LAW IN PRACTICE

Looking at the new CPC through lenses of civil court practices

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The Code of Civil Procedure (CPC), the century-old go-to apparatus for the civil law practitioners in Bangladesh, have gone through significant amendments. The amendments by and large aim to streamline civil court's processes, expedite the disposal of civil suits, and ensure more effective and speedy remedy for the litigants.

The most significant change is the introduction of digital methods for the issuance and service of summons upon the defendant/s. This amendment will allow the summons to be issued and served upon the defendant/s by means of SMS, Voice Calls or Instant Messaging service such as WhatsApp, telegram etc. Until now, the archaic method of issuing and serving summons upon the defendant/s is still in practice that, most of the time, protracts the trials. Sometimes, it takes years to complete the service of summons when the number of defendants is many, the addresses provided are either faulty and incomplete, or when the defendants situate in remote areas where the process-servers are less interested to go because no allowance is given, and the defendants intentionally avoid summons or cannot be found. The new method introduced by the amendment will expedite the processes of the Court. However, the persisting digital divide is quite real, and moreover, due care must be taken so that no court staff can harass, annoy or threaten any party to the suit in the name of serving summons digitally.

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Adjournment remains one of the most misused mechanisms for delaying civil suits. Previously, parties could seek up to six adjournments before the peremptory hearing (PH) without incurring any cost, and three more during the PH with costs. However, the recent amendment has reduced the number of permissible adjournments before the PH to three and introduced a condition precedent requiring a payment of Tk 300 for adjournment requests during the PH. Additionally, the court retains discretion to impose further costs of up to Tk 2,000. While these changes aim to discourage unnecessary adjournments, the minimal CP cost may still enable parties to exploit the provision.

Most of the people coming in the precincts of the civil courts are not educated and are also unable to present their cases before the bench, with majority depending upon their appointed lawyers. This mostly happens when the plaintiff's witness-1(PW 1) or defendant' witness-1 (DW 1) stands at the dock to present the case in light of the Pleadings. However, most of the time the PW-1 or DW-1 cannot spell out the main matters of dispute let alone the genealogy, in-between transactions and other information required to make out the case averred in the pleadings. The new amendment will allow the PW-1 and DW-1 to submit the statement of the pleadings by presenting affidavit. This will save the court's time and expedite the recording of evidence. The other party may contradict such witness in cross-examination. However, this method may become problematic when/if the court proceeds ex-parte (in absence of either party) in any case, regard being had to the fact that the absent party will not be there to cross-examine the witness to contradict his statement of pleadings.

Helpfully, the amendment has integrated the original suit with its execution. Under the CPC, a separate suit, named Execution Suit (ES), was to be filed after obtaining decree in the original suit for the purpose of bringing the obtained decree into effect on the ground. If the ES is filed after two years, notice was to be issued upon the decree-debtor/s. This ES was another means of procrastination and protraction of a civil suit to be finally decided and disposed of. Moreover, the ES was also the reason for the increased sufferings of the parties to the suit, a potential tool of aggrandisement for the lawyers, the court staff, and clerks. With the new integration, the long-drawn complexities of a civil suit are expected to come down to some extent. As per the amendment, the decree-holder will now be able to file an application directly after the declaration by the court of a decree to execute the same. Moreover, the amendment has also introduced a provision for the delivery of immoveable property directly to the decree-holder.

The procedure for execution of a decree in a money-suit was quite complex and time-consuming under the CPC with the provision of attachment of the property or civil arrest of the person against whom a decree was made. As per the original provisions, the subsistence allowances required for the maintenance of such person in the civil prison were to be borne out of the pocket of the person in whose favour the decree was passed. This was quite an absurdity introduced by the colonial law makers. Through the new amendment, all such provisions have been omitted, and new provision has been inserted to provide that all such allowances required for the maintenance of such person in the civil prison shall be borne by the government. Besides, the civil court's judges have been given the power of 1st class magistrate as enshrined in the Code of Criminal Procedure to execute the decree of a money suit. This will likely speed up the process of execution in the money suit.

Furthermore, the new amendments have, moderating the rules of dismissal for default, inserted the provision for deciding a civil appeal on merits even if the appellant does not appear on the date fixed, increased the compensatory cost for false and vexatious claims, and lessened the scope of the same defendant to set aside an ex-parte decree more than once (i.e., when the decree was passed ex-parte because the defendant did not appear).

It is hoped that the implementation of these amendments will facilitate the swift disposal of civil suits, thereby helping to reduce the overwhelming backlog of cases currently burdening the civil courts of Bangladesh.

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LAW REFORM

Plea bargaining within (a reformed) criminal justice system

PARVEZ RAHMAN

Article 35(3) of the Constitution of Bangladesh enshrines that every person accused of criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law. More often than not, due to various impediments, this article does not get implemented. The prime reasons behind such delay can be lengthy and corrupt investigation processes, outdated recording of evidence, mendacity in making police reports, overwhelming number of cases and last but not the least, long drawn trial processes. In this piece, I argue that to manage, if not eliminate the delay in administering and delivering justice, plea bargaining can potentially be a welcome addendum.

Plea bargaining may be defined as an agreement between the accused and the prosecution through which the accused gets a lesser sentence by admitting his or her guilt. According to the Black's Law Dictionary, plea bargaining is the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposal of the case, subject to court approval.

This tool is now used in many countries in Europe, Americas, Australia, and South-East Asian Nations. Notably, in the United States, about 90% of criminal cases are disposed of on the basis of plea bargaining. In the context of Bangladesh, where the conviction rate on average is only 8-10%, plea bargaining can prove to be a useful tool. Section 345 of the Code of Criminal Procedure 1898 (CrPC) prescribes the provision for compoundable offences. However, this provision does not apply to serious offenses. We do have provisions in sections 243 and 265E of the CrPC for admission of truth of accusation before magistrate and plea of guilty before sessions judge respectively. However, in these stages the accused does not usually plead guilty being well conversant with the futility of pleading guilty. Our justice system does not provide the accused with any advantage in this regard. Even if an accused pleads guilty in trial, awarding lesser punishment within law still remains discretionary with the judges.

In general, the principal benefit of plea bargaining is receiving a lighter sentence for a less severe charge that might result from taking the case to trial and eventually losing. Another clear advantage of plea bargaining for defendants is the potential savings on lawyers' fees. This is particularly beneficial for the socoeconomically marginalised sections of the society who struggle to afford legal defense. The litigation process requires more time and effort to bring a case to trial, whereas plea bargaining resolves cases more expeditiously. The primary goal of this system is to expedite case resolution, ease the burden on courts, and reduce overcrowding in prisons. There are certain inherent flaws too. As plea bargaining is one kind of negotiation, an accused may possibly face pressure from other side. Another important consideration is the overall state of the criminal justice system within which we introduce plea bargaining. When the investigation and prosecution processes are thorough and immaculate, plea bargaining will truly be effective. However, an accused who in fact committed the offence feels more likely to deny than admit guilt, since casting reasonable doubts on the prosecution's narratives are easier due to lack of evidence at the hands of the prosecution due to faulty investigation process. In such situation, the government must play an active role in putting a system in place so that investigation officers or agencies cannot find any scope to manipulate the investigation process. Moreover, by improving the prosecution efficiency, plea bargaining can bring in success. Preliminarily, plea bargaining can be introduced for certain criminal and special laws and not for serious crimes, crimes against women and children and habitual offenders. Also, police or law enforcement agencies should be kept out of the process to keep it both fair and unbiased.

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Pertinently, in India by Criminal Law (Amendment) Act 2005 provisions relating to plea bargaining were added in the Criminal Procedure Code by addition of new Chapter XXI-A of Code with restricted application. Standing at a crossroads, while we discuss multifarious reform agendas, it is crucial to ponder if plea bargaining can be introduced within our criminal justice system. Certainly, it alone cannot go a long way, as for India, plea bargaining is not optimistically contributing to the conviction rate. We need to bring in substantive reforms within our investigation and prosecution processes and within a reformed criminal justice space, plea bargaining, if introduced, will bring in the desired success.

The writer studies law at the University of Dhaka.