

## Summary Observations of Challenges Facing the Court System in Bangladesh

The present judicial system in Bangladesh, as in India and Sri Lanka evolved from institutions established during the colonial period. The basic elements of a modern system of civil justice have been in operation for more than a century. There is pride in this long-standing tradition. The leaders of the judiciary are aware of the challenges of carrying forward the best of their traditions into the 21<sup>st</sup> century and adapting the tested principles to a new global, high technology era. In this light they are moving forward with the Bangladesh Legal and Judicial Capacity Building Project.

The constraints and challenges facing the court system in Bangladesh are severe, but not unique. The high levels of poverty and low levels of literacy and education intensify the challenges. However, the high standards of the judicial system in the past and the pride in that heritage are positive forces that may be built upon. Rather than catalogue all the problems that beset the courts, a few observations are set forth below to show some of the obstacles that the courts face. Unless otherwise indicated, these refer to the lower courts, not the Supreme Court.

- There is excessive judicial passivity in managing cases; control rests with the lawyers. The reasons are many but in the District Courts they include, according to reports of some judges themselves, the judges' fear of the lawyers. By way of example, judges report that if they refuse an adjournment, they are severely criticized. In extreme cases an influential lawyer may call the Ministry of Law and complain. The judge may then be transferred to an undesirable post. The ultimate sanction of lawyers against a judge is a strike or boycott. If a judge offends important lawyers, then the lawyers of the Bar Association attached to the particular District Court may go on strike. Although this is rare, the possibility remains. Such a boycott will usually result in the judge being transferred. Lawyers control the court's calendar. If a senior lawyer cannot be present in a courtroom, his junior will obtain an adjournment. There is rarely a serious thought to ask the junior lawyer to handle the matter, however simple.
- The current measure of judicial performance serves as a disincentive to judges to try cases other than the easily disposed of cases or to try more than required. The current work requirement is that a district judge complete trial of 6 "cases" in each of the 11 months that the District Courts are open.<sup>1</sup> Disposition by dismissal for failure to appear do not count; judgments obtained in cases disposed ex parte or on compromise do not count among the 6. Civil appeals count as only 1/3 of a case, although an appeal of a title case or a partition suit can be a time-consuming, laborious job. If a judge does not offend anyone and serves without incident, working his 6 cases in each of the 11 months the district court is in session, seniority will normally control, and a judge can usually be assured he will move up the judicial ladder in the allotted time, retire at 57 and receive his pension.

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<sup>1</sup> District Courts are on vacation during the month of December. The Supreme Court is not sitting for about 2.5 weeks in December, 2 weeks in May, 7 weeks in Sept-Oct and at least one week in March.

- Excessive numbers of cases are listed for trial each day on the judge's calendar, thereby compelling adjournment of most of them.
- Adjournments often suit lawyers' economic interests. In the districts, a lawyer makes a small fee (\$5-15) from his client each time he appears in court to seek an adjournment. Often this is the maximum amount of money a poor client will be able to scrape together at one time. The lawyer in effect has an income stream from praying for adjournments. Speedy trials may not be in his interest.
- The Government is a party in approximately 40% of the civil cases in District Court. Government pleaders are private practitioners working part-time for the Government. It is reported that the Government frequently does not brief the Government pleader or provide answers or documents to him before a scheduled hearing for any number of reasons. Therefore, the pleader will frequently ask for adjournment and the judge as a practical matter will feel compelled to grant it.
- The physical infrastructure of the courts is generally very old and in need of rehabilitation. There are sometimes fewer courtrooms in the District Courts than allotted judges so that two have to share a courtroom, one working in the morning and one in the afternoon.
- Equipment and tools for judicial work are antiquated and even these are in short supply at the High Court and District Courts. Electricity in some Districts is not reliable. There are very few, if any, computers in use in District Courts. Trained operators for the computers are often in shorter supply than the hardware.
- The salaries of those working in the courts are very low. It is an openly-discussed perception that informal payments to the staff of the courts too frequently determine a case's progress, whether a file is lost or found, arrives at the judge's desk or does not, or is selected for trial or not. Too frequently whether and when a case moves from one case event to another is a matter of informal payment.
- In all courts, there is a lack of any authorized ADR mechanism except in family matters. The Code of Civil Procedure does not authorize judges to speak out to encourage settlement. If a district judge did so without positive legal authority to support him, there would be a complaint to the Supreme Court. In addition, it appears that lawyers frequently have little incentive to settle cases.