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Judiciary must take bold steps to get rid of backlog of cases

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Judiciary must take bold steps to get rid of backlog of cases

Zahidul Islam Biswas

Backlog of cases appears to be a common predicament of the judiciaries worldwide. Countries from both developed and developing world have been facing this problem more or less alike. However, this difficulty for Bangladesh judiciary seems going from bad to worse every year. According to latest annual report on the judiciary, still the Appellate Division of the Supreme Court has 8,997 cases pending, the High Court 2,62,349 cases and the judicial magistracy 6,02,173 cases as of December 31, 2007 although the disposal rate of cases has increased.

It is a matter of hope that the judiciary after being formally independent on November 1, 2007, has shown its efficiency to a good extent. After the separation of the judiciary from the executive and with the introduction of judicial magistracy, the rate of disposal of criminal cases in the courts of magistrates increased by 51 per cent in December 2007 in relation to the cases disposed of by the judicial magistrates in November 2007.

According to the said report, 5,63,344 cases were pending with the judicial magistracy as of November 1, 2007 and 34,131 cases were filed in November 2007, while the magistrates disposed of 33,104 cases. On December 1, 2007, the judicial magistracy had 5,64,371 cases pending and 87,789 cases were filed in December 2007, while 49,987 cases were disposed of. On an average, 137 cases were disposed of by each of the 242 judicial magistrates in November, in a month after the judiciary became independent of the executive.
However, while there are a huge number of cases pending and the rate of filing cases is greater than the rate of disposal indicating increase of caseload every year, it is certain that judiciary will have to bear the huge backlog of cases on its shoulder for an uncertain period of time unless special steps are taken to heal the cancer of the judiciary.

Understandably, this problem is not just a setback of the judiciary, but it is a great predicament of any nation. Backlog of cases obstructs the 'access to justice' which is considered to be the 'most basic human rights', as 'access to justice' does mean not only the presence of justice mechanisms like courts, tribunals etc. but also the ability of those mechanisms to deliver affordable and timely justice to the citizens. Backlog of cases does not only delay the disposal of cases and impose huge expense on the justice seeker but also perpetuates tensions among litigants.

For this reason fighting against this judicial handicap is getting more and more importance globally day by day. Bangladesh realizing the gravity of the problem started tackling the problem long ago. First attempt to tackle the backlog of cases was to establish a number of tribunals to deal with disputes from some specified areas. The underlying assumption for establishing various tribunals was that in the existing adversarial judicial system the formal trial procedure takes a longer period of time. This is because of their strict following of Code of Civil Procedure or Code of Criminal Procedure. By contrast, the tribunal as a special justice mechanism following suitable speedy procedure for dealing with some disputes of specific areas could be better equipped to deliver timely and inexpensive justice. But it seems that the history of tribunal does not confirm this assumption. Bangladesh's special tribunals have failed to contribute in improving the caseload situation of Bangladesh judiciary.
The next attempt, that was taken more than a decade ago, was to introduce ADR (Alternative Dispute Resolution) mechanisms, which includes mediation and conciliation, among others. In Bangladesh's adversarial judicial system, trial procedure is dominantly controlled by the lawyers of the both sides of litigation, where the judges play minimal role to control the trial. Lawyers takes repeated time to make them well prepared for dealing with the case, or for sometimes to frustrate the aim of the case itself by delaying its progress. ADR is introduced against this backdrop. One example of that is introducing mediation in the family courts of the country. It is claimed that the ADR programme in family courts is a great success, and following that success scope for ADR is created in all other civil courts by amending the Code of Civil Procedure. The previous government was even planning to introduce ADR in criminal courts also.

It is mentionable that there are serious arguments against ADR; however, I am not going to rehearse that discussion here. Simply put my argument is that given the nature of disputes and cases, all these cannot be sent to be resolved through ADR mechanisms. Moreover, if Bangladesh's social structures, power practice and litigants' mind are taken into account, how much ADR can contribute in other critical civil and criminal cases is uncertain. Moreover, sociologists such as Laura Nader have argued that even the American ADR models, which are often cited in India and Bangladesh now, actually divest the poor of justice. Similarly Galanter has argued that the informalism introduced by Lok Adalats is a debased form of informalism since it bypasses law rather than ensure that good law is available to all. Hence, the demand for strengthening the formal courts of law than relying on ADR finds persuasion in these arguments.

However, the point to discuss here is that all the times there were some attempts of legislative changes to deal with the backlog of cases. Time to time, various special laws and procedures have been made, and both Code of Civil
Procedure and Code of Criminal Procedure have been overhauled to respond the need of speedy justice. But evidently Bangladesh judiciary has failed to deal with its enormous backlog of pending cases, denying its citizens right to justice.

Understandably, all these abovementioned attempts were made considering only some aspects of the backlog of cases. In other words, these attempts were piecemeal ones to tackle the judicial malaise. Consequently success was also piecemeal, not comprehensive or overwhelming. It otherwise reveals that for an overwhelming development of the 'caseload situation' there is a need for a comprehensive approach to analyse the entire situation and take comprehensive actions that will weightily take into consideration the administrative and financial aspects, among others, of the judiciary.

Generally, the state of court administration is considered a great contributing factor in the backlog of cases. In the case of Bangladesh, we see the judge-population ratio is one of the lowest in the world. I don't have exact data in my hand this moment, but I guess the ratio is not more than 12/13 judges per million population. Comparing to developed world's judiciary, the ratio may evoke disbelief among many of us. A paper shows that even twelve years ago the numbers of judges for per million people were 41 judges in Australia, 75 in Canada, 51 in England and 107 in the USA.

In developed country's judiciary, along with judge-population ratio, another aspect which is taken equally importantly or more importantly is the ratio of case management staff number of cases. Court administration cannot succeed without the unstinted support of the Court staff and its Registry. In fact, they are the backbone of the system and the administrative burden really falls on them. Though there is no data as to this ratio in Bangladesh, undoubtedly it is also one of the lowest in the world.
While the unjustified shortage of court staff is contributing mismanagement of trial, proceedings and records, the ancient or traditional management technology have been worsening the situation. Most of the case management work - for example maintaining case files, keeping records of document and evidence, writing warrant, summons, notice, order, judgment etc is done manually, following century old format. Many developed courtiers, like USA, Australia, United Kingdom, Canada, who had faced same type of case management problem due to shortage of staff have been gradually overcoming this by introducing 'e-management' of cases. Their experiences show that by using modern information technologies like computer data base and internet etc. these case management problems can be overcome to a great extent even with the existing 'insufficient' number of staff. Hopefully, 'modern technology has been introduced in the management of court and cases that will help in bringing transparency to the judiciary', as the immediate past chief justice of Bangladesh recently said at the launch of the 2007 annual report of the judiciary.

Along with all these comes the role of law enforcing agencies, i.e., the police department. Criminal justice system is very much dependent on police and thana administration. Corruption in the Bangladesh police administration contributes heavily in the malaise of Bangladesh legal system. Without taking care of this department, nothing good can be expected overnight from the present independent judiciary.

No doubt, for improving court administration, the number of judges and management staff and infrastructure development is must, for which huge financial investment is necessary. In Bangladesh, the expenditure on judiciary in terms of GNP is again one of the lowest which is not more than 0.5 percent I guess. On the contrary it is 4 per cent on the average in other developed countries. Considering this trivial financial care of the judiciary, the poor administration of justice in Bangladesh is not inconsistent.
While this is a general discussion on the causes underlying the backlog of cases Bangladesh judiciary, the concerned experts are expected to reveal more causes. The point here is that for getting rid of the backlog of cases all these expressed and hidden causes have to be taken into account.

Now Bangladesh Judiciary is separate from executive. This separation is a result of a long struggle. It is now the responsibility of the judiciary to reap the benefits of being independent and to stand by the justice hungry people of the country. However, after separation of judiciary form executive, the judiciary is theoretically independent; practically it is still dependent upon the other partners in government, i.e., the executive and legislative branches of government, specifically in cases of legislative changes, police cooperation, allocation of national budget for judiciary etc.

In such a position judiciary must make a clear vision of how much time and in which way it wants to overcome the suffocating backlog of cases. Then it has to convey its vision to other partners of the government and convince them so that they cooperate to fulfil that vision. And at the same time judiciary must update the common citizens on this vision for upholding their confidence in judiciary. But, above all, the judiciary must be cautious that it does not sacrifice access to 'justice' for the sake of 'access' to justice.