REVIEWING *the views*

Delay in dispensation of justice

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DELAY in dispensation of justice is always a concern as right to speedy trial is rampantly discarded by it. The right to speedy trial is not a fact or fiction but a constitutional reality and it has to be given its due respect by removing the obstacles from its vicinity. This right has already been greeted by the courts and the legislature as a weapon to plummet the caseloads. A trial is delayed whenever it takes more time than necessarily required by the law, considering all procedural, constitutional and other rights of the parties concerned. Surprisingly, courts in Bangladesh are not entranced by the time frame in settling the dispute with some exceptions.

Causes of delay

In Bangladesh both in subordinate and higher courts irrespective of civil, criminal or constitutional issues dispensation of justice is always prolonged, with parties are compelled to spend an unlimited amount of money for indefinite time and to run from one place to another in pursuing their claims in court. Infirmities in the judicial governance and administration, weaknesses in the legal education, enfeebled legal profession, incompetent investigation and prosecution, lack of citizens' access to justice and legal information and inadequate resource allocation are the major factors causing delay in justice delivery system. The points may succinctly be described as thus:

The lawyers: The Canons of Professional Conduct and Etiquette entails the advocates to aid the court in the accomplishment of efficient and prompt justice. They must decline to conduct a civil case or to make a defence when convinced that it is intended merely to harass or to injure the opposite party or to work any oppression or wrong. Shockingly, instances are not infrequent, where these noble rules are ignored by the learned lawyers in many excuses.

Litigants: As litigation is a confrontation between contending parties, progress of it depends on the will of the parties. In our society filing of a civil or criminal case is regarded as a weapon of harassment, which makes a considerable number of litigants enthusiastic to file allegations that are neither sustainable nor factual but merely intended to harass opponents socially or politically or economically. In such instances, cases that ought not to go to the courts are pushed there and remain pending for years to increase backlog of cases.

Case management: Absence of active case management by the judicial officers is a main factor contributing to the backlog of cases. Judicial officers must be educated and well trained on effective case management. Case management and court administration is a course which is taught in different countries of the world which seems to be unaddressed in our legal curricula.

Lack of facilities: Judicial function is such a sophisticated responsibility that it requires wholehearted devotion and concentration in ensuring justice. Judge's reluctance of a moment can cause a catastrophe on litigating people. This is because, they still suffer from proper sense of security in terms of facilities provided with them.

Inadequate infrastructure: There are inadequate court buildings compelling judicial officers in many jurisdictions in rationing courtroom and chamber; libraries are virtually non-existent. This lack of indispensable need not only swipe away potential of judicial officers but also led to frustration for those who have obliged to serve judiciary. Use of courtrooms in shift and want of chambers are hampering smooth functioning and creating backlog of cases.

Court staff: Corruption and inefficiency of the administrative and support staff of the judiciary are crucial in delay. Bribery in service of summons, in giving certified copies, finding case records, transferring cases from one court to another, in maintaining cause list contributes in delay. Stenographers and records keepers are not well trained, not equipped with modern technology which also prevents expeditious trial.

Alternative Dispute Resolution: Section 89A of the Code of Civil Procedure has entrusted the judges with the obligation to facilitate the settlement of dispute by way of mediation (except a suit under the Artha Rin Adalat Ain, 1990). Taking advantage of this provision lawyers very often pursue the judges to permit ADR in the same suit in more than one occasion without any success. Thus, ADR, which was meant to expedite the settlement of dispute, undesirably, has turned into a weapon of delaying tactics.

Delay by investigative agencies: In trial of cognisable offences the incident need to be investigated by the police agencies. On completion of the investigation the precise formulation of specific accusation against the accused should be placed before the court in the form of Charge Sheet. A criminal case is not ready for trial till the Charge Sheet is submitted and submission of Charge Sheet is very often delayed because of work load of the investigating agencies or due to the pressure, undue influence or bribery by the interested party. Time required for getting expert opinion or collection of corroborating materials also delay the trial.

Law reform: In 2003, Code of Civil Procedure was reformed and provisions for cost on adjournment, amendment of pleadings, restoration of suit, for untrue statement and so on had created an atmosphere for speedy disposal. What is now required is the strict compliance of those provisions by the judges by way of active case management. New law is required to introduce time frame for disposal.

Strength of judiciary is not enough: The ratio of judicial officer is utterly negligible in comparison with the population of the country. At present Appellate Division is chaired by the Chief Justice and six (6) other judges and High Court Division is run by eighty nine (89) Judges (2 Judges are awaiting for oath). Nearly 1200 judicial officers are on duty in subordinate courts (both civil & criminal). In total approximately thirteen hundred (1300) judges and magistrates are entrusted with the responsibility to dispense justice among 150 million people. On an average one (1) judicial officer for more than one lac (1,15,000) people. This ratio is so disproportionate to enable the judicial officers to keep pace with the number of fresh filing of litigation in each day.

How to overcome?

There are numerous reasons for the prolonged trial, which in fact could be eliminated by conscious efforts. Measures recommended by the Asian Legal Resource Centre and others to mitigate delay are as follows:

- Take immediate steps to fill existing vacancies at various levels in the judiciary and number of courts and judicial officers need to be increased significantly.
- Immediate adequate funding to ensure available infrastructure and other facilities.
- Make use of available international expertise and advice to improve judiciary's communication infrastructure.
- Establish a process of accountability so that the aggrieved party suffering from delay of process could challenge the delay without fear of judicial wrath.
- Provide adequate training and education to members of the judiciary so as to facilitate a respect for the rights and dignity of all individuals, as well as for the rule of law, in discharging their judicial functions.
- Emphasis should be given on active case management and absolute devotion on judicial function by judicial officers.
- The civil and criminal procedure codes and the laws of evidence have to be substantially revised to meet the requirements of modern judicial administration.

Justice delayed is justice denied

Justice should not only be done but should also manifestly and abundantly be seen to be done. Essence of the rule of law is not only justice, but the justice within a reasonable time. Due to massive pendency, the cases take years after years for its finality, which should have been disposed within few months. The pendency causes delay and delay negates access to justice. The magnitude of delay in dispensation of justice cannot be under estimated as it has impact on the resources of the court and socio-economic factors of the litigants. In the case of *Anil Rai* v. *State of Bihar* [2002 (3) BCR (SC)] Justice Sethi of Indian Supreme Court rightly stated that 'delay in disposal of the cases facilitates the people to raise eyebrows, sometime genuinely, which if not checked, may shake the confidence of the people in this judicial system'. There must be untiring efforts by all concern not to prolong the disposal unnecessarily.

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HUMAN RIGHTS *watch*

Juvenile delinquency on rise

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MANY of the readers have noticed several reports on juvenile delinquency published in the newspapers. In the 1st day of April, the report published in *The Daily Star* on the rise in juvenile delinquency in the port city of Chittagong has made the parents, guardians and conscious people wary of getting their teenage children involved in crimes.

However, Chittagong is not an isolated place as there are reported involvements of 500 juveniles either directly with the crimes or have linkage with criminals' gangs in the capital of Dhaka. It was disclosed in a press briefing after the monthly crime conference of Dhaka Metropolitan Police held in the month of March as reported in The Daily Star on March 10. What would be the solution to halt this trend? What could be done to prevent children from coming in conflict with law?

Some might argue that prosecuting those involved with the crime would end the problem. If punitive measures are taken against accused, situation would improve. In that case, other juveniles would take lesson and remain aloof from criminal gangs. However, many of the guardians would disagree with such proposition. Particularly, human rights activists would seriously argue in favour of alternative measures other than imprisonment as enshrined in the UN Convention on the Rights of the Child (CRC).

Bangladesh is not only one of the earliest signatories of CRC, also acted as the elected member of CRC committee. The concluding observations of the Committee on the Rights of the Child indicate concerns and issues which require specific follow-up actions by the State Parties. The Committee welcomes the submission of the combined third and fourth periodic report submitted by Bangladesh and made recommendations. There had been specific recommendation on the administration of juvenile justice also.

Notably, the Committee appreciated the efforts mad by the government of Bangladesh to address the previous concluding observations including removal of some children from adult jails, establishment of juvenile development centres and the increased training for judges, magistrates and law enforcement officers concerned with juvenile justice. It is true that the number of children in jail decreased though there is still a significant presence of children in district jails. Due to socio-economic condition, children still come in conflict with law in large number and the trend continues to sustain. The scope of alternative measure is still very limited.

However, the CRC committee recommended to adopt a global and national policy in prevention and promotion of alternative measures to detention such as diversion, probation, counselling, community service or suspended sentences, wherever possible. Although there are 3 correction institutes in the country, demand is getting higher with an increase in juvenile delinquency. In 2003, the government renamed the "Correctional Institute" as "Kishor/Kishori Unnayan Kendra" and the decision to change the name is hailed as a milestone for the children justice system of Bangladesh.

Age of criminal responsibility is very low in the country and the CRC committee has repeatedly expressed concern as the legal age of criminal responsibility has been raised to only 9 years. In the last observation also, the committee recommended to raise the minimum age of criminal responsibility to at least 12 with a view to raising it further.

On the other hand, immediate attention needs to be paid in the development of children. The right to development is one of the four key principles of CRC. The CRC committee urged the government to adopt comprehensive, preventive measures when formulating public policies to guarantee the rights of all children, in order to reinforce their right to life, survival and development. Preventative measures are required to be taken by the state so that children do not come in conflict with law.

It is of paramount important that education of children shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential. It has been stated in Article 29 of CRC, "States Parties agree that the education of the child shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin".

To recapitulate, allocation of resources would speed up the process of realizing the rights of the child. The CRC committee recommended Bangladesh to use all available resources to set the appropriate conditions for the enjoyment of the rights of the child. In order to prevent children from coming in conflict with law, sufficient allocation of resource is urgently needed.

The writer is a human rights worker.

LAW *news*

Belgium votes to ban full-face veils

AMNESTY International has condemned an overwhelming vote by the lower house of the Belgian parliament on April 29, 2010 in favour of legislation banning the wearing of full-face veils in public.

One hundred and forty one parliamentarians voted for the measure, two abstained and none opposed it.

"A complete ban on the covering of the face would violate the rights to freedom of expression and religion of those women who wear the burqa or the niqab as an expression of their identity or beliefs," said John Dalhuisen, Amnesty International's expert on discrimination in Europe.

"The Belgian move to ban full-face veils, the first in Europe, sets a dangerous precedent. Restrictions on human rights must always be proportionate to a legitimate goal. A total ban on full-face veils would not be," said John Dalhuisen.

Amnesty International called on the Belgian Senate to exercise its prerogative to review the law and carefully consider it in the light of Belgium's obligations under international human rights law. The Senate should ask for an opinion from the Belgian Council of State on the legality of the measure.

Though the law is worded in general terms so as to criminalise any covering of the face that would prevent identification, it is clear from the parliamentary debates that the law's main aim is to prevent Muslim women from wearing full veils such as the burqa or the niqab.

Belgian politicians have argued that the law is necessary for public security and to protect women from being forced to wear full-face veils.

Under international human rights law, the only legitimate grounds for restricting the rights to freedom of expression and religion are the preservation of public security, order or morals and the protection of the rights of others.

Amnesty International said it believes that legitimate security concerns can be met by targeted restrictions on the complete covering of the face in well-defined high-risk locations.

Individuals may also be required to reveal their faces when objectively necessary.

"In the absence of any demonstrable link between the wearing of full-face veils in Belgium and genuine threats to public safety, there can be no justification for the restriction on the freedom of expression and religion that a complete ban on the wearing of face veils in public places would entail," said John Dalhuisen.

States do have an obligation to protect women against pressure in their homes or communities to wear full-face veils and should do this by intervening in individual cases through criminal or family law systems.

They must also combat gender stereotypes that result in the discrimination of women. This will require a range of social and public policy and education measures.

"Far from upholding the rights of women, such a general ban would violate the rights of those who choose to wear full face veils, while doing little to protect those who do so against their will, who risk even greater confinement as a result. The obligation to combat discrimination cannot be fulfilled by imposing a measure that is itself discriminatory," said John Dalhuisen.

Source: Amnesty International.