

Causes and Redresses of Delays in Disposal of Civil Suits in Dhaka District Judge Court: An Empirical Study

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1. Introduction

The problem of increasing backlogs of civil suits in Bangladesh is a long-identified concern that cripples the civil justice system. With a view to reducing the inordinate delay of disposal of civil litigations, the Code of Civil Procedure 1908 has been amended nine times from 1973 to 2021. However, the situation of case backlogs remains the unchanged-the number of pending cases rather showed an increasing trend in the last decade. There is an age-old proverb, 'justice delayed is justice denied'. There is also a maxim in equity that 'delay defeats equity'. Mr. Warren E Burger, a former Chief justice of the United States, in an address in 1970 nicely noted that '. . . a sense of confidence of the court could be destroyed if people come to believe that inefficiency and delay will drain even a just judgment of its value'.¹

Delay in the justice delivery system is considered to be a hindrance in ensuring access to justice to common people and also a violation of human rights, thus being a major concern across the globe.² Countries thus pledge to ensure equal access to justice for all by 2030 as their national commitment to the Sustainable Development Goals (SDGs).³ Equal access to justice for all itself is a crucial goal and also critical for attaining other SDGs, i.e., promoting gender equality (SDG 5), reducing inequality (SDG 10), access to safe and clean water (SDG 6), etc.⁴ Lack of access to

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¹ Mobis Philipose, 'Serving justice, Sebi style' <<https://www.livemint.com/Opinion/ifnBgiDzAX9sKIJMMO5r1H/Serving-justice-Sebi-style.html>> accessed on 5 March 2021.

² Shah Alam, 'Problems of Delay and Backlog Cases' *The Daily Star* (Dhaka, 25 February 2010) <<http://www.thedailystar.net/suppliments/2010/02/ds19/segment3/delay.html>> accessed on 29 August 2021.

³ See, Sustainable Development Goals, Goal 16; Target 16.3 <<https://sdgs.un.org/goals/goal16>> accessed on 29 August 2021.

⁴ Marcus Manuel and Clare Manuel, 'Achieving Equal Access to Justice for All by 2030' *Lessons from global funds*, Working Paper no 537 (Overseas Development Institute July 2018) 8. <<https://cdn.odi.org/media/documents/12307.pdf>> accessed 30 August 2021.

justice has also a greater negative impact on the condition of poverty.⁵ Timely disposal of legal proceedings is an integral part of providing access to justice.⁶

Despite the fact that practically all developing and developed countries struggle to keep lengthy and delayed judicial processes at bay, the problem elsewhere is not as serious as in south-east Asian countries, notably in Bangladesh.⁷ The major concern of all the Law Reform Commissions that have been established until today has been the excessive delay in the delivery of justice, which is a legacy of the British and Pakistan regimes and has continued through the Bangladesh period. They were established primarily to suggest reforms to eliminate such delays in civil and criminal proceedings.⁸

Further, The Law Commission, Bangladesh in its 2010 '*Report on Recommendations for Expediting Civil Proceedings*' commented that 'the problem of delay and backlog in the disposal of civil suits and cases has become alarmingly perennial, resulting in unbearable cost and time, and posing serious threat to access of the people to justice.'⁹ The then Chief Justice of Bangladesh, while addressing the national judicial conference in 2016, cautioned that such a huge burden of unsettled cases might bring the judiciary to a standstill, can enhance the cost of justice, may discourage people from coming to court, and they may seek extra-judicial means such as money and muscle for securing suitable solution or remedy of their problems.¹⁰ On 28 April 2019, the then Chief Justice expressed his concerns by stating that the case backlog in Bangladesh has reached a critical state.¹¹

Therefore, unusual delay in disposal of civil litigations is the most serious concern at present in the administration of the justice system in all the courts in

⁵ *ibid.*

⁶ Sekander Zulker Nayeem, 'Access to Justice is a Right for All' *The Daily Star* (Dhaka, 19 March 2019) <<https://www.thedailystar.net/law-our-rights/rights-advocacy/news/three-dimensions-access-justice-achieving-sdgs-1716856>> accessed 20 September 2019.

⁷ *ibid.*, see also, Department of Justice. *A Study on Court Management Techniques for Improving the Efficiency of Subordinate Courts* (Ministry of Law and Justice India 2016) 8.

⁸ After the British period, in order to examine the causes of delay of civil cases, the first Law Reform Commission was established in 1958, which was followed by the 1967 Committee headed by a highly reputed Judge Justice Hamoodur Rahman. After liberation of Bangladesh, at first, Law Reforms Committee was established in 1976 and later another Criminal Law Reforms Committee (for criminal laws only) was established in 1982. See, M. Zahir, *Delay in Courts and Court Management* (Bangladesh Institute of Law and International Affairs 1988) 1-6.

⁹ 'List of Reports/Bills Forwarded by The Law Commission To The Government' (*Law Commission-Bangladesh*) <<http://www.lawcommissionbangladesh.org/reports.htm>> accessed 17 August 2020.

¹⁰ Mizanur Rahman Khan, '5m pending cases by 2020' *The Daily Prothom Alo* (English version, Dhaka, 17 Jan 2017) <<http://en.prothom-alo.com/bangladesh/news/136201/5m-pending-cases-by-2020>> accessed 17 August 2020.

¹¹ Mizanur Rahman, '3.7 million cases in backlog in Bangladesh courts' *The Dhaka Tribune* (Dhaka 16 July 2020) <<https://www.dhakatribune.com/bangladesh/court/2020/07/16/bangladesh-s-courts-collectively-have-36-84-728-case-backlogs>> accessed 08 March 2021.

Bangladesh. Dhaka District Judge Court is no exception. Moreover, Dhaka District Judge Court is more crowded and covers more population than anywhere else.

The present research fundamentally aims to conduct an in-depth empirical study in order to identify the causes and barriers of case backlogs and undue delay which are distinct to the Dhaka District Judge Court. The article also attempts to suggest effective and practicable redress mechanisms so that such inordinate delay can be curbed. Furthermore, this research evaluates the practice and efficacy of recent amendments in the Code of Civil Procedure 1908 (hereinafter 'the Code'). The Code, the principal legislation governing the procedure for civil litigation in Bangladesh, has been amended nine times in the years 1973, 1974, 1978, 1983, 1989, 2003, 2006, 2012, and 2016.¹²

However, this study only addresses changes made since 2003 to the procedure for serving summons, adjournments, restoration of suits for non-appearance of parties, determination of a definite period for providing a written statement, beginning of the final hearing, and completion of the trial. The goal of these revisions was to limit the scope of dilatory techniques and to hold judges more accountable by requiring them to implement measures designed to speed up civil proceedings.¹³ However, there is no recent study or research evaluating the application of these abovementioned amended provisions in the courts and the extent of their efficacy in reducing the delay of civil suits. The present research attempts to examine the current implications of these amended provisions in the tertiary level of the civil court system, particularly in the Dhaka District Judge Court. This research will be useful in formulating national strategy adopting suitable measures and/or enactment or amendment of laws in order to expedite disposal of civil suits.

1.1 Objectives of the Research

The objectives of the present article are-

- (i) To assess the current situation of case backlogs and delays of civil suits in Bangladesh, in general, and in Dhaka District Judge Court, in particular;
- (ii) To find out the causes of delay at the various stages of civil litigations that are distinct to the Dhaka District Judge Court;
- (iii) To learn how the recently amended provisions of the Code since 2003 has been practiced so far in the Dhaka District Judge Court and to understand their implications on the current practices of the Courts;
- (iv) To suggest pragmatic and practicable measures to be taken in order to reduce undue delays and expedite civil proceedings at each stage of a suit in the Dhaka District Judge Court.

¹² Mahmudul Islam and Probir Neogi, *The Law of Civil Procedure* (Vol. 1, 2nd edn, Mullick Bothers, Dhaka 2015) 2.

¹³ Shah Alam (n 2).

1.2 Methodology and Limitation

This study is primarily doctrinal in nature. The majority of the data was gathered from secondary sources, such as prior study papers, Law Commission reports, journals, books, newspaper stories, and so on. It does, however, integrate with non-doctrinal or empirical approaches to examine and validate evidence obtained from secondary sources. Interviews based on a semi-structured questionnaire using both in-person and via email communication have been conducted in order to gain in-depth familiarity with real court practices and problems. The researchers' observations from time to time court visits, as well as their previous experiences as advocates, have been quite useful in writing this paper. The interviewees were the learned advocates, judges from Dhaka District Judge Court, and academics from both public and private universities based on Dhaka.

There are a few limitations of this research. It's worth noting that the judiciary is a delicate target for investigation. The so-called "mindset of confidentiality" in court processes obstructs the availability of research resources and the discovery of genuine malpractice scenarios, causing significant delays. Getting the experienced lawyers to take time out of their hectic schedules for interviews was likewise a difficult undertaking.

2. Situations of Case Backlogs in Civil Courts in Bangladesh, generally, and in Dhaka District Judge Court, particularly

Delay in the court proceedings is a global problem and the world suffers great economic diminution every year.¹⁴ However, Bangladesh being a developing country faces its effect much more severely, and here even access to justice cannot be ensured for all classes of people due to delay in the court proceedings. Access to formal justice and legal entitlements in the courts for poor and disadvantaged people in Bangladesh is limited by a huge case backlog, delays in the disposal of cases, and high litigation costs.¹⁵

The number of total pending cases in all courts in Bangladesh as of 31 December 2016 stood at 3,156,878.¹⁶ According to the Case Statistic Report sent to the media by the Supreme Court of Bangladesh, as of December 2019, the case backlog reached a critical state having a total of 36,84,728 cases in all types of courts across Bangladesh.¹⁷ The Statistic Report explains that the Supreme Court of Bangladesh is

¹⁴ Syed Emran Hosain, 'Delay in justice : An abysmal crisis' *The Financial Express* (Dhaka, 6 September 2012).

¹⁵ Jamila A. Chowdhury, *ADR Theories and Practices* (2nd edn, London College of Legal Studies (South) 2018); See also, Jamila A. Chowdhury, 'Women's Access to Fair Justice in Bangladesh: Is Family Mediation a Virtue or a Vice?' (PhD thesis, University of Sydney 2010).

¹⁶ Mizanur Rahman Khan (n 10).

¹⁷ Mizanur Rahman Khan (n 11).

holding 5,12,685 case backlogs in total- 4,89,068 under the High Court Division and 23,617 under the Appellate Division, whereas the remaining 31,72,043 case backlogs are under the subordinate courts.¹⁸ If the backlog continues at the present rate, the case-log jam may reach 5 million by 2020.¹⁹ Close to this forecast, as of December 31, 2020, the total case backlogs reach a total of 39,33,186 pending cases with the courts across the country; where 34,64,998 of them with subordinate courts, and 4,52,963 with the High Court Division, and 15,225 with the Appellate Division.²⁰

Further, the total pending cases in the all subordinates courts in Bangladesh was 4,75,753 (civil- 4,02,488) and 9,75,760 (civil- 6,46,923) in 2000 and 2010 respectively. The data by ten years indicates the sharp rise of total case backlogs including civil cases in the country.²¹ From 2000 to 2010, it increased by 5,00,07 pending cases, whereas in the next ten years from 2011 to 2020, it increased by 24,89,238 pending cases. As a result, the number of pending cases has climbed by a fifth in the last ten years compared to the preceding ten. The truth is indeed troubling, and it foreshadows a more grim future in Bangladesh's legal system.

Almost all of the people respondents for this study agreed that there is an unusual and excessive delay of years in the final disposition of civil suits. Amongst the respondents about 95% have experienced inordinate delay in the disposal of civil litigations. When we add the 2% who are undecided about the delay in civil litigations to the majority's side, we have 97 percent in support of the delay in disposal. Even more alarming is the fact that 87 percent of respondents believe it takes five years or more for a civil matter to be resolved; roughly 28 percent believe it takes ten years, while the remaining 15% believe it takes 15 years or more..

In February 2014, under the Judicial Strengthening Project (JUST), conducted by the United Nations Development Programme (UNDP) in collaboration with the Supreme Court of Bangladesh (SC), '*A House of Survey Research*' (SURCH) collected raw, case-related statistical data preparative to an analysis of the case flow in Bangladesh's three pilot district or subordinate courts.²² The SURCH scrutinized

¹⁸ *ibid.*

¹⁹ Mizanur Rahman Khan (n 10).

²⁰ M Moneruzzaman, 'Bangladesh Shelves 26 Law Commission Proposals on Case Backlog: Govt acts only on power to remove SC Judges' *The Daily New Age* (Dhaka, 13 August 2021) <<https://www.newagebd.net/article/146283/bangladesh-shelves-26-law-commission-proposals-on-case-backlog>> accessed 1 October 2021.

²¹ Asif Nazrul, Tureen Afroz, and Heather Goldsmith, *A Research Report on Evidence Based Analysis of the Trial Courts in Bangladesh* (United Nations Development Program and UK Department for International Development 2011) 9-13; See also, Mubina Yusuf, 'Mediation under the Code of Civil Procedure, 1908: Legal and Institutional Reforms' (PhD thesis, University of Dhaka, 2021); See more, Aminul Islam, 'Effectiveness of Alternative Dispute Resolution on the Recovery of Non-Performing Loans under Artha Rin Adalat: A study on Nationalized Commercial Banks in Bangladesh' (PhD thesis, University of Dhaka, 2019).

²² United Nations Development Programme (UNDP) and Supreme Court of Bangladesh. *Summary*

randomly selected, closed civil case files from the Dhaka, Kishoreganj, and Rangamati District Judge Courts, which were characteristic of their respective caseloads. The report found that the number of total pending civil cases in Dhaka Judge Court at the end of the year 2011, 2012, and 2013 is 58896, 64840, and 79338 respectively.²³

Based on a survey in three pilot districts—Dhaka, Kishoreganj, and Rangamati—the Supreme Court of Bangladesh and the United Nations Development Program collaborated to produce a study report in 2015 titled "A Challenge for a Change; Timely Justice for All, Court Processes, Problems, and Solutions".²⁴ It was found in this report that in almost three-fourths of the fifteen cases analyzed in Dhaka, the time between the date of the filing of the plaint and the date of decision was greater than six years.²⁵ Even, in 33% of the investigated cases, the time between the date of the filing of the plaint and the date of decision was between eight and more than fifteen years.²⁶ However, it is estimated that in terms of serving justice timely, no District Court case should take more than two years from the date of the filing of the plaint to the date of entry of judgment.²⁷

As data analyzed above indicates, time passes by; reforms are proposed; and, accordingly, laws are amended, but unfortunately enough, the matters in the delay of civil litigations and court practices do not change and litigants suffer as much as they had suffered in the past. The saying that the same litigations are handed down from one generation to the next and likewise has become proverbial.²⁸

3. Causes of Inordinate Delay in Dhaka District Judge Court

The current study, in addition to the empirical study and the authors' observations, drew on a number of past influential studies in order to find the actual reasons as they exist in the Dhaka District Judge Court on the ground. To name in particular, 'the 2015 SC-UNDP initiated Justice Strengthening Project titled, 'A challenge for a Change: Timely Justice for All, Court Processes, Problems and Solutions',²⁹ 'the

Report on Court Services Situation Analysis' (Judicial Strengthening Project, Supreme Court of Bangladesh 2013) <http://www.undp.org/content/dam/bangladesh/docs/Projects/JUST/Summary_Report_on%20Court%20Services%20Situation%20Analysis.pdf> accessed 10 February 2021.

²³ *ibid* 27-30.

²⁴ Supreme Court of Bangladesh and United Nations Development Programme, *A challenge for a Change: Timely Justice for All: Court Processes, Problems and Solutions*' (Judicial Strengthening Project, Supreme Court of Bangladesh 2015) 75.

²⁵ *ibid*.

²⁶ *ibid*.

²⁷ *ibid*.

²⁸ M. Zahir, *Delay in Courts and Court Management* (Bangladesh Institute of Law and International Affairs 1988) Preface.

²⁹ Supreme Court of Bangladesh and United Nations Development Programme (n 24).

1988 research book published by BILIA'³⁰, 'the 2011 Report by United Nations Development Program and UK Department for International Development initiated 2012 project titled, 'Evidence-Based Analysis of the Trial Courts in Bangladesh',³¹ and 'the 2010 Bangladesh Law Commission Report titled, Report on Recommendations for Expediting Civil Proceedings',³².

The findings of the study, which included both theoretical and empirical research as well as the authors' observations, were identical to those discovered in the aforementioned papers. As part of the empirical study, in order to test several age-old conceptions whether they really matter in causing delay, the respondents were asked to choose among fourteen pre-settled factors as reasons for the delay of civil litigations in the Dhaka District Judge Court. The principal factors that the interviewees identified as causes of delay are given below in a table. The number of interviewees that responded to a particular cause of delay is converted to percentage.

Table 1: The Principal Causes of Delays of Civil Suits in Dhaka District Judge Court

No	Reasons for Delay	Percentage and Counts
	There are less number of Judges and courts in proportion to the number of suits and parties involved	72.7% (40)
	Lawyers mostly are passive and reluctant to expedite the suit due to financial interest, and no significant sanctions are practiced to compel disobedient advocates and ensure their compliance with codes, rules, and procedures	67.3% (37)
	Court staff's malpractices for gaining financial advantage from parties are quite common	67.3% (37)
	There are unethical practices in the service of summons leading to inordinate delays to complete such service	63.6% (35)
	Too many adjournments are being indulgently granted in both pre-trial and trial stages, and too much time elapses between individual hearings, or between the filing and disposition of cases	63.6% (35)
	Complex and lengthy execution proceedings	61.8% (34)
	Lack of modern court records and case management facilities	56.4% (31)

³⁰ Zahir (n 28).

³¹ Nazrul, Afroz and Goldsmith (n 21).

³² The Law Commission, Bangladesh. *Report on Recommendations for Expediting Civil Proceedings* (Dhaka, 2010) <<http://www.lawcommissionbangladesh.org/reports.htm>> accessed 25 September 2021.

Complex Procedure for Service of Summons	54.5% (30)
Lack of digital technology	54.5% (30)
Lack of efficiency and integrity of judges	49.1% (27)
Old and un-updated Laws	47.3% (26)
Corruption and delay in copy department in providing certified copies of the judgment	32.7% (18)
Complex Procedure for Payment of Court Fees	21.8% (12)
Congested location and not spacious court premises	21.8% (12)

It is noted that most interviewees think that the less number of judges and courts is the first cause for delay. The authors also emphasize on the fact that the respondents opine that advocates' passive and reluctant role to expedite proceedings and court staff's malpractices and corruption are the second most important factor in delaying civil proceedings. It is well known that the administration of justice is governed by the judges, lawyers, and court staffs together and they each have an important role to play in resolving civil litigations on time. Neither of them can alone do anything.

However, this fact is often ignored and measures are taken bypassing this reality; for example, laws are amended to expedite civil litigations but they did not work out well due to the negative role of lawyers (67.3%), court staffs (67.3%) and sometimes the judges themselves (49.1%).³³ Moreover, the court staffs directly handle a civil suit in the stages of filing a plaint, issuing and service of summons, filing of written statement, discovery and inspection, settling date for the pre-emptory hearing, and also in fixing dates for all stages under the supervision of the Judges. The authors' observation and study also learn that often the overburdened judges heavily rely on their court staffs in these stages which leave the court staffs with unfettered powers to deal with the suits according to their wishes for monetary gain that leads to delay of the proceedings. This fact clearly dictates that the judges even if they are adequate in number and sufficiently skilled, alone could not resolve the problem of delay unless supporting staffs and lawyers who normally manipulate the system does not collaborate sincerely and honestly and unless they are made equally responsible for the malpractices they do.³⁴

In order to get clear comprehension about the foregoing identified causes of delays of civil suits in Dhaka District Judge Court, they are categorized under three distinct headings: firstly 'causes of delay in stages of civil suits'- delay in stages of

³³ It is further discussed herein in paras 5.1 and 5.2.

³⁴ Nazrul, Afroz and Goldsmith (n 21) 17.

civil suits are again discussed under three subheadings, namely, delay in the pre-trial stage, trial stage and post-trial stage. Secondly, other associated reasons are given under the heading of ‘causes of delay by the persons involving administration of justice’ and ‘infrastructural problems’.

4. Delay in Various Stages of Civil Suits

Civil litigation goes through multiple stages, and the Code's provisions are rich enough to allow for lengthy processes. The Code's age-old adversarial legal system, which assures procedural fairness at each level, invariably produces some inadvertent delay, and the system's manipulation generates much more unexpected delay. The summons must be served on the defendant when the plaint is filed, but this is not done in a timely manner owing to an unpaid process fee for a lengthy period. The aforementioned issue is only an illustration; each stage in this manner creates possibility for delays in the disposal of lawsuits.

4.1 Delay in Pre-trial Stage

A civil suit is instituted by the presentation of the plaint.³⁵ Then the service of summons, filing of written statement as a reply to the plaint, alternative dispute resolutions, framing of issues, and discovery and inspection constitute the civil pre-trial stage.

(i) Jurisdictional Problems

The pecuniary jurisdiction of the different tier of civil courts is outdated.³⁶ The limit of the pecuniary jurisdiction results in the concentration of cases in the court of Joint District Judges. Moreover, under the Civil Courts Act, 1887, cases are distributed or assigned to Judges according to the territorial jurisdiction. In that case, many of these courts have a workload that cannot be managed effectively by the Judges and staffs assigned. It means that some jurisdictions may have too much work and others, not enough. The current hierarchy and process of distributing cases to the Judges of Dhaka District Judge Court imposes a significant constraint on their effective utilization

(ii) Delay due to Improper Presentation of Plaint

While the plaintiff relies on documents in his possession or power as evidence in support of his claims, Order 7 Rule 14 of the Code requires him to exhibit them in court when the plaint is submitted, as well as provide the documents to be filed with

³⁵ See, Code of Civil Procedure 1908, s 26 and o 7.

³⁶ The updated ceiling of pecuniary jurisdiction under the Civil Courts (Amendment) Act 2021 comes into effect at the completion of the present research. The authors decide to keep jurisdictional problem as a cause of delay because of its effect in the past cases.

the plaintiff. However, it is observed that when the summons is ordered to be served upon the defendant, only a copy of the plaintiff's statement without copies of documents is served upon him.³⁷ For this improper presentation, when the defendant appears in response to the summons, he seeks adjournments for filing his written statement on the ground that he has to make the inspection of the documents and other issues relied upon by the plaintiff in his plaint³⁸ and thus the process makes a civil suit prolonged. This kind of delay might be avoided if all copies of the relevant documents were annexed to the plaint properly and served upon the defendant with the summons.³⁹

(iii) Delay due to Payment Procedure of Court fee

Payment of court fees is a vital part of a civil suit. Insufficient payment of court fee may be a ground of rejection of a plaint under Order 7 rule 11 of the Code. The calculation of court fees is complex and the advocate has to pay court fees to the Bangladesh Bank through purchasing stamps from vendors. It adds extra steps to the filing process and an extra burden on the litigant to turn to yet another desk that is located outside the court premises. Hence, the problem is that there is no central or one-stop payment of court fee and requisites⁴⁰ rather payments are made at different places⁴¹ which create complexity in the litigation process. The court fee takes at least 2-3 days to process before it can be used.⁴²

(iv) Delay in Service of Summons

An incorrectly presented plaint causes an unintended delay in summons service, but there are also several additional circumstances that purposely create a delay in summons delivery. Delay in issuing summons is one of the crucial problems in the civil litigation system.⁴³ The present system of service of process or summons is defective. After filing the plaint, it takes at least three to four months to issue summons or process to the defendant or witness after filing a plaint.⁴⁴ However, the Code of Civil Procedure (Amendment) Act 2012 has amended the provisions of Order 5 rule 1(1) which prescribes five working days to issue summons.

An investigation to the Nezarat section by the authors, reveals that the amendment has failed to bring desired change to the situation on the ground. Under the present procedural system, the process-server is the most powerful person. Even he can escape his responsibility for his failure to serve summons in time. More often

³⁷ Muhammad Sazzad Hossain, and Mohammad Imam Hossain, Causes of Delay in the Administration of Civil Justice: A Look for Way Out in Bangladesh Perspective' (2012) 6(2) *ASA University Review*.
³⁸ *ibid.*

³⁹ Nazrul, Afroz and Goldsmith (n 21) 15.

⁴⁰ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 31-32.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 33-34.

⁴⁴ Hossain and Hossain (n 37).

summons are returned with an endorsement of ‘party not found’, ‘address not known’, and most of such endorsements are fake and not genuine.⁴⁵ Moreover, if the defendant is clever enough and is determined to evade service of summons, he can easily do so by greasing the palms of the process server.⁴⁶ There is also neither systematic distribution of process between process servers nor any monitoring mechanism of process servers by the Court or *Nezarat* section.⁴⁷

Service by courier was adopted in 2012 with the goal of expediting summons service, however it has been discovered that the method has not yet been implemented in the Dhaka District Judge Court. The post office, which is in charge of delivering the summons to the defendant, was not upgraded. Therefore, delay in service of summons remains the same despite the change of laws.

(v) Delay in Submitting Written Statement

After the amendment of Order 8 rule 1 of the Code, it stands that the defendant must submit his written statement within 30 working days and the court is given the power to provide another 30 working days in case of failure to file it within the first 30 working day period. A written statement on the other hand must be filed within 60 working days; otherwise, the court is empowered to dispose of the suit *ex parte*. Despite of the strict prescription of law, submission of written statement still takes six months to one year.⁴⁸ In practice, often the defendant intentionally does not comply with the time-limit provision for filing a written statement. Rather numbers of frivolous applications and time petitions are filed at this stage before filing a written statement, which causes unnecessary delay in the disposal of proceedings.⁴⁹ The defendant who has no defence is naturally interested in prolonging the trial with a view to putting off the evil day as long as possible. Advocates help the defendant in such cases to prolong litigation by using dilatory tactics.⁵⁰

4.2 Delay in Trial Stages of Civil Suits

The trial stage begins with the opening of the case by the plaintiff and the defendant and consists of the examination of witnesses, production, and exhibition of pieces of evidence, argument, and judgment.

(i) Delay in Peremptory Hearing/Final Hearing (PH/FH)

This stage faces several time petitions and again these petitions face too many adjournments. One of the reasons for the delay in disposal of suits is that the court

⁴⁵ *ibid.*

⁴⁶ *ibid.*, Nazrul, Afroz and Goldsmith (n 21) 14.

⁴⁷ Supreme Court of Bangladesh and United Nations Development Programme (n 43).

⁴⁸ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 83.

⁴⁹ Hossain and Hossain (n 37).

⁵⁰ Nazrul, Afroz and Goldsmith (n 21) 38.

usually puts no bar to grant adjournments and often readily grants it either for the courts' advantage or for the convenience of the parties or under the pressure of advocates. The liberal attitude of the court in respect of adjournment is one of the main causes for the inordinate delay as every such adjournment takes months together. For example, at the stage of hearing and recording of deposition of the witnesses, if adjournments are frequent on the pretext of one after another, the litigant who has come to the court with several witnesses on a particular date would fail to get his witnesses recorded of deposition due to unexpected adjournments.⁵¹ This causes unnecessary delay to civil suit along with an unusual financial loss to the litigants.⁵²

Moreover, witnesses are neither effectively managed nor efficiently coordinated which kills precious times of courts.⁵³ As there is a huge case backlog in civil courts too many cases are fixed for a trial in a day. Due to this case burden over the court, no trial can be concluded in a single day or any legitimate period. Examination- in-chief is the most important part of witness examination but, in Bangladesh from a civil practice perspective, it merely repeats the contents of the plaint that wastes the court's time.⁵⁴ Although the Code prescribes continuous hearing at the trial stage and bars granting any adjournment in the trial stage⁵⁵, it is not followed at all due to witnesses not appearing, overburdening of the court, and so on. Consequently, witness examination consumes 1-2 years of a civil trial.⁵⁶

(ii) Delay in Delivery of Judgement and Drawing of Decree

Order 20 rule 1 of the Code prescribes that the court shall, after the case has been heard, pronounce judgment in open court, either at once or on some future day not beyond seven days. And Order 20 rule 5A provides that a decree shall be drawn within seven days from the date of the pronouncement of judgment. However, a study finds that in Dhaka District Judge Court, it takes one month to six months for the court to deliver judgment and draw a decree accordingly.⁵⁷ 'The dual layer of the process of judgment and decree is an artificial distinction adding complexity and delay to the process with little or no benefit'.⁵⁸ The transfer of judges pending

⁵¹ Muhammad Sazzad Hossain (n 37).

⁵² *ibid.*

⁵³ Nazrul, Afroz and Goldsmith (n 21) 16.

⁵⁴ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 51-53.

⁵⁵ o17 r 1(4), the restriction on the number of adjournments the court may grant at different stages is provided by the Code of Civil Procedure (Amendment) Act 2003, s 7. According to this provision, the court may grant six adjournments without cost and three adjournments with cost at the pre-trial stage. At the trial stage, the court may grant three adjournment with cost for ends of justice.

⁵⁶ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 83-84.

⁵⁷ *ibid* 84.

⁵⁸ *ibid* 55.

judgement is also one of the grounds for delay. The frequent and sudden transfer of judges makes the situation more complex. 'Since the judge who is bound to pronounce the judgment is not the same judge who heard the case in full, it causes further delay in rehearing and preparation time for the judge'.⁵⁹

Moreover, rotation and transfer of judges, meaning that the same judge who heard testimony may not decide the dispute when he/she moves a new jurisdiction, thus seriously impeding the process of continuous trial; the new judge may have to repeat some of the procedural requirements already fulfilled.⁶⁰

(iii) Delay in Execution of Judgement

A judgment is not executed at the instance of pronouncing judgment rather separate execution suit is to be filed under Order 21 rule 10 of the Code. This separate execution suit again consumes time and prolongs the litigation. Sometimes, in the execution stage, to delay the execution intentionally, judgment-debtors take advantage of technicalities and adopt several tactics and tricks.⁶¹ Thus it discredits the judgment and also the decree-holder. Moreover, the state enforcement mechanisms are also inefficient for which a judgment takes even 2/3 years to be executed.⁶²

(iv) Delay in Appeal and Revision

According to an unstructured conversation with the interviewees it is found that in most cases the appellate court did not examine the merit of the appeal or revision at its first place during the admission hearing. Consequently, frivolous appeals and revisions are often filed as a dilatory tactic. It causes a huge delay in completing the trial by the trial court when a suit is remanded to it by any appellate court. Most orders of the court are appealable under Order 43 of the Code. Under section 115 of the Code, revision can be filed to the Court of District Judge against an order of the Court of Assistant Judge, Senior Assistant Judge, and Joint District Judge. Revision may be filed to High Court Division against an order of District Judge Court and Additional District Judge Court, and a decree from all subordinate courts. There is also a scope to file a second revision application against the decision of the District Judge that he passes exercising revisional jurisdiction on the ground of error of important question of law under section 115(2).

It is found that, even before the completion of the trial, appeal and revision applications are filed in every suit several times and at least once go to High Court Division and it takes years that the suit comes back to the trial court.⁶³ Judges are

⁵⁹ *ibid.*

⁶⁰ Ashutosh Sarkar, 'Backlog of Cases' *The Daily Star*, (Dhaka, 18 March 2013) <<https://www.thedailystar.net/news/backlog-of-cases>> accessed 10 September 2021.

⁶¹ Hossain and Hossain (n 37).

⁶² Supreme Court of Bangladesh and United Nations Development Programme (n 24) 55-57.

⁶³ Nazrul, Afroz and Goldsmith (n 21) 39.

helpless to do anything about it even they know such appeals and revisions are filed as dilatory tactics.⁶⁴

Another difficulty is getting certified copies of concerned judgments or orders. The copy department of the District Judge Court is responsible for giving certified copies and the authors observed that it is well known in the court premises that it is not possible to get such copies within due time without giving speed money to the concerned court staffs. The requirement of certified copies is a cause for a delay of seven days on average.⁶⁵ Furthermore, complex procedures and malpractices of court staffs in sending Lower Court Record (LCR) substantially hinder the quick flow of the process of appeals, thus, causing inordinate delay in the appeal and revision stage.⁶⁶

(v) Delay in Interim Matters

One of the popular attitudes of people to file a suit is to harass the opponent instead of getting justice in Bangladesh. Therefore, when any plaintiff obtains an interim or *ad interim* relief, he often becomes disinterested in getting the original suit decided on merit and goes on enjoying the fruits of such an order at the cost of another party. Moreover, often parties are naturally interested in delaying the proceeding so that stay or injunction is continued as far as possible because this stay is sufficient enough for him to teach a lesson to the opposite party. Some advocates also consider interim orders as their victory on the case. Thus, in most cases, the long-drawn battle of realizing interim orders from courts is nothing but a waste of money, time, and energy.

5. Delay Made by the Persons involving Administration of Justice

Delays caused by the persons who are instrumental in the administration of justice and more specifically the advocates and parties to the suit can be termed as intentional delays. Bar and the Bench are the two arms of the same machinery and unless they work harmoniously, justice cannot be properly administered. Advocates in many cases play their role in this delay because greater delay ensures more earnings to them.

5.1 Advocates' Passive Attitude and Reluctance to Expedite Civil Proceedings for Financial Interest

In response to the question on the role of advocates in delaying civil litigation, 54 interviewees responded. Most interviewees were advocates from the Dhaka District Judge Court. Despite their professional bias, about 68% of the interviewees respond

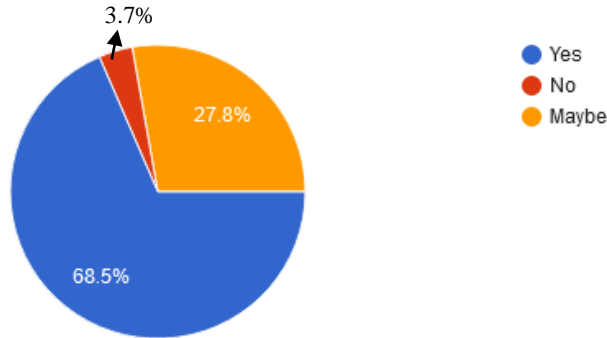
⁶⁴ *ibid.*

⁶⁵ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 56.

⁶⁶ *ibid.*

positively to the question and opine that the advocates do not play an active role in expediting procedures, rather often they are seen to employ dilatory practices. And they do so primarily for financial gain as they charge the clients whether or not the hearing is held. Only about 4% disagree and think that the lawyers do not engage themselves in such roles.

Figure 1: Advocates' Engagement in the Delay of Civil Suits



The financial interest of the advocates is one of the crucial factors to facilitate delay in disposal of suits. Since advocates generally settle their fees proportional to the number of hearings; naturally they tend to stretch a case to as many hearings as are possible by seeking adjournments on a pretext to have fees for per hearing. Moreover, advocates may take advantage of too many procedural applications more often just to delay the suit. For example, in any suit, an application may be filed by the party for (i) calling for particulars and interrogatories; (ii) application for issuing commission for local inspection or recording the deposition of witness; (iii) application for temporary injunction; (iv) application for appointment of a receiver, etc. These applications are of nature to keep a suit pending for a long time and during that time the party in possession of suit property can enjoy the property without any interruption.

5.2 Non-Conducive Relationship between the Bench and the Bar

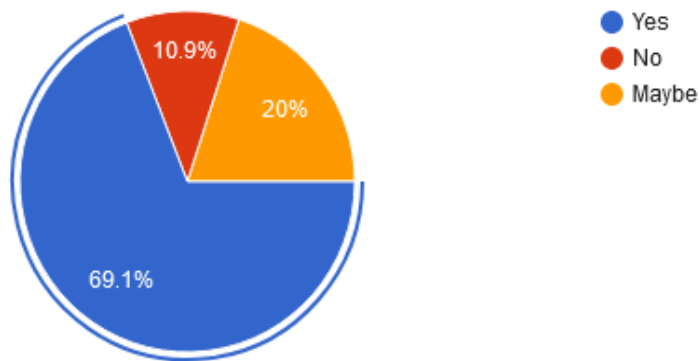
As the authors' observations progress and the interview unfolds, it becomes clear that there are underlying tensions between the Bench and the Bar in the courtroom, which exist or periodically surface. A report observed that

Some Judges voiced concern over their inability to sanction a section of advocates for their behavior that delays the court process. The problem lies with the advocates and not the litigants. If a judge takes action against an unethical advocate, he finds himself fighting the entire bar. The bar does not care what the advocates do; they just tend to stick together.⁶⁷

⁶⁷ Nazrul, Afroz and Goldsmith (n 21) 40-41.

The majority (about 51%) of interviewees admit that such an uneasy relationship of the bench with the bar brings negative impacts on the smoothly functioning of courts. About 35% are unsure whether it directly causes a delay in the proceedings. Only 15% observe that the bar-bench relationship has no bearing upon the court proceedings. In the next question, interviews were asked to comment on whether the positive and comfortable relationship between the bar and the bench expedites the disposal of civil suits. The fact that about 60% of interviewees observe in favour of 'yes' whereas only about 11% observes in favour of 'no' unequivocally exposes 'a circumstantial criteria' for resolving the procrastinated delay in civil proceedings.

Figure 2: Positive relations between bench and bar expedite disposal of suits



The authors put greater emphasis on the issue of building a collaborative relationship between the bar and the bench because it is a precondition- 'a circumstantial criterion', as the authors term it, for resolving the problems of inordinate delay in civil justice. Most time, in any effort of curbing delay in the administration of justice, this crucial circumstantial criterion has been ignored or less emphasized than the reformation of laws and technicalities. The authors argue that without developing a conducive legal culture promoting the collaborative relationship between the bench and the bar, timely justice delivery will be mere paperwork, even the appropriate reformations of laws are in place.

To give an instance from history, the Law Reforms Commission in 1958 suggested quite a several amendments in the procedural laws with a view to eliminating delay in the disposal of cases. To give effect to some of the recommendations, the then Government of Pakistan promulgated the Code of Civil Procedure (Amendment) Ordinance 1962 (Ordinance no. XLIV of 1962). Soon after the promulgation, it was found that the amendments in the Code of Civil Procedure were not received with approval by the members of the bar, the members of the bench, and also the litigant public. Resultantly, all the amendments, save a few, were

later withdrawn by the Code of Civil Procedure (Amendment) Act, 1962.⁶⁸ And, perhaps, due to ignoring the ground circumstances existed in the bar and the bench who can move the justice delivery, either way, the various law reforms since 1947 have miserably failed to have any marked effect on the rate of disposal of cases, even with the increasing number of judges.⁶⁹

Coming to the ground reality in the court premises of Dhaka District Judge Court and all courts in Bangladesh, the SC-UNDP report 2015 exposes the situation which is not promising at all. It stated that complaints are found that the authority of the judge has been apparently usurped by the bar, evidenced by the numerous granting of requests for adjournments from the parties' advocates in individual cases. However, there are also similar complaints that the adjournments are often due to court congestion because a court could not possibly hear the huge number of cases on its cause-list in one day. In addition, a politically divided Bar also leads to tension inside the courtroom where an advocate's political identity can often dominate as a factor of influence.⁷⁰ The authors are of strong opinion that this kind of ill-at-ease relationship among judges and advocates acts as a major catalyst for the unfortunate failure of the recently-made amendments of the Code to bring real changes in the expedited disposal of civil litigations.

Responses of the present research astonishingly reveal that the crucial amendment of the Code that was made a decade ago, relating to service of summons, a prescribed time limit in filing written statement, application for amendments of pleadings, limiting the number of adjournments, in particular, are not yet strictly followed or often not followed at all. Therefore, unless the Bar and Bench build a collaboration towards each other and avoid dilatory tactics with a vibe of positive mentality to accept any change in the justice system that brings timely justice to litigants, no reformations of laws may help the court deliver timely justice at the door of the suffering litigants. In one word, changes must come from within-in the mind of people who are primarily responsible to do the task.

5.3 Filing of False Cases

It is commonly agreed that filing false and vexatious cases is one of the vital reasons for the delay in dispensing justice in Bangladesh. Both advocates and parties tend to file false cases for the financial interest or to harass the other parties respectively. However, it is impossible to assess the actual number of false cases that are filed but estimates from judges and advocates range from 10%-80%.⁷¹ It has been observed

⁶⁸ Zahir (n 28) 4-5.

⁶⁹ Zahir (n 28) 8; See also, Nazrul, Afroz and Goldsmith (n 21).

⁷⁰ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 25.

⁷¹ Nazrul, Afroz and Goldsmith (n 21) 43-44.

that one can file a false case in Bangladesh with “virtual impunity.”⁷² The Code of Civil Procedure (Amendment) Act 2003 inserts section 35A that prescribes that the court may award compensation up to 20,000 taka to the aggrieved party for false and vexatious cases filed by the other party. However, it is hardly practiced in court. The research reveals that people who bring false cases are not prosecuted either because the process is too complicated, or the aggrieved party is already fed up and no longer wants to go for another cumbersome court proceedings, or it goes against the prevailing culture.⁷³

6. Delay due to Infrastructural Impediments

6.1 Inadequate Number of Judges

Most members in the interview (about 73%) speak of an inadequate number of courts and judges in proportion to backlogs of cases as the cause of delay. It makes the lack of courts and judges the most important factor in delaying the disposal of lawsuits. The finding of previous research is that 65% of the lawyers formally interviewed stated that the shortage of the number of judges was a major reason for the backlog in cases. It was also commonly complained by the judges as a problem in the quick disposal of suits.⁷⁴ Of course, the number of judges and courts must be increased to a reasonable proportion to the number of suits filed so that the judges do not become overburdened. However, often it is argued in a way that increasing the post of judges is the panacea for all ills that cripple our justice system.

However, the past experiences may suggest otherwise. For example- in the face of the increasing backlog of cases, in 1989, at the initiatives of the Ministry of Law and Justice of the Government of Bangladesh, the Chief Justice of Bangladesh constituted a Committee of Supreme Court Judges to study the reasons for the delay in disposal of cases. The report⁷⁵ of the Committee noticed with surprise that the backlog of cases continued to rise despite appointing of a good number of judges in 1984. Another study reveals that the problem of backlog continues to rise even after the appointment of a good number of new judges in 2007, largely because of the failure to address the main causes of delay in disposal of cases.⁷⁶

These contradictions suggest that unless the fully equipped *Ejlash* (court room) is ensured for each judge, the number and quality of support staffs are enhanced, the cooperation and efficiency of lawyers are enhanced, litigants are made aware of their

⁷² Hossain, Moran and Stapleton, *Joint Assessment of Prospects for Harmonization within the Justice Sector in Bangladesh*, (CIDA, DFID-WB Trust Fund, DANIDA, GTZ, 2007) paras 82-88.

⁷³ Nazrul, Afroz and Goldsmith (n 21) 43-44.

⁷⁴ *ibid* 59.

⁷⁵ The Committee of Supreme Court of Bangladesh, *Report on the Causes of Delay in Disposal of Cases and Recommendations for their Elimination and Better Management of Courts* (Supreme Court of Bangladesh 1989).

⁷⁶ Nazrul, Afroz and Goldsmith (n 21) Executive Summary.

rights and duties and above all procedural loopholes are thoroughly addressed, recruitment of more junior judges alone could not ensure disposal of the significantly larger number of cases.⁷⁷ This argument is also substantiated by the fact that the judges directly control only a few of various stages of the civil and criminal trial, while the support staff and lawyers could manipulate other processes more easily to delay a case.⁷⁸

6.2 No Centralized Registry Function and other Modern Facilities

There is no central Office of the Registrar in the Dhaka District Judge Court. Advocates and litigants must deal directly with the respective *sherestadar* for each judge, depending upon the territorial or pecuniary jurisdiction of that judge.⁷⁹ For this, the number of cases cannot be distributed evenly among judges. Some are overburdened with cases and some have less number of cases. It decreases the institutional maximum capacity of the Dhaka District Judge Court. Besides, the District Judge Court is composed of many individual judges' chambers or offices, each with its *sherestadar*, *peshkar*, stenographer, pending cases storage, and courtroom. Each judge functions independently. Tasks that should be common to each office run the risk of being performed in a variety of different ways, at the inclination or whim of the respective judge, *sherestadar* or *peshkar*. It also results in the complexity of filing and dealing with cases.

Many judges have to share court rooms with another judge. Judges, *sherestadars* and *peshkars* work in a single room which are cramped, crowded, and ill-equipped with broken, damaged, mismatched or deficient furniture, furnishings, and equipment.⁸⁰ Without an effective organization, suitable office accommodation, and modern facilities, it becomes nearly impossible to prepare for and effectively conduct a hearing on the merits or to timely dispense quality justice. The Dhaka District Judge Court is chaotic, overwhelmed by too much paper, endless numbers of registers, antiquated procedures, and a dearth of managerial control.⁸¹ According to a 1982 report, more than 80% of the judicial officers interviewed felt that they could dispose of cases sooner if provided with modern facilities and if they had more supporting staff.⁸²

The empirical study undertaken for this research also found similar findings. The majority of the interviewees (about 55%) think that lack of modern facilities and digital technology prolongs the disposal of suits. Most of the time, we forget that

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 5, 26-27.

⁸⁰ *ibid.*

⁸¹ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 26.

⁸² Zahir (n 28) 43.

judicial officers are human too. Whereas the offices of the government officers, even the bank managers' offices, and chambers of many lawyers are air-conditioned, courts are not. It is believed that good ventilation and air conditioners will certainly raise the standard and efficiency of judges.⁸³

6.3 Complex Court Records Management System

The District Court records are manual hard copies, and the archives that are maintained need significant modernization and updating. The Dhaka District Court's archives appear disorganized, overcrowded, and in considerable disarray and they are in dire need of a complete renovation and should be equipped with adequate lighting, air conditioning, electrical outlets, etc.⁸⁴ Part III, Chapters 16-20 of the Civil Rules and Order (CRO) Volume I governs the organization of case files, as well as the retention and destruction of official court records.⁸⁵ The CRO is in dire need of modernization and simplification and needs to be translated into the Bangla language. As written, it is much too complex for the average *sherestadar* or registry office employee to understand, much less implement.⁸⁶ For example, the Dhaka District Judge Court's archives are overwhelmed with old, closed records that should be destroyed or consolidated off-premises.⁸⁷ The present study finds that about 56% of the interviewees believe that if modern court records and case management facilities could be introduced, it would have substantially decreased the delay of disposal of suits.

6.4 Crowded Location and Congested Space for Courts

Based on the observations made during the court visits, it has been determined that the location of the court and the amount of space available are the most pressing issues for everyone. The court premise is located in the busiest old city in a narrow area. The court house remains always congested and crowded. Movement in the court premises and from one court to another is a challenging task. About 22% of interviewees observe that congested location and non-spacious court premises and buildings might cause the delay in the civil litigation. Thus is clear that it has influence on overall court administration, and such an environment in the courthouse undoubtedly causes a great deal of misery to litigants, lawyers, and judges.

⁸³ *ibid.*

⁸⁴ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 6, 27.

⁸⁵ *ibid.*

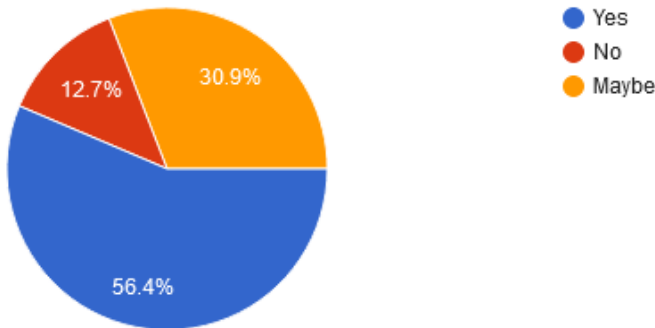
⁸⁶ *ibid.*

⁸⁷ *ibid.*

7. Appraisal of the Recent Amendments of the Code in Expediting the Civil Proceedings in Dhaka District Judge Court

Interviewees were asked whether they think that recent amendments of the Code are effective in expediting the litigation procedure of civil suits. The majority (56.4%) responds positively. Only about 13% think that these amendments are not effective to address the issue of delay of suits.

Figure 3: Appraisal of the Amendment of the Code to Expedite Civil Proceedings



In response to unstructured questions put to them, most of the interviewees agree on the sad fact that the amendments made since 2003 which were made to update the proceedings are not regularly practiced or could not be practiced due to circumstantial realities in the Court. On paras 5.2 and 5.3, the authors argue why these amendments could be made regularly practiced. The paper categorically states that given the findings from empirical data and secondary reports, no amendment will bring fruitful outcome in the administration of justice, if the practicing lawyers, incumbent court staff, and judges do not play a proactive role with skills, honesty, and integrity and acts collaboratively agreeing on the provisions of amendments. No imposition from up- Parliament or Executive, has not been effective and nor will be in the future. Amendment of procedural laws must come from the ground- the bar and bench must agree to them and swear to practice them.

8. Recommendations

The authors of the present research admit that the recommendations given herein are not wholly new because the inherent problems in the justice delivery system remain more or less the same till to date. Our findings substantially match those already given in the previous Law Reforms Commission's reports, research project reports, and elsewhere. In particular, most recommendations given below substantially correspond to those made in the reports of the Law Reforms Commissions of 1958,

1967, 1976, 1983; the 1989 Report of the Committee constituted by the Supreme Court of Bangladesh; the 2010 Bangladesh Law Commission Report and other research projects reports as mentioned in para 3. They are as follows-

- (a) The post of the judicial officer must be increased and so be the number of supporting court staff. The vacant judicial post must be immediately filled up. The Judges must be promoted timely and their leave must be planned and coordinated so that no court goes unheard for a single day.
- (b) Judicial culture must be developed that the lawyers do not seek unnecessary time petitions and adjournments except on urgent circumstances and the Judges feel free to take actions under the law against those who do so.
- (c) The ethical code of conduct of lawyers must be strictly followed and the bar must provide support to trial judges who attempt to sanction lawyers for unethical behavior.
- (d) The court must interfere in the initial stages of the suit by examining the plaint at or before signing on it to correct the valuation and to put an end to the practice of filing plaints with deficit court fees. It will save the huge time of the court at a later stage by preventing the opposite party to seek adjournments. The court must also frame issues by using the judicial mind and not mechanically on the issues supplied by *peshkars* or lawyers but on basis of the materials mentioned in the Order 14 rule 4 and Order 10. It will make the disputes of the suits precise and concrete and consequently save the court time at the trial stage as the court then can take evidence on the settled issues only. It will also provide minimum scope for the lawyers who wish to use dilatory tactics by applying for amendment of issues and seeking adjournments for this purpose.
- (e) The 2012 amendment of the Code regarding amendment of pleadings must be strictly followed that prohibits the pleadings from being amended after the commencement of trial and empowers the court to impose compensation on the objector if the application for amendment is made after the commencement of trial and to delay the proceedings.
- (f) Judicial culture must be developed that trial hearing must be taken place day to day without adjournments except on reasonable ground and the judges and lawyers will act collaboratively for doing so.

- (g) The assignment of cases according to territorial criteria or any other means that do not ensure randomness should be eliminated. Effective use of a random case assignment application would help to ensure that the judges' workloads are equitably distributed and that each judge has approximately the same number and the same type of cases assigned to him or her. Many Judiciaries such as the Philippines use a random lottery system to allocate cases to respective judges.⁸⁸ In the interim, the District Judge should also take active steps to redistribute the caseload of any judge who reports to him or her unmanageable load of pending cases. The District Judge, under section 24 of the Code, has the power to transfer a reasonable number of cases to other similar courts that have a minimum number of cases.⁸⁹ In this regard, the system of case flow management may be gradually institutionalized with the aid of foreign expertise in order to evenly distribute the cases among sitting judges and to monitor the progress of cases.⁹⁰
- (h) The Judiciary should establish a consolidated, centralized Office of the Registrar in the Dhaka District Judge Court.
- (i) Judges must monitor and ensure accountability of their *sherastader* and *peshkars*. These court officers are often involved in malpractices and employ different techniques to delay the process so that they can take undue advantage from the litigants. If the judges carefully monitor their actions, many problems will be solved automatically.
- (j) The summoning system must be updated introducing modern technology. The *Nezarat* section must be improved with modern facilities. The process servers must be given a proper uniform, travel facilities, and adequate travel allowances. The Judges must be strictly directed to proceed to act on either way of service by a process server or post whichever returns first to the court and not to wait for both services to be completed. Modern means e.g. email, SMS, fax, etc should be encouraged to use to send summons as the amendment of the Code, 2012 permits their use too.
- (k) The payment of the court system must be made while filing the case in a one-stop desk where the case and the payment are received at the same time. Digital or online or mobile banking payment systems may be introduced for payment of the court fees which is also in line with the Bangladesh Government's Information Communication Technology (ICT) initiatives.

⁸⁸ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 26-27.

⁸⁹ *ibid* 6.

⁹⁰ Zahir (n 28) 54.

- (l) Alternative Dispute Resolutions(ADR)mechanisms should be encouraged more and both pleaders and judges must act together with *bonafide* intention to make such ADR a success in all appropriate cases.
- (m) The requirement that the Judges have to take the deposition of witnesses and the testimony at hand which is very tedious and time-consuming. They must be well equipped with instruments like Dictaphones, digital recording devices, computers, etc, and well-staffed with a skilled stenographer.
- (n) The practice of the court of taking evidence at the beginning of the trial that the plaintiff with the help of hisadvocatestates the whole plaint word by word which is totally time consuming and unnecessary. Similarly, the defendant has to restate his written statement. This oral repetition of what was already stated and submitted in written form must be dispensed with.⁹¹ This could be avoided by adopting the amendment made in India in 2002. It provides that the examination-in-chief shall be taken place by affidavit and only cross-examination is heard by the court.⁹²
- (o) The dual-layer of judgment and decree should be removed and judgment and decree should be made in the same document simultaneously. It will reduce unnecessary time.
- (p) Measures should be taken to abolish separate copy departments for giving certified copies of judgments and decrees. The task should be assigned to the office of *sherastader*. For this purpose, photocopy machine should be installed in each *sherasta* from which certified copies shall be provided by mere photocopying and sign and seal of the court. For the long term, digital and record-keeping management should be introduced as per the recommendation given by the Supreme Court of Bangladesh and the United Nations Development Programme in their report of 2015.
- (q) The Appellate Court and Revisional Court must scrutinize the application of appeals and revisionsat the admission stage and should not grant leave to frivolous appeals and revisions. Advocates and litigants who file frivolous applications for revisions and appeals should be sanctioned.

⁹¹ The Law Commission, Bangladesh (n 32).

⁹² See, the Code of Civil Procedure 1908 (India), o 18, r 4.

- (r) Bench and Bar dialogue should be initiated to solidify judicial independence and create a reform-conducive environment. In this regard, the Bangladesh Bar Council, as well as the Supreme Court of Bangladesh and the Ministry of Law, Justice and Parliamentary Affairs, should play a pivotal role in initiating a professional and politically neutral (and if necessary bi-partisan) dialogue, separating the day-to-day operations of conducting one's profession from their larger political aspirations. It is also necessary that the Bar should be consulted at both the planning and implementation stage of any new changes to laws and rules involving the court's work processor administration of justice.
- (s) The members of the Bar should recognize and accept their professional responsibility to do their collective fair share to promote a more effective administration of justice in the courts. They should be fully prepared when their cases are called; should actively pursue settlements at every opportunity; should forego requests for unnecessary adjournments, and should avoid anything else that results in needless delay in disposing of their cases.
- (t) The list of witnesses whom the party wants to examine must be submitted before the court within a prescribed time before the trial begins.⁹³ A suitable digitalized system of witness record management for each court for managing the hearing date and compelling the absent witnesses should be developed taking examples of best practices from developed countries.
- (u) The amount of daily and traveling allowances for witnesses should be revised and made realistic for which adequate budget must be allocated by the Government.
- (v) Waiting rooms and seating facilities with an adequate number of restrooms should be provided in the court premises to the litigants and witnesses. A staffed help-desk maybe set up in a conspicuous corner of the court premise which will be the official one-stop information providing point for all court-related information to the public.

9. Conclusion

The findings of previous studies and investigations under the present research as discussed above manifest that the problems in the delivery of civil justice remain and naturally continue to be almost the same as they were in the past. Inevitably, the

⁹³ The provision of the Code of Civil Procedure 1908 (o 17 r 1) in India may be followed.

solutions to resolve the problems as suggested under different influential studies happen to be more or less of a similar kind. The paper, therefore, concludes with greater emphasis that a conducive judicial or legal culture where the bar, the bench, and court staff will collaborate with a positive attitude in support of progress and with keenness to change the way they work must be promoted. Otherwise, any reformative measures taken to resolve the problem of case backlogs in the Civil Courts be it the Dhaka District Judge Court or any District Court will be fruitless. It was seen in the past and so is being seen at present.

The research explored that the amendment made since 2003 which were believed if introduced would reduce the delay substantially in the disposal of civil suits are quite rarely practiced or are not practiced at all in the Dhaka District Judge Court. It was due to the fact that the judges, advocates, and court staff could not change the traditional mindset and prevalent practices or they were mostly unwilling to bring any change in the existing system. That is why the promotion of a constructive legal culture, willing enough to take reformations seriously in their practices is of great significance as stressed upon by the recent 2015 SC-UNDP study report.⁹⁴The paper, therefore, concludes in the following words as put by the above named report-

Only after the professionals of the judiciary embrace the concept and take the actions recommended above with determination, discipline and consistency will timely justice for all becomes a reality.⁹⁵

⁹⁴ Supreme Court of Bangladesh and United Nations Development Programme (n 24) 69.

⁹⁵ *ibid.*