

Address of the Hon'ble Chief Justice of Bangladesh Mr. Justice Md. Muzammel Hossain on the occasion of National Case Management Workshop in Dhaka to be held in the Ball Room of Ruposhi Bangla Hotel on 7 December 2012.

My brother Judges of the Supreme Court of Bangladesh, Special Guest of this august occasion Mr. Stefan Priesner, Country Director of UNDP Bangladesh, Distinguished Guests, Ladies and Gentlemen,

Assalamualikum / Good Morning.

In this month in 1971 the heroic people of Bangladesh achieved a great victory at the cost of millions. The struggle was against oppression and for protecting the right to life and human dignity as well as for the freedom of the motherland. At the very outset I would like to pay my highest regards to the departed souls of the valiant freedom fighters who made supreme sacrifice for the noble cause.

I am pleased to be present here in this august occasion, the National Case Management workshop under the auspicious of the Judicial strengthening Project.

Ours a common law country. We have inherited our adversarial judicial system from the British colonial ruler. The nature of cases, time, perspective and peoples expectation from the judiciary all are rapidly changing. Now time is of greater value for every litigant. The nature of the cases also demands expeditious decision. People also want reduction in the cost of litigation. We are proud of our modern justice system which greatly enjoys the confidence of the people. But there is room for further excellence. Every man-made system needs, after passage of time, updating through reforms and revision. We may be benefited from experience of other common law countries in prioritizing the area of reforms and JUST Project will provide us necessary support in this regard. Reform is always a painstaking and laborious job and judicial reform is more complicated and time consuming. It is my personal conviction that unless the court functionaries, the Judges, lawyers and the Court staff, really feel the necessity and take initiative for bringing about a change in their work culture, the efforts for reforms, can hardly succeed. It is encouraging to note that there is an overall change of mind in favour of reforms and excellence.

The judiciary and the judges are the true defenders of rights, liberties and freedoms of the people. We can not conceive of democracy, rule of law and pro- people development of the country unless there is an independent and competent Judiciary. Despite infrastructural inadequacy and other deficiencies and impediments the

Honorable Judges of the Supreme Court are making relentless efforts for upholding scale of justice and equality. The Constitution of the People's Republic of Bangladesh has repeatedly emphasized on the Independence of judges and magistrates under Articles 94 (4) and 116A. There is no such constitutional mandate or requirement of independence for any other organ, service or profession of the state. To remain truly independent one must be free from undue influence and allurements. It is, primarily, the responsibility of the state to create an environment conducive to judicial independence.

In this context it is pertinent to mention that in my reply to the felicitation given to me by the Supreme Court Bar Association after my taking oath as the chief Justice of Bangladesh I made it clear that for securing the independence of Judiciary and proper superintendence and control of sub-ordinate judiciary, effective steps and measures would be taken to open a judicial secretariat of the Supreme Court of Bangladesh. In the meantime the Supreme Court has taken preparations and effective measures including preparation of organogram for opening the secretariat. We have received positive response from the Government of Bangladesh in this regard. We are very much optimistic in the opening our judicial secretariat with the full co-operation of the Government without further delay.

A separate and fully equipped court room and judge's chamber are the basic and primary need of a judge. This is a precondition for dispensation of quality justice as well. I am sad to say that in some courts judges and magistrates are still sharing a court room which deprives them from utilizing the full court time. However, there is a reason to be optimistic. I am pleased to know that the government has started implementation of a project for construction of chief judicial magistrate courts in all districts HQ in phases.

The growth in the population and increase in the price of real estate coupled with rising of literacy level have resulted in increasing the number of cases in courts. Sincere efforts are being made at all levels to enhance the output, but despite disposal of nine lacs forty eight thousand nine hundred eighty nine (948989) cases in 2011; there is a backlog of twenty one lacs thirty two thousand forty six cases (2132046) cases since 1 January 2012 in all courts and tribunals including the Supreme Court of Bangladesh.. Above backlog of cases is slowly overwhelming the justice delivery system causing further delay in the disposal of cases and underling access to justice. Delay also increases the cost of litigation, discourages people to

bring their genuine disputes to the courts and encourages resorting to extra-judicial means of dispute resolution. Inordinate delays causes' loss of memory of the witnesses which ultimately results into miscarriage of justice. As such, backlog of cases is the single biggest impediment for us in the way of dispensation of quality justice.

The judiciaries in Canada and USA are tackling the wave of court cases by adopting the ADR mechanism, specially mediation and plea bargain procedures and introducing ICT in case management and court administration processes. In Canada about 80% of civil cases are disposed of through mediation and in the New York State Judiciary about 90% of criminal cases are disposed of through Plea Bargain. In both countries a great majority number of cases are finally settled by courts without resorting to trial processes.

Litigation through adversarial judicial system leads to a win-lose situation, resulting in animosity between the parties. This is not always desirable and congenial for a peaceful society. It is neither feasible nor desirable that all cases shall go through trial process and be ended with a judicial verdict. There is another aspect of the issue; our procedural laws allow appeal or revision at nearly every stage of the proceeding of a case. As such, if a party to a case wants to delay the proceedings, then it is very difficult for the court to get the case disposed of expeditiously. I appreciate the government for bring in the recent amendment to the Code of Civil Procedure making it mandatory for the civil judges to resort to mediation before proceeding with the trial of civil cases. We shall have to find out the ways and means to fully utilize the provision of mediation in original civil cases so that the court may be relieved of unnecessary civil cases and concentrate to the trial of cases involving complex legal issues. This will also help us to substantially reduce the backlog of cases.

Introduction of Information and Communication Technology (ICT) in courts and its offices is an important component of the JUST Project. ICT has become an indispensable instrument of modern management system. We have already introduced limited ICT in the Supreme Court and with the support of UNDP established LAN in Dhaka District courts and connected those courts with the Data Centre of the Supreme Court. But to harness the full power of technology and all it has to offer, the key is to automate our primary business- the filing, management and resulation of cases. Every year the lawyers and litigants use hundreds of millions of pieces of paper, serve a mountain of paper on opposing parties, and file it with the

courts. All this paper has to be transported, stored, retrieved as needed, and, ultimately, disposed. The waste, inefficiencies and cost are enormous. It is our expectation that ICT will make the justice delivery system more affordable, accessible, cost effective, transparent and accountable.

We are in need of defining the term "Delay" and also designing an ideal time line for disposal of a particular class of cases. In New York state judiciary the "exchange of Information" of the case by the parties and preparation of "Trial Schedule " by the judge in consultation with the lawyers of both parties contribute greatly in the speedy disposal of civil cases. We have the provision of Discovery and Inspection in the CPC but that is not properly utilized. This omission is mainly responsible for belated amendment of the plaint/affidavit or submission of the additional written statement/ affidavit in opposition.

I was a bit surprised when the Honorable Chief Justice of Canada mentioned to us during our experience sharing tour in the October this year that there is no provision of oral argument at the time of consideration of the petition for leave to appeal. The Court gives decision on the petition on consideration of the contents of the same. As far as the hearing of the original matter or appeal is concerned, arguments of the parties are time bound. Each party's lawyer gets one hour time for completion of his arguments. They have come out of the tradition of lengthy arguments hearing for hours or days or even weeks in one case.

The objective of today's exercise is to share knowledge, experience and views about our case management process, its strengths and deficiencies and identifying the area and scope of reforms and where we shall expect support of the JUST Project.

I hope that the brain storming open session and invaluable discussions, opinions and suggestions from this Workshop will help us to prepare a roadmap for future reforms to be supported by the JUST Project.

I also hope that the successful implementation of JUST Project during 2012-2014 will bring a qualitative change in case management and court administration processes and significantly reduce case backlogs in pilot courts. Above improvements will impact positively on our endeavor to further enhance access to justice for the poor and vulnerable group people of the country.

This is a beginning of Bangladesh judiciary's partnership with UNDP; I also hope that a successful implementation of this project will pave the way for a new and greater partnership with UNDP.

I appreciate Judicial Strengthening Project (JUST) for organizing this Workshop.

Thank you all.