



Timely Justice for all in Bangladesh

# A CHALLENGE FOR CHANGE

*Court processes, Problems and Solutions*



**Supreme Court of Bangladesh  
&  
United Nations Development Programme**





*Empowered lives.  
Resilient nations.*

## Timely Justice for All in Bangladesh: Court Processes, Problems and Solutions

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Supreme Court of Bangladesh  
&  
United Nations Development Programme

2015

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Complex procedures, case backlogs, and a lack of effective case management are key constraints to the court system in Bangladesh. They put pressure on the capacity of the system, and create challenges for citizens in accessing justice. UNDP supports the judiciary of Bangladesh to strengthen its capacity by reducing these constraints. This will in turn provide a sustainable foundation for citizens of Bangladesh, in particular women and vulnerable groups, to access justice.

This report is a result of a year-long a detailed analysis of case workflows, and aims to map the business processes of the courts. By analysing the different stages of a court case it provides evidence-based insight to support decision-making. It identifies causes for delays in court cases, areas that potentially undermine the efficiency in courts, and outlines key obstacles within the courts themselves to ensuring equal access to justice for all citizens.

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## Glossary of KEY TERMS

**Additional District Judge:** A Judge of a Civil Court. District Judge includes Additional District Judge. S/he shall have concurrent jurisdiction with District Judge in respect of judicial matters. S/he does not have administrative power as of District Judge.

**Assistant Judge:** A Judge of the first instance of a Civil Court with the pecuniary jurisdiction to hear and dispose of the cases not exceeding value of BDT 200,000.

**Senior Assistant Judge:** A Judge of the Civil Court with the pecuniary jurisdiction to hear and dispose of the cases not exceeding value of BDT 400,000.

**Bangladesh Bank:** The central bank of Bangladesh.

**Bangladesh Bar Council:** Bangladesh Bar Council constituted under the Bangladesh Legal Practitioners and Bar Council Order 1972. The main function of it, is to admit persons as advocates on its roll.

**CMC:** Case Management Committees of District Courts existing in the pilot districts of the JUST Project (Dhaka, Kishoreganj, Rangamati, Rajshahi and Rangpur).

**CPC:** Code of Civil Procedure, 1908.

**CRO:** Civil Rules and Orders.

**District Judge:** District Judge shall mean the Judge of a principal Civil Court of original jurisdiction. S/he is senior-most judge of a particular District.

**Hajira:** Appearance (of the party/ies).

**Joint District Judge:** A Judge of the Civil Court with the pecuniary jurisdiction to hear and dispose of the cases irrespective of the value of the subject matter.

**Judicial Reforms Committee:** A seven members committee headed by a Judge of the Appellate Division including six Judges of the High Court Division of the Supreme Court of Bangladesh vested with the power of formulating and implementing judicial reform initiatives by the Chief Justice of Bangladesh.

**MoLJPA:** The Ministry of Law, Justice and Parliamentary Affairs.

**Nazir:** The chief of staff of the Nezarat.

**Nezarat:** A central administrative office of a court dealing with service of summons, etc.

**Peshkar:** Bench clerk/Bench assistant of a court.

**Plaint:** Pleading of the plaintiff i.e. is written complaint of the plaintiff as to his claim. A suit is started by presentation of a plaint.

**Process Server:** Court staff who manually delivers court processes to addresses of defendants.

**Sheresta:** An administrative officer or a ministerial officer attached to the court.

**Sheristadar:** An administrative officer assigned to each judge who sits in a separate room called the Sheresta and can receive a plaint/suit on behalf of the Court.

**Small Causes Court:** Courts dealing with disputes not exceeding value of BDT 25,000.

**Written Statement:** Pleading of the defendant i.e. reply of the defendant.

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## Acronyms and abbreviations

CMCs	Case Management Committees of District Courts in the pilot districts of the JUST Project (Dhaka, Kishoreganj, Rangamati)
CPC	Code of Civil Procedure, 1908
CRO	Civil Rules and Orders
JIU	Judicial Intelligence Unit
JUST	Judicial Strengthening Project
LCR	Lower court records
MoLJPA	The Ministry of Law, Justice and Parliamentary Affairs
TC	Technical Committee

## MESSAGE



A strong foundation for the rule of law, a key pillar of democracy, rests on a court system that is independent, transparent, and effective. Bangladesh has a strong and competent judiciary but backlogs and outdated administrative systems impede justice delivery system and more work is needed to making justice services more accessible, acceptable and affordable.

I am pleased to see that UNDP in partnership with the Supreme Court prepared this research from which quality recommendations have emerged. This study has identified both short and long term actions needed to make court processes more speedy and efficient to serve their purposes. However, without proper implementation these ideas would remain obsolete. Judges and lawyers have to take effective steps towards application of short-term recommendations emerged from this report and use them as guiding principles in a day-to-day judicial and legal work.

We are living in a changing complex society where the science and modern technology has close impact on the pattern of human behavior and lifestyle that has given rise to the disputes and offences of various natures. To solve civil disputes and detect the perpetrators involved in commission of offences, there is no alternative but to fashion both procedural and substantive laws of the land.

As the Bangladesh Judiciary continues its efforts to establish a fair and transparent justice system free of backlogs and delays, the analytical report is important to promote the reforms.

I expect this study will contribute to removing the case backlog and its associated problems, to ensuring access to justice for poor and marginalized groups, and to ensuring the public trust in the judiciary.

**Justice Surendra Kumar Sinha**  
Chief Justice of Bangladesh

## MESSAGE



This timely study of the justice sector in Bangladesh provides a detailed analysis of case workflows with a purpose of mapping out business processes of the courts. By analytically breaking down the stages of a court case it builds increased insight based on evidence to support decision-making. It identifies causes for delays in court cases, areas that potentially undermine the efficiency in courts and it outlines key obstacles within the courts themselves to ensuring equal access to justice for all citizens.

The conclusions of this report are that some of the dynamics driving court cases through the justice system are limiting access to transparent and efficient justice. Delays in concluding court cases are not new, and neither are they unique to Bangladesh. But the end result is a growing case backlog, delayed and long drawn out cases, and economic losses for the parties involved in a case that encourages a loss of public confidence in the judiciary overall.

Looking forward the real value of this business process mapping report is that it identifies in concrete terms areas to improve the justice sector at its very core- which is process driven. As a living document this is not intended to be a static piece of research but one that evolves with change, assisting to identify bottlenecks in the workflow of the courts, and as a result enabling reform aimed actions to target these specific areas. Business process mapping is a tool that can expand with reform, not merely, a one off piece of research.

Reform of the legal system is a long-term goal and the United Nations Development Programme, together with the Supreme Court and the Government and other stakeholders, remains committed to continuing to broaden access to justice for the population of Bangladesh through sector wide reform. This kind of evidence-based research is a key pillar of this reform process and by identifying obstacles to justice objectively real and meaningful actions can be taken to improve the efficiency of the courts.

A handwritten signature in black ink, reading 'Pauline Tamesis'.

Pauline Tamesis  
Country Director

United Nations Development Programme Bangladesh

## MESSAGE



I am happy to present before you the report of the *Business Process Mapping* study, which is the first ever study of its kind in Bangladesh. The study covers an extensive range of areas, as shown by the title: '*Timely Justice for All in Bangladesh: Court processes, problems and solutions- A CHALLENGE FOR CHANGE*'.

The study highlights existing gaps and the bottleneck in both the procedural and practical aspects of case management and court administration. It addresses the problems of file management systems and the court hierarchy in the Supreme Court and the district courts. I am sure that this report will guide us in streamlining existing case management processes, improving the efficiency of the judiciary, and enhancing service delivery capability, especially with regard to the quick dispensation of cases. Based on the findings of the study, the judiciary will be able to develop and to take further steps towards providing timely and affordable justice for the citizens of Bangladesh.

The backlog of cases is the greatest impediment to quality justice in Bangladesh. JUST is the first project in the history of Supreme Court of Bangladesh to strengthen court administration capacity and to reduce the case backlog. The reduction of case backlog is the foundation of improving access to justice for citizens of Bangladesh, especially for vulnerable groups such as the poor, women, and children.

I would like to take this opportunity to thank the researchers of the report and in particular the Hon'ble Chief Justice of Bangladesh and the Supreme Court Special Committee for the Judicial Reforms for giving generously of their time to guide this critical exercise, and for providing the necessary information.

I hope this study will lead to a more effective case management mechanism, and a more efficient court administration.

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines.

**Syed Aminul Islam**

Registrar General of the Supreme Court of Bangladesh  
&

National Project Director, Judicial Strengthening Project.

## FOREWORD



Fair outcomes require fair judicial processes, but even just procedures cannot guarantee fairness if they are not followed. A decision cannot be regarded as truly fair if one party has not been able to call any witnesses, or if it took over a decade for a decision to be reached. This report uses business process mapping to scrutinize current procedural laws in Bangladesh and how those laws operate in practice. By identifying the gaps between the two and recognizing other areas for reform, it provides recommendations for systemic change that will have a positive impact on the administration of justice in Bangladesh.

Two of the most immediately visible problems with the judicial system in Bangladesh, long delays in court cases and the overwhelming case backlog, are fundamentally procedural issues. Although current procedural rules contain tools to address these issues, they are either inadequately employed or insufficiently enforceable. For example, mandatory mediation legislation was enacted in 2012, but judges have no way of requiring parties to pursue mediation. In practice, parties often fail to appear for mediation, and the case proceeds to the next stage without sanction for either party. Similarly, where the defendant fails to respond to the plaintiff's suit within thirty days, the court has the ability to issue an order against the defendant in his or her absence (an *ex parte* order). In practice, the court often grants the defendant more time, further delaying the case. The simple and cost-effective solution is to identify means of empowering and encouraging the judiciary and court officials to apply the procedural rules already in place.

Procedural fairness is intrinsically tied to the judicial culture in place. In preparing this mapping, sitting and retired judges from the District and Supreme Courts gathered for the first time with practicing lawyers and national and international consultants to review every event, stage or step in civil cases at the district courts. The result is a practical guide for the judiciary, court administrators, clerks of court and other court staff that will enable them to make informed decisions in the application of day-to-day court procedures. Envisioning a real and sustainable impact on judicial services, the report incorporates both short and long-term recommendations. If readily and consistently adopted, these recommendations could go a long way towards promoting access to justice in Bangladesh.

A handwritten signature in black ink, appearing to read 'J. Khaydarov', with a stylized flourish at the end.

**Mr. Jakhongir Khaydarov**  
Chief Technical Advisor

United Nations Development Programme Bangladesh



## EXECUTIVE SUMMARY

The Supreme Court of Bangladesh has recognized that the dire state of court congestion and case backlogs are endemic problems faced by the justice system as a whole, which needs to be addressed both at the policy as well as ground level, from the highest judiciary percolating right down to the lower courts. A preliminary analysis of the workflow in District Courts revealed the need for significant improvement in court organization as well as the manner in which cases are processed. Some of the problems identified include, among others:

- ✓ There are inordinate delays involving service of process.
- ✓ Too many adjournments are being indulgently granted.
- ✓ Too much time elapses between individual hearings, or between the filing and disposition of both civil and criminal cases.
- ✓ Judges are not 'captains' of their courtrooms; power and authority has been usurped by the bar/litigants.
- ✓ Witnesses are neither effectively managed nor efficiently coordinated.
- ✓ Significant monetary sanctions are not imposed to compel disobedient advocates, litigants, witnesses or expert witnesses' compliance with codes, rules, policies, processes and procedures.

All of these factors significantly hinder the effective administration of justice and likely account for the burgeoning backlogs throughout Bangladesh's Judiciary. This seems to be a symptom of an institutional lack of due diligence in dealing with the disposal of cases effectively and efficiently. To restore and enhance public confidence as well as address these problems, the

district courts need principal-centered leadership and commitment to excellence from only those who can do it—the Hon'ble Chief Justice, the District Judges, the judges, court staff and the Bar. As a result, through the Judicial Strengthening Project (JUST), the Supreme Court of Bangladesh has commissioned an analysis of current business processes and workflow of the courts as a first step towards reviewing its work processes, so that they can be improved or redesigned.

### ***A. Purpose of the Report***

The focus of this report is on the overall business process of district (civil) courts and how to manage change effectively. The Judiciary is best-positioned to create the most accurate process map and can use this report as a basis for reviewing and enhancing its business processes. Thus, it is intended to be a living document that will require adjustment with the needs of the court and the stakeholders. The purpose of this report is to provide a guideline for judges, court administrators, clerks of court, court staff, including court information technology (IT) staff and other court managers to help them prepare for technology change and adjust accordingly. In this sense, technology not only refers to IT, but also to the introduction of new streamlined processes based on local conditions and international best practices.

### ***B. What is Business Process Mapping?***

The 'business process' is a set of related activities by which an organization uses its resources to provide defined results in support of its mission, goals and objectives (Harrington, 1991). An action, process or an activity can be broken down into a set of smaller actions, sub-processes and sub-activities where each of these steps are inter-connected or where one step leads to another. Once these are mapped or identified, they may be illustrated as a

diagram that indicates these actions and demonstrates the links between them.

### ***C. Business Process Mapping, Enhancement and Re-engineering for the Courts***

Outdated processes directly impact on efficiency and can lead to court congestion and backlogs. Increasing backlog reduces the time spent on each case and causes delays. Lack of resources, including a sufficient number of judges, court staff and adequate funds for the optimal operation of the courts contribute to court congestion and excessive delay in the resolution of cases. Excessively adversarial, lengthy, costly, prejudiced, unsatisfying trials and other proceedings and unenforceable judgments negatively affect lawyers and litigants. This also impedes the courts from effectively and efficiently meeting their constitutional mandate to the citizens as well as their mission and strategic goals. As a result, courts are facing demands for improving services to citizens as well as reducing (or not increasing) operational costs.

This concern among the legal community as well as the public has led to the search for solutions designed to eliminate unnecessary expense and delay in litigation. With overburdened dockets, courts in various countries have, in the last two decades, started applying management methods to the court systems. The judge or an officer of the court sets a timetable and monitors the case from filing to disposal. Over the past decades, increasingly forced by growing caseloads, increasing litigation costs, and public and governmental pressure to address these problems, courts have instituted procedural changes that mandate case management as a necessary part of the court process. A survey of the progress made in other countries reveals that, in spite of some objection from lawyers and judges, the case management policy has produced

good results.

In order to enhance efficiency and provide within its means the best possible access to justice for citizens, the court must consider changing the way it carries out its daily activities, i.e. review and enhance business processes, while observing and maintaining the quality of justice and due process without conflicting with procedural requirements in individual cases. Consequently, the courts may need to consider changing outmoded processes in order to use new technologies such as IT or new streamlined processes to aid the delivery of improved justice services to citizens and court users.

Court work includes a myriad of business processes on a daily basis, including creating, maintaining and updating case records, case calendars, various registers such as the suit register, the court fee register and the summons register. Court proceedings may be broken up into smaller processes or activities, case flow management, human resources, finance and procurement. Many of these processes recur and it is up to the court, since its workload seems to be outweighing its capacity, to routinely look for ways to improve operational efficiencies (Ibid., 11). Thus, as new business needs arise for the court, it looks for solutions to address them. In this regard, process improvement and process re-engineering require systematic and disciplined approaches to analyse existing processes in order to facilitate design and implementation solutions for business needs.

# BUSINESS PROCESS MAPPING FOR THE BANGLADESH COURTS

The analysis of the current situation in the courts represents only the first step of what should be a continuous review of court policies, practices, processes and procedures by those directly responsible, leading to the evolution of a more effective administration of justice in Bangladesh's Judiciary. The recommendations made in this report emerged during various stakeholder consultations and are not intended to be exhaustive. These are suggestions that need to be further considered, refined, and if the Supreme Court and other relevant institutions reach a consensus and decide on initiating change, only then will they be implemented. Moreover, additional recommendations for change will likely emerge during further design, development, preparation and consequent implementation of an Integrated Case Management System (ICMS) software application. However, much remains to be done to improve the manual management of cases before Bangladesh's Judiciary should even contemplate a transition to ICMS.

A court's typical workflow processes consist of small steps, beginning with receipt of a civil plaint, an appeal or other initiating activity, and ending with the satisfaction of a judgment or decree, and the archival of the case file. It is of utmost importance that each of those steps adds value to the administration of justice and that all actors ask themselves continuously why they are performing a particular step, whether there is "a better way" to reach the same result, or whether the step is necessary at all. In reviewing its processes, the Judiciary may consider reviewing both its organization and administration, which is an integral part of court management as well as its caseload management.

## ***A. Organization and Administration***

The Supreme Court of Bangladesh has a constitutional mandate and is the guardian of the Constitution of Bangladesh. The Supreme Court has rendered many notable decisions on the prevention of Constitutional transgressions as well as on the protection of fundamental rights. However, in order to run effectively, the court must also view itself as an organization that needs to manage its resources, personnel and operations. The following were observed during the process mapping exercise:

### ***1. Lack of Mission and Vision Statement***

- A proper mission statement should be drafted and adopted in consultation with fellow judges and in accordance with the Judiciary's constitutional mandate, which should be displayed in conspicuous locations in courts and incorporated in any court-related literature.
- A citizen charter may be drawn up and conspicuously displayed in front of the Court so that the court users/litigants may obtain all relevant information of the expected standard of service.

### ***2. Lack of Strategic Plan***

- A strategic plan should lay out the judiciary short- and long-term goals over a 3-5-year period, with a view to harmonizing its processes as per its mission and vision, and providing a service to the public.

### **3. The Independence and Autonomy of the Judiciary**

- There appears to be an inconsistent application of the concept of judicial independence. The subordinate courts are effectively reporting to two institutions instead of one, which leads to serious operational problems for the courts because information takes longer to be relayed and processed between two institutions. For example, judges of the lower courts face considerable difficulties in matters requiring approval, which effectively involves getting initial permission for leaves and other related matters from the Supreme Court followed by a Government Order to be processed from the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA).
- There is no office of Independent Attorney Services in the justice sector nor effective dialogue between the Bench and the Bar.
- Logistic issues such as requests for supplies and stationery can also be cumbersome and needs to be addressed. Allocation of resources and budgeting can strain institutional efficiency not simply due to insufficient funds, but a mutual perception that neither branch properly understands or respects the other's mandate and goals. The question of whether the Executive or the Judiciary should set the objectives for judicial sector performance also raises concerns about the operational autonomy of the Judiciary, which is at the heart of judicial independence.
- The district courts seem genuinely understaffed and it was observed in the Dhaka Courts that there is a frequent informal practice of recruiting ummedars who assist the sherstadars and peshkars with their workload.

### *Recommendations*

- Create a strategic plan delineating each institution's role and ensure that staff from the top down understand their respective job descriptions and institutional mission.
- Create a strategic plan delineating each institution's role and ensure that the staff from the top down to the lowest tier understands their respective job descriptions and institutional mission.
- Engage in advocacy at the highest level, supported by the Chief Justice, to ensure institutional comity.
- Initiate dialogue with the Bar.
- Initiate national dialogue assessing needs for an Independent Attorney Service.
- Review and streamline rules of business for judges of the district court dealing with remuneration, holidays and leave, promotions etc.
- Initiating dialogue with judges and court staff determining major areas in need of resources and prioritize accordingly.
- Perform a budget analysis with support from the MoLJPA or the Finance, which may provide in-house officials who are dedicated budget analysts.
- Engage external assistance from donor partners to deploy a professional financial/budget analyst who can map the needs of the judiciary in light of its overall institutional structure and make recommendations accordingly.
- Implement a revised budget within specific programmatic structures and set performance indicators in order to measure its effectiveness in addressing resource constraints.

- Carry out a review of preliminary matters such as the maintainability of a suit, and review and check filing documents' order, etc. using current staff and increasing staff intake, or recruiting paralegal court officers with a law degree (but not necessarily recruited through judicial services examinations) or newly recruited (but not yet confirmed) judges can also be assigned to carry out this function in the short term, with a view to phasing it out for handover to trained court staff or paralegals. The practice of sub-contracting work to ummedars must be eliminated.
  - Recruit qualified, professional administrators to manage the administrative and operational aspects of district courts. This may be a task strictly created for back-office issues that are unrelated to any activities associated with the substantive outcome of a case. Incumbents should be university trained and have broad experience in management, human resources, budgeting, procurement and IT, etc.
  - The courts, in consultation with management experts (or if administrators are recruited), should discuss, draft and adopt Standard Operating Procedures (SOPs) for all operational (non-judicial) activities of the Judiciary, with a view to standardize court processes, delineate the roles of court staff and organize the paper records effectively, etc.
- The Judiciary should establish a consolidated, centralized Office of the Registrar in the district courts.
  - Human resources should be enhanced (See Chapter II (A)(3)(c) page 24)
  - As a matter of policy, consideration may be given to revising the pecuniary jurisdiction of courts to evenly distribute some of the case load within the courts.

#### ***5. Lack of Customer/Client Service for Court Users***

The current environment of the district courts does not contribute to effective, efficient 'customer' or 'client' service for the court users. The Court should:

- A citizen charter may be drawn up and conspicuously displayed in front of the Court so that the court users/ litigants may easily obtain all relevant information about the expected standard of service.
- A staffed help-desk may be set up in court to serve as the official point of contact for all court-related information to court-users.
- Customer/client services should be improved by developing ethical guidelines delineating the need for ethical behaviour and good customer service.
- Complaints section or mechanisms should be set up whereby court users/clients can lodge complaints.

#### ***6. Unequal Distribution of Workload for Judges***

Despite dedicated 'territorial jurisdictions', most of these courts have a workload that cannot be managed effectively by the judges and staff assigned because some jurisdictions may have too much work and others, not enough. Accordingly, the court should:

- Introduce a random case assignment

#### ***4. No Centralized Registry Function***

Advocates and litigants must deal directly with the respective sherestadar for each judge, depending on the territorial or pecuniary jurisdiction of that judge. This encourages 'forum shopping'.



application to ensure that the judges' workloads are equitably distributed;

- As a matter of policy, in the interim, consideration may be given to revising the pecuniary jurisdiction of the courts to evenly distribute some of the case load within the courts.
- In the interim, the District Judge should also take active steps to redistribute the caseload of any judge who reports to him or her an unmanageable load of pending cases. The District Judge, under section 24 of the Code of Civil Procedure 1908, has the power to transfer a reasonable number of cases to other similar courts that have a minimum number of cases.

### **7. District Court Records Management**

The District Court records are manual hard copies and the archives that are maintained need significant modernization and updating. For example, the Dhaka District Court's archives appear disorganized, overcrowded and in considerable disarray.

- Sufficient funds should be budgeted for the complete renovation of the Dhaka District Court's archives.
- A Technical Committee (see Chapter VI (A)(2)) should review Part III, Chapters 16-20, of the Civil Rules and Orders (CRO) and streamline the processes involving organization of case files and the retention and destruction of court records (Annex III).
- The bar coding system may also be introduced for monitoring the movement of manual records.

### **8. Lack of Sufficient Security and Disability Accommodation**

- Sufficient funds should be budgeted for the installation of a metal detector and an x-ray machine at the main entrance of the courthouse,

and to equip police officers with hand-held scanners.

- A budget needs to be allocated for the assessment and installation of wheelchair ramps and other relevant accommodation.
- In the long term, consideration should be given to the installation of close circuit cameras in at least some of the busy metropolitan courts.

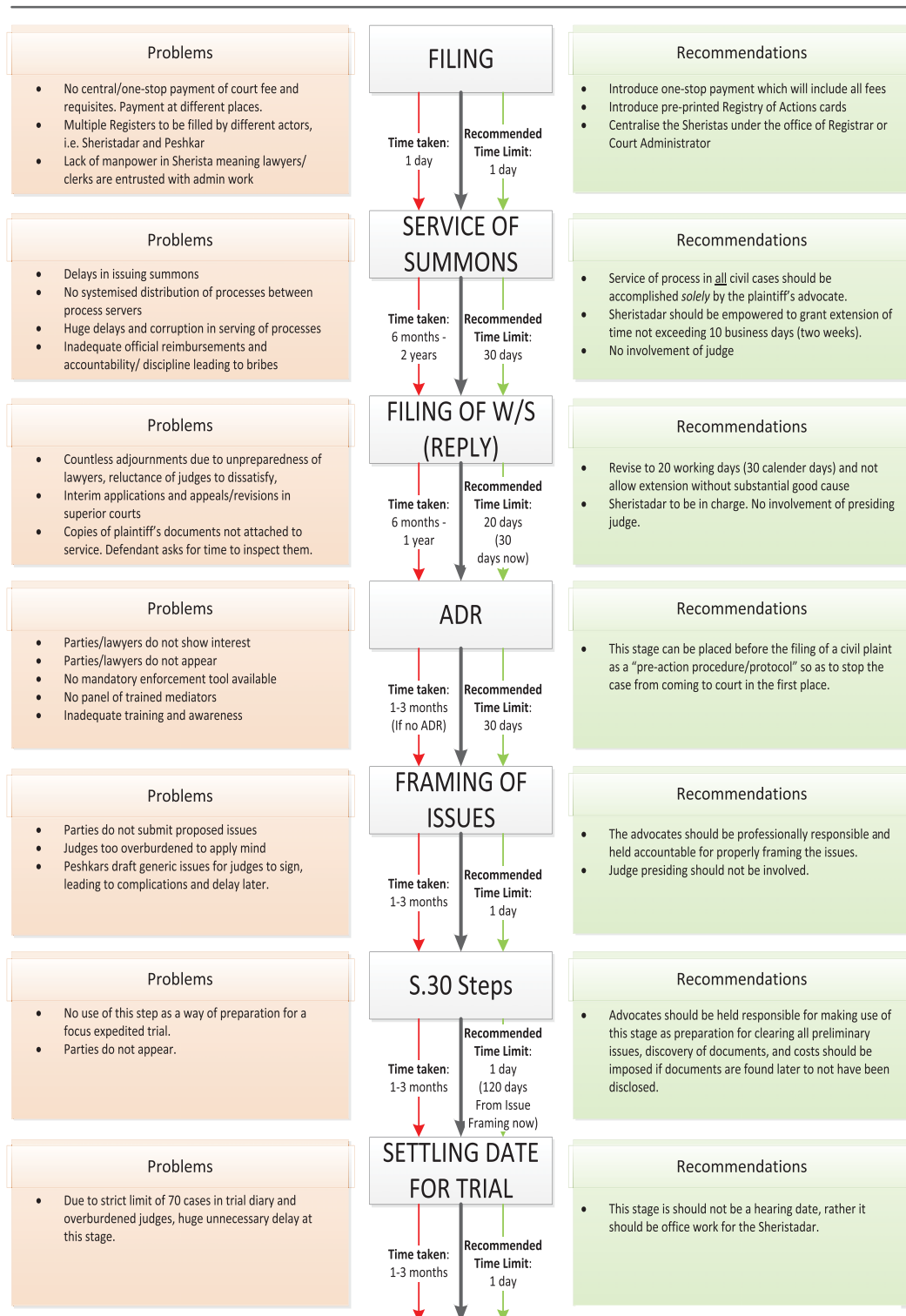
### **B. Civil Workflow**

Analysis of the district court civil process and workflow revealed that obstacles to the effective administration of justice can be removed, many procedures can be largely simplified, consolidated or streamlined, and others can be eliminated. This will maximize available resources, which will allow judges to focus their energies and attention solely on substantive matters related to the cases assigned to them, and their respective staff will have more time available in which to accomplish their work. It will also lay the foundations for the Judiciary to incorporate transparency in its procedures and move towards automating its courts.

However, it is important at the outset to identify what 'backlog' is. The term 'backlog' is often used to mean different things. One preferred approach to measure a court's 'backlog' is to tally the cases that exceed its established filing-to-disposition time standards. This is a preferred approach by many courts. Cases nearing or exceeding a court's filing-to-disposition time standards should be given high priority when scheduling. The elimination of civil caseload backlogs must be met with setting strict timelines for identified processes as well significant cost implications for non-compliance.

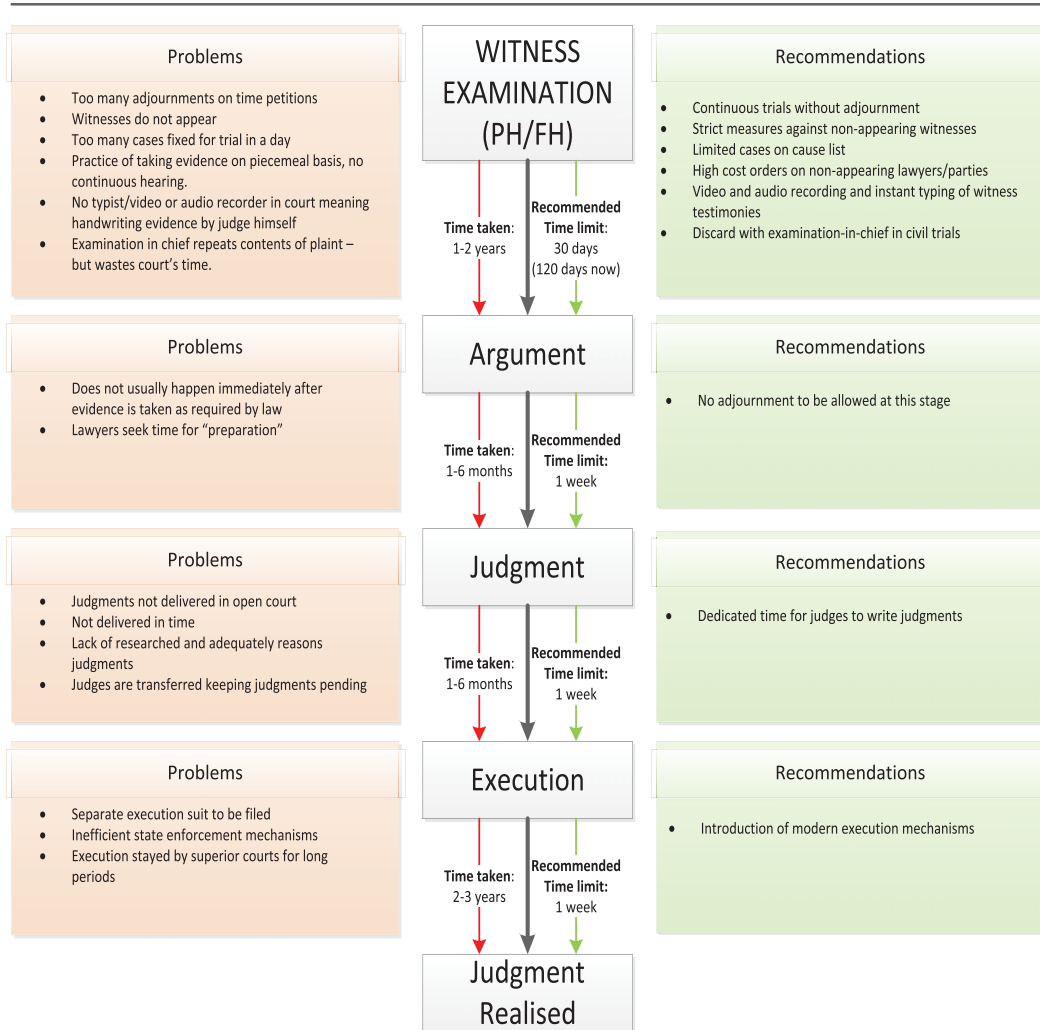
An elaborate step-by-step outline of the civil process in the district courts of Bangladesh and recommendations based on a literature review, interviews and observations is included in the report as follows.

## Flowchart 1: Civil-Pre-Trial Stage – Problems, Recommendations and Timelines

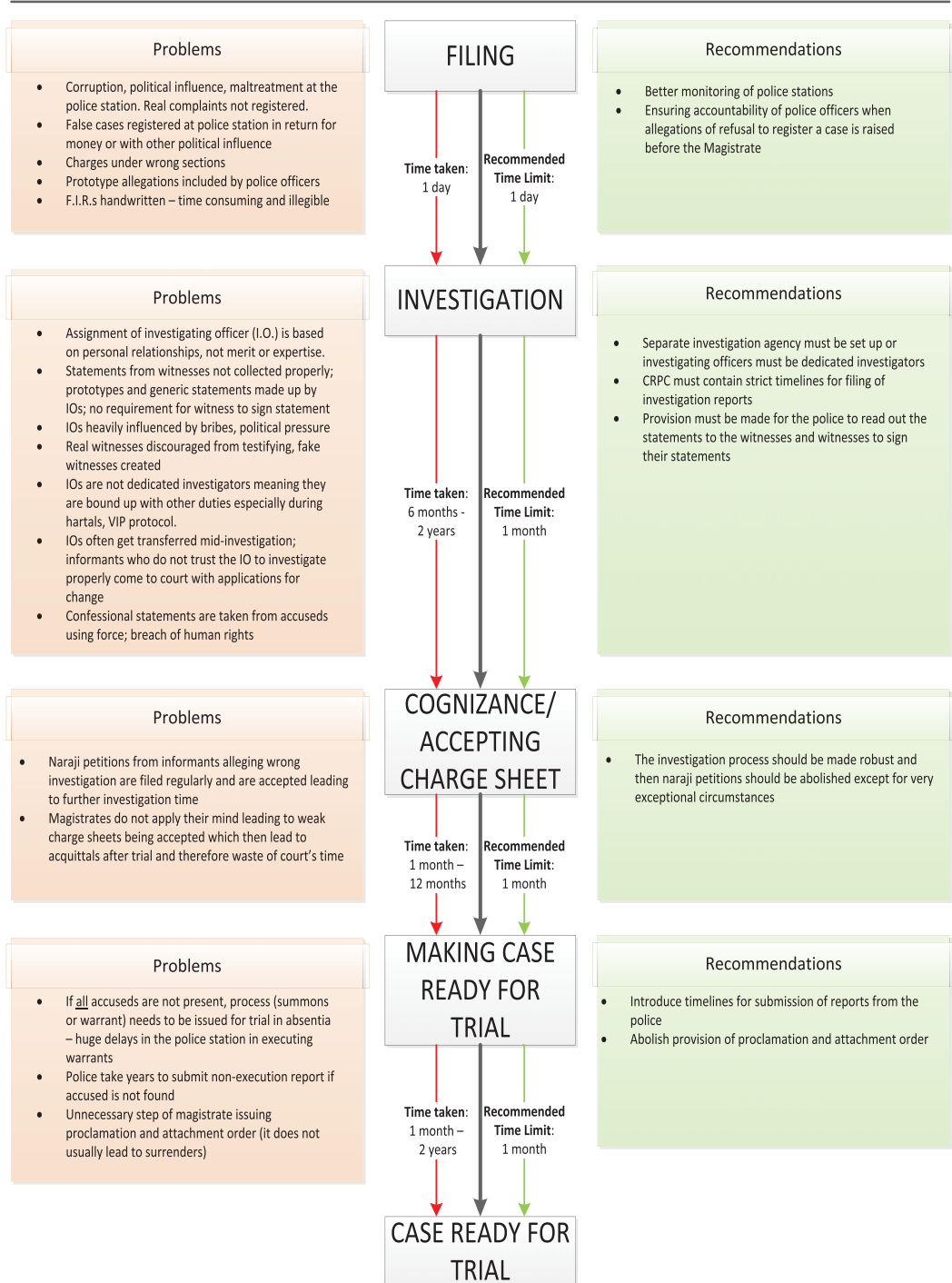




## Flowchart 2: Civil-Trial and Post-Trial Stage – Problems, Reforms and Timelines



### Flowchart 3: Civil-Pre-Trial Stage – Problems, Recommendations and Timelines



## NEXT STEPS: BUSINESS PROCESS REVIEW AND ENHANCEMENT

### **Step One: Develop an Appropriate Governance and Management Structure**

It is important to develop an effective management structure delineating objectives, expectation, scope, resources, roles and responsibilities so that all stakeholders are aware of the functions they are required to perform and their respective timelines.

#### **1. Set the Strategic Mission and Goals for the Court**

The first task that should be undertaken by any court interested in improving its work processes and case management systems is to discuss, draft and adopt a mission and a vision statement as well as its objectives in a strategic plan (Chapter II (A) (1)).

#### **2. Set up Technical Committees**

The success of court-based reform will require assigning a technical committee (s) (TC) or taskforce to consider the reforms and providing sufficient authority to the group to implement those recommendations. The TC should comprise representatives from the highest point of the court hierarchy (e.g. a judge), to the lowest (e.g. a deputy registrar, sherestadar or peshkar). Ideally, this group must be temporarily removed from their usual services and deputed to spend a stipulated period of 3, 6 or 9 months as appropriate on identified and targeted procedural reform.

#### *Recommended Action*

A TC should generally perform the following tasks:

- Conduct a comprehensive workflow analysis.
- Prepare a detailed flowchart of the

workflow as it currently exists.

- Work closely with line staff to identify steps or procedures that are duplicative, redundant and unnecessary, or that do not add value to the respective work processes.
- Suggest, propose or experiment with reengineered steps and procedures that simplify, modernize or render more effective the current work processes.
- Prepare a detailed flowchart of the revised work processes as proposed, and assist with its implementation.
- Work with line staff to develop potential areas where IT or other technology can enhance the needs of the court and that can also be used to produce meaningful statistical or managerial data for subsequent assimilation at both the local and national levels.

The Judicial Reform Committee, may assign various TCs to work on the following, inter alia:

- a. The Code of Civil Procedure (CPC) and the CRO should be the focus of a comprehensive review by legal scholars, judges from the High Court (ideally with background in judicial services), subordinate courts, an additional or deputy Registrar from the High Court and practitioners.
- b. Identify and statistically measure a court's 'backlog' by tallying those cases that exceed its established filing-to-disposition time standards, which may involve the following steps:
  - Define what constitutes a 'backlog'.

- Determine the 'universe' of cases that constitute the backlog, e.g. cases pending for 12 months or longer.
  - Determine and rank the age of the respective cases.
  - Assess the availability of corroborating witnesses and the strength of their anticipated testimony.
  - Assess the availability and strength of exhibits e.g. physical objects, documentary material, or demonstrative evidence.
  - Decline or dismiss weak or uncorroborated cases in which the balance of probabilities does not favour the plaintiff.
  - With the approval of the assigned judge, 'fast track' the entry of judgment and close the case.
- c. Introduce a number of pilot schemes themed under a Backlog Reduction Programme. Pilot initiatives could include:
- i. A pilot filing desk or centralized registry in the court premises (See Chapter III (B) (1).
  - ii. Register of Actions card on a pilot basis (See Chapter III (B) (1).
  - iii. Introduce descriptive rubber stamps to enter routine case action information on a Register of Actions.
  - iv. Prepare and adopt standard, pre-printed minute orders for common cases for the judges to use instead of creating one each time.
  - v. Standard case opening forms, e.g. cover sheets, pre-printed forms with 'check-off' boxes, and other routinely used court documents.
  - vi. Introduce barcoding technology to track the movement of files.
  - vii. Begin case purging scheme and continue it when necessary.
- d. The court should eliminate the assignment of cases according to territorial criteria or any other means that does not ensure randomness. The court should randomly allocate cases through manual streamlined processes where cases are allocated by a random lottery through a machine. In the long term, once automation is underway, the courts may consider using a software application, ensuring randomness and equitable workloads among the judges, which would protect them from charges of manipulation or corruption. This random assignment should be carried out by a Senior Deputy Registrar under the supervision of the Registrar or a full-time judicial administrator and not by the District Judge. Under no circumstances should an advocate be able to select the judge who will hear his/her case because this encourages *forum shopping*.<sup>1</sup>
- e. Developing an Integrated Case Management System (ICMS) should be the focus of a careful, functional and comprehensive review by all court and process actors, e.g. judges, advocates, sheristadars and peshkars, working in concert with Information and Communication Technology (ICT) experts. However, this task should not be undertaken until the manual processes have been streamlined to determine which areas could benefit the most from incorporating IT.

<sup>1</sup> Forum shopping' is an informal term used to refer to the practice by some litigants to have their case heard in the venue thought to be most likely to provide a favourable judgment.

### **3. Institutional Memory and Decision-Making Power**

Change management is a slow process that requires ownership at every level throughout the court hierarchy and needs to be an inclusive effort. Often, efforts stall due to bureaucratic red tape, lack of delegation and highly centralized decision-making. New processes or schemes are sometimes designed by particular individuals. However, at the end of their tenure or if promoted, transferred or retired, any progress on review has to start all over again.

#### *Recommended Action*

- The Supreme Court should ensure that all the senior-most judges are included or apprised of the proposed reforms. Similarly, in the district courts, arrangements should be made so that reform efforts are not designed around an individual judge or judicial officer, but information is retained within the institution. This will ensure that there is sufficient institutional memory so that even if there are changes in leadership through retirement, promotion or transfer, etc., the review of process and reform that is underway runs smoothly without interruptions.
- The Judicial Reform Committee, CMC and TCs should also be granted decision-making authority where each group owns and accepts accountability for the Business Process Review and Enhancement.

### **Step Two: Assess Organizational Readiness, Build Support for Change and Manage Expectations**

#### **1. Assess Organizational Readiness**

Before undertaking a process review and enhancement, the court needs to understand what skills and resources

may be required for success and the possible changes in internal organization and local court culture that may be associated with such enhancement. Often, despite obvious knowledge and acknowledgement that an existing business process needs to be changed, the organization, which includes all levels of staff, various departments, offices and intricate layers of interaction between these groups, may not be ready for change. It is important, therefore, to assess organizational readiness not only for supporting progress, but also for accepting change. Before proceeding with significant changes, the Judiciary should consider:

- whether the Chief Justice or his designee authorized and prepared to drive the process;
- whether judges and staff are amenable to committing the time and effort that will be required to document the process and analyse the results.

#### **2. Build Consensus for Change**

The Chief Justice and the Reform Committee should begin an early effort to build support for process enhancement within the judiciary and among other justice sector stakeholders.

- Judges, staff members and other stakeholders should be included as soon as it is practicable in managing the change process well before the new process is implemented; otherwise, any proposed changes will lack the requisite support needed for implementation of the new process.
- Consensus should be developed among external court users and stakeholders in support of the level of changes that will be needed to achieve the court's strategic

objectives. In this regard, public perception surveys, focus group discussions and other participatory methods may be used to involve external stakeholders wherever possible in the change effort.

### **3. Manage Expectations**

The success of substantive judicial reform will be determined by how well the Judiciary manages the following factors:

- *Leadership*
- *Commitment*
- *Communication*
- *The learning environment.*

**Step Three: Perform a Gap Analysis to measure the gap between the existing Processes and the Court's Strategic Mission, Vision and Objectives.**

#### **a. Assign the Technical Committee**

- The Court should immediately set up the TC to analyse particular processes as they are currently operating. Each group will then break up each process into sub-processes to first analyse the current process as it is, and then review it against the Court's strategic objectives to determine how it should be.
- Launch pilot initiatives as recommended.

#### **b. Measure Delays**

Statistics are an important part of the business process mapping exercise because they help measure where delays are actually occurring. They also provide the evidence base for initiating review of these processes where delays are occurring.

District court data on pending cases are regularly sent to the Supreme Court every month. However, an inordinate amount of time and effort are devoted to the collection, compilation and publication of

statistical data, which are ambiguous, often unreliable and rarely, if ever, used as a tool to effectively manage a district court's caseload.

In addition, there is also no apparent effort to streamline statistics needed to help Bangladesh's Judiciary manage its respective workloads:

- internally, which includes information such as case age, time between events, reasons for delay, case types, case assignment, scheduling, tracking, dispositions per judge etc.; or
- nationally, which includes information such as trend analyses, workload indicators, judgeship needs, fiscal year budget forecasting or justification, etc.

#### *Recommended Action*

- Working together, the Judiciary and the MoLJPA should determine the scope, array and complexity of statistical data that truly serve a national purpose.
- The district judges should meet with their respective colleagues to discuss and formulate the kinds of statistical data that facilitate the day-to-day work of their judges and with the range of information they may need to make policy decisions, which promote effective case management.
- The Supreme Court should set up a Statistical Analysis Unit within its premises equipped with resources and staffed with officers with monitoring and evaluation expertise.
- Subordinate courts should be required to transmit their respective statistical reports according to a strict, predetermined, established schedule, e.g. monthly, quarterly or annually, for subsequent publication and dissemination to the MoLJPA and other stakeholders.

***c. Promote Transparency and Accountability, and Incorporate Anti-corruption Measures***

There are large systemic problems that remain in the system, including an archaic system, the lack of independence and the lack of human resources. A system marred with these problems creates opportunities for those with vested interests, be it a judge, lawyer or court staff, to take advantage of it for their own personal benefit. There is much to gain for them if status quo is maintained. As a result of the actions of a few, the system as a whole suffers, systemic progress is inhibited, and a negative public perception of the judiciary is created.

A common belief is that corruption only involves a public official taking bribes. However, a broader definition will help understand and take into account the pervasive impact that it can have in public and judicial offices. It may be generally defined as the abuse of power by a public official for private gain. Generally, public officials will be operating within an organized, interdependent system and engage in either or both nonfeasance, i.e. not performing the mandated duties, or misfeasance, i.e. performing them in an improper way, to the detriment of the system's original purpose. This definition encompasses the whole gamut of duties associated with public office which must operate within constitutional or regulatory limits and remain accountable to the public at all times.

Defined in this way, corruption in judicial systems not only violates the basic right to equality before the law, but also denies procedural rights guaranteed by the Constitution. There are many avenues of tackling this both at the policy and implementation levels. However, small incremental changes and incorporating anti-corruption measures in the court process will help prevent or minimize corruption, and promote transparency and

accountability within and across institutions. Some suggested measures, embodied in the rest of this report, include:

- Introduce barcode technology to prevent unauthorized movement or disappearance of files.
- Introduce pilot schemes such as the Register of Actions card.
- Update and streamline records management.
- Randomly assign cases to judges to ensure equitable workload and prevent forum shopping by lawyers.
- Develop and implement strong ethical guidelines for the Judiciary, Bar and court staff.
- The Bar Council may be encouraged to hold disciplinary actions for members of the Bar reported to be participating in or soliciting bribes, speed money, etc.
- Initiate dialogue with the court staff association and encourage its formal registration.
- Tighten recruitment of court staff based on merit and qualifications, eliminating general subcontracting or outsourcing by sherestadars.
- The Court should not be staffed by anyone who is not officially recruited through the Ministry.
- Maintain a 'zero tolerance' policy for reported cases of unethical behaviour.
- Establish a reporting mechanism whereby judges, court staff and lawyers may be reported for unethical behaviour.
- Minimize institutional interference.
- Monitor and evaluate ACRs regularly.
- Recruit and place candidates based on merit and ACR performance.



- Establish a Secretariat to take over human resources management responsibilities.
- Establish a district-based Judicial Intelligence Unit (JIU). A judicial officer within each district may be vested with the duty to report any malpractice of judge or their respective staff to the Supreme Court. Upon receipt of any such information received from the JIU and verification of such allegations, the Supreme Court should have disciplinary mechanisms in place to take rapid disciplinary action.<sup>2</sup>
- Set up a comprehensive feedback system. Generally, the Controlling Officer (District Judge and Chief Judicial Magistrate or Chief Metropolitan Magistrate) evaluates the junior judicial officers and accordingly assigns ACR feedback. However, there should be a feedback mechanism for all judicial officers and staff to communicate their working experiences and how the workplace and court services may be improved.<sup>3</sup>
- Install a mechanism whereby, court staff is also transferred at regular intervals, for example for three years, to another district. This is to ensure greater accountability and integrity of court staff because lengthy periods of service in one area may lead to entrenched and vested interests, which in some cases may lead to a misuse of power and malpractice.<sup>4</sup>

## CONCLUSIONS

The current case and records management policies, practices, processes, procedures and local legal culture are in need of significant change. If the courts maintain their positive attitude in support of progress and demonstrate a willingness to change the way they work by adopting an effective and efficient methodology, this will create a positive public impression of the subordinate courts as well as enhance access to justice for the citizens.

The challenge to the District Judges, the judges, and their court staff is to be 'healers' of disputes, and to raise the ethical and professional standards of the Judiciary. This involves more than simply conducting one's own career with honesty, integrity, and a high degree of ethics, by also having the 'intestinal fortitude' to be willing to call colleagues to task when their behaviour is unseemly and below the professional standard to which judges, sherestadars and peshkars is held. This is a burden that the entire Judiciary must share equally. Moreover, the Judiciary must understand that an effective, efficient administration of justice is not only about saving time, but also affecting people's lives. Only after the Judiciary embraces this concept and takes the above-recommended actions with determination, discipline and consistency will timely justice for all become a reality.

<sup>2</sup> This is based on feedback received from preliminary consultation of the draft Business Process Mapping report with district court judges.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

# BUSINESS PROCESS REVIEW GUIDELINE

## I. INTRODUCTION

The UNDP Judicial Strengthening Project has been working with the Supreme Court in an effort to better manage its caseload and address the dire backlog problem that currently plagues the justice system. The Bangladesh Judiciary continues in its efforts to establish a fair, transparent justice system free of backlog and delay. Unless its current organization, policies, practices, processes, procedures and legal culture are significantly overhauled, they will be an impediment to achieving an efficient and effective system.

The Supreme Court has recognized this state of affairs as symptomatic of broader endemic problems faced by the justice system, which needs to be addressed both at the policy and the ground level, from the highest judiciary all the way down to the lower courts. As a result, through the UNDP Judicial Strengthening Project (JUST), the Supreme Court of Bangladesh has commissioned an analysis of current business processes and workflow of the courts as a first step towards reviewing the areas and processes so that they can be improved or redesigned.

The analysis of the workflow in both the High Court and the Dhaka District Court reveals that significant improvement is possible in court organization as well as the manner in which cases are processed. Obstacles to the effective administration of justice can be removed, and many procedures can be largely simplified, consolidated or streamlined, while others can be eliminated. This will maximize available resources, which will allow judges to focus their energies and attention solely on substantive matters related the cases assigned to them, and

their respective staff will have more time available to accomplish their work.

Many of the step-by-step procedures followed in the courts are codified in the CPC or the CRO, hence, substantial, it may not be possible to effect sustainable changes quickly. To effect large-scale reform, a great deal of work remains to be done through key institutions and actors both within and outside the justice sector involving the Parliament, the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA), the Law Commission, the Hon'ble Chief Justice, the judges and senior staff, civil society and others. This, however, should not deter the District Judge or his/her judges from their efforts to think outside the box. The key to dramatic improvement in how the Judiciary processes its work is to give the courts control over their own internal processes. A willingness to take risks, practise continuous process improvement and pursue opportunities for meaningful change will transform the courts by maximizing efficiency and improving public perception.

### *A. Purpose of the Report*

The focus of this report is on the overall business process of district (civil) courts and how to manage change effectively. However, the Judiciary is best positioned to create the most accurate process map and can use this document as a starting point for beginning reviewing and enhancing its business processes. The recommendations made in this report emerged during various stakeholder consultations and are not intended to be exhaustive. These are suggestions which need to be further considered, refined and if the Supreme Court and other relevant institutions reach a consensus and decide

on initiating change, only then it is to be implemented. This report is intended to be a living document, which will need to be adjusted with the needs of the court and the stakeholders. The purpose of this report is to provide a guideline for judges, court administrators, clerks of court, court staff, including court information technology (IT) staff and other court managers to help them prepare for technology change and adjust to the changes that technology brings to the courts. In this sense, technology does not only refer to IT but also the introduction of new streamlined processes based on local conditions and international best practices. Since the Supreme Court of Bangladesh is open to meaningful reform, it can use this report to map current court processes and measure and compare them with their intended vision for the Judiciary to ensure that all processes are aligned with the organization's projected values and capabilities.

The Business Process Mapping exercise has been deliberately designed in phases, taking into account all the ground realities faced inside a court. By focusing in detail on civil processes at this first phase as a pilot effort, the effectiveness of the civil courts can be reviewed, and new measures tested to yield positive results over time. The courts can be gradually strengthened in this manner by working methodically, showing some initial success as an 'architect' of change, and then moving on to a subsequent process and doing the same. In addition, this report has mapped not only the formal processes prescribed by codes or court rules, but also the informal processes and practices that can significantly impact caseload. Accordingly, this exercise has examined myriad small steps in the processing of a case from filing to disposal.

### *B. What is Business Process Mapping?*

The 'business process' is a set of related activities by which an organization uses its resources to provide defined results in

support of its mission, goals and objectives (Harrington, 1991). Thus, an action, processor an activity can be broken down into a set of smaller actions, sub-processes and sub-activities where each of those steps are inter-connected or where one step leads to another. Once these are mapped or identified, they may be illustrated as a diagram, which indicates these actions and demonstrates the links between them.

A Business Process Mapping must be distinguished from an organizational chart, which merely portrays the management structure rather than focusing on activities. A clear and detailed business process map assists organizations in becoming more efficient by getting a solid view of the ground realities as they are occurring and helping assess whether or not improvements can be made to the current process. A review of the business processes may reveal that either current processes need simple tweaking or to be completely re-designed or re-engineered. There are many forms of Process Maps used for different disciplines. However, in recent decades, judiciaries around the world have adopted management techniques as a response to court congestion and delays in other matters that not only impede access to justice, but also impose high economic costs for the institutions, which could otherwise have maximized its resources.

### *C. Business Process Mapping, Enhancement and Re-engineering for the Courts*

## **Background**

In many judiciaries around the world, especially in many common law countries that have inherited colonial legal systems, the courts may find themselves operating with outdated processes that were designed before the emergence of modern technologies and the changing needs of society. Outdated processes directly impact

on efficiency and can lead to court congestion and backlogs. Increasing backlog reduces the time spent on each case and causes delays. Delays strengthen the incentives for breaking commitments, leading to more legal disputes - and so the cycle continues. Lack of resources, including a sufficient number of judges, court staff and adequate funds for the optimal operation of the courts contribute to court congestion and excessive delay in the resolution of cases. Overworked judges demand more resources for court and case management, more disciplinary authority over the progress of litigation, better pay and greater protection from attempts of improper influence and interference by other branches of government. Excessively adversarial, lengthy, costly, prejudiced, unsatisfying trials and other proceedings and unenforceable judgments negatively affect litigants and lawyers. This, in turn, results in increased costs to litigants and affects the quality of justice. It also impedes courts from effectively and efficiently meeting their constitutional mandate to citizens as well as their mission and strategic goals. As a result, courts are facing demands for improving services to citizens as well as reducing (or not increasing) operational costs.

This concern among the legal community as well as the public has led to the search for solutions designed to eliminate unnecessary expense and delay in litigation. With overburdened dockets, courts in various countries have, in the last two decades, started applying management methods to the court systems. This means that the Judge or an officer of the court sets a timetable and monitors the case from filing to disposal. Over the past decades, increasingly forced by growing caseloads, increasing litigation costs, and public and governmental pressure to address these problems, courts have instituted procedural changes that mandate case management

as a necessary part of the court process. A survey of the progress made in other countries reveals that, in spite of some objection from lawyers and judges, the case management policy has produced good results.

### *What is Case Management?*

Case management is a comprehensive management system of time and events in a law-suit as it proceeds through the justice system, from initiation to resolution. The two essential components of the case management system are the setting of a timetable for pre-determined events and suspension of the progress of the law-suit through its timetable.<sup>5</sup> Caseload management requires that, from the commencement of litigation to its resolution, whether by trial or settlement, any time spent other than what is reasonably required for drafting/submitting/amending pleadings, requesting documents, examining witnesses/experts and other court events should be eliminated. Designing and implementing a case management system requires taking into account both legal and social culture. An adversarial system such as in Bangladesh is driven by the litigants or lawyers typically setting the timetable that suits them. However, with case management, the Judge or a court manager can develop and set a standard timetable that will assist in the effective and timely disposal of cases.

With respect to civil case management, it should be noted that there are a number of general themes that cut across the recommendations contained herein, as noted below:

- Total Case Management (TCM) concepts should be integrated into all aspects of caseload management. The objectives of total case management are to reduce overall

<sup>5</sup> See References to Lord Woolf's Interim Report, Chapter 5, Para 18, and other recommendations, Draft Case Management Rules, Law Commission of India [http://lawcommissionofindia.nic.in/adr\\_conf/casemgmt%20draft%20rules.pdf](http://lawcommissionofindia.nic.in/adr_conf/casemgmt%20draft%20rules.pdf)

case-processing time, subject the litigation process to court supervision from commencement to termination, and increase the court's disposition rate;

- Before any hearing is scheduled, the case must be 'at issue' or ready to be heard. Cases should not proceed until various thresholds have been reached, e.g. issuance of summons, effective service of process, filing of the defendant's reply, filing of the plaintiff's written statement, completion of discovery, and filing of a fully endorsed at-issue memorandum or a certificate of readiness.
- Once at issue, the case becomes the property of the court, which must take charge of its management through disposition (including enforcement of the judgment).
- Court control, rather than advocate or litigant control, is essential to effective caseflow management.
- A case management conference/first pre-trial must be scheduled not later than ten business days (two calendar weeks) of the case becoming at-issue. At this conference, all parties are required to appear. If an advocate represents a litigant and appears in his/her place and stead, he/she must have full authority to settle the case on behalf of his/her client(s).
- The judge assigned should attempt a 'hands-on' settlement even if it takes several hours to do so.
- Advocates should be held responsible for helping to ensure the smooth functioning of the adjudicatory process by attending all scheduled hearings, being fully prepared when expected to do so, following all orders

of the court and keeping their clients fully informed at each step of the judicial process.

- Every case must be on calendar or scheduled for a date certain and a purpose certain.
- The court must promulgate a firm postponement policy, combined with the judges' demand that advocates be fully prepared, and enforce the policy with the imposition of significant money sanctions per occurrence. There must be strong legal sanction for non-compliance with the court's orders and schedule or in the event of inordinate delay due to an advocate's unpreparedness. However, imposing such a policy would have to be preceded by significant bench-Bar dialogue so to avoid alienating the bar.
- Requests for adjournment are few in number and sufficient good cause is required before a request for adjournment is granted by the court.
- Early and firm hearing dates are associated with the faster disposition of cases.
- In a court that sets firm trial dates and limits postponements, advocates know there will be a judge available on the scheduled trial date, which leads them to complete investigative work, discovery<sup>6</sup> and preparation for trial. If this does not result in a settlement, a trial can begin as scheduled.
- The age of the respective case should be a factor in all aspects of the system, particularly when scheduling cases for hearing. Without exception, older cases should be heard first. The oldest pending cases should be designated as a class of cases deserving priority

<sup>6</sup> Discovery is defined as compulsory disclosure, or inquiry into, any information that reveals facts and develops evidence relevant to the subject matter of the action. Black's Law Dictionary, Seventh edition, 1999.



in the work of the pilot district courts. Small measures can ensure identification and prioritization of old cases. For example, a different colour of sticker may be attached/annexed on the record of the case/suit so that the judge, staff and lawyer can easily identify it as an old case/backlog and can fix a possible 'short date' for its speedy disposal; or judges on their own initiative may maintain a special/personal diary for the old case so that he/she can take special care of it.

- A court must be willing to try new techniques and change work habits. Courts change slowly, and many judges prefer not to experiment with new procedures. However, a court must accept that a change in procedure or attitude may be necessary in order to change the present pace of litigation.
- Meaningful communication among the judges and their staff, as well as with the bar, is the key to success.

#### *Case Management and the Need for Business Process Mapping*

The pre-requisite to designing and implementing an effective case management system requires a review of its business processes. In order to enhance efficiency and provide within its means the best possible access to justice for citizens, the court must consider changing the way it carries out its daily activities, i.e. enhance business processes, while observing and maintaining quality of justice and due process without conflicting with procedural requirements in individual cases (The National Consortium for Justice Information and Statistics and National Center for State Courts. 2003). Consequently, the courts may need to consider changing outmoded processes in order to use new technologies such as IT or new streamlined processes to aid the delivery of improved justice services to citizens and court users.

Court work includes a myriad of business processes on a daily basis, including:

- creating, maintaining and updating a case record;
- creating, maintaining and updating a case calendar and diary;
- maintaining and updating various registers such as the law suit register, the court fee register, the summons register, etc.; and
- managing caseload;

Many of these processes recur and it is up to the court, since its workload seems to be outweighing its capacity, to routinely look for ways to improve operational efficiencies (Ibid: 11). Thus, as new business needs arise for the court, it looks for a solution to address them. In this regard, process improvement and process re-engineering require systematic and disciplined approaches to analyse existing processes, in order to facilitate design and implementation solutions for business needs. A holistic and systematic approach will also allow the courts to consider the impact of proposed reforms, not only internally within the courts, but also on its relationship with related institutions and actors within the justice sector.

## II. BUSINESS PROCESS MAPPING FOR BANGLADESH COURTS

The analysis of the current situation in the courts represents only the first step of what should be a continuous review of court policies, practices, processes and procedures by those directly responsible, leading to the evolution of a more effective administration of justice in Bangladesh's Judiciary. Moreover, additional recommendations for change will likely

emerge during the further design, development, preparation and consequent implementation of an Integrated Case Management System (ICMS) software application. However, much remains to be done to improve the manual management of cases before Bangladesh's Judiciary should even contemplate a transition to ICMS.

A court's typical workflow processes consist of small steps, beginning with receipt of a civil plaint, an appeal or other initiating activity, and ending with the satisfaction of a judgment or decree, and the archival of the case file. It is of the utmost importance that each of those steps adds value to the administration of justice and that all actors ask themselves continuously why they are performing a particular step, whether there is a better way to reach the same result or whether the step is necessary at all. While mapping the business process of the Dhaka District Courts and the Supreme Court the following were observed, the findings and recommendations of which are detailed below:

### **A. Organization and Administration**

The Supreme Court of Bangladesh has constitutional mandate and is the guardian of the Constitution of Bangladesh. The Supreme Court has rendered many notable decisions on the prevention of Constitutional transgressions as well as protection of fundamental rights. However, in order to run effectively, the court must also view itself as an organization that needs to manage its resources, personnel and operations. The following were observed during the process mapping exercise.

#### **1. Mission and Vision Statements**

It appears that neither the MoLJPA nor the Supreme Court of Bangladesh have drafted or adopted comprehensive *Mission and Vision Statements* for the Bangladesh Judiciary. If one has been adopted, it is neither prominently displayed anywhere in

the MoLJPA, the Supreme Court, or the district courts, nor is it posted on their respective websites.

#### *Recommendations*

- A mission statement should be drafted in consultation with fellow judges and in accordance with the Judiciary's constitutional mandate. It should be clear, concise and comprehensive. It should spell out, in as few words as possible, the singular purpose for, or mission of, Bangladesh's Judiciary.
- A proper vision statement should be Specific, Measurable, Achievable, Realistic and Timely (SMART).
- Both the Mission and Vision statement should be displayed in conspicuous locations in courts and also incorporated in any court-related literature.
- A citizen charter may be drawn up and conspicuously displayed in front of the Court so that the court users/ litigants may get all relevant information of the expected standard of service.

#### **2. Strategic Plan**

Currently, there is no strategic plan for the Judiciary or the MoLJPA. A strategic plan should lay out the Judiciary's short-and long-term goals over a 3-5 year period, with a view to harmonizing its processes as per its mission and vision, and providing a service to the public.

#### *Recommendation*

- A strategic planning exercise is under way. However, it should be a multi-agency consultative process so that the interaction between the judiciary and other justice sector institutions such as the police and prisons are able to work towards harmonizing their intra- as well as inter-agency relationship.



### 3. Independence of Judiciary

There appears to be an inconsistent application of the concept of judicial independence, specifically as it relates to subordinate court organization, judicial administration, or records management. An independent judiciary must have impartiality, finality and respect for decisions, and freedom from outside influence (World Bank Group, 2001). The concept of judicial independence is more properly concerned with the prevention of coercion or interference in the conduct of judicial decision-making and less with the organization or administration of a court or chamber.

#### *a. Political Interference and Administrative Dependence*

Despite the Masdar Hossain ruling,<sup>7</sup> it appears that the judges of the subordinate courts are not yet fully independent and autonomous. Measures designed to insulate the Judiciary from political interference have not yet ensured the impartiality of the institution due to its administrative dependence. The MoLJPA, as well as the Supreme Court, need to carefully and immediately consider the conditions under which the judges of the subordinate courts work.

The subordinate courts are effectively reporting to two institutions instead of one, which may often appear to be chaotic and add to the already compounded problem of delay. This leads to serious operational problems for the courts because information will much take longer to be relayed and processed between two institutions; for example, judges of the lower courts face considerable difficulties in matters requiring approval, which effectively involves getting initial

permission for leaves and other related matters from the Supreme Court followed by a Government Order to be processed from the MoLJPA. Although the two institutions should work in consultation with each other, given the nature of bureaucracies and that these are two distinct and different branches of the government namely, the Executive and the Judiciary, both institutions are by constitution assigned with a different mandate.

While operationally the MoLJPA reports to the Executive, and the Judiciary is designed to be independent, the two institutions should provide a mutual check and balance function. Therefore, it is hardly inconceivable that the two institutions, while carrying out two separate mandates, may often find themselves at the brink of conflict or tension. This may be most apparent in deciding matters of transfers, posting, promotion and departmental actions. Most of these matters are regulated by rules of business for the courts, which may benefit from a review to ensure that it addresses some of the practical issues faced by the courts.

#### *Recommendations*

- Create a strategic plan delineating each institution's role and ensure that the staff from the top down to the lowest tier understand their respective job descriptions and institutional mission.
- Create an inclusive and practical budget taking into account the needs of each institution.
- Engage in advocacy at the highest level, supported by the Chief Justice, to ensure institutional concord and support.

<sup>7</sup> The landmark decision of Secretary, Ministry of Finance v Masdar Hossain (1999) 52 DLR (AD) 82 was determined on the issue as to what extent the Constitution of the Republic of Bangladesh has actually ensured the separation of judiciary from the executive organs of the State. In essence, the case was decided on the issue of how far the independence of judiciary is guaranteed by the Constitution and whether its provisions have been followed in practice. See: [http://www.bangladeshsupremecourtbar.com/Masdar\\_Hossain\\_Case.php](http://www.bangladeshsupremecourtbar.com/Masdar_Hossain_Case.php)

- Review and streamline rules of business for judges of the district court dealing with remuneration, holidays and leaves, and promotions, etc.

#### *b. Budgeting*

Multi-institutional reporting also creates logistical issues, for example, supplies and stationery must be officially requested by the District Judge, who then forwards an estimated budget requirement to the MoLJPA. This is often insufficient and involves a lengthy wait. Court and Case Management are intricately tied to budget allocation for the courts. Proper utilization of budgets is a serious issue affecting the Bangladeshi courts. In many courts, the allocated budget in purchasing stationery and furniture etc. is often under-utilized. In addition, due to a lack of regular audits of court expenses, there is a risk of misappropriation and malpractice by court staff.

Experience from many countries suggests that the interaction between the Executive and the Judiciary can often be strained when dealing with budgetary issues (Webber, 2007). While the Executive Branch strives for fiscal restraint and accountability in financial management, the justice sector as a whole will compete with other institutions for securing an optimum budget. As a result, the Executive may often be perceived as infringing on the principles of the judicial branch ('fairness' and 'independence' in the administration of justice).<sup>8</sup> The problem is not simply insufficient funds, but a mutual perception that neither branch properly understands nor respects the other's mandate and goals. The question of whether the Executive or the Judiciary should set the objectives for judicial sector performance also raises concerns about the operational autonomy of the judiciary, which is at the heart of judicial independence.

Determining annual budgets for the justice sector can be challenging because it requires significant financial support. Often, the national budget will be key source of financing for the judicial system, although, some donor contributions also fund judicial reform work for a limited time. Budgets that are well prepared accommodate the growing needs of the judiciary and utilize the limited resources efficiently. In addition, good budgets can also substantially assist in raising the performance of the judicial sector. Application of modern financial management techniques that link growth in expenditure demands in the justice sector, particularly caseloads in the courts, to the budget planning process can make considerable difference to the allocation of judicial budgets.

#### *Recommendations*

- Initiating dialogue with judges and court staff determining major areas in need of resources and prioritizing accordingly.
- Budget analysis with support from the MoLJPA or the Finance Ministry who may provide in-house officials who are dedicated budget analysts.
- The Judiciary may also consider external assistance from donor partners to deploy a professional financial/budget analyst who can map the needs of the judiciary in light of its overall institutional structure and make recommendations accordingly.
- A revised budget should be implemented within specific programmatic structures and set performance indicators in order to measure its effectiveness in addressing resource constraints.
- Regular audits and continuous supervision of budget allocation and spending.

<sup>8</sup> Ibid, 4

### *c. Human Resources*

Currently, the administration of each department of the district judiciary is run by an assigned judicial officer, also referred to as Judge-in-charge of various departments, including, for example, Nezarat, Stationary, Library. Thus, judges are expected to carry out additional administrative tasks together with their judicial work. In many cases, they find themselves so overburdened with judicial work that they are often unable to carry out their administrative duties effectively. As a result, there is a knock-on effect on the entire administration.

Accordingly, the Bangladesh Judiciary can consider the following:

#### *Recommendations*

— Carrying out the review of preliminary matters such as suit-maintainability, review and checking of filing documents in order, etc. through:

- training of existing staff and increasing staff intake; or
- recruiting paralegal court officers with a law degree (but not necessarily recruited through judicial services examinations).

Alternatively, newly recruited (but not yet confirmed) judges can also be assigned to carry out this function in the short term, with a view to phasing it out for handover to trained court staff or paralegals.<sup>9</sup>

— In the short term, the court can consider appointing in-house administrators from mid-level judges. With some short-term intensive training in administration, these judges, for the duration of the appointment, will only carry out administrative work and not judicial

work. While it is true that traditionally only those in judicial service qualified through the Judicial Services Examinations are allowed to deal with administration, for the long term the Judiciary may envisage creating an administrative post for only dealing with back-office issues, which is not associated any activities related to the substantive outcome of a case. Incumbents for such a permanent administrator's role should be university trained and have broad experience in:

- Management
- Human resources
- Budgeting
- Procurement
- IT.

— The courts, in consultation with management experts (or if administrators are recruited), should discuss, draft and adopt standard operating procedures (SOPs) for all operational (non-judicial) activities of the Judiciary. SOPs will:

- standardize court processes;
- delineate role of court staff;
- promote consistency in the courts' internal work processes;
- organize the paper records effectively;
- pave the way for the eventual development of a comprehensive Integrated Case Management System software application.

At a minimum, SOPs should be reviewed annually and updated or rewritten accordingly.

<sup>9</sup> Currently, there is no basic difference in terms of judicial and administrative functions of the confirmed and yet to be confirmed judges.

#### *d. Absence of Attorney Services*

Tied to the idea of an independent judiciary is the lack of Independent Attorney Services. Generally, most countries, including neighbouring India, Pakistan and Sri Lanka, have a permanent cadre of public prosecutors and government pleaders that report to the Ministry of Law and are also staffed and managed by it. However, in Bangladesh this appears to be a political function, even though setting up an independent office for Attorney Services will still essentially leave it under the purview of the Executive. Not having such an essential service ultimately poses significant economic costs for the Government. Cases for the State are handled inefficiently, often requiring the services of private lawyers. This also prohibits access to justice for citizens who not only deal with a prohibitively costly justice system but also with inexperienced prosecutors and government pleaders.

Public Prosecutors and Government Pleaders are appointed politically, resulting in the appointees not typically drawn from the top tier of academically and experientially qualified practitioners. However, since there is no institution driving cases on behalf of the state, these ad hoc appointees have no experience dealing with government cases. This leaves plenty of room for unfair exploitation of parties and there is no system in place for accountability of these appointees to the Court or elsewhere. Establishment of a permanent attorney service where attorneys are appointed through competitive examinations with scope for promotion, it will have a positive impact on the justice system.

#### *Recommendations*

- Initiate national dialogue and advocacy to build consensus for establishing an Office of Independent Attorney Services.
- Engage in advocacy at the highest level, supported by the Chief

Justice, to cultivate political will to create such an office.

- A Permanent Prosecution/Attorney service may be established by appointing law graduates with experience in the court (practice) through the Bangladesh Judicial Service Commission with competitive exams.

#### *e. Bench-Bar Relationship*

It appears that there are underlying tensions between the bench and the bar. There are frequent complaints 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' lawyers 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 a lawyer's political identity can often dominate as a factor of influence. However, this could also arguably work to a lawyer's disadvantage if he/she is perceived to be partisan. In this regard, the Bangladesh Bar Council as well as the Supreme Court and the MoLJPA 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.

#### *Recommendations*

- Initiate Bench and Bar dialogue to solidify judicial independence and create a reform-conducive environment.
- Consult with the bar at the planning as well as the implementation stage of any new changes to the court's work process or other policies.
- 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. Therefore, they should be fully prepared when their cases are called, actively pursuing settlements at every opportunity, forgoing requests for unnecessary adjournments, or avoiding anything else that results in needless delay in disposing of their cases.

- The Chief Justice should, at every opportunity, articulate his/her active support of the subordinate courts, giving the judges the authority and encouragement they need to effectively manage their courtrooms.
- The Supreme Court should actively engage with the Bangladesh Bar Council as the advocates' regulating body to encourage a renewed emphasis on a more effective, efficient administration of justice in Bangladesh's courts.

#### **4. No Centralized Registry Function**

There is no central Office of the Registrar in the Dhaka District Court or in other major metropolitan district courts. Advocates and litigants must deal directly with the respective *sherestadar* for each judge, depending upon the territorial or pecuniary jurisdiction of that judge. The District Court is composed of many individual judges' chambers or offices, each with its own *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*. The *sherestadars'* and *peshkars'* offices or work areas are cramped, crowded and ill-equipped with broken, damaged, mismatched or deficient furniture, furnishings and equipment.

#### **Recommendations**

- The Judiciary should establish a consolidated, centralized Office of the Registrar in the district courts.
- Human resources should be enhanced (See Chapter II (A)(3)(c) and Chapter III (B) (1).
- As a matter of policy, consideration may be given to revising the pecuniary jurisdiction of courts to evenly distribute some of the case load within the courts.

#### **5. Lack of Client Service for Court Users**

Without 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. For example, the Dhaka District Court is chaotic, overwhelmed by too much paper, endless numbers of registers, antiquated procedures, and a dearth of managerial control. The current environment of the District Courts does not contribute to effective, efficient court users service. In addition, there seems to be no attempt to promote excellent customer service or a positive, public impression of the Judiciary.

#### **Recommendations**

- A citizen charter may be drawn up and conspicuously displayed in the court so that the court users/litigants may obtain the information of their desired service.
- A staffed help-desk may be set up in court to be the official point of contact for all court-related information to court-users.
- Ethical guidelines and conduct ethics training should be developed for all court staff delineating the need for ethical behaviour and good customer service.
- Pamphlets and other materials



should be developed, informing court users of the services and facilities available, as well as how to access the court's services.

- A complaints section or mechanism should be set up whereby court users can lodge complaints. Each complaint should be carefully scrutinized and anyone found guilty of misconduct should be held accountable.

### **6. Unequal Distribution of Workload for Judges**

The District Judge is directly responsible for distributing the workload of the various judges. The Districts Courts consists of different levels of judicial officers which can pose problems due to its precise or rigid organizational strata established to correspond with the complexity or value of a case. For example, in the Dhaka district courts there are at least four strata of judicial officers, each of whom hears cases at different jurisdictional levels, segregated by territorial or pecuniary demarcations.<sup>10</sup>

However, despite these dedicated 'jurisdictions', most of these courts have a workload that cannot be managed effectively by the judges and staff assigned. Moreover, some jurisdictions may have too much work and others, not enough. The current hierarchy and process of distributing cases to the judges of District Court imposes a significant constraint on their effective utilization.

#### *Recommendations*

- The court should eliminate the assignment of cases according to territorial criteria or any other means that do not ensure randomness. As a matter of policy, consideration may be given to revising the pecuniary jurisdiction of courts to

evenly distribute some of the case load within the courts.

- 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.
- The District Judge and the newly appointed Registrar/court administrator should work together to ensure that the respective judges' workloads are equitable and that each is making a diligent effort to dispose of cases effectively and efficiently.
- In the interim, the District Judge should also take active steps to redistribute the caseload of any judge who reports to him or her an unmanageable load of pending cases. The District Judge, under section 24 of the Code of Civil Procedure 1908, has the power to transfer a reasonable number of cases to other similar Courts that have a minimum number of cases.

### **7. District Court Records Management**

The District Court records are manual hard copies, and the archives that are maintained need significant modernization and updating. For example, the Dhaka District Court's archives appear disorganized, overcrowded and in considerable disarray. They are in dire need of a complete renovation and should be equipped with adequate lighting, air conditioning, electrical outlets, etc.

Part III, Chapters 16-20, of the CRO

<sup>10</sup> District Judge, Additional District Judges, Joint District and Sessions Judges (12), Senior Assistant Judges (15) Assistant Judges (none).



Volume I governs the organization of case files, as well as the retention and destruction of official court records. The CRO are in dire need of modernization and simplification and needs to be translated into Bangla language. As written, it is much too complex for the average sherestadar or registry office employee to understand, much less implement. For example, the Dhaka District Court's archives are overwhelmed with old, closed records that should be destroyed or consolidated off premises.

#### *Recommendations*

- Acting under the auspices of the Supreme Court Special Committee on Judicial Reforms. A Technical Committee (TC) (See Chapter VI (A)(2)) should work with a competent team of experienced sherestadars, to carefully review and streamline the chapters of the CRO Volume I related to the organization of case files, as well as the retention and destruction of court records, making it easier for sherestadars, peshkars and other non-judicial personnel to understand and implement them.
- Sufficient funds should be budgeted for the complete renovation and reorganization of the Dhaka District Court's archives.
- Bar coding system may also be introduced for monitoring the movement of manual records.

### **8. Security and Disability Accommodation**

There is no courthouse security equipment such as metal detectors, x-ray machines, hand-held scanners etc. While some courts such as the Dhaka district court did have several police officers stationed at the entrance, there seemed to be no comprehensive security measures. In addition, although the Supreme Court has now established rest rooms for female

litigants, there is no suitable accommodation such as ramps for wheelchairs for elderly citizens or those with mobility issues, nor sufficient elevators, etc.

#### *Recommendations*

- Sufficient funds should be budgeted for the installation of a metal detector and an x-ray machine at the main entrance of the courthouse, and for equipping police officers with hand-held scanners.
- Budget needs to be allocated for the assessment and installation of wheel chair ramps and other relevant accommodation.
- In the long run, consideration should be given to the installation of close circuit cameras in at least some of the busy metropolitan courts.

### **B. Civil Workflow**

An analysis of the civil workflow will help identify process-bottlenecks and determine the delays that lead to back-logged cases. However, it is important at the outset to identify what 'back-log' is. The term 'backlog' is often used to mean different things by those involved in development work and the local partners they serve. When one asks for caseload statistics on the size of a court's backlog, how should a court respond? There are at least three ways (Steelman, 2002) to answer this question; each answer has some relevance depending upon the circumstances:

First, according to some international experts (ibid), the *total* number of pending cases (filed and awaiting disposition) is synonymous with the term 'backlog'. By dividing this number by the number of full-time judges handling a given case type, e.g. criminal, civil, family, enforcement, etc., the quotient is a measure of pending cases per judge, which some consider the

backlog per judge. Not every case that has been filed, however, is ready to be adjudicated; many may have not had a response filed by the defendant or have not had sufficient time for discovery,<sup>11</sup> so they are *not* ready to be resolved.

Second, according to other experts, the term 'backlog' is defined as cases that are ready to be heard (or that could be settled) but the courts cannot fit them into their respective schedules. If cases are ready for adjudication, but the courts cannot get them to hearing before an available judge, then these cases can reasonably be considered backlogged.

A third way to measure a court's backlog is total up the cases that exceed its established filing-to-disposition time standards. This is a preferred approach by many courts. Moreover, a regular inspection of such cases can be a very powerful tool for isolating, understanding, and tackling the root causes of delay, thereby improving case-flow management and eventually reducing the backlog.

The respective District Judge should always know how many cases are backlogged, e.g. those that exceed case-processing time standards, and require his/her judges to prepare and submit regular monthly reports on them for further review by a case management committee (Steelman, 2002). Cases nearing or exceeding a court's filing-to-disposition time standards should be given high priority when scheduling. Civil caseload backlogs must be eliminated by setting strict timelines for identified processes as well as by imposing significant cost implications for non-compliance.

Below is a step-by-step outline of the civil process in the district courts of Bangladesh and recommendations based on interviews and observations. However, this entire process needs to be reviewed by the Bangladesh Judiciary and decide on which solutions will best suit its needs.

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<sup>11</sup> Discovery is defined as compulsory disclosure, or inquiry into, any information that reveals facts and develops evidence relevant to the subject matter of the action. Black's Law Dictionary, Seventh Edition, 1999.

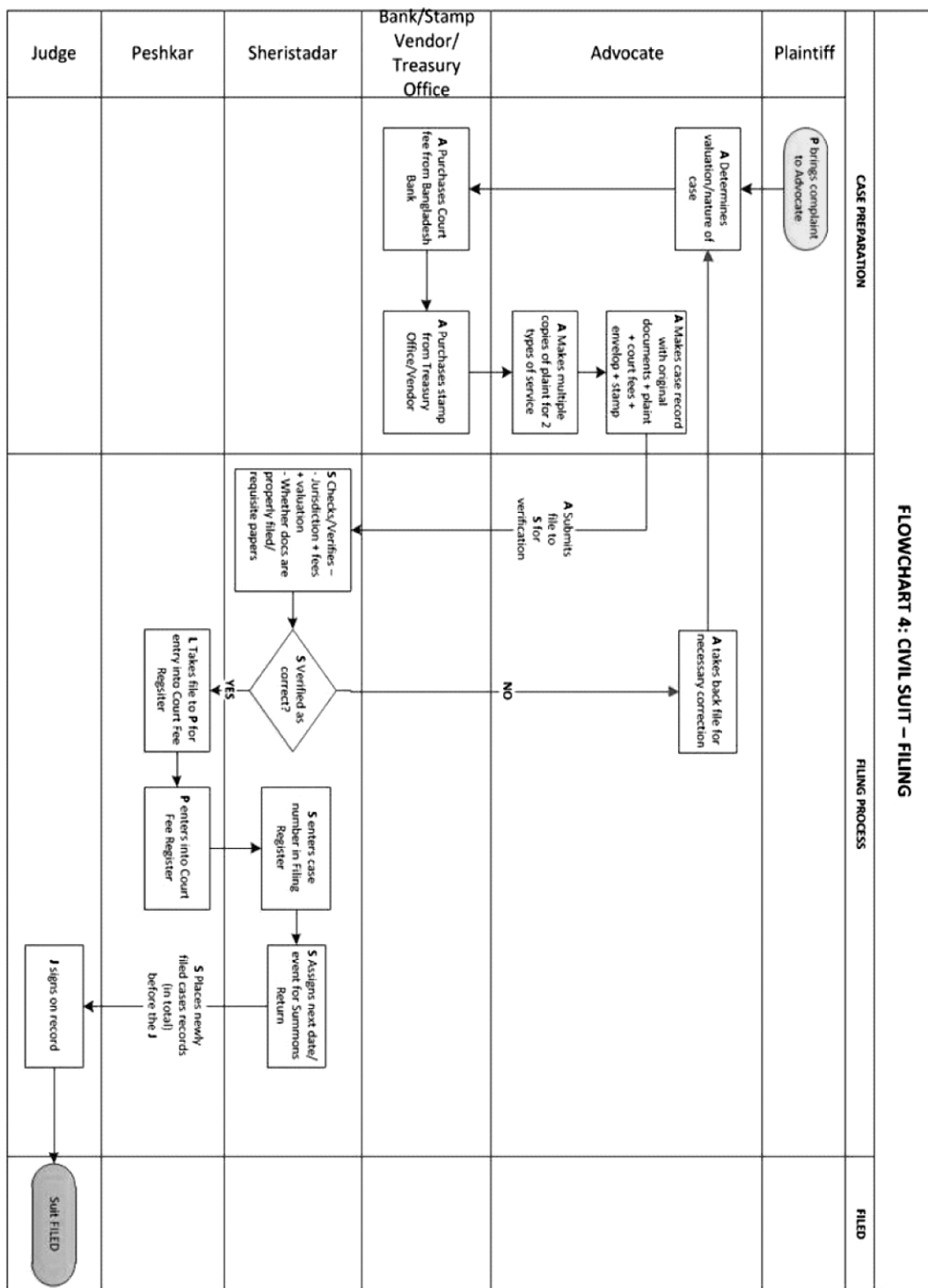


Figure 1. Filing

## 1. Case Preparation and Suit Filing

- The litigant brings the complaint/ papers to the advocate.
- The advocate determines valuation/ nature of the suit.
- The plaint is drafted.

### Process Problems

- It is difficult for a litigant to value his/her suit and determine the correct court in which to file. At the moment there is no information point in the court building or any website on the demarcation of jurisdiction among the civil courts.
- The fee structure for filing a civil suit as laid out in the Court Fees Act, 1870, is based on complex numerical calculation that is not understandable to the general public. The Act is also significantly outdated and is in need of updating to reflect current practices.
- No officially approved drafting format for plaints available to the public.

### Short-Term Recommendations

- Have information on the territorial/pecuniary jurisdiction of each court and process of determination of court fees in simple formats displayed in the court website, around the court premises and outside each courtroom. This can be easily drawn up by an assigned committee.
- Have information on the calculation and determination of court fees.
- Create sample formats of plaints and make available to the public to download from the website or collect from the court information center/reception desk.
- Consider limiting number of pages per plaint to 30.

### Long-term Recommendations

- Amend the Court Fees Act, 1870 to create fixed court fees for three types of first-instance courts—Small Claims, Assistant Judge and Joint District Judge Courts.
- Create a uniform filing system for all civil cases to make case preparation simple and user-friendly.
- Amend and incorporate additional staff and resources in the annual budget to establish court information counters.

*Overall Comments*

The filing process of a civil case is extremely outdated, with little or no changes in the last century. The complexity of the process, the sheer number of actors involved, and the number of desks that an ordinary litigant or a lawyer on his/her behalf has to turn to are major reasons for which there are almost no litigants in person in the courts of Bangladesh. Although not directly contributing to delays or backlog, the outdated and inefficient system is a barrier to access to justice for the poor and marginalized groups, and an avenue for

their exploitation by the system.

**1.1 Paying court fees**

- The advocate pays the court fee at Bangladesh Bank.
- The advocate purchases a stamp from the Treasury Office/Vendor.
- The advocate makes multiple copies of plaint for two types of services.
- The advocate makes the case record with original documents, the plaint, court fees, envelopes and stamps.

**Process Problems**

- Similar to all government offices, the payment process for filing a case is outsourced by the court to a state bank, which 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.
- The court fee takes at least 2-3 days to process before it can be used.
- Unofficial and unauthorized vendors are often seen selling stamps on the court premises.
- Fake or forged court fees are sometimes found to be sold in Court area that ultimately incurs losses for the Government Treasury.

**Long-term Recommendations**

- Consolidate the payment system with the filing system in a one stop desk where the case and the payment are received at the same time.
- With the support of Bangladesh's Ministry of Finance (MoF), the Supreme Court and the MoLJPA, the Bangladesh Judiciary should enable bKash electronic fund transfer via a mobile device, or install debit or credit card 'swipe' machines that are linked by telephone line to the Judiciary's account at the Treasury.
- This would save litigants or their advocates significant time in filing their cases and provide a clear, comprehensive 'audit trail' or accounting of filing fees paid during any given time period, e.g. monthly, quarterly, annually. This is also in line with the Bangladesh Government's ICT initiatives.
- Unofficial and unauthorized vendors outside courts should be removed, and regular audit and monitoring are required to prevent their practices.

## Process Problems

- There are no available guidelines on what needs to be in the record for a court user to follow.
- The paper to be used for writing the plaint, the envelopes and the stamps are all to be obtained from different places, which places a burden on the court user to make all the arrangements.
- The length of the plaint can be 10 to 100 pages.

## Short-term Recommendations

- Make all required stationery available for purchase from a single point in the court premises.
- Provide staff support at the *sheresta* for arranging records and preparing them for filing.
- Limit the number of pages per plaint to no more than 30, excluding annexes and ancillary documents.

### 1.2 Submission of file

- The advocate submits file to the *sherestadar* for verification.
- The *sherestadar* checks/verifies:
  - jurisdiction, fees and valuation;
  - whether the documents/requisite papers are properly filed.
- If verified as incorrect, the advocate takes back file for correction.
- If verified as correct, the advocate takes the file to the *peshkar* for entry into the Court Fee Register.
- The *peshkar* puts filing seal and enters into Court Fee Register.
- The advocate/*peon* brings file back to the *sherestadar*.
- The *sherestadar* enters the case number in the Filing Register.
- The *sherestadar* assigns next date/event for Summons Return.



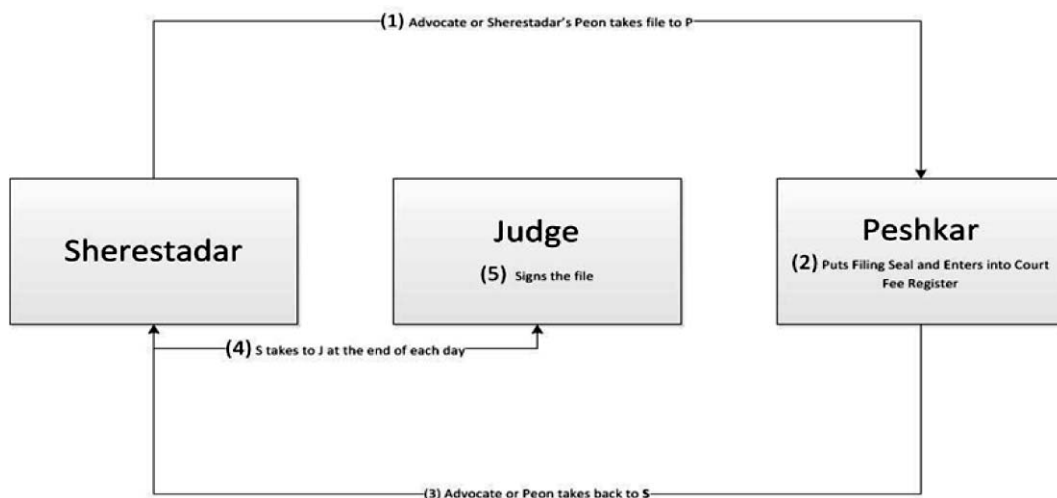


Figure 2. Procedure in the Submission of a File: the Sherestadar, the Judge and the Peshkar

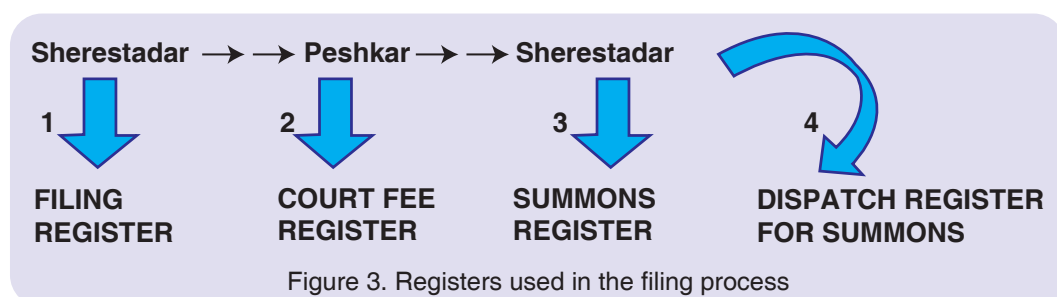


Figure 3. Registers used in the filing process

### Process Problems

- Even if the plaint is correctly submitted, the process involved at least three different actors—the *sherestadar*, the *advocate/peon*, and the *peshkar*- to complete the process.
- The advocate carries the file back and forth between the *peshkar* and the *sherestadar* when there should be *peons* carrying out this function.
- The *sherestadar* and the *peshkar* are in different rooms, which causes the file to travel back and forth from the *sheresta* (the *sherestadar's* office) and the courtroom (where the *peshkar* sits).
- The *peshkar* enters details of the court fee into the Court Fee Register without mentioning the case number, while the *sherestadar's* Filing Register registers the case number, which creates a lack of coordination.
- The court fee register is unnecessarily kept with the *peshkar*.
- Each court has a different *sheresta* attached to it, to whom the court user must personally submit his/her file.

## Short-term Recommendations

- Appoint staff in the *sheresta* to fill in the Court Fee Register at the same time as it is entered in the Filing Register to simplify the process.
- Establish a pilot central filing desk or registry in the court premises where a staff representative from a select group of pilot courts will be present to receive cases to be filed in their courts.

## Long-term Recommendations

- A Technical Committee or Taskforce (see Chapter IV (A)(2)) should be tasked with reviewing the various registries and diaries to streamline the process and consolidate more than 32 manual registers that the *sherestadar* and *peshkar* are currently mandated to keep under the Civil Rules and Orders.
- Introduce Register of Action cards, pre-printed forms and orders (see Overall Comments below).
- Introduce an electronic database in the *sheresta* to store all information on a filed case and abolish manual registers.
- Establish a permanent and centralized registry (see Chapter II (A)(4) above) in the court premises where cases for all courts will be filed and later transferred to the appropriate court.

### 1.3 The judge's signature

- At the end of each day, the *sherestadar* places all newly filed case records before the judge.
  - The judge signs on record.
  - The suit is filed.

## Process Problems

- Signing by a judge is an unnecessary step adding to the judge's work without adding much value to the process.
- Judges are usually too busy to read the file before signing, which makes the requirement of a signature redundant.

## Long-term Recommendations

- Paralegal court officers may be appointed to check suits for maintainability and for compliance with pre-printed forms, thus relieving the burden from the judge. However, the court may also consider assigning newly recruited judges to this task.
- Introduce Register of Action cards, pre-printed forms and orders (see Overall Comments below).
- Introduce an electronic database in the *Sheresta* to store all information on a filed case and abolish manual registers.
- Establish a permanent registry/central filing system in the court premises where cases for all courts will be filed and later transferred to the appropriate court.

### Overall Comments

**Duplication of Information:** The practice of entering the same case information in multiple locations, e.g. various registries, should be discontinued as quickly as possible. Any overt duplication should be reduced or eliminated immediately, and the need for any confirming signature, e.g. for delivery or movement registries, should be replaced with *trust* between the former signatories as well as accountability measures, such as:

- A pre-printed *Register of Actions* card should replace the registers, or in the short term, replace the duplication of data-entry. The Register of Actions card should reflect the current status of every case filed with the court and must include:
  - the details of the parties (including addresses, mobile and line telephone numbers, etc.);
  - their advocates (including addresses, mobile and line telephone numbers, e-mail addresses, Bar Association membership numbers, etc.);
  - the case type and consecutive case numbers;
  - filing and disposal dates for statistics purposes;
  - a summary of all case-related activity in chronological order, which mirrors the contents of a case file and serves as a table of contents for it.
- Additionally, the following may be considered:
  - Verbatim entry of the complainant's prayer in any of the register books (or on a *Register of Actions* card) should be eliminated.
  - Descriptive rubber stamps should be used to enter routine case action information on a Register of Actions card instead of hand written notes that are frequently illegible due to poor record-keeping and dust.
  - Bar coding technology may be incorporated to track the movement of files from one location or desk to another. This will instil accountability and help identify process bottlenecks.
- **The peshkar's role:** The judge's *peshkar* (with the assistance of the judge's stenographer) should act as a case manager and carry out the following tasks:
  - Manage the judge's hearing schedule.
  - Prepare daily or weekly calendars.
  - Prepare and send summons.
  - Prepare the judge's miscellaneous orders that affect the timely progress of the case from filing to disposal.
  - Type and/or process the judge's decisions, orders and minutes, and answer the judges' telephone.
- **The sherestadar's role:** The sherestadar should perform all functions related to:
  - the care, custody, control and safekeeping of the record;
  - maintenance of the case file;
  - preparation of the alphabetical case/party index;
  - regular updating of *Register of Actions* cards (see below).

In the long term, routine functions should be delegated solely to a responsible *sherestadar* (and/or court paralegals or central registry staff if recruited), and not

shared between the respective *sherestadar* and the *peshkar*. These include:

- reviewing the plaint;
- accepting the filing fee;
- scheduling a date for hearing or signing the summons.

The case file should remain in the respective *sherestadar*'s office and all procedural, administrative or clerical functions preparatory to the first hearing should be performed by the respective *sherestadar*, or his/her designee.

Monetary incentives for special services by court staff should be strictly prohibited. Those who are caught soliciting or accepting such incentives should be disciplined accordingly. Repeated occurrences, after an initial warning, should be grounds for termination of the subject employee.

— **On a pilot basis, the District Courts should consider:**

- preparing and adopting standard, pre-printed minute orders for common cases for the judges to use instead of creating one each time;
- using standard case opening forms, e.g. cover sheets, pre-printed forms with 'check-off' boxes, other routinely used court documents.
- using Digital Audio Recording (DAR) in its courtrooms in order to speed preparation of the record. This should only be in place in the long term after the courts are adequately staffed. DAR will:
  - ❖ save the presiding judge substantial time in conducting the hearing;
  - ❖ enable a *peshkar*,

stenographer or judge to perform many of the important functions of a court reporter;

- ❖ ensure an accurate record of events for later review;
- ❖ facilitate the preparation of the record on appeal.

— **In the long term:** All complaints should be processed exclusively by an employee of a centralized Office of the Registrar and not by the assigned judge, his/her *sherestadar* or his/her *peshkar*. The new Office of the Registrar should be separated into two major divisions: operations (intake, civil, criminal and family subdivisions), and administration (human resources, budget and finance, IT, procurement and property, statistics and facilities subdivisions), each with their own records storage capacity. The Registrar Office staff should:

- open the case;
- confirm the payment of filing and other fees;
- randomly assign a judge for a case;
- schedule the first hearing;
- create a file;
- fill in a case/party index card and a *Register of Actions* card
- prepare all procedural or scheduling orders;
- perform all other relevant preliminary or preparatory work related to the initiation of a case.

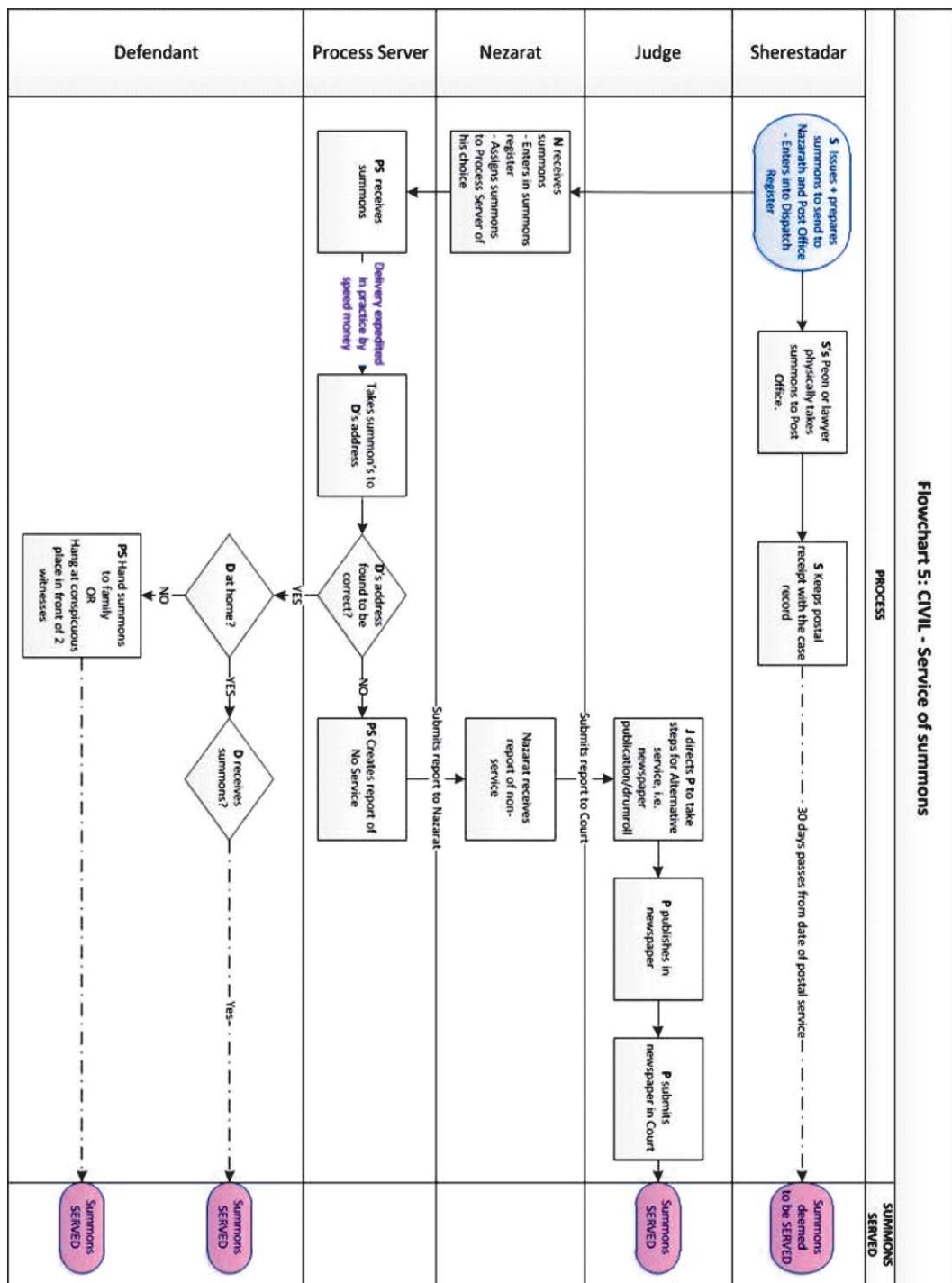


Figure 4. The summons

## 2. Summons

### Path i: Postal Service

- Preparation of Summons
  - The *sherestadar* issues and prepares summons to send to the *Nezarat* and the post office.
  - Enters into Dispatch Register.
- Service
  - The *sherestadar's* peon or the advocate physically takes the summons to the post office.
  - The *sherestadar* keeps the postal receipt with the case record.
  - 30 days elapses from the date of postal service. Summons is deemed to be served.

### Process Problems

- Even though it is the *sherestadar's* duty to post the summons, in practice, it is usually carried out by the advocate because the *sherestadar* does not have the resources nor time due to an unmanageable workload.
- The acknowledgement receipt is usually not retained in the *sheresta*.

### Short-term Recommendations

- There should be greater enforcement and use of the 30-day postal summons
- Since the postal receipts are key documents, their collection and preservation should be strictly monitored. Judges should take extra care to ensure that the record contains the postal receipt properly and in a timely manner.

### Long-term Recommendations

- Engage in greater advocacy within the highest level of the government and revising budget for increasing human resources within the postal service dedicated to carrying out the mailing and delivery of summons and other court-related documents.



**Path ii: Manual service**

## — Assigning a Process Server

- The *Nazir* receives summons.
- He or she enters it in the summons register.
- He or she assigns the summons to the process server of his/her choice.
- The process server serves the summons to the defendant(s).
- The process server takes the summons to the defendant's address:

→ If the defendant's address is found to be correct and the defendant is home, the defendant receives the summons and the summons is **served**.

→ If the defendant's address is found to be correct but the defendant is not home, the process server:

- hands summons to member of family; or
- hangs the summons at a conspicuous place in front of two witnesses.

— If the defendant's address is found not to be correct:

- the process server drafts a report of **no service**
- he or she then submits it to the *nezarat*;
- the *nezarat* receives the report and submits to the court through the *sherestadar*.

**Process Problems**

- The distribution of processes to the process servers is not uniform, equal or systematic. The distribution of process documents is made by the *nazir* at his/her discretion, which creates room for bias, favoritism and an arbitrary distribution of the workload.
- Process servers do not receive adequate travel costs as per the outdated rates fixed by law. Therefore, there is no incentive for them to serve, leaving a great deal of room for corruption i.e. 'speed money'. Reportedly, most processes are served with the payment of speed money.
- The current service of process leaves room for widespread corruption, for example:
  - plaintiffs can pay the process servers to report that the process has been served even though it has not been served (in order to obtain an ex-parte decree);
  - the potential defendant can pay the process server to report that his/her address is incorrect (in order to delay the suit).

### Short-term Recommendations

- Immediately revise rates for process servers to cover actual costs as per current costs of travel.
- Create monitoring mechanisms to oversee the process servers and create a complaints process to receive complaints of corruption.
- Enforce hard disciplinary action including dismissal from service and criminal prosecution on process servers found guilty of corruption.
- If service of process is initially unsuccessful, notice should be published in a local area newspaper and the case should proceed without further delay.

### Long-term Recommendations

- MoLJPA and the Supreme Court should entrust Technical Committees or a Taskforce (See Chapter III (A) (ii)) to discuss, draft and adopt a Memorandum of Understanding (MoU) to ensure common understanding of the summoning process.
- Amend the National Judicial Budget to incorporate the modernization of the *Nezarat* and its processes.
- Amend the Code of Civil Procedure (CPC) and the Civil Rules and Orders (CRO) as required to effect the necessary changes.

#### *Alternative Service*

- If the summons has not been served according to the above steps, the Judge directs the plaintiff to take steps for alternative service through:
  - a newspaper publication; and/or
  - a drum-roll in the defendant's local area.
- The Plaintiff publishes the summons in the newspaper.
- Plaintiff submits newspaper in court.
- The summons is **served**.

### Process Problems

- The alternative service method of drum rolling in the defendant's local area is largely ineffective and outdated in putting a defendant on notice.
- This process of alternative service adds 2-4 months to the pendency of a suit.

### Long-term Recommendations

- Amend the Code of Civil Procedure (CPC) and the Civil Rules and Orders (CRO) to abolish drum rolls as a method of alternative service.
- Establish access with the National Identity Card database in order to cross-check whether addresses given by plaintiffs are correct.
- If service of process is initially unsuccessful, notice should be published in a local area newspaper, and the case should proceed without further delay.

### Overall comments

The summons process in Bangladesh is a step in the civil case-flow, which is most prone to mismanagement, misuse and corruption, and hence delay. Being an administrative step, the judicial officer does not have much control over the process, making accountability a key issue.

The summons process is a well-known cause of delay, which has been well-documented in reports, and a step was taken in the 2012 amendment of the Code of Civil Procedure (CPC) to alleviate the problem. However, instead of modernizing the facilities of the *Nazir's* office or increasing monitoring, only the law was changed, and no evidence of any change in practice has been found.

The Courts can consider the following on a pilot basis:

- Regardless of how service of process is performed, the *sheristadar*, showing good cause, should be empowered to grant an extension of time not to exceed ten business days. The presiding judge should *not* be involved.
- If after an additional ten days the summons has still not been successfully served, it should be published without delay in a local newspaper and the case should proceed as scheduled.

### 3. The Written Statement

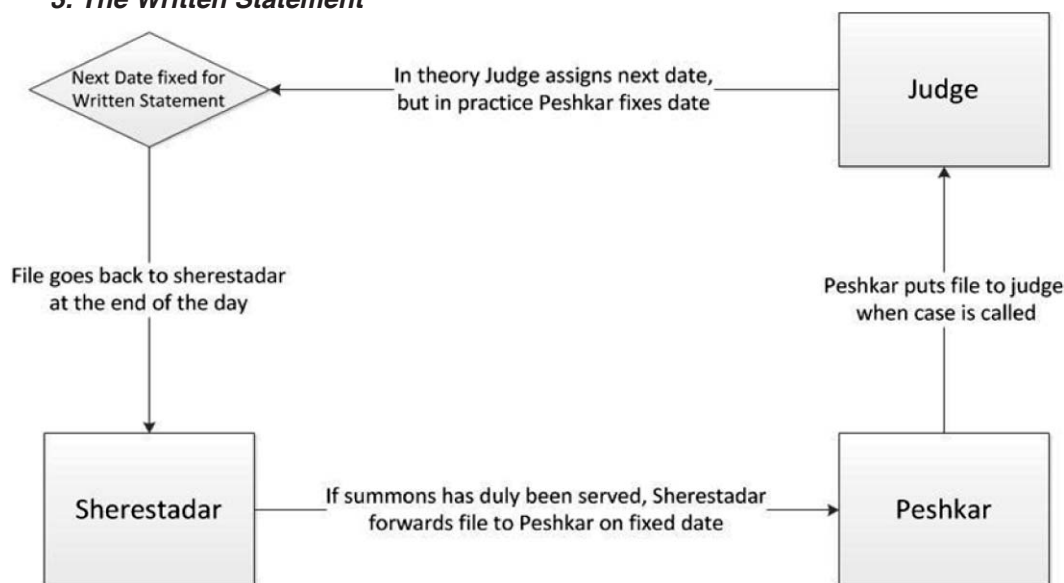


Figure 5. Assigning a Date for Filing of Written Statement

#### 3.1 Assigning a date for filing a Written Statement (reply/defence)

If summons has been duly served:

- The *sherestadar* forwards the file to the *peshkar* on the date fixed for return of the summons.
- The *peshkar* puts file to judge when the case is called.

— In theory, the judge assigns the next date for filing of the written statement.

— In practice, the *peshkar* assigns the next date.

- After next date has been assigned, the file is sent back to the *sherestadar* at the end of the day.

## Process Problems

- Although the plaint is sent with the summons to the defendant(s), the supporting documents are not sent, making it nearly impossible for a defendant to reply on the first assigned date.
- According to CPC, all original documents are required to be submitted before the court at the time of filing of the suit. But in practice, photocopies are sometimes submitted and often due to the workload, or in cases of unscrupulous court staff, these practices are overlooked. This can result in unnecessary adjournment since contesting parties will object or the filing party will inevitably ask for more time to file the original document.
- Countless adjournments occur due to the lack of preparedness of lawyers, the reluctance of judges to enforce strict timelines, etc.
- There are interim applications and appeals/revisions in the superior courts.
- The new CPC Amendment of 2012 reducing the time for filing the Written Statement from 60 to 30 days has had no practical effect on judge's granting time to defendant(s).
- The process of assigning a date for written statement until receiving the written statement(s) involves hearing a number of time petitions, which is not a good use of a judge's time and can be handled by administrative staff.
- The leniency in the process causes delays ranging from 6-18 months.

## Short-term Recommendations

- Attach all original documents submitted with plaint with the summons and the plaint to be sent to the defendant(s) for their review before the fixed date.
- Strictly enforce the 30-day time limit unless there is compelling reason to grant time.
- Require filing of all original documents at the time of filing.
- Adjournments should be sharply curtailed and granted only upon a showing of substantial good cause; (and with heavy cost where appropriate).

## Long-term Recommendations

- Amend the Code of Civil Procedure (CPC) and the Civil Rules and Orders (CRO) to place a *sheristadar* (while increasing entry requirements for the post) or a junior judicial officer in charge of assigning a date for filing of written statement, dealing with time petitions and receiving them.
- Ensure that there is no involvement of presiding judge until trial stage or miscellaneous applications, such as injunctions, attachment, and so on.

#### **4. Ex-Parte Hearing and Judgment**

If the defendant(s) do not file a written statement within the 30- (thirty) days limit:

- the case is called in court;
- the court can hear the plaintiff and pass an ex-parte decree in the absence of the defendant(s).

In practice, this is not done, but rather:

- the case is called in court;
- the court may or may not hear the plaintiff;
- the court grants further time to the defendant(s) to submit the written statement;
- the court fixes the next date, 1-4 months later, for filing the written statement.

If ex-parte decree is passed:

- the defendant can file an application under Order IX Rule 13/13A of the CPC to set aside the ex-parte decree;
- the court usually allows application and revives suit.

#### **5. Alternative Dispute Resolution (ADR)**

In 2012, the Code of Civil Procedure (CPC) was amended to include sections 89A and 89C which make mediation mandatory in all original suits and appeals, respectively; however, section 89E

promulgated at the same time, restricts the former sections from coming into force until the Government issues a notification declaring its applicability in districts of its choice.

As the law stands, the ADR stage in the proceedings, which comes immediately after the written statement(s) is/are filed, has no formal mechanism. It is carried out on an ad hoc basis and solely depends on the wishes of the parties. The judge has no instrument to compel the parties to even try to resolve their disputes through an alternative method. However, since the process for carrying out mandatory mediation has already been laid out in the law, it is useful to map it for the purposes of this report.

#### **Process Problems**

- To date, no district has been brought under the purview of mandatory mediation steps under section 89A. The law merely requires steps under 89A to be followed rather than laying down thresholds for some cases to be mediated as a matter of law.
- At present, the date fixed for ADR is a date when no parties appear and the case simply moves on to the next stage.

## 5.1 Mediation

- If written statement(s) have been filed and if parties are in attendance in court, either in person or through their lawyers, the Court will adjourn the hearing and:
  - decide to carry out mediation itself; or
  - refer to the lawyers/parties to mediate; or
  - directly refer to a mediator from a pre-selected panel of mediators.
- If it is a Court-led Mediation, the court will determine the procedure to be followed and will not charge any fees.
- If the Court refers to the lawyers/parties to mediate:
  - lawyers, in consultation with their respective clients, will appoint another lawyer, retired judge or a panel mediator; and
  - inform the court within 10 (ten) days of the appointment.
- If the lawyers/parties fail to appoint a mediator within the 10 days:
  - the Court will appoint a mediator on their behalf within 7 (seven) days;
  - the lawyers, parties and mediators will determine the fees and procedure to be followed.
  - if the lawyers/parties fail to determine the fees, the Court will fix the fees.
- Mediation must be completed within 60 (sixty) days of referral to the mediation:
  - If it is not completed within the stipulated time, the Court may grant up to 30 (thirty) days extension.

- The Court or the mediator, as the case may be, will create a report at the end of the mediation.
- In case of Court-led mediation:
  - If no compromise has been reached and if the same judge who conducted mediation is sitting in the Court:
    - ♦ the case will be transferred to another Court for the hearing to continue from the stage where it was adjourned.
  - If the same judge who conducted mediation is no longer sitting in the Court:
    - ♦ the hearing will continue from the stage where it was adjourned.
- If a compromise has been reached, the report will contain:
  - the terms of compromise in the form of an agreement; and
  - signatures of the parties, the lawyers and the mediator/judge (as the case may be) as witness.

**5.2 Formal recognition of compromise:** If compromise has been reached and a report submitted to that effect:

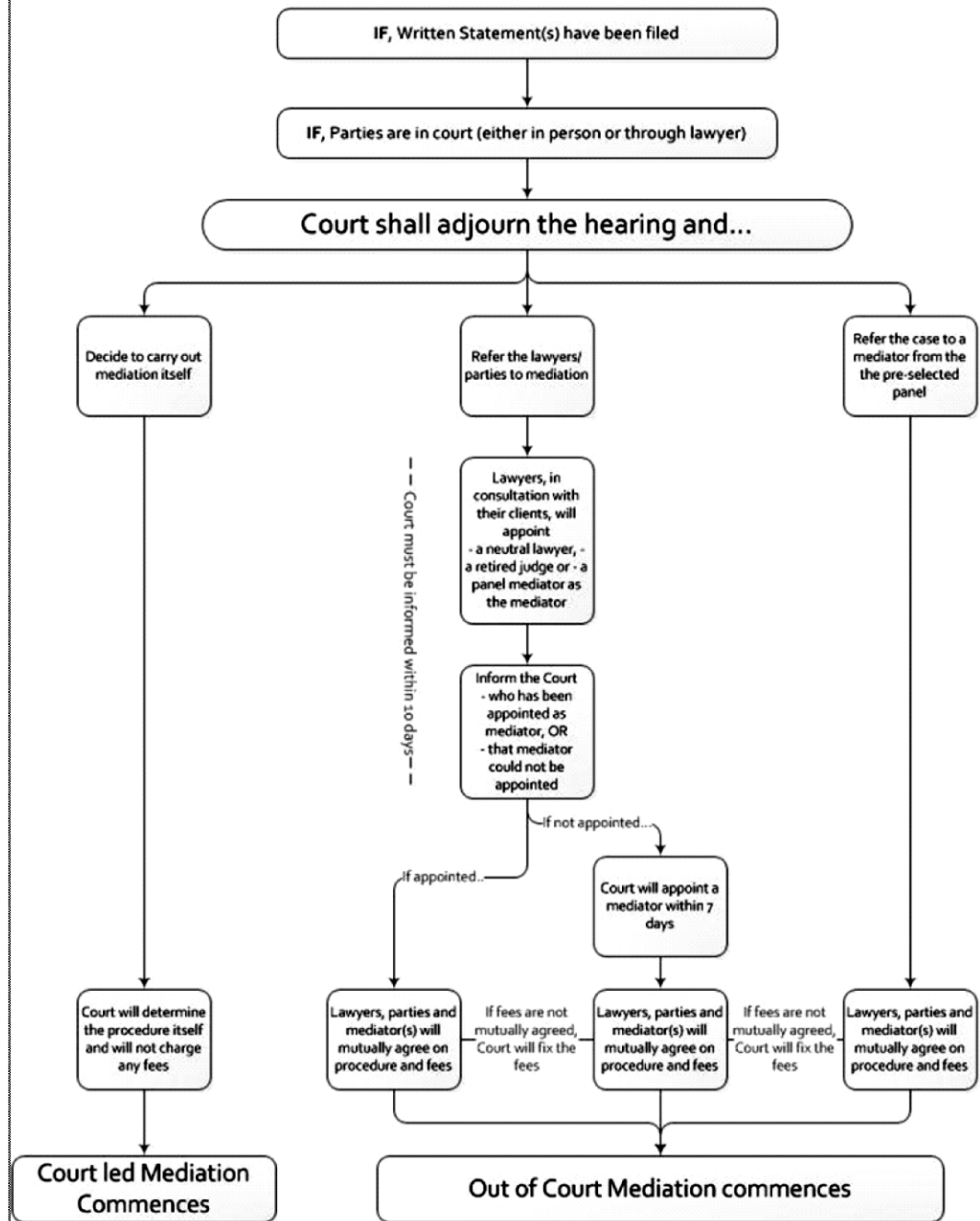
- a decree shall be passed by the Court within 7 (seven) days;
- the Court shall issue a certificate directing refund of the Court fees; and
- a refund will be given within 60 (sixty) days.



## Recommendations

- Mediation should be Court-connected, not Court-annexed; mediation of all civil disputes should be mandatory; however, any external mechanism to do so should be firmly established and operational, before mediation is ordered.
- In the short and medium term, a judge may be assigned to any district court to act as a mediation court, whereby he/she will only dispose of mediation cases and will not be assigned trial adjudication.
- Parties should face court sanctions if absent on the days proposed for mediation.
- In the longer term, a permanent cadre of court-connected mediators should be established who will be referred all mediation cases, both by law and voluntarily by the parties. However, a significant amount of buy-in and consultation is required from the Bar in this regard as currently there is very little incentive for mediation. In addition, institutionalization of such a process also requires significant public trust and litigant confidence, which makes the lawyers an indispensable medium for instilling such confidence in their clients.

## MEDIATION UNDER SECTION 89A OF THE CPC (p.1)



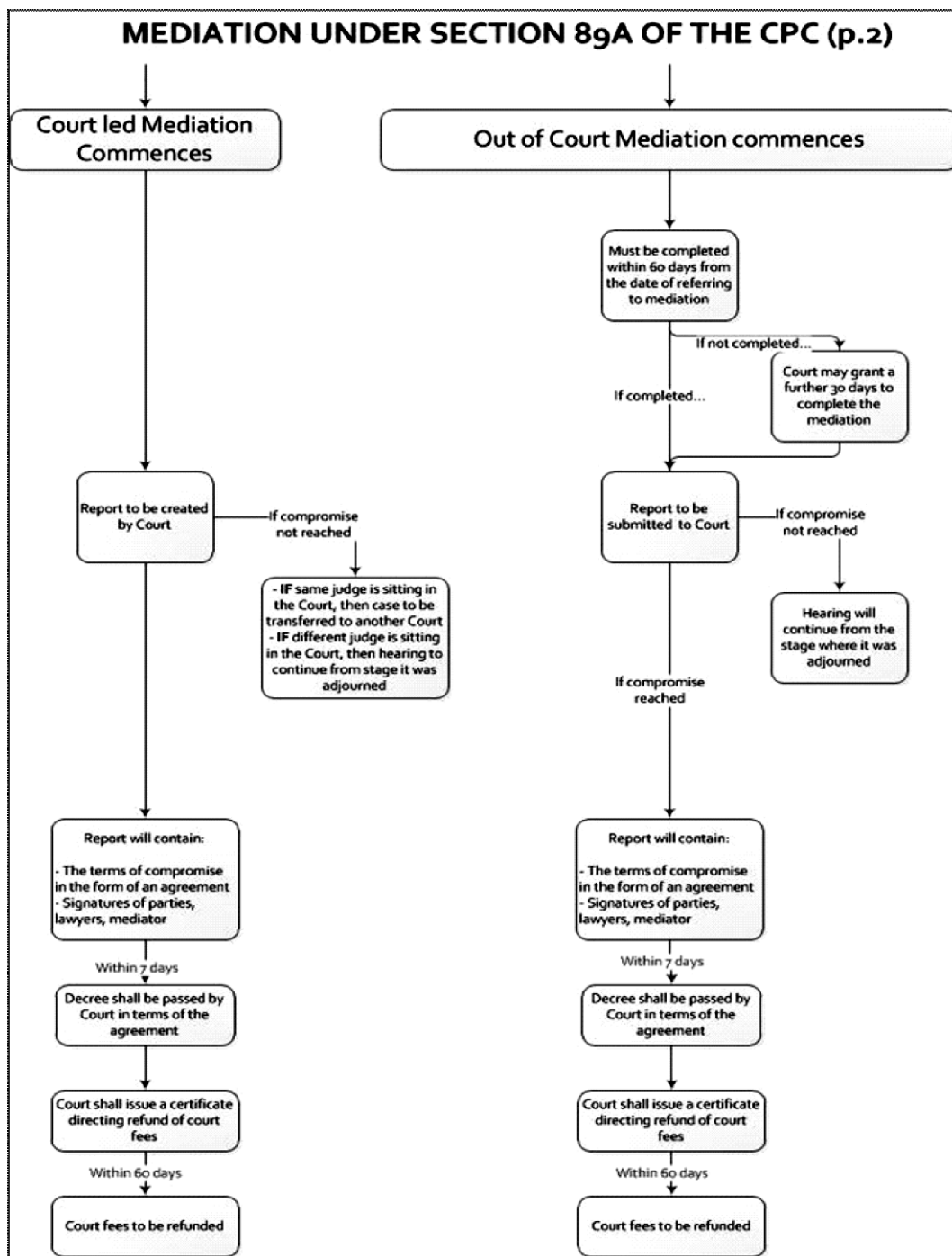


Figure 6. Mediation under Section 89A of the Code of Civil Procedure, 1908

## 6. Issue Framing

### 6.1 Process in theory

The framing of issues stage is a vital pre-trial stage where points of agreement and disagreement, i.e. the points at issue, are identified and articulated in order to avoid deliberation on irrelevant and admitted facts at the trial. The correct way, according to the interviewees, is for both parties to submit proposed draft issues to the Court and the Court to then form its opinion based on the plaint, written statement and the submitted draft issues.

### 6.2 Process in practice

- Parties only file *hajira* (appearance of parties on designated court dates) but do not appear in reality.
- The case is usually not called in court.
- The *peshkar* writes usual prototype issues and presents to the judge who signs on the issues as being framed.

### Process Problems

- The court does not have sufficient time to engage with a suit and determine the issues in contention.
- There is no mechanism to compel parties to assist the court with framing issues.

## Long-term Recommendations

- Introduce case management conferences where advocates from both sides, together with the judge, discuss and finalize a limited list of issues to be contested in trial.
- Make provision for high-cost orders against parties defaulting on submitting proposed issues/attending case management conferences.

## 7. Steps under Section 30 of the Code of Civil Procedure

### 7.1 Process in theory

Section 30 of the CPC gives the Court the power to make orders relating to discoveries, interrogatories, inspections and the summoning of witnesses, and so on. This is a power that can be exercised by the Court at any time but the Court, as a matter of practice, fixes a date for "steps under Section 30 of the CPC"<sup>12</sup> after issue has been framed in a suit, making it a stage in the suit. The purpose of the stage is to ensure that:

- full disclosure of all documents has been made;
- all matters relating to preparation for the trial have been completed before the case is fixed for trial.

<sup>12</sup> Section 30 of the CPC states: *Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party -*

(a) *make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;*

(b) *issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;*

(c) *order any fact to be proved by affidavit.*

## Process in practice

- Parties only file hajira (appearance) but do actually appear in reality.
- The case is usually not called in court.
- The next date is fixed by the *peshkar*.

## Process Problems

- The opportunity for completing all preparatory work for the trial is lost because there is no cost-incentive, i.e. there is no substantial cost penalty if a party wishes to amend its plaint, make an application for discovery, etc. at a later stage during the trial. According to the amendments brought in the Code of Civil Procedure (CPC) in 2012, the allocation and imposition of costs at the time of permitting amendment of plaint or written statements is compulsory.
- This stage is simply a formality since no parties are compelled to appear.

## Long-term Recommendations

- Provide sufficient training to judges on case management to enable them to make full use of Section 30 by ordering discoveries.
- Make provisions for high-cost orders for raising issues/filing applications at the trial stage, which could have been resolved at the pre-trial stage.

## 7.2 Setting Date of Hearing (SD/H)

- Case comes up for setting a date of hearing.
- The judge checks the trial diary to see if it has more than 70 cases already fixed for trial (a court can have up to 100 trial cases at one single time, and can only fix another case for trial if it has 70 or less cases).
- If the diary is full, the case is adjourned and a further date is fixed for settling a date of trial. Dates are fixed for SD/H until there is space in the trial diary for inclusion of a new case.
- If the diary is not full (70 or less cases), the court fixes the next date for a peremptory hearing (trial).

## Process Problems

- There are no guidelines on which cases may be assigned priority for going to trial, e.g. on the basis of its age, importance, complexity, severity and nature.
- Judges often tend to prioritize easy cases and delay complicated cases.
- Judges spend about half their court time dealing with interlocutory matters, which leaves very little time for trial.
- Advocates appear at court for each morning's calendar call, which wastes much time and incurs expenses, especially if their case is not called for hearing or adjourned for some other reason, e.g. the judge's excessive workload. This wastes everyone's time, especially their clients if they appear in court. Moreover, advocates likely charge their clients a fee for any time spent in court, even if their respective case does not proceed.

### Short-term recommendations

- The Judicial Reforms Committee may issue a directive providing a guideline on prioritizing cases for the peremptory hearing (trial) stage on the basis of its age, importance, complexity, severity and nature, etc.
- The oldest cases should always be heard first. In every circumstance, the age of the respective case should be a significant factor in all aspects of the system, particularly when scheduling or calling cases for trial.
- The pilot district courts should experiment with using mobile phones to summon advocates to court, instead of requiring their personal presence for several hours most days of the week. Thus, the court will have to assign an officer to undertake this task as well.

### Overall Comments

The Judiciary may consider allocating suits to courts based on tracks. Law suits shall be channelled in different tracks based on the nature of the dispute, the evidence to be examined and the time needed for the completion of the suit, for example:

- Track 1 suits may consist of family matters, divorce, child custody, adoption maintenance, etc.
- Track 2 suits may consist of monetary law suits, based on negotiable instruments and suits primarily based on documentation.
- Tracks 3 suits may consist of rent, lease and eviction matters, etc.

All efforts should be made to complete

the suit in Track 1 within a period of six months, Track 2, within nine months, Track 3, within one year, etc. However, this can only be achieved after a full business process mapping has been performed and the Supreme Court actively provides guidelines for track cases to the lower courts.

## 8. Trial

### 8.1 Process overview

- The plaintiff produces the first witness.
- The examination-in-chief is conducted by plaintiff's advocate.
- Cross-examination is conducted by defendant's advocate.
- The above process is repeated for all witnesses produced by the plaintiff.
- After the plaintiff closes his case, the defendant calls his/her first witness.
- Examination-in-Chief is conducted by defendant's advocate.
- Cross-examination is conducted by plaintiff's advocate.
- The above process is repeated for all witnesses produced by the defendant(s).
- Once the witness process is closed, the case is fixed for argument hearing (closing statements).
- After the argument hearing, the trial is closed and case is fixed for judgment.

### 8.2 The plaintiff's witness

- The plaintiff's advocate call the witness to the witness dock.
- The witness reads out oath.
- The plaintiff's advocate asks questions to the witness to narrate his/her story.

- The judge writes down each answer given by the witness by hand.
- The witness submits documents and other exhibits as part of the testimony.
- The defendant's advocate cross-examines the witness.
- The witness leaves the dock and puts his/her signature on his/her testimony.
- The case is automatically adjourned and next date is fixed for the witness.

### 8.3 The defendant's witness

- The same process is followed as the plaintiff's witnesses.

### 8.4 Argument hearing

- The hearing takes place once all witnesses produced by the parties have been examined.

#### Process Problems

- There is no prior requirement to provide a list and number of witnesses that each party will call, which makes it easy to delay cases.
- The examination-in-chief reads verbatim and is a reproduction of what is already in the plaint. Most common-law jurisdictions have discarded the requirement of an examination in chief in civil cases in favor of signed witness statements. However, this still continues in Bangladesh.
- The time between hearings is too long and is delayed at various points in the adjudication of cases due to process inefficiencies.

- The requirement for the judge to write the testimony down by hand is extremely time-consuming and tedious.
- Although the Code of Civil Procedure (CPC) prescribes a continuous hearing at the trial stage, it is not followed at all due to witnesses not appearing, overburdening of the court, and so on.

#### Short-term Recommendations

- The Judicial Reforms Committee may issue a direction upon the courts to require parties, at the pre-trial stage, to submit lists and details of the witnesses they are going to produce in trial.
- Short-hand typists/ stenographers should be introduced in court to make transcripts of the testimonies of witnesses.
- The time between hearings for the same case and the number of hearings required to close a single case should be dramatically reduced in order to promote a continuous hearing of a case instead of imposing long time periods between them.



## Long-term Recommendations

- Make provisions to require all parties to submit, at the pre-trial stage, signed witness statements with details of each witness they wish to produce in court. Provision must also be made for the Court to disallow calling witnesses whose statements are prima facie irrelevant to the issues in the case.
- Discard the requirement of the examination-in-chief and instead introduce a system of producing signed written statements.
- Introduce digital audio recording devices in the courtroom to digitally record testimony to supplement and verify the written transcripts.
- Carry out necessary reform of the Evidence Act and CPC to make audio and video recordings at trials usable as evidence.
- Create a professional witness coordinator position charged with ensuring that witnesses have been properly summoned and contacting them the evening prior to the scheduled hearing to confirm that he/she will appear as scheduled, on the date indicated on the summons. Alternatively, a witness coordinator would also be responsible for keeping witnesses informed of any calendar or schedule changes, so that the respective witness does not travel to court if he/she is not needed on a particular day.

## 9. Judgment and Decree

### 9.1 PROCESS OVERVIEW

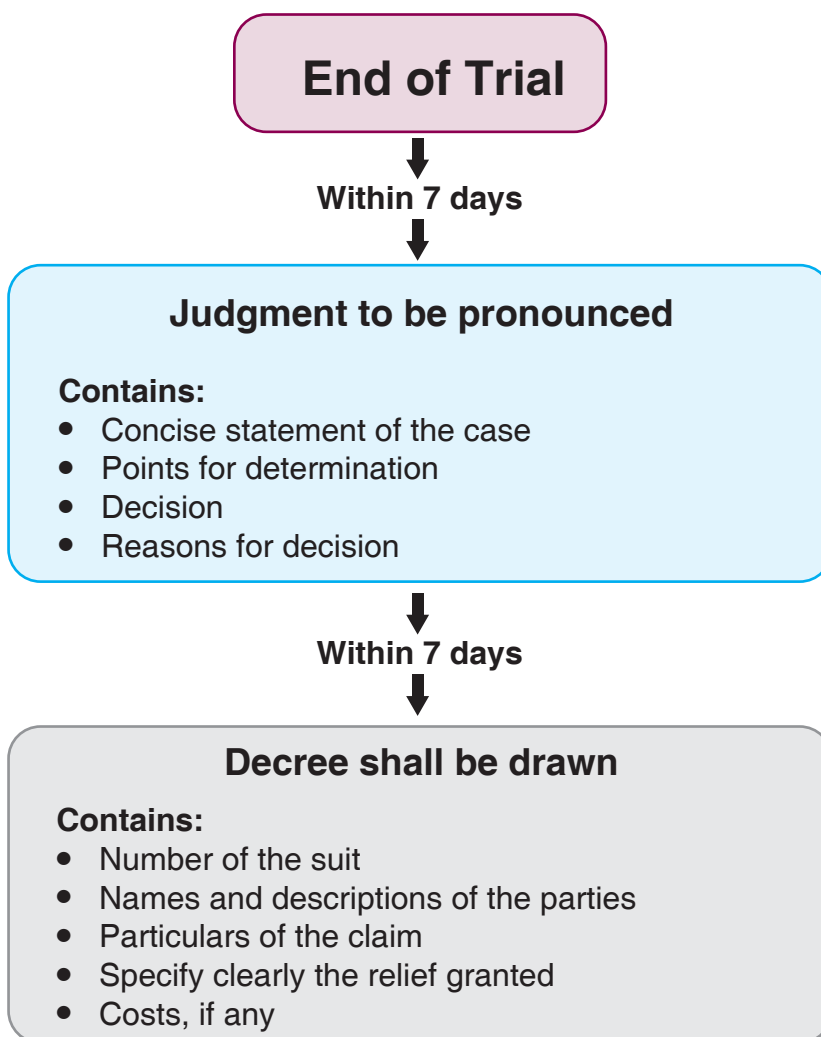


Figure 7. Judgment and Decree

Note: The seven-day time limit is set by Order XX Rule 1: "The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, [not beyond seven days,] of which due notice shall be given to the parties or their pleaders."

### Process Problems

- The courts are too overburdened to comply with the seven-day time limit for pronouncing judgments.
- Due to inordinate delays and frequent and sudden transfers of judges, the new judges often are suddenly assigned during the judgment stage.
- 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.
- The dual layer process of judgment and decree is an artificial distinction adding complexity and delay to the process with little or no benefit.
- The requirement for the judge to write the testimony down by hand is extremely time-consuming and tedious.
- Not all courts have designated stenographers.
- Although the Code of Civil Procedure (CPC) prescribes continuous hearing at the trial stage, it is not followed at all due to witnesses not appearing, overburdening of the court and so on.

### Short-term recommendations

- Provide sufficient notices of transfer to judges to allow them to pronounce judgments in all cases heard by them.

### Long-term Recommendations

- Provide a sufficient number of judges with adequate resources, skilled stenographers and staff to strictly comply with the seven-day time limit for pronouncing judgment. This may include additional staff, dictaphones, digital recording devices, computers, etc.
- Unify the judgment and decree into one document and remove an unnecessary step.

## 9.2 Executing the decree

- If the judgment debtor fails to comply with the decree, the decree holder may wish to execute the decree in his or her favour.
- A separate application for execution under Order XX1 Rule 10 of the CPC is to be made.

### Process Problems

- The Copy Department is responsible for supplying certified copy of the judgment to the applicant. Whenever any party wants a certified copy, an application needs to be made (in a prescribed form) to the Copy Department, which then sends the application to the concerned court's sheristadar for assessment of folio. Upon assessment of folio, the parties must deposit the required number of folios and thereafter the record brought from the concerned court and after typing or composing and after making comparison with the original and finally, signing by the principal copying staff, the certified copy is supplied. Thus, the process takes an unusually long time and opens up avenues for exploitation.

### Long-term Recommendations

- Unify the judgment and decree into one document and remove an unnecessary step.
- If a photocopy machine is installed in every *sherista*, the certified copy can be easily given by photocopying the concerned order or judgment from the original record.

## 10. Appeals and Revisions

### 10.1 Process: Appeals and Revisions in the District Court

Generally, the Court of the District Judge is the appellate forum for orders and judgments from the assistant and senior assistant judge courts, which are the courts empowered to try lawsuits for claims of up to Tk.400,000.00 (taka four lakhs). Although, the Court of the District Judge generally does not take an appeal from the Court of Joint District Judge, it occasionally entertains such appeals for suits valued at under Tk.500,000.00 (taka five lakhs).

Revisions are preferred by aggrieved parties against interim orders (except against an order of injunction, in which an appeal must be filed).

The pecuniary jurisdiction dividing the work between Assistant Judges and Joint District Judges is largely outdated and leads to overcrowding of cases in the Joint District Judge Courts. The jurisdictional limits need immediate reform to make the distribution of cases between the two tiers more equitable.

### 10.2 Preparation

- The lawyer applies for certified copies of the records of a suit.
- He/she pays the requisite fees.
- He/she obtains certified copies.
- He/she drafts an appeal attaching the certified copies.

### Process Problems

- The court lacks sufficient staff and technological support, e.g. computers, to provide certified copies required so speed-money is essential in obtaining it
- The requirement of certified copies is a cause for a delay of 7 (seven) days in average.
- It is very common to observe payment of 'speed-money' to court staff, which is used to expedite the process of obtaining certified copies.

### Long-term Recommendations

- Introduce digital record-keeping and management (See Annex IV below).
- Install photocopy machines in each sheristadar's office.

### 10.3 The Judicial Process

- The appeal/revision is filed before the District Judge.
- The admission hearing takes place.
- The appeal/revision is either:
  - admitted; or
  - summarily rejected.
- If admitted, the District Judge may:
  - fix the matter for hearing in his own court; or
  - transfer the matter for hearing to an Additional District Judge or transfer the matter for hearing to a Joint District Judge (only when the decree amount is less than Tk. 500,000.00 (taka five hundred thousand)).
- The Appellate Court (whichever option is taken) hears the matter and either:
  - allows the appeal/revision; or
  - dismisses the appeal/revision.

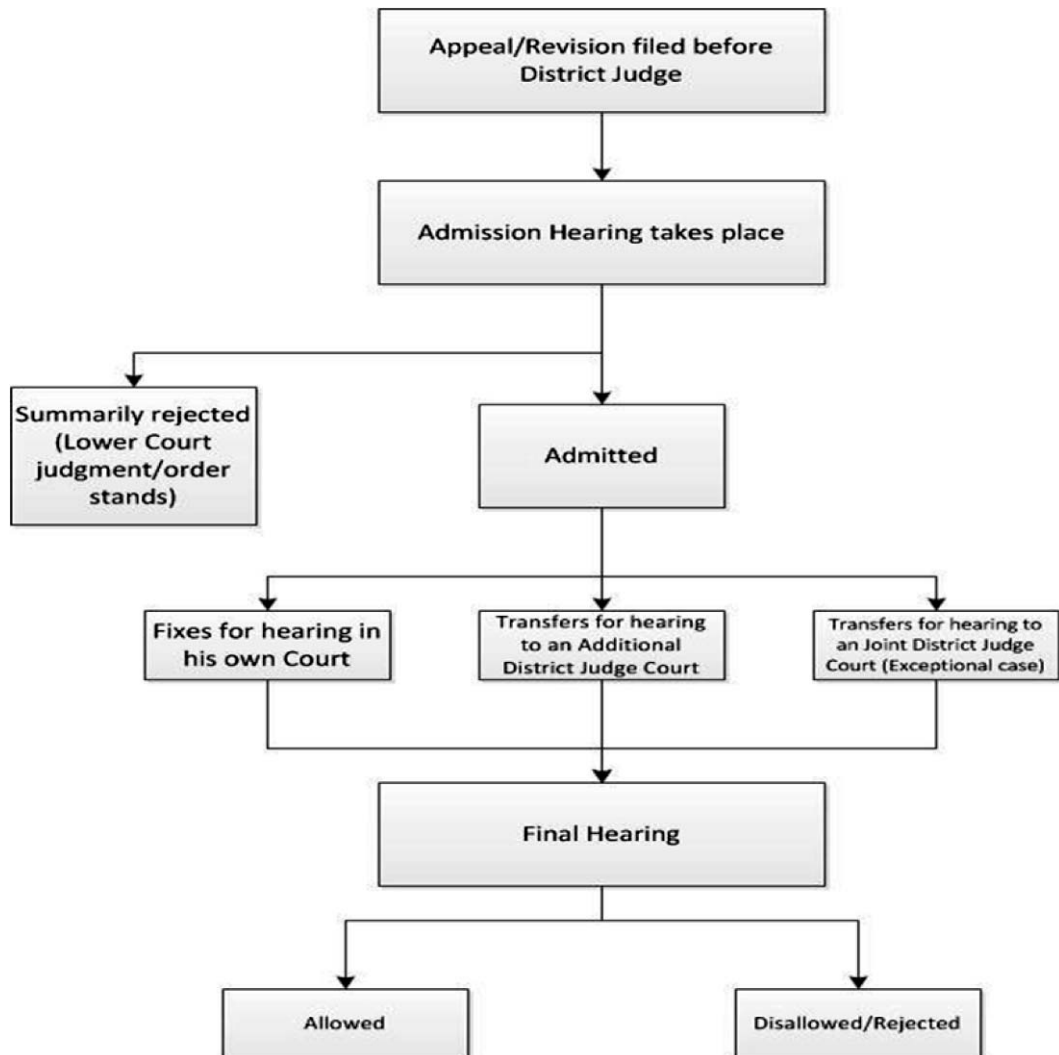


Figure 8. The Judicial Process of an Appeal/Revision in the District Court

## Process Problems

- The appellate/revisional courts are extremely unwilling to dismiss cases on default for parties not appearing on time.
- In practice, the appeals and revisions are usually accepted without much scrutiny, which causes congestion of cases in these courts.
- There are numerous adjournments by parties.
- Frivolous appeals and revisions take up court time due to lack of a strict filtering policies at the admission stage.

### Recommendations

- Discourage time petitions with heavy costs.
- Dismiss for default when parties do not appear.
- Apply strict standards at the admission stage to prevent frivolous appeals and revisions. The Appellate Court or Court of revision should monitor filing of unnecessary appeals or revision.

### 10.4 The Administrative Process

A major cause of delay in the appeal and revision process is the transfer of the lower court records (LCR) from the trial court to the Appellate Court and vice versa. Without speed money or *bakshish* (tip), it takes months and even years for the LCR to move between courts despite specific orders of the judge. All appeals when admitted will require the LCR to be called, but in revisions, calling the LCR is upon

the discretion of the judge.

### The Process

- When the appeal/revision is admitted:
  - Notice is issued to the respondents;
  - LCR is called for (all appeals, but not all revisions).
- Notice is served in the same way as the summons is served.
- For LCR:
  - The request for LCR is communicated to the sherestadar of the trial court.
  - The sherestadar prepares the LCR and sends it.
  - The concerned officer in the Appellate/Revisional Court receives it and attaches it with the appeal records.
- After the appeal/revision is disposed of:
  - the court orders the result and the LCR to be sent to the trial court:
    - to register the result in the suit register;
    - to follow directions from the Appeal/Revisional Court;
    - for possible execution.
  - The concerned officer in the Appellate/Revisional Court prepares the record and sends it. The sherestadar in the trial court receives it and takes the appropriate action required in the order/judgment of the higher court.

### Process Problems

- There is little or no supervision of the court officials involved in the transfer of the records.
- There are huge delays if the officials are not 'tipped'.

### Short-term Recommendations

- Impose punishments on officials if orders to transfer records are not complied with in time.

### Long-term Recommendations

- Place the responsibility of collecting copies of all documents required in the appeal/revision on the appellant/petitioner and dispense with the requirement of the lower court records (LCR) to be called for.



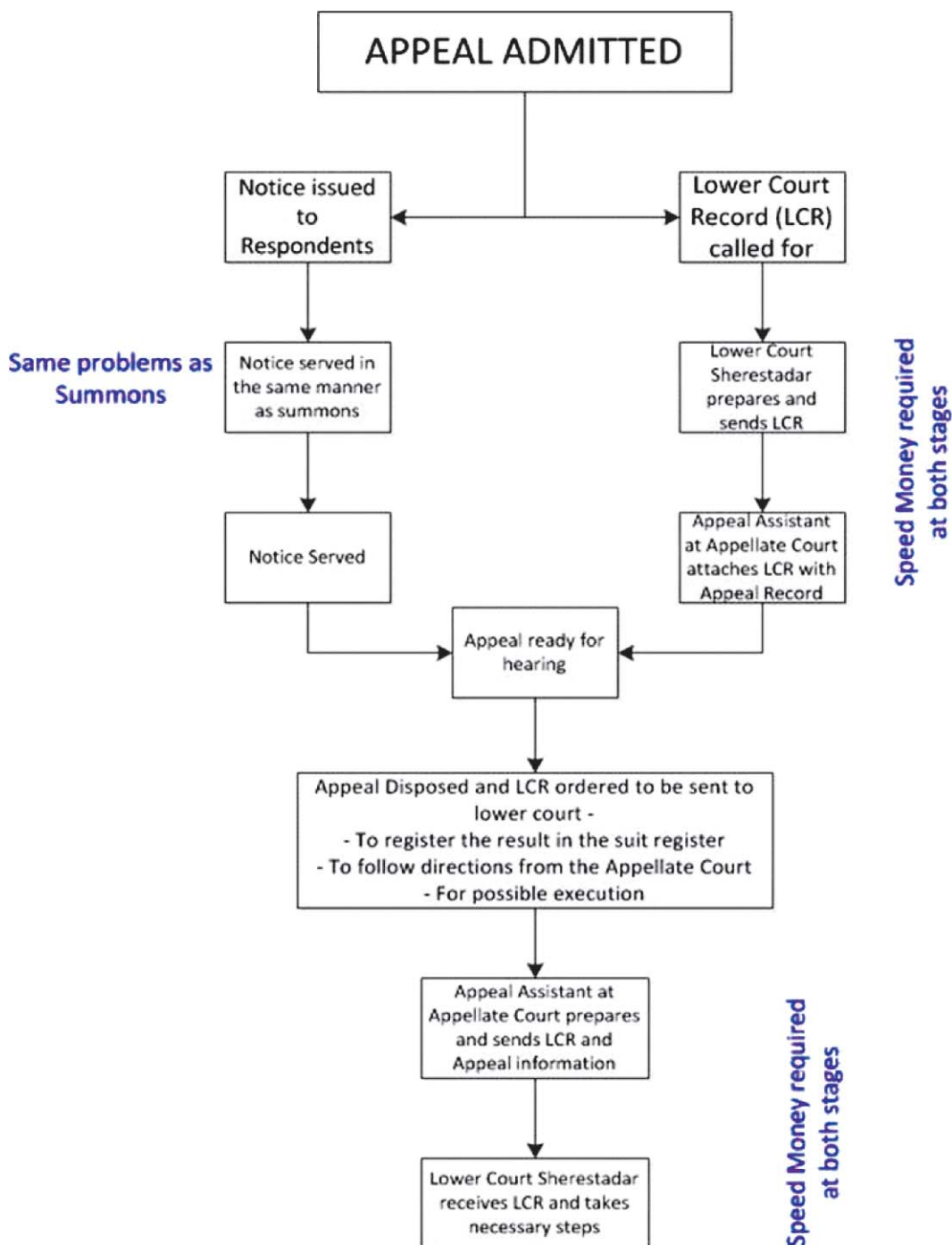


Figure 9. The Administrative Process in an Appeal/Revision

## III. NEXT STEPS: BUSINESS PROCESS REVIEW AND ENHANCEMENT

### A. Develop an Appropriate Governance and Management Structure (Step One)

Like any other important undertaking, successful Business Process Review and Enhancement in a court will depend on important factors such as leadership, a bold vision, having an organization that is ready for change, and having a capable project team to undertake the enhancement effort (SEARCH, 2003). It is therefore important to develop an effective management structure delineating objectives, expectation, scope, resources, roles and responsibilities so that everyone involved is aware of the functions they are required to perform and their respective timelines.

#### 1. Set the Strategic Mission and Goals for the Court

Undertaking a business process review and enhancing it requires not only support for change across the institution, but actually changing the way a court's daily work is done, aligned with its mission, vision and objectives. The main purpose of a court is to provide services to citizens who come to court. Only after the Judiciary has determined the courts' work processes can they consider *how* to carry out those processes in the most effective and efficient way. The first task that should be undertaken by any court interested in improving its work processes and case management systems is to discuss, draft and adopt a mission and a vision statement as well as its objectives in a **strategic plan**.

All the work and activities undertaken by the MoLJPA or the Judiciary should *clearly* be linked to their *mission* and *vision* statements. Judges, managers and their subordinates should be familiar with the respective mission and vision statements, and how they can contribute to a more

effective administration of justice in Bangladesh's Judiciary.

#### Recommendations

- The Judiciary and the MoLJPA should immediately begin work on a clear, concise and comprehensive *mission* and *vision* statements for Bangladesh's Judiciary, and upon completion, ensure that it is promulgated far and wide, and prominently displayed in conspicuous locations throughout all the courts and the MoLJPA (See Chapter II (A)(1)).
- The Supreme Court has also recently initiated a strategic planning exercise with support from the JUST Project. A mission and a vision statement will significantly help steer the strategic objectives of that process in the direction of progress and change best suited to serve the citizens of Bangladesh.

#### 2. Technical Committees

Leadership both at the higher and the lower judiciary is vital to the success of any court-based reform. Key to this effort will be assigning a TC for each district court - and not individual judges' courts - and one for the Supreme Court to consider the reforms and grant sufficient authority to the group to implement those recommendations. The Judicial Reform Committee of the Supreme Court could be assigned responsibility to oversee and monitor the TC.

The TC must be distinguished from the Case Management Committees (CMCs), which are primarily entrusted with monitoring court congestion and other issues, and meet periodically to discuss and iron out any operational issues. The TC should be essentially dedicated to work

on procedural reform, and its members should be representative of all strata within the court system.

#### *Recommended Actions*

- The TC should comprise representatives from the highest point of the court hierarchy (e.g. a judge) to the lowest (e.g. a deputy registrar, *sherestadar* or *peshkar*). The TC should be provided technical assistance to learn best practices and make the changes to existing rules. If possible this group must be temporarily removed from their usual services and **deputed** to spend a stipulated period of 3, 6 or 9 months as appropriate on identified and targeted procedural reform.
- The TC should initially be encouraged to propose from 1-3 changes to the rules of court to ensure that the amendments are understandable, fairly easy to implement and capable of being studied to measure their impact on caseload and case backlog of the Bangladesh Judiciary. For example, a TC could be assigned for the first phase of identifying and implementing changes for only addressing delay resulting from summons service. Whatever area of reform is chosen, it should be manageable and measurable to minimize the chance that expectations will be frustrated.
  - The TC should generally focus on the following activities:
    - conducting a comprehensive workflow analysis;
    - preparing a detailed flowchart of the workflow as it currently exists;
    - working closely with line staff to identify steps or procedures that are duplicative, redundant,

unnecessary or do not **add value** to the respective work processes;

- suggesting, proposing or experimenting with re-engineered steps and procedures that simplify, modernize or make more effective the existing work processes;
- preparing a detailed flowchart of the revised work processes as proposed, and assist with its implementation;
- working with line staff to develop *potential* areas where IT or other technology can enhance the needs of the court and which can also be used to produce meaningful statistical or managerial data for subsequent assimilation at both the local and national levels.

The Judicial Reform Committee, may assign various TCs to work on the following, *inter alia*:

- a. The CPC and the CRO should be the focus of a comprehensive review by legal scholars and practitioners, e.g. law professors, judges, advocates, working in consultation with the Law Commission. Emphasis should be given to ensuring modern, readable, comprehensible products so that anyone, especially non-judicial support staff, can utilize them effectively to achieve the results intended by the drafters.
- b. Identify and statistically measure a court's backlog by tallying those cases that exceed its established *filing-to-disposition time standards*. Bangladesh's Judiciary should undertake a comprehensive programme of civil backlog reduction, incorporating policy,

procedural and statutory changes, as well as the imposition of substantial monetary sanctions on recalcitrant advocates, and their clients, witnesses or expert witnesses. Achieving a one-time objective of reducing or eliminating the respective backlogs might involve the following steps:

- Define what constitutes a 'backlog'.
  - Determine the 'universe' of cases that constitute the backlog, e.g. cases pending for 12 months or longer.
  - Determine and rank the age of the respective cases.
  - Assess the availability of corroborating witnesses and the strength of their anticipated testimony.
  - Assess the availability and strength of exhibits, e.g. physical objects, documentary material, or demonstrative evidence.
  - Decline or dismiss weak or uncorroborated cases in which the balance of probabilities does not favour the plaintiff.
  - With the approval of the assigned judge, fast track the entry of judgment and close the case.
- c. Introduce a number of pilot schemes themed under a *Backlog Reduction Programme*. Pilot initiatives could include:
- a filing desk or registry in the court premises where a staff representative from a select group of pilot courts will be present to receive cases to be filed in their courts. (See Chapter III (B) (1).
  - a *Register of Actions* card on a pilot basis (see Chapter III (B) (1), p. 20). A *Register of Actions* card should be used in place of the various registry books. To be effective, a

Register of Actions card should *never* leave the respective sherestadar's office.

- descriptive rubber stamps to enter routine case action information on a *Register of Actions* card instead of handwritten notes which are frequently illegible due to poor record-keeping and dust;
  - standard, pre-printed minute orders prepared and adopted for common cases for the use of judges instead of their having to create them ad hoc;
  - standard case opening forms, e.g. cover sheets, pre-printed forms with 'check-off' boxes, other routinely used court documents;
  - barcoding technology to track the movement of files from one location or desk to another;
  - a pilot 'case purging' scheme where inactive cases more than 1-5 years old (as determined by the respective court) may be identified, followed by a newspaper publication as well as personal notification to parties to act promptly. If no action is taken within 6-12 months (as determined by the respective courts), these cases would be dismissed or purged, effectively taking them out of the backlog count.
- d. The court should eliminate the assignment of cases according to territorial criteria or any other means that does not ensure randomness. In the short term, the court should use manual streamlined processes where cases are allocated by random lottery through a machine. In the long run, once automation is underway, the court may consider using a software application and *experiment* with an automated approach to case assignment. This

would ensure randomness and equitable workloads among the judges, and protect the courts from charges of manipulation or corruption. Such assignment should be carried out by a Senior Deputy Registrar, under the supervision of the Registrar, and not by the District Judge. Under no circumstances should an advocate be able to select the judge who will hear his/her case because this encourages *forum shopping*.

- e. Develop an Integrated Case Management System (ICMS) should be the focus of a careful, functional, and comprehensive review by all court and process actors, e.g. judges, advocates, *sheristadars* and *peshkars*, working in concert with ICT Experts. However, this task **should not** be undertaken until the manual processes have been streamlined to determine which areas could benefit the most from incorporation of IT.

### 3. Institutional Memory and Decision-making Power

The Supreme Court already has a Judicial Reform Committee to support and oversee the overall reform effort from start to finish. However, change management is a slow process that requires ownership at every level throughout the court hierarchy. It should be an inclusive effort. In addition, a certain degree of decision-making power or autonomy should be granted to these groups to test and try pilot schemes or small changes. Often, efforts stall due to a bureaucratic red-tape, lack of delegation and highly centralized decision-making. New processes or schemes are sometimes designed under instructions of a particular individual or group. However, at the end of their tenure or if promoted, transferred or retired, any progress on review, any progress on review has to start

all over again. This is the reason for which proposed changes should be democratic and inclusive so that reform efforts are tied to a particular office with institutional memory rather than one individual. Therefore, change management should be office-based rather than personality. It should be a continuous process centrally and jointly managed by Supreme Court and Law Ministry.

#### *Recommended Actions*

- The Supreme Court should ensure that all the senior-most judges are included or apprised of the proposed reforms. Similarly, in the district courts, arrangements should be made so that reform efforts are not designed around an individual judge or judicial officer but information is retained within the institution. This will ensure that there is sufficient institutional memory so that even if there are changes in leadership through retirement, promotion, transfer, etc., the review of process and reform that is underway runs smoothly without interruptions.
- The Judicial Reform Committee, CMC and TCs should also be granted decision-making authority where each groups will own and accept accountability for the Business Process Review and Enhancement.

### **B. Assess Organizational Readiness, Build Support for Change and Manage Expectations (Step Two)**

#### **1. Assessing Organizational Readiness**

Before undertaking a process review and enhancement, the court needs to understand what skills and resources may be needed for success and the possible changes in internal organization and local court culture that may be associated with such enhancement. Often, despite obvious

knowledge and acknowledgement that an existing business process needs to be changed, the organization, which includes all levels of staff, various departments, offices and intricate layers of interaction between these groups, may not be ready for change. It is important to assess organizational readiness not only for supporting progress, but also for accepting change.

#### *Recommended Actions*

Before proceeding with significant changes, The Judiciary should consider (National Consortium for Justice Information and Statistics, 2009; 8):

- whether the Chief Justice or his designee authorized and prepared to drive the process;
- whether judges and staff are amenable to committing the time and effort that will be required to document the process and analyse the results.

### **2. Building Consensus for Change**

The Chief Justice and the Reform Committee should begin an early effort to build support for process enhancement within the court and among court users and stakeholders. The chief, district or presiding judge of a court is well positioned to explain the court's situation and goals, both internally and externally, and to determine appropriate criteria for success. The sustained and conspicuous involvement of the judges sends a strong signal to both the court community and the broader community that the court is serious about improving its performance (Ibid).

#### *Recommended Actions*

- Judges, staff members and other stakeholders should be included as soon as is practicable in managing the change process well before the new process is implemented; other, any proposed changes will lack the

requisite support needed for implementation of the new process.

- Consensus should be developed among external court users and stakeholders in support of the level of changes that will be needed to achieve the court's strategic objectives. In this regard, public perception surveys, focus group discussions and other participatory methods may be used to involve external stakeholders wherever possible in the change effort.

### **3. Managing Expectations**

Whether the pilot district courts are successful in their efforts to reach their case management goals and develop an effective case management application (manual or electronic) is determined by how well they manage the following factors:

- **Leadership:** There must be visible support from both the Judiciary's leadership and the MoLJPA. This leadership must be able to articulate a vision of how caseload management will improve their system, explain the anticipated benefits, and show an ongoing commitment to the effort. That leadership must be an advocate for the effort and build consensus and support from both within the institution, and with those individuals and organizations that interact with it.
- **Commitment:** It is essential to the success of the case management effort that Bangladesh's Chief Justice, district judges, judges, magistrates, *sheristadars*, *peshkars*, prosecutors, advocates (through the Bangladesh Bar Council) and their staff be involved and committed. Staff should be deeply engaged in the review and re-engineering of case management processes, and their input actively solicited



throughout the development of either manual or automated case management applications.

- **Communication:** Effective communication is essential in any effort to implement change at the institutional level. Chances of success are improved through frequent and sustained communication among and between judges, magistrates, *sherestadars*, *peshkars*, prosecutors and advocates (through the Bangladesh Bar Council) and their staff, as well as MoLJPA officials and representatives of the international aid community. Effective communication ensures that all participants have a clear understanding of what change requires, why it is needed, and what their respective roles will be.
- **Learning environment:** In order for Bangladesh's Judiciary to manage their caseloads successfully, they must understand why and how a case-flow management programme works. Education and training will ensure that each participant understands their respective role, as well as the role of the Judiciary in society.

### ***C. Conduct a Gap Analysis to Measure the Gap between the existing processes and the Court's Strategic Mission, Vision and Objectives. (Step Three)***

#### **a. Assigning Tasks**

The Court should immediately set up the TC and set up a management structure to drive the reform process. Once that is completed, each group should be assigned and allocated tasks according to their area of expertise. For example, when considering purely court process that takes place in the back office such as that of a *sherestadar*, a representative group of *sherestadars*, *peshkars* led by judges

assigned to oversee a particular TC could only examine the process of records management or only the process of maintaining registers. The court staff such as *sherestadar* and *peshkar* and administrative staff are best positioned to inform the TC about the work that they do and the support that they need to accomplish the goals set by the Judiciary.

#### ***Recommended Actions***

- The TC may be assigned to analyse particular processes as they are currently operating. Each group will then break up each process into sub-processes to first analyse the current process **as it is**, and then review it against the Court's strategic objectives to determine how it **should be**.
- Launch pilot initiatives as recommended above.

#### **b. Measuring Delay**

Statistics are an important part of the business process mapping exercise since they help to measure where delays are actually occurring. They also provide the evidence base for initiating review of those processes where delays are occurring.

District Court data on pending cases is regularly sent to the Supreme Court every month. However, an inordinate amount of time and effort are devoted to the collection, compilation and publication of statistical data, which are ambiguous, often unreliable and rarely, if ever, used as a tool to effectively manage a district court's caseload. Moreover, current statistics may not facilitate the day-to-day work of the various judicial officers, e.g. there is no true case management application.

In addition, there is also no apparent effort to distinguish between the statistics needed to help Bangladesh Judiciary manage its respective workloads *internally*



or *nationally*. The Judiciary needs two types of information that may help in measuring delays. First, it needs information or statistics relating to its internal workload which will help manage it *internally*. This includes information such as:

- Case age
- Time between events
- Reasons for delay
- Case types
- Case assignment
- Scheduling
- Tracking
- Dispositions per judge, etc.

Second, it needs information or statistics that can be meaningful or useful at the *national* level. This includes information such as:

- Trend analyses
- Workload indicators
- Judgeship needs
- Fiscal year budget forecasting or justification.

#### *Recommendations*

- Working together, the Judiciary and the MoLJPA should determine the scope, array and complexity of statistical data that truly serve a national purpose.
- The District Judges should meet with their respective colleagues to discuss and formulate the kinds of statistical data that facilitate the day-to-day work of their judges and give them the range of information they may need to make policy decisions, which promote effective case management.
- The Supreme Court should set up a Statistical Analysis Unit within its premises equipped with resources

and staffed with officers with monitoring and evaluation expertise. For this purpose, donor assistance may be sought in the initial stages to support and procure the research expertise needed to set this up.

- Subordinate courts should be required to transmit their respective statistical reports according to a strict, predetermined, established schedule, e.g. monthly, quarterly or annually, for subsequent publication and dissemination to the MoLJPA and other stakeholders.

#### **c. Promoting Transparency and Accountability, and Incorporating Anti-Corruption Measures in Court Processes**

There are large systemic problems that remain in the system, which include an archaic system and lack of independence and of human resources. A system marred with these problems creates opportunities for those with vested interests, be it a judge, lawyer or court staff, to take advantage of it to their own personal benefit. There is much to gain for them if the status quo is maintained. As a result of the actions of a few, the system as a whole suffers, systemic progress is inhibited and a negative public perception of the judiciary is created.

A common belief is that corruption only involves a public official taking bribes. However, a broader definition will help understand and take into account the pervasive impact it can have in public and judicial offices. Corruption may be generally defined as the abuse of power by a public official for private gain. Generally, public officials will be operating within an organized, interdependent system and engage in either (or both) nonfeasance, i.e. not performing the mandated duties, or *misfeasance*, i.e. performing them in an improper way, to the detriment of the system's original purpose. This definition encompasses the whole gamut of duties

associated with public office which must operate within constitutional or regulatory limits and remain accountable to the public at all times.

Defined in this way, corruption in judicial systems not only violates the basic right to equality before the law but denies procedural rights guaranteed by the Constitution. There are many avenues of tackling corruption both at the policy and implementation levels. Small incremental changes and incorporating anti-corruption measures in the court process will help prevent or minimize corruption and promote transparency and accountability within and across institutions. Some suggested measures include:

- Introduce barcoding technology to prevent unauthorized movement or disappearance of files.
- Introduce pilot schemes such as the Register of Actions card.
- Update and streamline records management.
- Randomly assign cases to judges to ensure equitable workload and prevent forum shopping by lawyers.
- Develop and implement strong ethical guidelines for the Judiciary, the Bar and court staff.
- The Bar Council may be encouraged to hold disciplinary actions for members of the Bar reported to be participating in or soliciting bribes, speed money, etc.
- Initiate dialogue with court staff association and encourage its formal registration.
- Tighten recruitment of court staff based on merit and qualifications, eliminating general subcontracting or outsourcing by *sherestadars*. The

Court should not be staffed by anyone who is not officially recruited through the Ministry.

- Maintain a 'zero tolerance' policy for reported cases of unethical behaviour.
- Establish a reporting mechanism whereby, judges, court staff and lawyers may be reported for unethical behaviour. Ways of reporting must be widely disseminated to the public and court users.
- Minimize institutional interference.
- Monitor and evaluate ACRs regularly.
- Recruit and place candidates based on merit and ACR performance.
- Establish a Secretariat to take over human resources management responsibilities.
- Establish a district-based Judicial Intelligence Unit (JIU). A judicial officer within each district may be vested with the duty to report any malpractice of judge or their respective staff to the Supreme Court. Upon receipt of any such information received from the JIU and verification of such allegations, the Supreme Court should have disciplinary mechanisms in place to take rapid disciplinary action.<sup>13</sup>
- Set up a comprehensive feedback system. Generally, the Controlling Officer (District Judge and Chief Judicial Magistrate or Chief Metropolitan Magistrate) evaluates the junior judicial officers and accordingly assigns ACR feedback. However, there should be a feedback mechanism for all judicial officers and staff to communicate their working experiences and how

<sup>13</sup> Based on feedback received from preliminary consultation of the draft Business Process Mapping report with district court judges.

the workplace and court services may be improved. In this regard, a reciprocal ACR system may be introduced, which would also provide incentive to senior judicial officials to become better leaders.

- Install a mechanism whereby court staff are also transferred to another district at regular intervals, for example, three years. This is to ensure greater accountability and integrity of the court staff as lengthy periods of service in one area may lead to entrenched and vested interests, which in some cases may lead to a misuse of power and malpractice.
- Ensure the transparency of the staff appointment process and its efficient supervision, since it is required by a skilled human resources management system.

## IV. CONCLUSION

The current case and records management policies, practices, processes, procedures and a local legal culture are in need of significant change. Both the Supreme Court and the *pilot*

courts have demonstrated a strong support for progress. If the courts maintain their positive attitude in support of progress and demonstrate a willingness to change the way they work by adopting an effective and efficient methodology, this will harbour a positive public impression of the subordinate courts as well as enhance access to justice for the citizens.

The challenge to the District Judges, the judges, and their *sherestadars* and *peshkars* is to be 'healers' of disputes, and to raise the ethical and professional standards of the Judiciary. More than simply conducting one's own career with honesty, integrity, and a high degree of ethics, this also involves having the "intestinal fortitude" to be willing to call colleagues to task when their behaviour is unseemly and below the professional standard to which judges, *sherestadars* and *peshkars* is held. This is a burden that the *entire* Judiciary must share equally. Moreover, the Judiciary must understand that an effective, efficient administration of justice is not only about time, it is also about people's lives. Only after the Judiciary embraces this concept and takes the actions recommended above with determination, discipline and consistency will timely justice for all become a reality.

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

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## VI. ANNEXES

### A. ANNEX I: METHODOLOGY AND LIST OF KEY PROJECT STAFF AND CONSULTANTS

This Business Process Mapping Exercise required several fact-finding visits to the Dhaka District Court to closely observe, review and document fundamental work processes and case management systems in place. Subsequently, comprehensive flowcharts or maps depicting current workflow and process bottlenecks have been produced by the JUST Project.

These flowcharts can assist the courts not only with the effective and efficient reengineering of *manual* practices, processes and procedures, but can also contribute to the eventual development of an integrated case management system software application.

This effort also involved interviews of or meetings with various actors responsible for the smooth running of their respective courts. The individuals who provided assistance, input or information about the project as well as the current work processes and case management systems in place in Bangladesh's Judiciary included:

- The Supreme Court Special Committee for Judicial Reforms, chaired by Justice Muhammad Imman Ali, Judge of the Appellate Division of the Supreme Court
- Md. Syed Aminul Islam, Registrar General of the Bangladesh Supreme Court
- Md. Zakir Hossain, Registrar, Appellate Division, Supreme Court of Bangladesh
- Md. Mainuddin Khandaker, Additional Secretary, Ministry of Home Affairs
- Md. Showkat Ali Chowdhury, Additional Registrar, Supreme Court of Bangladesh, High Court Division, Dhaka
- Md. Aktaruzzaman Bhuiyan, Assistant Registrar, Supreme Court of Bangladesh
- Farida Yesmin, Superintendent, Civil Section, Supreme Court of Bangladesh, High Court Division, Dhaka
- Md. Shahriar Kabir, Joint District and Sessions Judge, Dhaka District Court
- Md. Habibur Rahman Khan, Deputy Registrar, Supreme Court of Bangladesh
- B.A. Sayeed, Sheristadar for Joint District & Sessions Court, Dhaka
- F. M. Masud Ahmmed, Peshkar for Joint District & Sessions Court, Dhaka

## KEY PROJECT STAFF AND CONSULTANTS:

### Consultants

- Mr. Jakhongir Khaydarov, Chief Technical Advisor, Judicial Strengthening Project of UNDP Bangladesh (Team Leader).
- Mr. Keenan Casady, International Consultant.
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### Project Staff:

- Md. Masud Karim, Programme Officer of UNDP Bangladesh.
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- Mr. Kabir Hossain, Communication Officer of Judicial Strengthening Project of UNDP Bangladesh
- Ms. Shahreen Srahon Tilottoma, Programme Support Officer of Judicial Strengthening Project of UNDP Bangladesh.

## B. ANNEX II: CASEFLOW STATUS IN THE PILOT DISTRICT COURTS OF DHAKA, KISHOREGANJ AND RANGAMATI

### *Statistical Research on Caseload*

In February 2014, Bangladesh's SURCH: *A House of Survey Research* (SURCH) collected raw, case-related statistical data preparative to an analysis of the caseload in Bangladesh's three pilot district or subordinate courts.

SURCH scrutinized randomly selected, closed civil case files from the Dhaka, Kishoreganj and Rangamati district courts, which were characteristic of their respective caseloads. The data was then reviewed and analysed by the Judicial Strengthening Project (JUST) in an effort to ascertain the reasons for the courts' low productivity and almost overwhelming backlogs. What follows is a detailed assessment of caseload management in the pilot district courts.<sup>16</sup>

### *Methodology*

The survey design required the collection of numerous elements of data for each case, as available, including detailed information about all scheduled events in each of the tracked cases. Site-specific data collection forms were prepared with input from the JUST Project and used by SURCH to record detailed information about each consecutively scheduled event, stage, or step in a respective case. This data were obtained by carefully reviewing minute orders, a judge's rough notes of each scheduled hearing, or case-related papers contained in the respective case file.

From the data gathered by SURCH, and subsequently analysed by JUST, an array of information on the respective pilot courts' civil case-flow emerged; e.g. the

time that elapsed between the filing and disposition by type of case, the number of hearings held per case, the time that elapsed between certain scheduled events, and the number of times a case was adjourned or postponed before it was disposed or closed. These data can be of significant value in understanding the *reasons* for delay and, if taken seriously, can greatly assist Bangladesh's pilot district courts in determining specific strategies that, if *adopted and uniformly followed by all judges*, will go a long way towards improving caseload management, and reducing or eliminating the courts' backlogs.

Fifteen (15) civil cases from three pilot district courts were randomly selected for analysis. The sampling size is significantly small and has been selected as a pilot effort to demonstrate the value of statistical information and the types of information that may be obtained from this kind of exercise. In order to obtain a truer picture of the pace of litigation in the pilot district courts, a larger sample representative of the courts' total number of closed and pending cases should also be analysed. By doing so, cases that may have been pending for many years would be included in the analysis. Additional data that should be collected and analysed include the age of the respective case, the type of pleading (e.g. plaint, written statement), the date the plaint was filed, the dates of intervening events, and, most importantly, the date of the last or most recent scheduled event.

Using the forms, caseload data were collected by trained SURCH staff trained in data collection procedures. All original data collection forms were dated and initialled by the responsible individuals and submitted to SURCH supervisors for quality control and random accuracy check. Data entry was accomplished by SURCH, using *Microsoft Access* software,

<sup>16</sup> This consultant also prepared an assortment of Microsoft Access/Excel charts and tables, which are appended to this report. It is hoped that these visual aids will complement the report, helping readers to better understand the gravity of the problems identified herein.



which was subsequently compiled, analysed and summarized.

## Findings and Conclusions

Fifteen (15) civil cases that were closed between 1996 and 2013 were reviewed; the oldest case analysed was filed on 22 November 1994, and the newest case, on 11 August 2010.

### Finding 1

With respect to time, the average number of days that elapsed between the date the plaint was filed and the date the summons was issued was ten (10) days. The range was between 1 and 1,191 days.

- In five cases (33 percent), the time between the filing of the plaint and the issuance of the summons was 5 days or less.
- In five cases (33 percent), the time between the filing of the plaint and the issuance of the summons was between 7 to 26 days.
- In five cases (33 percent), the time between the filing of the plaint and the issuance of the summons was between 35 and 1,191 days.

### Conclusion

It appears that the pilot district courts are not exercising sufficient control over the issuance of summons to the parties or their witnesses. This could be the result of problems caused by the respective *Nezarat* Section or the *sheristadars'* failure to monitor pending cases closely enough, or other events that the courts are not controlling effectively.

### Finding 2

The average number of days that elapsed between the issuance and return of the

summons was 68; the range was between four and 618 days.

- In five cases (33 percent), the time between the issuance and return of the summons was between 4 and 21 days.
- In five cases (33 percent), the time between the issuance and return of the summons was between 26 and 84 days.
- In five cases (33 percent), the time between the issuance and return of the summons was between 91 and 618 days.

### Conclusion

It appears that the pilot district courts are **not** exercising sufficient control over the return of proof of service. This could be the result of problems caused by the *sheristadars'* failure to monitor his/her pending cases closely enough or other events that the court is not controlling effectively, e.g. the *Nezarat* Section.

### Finding 3

The average number of days that elapsed between the date the proof of service was returned to the respective court and the date the written statement was filed is 146; the range was between 15 and 958 days.<sup>17</sup>

- In five cases (33 percent), the time between the return of service and the filing of the written statement was between 15 and 133 days.
- In five cases (33 percent), the time between the return of service and the filing of the written statement was between 159 and 958 days.

<sup>17</sup> In five cases (33 percent), the record was silent as to the date the plaintiff's written statement was filed.

## Conclusion

It appears as though the pilot district courts are **not** exercising sufficient control over the plaintiff's submission of the written statement. This could be the result of the respective *sheristadar's* failure to manage his/her pending cases closely enough, or other events that the court is not controlling effectively.

### Finding 4

The average number of days that elapsed between the date of the filing of the plaintiff's written statement and the examination of witnesses was 282.

- In five cases<sup>18</sup> (33 percent) the time between the filing of the plaintiff's written statement and the examination of witnesses was between 107 and 1,940 days.

## Conclusions

- In almost every one of the cases analysed, the examination of the witnesses did not begin for more than three months following the filing of the plaintiff's written statement. In the majority of cases tracked, it took eight (8) months or longer to begin the examination of witnesses. Given the range of disputes before a district court, this is inexcusable.
- One of the most important tenets of a *Total Case Management* philosophy is that the immediacy of trial settles cases. If this is indeed true, then allowing so much time to elapse between the filing of the plaintiff's written statement and the examination of witnesses can be counterproductive to the effective management of cases and the prompt resolution of civil disputes.

### Finding 5

The average number of days that elapsed between the date of the filing of the plaint and the date the judge delivered his/her decision was 1,920; the range was between 645 and 5,505 days.

- In two cases (13 percent), the time between the date of the filing of the plaint and the date of decision was approximately two years.
- In four cases (27 percent), the time between the date of the filing of the plaint and the date of decision was between three and four years.
- In four cases (27 percent), the time between the date of the filing of the plaint and the date of decision was approximately six years.
- In five cases (33 percent), the time between the date of the filing of the plaint and the date of decision was between eight and more than 15 years.

## Conclusion

In almost three-fourths of the cases analysed, the time between the date of the filing of the plaint and the date of decision was greater than six years. This is contemptible. *Justice* demands that 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.

### Finding 6

We reviewed 843 hearings occurring in 15 civil cases, in three pilot district courts, that were closed between August 1996 and March 2013. Of that number, our analysis reveals that the average number of hearings *per case* was 42 in Dhaka, 76 in

<sup>18</sup> In ten cases (67 percent), the record was silent as to the date the witnesses were examined.

Kishoreganj, and 25 in Rangamati. The range was from 34 to 104 hearings in a single case in Dhaka; 33 to 111 hearings in a single case in Kishoreganj, and 20 to 63 hearings in a single case in Rangamati.

### Conclusion

Such delay is unwarranted and can be easily rectified through orderly and systematic process re-engineering.

### Finding 7

Hearings were adjourned for the following reasons:

- three hearings (.5 percent) were adjourned because the summons (or notice) was not served in a timely manner;
- 73 (12 percent) hearings were adjourned because service of process was incomplete;
- 257 hearings (42 percent) were adjourned at the request of the parties;
- 28 hearings (5 percent) were adjourned awaiting submission of a petition;
- two hearings (.3 percent) were adjourned by order of a higher court;
- 22 hearings (4 percent) were adjourned because notified parties failed to appear;
- 181 hearings (30 percent) were adjourned due to the courts' excessive workloads;
- nine hearings (1 percent) were adjourned because advocates failed to appear or appeared unprepared;
- three hearings (.5 percent) were adjourned because witnesses failed to appear;
- one hearing (.2 percent) was adjourned because the recall of a

witness was requested;

- two hearings (.3 percent) were adjourned because ADR was incomplete;
- 23 hearings (4 percent) were adjourned because the judges' diaries were full;
- one hearing (.2 percent) was adjourned because the court's verdict had not yet been prepared;
- one hearing (.2 percent) was adjourned by order of a higher court to revise a verdict or decree;
- Two hearings (.3 percent) were adjourned because transfer of a petition to a lower court had been approved.

### Finding 8

The number of hearings scheduled or held per case is excessive:

- In six cases (40 percent), 40 or fewer hearings were required to dispose of the case;
- In five cases (33 percent), between 41 and 70 hearings were required to dispose of the case;
- In four cases (27 percent), between 71 and 111 hearings were required to dispose of the case.

### Finding 9

The time between different events *in the same case* is unnecessarily too long - **at least** 30 calendar days or more:

- 394 scheduled hearings (65 percent) were adjourned due to factors *external* to the court, e.g. irregular or incomplete service of process, parties' or advocates' failure to appear, or the parties' own request for an adjournment.
- 205 scheduled hearings (34 percent) were adjourned on the court's *own*

motion, which should be of considerable concern to the respective district judge. Such a delay, especially on the part of the pilot district courts, is unacceptable and contributes significantly to the denial of justice and ever-increasing backlogs.

- In the majority of closed civil cases analysed, the *number of hearings* scheduled or held to dispose of

each case is excessive. Such unchecked leniency contributes to burgeoning caseload backlogs.

### Conclusion

The *number of days* that elapsed between scheduled hearings in a single case appears excessive. It is this inattention to time that contributes most to trial court delay, denial of justice, and burgeoning backlogs.

### C. ANNEX III: RECORDS MANAGEMENT / INTRODUCTION OF COLOR-CODED, TERMINAL DIGIT FILING SYSTEM

#### ***Current Records Management System***

Case file contents in the High Court and the Dhaka District Court are poorly assembled and messy. The paper products used are of questionable quality and disintegrate rapidly. Significant amounts of often illegible, hand-written entries are commonplace. File contents are held in place by a single piece of yarn or string inserted through holes punched in the left-hand corner of the file. Documents are placed into the case file either by the judge's *sherestadar* or the *peshkar*.

Case files are often housed in hot, humid, damp facilities and subject to poor air quality, which may have a degenerative effect on permanent court records. Pending district court case files are stored horizontally (flat) on shelves located in the *sherestadar*'s office or, alternatively, in the respective judge's office. High Court case files are, likewise, stored horizontally in the Appeals Section. Such shelving is poorly designed for ease of access and do not maximize the use of available space. Closed cases are also filed horizontally in the court's archives, which appear to be extremely disorganized and overflowing.

District court judges store a large number of pending case files in their offices or courtrooms, even if such cases are not scheduled for a specific date to be heard or are not needed in the immediate future. Allowing judges to maintain case files in their respective offices complicates an already complex records management process by making the files difficult or time-consuming to locate, or to easily file incoming documents and proofs of service, etc. in the respective case file.

The current methodology for housing case files does not maximize the use of

available space for storing, and subsequently locating records. In addition, the practice of lodging case files in multiple locations throughout the Dhaka District Court may be labour-intensive and highly inefficient and wastes staff or the judge's time trying to locate them. Unless a *sherestadar* knows exactly where a case file is according to its status, finding it may become a time-consuming, difficult task.

None of the Courts use a common case-file numbering convention to distinguish between case types or jurisdictions. Often, several different case types can have the same case number, making it impossible to rely on that case number to locate, track or process the case. A case number should be the *primary* reference point for access to case information. It is important that each case filed in the courts have a unique number to identify it.

There is no standard format as to the content of a case number or the order in which particular parts of the case number are arranged. The Courts can contribute significantly to their own internal process improvement by ensuring that a common case numbering format is adopted and used throughout the Judiciary. The public, as well as the Judiciary, should have greater access to case information. Public safety and the responsible stewardship of public information demand that technology be used as a tool to serve the needs of justice, both effectively and efficiently. Since the Judiciary may, at some future date, have the capacity to store and retrieve data electronically and use automated, integrated case management system software to manage case information, it is increasingly important that a standardized case numbering convention be adopted.

Finally, Part III, Chapters 16-20, of the Civil Rules and Orders (CRO) governs the organization of case files as well as the retention and destruction of official court records. The CRO are in dire need of

modernization and simplification. As written, it is much too complex for the average *sherestadar* or registry office employee to understand, much less implement. For example, the Dhaka District Court's archives are spilling over with old closed records that should be destroyed or otherwise consolidated off premises. Bangladesh district courts are in dire need of simple, modern records retention and destruction policies that the average clerical employee can understand and implement.

### *Recommendations*

In light of the above situation, the following steps are **recommended**:

- The Judiciary should review the benefits that can be derived from the purchase and use of colour-coded, terminal digit case file folders made of heavy, card stock and designed to withstand repeated handling.
- The Judiciary should be mindful of the longevity of the case file and the need for its durability. Accordingly, it should draft, adopt and promulgate strict standards for the size and weight of paper products used in a typical civil case.
- While the unit cost of the new case files may be cause for initial concern, one should be mindful of the singular, central importance of the case file to the adjudicatory process and the effective administration of justice, as well as the need for it to withstand repeated handling and decades of archival retention.
- The colour-coded, terminal digit file folders should include metal clasps at the top of each folder commonly referred to as 'Acco fasteners'. The invention of the Acco fastener in

1912 is just one of the ways that Acco has helped offices run more efficiently and productively. These fasteners are affixed permanently to the case file at the top of each panel and can be easily manipulated to remove or insert pleadings, filings or other documents

- Establish budget funds for the renovation of the existing space to include adequate lighting and air-conditioning (to remove moisture from the air and help preserve the records)
- Install as many steel open shelving units as possible.
- Adopt a common case-numbering convention as soon as possible. A common case or file numbering convention should:
  - guarantee uniqueness for all cases, regardless of the case type or respective jurisdiction;
  - minimize the impact on the users' ability to locate a particular case file;
  - assign a case number that is meaningful and as short and as easy to use as possible;
  - facilitate adoption and implementation;
  - ensure that whatever convention is adopted, the sequence does not interfere with the requirements of a colour-coded, terminal digit filing system (see below).

The ability to accurately reference case information within or from any court in Bangladesh also facilitates:

- statistical reporting, both internally and to the MoLJPA, the Supreme Court, Parliament, etc.;

- automation applications;
  - nationwide indexing to expedite the search for, and retrieval of, pertinent, case-related information.
- To save space and work, the case number should contain no hyphens or slashes; unique colours should be incorporated. The following is the case file numbering convention commonly used by Bangladesh's Judiciary:
- Geographic location (a numerical code indicating the court of first instance or original jurisdiction), e.g. 00 for the High Court; 01 for the Dhaka District Court;
  - Sub-case category, e.g. 03, representing the judge assigned to hear it;
  - Year (two digits on a single label, colour-coded to indicate major case category - red for criminal, blue for civil, green for family and so on for e.g. "13" for 2013;
  - Sequential case number, e.g. 0123. For example, for the 123rd civil case filed in the Dhaka District Court (1st), assigned to Joint District Judge (3rd) and filed in 2013 (13), the expanded case number might be:
- 01 03 13/13 0123
- Place all retained records vertically in properly designed cardboard archive boxes, organized by case type, year and sequential case number. Legibly write this information on each box in an easy-to-see location.
- Store boxes on the shelving units, segregated by case type, and within each case type, by year and by case number.
- Create a 'pending and recently closed cases' archive on the District Court premises.
- Staff the archive with no less than two responsible employees who have been properly vetted and who have been vested with *full* responsibility for the care, custody, control and safekeeping of the court's records.
- Relocate all pending cases from the various *sheristadars'* offices and from the judges' offices to this archive for care, custody, control and safekeeping, ensuring that the entry way is locked securely whenever a staff member is not present, or after normal business hours.
- Once the existing file shelving has been replaced with open shelf filing systems and all pending files have been retrieved, the 'pending and recently closed cases' archive should arrange the file shelving so as to accommodate case files vertically, organized by year, and by the terminal or last digit of the case number.
- A basic computer running Microsoft Office, e.g. Excel, Outlook, or the soon-to-be-modified electronic cause list could be used to enter simple case scheduling information, e.g. case number, date and name or initials of the judge assigned, and to produce a calendar from which the cases could be 'pulled', according to case number, one week in advance of a scheduled hearing and delivered to the respective, responsible judge for his/her review and preparation.

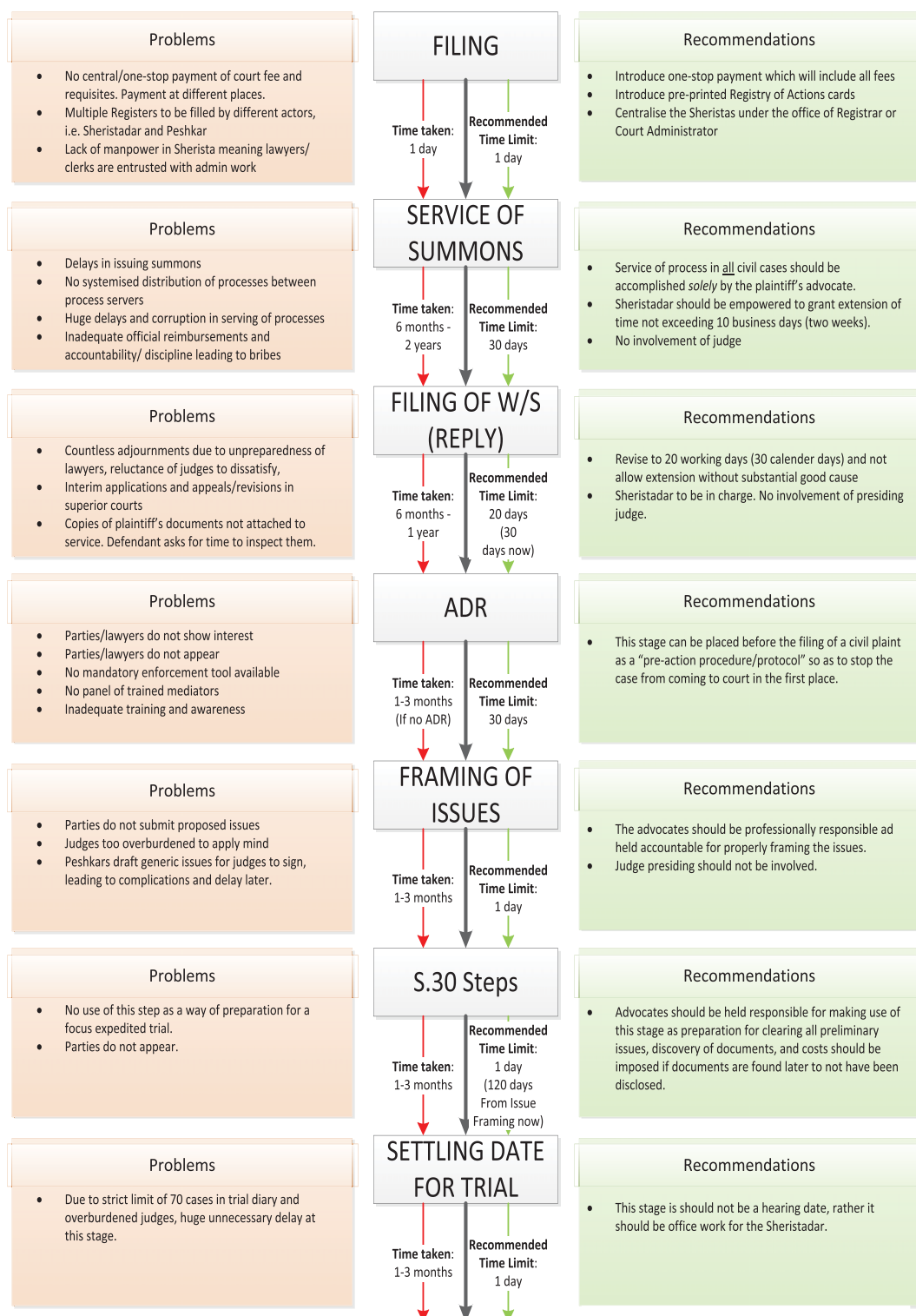


- The use of colour-coded, terminal digit case file folders will facilitate the location and control of pending case records and reduce the frequency with which the case files are handled. Cases are organized *vertically*, by year, and filed by terminal digit (the last digit of a case number, e.g. 1201, 1211, 1221, 1231, 1241, 1251, 1261, 1271, 1281, 1291, 1301, etc.). When needed, files are 'pulled' using a simply designed, computer-generated print-out.

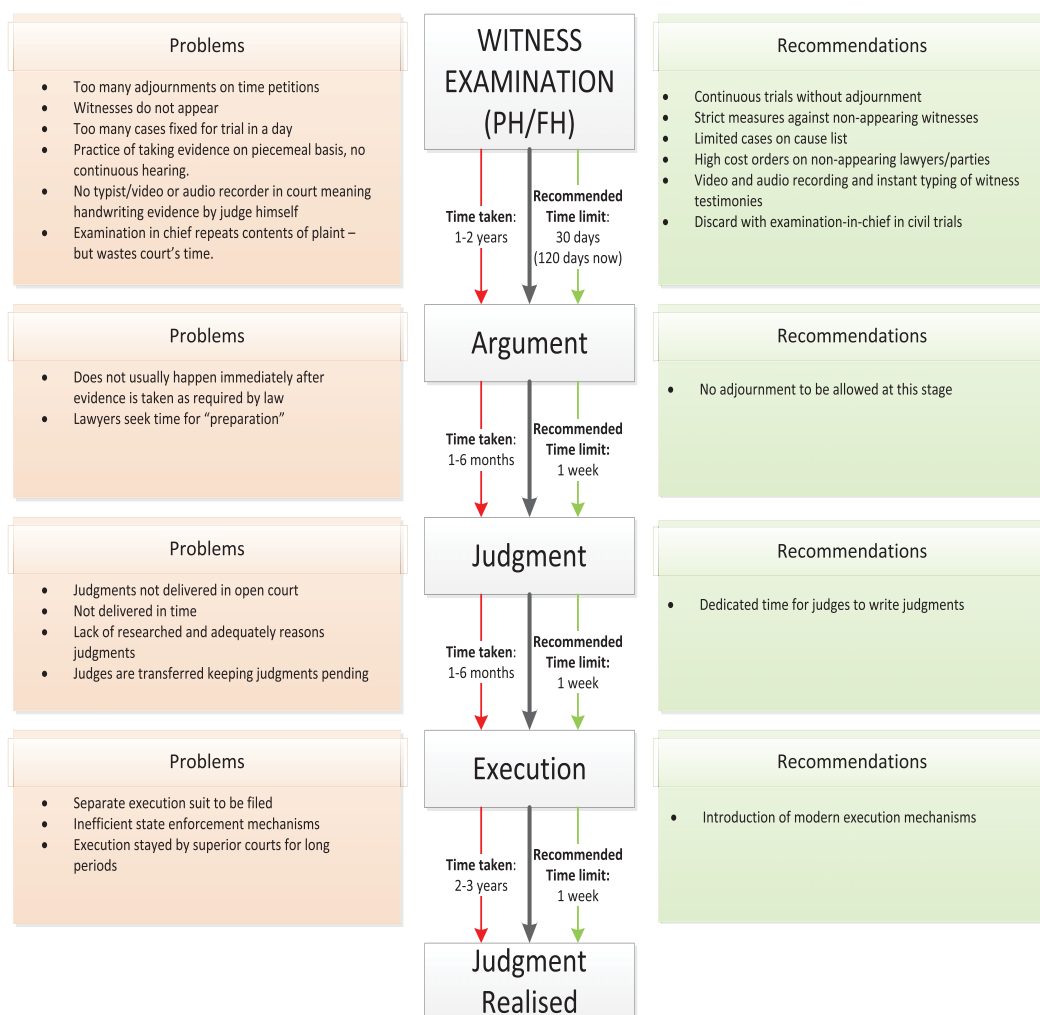


- The introduction of a colour-coded, terminal digit case filing system and automation of the case/records management process via a bar-coding equipped, stand-alone computer would obviate the need to maintain duplicate, triplicate or quadruplicate registries or records of case numbers, parties, documents, etc.
- The Judiciary's IT specialists should ensure that the envisioned Integrated Software Case Management (ICMS) application permits the daily, automatic production of a status report that identifies outstanding documents or pending events by deadline or due date. Each morning, the staff would use the computer-generated printout to follow up on due or overdue documents, pleadings, responses, etc., or to 'pull' and deliver case files to those judges who have hearings scheduled within the next seven-day period.
- Bangladesh's Judiciary should move with all deliberate speed to draft, adopt and promulgate a comprehensive, easy-to-follow policy that governs the retention and destruction of court records. Acting under the auspices of the Supreme Court Special Committee on Judicial Reforms, a Technical Committee (See Chapter VI (A) (2)) should work with a competent team of experienced *sherestadars* to carefully review and streamline the chapters of the CRO related to the organization of case files, as well as the retention and destruction of court records, making it easier for *sherestadars*, *peshkars* and other non-judicial personnel to understand and implement them.
- The responsibility for determining whether to archive or destroy a case file should be delegated to a senior *sheristadar*, the District Court's Registrar (when one is appointed) or a senior deputy registrar. This task should not be performed by a judge.
- The court should make every effort to record pertinent information regarding the archival or destruction of a case file and related documents solely on a *Register of Actions* card.
- Instead of a judge, the respective sheristadar (or the Registrar, when one is appointed) should be vested with the full responsibility for the care, custody, control and safekeeping of the court's records. As such, the respective sheristadar's office should be the official repository of all case files, so that they are not only available for the parties, their advocates, the public or the media, but also for the staff to keep them current.
- Any time when the case file is not needed by a judge to prepare for, or conduct, a hearing or draft his/her decision, the case file should be lodged in a centrally located 'pending and recently closed cases' archive.

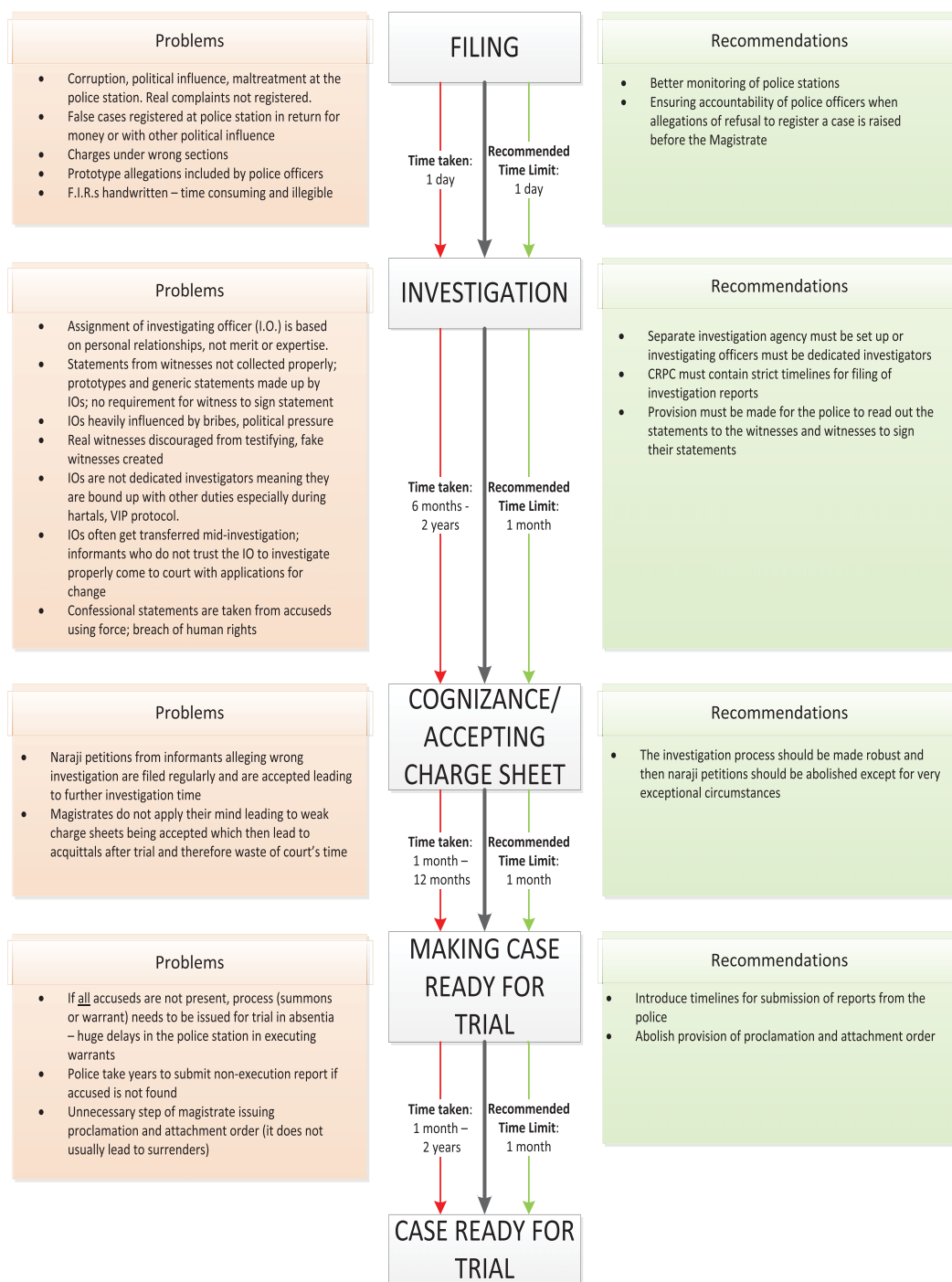
## Flowchart 1: Pre-Trial Stage – Problems, Recommendations and Timelines

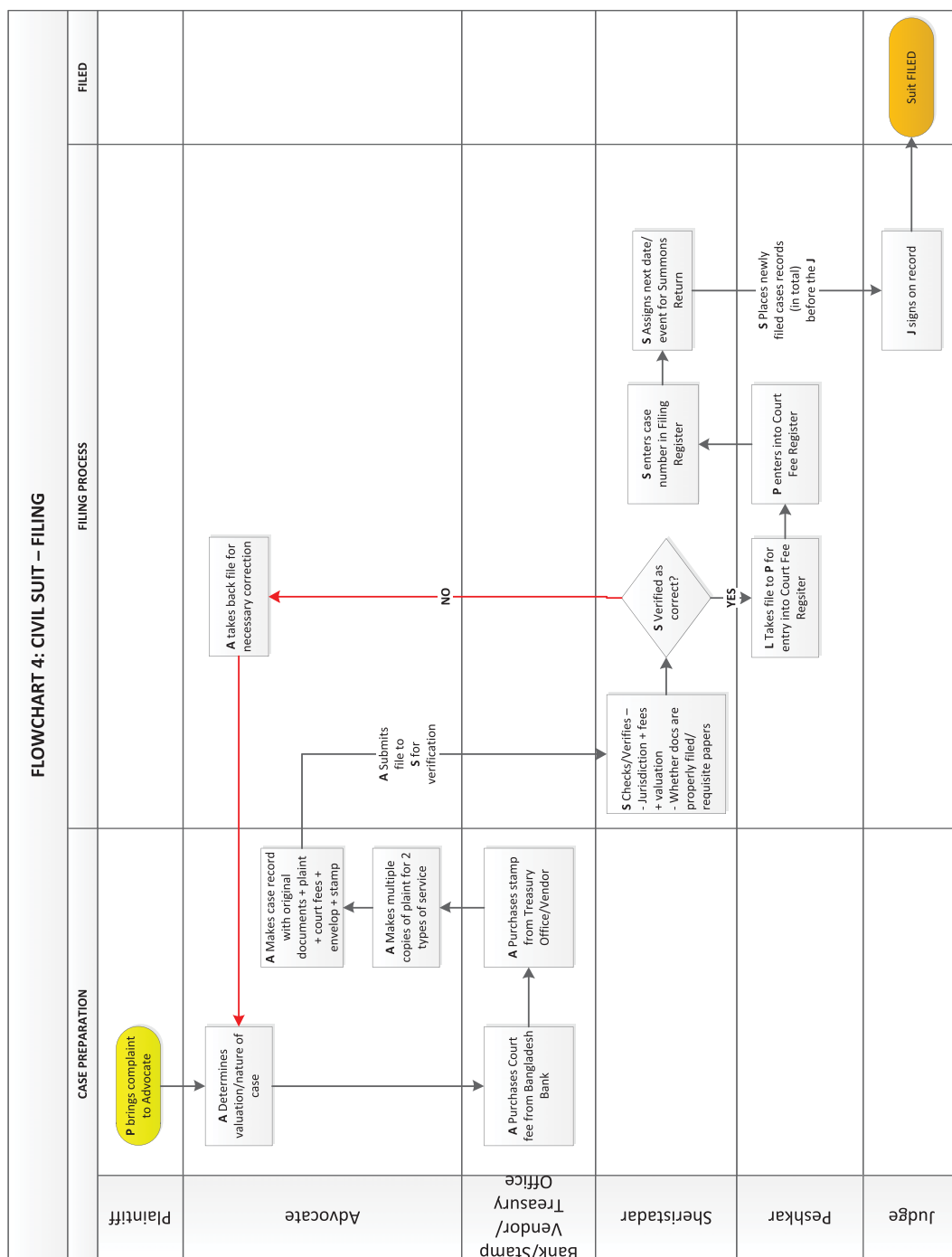


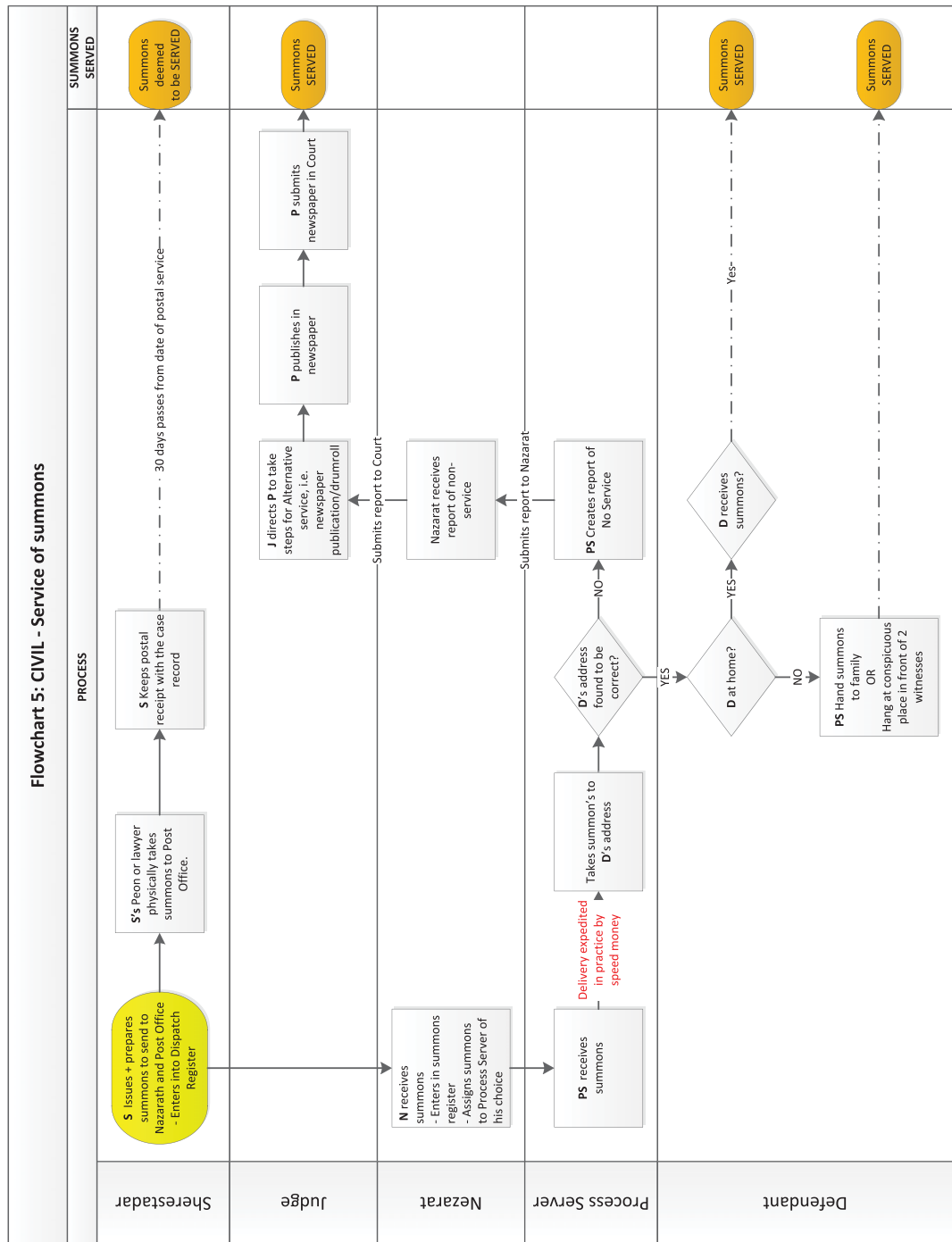
## Flowchart 2: Trial and Post-Trial Stage – Problems, Reforms and Timelines



### Flowchart 3: Pre-Trial Stage – Problems, Recommendations and Timelines

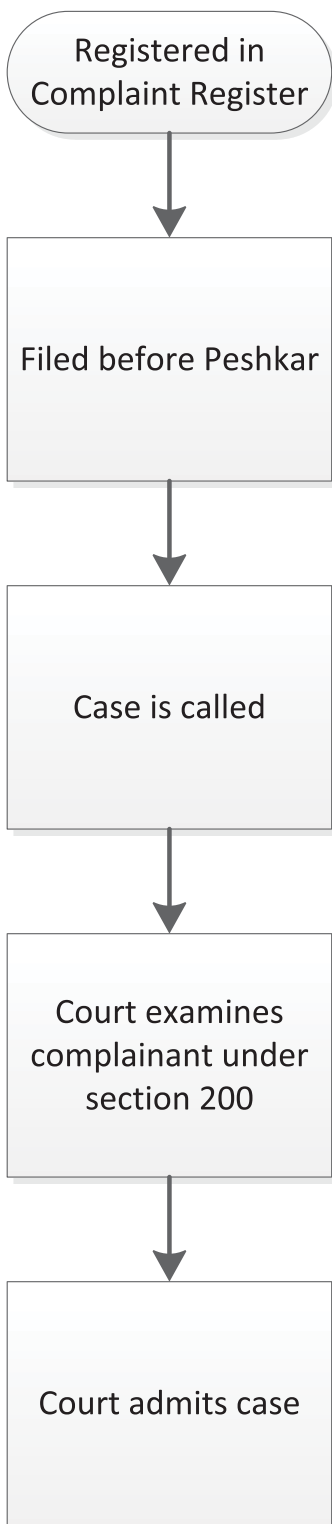






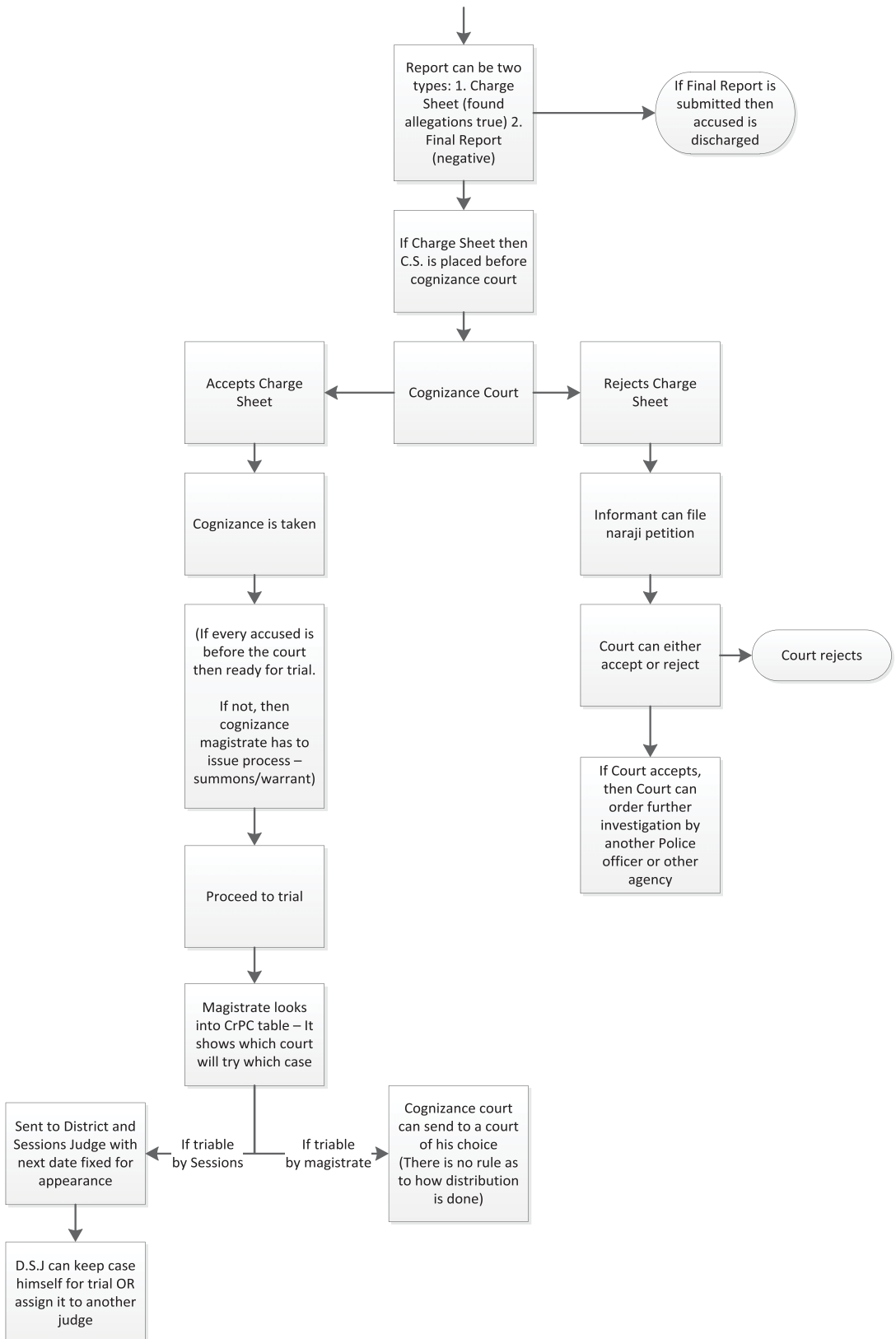


## Flowchart 6: Filing a C.R. Case

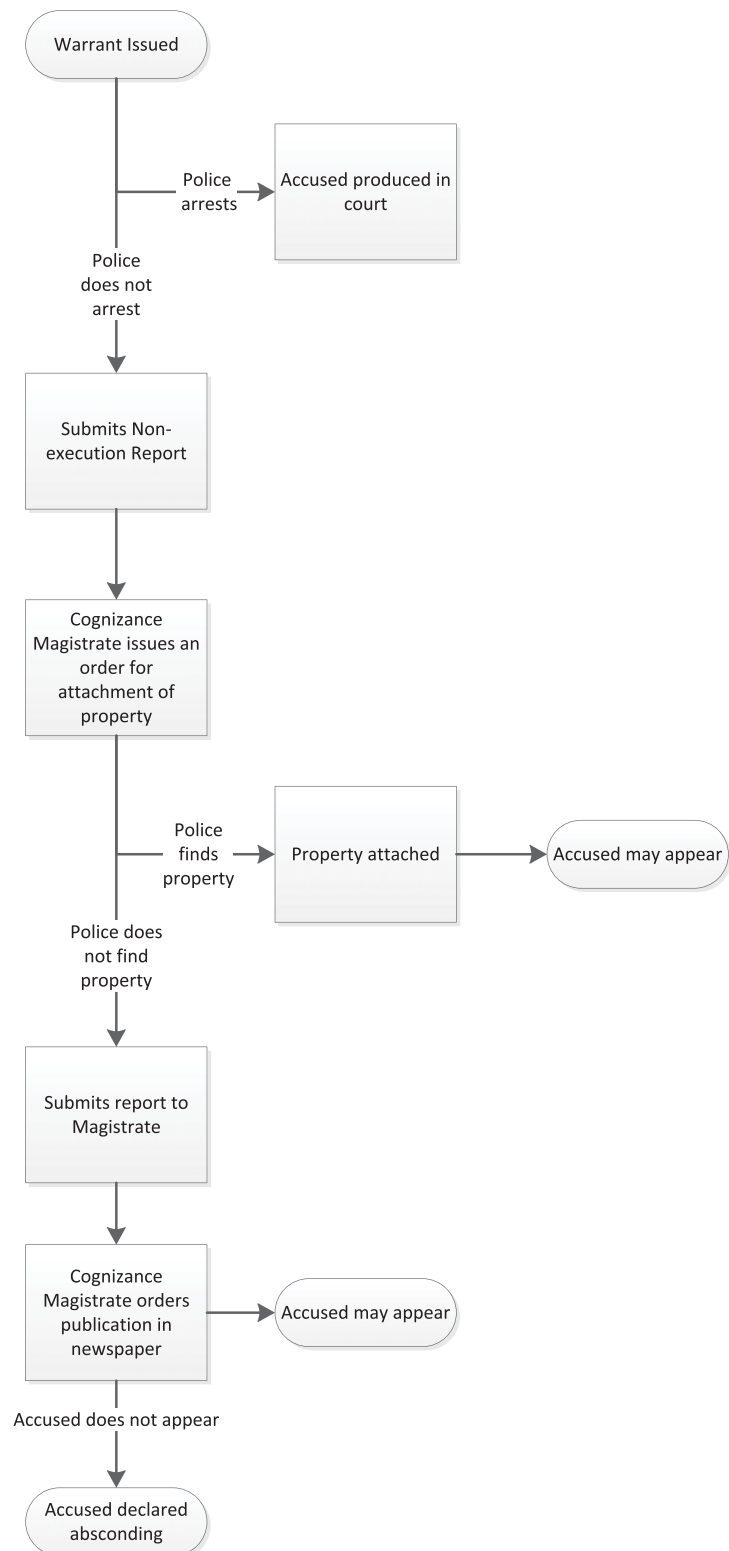


## Flowchart 7: Basic G.R. Case





## Flowchart 8: WARRANT





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Democratic Governance Cluster  
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