litigation is really a huge problem especially to the poor people of Bangladesh. In the current situation if a litigating party wants to make a delay, he will have so many options in procedural laws. Taking advantage of those defective provisions may be somehow legal but ultimately this is enough for destroying the public confidence in the judiciary in the near future. But the condition may be improved dramatically through following recommendations.

- A. Adjournment costs should not be lower and it should not be the same in all cases. Entertainment cost should be determined according to the value of the disputed property, or on the level of importance of a right.
- B. The number of judges should be proportionate to the number of suits filed in every year and all the pending civil litigations.
- C. Legislature should determine on which ground the court may be satisfied for granting adjournment, and the time frame of every adjournment should be strictly fixed.
- D. Alternative dispute resolution is rightly effective for promptly disposing of suits, so the government should make more publicity on behalf of it.
- E. To make the advocates interested in promptly disposing of suits, the government should introduce national recognition or awards for advocates every year, on the basis of prompt disposal of suits.

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