

# INTERNATIONAL JOURNAL OF RESEARCH IN COMMERCE, IT & MANAGEMENT

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## DEVELOPING A MODEL TO ENSURE SWIFT JUSTICE IN DEVELOPING COUNTRIES: A STUDY ON SUIT JAMS IN BANGLADESH

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### ABSTRACT

*It is evident from different statistics that, an ever increasing suit jam is prevailing in the courts of Bangladesh. The researchers attempted to develop a model to reduce the suit jam by analyzing the present scenario and the causes of the problem. The research is primary and secondary data based along with a semi-structured questionnaire to collect data from 100 lawyers, 100 victims, 100 academicians and 100 judges and magistrates by stratified sampling. It is proved from huge number of pending suits that thousands of people are suffering from long lasting verdict process due to provision of long duration to be equipped to provide the justice to the sufferers. The information collection, analyzing and transferring process of different parties with others, intentional and institutional procedures are worsening the situation. The researchers developed a model of providing the verdicts at four different stages; department level, lawyers level, specialized judge/magistrate level and higher court level on the basis of standardized laws to provide verdict at lower levels and forwarded the cases of exceptional nature on the basis of Management of Exceptions to the higher level with reports to provide necessary information to provide rapid verdict.*

### KEYWORDS

Suit Jam, Stratified Sampling, Specialized Judge/Magistrate, Management by Exception, Standardized Law.

### INTRODUCTION

Generally an individual can suffer from two types of wrongs, namely, criminal wrong and civil wrong. In ordinary language, the term crime denotes an unlawful act punishable by the state (Wikipedia). The term crime does not, in modern criminal law, have any simple and universally accepted definition, though statutory definitions have been provided for certain purposes. The most popular view is that crime is a category created by law (i.e. something is a crime if applicable law says that it is). One proposed definition is that a crime, also called an offence or a criminal offence, is an act harmful not only to some individual, but also to the community or the state (a public wrong). Such acts are forbidden and punishable by law. Section 40 of the Penal Code 1860 states that "the word "offence" denotes a thing made punishable by this Code." (Penal Code 1860) On the other hand, a "suit in law" is a civil action brought in a court of law in which a plaintiff, a party who claims to have incurred loss as a result of a defendant's actions, demands a legal or equitable remedy (Wikipedia). The defendant is required to respond to the plaintiff's complaint. If the plaintiff is successful, judgment is in the plaintiff's favor, and a variety of court orders may be issued to enforce a right, award damages, or impose a temporary or permanent injunction to prevent an act or compel an act. A declaratory judgment may be issued to prevent future legal disputes (Wikipedia).

In general there are three basic classifications of criminal offenses - felonies, misdemeanors and infractions (about.com). They are distinguished from each other by the seriousness of the offense and the amount of punishment for which someone convicted of the crime can receive.

Felonies are the most serious classification of crimes, punishable by incarceration of more than a year in prison and in some cases life in prison and even execution. Murder, rape and kidnapping are felony crimes, but armed robbery and grand theft also can be felonies. Not only can the person who committed the crime be charged with a felony, but so can anyone who aided or abetted the felon before or during the crime and anyone who became accessories of the crime after it was committed, such as those who help the felon avoid capture.

Misdemeanors are crimes that do not rise to the severity of a felony. The distinction between misdemeanors and felonies lies within the seriousness of the crime. Aggravated assault (beating someone with a cricket bat, for example) is a felony, while simple battery (slapping someone in the face) is a misdemeanor.

Infractions are crimes for which jail time is usually not a possible sentence. Sometimes known as petty crimes, infractions are usually punishable by fines, which can be paid without even going to court.

There exists another type of crime known as the Capital crimes. These crimes are punishable by death. They are, of course, felonies. Such as, Section 303 of the Penal Code 1860 provides Death Penalty as only punishment for committing murder by a person imprisoned for life.

On the contrary civil suits include- Contract disputes, Obligations disputes, Property disputes or damages, Torts (a physical or psychological wrong or damage against another person whether intentional or not), which result in harm, including negligence, libel, and accidents, Succession disputes, Administrative law matters, Business disputes, Commercial law disputes, Temporary restraining orders, Dispute arising out of marriage (i.e. Polygamy, Divorce, Dower, Maintenance, Guardianship etc.) (Wikipedia).

In Bangladesh, in both cases (Criminal and Civil) the person who suffers injury for the acts of others needs to go to the court for seeking relief. Such as, in Criminal Case the remedy for the victim is five types of punishments awarded to the person found guilty, namely:

1. Death Sentence,
2. Imprisonment for life,
3. Imprisonment, which can be of Simple or Rigorous,
4. Forfeiture and
5. Fine. (Penal Code, 1860)

In Civil Suits the remedies are Injunction, Specific Performance, Appointment of Receiver, Declaration of rights etc.

The policy of the Court is that judgment should be delivered as expeditiously as possible. However, the constantly changing and often unpredictable demands on judicial time, the differences in the priorities for the delivery of judgments in different cases and the difference in the time required for the writing of judgment in different cases, the judges do not regard it as appropriate or useful to settle a time-table governing the delivery of reserved judgments. All judges aim to deliver decisions as promptly as possible. It is an internationally accepted norm that decisions will be delivered within three (3) months of the last day of hearing or receipt of the last submission. This period does not include court vacations. On occasion a judge may advise the parties at the hearing that the judgment will take longer than three months to deliver due to the complexity of the case or other pressing matters of court business.

Criminal proceedings are started by filing an FIR to the nearest police station stating the harm or loss caused by the victim for the acts of the accused (This is known as GR case or General Register case) and when the victim fails to lodge the complain with the police station then the Magistrate will register the case (Which is generally known as Complaint register). The police can arrest the accused without the permission of Magistrate or without warrant in case of cognizable offence. In case of Non-cognizable offences a police officer can arrest only with a warrant. According to the Article 33 of Constitution and 167 section of Code of Criminal Procedure police must produce the accused before the nearest Magistrate within 24 hours of arrest. With the permission of magistrate the police can keep the accused for more than 24 hours for further interrogations (Constitution of Bangladesh & CrPC). This is usually known as remand.

Section 15 of the Code of Civil Procedure of 1908 says that every suit shall be instituted in the Court of the lowest grade competent to try it (CPC 1908). The suit starts by moving a written petition called "Plaint" to the court. The Civil Courts Act 1887 laid down the Jurisdiction of the Civil Courts. According to this Act the suit valued below tk. 2 lacs is to be placed in the Court of Assistant Judge, of tk. 2 lac to 4 lac to the Court of Senior Assistant Judge and where the suit value is more than tk. 4 lacs it is to be instituted to the Court of Joint District Judge. The defendant must pay the court fee as per the rates fixed by the laws of the land time to time (Civil Court Act 1887).

Stages of Criminal proceeding: All criminal proceedings are regulated under the Code of criminal procedure 1898 and other Criminal Rules and Order (CRO). The CrPC contains details about the administration of criminal justice into three stages: namely investigation, inquiry and trial.

PRE-PROCEEDING STAGE: This is the initial stage of investigation and the preparation of a criminal case. Only the police plays role from the beginning to the end of this stage.

First Information Report----Investigation----Charge-sheet or a Final report----Naraji.

PROCEEDING STAGE: Taking Cognizance

THE TRIAL STAGES:

Pre-trial hearing----Framing of charge----Plea and conviction----Evidence----Examination of accused/342 [of CrPC] Steps. ----Final arguments----Judgment of Acquittal or Conviction.(CrPC, 1898)

Stages of civil suits:

Submission of plaint/ Institution of suits---- Service of Summon---- Service Return/ Acknowledgement---- Written Statement---- Discovery and Inspection---- Framing of issue---- Settling date for peremptory hearing---- Peremptory hearing---- Argument---- Judgment---- Decree---- Execution of Decree (CPC, 1908).

From the secondary data it is found that each civil court is dealing with almost 1274.66 suits. It is observed that Suits of 1961 is under judgment, both the parties of many suits have died but the case is still pending, a Signboard shows that Injunction Granted on 1978 is still in force, a Suit of 1965 regarding the determination of the rights of parties on Khas land is still not settled, even after 37 years of a murder no judgment is made yet, a suit on Election dispute instituted 40 years back is not settled yet, and thousands of Political cases remained unsettled.(Shaptahik 2000).

The civil suits take more times than the criminal case. 186 suits which were instituted on Pakistan period (1961-1970) is still under trial. Among the old cases, the number of 50 years old running cases is 175; number of 25-30 years old 1288 and the number of 20-50 years old cases are 2000 (Shaptahik 2000). At present in all courts in Bangladesh the number of pending suits is more than 30 lacs. The main reason is slow processing of the cases, rate of filing cases are much higher than that of settlements as reported by many experts.

In this situation, it quite impossible to ensure justice to the people of the country. So it is essential to examine the suit management system of Bangladesh and develop a perfect model to solve the problem of suit jam and initiate efficient and effective suit management system to ensure justice.

**OBJECTIVES: THE SPECIFIC OBJECTIVES OF THE STUDY ARE**

1. To study the present scenario of disposing suits in Bangladesh
2. To study the causes of suit jam in present structure.
3. To develop a model to ensure swift justice to the victims of suitjam in Bangladesh

**METHODOLOGY**

This research is a problem solving analytical research. The researchers used the sampling design of stratified probability types and collected data from 200 lawyers of Sylhet, Dhaka and Chittagong of lower court and high courts and of 100 academicians of different universities and also 100 magistrates and judges regarding the causes and types of suits and the suitability of the proposed model. The data were properly tabulated and processed by Microsoft excel 2007. The secondary data were collected from different authentic sources.

**FINDINGS**

**PRESENT SCENARIO OF VARIOUS CIVIL COURTS IN BANGLADESH**

The breathtaking figure of pending civil cases in the districts of Bangladesh is mounting gradually. Up to December'2012, the total number of civil litigation pending in the divisional districts is given below.

**TABLE 1: THE NUMBER OF PENDING CIVIL SUITS AT DIFFERENT COURTS:**

City	Pending Civil suit	Courts	Pending suit per court
Dhaka	62,250	38	1638.158
Chittagong	75,010	39	1923.333
Khulna	21,118	21	1005.619
Rajshahi	15,339	17	902.2941
Sylhet	6,664	22	302.9091
Barishal	25,760	18	1431.111
Rangpur	9,228	14	659.1429
Total	215,369	169	1274.373

Source: Statement up to December'2012 of Dhaka, Chittagong, Khulna, Rajshahi, Sylhet, Barishal & Rangpur courts

As no authentic data are available regarding the proportion of civil suits of different types, so the authors collected the opinion of 100 lawyers of Sylhet, Dhaka, & Chittagong regarding this. According to their opinion of land disputes contributed the most (65%) on civil suit and it is followed by family matter (25%) and the rest 10% are regarding business and other matters.

The growth in different types of criminal suits filed from the year 2001-2007 is shown in the following table:



TABLE 2: TYPES OF CRIMINAL SUITS FILED

Types of Criminal Case	2001	2002	2003	2004	2005	2006	2007	CAGR	Proportion in 2007
Dacoity	758	963	949	885	796	795	1047	0.05	0.01
Robbery	1265	1397	1170	1207	898	843	1298	0.00	0.01
Burglary	3654	3959	3883	3356	3270	2991	4439	0.03	0.03
Theft	7432	8245	8234	8605	8101	8332	12015	0.07	0.08
Murder	3678	3503	3471	3902	3592	4166	3863	0.01	0.02
Rioting	2161	1276	890	754	570	570	263	-0.26	0.00
Women Molestation	12958	18455	20242	12815	11426	11068	14250	0.01	0.09
Children Oppression	380	512	475	503	555	662	967	0.14	0.01
Kidnapping	834	1040	896	898	765	722	774	-0.01	0.00
Police Attack/ Torturing	344	281	271	280	240	337	278	-0.03	0.00
Rescue Operation	12909	17394	16785	16534	20960	22073	22802	0.08	0.15
Law of rapid Justice	2396	1693	2179	2053	1814	1638	1980	-0.03	0.01
Others	65422	68898	66194	67531	70046	76381	93224	0.05	0.59
Total	114191	127616	125639	119323	123033	130578	157200	0.05	1.00

Source: Statistical Pocket Book 2008

From the above table, it is depicted that the growth of criminal suits is 5% from 2001 to 2007. The highest growth is found in child Oppression suits (14%) is followed by rescue operation (8%) and theft (7%). The highest decrease in growth is recorded in rioting (26%). The highest proportion of criminal suits is found in other types (59%) that are followed by rescue operation (15%) and women molestation (9%).

The logistic supports are very limited to solve the huge number of suits. It is found that the rate of resolving is much higher than the rate of lodging cases. The number of pending cases and the number of judges available is known in the following table:

TABLE 3: COMPARATIVE STUDY ON THE NUMBER OF PENDING SUITS AND AVAILABLE JUDGES

Number of pending suits in different courts		Number of judges on different courts	
Higher courts	422040	Judges in High court	100
Lower Court	880307	Lower Court	1598
Criminal	486000	Average suits on judge of High court	1400
Metropolitan Magistrate Court	210806	Average suits on Judge at Lower court	3100
Family court	58106		

It is verified from the above table that the average suits on judge of high court is 1400 and on lower court it is 3100. And as the rate of lodging cases is higher than the rate of resolving so it is increasing rapidly. So the only way to reduce the suit jam is found as increasing the processing speed by appointing more judges and taking other measures or reduce the rate of lodging cases.

The policy of the Court is that judgment should be delivered as expeditiously as possible. However, the constantly changing and often unpredictable demands on judicial time, the differences in the priorities for the delivery of judgments in different cases and the difference in the time required for the writing of judgment in different cases, the judges do not regard it as appropriate or useful to settle a time-table governing the delivery of reserved judgments. All judges aim to deliver decisions as promptly as possible. It is an internationally accepted norm that decisions will be delivered within three (3) months of the last day of hearing or receipt of the last submission. This period does not include court vacations. On occasion a judge may advise the parties at the hearing that the judgment will take longer than three months to deliver due to the complexity of the case or other pressing matters of court business.

But in Bangladesh there is no time frame for civil and criminal suit in practice. Though certain acts require a suit to be finished within a specific period of time but in practice there exist no sign of that.

For instance, Section 10 of the Speedy Trial Tribunals Act requires disposing of cases within 90 days of the filing of the proceedings. In case of failure it can take another 15 days which may be extended up to 30 days. If the matter is not settled within the stipulated time then the same will be sent back to the regular court (Speedy Trial Tribunals Act 2002).

Section 20 of the Prevention of Women and Children Repression Act 2000 requires a trial to be finished within 180 days. If it is not done within the stipulated time the court may enlarge the accused on bail. But in practice most cases are not finished within the specific time (Women and Children Repression Act 2000).

For negligence of doctors and police 2103 cases has been stopped. Doctors and police do not go to the court regularly when they are required to make their disposition before the court.

At present around 24000 Cases are settled every year, the number is much lesser than that of cases instituted each year. Survey shows that more than 40 years needed to settle the current disputes, without taking any new dispute for settlement.

**CAUSES OF DELAY**

Delay due to the Litigants: From the table below, it is found that the respondents verified that delay on the behalf of litigants are for the following reasons; lack of legal knowledge, failure to produce witness; intentional time killing, malicious prosecutions, delay in submission in written statement and lack of client to client interaction. The leading cause of delay is identified by the respondents is intentional time killing (25%) that is followed by delay in submission written statement (24%) and malicious prosecution (18%).

TABLE 4: DELAY IN VERDICT DUE TO LITIGANTS PROBLEMS

Category	%
Lack of legal knowledge	05
Failure to produce/ Delay in producing witness	15
Intentional time killing	25
Malicious prosecution	18
Delay in submitting written statements	24
No client to client interaction	13

Delay caused by the lawyers: The main factor of delay from the lawyers is found as unwillingness to resolve the dispute through ADR (35%), followed by inducing the litigants to unnecessary sue (23%) and monetary interest (20%), that is depicted from the following table:

**TABLE 4: DELAY IN VERDICT DUE TO LAWYERS PROBLEMS**

Category	%
Inducing the litigants to sue where it was not necessary	23
Willfully causing delay to secure monetary interest	20
Lack of legal knowledge	05
Unwillingness to resolve the dispute through ADR	35
Absence of lawyer-client accountability	05
Vagueness in the terms and wordings of the plaint and written statement	05
Lack of skilled lawyers	07

In Criminal Cases: In criminal cases the main reasons for delay as identified by the respondents are; delay in investigation report (20%) abstention of required persons to verify (20%); corruption of the police (18%) and other causes, as reflected by the following table.

**TABLE 5: REASONS FOR DELAYED VERDICT IN CRIMINAL CASES**

Category	%
Not ensuring the environment of dispensing justice	10
Corruption by the court personnel	10
Delay in submitting investigation report by the police	20
Abstention of the police, medical officer or other persons required by the court	20
Corruption of the police	18
Delay in issuing medical certificates	12
Insufficient court personnel's	10

Delay caused by the judges: The insufficient number of judges (50%) is found as major causes of delay among the causes from judges as shown in the following table:

**TABLE 6: DELAY CAUSED BY THE LIMITATION OF JUDGES**

Category	%
Reluctance of the judges	15
Insufficient internal discipline and accountability	15
Need of specialization	05
Frequent adjournments	15
Insufficient number of judges	50

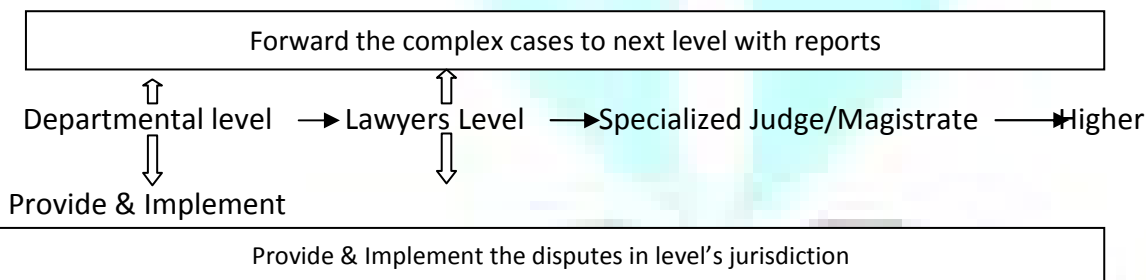
Model to reduce the Suit Jam:

By analyzing the causes of delay in settling the disputes by the present system, it is apparent that, the delay is due to three main reasons; the lengthy procedural practice, the long transferring time of information from advocates to judges; and time taken by the verdict givers in analyzing the problems and the intentional delay by supporting authority (police, lawyers and others).

So the proposed model should address all the loopholes by standardized rules and laws to solve the simple cases at primary level and advancing the cases of exceptions to the next levels by Management by Exception rule (Lewis et. el 2007)

To reduce the information transferring duration, the parties with maximum information are empowered to give the verdict at initial level for all cases. The verdict on simple cases must be implemented but for exceptional cases it should be transferred to the next level for more analysis with the analysis of authority at initial level. By this method, all cases are to be transferred to the higher level on the principle of management by exceptions and by getting implemented on that level in case of level matching cases.

So the model can be expressed by the following diagram:



**FOUR LAYER MODEL TO PROVIDE QUICK VERDICT**

Time frame must be given for all levels to provide the verdict and report. In case of in consensus, the report must be given to the higher authority with all documents.

Measures to reduce criminal cases: Earlier we discussed that criminal offence can be of three kinds, namely, felonies, misdemeanors and infractions. The first two are serious types of crimes and the later is less serious. Our survey shows that most of the cases instituted belong to the third category. It means if there exists any effective mechanism to deal with infraction the suit jam will be decreased in a great extent. At the departmental level, from the report of the police station, verdicts and or report may be given by the higher police officials who must have necessary legal knowledge. But for more tinny problems, the relevant police officer must delegate the power to punish the criminals with fine and confinement in jail for hours to days.

Police shall be given some judicial powers in case where the accused is caught red-handed and they will also be empowered to try certain petty cases. Though it may also cause the police to involve in corruption in a larger scale, yet it can be controlled. If any person feels aggrieved by the decision of the police, he may have a chance to appeal against such decision and if it is found that the police had punished him maliciously than the court may compel the department (police) to pay compensation.

It is found from the field survey that there is a problem with investigation by the police officer. Delay in submitting investigation report is one of the biggest reasons of the suit jam. It is also found that the police officer who is investigating a matter has to do certain other things simultaneously. He has to maintain discipline among the countrymen, sometimes also has to ensure security of the Ministers, Prime- Minister, Diplomats etc. So the same person surely will not be able to discharge his duty efficiently. Many police officers prepare investigation report even without visiting the spot where the crime is committed. Usually he calls upon the parties and the witnesses in the police station and records their disposition and prepares the investigation report. This is also causing great injustice.

If the government forms a separate investigating authority and train them in a sophisticated manner, this problem can be solved. If the investigation report is submitted in due course it will help the judges to deliver justice within a short period of time.

There exists the concept of village court to deal with certain cases, but their functioning is not out of question. There should be a regulatory committee to supervise the function of the village court.

Section 345 of the CrPC speaks about certain offences which are compoundable. But the number is very limited. The law can be amended to maximize the number of compoundable cases.

For the complex cases, the police department may submit the report in shortest possible time. On the basis of the report specialized investigation cell must investigate and prepare the final report. If the accused person is identified properly, the case will be in the jurisdiction of the department. Then the department may give their verdict. Otherwise transfer the case/s to the next level with their report. The lawyers of both parties (citizen vs citizen, or citizen vs. Govt or department) will draft the cases and sit together with a senior Lawyer (appointed by court) in a specific day to give their report on the case.

With the help of department's report and the lawyers report the specialized magistrate will give and make arrangement to implement the verdict in a shorter period.

The dissatisfied party is allowed to go to the higher court for appeal against the verdict with the compulsion of bearing the compensation of other party in case of rejection of appeal.

Measures to reduce civil suits: The same model may be applied for the civil suits with the following stages of verdicts; Departmental Level, Lawyers level, Specialized judges level and higher court level.

To shorten the verdict delivery process and ensure the proper verdicts the above model may be formulated where every case must be solved at department level first. Survey shows that, In Bangladesh most of the civil suits arise out of common three grounds, namely Land 65%, Family 25% and Business 10%.

To reduce the delay of land dispute the authorities which deal with land may be given certain judicial powers. Such as, the government can empower the authorities like Registration office, Tofshil Office and Vumi office to try certain land disputes. This process can be termed as solution in the departmental level if any party is not satisfied by the verdict he may be allowed to appeal to the court.

Similarly in dealing with family disputes the local chairman and other authorities shall be given more power to resolve such matters. If this happens then the suit jam will reduce automatically.

There exists various Business Organizations like the Chambers of Commerce etc. They can be given power to mitigate business disputes.

The second stage will be known as the lawyer's stage. As the lawyers have to study the case before filing it, so usually they know everything about the fact. So the second stage of verdict can be found at lawyer's level. The two parties will present documented the case and give a report on consensus with the help of third senior lawyers. Lawyers of both parties along with a third senior lawyer will try to reach in a conclusion.

The third stage is known as specialized judges & Magistrates Level. If any party becomes dissatisfied he can appeal to specialized court, where judges are appointed on the basis of specialization. There may be institutions who will train the judges on different disputes like disputes on land, marriage, women and child, jobs, business, human rights, politics etc. in a program of 2 or three years. At this level the dispute will be settled more expeditiously.

To reduce the number of cases, there may be a provision of taking compensation from the lawyer who advances the case to court despite the verdict at lawyers' level. He will return all the fees he got from the client.

To establish the rule of law, a sufferer may be allowed to appeal to the higher court for final verdict, if he wishes but he must deposit all the projected cost of the defense party in case of failure.

Conclusion: The present scenario of pending suits in Bangladesh clearly indicates that the rate of lodging suit is much higher than that of settlement. The causes of suit jam are from three broad categories; lengthy process of information collection, analysis and transmission, intention delay and procedural delay. To reduce the suit jam, a model is developed on the basis of standardized laws for settling the disputes, cases at initial levels and on the basis of principle exceptional management by exception, the cases beyond the jurisdiction is to be transferred to next level with necessary documentation and report of analysis. Thus in the four stages of dispute settlement and suit resolution model can be adopted to reduce the session jam in the country.

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