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The Daily Star

COURT *corridor* Delay in justice delivery

MD. ZAHURUL ISLAM

WING to the dispensation of judicial justice in the mould of the nineteen-century as inherited from the British origin, there has been a rising flood of pending cases. The slow process of distributing justice gave rise to a tidal wave of litigation threatening to engulf the judicial justice.

Delay defeats equity. Prolonged delay makes the litigants enormously impatient. The maxim of equity goes to say that justice should not only be done but must be shown to have been done. As such the awareness about the elements causing delay in the dispensation of justice would certainly lead to a sound solution of the problem. The remedy obtainable in a quickest possible period can only inspire and ensure the real spirit of justice among the people who have utter dissatisfaction and disregards towards the law and the legal system.

Justice delayed is justice denied. As such an implicit model of mechanism must be made to play to resolve the undue delay in the disposal of cases. After years of controversy and frustration of the problem of administration a new device needs to be chalked out. Despite dozens of proposals, scores of sessions in courts, pragmatic suggestions and resolution, discussions in seminars, illuminating lectures of the legal luminaries and years of efforts, an acceptable novel plan could not be designed to mould the old laws into an actionable pattern to run the judicial administration smoothly to enhance the pace of quicker justice and speedy disposal. Some of the problems of delay in the disposal of cases may be illustrated here along with solution of the same.

Components of delay in the disposal of suits

There are a variety of suits such as civil suits, money suits, mortgage suits being disposed of by the Subordinate Judges and the Assistant Judges. Both the Courts confront frequent adjournment petitions on flimsy grounds either of the parties or of the counsels which causes delay in the disposal of civil suits. There is no obligatory directives limiting the prayer for adjournments. Rejection of adjournment petitions very often causes dissatisfaction among the counsels. A sound outlook and philanthropic attitude must be grown among the counsels to bring out their preparation towards the speedy disposal of suits.

Petitions for amendment of pleadings by the parties followed by written objections create deadlock in the disposal of suits. Rejection of such petition on grounds of the change of character of the suits by the court lead to the preference of revisional applications in the Hon'ble High Court Division taking a lot of time to be disposed of. Hearings of the suits by the trial courts are thus delayed. Extreme care, attention and preparation to build up the pleadings by the lawyers on observation of all the documentary papers of the parties can only prevent the frequent necessity of amending the pleadings. A sound culture of making pleadings in compliance with the requirements of law as laid down in the Civil Procedure Code and other laws can expedite disposal of cases. The lawyers should refrain from making frivolous, misconceived and mala fide petitions so as not to take up the valuable time of the courts.

Interlocutory matters like applications for temporary injunction, local inspection, local investigation and appointment of receiver consume much time of the courts. Lack of preparation of the lawyers for hearing of the temporary injunction followed by prayer for time spoils much time of 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.

Sometimes in the suits for partition and recovery of khas possession,

temporary injunctions are unnecessarily sought for owing to ill advice of the lawyers and parties. Such mala fide tendencies require to be discouraged. Both the parties and lawyers should come forward in anticipating speedy disposal of suits in a lawful manner.

Much time is spent in the submission of the reports of local inspections and investigations. Fees of Advocate Commissioners are not alluring. Lesser number of survey-passed Commissioners also delays submission of local investigation reports.

Augmentation of the survey-passed Commissioners is necessary to facilitate submission of investigation reports. Training institutions for survey, reported to have been stopped, are required to be established to



increase the number of survey-passed Commissioners.

Dismissal for default followed by miscellaneous cases under order 9 rule 4 and rule 9 of the Code of Civil Procedure for restoration of suits is a regular feature. Intentional non-appearance and absence by filing of petition for adjournment result in the dismissal for default to linger the course of litigation. This pattern of malpractice need to be discouraged because orders passed by the trial courts in such miscellaneous cases also give rise to miscellaneous appeals consuming much time in the disposal of the original suit. Responsible and conscious discharge of professional duties by the lawyers can only fight out such unbecoming practices.

Appearance on the date of ex-parte disposal seeking adjournment for filing of written statements and rejection of such petitions for adjourn-

ment is followed by miscellaneous appeal creating deadlock and setting aside of the ex-parte order by the appellate courts in terms of liberal construction enabling opportunity to the other side to contest the original suit consume much time to dispose of the original suit. The rejection of petitions under order 7 rule 11 of the Code of Civil Procedure seeking rejection of plaint is also followed by appeal creating deadlock in the disposal of the original suit. Petition for rejection of plaint as a test case is regularly filed on the ill advice on illusory grounds to linger the course of litigation. Changed mentality is necessary to prevent such malfunction.

Petition for abatement of suits on grounds of non-substitution of the legal heirs of the deceased party results in the filing of miscellaneous cases taking up a lot of time to be disposed of. Simplification of procedure is necessary for substitution of the legal heirs of the deceased. Provision can be made for substitution of the legal heirs of the deceased at once without giving scope for filing of miscellaneous cases for the same. This will save the unnecessary killing of time.

In some suits opinion of handwriting expert becomes necessary. Much time is consumed in getting the opinion of the expert in the form of a report. Even after submission of report of the expert, his non-arrival before the Court for proof of the report is a common phenomenon. It is heard that there are a lesser number of handwriting experts deployed by the CID in Dhaka. There is necessity of increasing the number of experts by the department concerned facilitating speedy disposal of suits.

For protection of the interest of the minors, there is provision for appointment of court guardians on payment of a nominal fees say Taka 50 (fifty). Such payments do not encourage advocates to act as court guardian. It so happens that report of the court guardian fails to be filed even after a lapse of couple of months. Payment of adequate fees can only alleviate this problem in order to enhance quicker justice.

Interrogatories and discoveries are there 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 lawyers must be careful and vigilant in serving interrogatories timely in order to facilitate the speedy disposal of suits.

In the like manner documents are called for from the concerned Registry Office at the prayer of the parties for 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 volume books which kills much time in the disposal of the suits in a quicker pace of period. Necessary directives are essential to be issued by the Registration Department to comply with the requisites of the Court by such offices at once.

Furthermore, times of the Courts are unnecessarily killed by the filing of multifarious frivolous and vexatious petitions to linger the duration of litigation. Even if these are rejected with grounds, the parties concerned go to the higher courts by filing revisional applications. Innovative legal provision should be made to discourage the frivolous and vexatious petitions. The display of fairness and consciousness of the concerned lawyers can only stop such malpractice to facilitate the speedy disposal of suits. By our innovative and anticipatory wisdom procedural simplification should be made to stop the unending process of litigation. Honest discharge of duties by the lawyers and a meaningful scheme of combination of the bench and the bar can resolve the problems of delay in the disposal of suits.

Md. Zahurul Islam is a retired District Judge. In the next issue he will trace the reasons of delay in criminal cases, appeals and revisions and will recommend the solutions.





Four constitutional issues remain undecided

Four cases relating to constitutional issues have been waiting for a long period for disposal in the Supreme Court. These cases are 13th amendment case, 5th amendment case, 7th amendment case and the case relating to section 54 of the Code of Criminal Procedure. A High Court Division Bench comprising Justice Md. Fazlul Karim and Justice Mohammad Abdul Oahhab Mia issued a rule asking the government as to why the 13th amendment of the Constitution should not be declared as unconstitutional and void. The rule was issued in a writ petition (Petition No. 4112 of 1999) on 14 November 1999 but the rule has not yet been decided due to the stay order of the Appellate Division. The 5th amendment of the Constitution which legalised the Military Orders relating to Vested Property (Order No. 1 of 1997 and Order No. 7 of 1997) were challenged by a writ petition (Petition No. 60116 of 2000). A High Court Division Bench comprising Justice Mohammad Golam Rabbani and Justice Nazmun Ara Sultana on 11 December 2000 issued a rule upon the government as to why this amendment should not be declared as violative of the Constitution as well as void. But no hearing have taken place since the issuance of the rule. It is noted that the previous government repealed the Vested Property Act. The Military Order No. 133 of 1986, which was constitutionalised by the 7th amendment, was challenged by a writ petition (Petition No.5933 of 2000). On 13 December 2000 a Division Bench comprising Justice Golam Rabbani and Justice Nazmun Ara Sultana issued a rule asking the government as to why the amendment should not be declared as unconstitutional and void. A Division Bench of Justice A.M. Mahmudur Rahman and Justice M. Mozammel Hossain on 29 November 1998 issued a rule asking the Secretary of the Ministry of Home Affairs and the Inspector General of Police as to why arrest under section 54 and subsequent police remand under section 167 of the Code of Criminal Procedure should not be declared as violative of the Constitution and void. This rule was issued in a writ petition filed by Bangladesh Legal Aid and Services Trust and Ain O Salish Kendro. These two rules are also yet to be decided. -Daily Manavazamin, 10 August.

Reintroduction of Gram Sarker (Village Government)

The Government plans to reintroduce Gram Sarker in 4000 villages of the country. Each ward of a Union Parishad will have a Gram Sarker, according to the proposal of the Ministry of Local Government and Rural Development (LGRD). Every local government will consist of 13 members including a chairman. Among the members 3 will be female representatives while 2 will be selected from farmers, 2 from labourers and other members will be selected from different professions of the society. The elected female member of the ward of Union Parishad will be ex officio adviser of this local body. This local body will act as a village court and will address different kinds of problems including family matters of the villagers by mediation, conciliation etc. It will also look after the local development programmes including family planning, elimination of illiteracy etc. The tenure of this local body will be 5 years from the first meeting of the body. -Daily Jugantor, 13 august.

Diverse reaction over increased court fees

Increment of court fees has created mixed reaction among the lawyers. They protested it by abstaining from the court. In the current fiscal year court fees for different cases have been increased. The price of vokalatnama is now Tk. 15 which was previously Tk. 5. Court fee for every application to the court has been increased form Tk. 5 to Tk. 15. Court fee for declaration suit has been increased from Tk. 100 to Tk. 500 and court fee for suit for family matter has been increased from Tk. 30 to Tk. 300. The highest court fee was earlier Tk. 28 thousands which has now been increased up to Tk. 44 thousands. There is apprehension among advocates of different courts that augmentation of court fees will create discrimination among people to get justice and the poor will be deprived of justice. They also fear that justice will become an expensive commodity which can only be bought by the rich. *-Daily Janakantha*, *12 august*.

One police for every 555 citizens

here is only one policeman for the protection of every 555 citizens of



How long do we have to wait?

The Bangabandhu Murder Case is reportedly waiting for an adhoc justice in the Appellate Division to be disposed of and without it the case is not possible to be heard until 2004 (Daily Bhorer Kagoj, 13 July). The leave to appeal petition of four convicted were not possible to be heard due to lack of judge in the Appellate Division since two of them heard the case in the High Court Division. Of the seven justices of the Appellate Division, Justice Md Ruhul Amin is not able to hear it as he was the

Waiting for justice

Justice in the High Court Division and Justice Md Fazlul Karim was the third Justice who heard the divided judgement of the High Court Division. Three of the seven justices were embarrassed to hear the case. So, the rest two justices, including Chief Justice are unable to hear the case because in order to hear the case in Appellate Division, the bench must consist of three justices. On the backdrop of this situation the erstwhile Chief Justice required an adhoc Justice. But there is no visible response from the Government till today. The reluctance of the Government to appoint an adhoc Justice in the Appellate Division frustrated us. Does the Government really want to dispose of the case? The Government appointed eleven additional judges in the High Court Division a week ago. Why the Government is so averse to Bangabandhu murder case? Does it want to let the criminals go unpunished? We demand and are hopeful that the Government will immediately take initiative to appoint an adhoc Judge for quick disposal of Bangabandhu murder case.

Simi, Jui and Lopa Bakhsibazar, Dhaka.

When does a VIP resign?

I thank Mr. Maznu-Nul Huq for his write-up 'Let us learn to "Resign" and say "No" when situation demands' published in the Daily Star on August 4, 2002 in Law & Our Rights section. Many others and I will agree with him that it would have been prestigious for Prof. Anwarullah Chowdhury if he resigned from the post of VC immediately after those unfortunate incidents that took place in Shamsunnahar Hall. Prof. Anwarullah Chowdhury resigned from his post only when political support called off from him. But the question that remains unanswered here is why did he not resign in time? Or, may we put the question the other way when does a VIP resign? A VIP should resign when he is pricked by his own conscience and honestly feels that he has failed to serve the nation or the organization, though he may not be personally responsible for the failure. But for that a person has to be honest and must have a strong sense of self-respect and dignity. Unfortunately, in our society we hardly find any such person, in any profession, who has the moral

guts to "Resign" and say "No" when situation demands'. In the case of our public universities where VCs were appointed by election only, one cannot expect an honest and qualified teacher with strong sense of self-respect and dignity for the post. Call it a democratic process, or anything you like, a teacher who has all the good qualities will never indulge in teachers' politics and contest in the election for the post of VC. So, the process of appointment of VC should be changed. The University Ordinance may be amended to ensure an honest and non-political person for the post. **Ashraf**

New DOHS, Mahakhali

AW lexicon

Act of God

Act of God refers to an event which is caused solely by the effect of nature or natural causes and without any interference by human whatsoever. Insurance contracts often exclude "acts of God" from the list of insurable occurrences as a means to waive their obligations for damage caused by cyclones, floods or earthquakes, all examples of "acts of God".

Alternative dispute resolution

Alternative dispute resolution or ADR is a method by which legal conflicts and disputes are resolved privately and other than through litigation in the public courts, usually through one of two forms: mediation or arbitration. It typically involves a process much less formal than the traditional court process and includes the appointment of a third-party to preside over a hearing between the parties. The advantages of ADR are speed and money: it costs less and is quicker than court litigation. The disadvantage is that it often involves compromise.

Caveat

It is a Latin word meaning "let him beware". It refers to a formal warning. Caveat emptor means let the buyer beware or that the buyers should examine and check for themselves things which they intend to purchase and that they cannot later hold the vendor responsible for the broken condition of the thing bought.

Source: The 'Lectric Law Library's Lexicon & Duhaim's Law Dictionary.



A woman was being questioned in a court trial involving slander. "Please repeat the slanderous statements you heard, exactly as you heard them," instructed the lawyer.

The witness hesitated. "But they are unfit for any respectable person to hear," she protested.

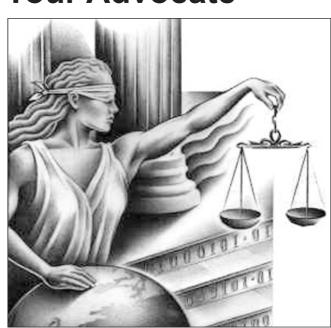
"Then," said the lawyer, "just whisper them to the judge."

A doctor and a lawyer were talking at a party. Their conversation was constantly interrupted by people describing their ailments and asking the doctor for free medical advice. After an hour of this, the exasperated doctor asked the lawyer, "What do you do to stop people from asking you for legal advice when you're out of the office?"

"I give it to them," replied the lawyer, "and then I send them a bill." The doctor was shocked, but agreed to give it a try.

The next day, still feeling slightly guilty, the doctor prepared the bills. When he went to place them in his mailbox, he found a bill from the lawyer.

Your Advocate



Your advocate is **Mr. Probir Neogi** of the Supreme Court of Bangladesh. His professional interests include civil law, constitutional law and banking law. Send your legal and human rights queries to the Law Desk, The Daily Star. A

panel of lawyers will address your problems.

Q: I am a government employee. I joined the Directorate General of Family Planning (DGFP) of Health and Family Welfare (MOHFW) as a Medical Officer (MO) in June 1988. In the course of my service, I attended 3 post-graduations (1 MSC & 2 diplomas) on health service discipline. I had submitted my joining letter on 31 July 1997, at the end of my last post-graduation abroad. But I received a joining letter signed on 06.01.1998 making a delay of more than five months, and absolutely on an irrelevant post without counting my qualifications. I was posted as Medical Officer (MO) in a Thana Health Complex (THC). My questions are, "Is it allowed by our government rule to make such delay in receiving the joining letter of an officer? Is not there any rule to encounter qualifications, other than post-graduation in biomedical science?" **Dr. Lailun Nahar**

Dhaka, Bangladesh

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Your Advocate: I am sorry to say that your statements are neither adequate nor unambiguous enough to enable me to make an effective reply to your query. To render any opinion on your problem I have to know the process of your recruitment and the terms and conditions of your service entail therefrom. Terms under which you were allowed to prosecute your studies abroad are also not before me. So, it is quite difficult to make any comment on acceptance of your joining letter dated 31.07.1997 on 06.01.1998. If you furnish some details I will try to meet your queries.

Corresponding Law Desk

Please send your mails, queries, and opinions to: post -Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk; interactive email lawdesk20@hotmail.com Dhaka while one VIP enjoys protection of 8 policemen. There are 18 thousands policemen in the city for maintaining the law and order situation of them 3200 are busy for the safety of the VIPs. Only 2800 policemen are left for the security of one million people. The rest of the policemen are busy in oppressing the anti government movement. As most of the policemen are busy for the protection of the VIPs, the authority of the Dhaka Metropolitan Police asked for additional 5000 policemen from the Ministry of Home Affairs. The high officials of the police the Ministers and State Ministers unnecessarily asked for security force just to maintain their status. - Daily Manavazamin, 8 August.

Acid throwing is yet to control

The crime of acid throwing is increasing alarmingly despite the tough laws. Delay in disposal of the cases, reluctance of the police to investigate and to submit charge sheets are behind the failure to control this heinous crime. Only 122 cases out of 714 were reportedly disposed of during the last five years. It is reported that 65 incidents of acid throwing took place in 1996 while 117 in 1997, 130 in 1998, 112 in 1999, 127 in 2000 and 153 in 2001 showing the intolerable situation. Though the government enacts the Acid Control Law 2002, there is no noticeable improvement of the situation due to lack of proper implementation of the law. However, National Council for Acid Control has taken a decision to publish photographs of the acid throwers in newspapers so that police can identify and apprehend these odious criminals *-Daily Ajker Kagoj & Daily Manavazamin, 11 August.*

High Court directs Cricket Board to hold election within two months

The High Court Division directed the president of the Bangladesh Cricket Board (BCB) on 11 August to hold its election within two months issuing a rule nisi upon the government, National Sports Council (NSC) and Bangladesh Cricket Board to show cause why clause 12 of NSC constitution should not be declared illegal. Till the election the president of BCB will run the Board. The rule was issued by a Division Bench comprising Justice MA Aziz and Justice Mohammad Momtajuddin in a writ petition filed by Rafiqul Islam Babu, a councilor of BCB from Indira Road Krira Chakra. Babu challenged in the writ petition the formation of BCB Board of Directors which had been elected early last year. - *The News Today 12 August.*

Deterioration of law and order hinders EC aid

A European Commission (EC) diplomat said on 11 August that deterioration of law and order in Bangladesh would remain a bar against getting assistance from the development partners. Charge d'Affaires of the delegation of the European Commission to Bangladesh Anne Marchal said this on 11 August in a conference on "Grassroots Level Counter Trafficking Initiatives: Northern Region, Bangladesh" held at Bangladesh Institute of Administration and Management (BIAM). The conference was organised by Centre for Women and Children Studies (CWCS) and Polli Sree of Dinajpur. "Bangladesh had signed 20 contracts with the EC during the last 30 years to upgrade human rights conditions but the result is not satisfactory" Anne said. CWCS papers presented in the conference revealed a total of 1556 children remained missing, kidnapped and trafficked in eight districts of the country in the last two and a half years' period. The districts are Dinajpur, Gaibandha, Kurigram, Lalmonirhat, Nilphamari, Panchagar, Rangpur and Thakurgaon. - The Financial Express, 12 August.