USING DIGITAL TECHNOLOGY IN CIVIL JUSTICE SYSTEM: AN APPROACH TO JUDICIAL REFORM IN BANGLADESH

Dr. Md. Abdul Alim[1]

I. Introduction

Justice is the concept of moral and legal rightness based on ethics, rationality, law, religion, equity or fairness. It takes into emphasis on the inalienable and inborn rights of all human beings and citizens. The right of access to justice demands all people and individuals to equal protection before the law of their civil matters, without discrimination on the basis of race, gender, sexual orientation, gender identification, national origin, color, ethnicity, religion, disability, age, or other characteristics. Justice is further regarded as being inclusive of social justice. Delay in civil suits is a very big problem in our country. If delay defeats the right to obtain relief then delay in disposal of suit violate the entire rights to parties by the Court (Mohsin, 2008, p. 271). The main cause of delay is outdated laws, procedure, corruption, political cause, separation of judiciary, low quality of judges and Court staff, lack of speedy system, ineffective law enforcement authority, shortage of manpower, lack of legal awareness, social acceptance of justice delivered, influence of money and power, etc. Bangladesh faces serious challenges in civil justice and ranked at the bottom among ninety seven countries in guaranteeing access to civil justice due to its lengthy Court procedures and judicial corruption.[12]Using digital technology and improving ADR mechanism

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[1] Associate Professor, Department of Law, University of Rajshahi, Bangladesh

[2] Bangladesh at the bottom in guaranteeing civil justice, New Age, 29 November 2012, the Rule of Law Index 2012 latest report released by Washington based World Justice Project. India ranked 78th among 97 countries in guaranteeing access to all

could have a great role to avoid delay in Bangladesh. It is a system of *shalish*[3] or arbitration by which delay in civil suits can be removed and dispute could be solved.

II. Corruption in Judiciary

Corruption is the abuse of power by a public official for private gain or misuse of their duty. It may include any organized, interdependent system in which part of the system is either not performing duties, or performing in an improper way which could be detrimental of the original purpose (Sachs, 2013). The abuse of public offices for private gain was a classic definition of corruption. A common belief is that corruption in judiciary is taking bribes by court officers, lawyers and judges. Judicial Corruption refers to corruption related to misconduct of judges, through receiving or giving bribes, improper sentencing of convicted criminals, bias in the hearing, unfairness in arguments and judgment, and other such misconduct.[4] Judicial corruption is more

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civil justice and Sri Lanka leads the South Asian nations in most dimensions of the rule of law. Pakistan shows weaknesses in most dimensions when compared to its regional and income group peers, the report said.

[3] The term '*shalish*', which is usually used in Bangladesh profoundly, refers to a community-based, largely informal process through which small panels of influential local figures help resolve community members' disputes and/or impose of sanctions on them.

[4] Transparency International (TI) in the beginning defined corruption as- 'the use of public office for private gain'. TI later expanded its definition to- 'the misuse of entrusted power for private benefit'. This was seen as necessary in light of the privatisation of public services such as water and electricity, where private companies were subsequently able to dominate the supply of these essential services. The German Federal Ministry of Economic Cooperation and Development has defined corruption as the "behaviour of people who are entrusted with public or private tasks and who, by failing to respect their obligations, acquire unjustified advantages. Corruption - conventionally defined as the use of public power for private gain - is one of the hallmarks of a society governed by the rule of law, as corruption is a manifestation of the extent to which government officials abuse their power or fulfill their obligations under the law. Forms of corruption vary, but include bribery,

interested in bringing money into the Courthouse bank and being a productive banker rather than justice is served and citizens are treated fairly according to law. Corrupt judicial systems not only violate the basic right to equality before the law but deny procedural rights guaranteed by the Constitution. *Justice Krishna Iyer* observed that procedural law is not to be a tyrant but a servant not an obstruction but an aid to justice (Thakker, 2011, p.9). For instance, when a family Court judge is an aggressive feminist then the judge is quite likely to find the men is guilty of domestic violence. Even she did not present more evidence than a complaint and who wants an unfair advantage in a pending suit. On the other side if a criminal Court judge is a dogmatist, then he may be likely to find that a poor man is guilty of robbery or rape even if there is no reliable evidence to support his verdict. A research study conducted in jail by the FBI regarding rape case found that 30% of the convicted men were innocent according to the DNA evidence.[5]

III. Corrupted Court Officers

In Bangladesh the independence of judiciary is in going and side by side it has also awful aroma running in Court premises. In the day to day scenery shows lawyers, judges and Court staff are taking bribe spontaneously and make the case diverted. It is a very common phenomenon in Bangladesh while money taking from clients saying judges demands. So if the independent judiciary is vested upon the deceitful lawmakers, there must be disorders in law and odd situation

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extortion, improper influence by public or private interests, and misappropriation of public funds or other resources. Retrieved from http://en.wikipedia.org/wiki/Corruption assessed on 8 October 2013.

[5] Moazzem Hossaain v State (1983) 25 DLR (AD) 290.

of Bangladesh. The traditional civil justice system nourishes this group of the rural society for many generations. The general people's perception toward the Courts is who gets trapped by the law falls into the mouth of a tiger (Siddiqi, 2003). Both the Bar and the Bench are two arms of the judiciary and when they do not work melodiously, justice cannot be properly administered.[6] The Law Commission of Bangladesh anxiously observed that due to delay in justice, people are starting to lose their confidence in the Judiciary, foreign investment are cutting down.[7]

IV. Civil Justice against Corporation

The civilized civil justice system gives people have a fair chance to receive justice through the legal system when they are injured by the negligence or misconduct of others. Even the misconduct has done by the most powerful corporations, international companies and government. The inefficiency of the governmental management has naturally been accountable for significant delay in disposal of cases where the government is a party. The term 'government' includes State Government, statutory corporations, nationalized banks, universities and any authority which is an instrumentality or agency of the

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[6] ***Understanding How and Why Our Judges Become Corrupt,*** **retrieved from http://www.justodians.org/UnderstandingJudicialCorruption.htm accessed on 8 October 2013.**

[7] Bangladesh Law Commission's (established under the Ain Commission Ain, 1996) Thirteenth Report on
"Proposal for Disposal of Suits and Cases in Subordinate Courts in Bangladesh", pare-2.

government.[8] We would like to admit that the arms, drug and oil industries, big multinational companies, insurance companies, mobile and other large corporations are dominating our political process through decision making. The Bangladeshi people are scared depend on the political system to make corporations accountable. When corporations or buyer agencies act irresponsible occurs by delaying or refusing to pay fair claims, producing unsafe products, polluting environment or cheating their employees and shareholders, the last resort for Bangladeshi people to hold them accountable is in Supreme Court. Then the people needed a big amount of money to file a writ petition. This is why we need a strong civil justice system, and responsibility in protecting common people's rights; workers, consumers, and families rights. If the system provides for fair and effective enforcement of civil justice then it could measures by variables combined to form the following seven sub-factors:

a. People can access and afford civil justice

b. Civil justice is free of corruption

c. Civil justice is free of discrimination

d. Civil justice is free of improper government influence

e. Civil justice is not subject to unreasonable delays

f. Civil justice is effectively enforced

g. ADRs are accessible, impartial, and effective

V. Civil Justice Administration

Civil justice obliges the system be accessible, affordable, effective, impartial, and culturally competent. The provisions of civil procedure

[8] *Rajasthan Electricity Board v Mohanlal*, AIR 1967 SC 1857; *Sukhdev Sing v Bhagat Ram*, AIR 1975 SC 1331; Central Inland Water Transport Corpn. v Brojo Nath Ganguly, AIR 1986 SC 1571.

should be construed liberally and technical objectives should not be allowed to defeat substantial justice (Thakker, 2011, p.7). A hyper technical view should be avoided by the Court. The Indian Supreme Court stated[9],

> A procedure law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedure law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedure law what is given by the substantive law.

Accessibility includes general awareness of the community and appropriate available remedies. This includes availability and affordability of legal advice and representation; and absence of excessive or unreasonable fees and obstacle. Impartiality includes absence of arbitrary distinctions, such as gender, social and economic status, as well as decisions that are free of improper influence by political persons, public officials or private interests. Effective civil justice also implies that Court proceedings are conducted in a timely manner and judgments are enforced without unreasonable delay. Finally, it is essential that alternative dispute resolution provides effective access to justice, while refraining from binding persons who have not consented to be bound by the mechanism.

VI. Reforms in Judicial Administration

The independent judiciary seeks to improve the efficiency of the legal process as a whole and includes reform of the budget process. Budgetary autonomy for the judiciary is to secure funding relating allocation and the share of the budget. Other measures include

[9] *Saiyad Mohd. Bakar v. Abdulhabib Hasan* (1998) 4 SCC 343 p.349, AIR 1998 SC 1624.

strengthening of government prosecutors, legal aid, and procedures for executing judgments. Reform of the procedures for appointing judges and of the rules regarding the length and terms of tenure, disciplining, transfer and impeachment procedures are seen as crucial to improve judicial independence. Sometimes, executive influence over the judiciary has been sought reduced by involving other bodies, such as judicial councils or judicial service commissions in appointment and disciplining of judges and administration of the Courts. The aim of these reform measures has been to strengthen the judiciary to guard the judges against undue influence must be balanced against the possibility for guarding the guardians.

VII. Judicial Capacity Building Project

The Government of Bangladesh would like to develop a strategy for Legal and Judicial Reforms following consultations with civil society, legal professionals and government officials throughout the country. The Legal and Judicial Capacity Building Project covers the first phase of the government's long-term strategy to build a well functioning legal system capable of improving the financial, commercial, industrial and social life of Bangladesh. The project implemented under the leadership of the Ministry of Law and the Supreme Court, with the active cooperation of legal professionals working in both the Supreme Court and the District Courts.[10] The objective of the Legal and Judicial Capacity Building Project was to improve the civil justice system in Bangladesh in order to stimulate private sector development and make

[10] The World Bank, Legal and Judicial Capacity Building Project, retrieved from http://www.worldbank.org/projects/P044810/legal-judicial-capacity-building-project?lang=en visited on 25 May 2014.

the system more accessible to the poor, women and the disadvantaged. The Model includes[11] early managerial intervention by a judicial officer in case preparation, case timetabling, initiating alternative dispute resolution (ADR), and case tracking. The Structure sets out a centralized filing system for all the Courts in a district, replacing the localized filing of cases in each Court. Under the centralized filing system, an administrative judge is in charge of filings and is responsible for distributing cases among all the judges in the district. The Model was being implemented in the Supreme Court, and both the Model and the Structure were being tested with pilot project in the districts of *Gazipur, Khulna, Dhaka, Comilla* and *Rangpur*. However, it was really a good initiatives but outcome seems to be non actionable in civil justice system.

VIII. Reforms in Justice Delivery System

The basic principle of granting equitable reliefs is 'he who comes to equity must come in clean hands' and all the reliefs available in civil justice system are equitable ((Mohsin, 2008, p. 267). In some of the cases of equitable reliefs like attachment, appointment of receiver, specific performance, rectification of instrument, cancellation of deeds, declaratory decrees, Court misuse their discretion power in granting or refusing reliefs (Mohsin, 2008, p. 271). In Bangladesh justice delivery system is based on colonial attitude and so it is not accessible, cheap, informal and speedy. Bangladesh needed a strong mechanism to

[11] The project has four main components: (a) judicial capacity building by modernizing case management and court administration in the Supreme Court and in 23 identified districts of Bangladesh; (b) improving access to justice; (c) promoting legal literacy and public awareness; and (d) legal reform capacity building. Under the judicial capacity building component, a draft "Case Management Model" and a draft "Court Administration Structure" for district courts have been developed.

enhancing the powers of the village Courts for speedy resolution of the disputes both civil and criminal at grassroots with participation of *pro bono*[12] students or lawyers. Again, it is urgent needed to digitalize the records and dockets of the cases at all tiers of the Courts. Overcoming the backlog of the cases in subordinate and higher judiciary State could insert the principles and techniques of the ADR in both civil and criminal cases and at all tiers of the Courts. To ensure access of the poor, backward and vulnerable people to justice State should avoid technicality in civil disputes and reduce of cost of litigation, Court officials corruption, case filling and examine plaint, passing summons to defendant by implementing the modern technique of Court administration and case management.

IX. Reforms in Record Delivery System

Law Commission should work on research and find out developed nations experience especially family matters for protection of the rights of the people related women in property, inheritance and partition cases. State could establish a central land record delivery office so that people can get CS, SA, and RS record's certified copy within a few minutes. This is very much essential to prove a civil case. State can establish same type of registry for registration of the fact of marriage and divorce under different faiths. This diverse category of reform efforts includes reform of laws, Court structures, and bureaucratic or complicated Court procedures. This is important for access to the

[12] The term "pro bono," which is for *Pro bono publico* means for the public good is a Latin phrase. It may include professional work undertaken voluntarily and without payment or at a reduced fee as a public service. *Pro bono* service, unlike traditional volunteerism, uses the specific skills of professionals to provide services to those who are unable to afford them.

Courts, for efficiency, professional discipline as well as for judicial independence.

X. Dispute Resolution Mechanisms

The creation of mediation and conciliation services and other alternatives to resolving disputes in the Courts could reduce Court costs. It can be done by introducing of small claims Courts or justice of the peace and the establishment of Pro bono organization (Messick, 1999, p. 117). The ADR experiment in many countries exposes that ADR is the only mechanism, which settles down the dispute at the early stage of proceedings and prevents lingering of suits before entering into trial stage. ADR works like an anti-biotic against the long process of disposal of suits. Policy should inserted and that could develop the Alternate Dispute Resolution mechanism not only the urban areas but also the rural areas. The village could process 60 to 70 percent of rural litigation leaving the regular Courts in districts and sub-divisions to devote their time to complex civil and criminal matters. The rural people will receive a fair, quick and inexpensive system of dispute settlement if participatory, flexible machinery available at the village level where non-adversarial, settlement-oriented procedures are employed. The Consensual System is a essentially type and process of dispute resolution that requires judges, lawyers and the litigant public to change their century's old mind-set and to adjust gradually to play a combined and co-operative role in the resolution of disputes. In developed countries, judges do not conduct mediation or non-binding arbitration. They are meant for trial of a case. But they have the authority to refer any case, or part of a case for any of the ADR mechanisms, preserving their jurisdiction to try the case if ADR fails. When they do so, there is no appeal or revision against the order.

because that kind of order is passed only when the parties agree with the judge that it should be done.

XI. Using Digital Technology in Civil Matters

The current judicial system in Bangladesh is hand-written one including the deposition, cross examination. The use of information technology will make it more speedy and efficient. So the entire Court system should be computerized. The higher Court should effectively monitor and supervise the works of lower Courts. Monitoring and cases-flow tracking must be done such a way as to know the status of each case, to know its procedural position, to locate documents and records more easily and to reflect everything in transparency plate.

XI.I. Speed the Processing of Cases

It is needed to provide management training by computers to judges and Court personnel for reduces case backlogs. Also revise the procedures for filing civil cases and resolving lawsuits. It takes huge time for return of summons and process officers are so much corrupted in issuing, servicing and return of summons. It would take more than 10 steps from submitting a *Plaint* and moving from *Serestader, Paskar, Najarot* and Judge. Again the Court may make order for dismissal of suit if the plaintiff does not duly deposit the process fees.[13] The dismissal of suit for non-deposit of process fees makes the process unnecessary delay. At the same time the defendant's lawyer raises objection as to the valuation of the disputed property and payment of Court fees. Much time is spent on hearing of the issues relating to valuation, amount of Court fee and jurisdiction of the Court. Today, e-Stamp and other electronic modes of electronic monetary transactions

[13] See Order 9, Rule 2; Order 17, Rule 3 of Civil Procedure Code

to courts are being used to pay court fees in High Courts of Delhi and a few States of India[14]

XI.II. Judicial Reforms with Computerized System

We feel a computerized management information system regarding case management and Court administration should be developed. Training facilities for the judges and Court staff should be updated with modern curricula. Though Bangladesh Government has taken a number of initiatives to the Civil Procedure Code (CPC) in 2012 issuing service of summons, amendment of pleading and to attempt ADR for resolution of cases but section 89A says after filling of written statement if all the contesting parties are in attendance in the Court in person then the Court may pass an order to settle the dispute. Now we could understand lot of time has taken after filling written statement and service of summon procedure. Judges and selected lawyers have been trained in mediation techniques and mediation department should establish before or after filling pleading in out-of-Court settlements.

XI.III. E- Discovery in Civil Litigation

Discovery is changing in reaction to the enveloping use of computer technology. Moreover, cases involve e-mail, fax, mobile, word-processed documents, spreadsheets, web pages and records in internet activity. A tremendous body of professional and academic literature is developing around the issue of computer-based disclosure, discovery, and evidence. In some cases, computer-based discovery can be routine and uneventful. The parties may agree simply to exchange computer

[14] Report on *eCourts Mission Mode Project*, Ministry of Law and Justice of India .Available at: http://doj.gov.in/?q=node 39> accessed on 26th October, 2014.

disks of documents i stead of paper. In many cases, however, computer-based discovery generates disputes over the scope of disclosure, form of production, privilege, and alleged spoliation. The costs of photocopying and transport can be reduced dramatically or eliminated altogether. The time involved in reviewing and organizing evidence can be reduced by using word-searching, sorting, and other forms of computer manipulation. In many of the reported cases on electronic discovery, failure of the attorneys to understand their own clients' computer systems, routines, capabilities, and limitations were at the heart of the problem. For instance, *Zubulake v UBS Warburg* is a case heard between 2003 and 2005 in the United State regarding electronic discovery and in 2012, the plaintiff published a book about her e-discovery experiences titled "Zubulake's e-Discovery: The Untold Story of my Quest for Justice".[15]

XII. Digital Case Management in Civil Trial System

Case management includes detailed scheduling of the history and *prima facie* of a case, after written statement has been submitted. Specifically, case management is designed to reduce dilatory, frivolous, inefficient, and protracted litigation practices that could be replace party controlled

[15] *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309 (S.D.N.Y. 2003). *Laura` Zubulake*, the plaintiff, argued that key evidence was located in various emails exchanged among employees of UBS, the defendant. Initially, the defendant produced about 350 pages of documents, including approximately 100 pages of email. The main and first issues raised were the scope of a party's duty to preserve digital evidence during the course of litigation or even when first acknowledged that a chance of litigation exists. Secondly, lawyer's duty is to monitoring their clients' compliance with electronic data preservation and production (litigation hold). Thirdly, data sampling so that knowledge about costs and effectiveness of the recovering process are known in advance. Fourthly, the ability for the disclosing party needed to shift the costs to the requesting party of recovering inaccessible media (backup tapes, for example).

litigation processes with judge-controlled, sequential steps in the existence of a civil proceeding. Thus, case management leads to a clear identification and narrowing of the legal and factual issues to be decided. For preparing a case for trial particular attention should be paid to the proper use of the rules relating to discovery, inspection and admission in Orders XI and XII of the Civil Procedure Code (in a digital era e discovery is more important to recognize by the Court).[16] It is mainly with regard to these matters that the practice of the subordinate Courts and lawyers are not sound. Many cases are allowed to go to trial without any preliminary preparation with the result that time and money is wasted. Rules 9 and 10 of Order XXVI of the Code empower the Court to issue commission for local investigation.[17] Court can also issue commission for local inspection (Rule 7, Order XXXIX).[18] In both cases it takes a long time to take decision on the report made by the commissioners. In the meantime the whole process of the original suit gets stuck up. The main object of Order 10 and Order 18 of CPC is to empower the Court to examine the parties and witnesses to ascertain the matters in dispute and not to take evidence or to find out what is to be the evidence (Matin, 1995, p. 267). Again, when plaint and written statement was submitted with an affidavit from the both parties then, what should the judge do? Although swearing of false affidavit is an offence of perjury punishable under the Penal Code. It is a grave and serious matter and lenient view is not warranted by the

[16] *Ibid.*

[17] *Abdu v. Akmal*, 20 DLR 304, and *Matasim v. Ismail*,21 BLD 216.

[18] Local inspection and local investigation are the two different matters. Whether there are boundary pillars between certain *mouza* is a matter for local investigation and not local inspection. By local inspection pillars may be found, but whether those are really boundary pillars between certain *mouzas* can be ascertained by a local investigation.

Court (Thakker, 2011, p.308). Where false affidavit is filed by an officer of the Government or public very strict action should be taken.[19] But reality is so different and Court could easily order for economic punishment and dispose of these matters at trial stage using digital technology if the Court thinks appropriate.

XII.I. Supreme Court Cause List

The Supreme Court of Bangladesh signed a deal with a private company to help litigants get information about the status of cases pending in the apex Court. Supreme Court launched these initiatives so that case information more easily accessible to the public. Through launching the system of sending information about status of cases Bangladesh made a step towards a digitalized Bangladesh. The lower Court may introduce the SMS-based system to know the status of case can be accessed by many more people from across the country, via technology already in their hands.

XII.II. Computerization and Monitoring System

We should use a docket system to manage selected high profile or complex cases. The Electronic Filing System (EFS) and Integrated Electronic Litigation System (IELS) eliminates the need for manual delivery of documents as files can be electronically routed and accessed by different users at the same time. EFS automate certain checks on documents and automate the calculation of Court fees and automatically deduct fees from the lawyers or clients accounts. This makes the process fast, convenient and efficient.

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[19] *Nanguneri Sri Vanamomalai Ramanuja v. State of T.N.* 1996 AIHC 204.

XII.III. Digital Transcription System (DTS)

In the traditional system like Bangladesh, judges used to take down notes of the witness speech, cross examination, evidence and so on in civil cases. Shorthand reporters are available only in some Court officers. Now tape recording becomes available. Now a day the developed nations have progressed to the Digital Transcription System (DTS) in their Court which facilitates the digital audio recording of all open Court hearings. The digital audio record, which forms the official Court record, also forms the foundation for the preparation of transcripts. It is an expensive service, paid for partly by the Courts and partly by the parties. Parties still have the option of asking the judge to record the evidence manually but this is not often resorted to as the saving in transcription costs is often exceeded by the costs of an extended trial.

XII.IV. Audio and Video Conferencing

Videoconferencing is viewed as a way of reducing costs and security risks by preventing the need to transport people's in-custody to and from detention facilities in the criminal context. Similarly, it may also reduce the expense of witness and counsel travel to Courts in the context of both criminal and civil cases. However, for civil litigants requesting use of Court videoconferencing facilities, the associated equipment, telecommunications charges, any charges for use of other videoconferencing equipment and any costs associated with bridging external systems with Court systems must also be taken into account. Audio conferencing is specifically available for use in the transmission of testimony and for purposes of cross examination. CCTV is also used to allow vulnerable witnesses (e.g. child witnesses and witnesses in high security trials) to testify from secure locations

outside of the Courtroom. Bangladesh could use assistive devices for persons with disabilities like FM and infrared listening devices and teletypewriter (TTY) equipment and software and *Braille* printers in the Court.

XIII. Suggestions and Conclusion

In Bangladesh lower Court judges have lack judicial experience and least knowledge how to use discretion power. Court could exercise discretionary power in addition to its inherent power for the end of justice and to prevent the abuse of the process of the Court (Mohsin, p. 246). As example, in case of injunction there are specific guidelines for granting injunction e.g. *prima facie* case, irrespective lose and balance of convenience. The Court sometimes grants or refuses granting relief without considering the circumstances of the cases.[20] In a trial stage witnesses are to be examined (examination in chief and cross examination) unstopped once recording of evidence starts and adjournment should be allowed only when there is genuine ground but it should not be in any case more than three days. There should be clear-cut provision that examination-in-chief and cross-examination of a witness must be completed on the same day or on the consecutive day (Hossain and Hossain, 2012). Judgments of both civil and criminal cases have to be passed within 10 days of argument and it should be maintained under any cost. Tendency of some judges to dispose of appeal by sending it back for retrial must be strictly monitored. The following suggestions could make civil justice more effective and can reduce back lock inserting modern technology in the Court proceedings.

1. There should be provision for maintaining timeframe for each chronological step ranging from filing of the case to disposal of the case and there should be a limitation on submitting time petition.

[20] *Ibid.* 270.

2. All presiding judges irrespective of ranks are to be trained with computer rather than provided Steno-typist and if possible all are to be made accessible to computer. All Judges are to be provided with secured residential accommodation and safe transportation facilities for going to and coming from Court.
3. After reaching of the cases to peremptory hearing no interlocutory applications and petitions relating to amendment of plaint and written statement should be entertained unless there is serious exigency and this should be ensured even by amending the CPC. One of the causes for delay in civil suit was frequent amendment of pleadings even at the stage of argument. This kind of amendment at such belated stage sends back the case to its initial stage.[21]
4. Allow people to transmit their pleading to the Court and allow the Court to receive that pleading and store it scanning and preserve in Pdf file or on e-mail or specific online storage area. Existing practice of taking evidence is time consuming. At the beginning of the trial, the plaintiff with the help of his lawyer states the whole plaint, which was written in accordance with his advice and submitted before the Court. Similarly the defendant has to state whatever was written in his written statement. This oral repetition of what was already stated and submitted in written form can be dispensed with.
5. Certain amendments can be made as regards Rule 4 of Order XVIII and Rule 1 of Order XIX of the Code of Civil Procedure and the Evidence Act, 1872 to effect the proposed changes in taking evidence in civil suits. It is already in Rule 1 of Order

[21] In 2012, BD Govt. made an amendment on Order 6 Rule 17.

XIX that in exceptional circumstances, the Court can order that any particular fact may be proved by affidavit. In that case no oral testimony is needed to prove the fact.

6. The statement in the plaint can be treated as evidence of the plaintiff, and similarly the statement in the written statement can be treated as evidence of the defendant. Courts need not write down the statement of plaint or written statement. The original documents necessary to prove one's own case may be required to be submitted along with an affidavit at the time of trial and those will be given exhibit mark in accordance with the provision of the Evidence Act.
7. Allow the parties and/or witnesses to "appear" in ways other than in person (eg videoconferencing, teleconferencing, pre-recorded evidence).
8. Presently parties need to file a separate execution case to execute a decree, although it is the continuation of the original suit. It is suggestible that a party be allowed to submit a petition in the original suit (as a part of it) to start an execution of a decree. There is no need to file a separate case in this respect and thereby there is no need to call for the records or submit any other document to start execution process.

At present the document which is less than thirty years old needs to be proved by the executants or the attesting witnesses who signed the document no matter whether other party raises any objection or not.[22]

[22] Evidence Act 1872 section 90 says, "Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed

The certified copies are to be proved after bringing the volume from the Sub-Registrar's office. And the party who is the holder of the document has to bear all the expenses of proving his document. Instead of this practice, any original deed and certified copies of original deed no matter how old it is can be taken as evidence directly unless an allegation of false personification is raised by any party. If any party raises specific allegation of false personification, only then the documents may be required to be proved, and all the costs of proving such document must be borne by the party who raises such objection. Relevant documentary provisions of the Evidence Act need to be amended in this respect.[23] This will not only prevent delay in proving documents but will also discourage the disputant parties to raise unnecessary objection against the authenticity of any document. In most cases the trial judge gives decree without cost, not showing reasons for it, which he is under obligation to do. Decree with adequate cost is likely to reduce the number of false and frivolous cases. Order 10 rule 2 provides that at the first hearing of the suit, the Court shall with a view to elucidating matters in controversy in the suit, examinee

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and attested." (Remember not contents of documents). Presumption is mandatory not permissive presumption and especially permissive is dealt in section 90 of the evidence act. Permissive presumption means it is on the court discretion whether to believe or not to believe. Thus Section 90 deals with the presumption which may be drawn in favour of document of thirty years old. The period of thirty years must be reckoned from the date, the document purports to bear and if the document is undated then no such genuineness can be raised under this section. Further the other necessity which needs to fulfill is that the production of 30 years old must have been produced from the custody, which in the opinion of the court is proper. The document should also be free from suspicion and anonymous.

[23] Document means any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter. Like Sketch, caricature, cartoon, picture, drawing, map, plans, photograph, inscription on metal or stone or leaf.

orally such of the parties to the suit appearing in person or present in Court, as it deems fit, and may orally examinee any person, able to answer any material question relating to be suit, by whom any party appearing in person or present in Court or his pleader is accompanied (Rabbani, 2008, p. 305). Thus, this provision casts a duty on the Court to examine the parties orally before settling the issues. In practice, however, this provision is simply ignorant and issue is invariably raised from the pleading of the parties examines the parties orally, it is quite likely that many a time truth will come out immediately in spirit of what is started in the pleading. Certain provisions, on the other hand, are not properly applied e.g. section 99 and 99-A have not been usually pressed into service by Courts or even by parties. Similarly, sections 35-A and 35-B compensatory costs in respect of false or vexatious claims or defenses' and causing delay are rarely used by Courts or even by litigants (Rabbani, 2008, pp. 46-48.). Order 41 rule 3-A prohibits an appellate Court to grant stay when the appeal is time-barred, in many cases appellate Court grant stay or injunction subject to the limitation being condoned this is clearly contrary to be legislative intend reflected in Rule 3-A. Similarly, in spirit of the specific provision in order 41 Rule 23-A for ordering remand when the case does not fall within the sweep of Rule 23 or Rule 25.[24] Generally as far we know, it is not resorted to by appellate Courts. Sometimes, the government files an appeal even though there is not substance in it. In *State of Maharashtra v. Narayan Vyankatesh Deshpande*[25], the Supreme Court had to observe:

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[24] Order 41 of *Code of Civil Procedure, Act V of 1908.*

[25] *State of Maharashtra v. Narayan Vyankatesh Deshpande*, (1976) 3 SCC 405, AIR 1976 SC 1204.

> It is indeed difficult to understand as to why the state of Maharashtra should have prepared the present appeal all. We do not think it is right that the state Government should lightly prepared an appeal in this Court against the decision given by High Court unless they are satisfied, on careful consideration and proper scrutiny that the decision is erroneous and public interest requires that it should be both brought before a superior Court for being corrected. The state Governments should not adopt a litigious approach and waste public revenues on fruitless and futile litigation were their no change of success.[26]

On 7th August, 2014, in a historic verdict which has influential connotations on all future cases. Division Bench of Chief Justice *Manjula Chellur* and Justice *Asim Banerjee* of Calcutta High Court dismissed an appeal filed by West Bengal Medical Council (WBMC) which prevented "live" internet videoconferencing from USA to permit, Dr. *Kunal Saha*, to appear "in person" for conducting cases. As, Dr Saha consented to bear all expenses for videoconferencing, the bench of High Court, allowing so, declared that there should be no reason for the state medical council to object against "live" videoconferencing. It could help Dr. Saha to participate in cases from USA without coming down to Calcutta, as *Dr Saha* is based in Ohio. So, doctors, police officers, jail authority and experts need not to cancel their high expense of service in their own offices or laboratories. Court, hospitals, jail can simultaneously share their presentations/evidence/documents and other information online in a secured mode of electronic transaction. Now this is an age of digitalization and blessing of science through the use of digital means Bangladesh can improve the existing civil litigation system.

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[26] Ibid, at p. 407 SCC at p. 1206 AIR.