



REVIEWING THE VIEWS

REDUCING CASE BACKLOGS

Time to change the classification of cases

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BANGLADESH is experiencing a huge backlog and the number of pending cases is increasing day by day in compare to increasing population. In a lawyer dominated advisory legal system, like Bangladesh, case management could be a way to dispose of this situation. Case management is a tricky tool and need to be handled skilfully like most developed countries have used and have experienced extraordinary positive results. However, I would like to focus on just one component of case management and that is 'Differentiated Case Management' experiencing from Australian courts.



rately with the medical profession and termed it as 'triage'. He explained: a patient in the medical case is particularly assessed at the very beginning; the same can be adopted in court cases too. For example, if a case is complex in nature it would be allocated with proper time, or if a case is more suitable for mediation it should be straight sent for mediation (most of the partition suit demand mediation). At the time of filing, the court officer (Serestadar) would classify according to the complexities of the cases.

In Bangladesh, chapter 16 of Civil Rules and Order ensures five classes of cases according to the nature of the cases. But the fact is there is no different treatment rather all classes of the cases follows same procedures except the pre-emption cases and miscellaneous cases. These classifications secure the reserve of records. Here I would like to argue that classification of cases should be made to ensure how the cases would be treated not how the record would be secured for future.

In Australia, the Supreme Court of New South Wales has adopted the 'Differentiated Case Management (DCM)' in the 1990s. The DCM was introduced based on concept that not all cases make the same demands. Therefore, at the very initial stage, the individual need would be identified and court schedule would be planned according to its characteristics and the degree of appropriate management would be ensured. Accordingly, some cases would be

heavily supervised while others would be less supervised to ensure their timely disposal. A similar approach exists in United Kingdom through the adoption of procedural tracks; those are small track, fast track and multi-track.

To ensure separate treatment according to the complexity of each case at first we will have to sort out the definition of 'complex cases'. Manual of complex and Multidistrict litigation defines it as 'having unusual problems and which require extraordinary treatment.' Jay Tidmarsh briefly clarifies 'costly to litigate, when they involve many issues, when they involve many parties, when they involve parties located in many forums, when they involve legally thorny issues, when they are protracted, when they develop voluminous evidence, or when the outcome of the case might have nationwide consequences.'

To ensure separate treatment we must know the identification marks of complex cases and how they occur because it allows the court, legal practitioners and the parties to determine and set plan for the cases measuring the complexities through managerial judging. Michael Legg has summarised the causes of complex civil litigation as follows:

- a. Legal complexity: it involved through uncertainty or nature of the law applied in each case.
- b. Factual complexity: it needs expert opinion or technical support. Expert evidence and discovery can create complexity through increas-

ing the size of the litigation or the difficulty of the underlying concepts that need to be resolved by a judicial officer.

- c. High stake or bet the company litigation: Sometimes commercial objectives and company involvement threaten a case to be complex.
- d. Multiple parties: it arises through a number of claims and party interests being combined into a single proceeding. This may have efficiency advantages for the court but it can also result in more complex litigation.
- e. Lawyer conduct: lawyer conduct can result in complex litigation through 'adversarialism' by taking of every point within the litigation and lack of cooperation between the lawyers can cause the contentiousness of the case to result in the need for greater evidence (every point must be proved rather than non-core issues agreed), a larger range of claims and associated legal issues so that the since of the litigation increases.

The Bangladeshi civil trial court should turn to change the classification according to the complexities of the suits as part of case management not just considering the title of the cases. And accordingly the schedule and plan would be ensured for individual cases. Remarkably, there must be an option for conversion from complex to simple or from simple to complex category even in any stage of the suit as soon as it is identified that the suit is not a complex one or it is no more simple case and would ensure different treatment.

It would rightly be told that the overall court system of Bangladesh is too fragmented in the way it is organised since there is no one with clear overall responsibility for the administration of civil justice, and too adversarial as cases are run by the parties, not by the courts or the rules of court, all too often, are ignored by the parties and not enforced by the court.

Though case management varies depending on the personality, experience, expertise, willingness to innovate and experiment, likes and dislikes of a particular judge but this classification will surely forward a step in reducing case backlogs within the boundary of case management.

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FOR YOUR INFORMATION

Protection of civilians in time of war

GENEVA CONVENTION IV 1949 deals with protection of civilian persons in time of war exhaustively. Article 27 of this Convention proclaims the principle of respect for the human person and the inviolable character of the basic rights of individual men and women. The statement of these principles in an international convention gives them the character of legal obligations and marks an essential stage in the history of international law—in particular international humanitarian law, which is concerned above all with man as man.

Principles enunciated under Article 27:

- Respect for fundamental rights: This provision is based on a similar obligation laid down in the 1929 Geneva Convention on prisoners of war. The right of respect for the person must be understood in its widest sense: it covers all the rights of the individual, that is, the rights and qualities which are inseparable from the human being by the very fact of his existence and his mental and physical powers; it includes, in particular, the right to physical, moral and intellectual integrity—an essential attribute of the human person.
- Respect for honour: Honour is a moral and social quality. The right to respect for his honour is a right invested in man because he is endowed with a reason and a conscience. The fact that a protected person is an enemy cannot limit his right to consideration and to protection against slander, calumny, insults or any other action



impugning his honour or affecting his reputation; that means that civilians may not be subjected to humiliating punishments or work.

- Respect for family rights: The obligation to respect family rights, already expressed in Article 46 of the Hague Regulations, is intended to safeguard the marriage ties and that community of parents and children which constitutes a family, "the natural and fundamental group unit of society". The family dwelling and home are therefore protected; they cannot be the object of arbitrary interference.
- Respect for religious convictions and practices: The principle of freedom of thought is the basis of the great movement for the Rights of Man which invaded and transformed politics and law. It is therefore inscribed at the beginning of the traditional proclamations of essential rights and fundamental liberties.
- Respect for manners and customs: Respect for the human person implies respect for "manners" (in the sense of individual behaviour) and "customs" (meaning the usages of a particular society).
- Humane treatment: The expression "to treat humanely" is taken from the Hague Regulations and from the two 1929 Geneva Conventions. The Word "treatment" must be understood here in its most general sense as applying to all aspects of man's life. It seems useless and even dangerous to attempt to make a list of all the factors which make treatment "humane".

This Article also stipulates to ensure equality of treatment and non-discrimination with particular emphasis to provide special consideration to women.

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Child advocacy in Bangladesh: A long way to go

FARHA NOOR RAHMAN

AN age-old African proverb says that, "Don't speak about us, without us." Very interestingly, if we want to correlate this ancient proverb with our modern civilization, we can certainly understand that, leaving a group of people unobserved, we have no right to uphold their entitlement. Children are the ultimate future of a country. In a developing country like Bangladesh, children are neglected and suffer a lack of proper care in maximum cases. To raise the voice of

According to Alfred J. Kahn, Sheila B. Kamerman and Brenda G. McGowan (Child Advocacy: Report of a national baseline study; US Department of Health, Education and Welfare; Office of child Development, 1973; p. 37):

"... child advocacy means a consumer controlled outreach system with two major objectives: to obtain more responsive, adequate and effective service from child and family service agencies, and to develop the strengths, skills and initiatives of families and communities to solve

children with the society, to strengthen and develop the preservation of children's rights and to have clear understanding on the application of international laws on the juvenile justice system; a better evolution and advancement of child advocacy is a burning issue in Bangladesh.

As children are the specific group of people who have not attained the age of majority and they have an alternative standard of behaviour, so an effective guideline must be urged in case of a bona fide mechanism of child advocacy. The following objec-

basic protection of the children must be ensured.

- A counseling program to determine the responsibilities as well as the awareness among the common people.

In our country, there is a lacuna between the laws and their proper application in a proper way. In maximum cases international and humanitarian standards are not followed in a true sense. So it can be said unflatteringly that, child advocacy is a potential and dynamic way which may come forward to pervade the legal lacuna. "The advocacy role is most effective because it involves so many people- the concerned parents, the state, the federal agencies and all who support the need to provide our younger citizens with a legacy for competency." (Thomas R. Phillips; Juvenile Delinquency: A contemporary View).

Advocacy system provides the identification of the root causes of the delinquent behaviour, measurement for prevention and the proper treatment in a legal way. Criminal responsibility, state's liability, principles of juvenile justice system, different criminal procedures, legal support as well as legal representation and reintegration, coordination and effective monitoring process can be provided to the concerned children and their parents in a smooth way through a child advocate.

Therefore, to make a better world for the children at risk and to give them opportunity to express themselves, child advocacy is surely a stimulating procedure to thrive the change of the juvenile justice system in Bangladesh.

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LAW EVENT

Seminar on ADR held at DIU



RAISUL ISLAM SOURAV

BOTH lower and upper judiciary in Bangladesh are overstrained with more than 2.5 million civil and criminal cases demanding effective operation of Alternative Dispute Resolution (ADR) to reduce the pressure on all tiers of the courts. Key problems like cost, complexity and delay of adversarial litigation procedure can effectively be reduced by mere introduction of arbitration, mediation, negotiation, conciliation and other forms of ADR in our laws and court systems.

In addition, mind set up and culture of litigation should be changed to bring an effective solution for easy access to justice for dispute affected poor and marginal people. Speakers at a seminar on ADR in Bangladesh jointly organised by Dhaka International University (DIU) and Bangladesh International Arbitration Centre (BIAC) on September 04, 2014 emphasised the need for wide implementation of ADR mechanisms to decrease the backlog of cases of our country.

Dr. Taufiq Ali, Chief Executive of BIAC presented the keynote paper at the seminar. Barrister Jennifer Ashraf and Advocate Khalid Yhaye were the

discussants in the program while the seminar was emceed by Raisul Islam Sourav, senior lecturer and coordinator of the department of law of DIU.

The spokesmen mentioned the loopholes of the existing provisions of ADR in our legal system, specially the provision of the Artha Rin Adalat Ain and the Civil Procedure Code to go to the court for ADR. According to their views apart from our court system lawyers are not less liable for the delay in civil litigation like land related matters.

They also criticised its non practices and gave some recommendations to change the scenario of litigation. They told that arbitration and mediation are easier process in comparison with formal court proceedings and it is much time effective also. They said it could be a new door for the young lawyers to boost up their careers. Further, they urged to introduce the ADR course into our legal studies.

Among others chairpersons of different departments along with faculty members of law department and around 200 students of the department of law were present.

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"If You Believe, They Will Achieve" A Child Who Has Hope Will Have The Belief That They Can Achieve.

MOTIVATIONAL SPEAKERS AND TRAINERS

the children to a higher primacy, the theme of child advocacy plays as a legal and social mechanism as well as a mode of protection.

To deal with the juvenile delinquency, Bangladesh has resembled a juvenile justice system. To facilitate this system juvenile court has been established. Different national and international policies and frameworks have been promoted and evaluated. But juvenile justice system and the policies are, in many cases, silent about child advocacy.

their own problems.... A service program or approach directed towards changing systems and designed to improve life conditions for children by assuring that service delivery systems and institutions bearing most on children work for these children, rather than against them."

So we cannot deny the significance of child advocacy from the perspective of Bangladesh. It can undoubtedly be said that to grow awareness about the juvenile justice system, to ensure smooth concoction of the

tives must be kept in mind while implementing the mechanism of child advocacy:

- Child advocacy must be committed to the best interest of the child and must be ensured to assist the juvenile court and child serving agencies.
- Separate and efficient office of child advocates should be established in a proper way.
- A countrywide program should be arranged to impact on the legislation and the child welfare services.
- Identification of the urgent and