



COURT corridor

Delay in justice delivery

Continued from the last issue.

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Components of delay in the disposal of cases

In common parlance, cases denote criminal cases and proceedings. The word 'case' also connotes proceedings of civil nature. Miscellaneous cases under the Civil Procedure Code such as violation of temporary injunction entailing civil imprisonment, the sentence awarded by the Judge of the Family Courts for non-payment of decretal amount in the capacity of the Magistrate etc. are quasi-judicial in nature. An Assistant Judge performs such quasi-judicial cases.

A Subordinate Judge performs a dual function of disposing the civil suits as well as the criminal cases. He is a Subordinate Judge when deals with civil suits. He is an Assistant Sessions Judge when deals with criminal cases. He also acts as a Tribunal in dealing with cases under the special laws. He is also over-burdened with files of both civil and criminal nature.

Non-arrival of witnesses in the criminal cases even after repeated issuance of summons and warrants, driving out of the witnesses of the criminal cases by the defense side in a collusive venture and connivance, absence of prosecutor and defense lawyers after arrival of the witnesses on dock, non-production of accused persons involved in the trial by the jail authority on the date of trial, non-sending of the accused persons by the jail authority outside the districts on grounds of their involvement and being wanted in other criminal cases of the said districts for shortage of police escorts, absence of the accused persons and their voluntary surrender before the court in the midst of part-conclusion of trial seeking for recalling of the witnesses already examined, splitting up of the criminal records for simultaneous trial of the adult as well as juvenile offenders in presence of the same witnesses at two places, frequent hearing of bail matters for the same accused persons, non-appearance of the Magistrate recording the confessional statements of the accused persons even after repeated issuance of summons and processes, non-arrival of the investigation officers even after exhaustion of all the processes, non-compliance of warrants by the police personnel, non-appearance of the expert witnesses for proof of the expert reports, dilatory tactics of the defense lawyers, etc. are the usual components of delay in the disposal of the criminal cases.

A Sessions Judge is always under pressing engagements in disposing of different matters of criminal nature. Such as hearing of excessive bail matters and criminal miscellaneous cases, criminal motions and revisions, taking cognizance of different cases, admission of criminal appeals and revisions as well as civil appeals and miscellaneous appeals and conducting administrative functions of the establishment etc. The Sessions Judge has to conduct a lot of administrative and managerial problems. Works of the subordinate courts, inspection of courts and outturns are observed by the Sessions Judge. He has also to reach his targeted outturns of works. As a head of the institution his overall vigilance in the matters of administration and management is necessary to facilitate the speedy disposal of cases of the courts under him. His surprise visit and inspection of different courts is supposed to create consciousness among the judicial officers under him to facilitate the speedy disposal of cases. His directives and guidelines in the matters of speedy disposal of cases can go a long way to serve the purpose of quicker dispensation of justice. His sitting with the judicial officers under him can enable discussions of the problems of the components of delay in the trial of cases from which the judicial officers can derive salutary devices and suggestions. His asking for quicker disposal of cases with greater quantum of outturns are supposed to be compellingly complied with by other judicial officers whose annual confidential reports are written by him. His adverse comments can affect a negative impact in the promotion of the

judicial officers working under him.

The Additional Sessions Judge also performs a variety of works of criminal nature. A tendency is developing manifesting non-moving of the criminal appeals and revisions by the concerned lawyers for years together. The Additional Sessions Judge disposes of the criminal appeals and revisions on merit without hearing the concerned lawyers for their intentional non-attendance. The active outlook of the concerned lawyers in moving the criminal appeals and revisions will certainly result in the speedy disposal of the same to facilitate quicker dispensation of justice. The Supreme Court of Bangladesh has supervisory and controlling jurisdiction over the subordinate judiciary. Effective method of administration for the courts can be introduced by the Supreme Court as the guardian of the Constitution, which



guaranteed the fundamental rights for the citizens of the country. The code of conduct should be introduced for regulation of the discharge of duties by the lawyers with accountability to the concerned controlling authority to facilitate the quicker dispensation of justice.

Delay in the disposal of appeals and revisions.

The Subordinate Judges, Additional District Judges and District Judges hear the civil appeals. ¼ disposal of civil appeals are valued as being equal to the disposal of a regular criminal case which discourage the Additional District Judge and Sessions Judge to dispose of the same. 2(two) appeals should be made equivalent to one regular criminal case in terms of outturn of work which may encourage the disposal of civil appeal in greater numbers. It so happens that all the Courts of Additional District Judge are not equally burdened with files. The Sessions Judge should be empowered to

make arrangements for transfer of adequate number of cases. In terms of outturn, 10/12 disposal of revisions being treated as equivalent to the disposal of a regular criminal case discourages the disposal of revisions. 5/6 revisions should be treated equal to the disposal of a regular criminal case which will encourage the judicial officers to dispose of the revisional matters in larger numbers. The lawyers must work along with the Bench to facilitate the disposal of the criminal matters lying pending for years together.

Miscellaneous components of delay and solution.

Educated management of the judicial system to effect speedy dispensation of justice is necessary. Delay in the process of litigation comes out of ignorance of the short-cut procedure. Wisdom of the meritorious judges can facilitate the quicker disposal of civil and criminal matters. Seeking admonitions, sermons and counsels and professional discussions in presence of experienced judges can assist the curtailment of the plight of areas and delay in litigation. The Bench and the Bar as well as the judges of the Supreme Court should come forward collectively to bring out the solution towards the mountainous heaps of pending cases. Introduction of distributive administration in the transfer of cases equally to different courts can enhance the quicker disposal of cases. A national plan for remoulding the old laws of procedures is the need of the hour. Procedures must be simplified and rationalised. Seminars and discussions at professional levels leading to proposals for structural and procedural changes in order to fight out the delay from the course of litigation. Number of Judges must be increased to implement quicker disposal of cases. Judges should be provided with adequate salaries and facilities enabling them to work with vigour, vitality and strengthen without being indulgent of corruption. Facilities of legal aid should be provided to the litigants who are unable to bear the costs of litigation.

Remand of civil and criminal cases killing enormous time should be stopped. The appellate courts vested with similar powers alike the trial courts should dispose of the same without sending of remand if not unavoidable. Framing of appropriate issues in the disposal of civil matters must be looked at by the concerned lawyers so that relevant evidences may be adduced to keep conformity with the issues so framed.

Judicial conference among judges should be frequently held to create awareness for fighting out delay in the disposal of cases. Procedural law lingers the litigation, which needs to be reorganised, reformulated and simplified. Too much procedural laws render too little justice. Intellectual debates among the persons in the professional levels on the subject of delay in the disposal of cases may deliver beneficial lessons in the quicker dispensation of justice. Inspection of courts by the head of the institution at fortnight or monthly interval can help quick disposal of justice.

Allergy for adoption of technological modernism must be fought out. The computerisation at certain sphere of administration may also help the speedy disposal. Arrival to the higher courts causes delay. As such justice should be brought to the door-steps of the peoples by way of decentralisation judicial training both for the judges and lawyers is necessary to sharpen their knowledge for the evasion of delay of the litigation. Teachers, academics, students, scholarly peoples, legal luminaries, jurist of national and international repute should be invited to bring out remarkable project on the subject of the alleviation of delay in the disposal of justice. Delay drains out even a just judgment. Delayed justice is the means of inflicting injustice through judicial system.

Lastly it may be pointed out that no solution of the problems will ever be effective unless and until the parties including their advocates and also the judges come forward with all sincerity to end litigation in due time.

Md. Zahurul Islam is a retired District Judge.

READER'S queries



Your Advocate

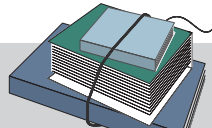


Your advocate is **Mr. Probir Neogi** of the Supreme Court of Bangladesh. His professional interests include civil law, constitutional law and banking law. Send your legal and human rights queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: My relative has a piece of land in Dhaka City. He wants to develop it with the help of developer on joint sharing basis. He talked to number of mid-level developers and commercial terms were settled. But the problem arose with legal terms. The developer wants the land-owner to execute in favour of the developer irrevocable registered power-of-attorney as soon as the agreement is signed. The developer says power-of-attorney is necessary to get permission from different authorities and for execution of the project. But my relative says the developer wants this instrument only to exploit him. Is it necessary for the developer to have this power and in case of litigation which one will get precedence, the agreement or the power-of-attorney? Please advise.

Your Advocate: By now it has become a common practice in the city areas that the land-owners enter into agreements with the developers for the purpose as stated in your letter. Yes, in such agreement usually a term is incorporated to the effect that the land-owner will execute a power-of-attorney in favour of the developer empowering him to do the needful to accomplish the object of the agreement. This power-of-attorney is executed pursuant to one of the terms of the agreement and powers so conferred upon the attorney by the executant are in conformity with the other terms and conditions of the agreement. So, what you are to examine before signing the agreement is that neither of the parties to the agreement is given any unfair and undue advantage over the other. In this sort of agreement land-owner is the "principal" and the developer is the "agent" within the meaning of section 182 of the Contract Act. Execution of this type of power-of-attorney creates agency and the agent (constituted attorney/developer) achieves an interest in the property which forms the subject-matter of the agency (i.e. power-of-attorney). As per provision of section 202 of the Contract Act this type of power-of-attorney cannot be revoked unilaterally, in the absence of an express contract, to the prejudice of the agent's interest. You may incorporate a term in the agreement (contract) to the effect that in case of any contravention of the term(s) of agreement, either of the parties will be at liberty to terminate the contract and in case of anything done by the developer in excess of the powers conferred by the power-of-attorney the principal (land-owner) will be at liberty to revoke the same. Perhaps you are, therefore, clear that in case of litigation both the agreement and the power-of-attorney will be relevant.

LAW lexicon



Burden of proof

Burden of proof refers to the obligation of a party to prove his allegations during a trial. Typically, the plaintiff must prove whatever allegations he included in his complaint in order to win his case. The defendant is given the opportunity to submit evidence to rebut the plaintiff's case. To rebut generally means to contest a statement or evidence presented by another.

The duty of a party in a lawsuit to persuade the judge that enough facts exist to prove the allegations of the case. Different levels of proof are required depending on the type of case.

This phrase is employed to signify the duty of proving the facts in dispute on an issue raised between the parties in a cause. The burden of proof always lies on the party who takes the affirmative in pleading.

In criminal cases, as every man is presumed to be innocent until the contrary is proved, the burden of proof rests on the prosecutor, unless a different provision is expressly made by statute.

Circumstantial evidence

Circumstantial evidence is best explained by saying what it is not - it is not direct evidence from a witness who saw or heard something. Circumstantial evidence is a fact that can be used to infer another fact.

Indirect evidence that implies something occurred but doesn't directly prove it; proof of one or more facts from which one can find another fact; proof of a chain of facts and circumstances indicating that the person is either guilty or not guilty.

E.g., If a man accused of embezzling money from his company had made several big-ticket purchases in cash around the time of the alleged embezzlement, that would be circumstantial evidence that he had stolen the money.

Circumstantial evidence is usually not as good as direct evidence because it is easy to make the wrong inference. Circumstantial evidence is generally admissible in court unless the connection between the fact and the inference is too weak to be of help in deciding the case. Many convictions for various crimes have rested largely on circumstantial evidence.

Mens rea

Mens rea is a Latin term which means guilty mind. The state of mind that the prosecution, to secure a conviction, must prove that a defendant had while committing a crime. Mens rea means criminal intent or recklessness. The mens rea for theft is the intent to deprive the rightful owner of the property.

Ex post facto legislation

Ex post facto is a Latin term which means 'after the fact'. Legislation is called *ex post facto* if the law attempts to extend backwards in time and punish acts committed before the date of the law's approval. Such laws are constitutionally prohibited in most modern democracies. Article 35(1) of The Constitution of Bangladesh strictly prohibits *ex post facto* legislation by saying, "No person shall be convicted of any offense except for violation of a law in force at the time of the commission of the act charged as an offense, nor be subjected to a penalty greater than, or different from, that which right have been inflicted under the law in force at the time of the commission of the offense."

Source: The Electric Law Library's Lexicon & Duhaime's Law Dictionary.

LAWSCAPE



ONE day, a teacher, a garbage collector, and a lawyer all died and went to heaven.

St. Peter was there, having a bad day because heaven was getting crowded. When they got to the gate, St. Peter informed them that there would be a test to get into Heaven: They each had to answer a single question.

To the teacher, he said, "What was the name of the ship that crashed into an iceberg and sunk with all its passengers?"

The teacher thought for a second, and then replied: "That would have been the Titanic, right?" St. Peter let him through the gate.

Next, St. Peter turned to the garbage man, and figuring that heaven didn't really need all the stink that this guy would bring in, decided to make the question a little harder. "How many people died on the ship?"

The garbage man guessed 1228, to which St. Peter said, "That happens to be right. Go ahead."

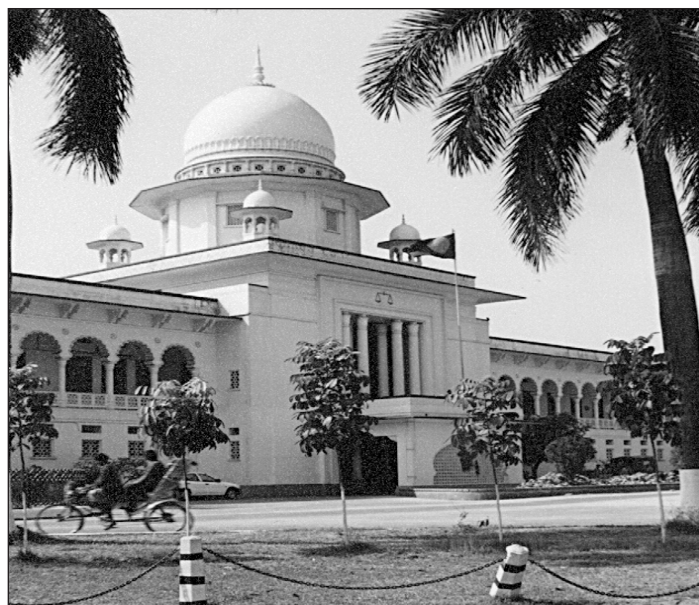
St. Peter then turned to the lawyer. "What were their names?"

LAW letter



Independence of Judiciary, how far?

For flourishing of democracy and making the country self-reliant and prosperous, there is no alternative than an independent judicial system. It is shameful that the public demand for separation of judiciary from the executive branch still remains illusive. It may be recalled that this particular issue was included in the 21-point demands of 1954 general election. Since then this burning issue used to get overwhelmed public support in every movement. But it is a matter of great regret that this most wanted



public interest always went unheeded by the ruling echelon. The last 12-point directive of the Appellate Division of the Supreme Court for separation of judiciary and establishment of an independent judicial system in the country has not yet been observed by the government.

The necessity for an independent judiciary has been admitted without any shred of doubt by all the governments although they failed to establish it. For establishing rule of law in the country, a free and independent judicial system is indispensable. Our constitution faces many upheavals. Still the Constitution remains sublime because of our judiciary and its courageous move. In the wake of multifarious administrative snags judiciary is considered as the last resort of the general people. For institutionalization of democracy in our turbulent society and to put the country in a prestigious position it is very essential to establish an independent judicial system. The sooner the present government realizes it, the better.

M.H. Bari
Khulna.

LAW quotation

"The best mode of obtaining a thorough knowledge of the law is very simple, though laborious, and tedious. It is only to get the books, and read, and study them carefully.... Work, work, work, is the main thing."

Abraham Lincoln, (1809-1865), U.S. president.

"What is lawful is not binding only on some and not binding on others. Lawfulness extends everywhere, through the wide-ruling air and the boundless light of the sky."

Empedocles, (484-424 B.C.), Greek philosopher.

"The precepts of the law are these: to live honestly, to injure no one, and to give everyone else his due."

Marcus Tullius Cicero (106-43 B.C.), Roman orator, philosopher, statesman.

LAW week



Law and order situation beyond police control

The law and order situation of Dhaka City has gone beyond police control. A total of 57 murders, 12 abductions and 30 decoities took place during the last 10 days in the capital city. But the police failed to arrest any notorious criminal in this connection. They have allegedly arrested and oppressed the opposition activists under section 54 of the Code of Criminal Procedure instead of bringing the situation under control. It was reported that more than 5 most wanted criminals and a large number of arms cadres are staying in the city despite the police operation. Lack of chain of command of the law enforcing authority and political pressures are behind the failure of the police to nab the criminals though they know their whereabouts. -Daily Aker Kagaj, 20 August.

Appellate Division refused to accept Government's report

The full bench of the Appellate Division of the Supreme Court refused on 13 August to accept the report of the Government relating to the separation of Judiciary. The report was submitted after two months from the direction of the said court to do so. Earlier the court on 19 June had ordered the Government to submit the monthly progress report of initiatives taken by the Government in order to perform the direction of the court. But as it was submitted after two months instead of one, the court declined to accept it, showing dissatisfaction of the developments. The court also ordered the Government to submit its report on 27 August. -Daily Prothom Alo, 14 August.

Amendment of CPC

Government plans to amend the Code of Civil Procedure in order to introduce Alternative Dispute Resolution in the lower courts. More than 3 lakhs cases are reportedly waiting for disposal in the lower courts all over the country. For quicker disposal of the cases the government has designed to solve the matters, firstly, by Mediation, Conciliation etc. in lieu of litigation. If these alternative initiatives fail then the court will proceed for hearing of the cases, according to the proposal of the Ministry of Law. -Law desk.

Deteriorating law and order situation in Pabna district

Heinous crimes like murder, rape, extortion have increased in Pabna district alarmingly. More than 81 killings have taken place in the district during the last 7 months. Besides, 80 incidents of women repression have taken place during the said period, according to the police report. The reluctance of the police to investigate the case and submit the chargesheet caused some confusion among the people about the sincerity of the law enforcing authority to curb the crimes. -Daily Sangbad, 17 August.

High court's directive to maintain status quo

The High Court Division directed the National Credit and Commercial Bank Ltd. (NCCBL) to maintain status quo on the operation of account of Indian national Om Prokash Agarwal on the question of encashment of cheques worth about Taka 45 crores and 13 lakhs. The cheques were issued by Om Prokash in favour of 80 Companies of the country. The bench comprising Justice Md. Abdur Rashid Miah also issued a rule nisi as to why the order rejecting the prayer for status quo passed by the Joint District Judge, Dhaka, on July 10, should not be set aside. The direction of the court came on a Civil Revision Application filed by the NCBL challenging the order rejecting the prayer for status quo by Joint District Judge, Dhaka. -Daily Independent, 18 August.

Leave to Appeal of Public Safety Act granted

The Appellate Division of the Supreme Court granted leave to appeal petition challenging the High Court Division's verdict on writ petition regarding the Public Safety Act. The full bench of the court passed the order upon hearing the petition filed by Mamunur Rashid Mamun, Engineer Mohiuddin and 16 others. It also stayed the order of the High Court Division for six months. The High Court Division on April 30, 2002, declared hearing on petitions challenging the legality of Public Safety Act as "infructuous" as the Parliament has already abolished the law. The Parliament had earlier scrapped the law with provision to withdraw the cases under this Act by Government notification after scrutinizing the cases. -The Bangladesh Observer, 20 August.

Imams urged to establish human rights

The first National Imam Conference on Human Rights Affairs was held on 18 August at the Bangladesh-China Friendship Conference Center in Dhaka. The conference was jointly organized by the Islamic Foundation and Institutional Development of Human Rights in Bangladesh (IDHRB). Prime Minister Begum Khaleda Zia inaugurated the conference. She asked the Imams and Muazzins to be increasingly involved in the noble task of spreading education and alleviating poverty to help establishment of human rights in the society. "In our society, human rights are violated mainly because of poverty and illiteracy" she said while inaugurating the ceremony. She also expressed that the Imams through the training would play a vital role in checking terrorism, developing human resources, establishing human rights and dignity of women as well as for maternal and child health care and prevention of AIDS. The other guests argued that terrorism and addiction in the society are increasing perilously and the youth becomes the worst victims of this habit. The Imams can play a vital role to protect these crimes as they have direct relation with the root level people. The guests also said that Bangladesh is an Islamic country but the people of this country do not like fundamentalism. -The Independent & Daily Ittefaq, 19 August.

Witnesses shall not be refused in any cause

Judges and lawyers shall not refuse to hear the witnesses in any excuse who appear in the court. The decision came on a judicial meeting of the Metropolitan Magistrates of Dhaka. The other decisions that were taken in the meeting are, (a) the cases shall be disposed of in due time, (b) the prisoners must be taken to the court within 10 A.M. from the Central Jail and (c) the detainees of the Thana shall be produced before the court within 2 P.M. -Daily Jugantor, 10 August.

Over 4500 women, children raped last year

Over 4500 women and children were subjected to rape across the country in the year of 2001. The intolerable situation is showing clear evidence that the tough laws enacted with a provision of capital punishment to deal with the crime could not check the horrendous offences. Of the total victims 141 were gang raped while 95 killed after rape, according to the study of News Network. Quoting a police report, the study said that 3,189 women and children were subjected to violation in 2001 and 3,140 in 2000. Out of 1,14191 criminal cases recorded by police in 2001, over 13,300 were related to woman and child repression, the study said. The actual figures will be much higher as most people of the rural areas try to conceal such incidents to avoid social harassment. On average 10 women and children fell victim to violation and 37 were repressed each day in 2001, according to the study. Many girls committed suicide in shame after rape. Mahima khatun of Putia Rajshahi, Indrani Hawlader of Bagerhat and Simi of Dhaka are some of the examples. The study report revealed that in 95 percent rape cases, the accused were acquitted due to faulty investigation by police and age old system of examining the rape victims. Another problem is that the rape victims, in most cases refuse to undergo medical examination as it is done by male doctors. -UNB and Daily Star, 17 August.

Corresponding Law Desk

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