

Delay in Civil Justice System in Bangladesh focusing on Summons and Adjourment Procedure

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1. Introduction

An essential requirement of justice is that it should be dispensed as quickly as possible. Our country provides adversarial character in the civil process so the litigation is party controlled mostly by the lawyers, judges and officers of the court rather than the parties. Delay is one of the main problems in our civil litigation. Delay in judicial process causes backlog, increasing backlog puts tremendous pressure on present cases and vice versa. This process goes on with no apparent remedy in view. Present rate of disposal of cases and backlog is alarming for justice, rule of law and economic development of the country.¹ Most of the delays in our judicial system occur in summon and adjournment procedure. Our judicial still follows the same rules and regulations which was made in British period. There is no use of latest technologies in judicial system. There are lots of loopholes in present procedural system which is mostly misused by litigants and their lawyers. It is highly expected that a case should be decided as early as possible. But due to procedural defects and regular delay, it takes lots of time to dispose a civil suit. It is widely alleged that the existing system of civil justice administration has failed to deliver justice within reasonable limit of time and cost. The ultimate result is that thousands of civil cases are pending for decades. In the light of the above situation, the main objective of this study is to trace out the causes of delay in disposal of civil cases in Bangladesh focusing on summons and adjournment stage.

¹ BANGLADESH CONST. art. 31.

2. Legal Framework and the Problem of Backlog

The structure of civil court is governed by Civil Courts Act, 1887.² The civil courts of Bangladesh are governed by Code of Civil Procedure, 1908 (CPC) and Civil Rules and Orders (CRO). Under Section 3 of the Civil Courts Act 1887, there are five classes of Civil Courts: Court of the District Judge, Court of the Additional District Judge, Court of the Joint District Judge, Court of the Senior Assistant Judge, and Court of the Assistant Judge. Every civil suit has to pass through various distinct stages under the provisions of the Code of Civil Procedure 1908, namely: presentation of the plaint (Order IV and VII); issuance and service of summons (Order V); appearance of parties and filing of written statement (Order VIII); examination of parties (Order X); discovery and inspection (Order XI); admission (Order XII); production, impounding and return of documents (Order XIII); framing of issues (Order XIV); disposal of the suit at the first hearing (Order XV); summoning and attendance of witnesses (Order XVI); adjournments (Order XVII); hearing of the suit and examination of witnesses (Order XVIII); judgment and decree (Order XX).

When a case is filed by the plaintiff, it is registered under Order IV Rule 2 of the Code of Civil Procedure.³ After completion of filing of case, the next stage of civil suit is issuing and service of summons.⁴ The system of Civil Justice in Bangladesh is under heavy stress. Backlog of civil cases is a regular scenario. The mounting pressure of backlog cases is gradually making the judiciary inactive. Delayed justice increases the cost of litigation, causes harassment to the parties, and leads to public frustration. It creates a major threat to the rule of law and destroys the confidence of the general public in the administrative system of justice.

3. Judicial Interventions and Loopholes in Summons Procedure

The provision of issuance and service of summons is contained in Section 27 and Order V of the Code of Civil Procedure 1908. Summons is an instrument of the court used to notify the defendant about the legal action brought against him.

² The Civil Courts Act, 1887, § 3 (Banga.).

³ The Code of Civil Procedure, 1908, Order IV, r. 2 (Banga.).

⁴ Id. Order V, r. 1.

Under Order V of the Code, there are several modes for service of summons:

- Personal or Direct Service: Service shall be made on the defendant in person or to his authorized agent (Order V Rule 12, 15, 16).⁵
- Service by Court Officer: Summons is delivered by the process server (peon) of the court.
- Service by Post: Summons sent by registered post with acknowledgment due (Order V Rule 19A).⁶
- Substituted Service: Where the defendant is avoiding service, the court may order the summons to be served by affixing a copy in some conspicuous place in the court-house and upon the house where the defendant is known to have last resided, or by publishing it in a daily newspaper (Order V Rule 20).⁷

The process of summons service is highly infected by institutional corruption and structural loopholes.⁸ The process servers (peons) do not visit the address mentioned in the summons but write fake return reports sitting in the court premises. Litigants and process servers frequently collude to ensure that the defendant does not receive the summons, which results in ex-parte decrees or enormous delays. Sometimes, plaintiffs intentionally provide incorrect, incomplete, or false addresses in the plaint so that the defendant never gets the information of the suit, enabling the plaintiff to obtain an easy ex-parte order. Furthermore, substituted service through newspaper publication is turned into a mere formality. The notices are published in unknown, low-circulation daily newspapers which are completely out of reach of the common defendant, frustrating the actual purpose of notice.

⁵ Id. Order V, r. 12.

⁶ Id. Order V, r. 19A.

⁷ Id. Order V, r. 20.

⁸ M.A. Chowdhury, A Study on Delay in The Disposal of Civil Litigation: Bangladesh Perspective, 14 INT'L J. SOC. SCI. 45, 48 (2013).

4. Critical Analysis of Adjournment Procedures

Adjournment means to post-pone the proceeding of a case from one date to another date. Order XVII Rule 1 of the Code of Civil Procedure 1908 states that the court may, if sufficient cause is shown, at any stage of the suit grant time to the parties and adjourn the hearing of the suit.⁹ Adjournments are meant to be granted only in exceptional cases, but they have become a regular tool used by litigants and lawyers to protract the legal proceedings indefinitely.

The law provides specific limitations on adjournments:

- By the amendment of 2003, Section 342A was inserted into the Code of Civil Procedure to limit the absolute number of adjournments at different stages of the suit.
- Order XVII Rule 1 provides a cost mechanism, according to which the court shall fix a cost which shall not be less than two hundred taka and not more than two thousand taka to be paid by the party seeking adjournment to the opposite party.¹⁰

However, in actual court practice, these statutory limits and cost mechanisms are rarely applied by the judges.¹¹ Judges hesitate to refuse adjournment requests or impose mandatory costs due to regular pressure from local bar associations, as refusing an adjournment often creates professional conflict between the bench and the bar. Litigants and lawyers employ various tactics to get time, filing frivolous petitions on grounds of illness of the senior lawyer, engagement of the counsel in another court, or the absence of material witnesses. Litigants also regularly misuse revisional or appellate jurisdictions against interlocutory orders of the trial courts. When a revisional application is filed in the higher judiciary, the proceeding of the trial court is stayed for months and years, stopping the trial process completely. Witnesses are also not produced before the court on the scheduled date, requiring sequential adjournments under Order XVI¹² and XVII, which prolongs the peremptory hearing stage.

⁹ The Code of Civil Procedure, 1908, Order XVII, r. 1 (Banga.).

¹⁰ Id. Order XVII, r. 1(2).

¹¹ D.R. Halder, Dynamics of Case Backlog in the Civil Judiciary, 6 D.U. L.J. 112, 115 (2015).

¹² The Code of Civil Procedure, 1908, Order XVI, r. 1 (Banga.).

5. Proposed Solutions and Reforms

A. Digitalization of Summons Service

- The concept of service must be updated by including electronic media. Summons should be permitted to be served via Registered Email, Short Message Service (SMS), and other popular electronic applications.
- Court process servers (peons) must be tracked using GPS enabled devices to confirm their physical movement and presence at the address specified in the summons when preparing the return report.
- Independent private courier agencies should be authorized by the court to serve summons alongside the traditional process servers to ensure transparent and speedy service.

B. Enforcement of Strict Case Management and Adjournment Controls

- The cost provision provided under Order XVII Rule 1 must be made strictly mandatory. If any party seeks adjournment without showing exceptional, unavoidable reasons, heavy exemplary costs must be imposed by the judge.
- Courts must implement a predefined "Case Flow Management" model, where timelines for filing written statements, framing issues, and producing witnesses are fixed and strictly enforced without giving unnecessary relaxation.¹³
- Under Order XVIII, the system of day-to-day continuous trial must be introduced. Once the recording of evidence (peremptory hearing) begins, it should continue daily until all witnesses are fully examined, rather than allowing wide gaps between individual witnesses.¹⁴

¹³ Id. Order XVIII, r. 1.

¹⁴ Law Commission of Bangladesh, Report on Recommendations for Reducing Backlog in Civil Courts 23 (2018).

6. Conclusion

The civil judiciary of Bangladesh is heavily suffering from procedural backlogs that defeat the foundational objective of the administration of justice. The legal provisions regarding summons under Order V and adjournments under Order XVII of the Code of Civil Procedure, 1908, are constantly manipulated by the parties and legal professionals to stretch out the cases. Introducing electronic modes of service, ensuring strict enforcement of mandatory cost provisions for unnecessary adjournments, and practicing strict case tracking will minimize the structural delay, restore public confidence, and guarantee speedy civil justice for all.

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