

## **Transparency International Bangladesh**

### **COURT-WATCH Report on Research on Speedy Tribunal Act 2002**

**Presented for Roundtable Discussion**  
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#### **Executive Summary**

##### **Introduction**

Bangladesh is a poor state in South Asia, ridden with innumerable problems. The pressure of population, terrorism, poverty, and corruption are some of the problems that are clouding the lives of the people of this country even 33 years after Liberation. The absence of good governance and its negative influence has made this nation to be recognized as the most ineffective nation, an identity that cannot be auspicious for a nation.<sup>1</sup>

In a democratic system, the government has three wings, the executive, the legislative and the judiciary. If these wings of the government do not function properly, it means that there is not a sufficient level of democracy operating, or that the rule of law has not been established properly in the country. This indicates that the place of the judiciary is extremely important in a democracy. According to article 27 of the Constitution, every citizen of Bangladesh 'has the right to equal protection of the law'. Although it is not a constitutional right of every citizen (Bangladeshi) to get justice at the specified time, every citizen concerned with cases hopes that every judicial case is brought to justice speedily. There is no substitute for the establishment of the rule of law for ascertaining the influence of good governance on personal, social and national life.

The corruption of the judiciary wing has recently become a topical issue in recent times. Various reports of the surveys conducted by Transparency International Bangladesh (TIB) too have established that the judiciary wing is one of the most corrupt sectors (TIB 1997 and 2002). In the very recent past, a justice of the High Court section of the Supreme Court was removed from service for corruption, for the first time in the history of Bangladesh<sup>2</sup>. Nor are the people of the country satisfied with the quality of the justice meted out. One can see the validity of this in the reports of the various organizations concerned with human rights.

The government's interference in the court, particularly in the lower courts is a well-discussed issue in our country. The independence of the judiciary wing was never assured, and hence such interference has never ceased. In spite of the fact that the court

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<sup>1</sup> Time Magazine, 12<sup>th</sup> April, 2004

<sup>2</sup> Prothom Alo 21<sup>st</sup> April, 2004

has given a ruling for the separation of the judiciary and the executive, and has set a time limit on it, but this limit has been extended innumerable times, something that is undesirable.

The slow pace that justice takes in our country is one of the main hurdles in the way of good governance. In some cases, in spite of a time limit being set in which the case must be disposed of, it is often seen that that is not being done. One such example of recent times is the Shazneen murder case. In spite of the fact that the Prevention of Cruelty to Mother and Child Act which stipulates that the case must be finalized within ninety days, the verdict in this case was passed after 1 thousand 822 days.<sup>3</sup> This means that, about 20.2 times more time than stipulated was taken to finalise this case.

In respect of the types of cases for which no time limit has been set, the situation is more frightening. The slow pace of justice allows over 30 thousand cases to remain under trial for years in the Dhaka Metropolitan Sessions Court.<sup>4</sup> For the same reason, there are 30 thousand cases under trail for many years in the criminal courts of 16 districts of the northern areas.<sup>5</sup> If one looks at the number for the whole country, there are 32 lakhs cases under trail in different courts of the country. If the cases are finalized at the present pace, it is going to take 3.5 crore years to do it<sup>6</sup>.

To do away with the sluggish rate in the pace of our justice, different governments have taken some steps at different times. One such step was the *Law for the Crime of Disruption of Law and Order situation* (speedy trial), 2002.

### **Introduction to the Law for Speedy Trial**

After the *Crime of Disruption of Law and Order situation* 2002 was passed during the eighth National Assembly, it received the President's approval to become a law on 10 April, 2002, and was published in the gazette. The crimes of disruption of law and order situation (speedy trial) that this law was set up for were: (1) Any form of coercion, threat or illegal force used for extorting money, help or property in the name of contribution, or the adoption of such means to take advantage or attempt to take undue advantage; (2) Creation of any disturbance or obstruction in transports traveling by land route, rail route, by sea route or by air, or to try to force or influence the driver of the transport to change its course against his will; (3) to deliberately damage any transport; (4) to willfully break or damage any immovable or movable properties (5) attempt to hijack, or hijack, or forcibly to snatch away;(6) to use planned or unplanned show of strength individually or in group to threaten and create panic, chaos and anarchy (7) to create obstruction or to forcibly cause hindrance or impediments in the sale, purchase, in the acceptance and submission of tender papers; (8) to threaten any officer or staff or any near relative of officer and staff of any office directly or indirectly for compelling them to do something, or not to do something, or to obstruct them from performance of their duty.

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<sup>3</sup> Prothom Alo 3<sup>rd</sup> September,2003

<sup>4</sup> Sangbad,09<sup>th</sup> August,2003

<sup>5</sup> Sangbad,18 February,2004

<sup>6</sup> Prothom Alo,23<sup>rd</sup> July,2003

It has been proposed that one or more than one speedy trial courts be set up in all districts and metropolitan areas of Bangladesh. Generally a first class magistrate carries out the judicial duties of such courts. A crime will be taken for trial when it is filed by any police officer not below the rank of a sub-inspector, or on the written report or complaint of a person empowered for such purpose through order or special order from the government, or on the basis of the complaint of the person or organization affected by the crime, or on the basis of the written report of a person who has knowledge of the crime.

This law has ordained that the trial can proceed both in the presence or absence of the accused. It has also made provision for bail. A limit of thirty to sixty days has been set for the trial by this law, with the provision of punishment for a maximum of five years.

### **The Time Limit for Filing Cases**

A survey of the cases filed in the courts concerned since the setting up of the speedy trial courts shows that since its inception, the number of cases have steadily increased up to July, 2002, but declined in number from August, to increase again in the months of November/December. In the same way, a survey of the cases filed in 2003 shows a similar picture. It shows that towards the middle of the year, in July, August, and September, and at the end of the year in November and December the number of cases filed increases in the concerned courts.

### **Clause of Cases**

An analysis of the cases filed since the setting up of the Speedy Trial Court in April, 2002, to December, 2003 shows that one-third of the cases had been filed in 2003. There are several reasons behind the lower number of the cases filed in 2002. Firstly, the Speedy Trial Law was passed in April, 2002. Secondly, as it was a new law, people were not knowledgeable about it, and their awareness of the law is increasing gradually

### **The Different types of Crime**

An analysis of the law for *Crime of Disruption of Law and Order situation* (speedy trial), 2002, shows that of the cases filed, cases of coercion for extraction of money are the highest in number (32.5%). Those affected by coercion for extraction of money includes businessmen and people of many other professions. Obstruction in the movement of transports forms almost one-third of the cases of forcible extortion of money. On the other hand, damage and destruction to movable and immovable property forms less than one-tenths of the total incidents. Similarly, creation of lawlessness and anarchical situation, obstruction in the process of calling for and submission of tenders, and hindering the work of officers and staff separately constitutes less than 10%. It is only the cases of forcible extortion of money, and hijacking that count for more than 50% of the total incidents.

### **Time Taken in Submission of Investigation Reports.**

According to the law, the time that could be taken for the submission of report of investigation into the incident a maximum of seven days. The facts received about this shows that in 65.3% of the reports of cases, it was submitted in exactly seven days, while in 34.7% of the cases, the report was submitted before seven days. In no cases among the

courts selected for observation were incidents of investigation exceeding this seven-day limit found. So it can be said that reports of investigation were submitted in court in accordance with the stipulated time limit of seven days set down by the *Crime of Disruption of Law and Order situation* (speedy trial), 2002.

### **Time Spent in Bringing the Accused to Court**

The law also stipulates that the accused has to be arrested and brought to court (in the cases where arrest is possible) within 24 hours. From the facts collected, it has been seen that in cases of those it was possible to arrest, the accused was produced in court within 24 hours. A majority 61.3% were produced in court within 21-24 hours. So it can be said that the arrested persons were produced in court within the stipulated time.

### **Time taken for completing the trial**

When the culprit is apprehended within 24 hours after the incident, the trial has been stipulated to be finished within 30 days by this law. From the information received it has been seen that in two-thirds of the cases the trial was completed before thirty days were over, while in one-third of cases it was completed within stipulated time. This seems to show that if the accused was not absconding, all the work related to the trial was completed within the time set for this. On the other hand, if the accused is absconding, the trial must be completed within sixty days. For cases of this type, the trial of 54.4% of the cases was finalised before sixty days were over. The other 45.6% of the cases were finalised on the stipulated sixtieth day. Even when the accused is absconding, the trial of the cases is completed within sixty days or less.

### **The Presence of the Accused, and Trial**

From the information received from the selected courts, of the cases filed under the *Crime of Disruption of Law and Order situation* (speedy trial), 2002, one-third of the trials were disposed in the presence of the accused. Trial of the remaining 66.3% of the cases was completed in the absence of the accused. However, in some cases, the accused has surrendered to court after the trial was over.

### **Bail in the Related Court**

From the reports received from the selected courts, no bail was granted to the accused in almost half the cases. Only in 9.3% of the cases were all accused granted bail.

### **Awarding Punishment**

The information received show that the rate of punishment in the cases tried under the for *Crime of Disruption of Law and Order situation* (speedy trial), 2002, is 65.3%. In the remaining cases there is no punishment meted out.

### **Political Cases**

The government has passed the law 'for achieving dishonest political ends', keeping such an idea in view, we put a question in relation to this to those concerned. In the opinion of lawyers, of those under trial in cases filed under the *Crime of Disruption of Law and Order situation* (speedy trial), 2002, one-fourth (25.3% are political cases. However, the bench clerks in the related courts think that the number is lower (14.5%). Magistrates of

the concerned courts (not all magistrates of all courts were willing to comment) hold the rate to be even lower (4.1%).

### **Government interference in the conduct of trial**

When asked if there was any government interference in the conducting of trials, the people concerned (lawyers, bench clerks, magistrates, plaintiff, defendant) consider that in certain cases there is some extent of political interference. When asked about the number of such cases, the concerned people (especially the lawyers) thought in the light of their experience that more than one-third of the trial of cases had government interference. According to them, the related ministry and the party in power interfere in the matter of conducting the trial. However, the bench clerks and magistrates consider the rate of government interference to be lower. Many of the respondents did not agree to answer this question..

### **Satisfaction of the defendant and plaintiff in the conducting of trial**

This law stipulates that the work of investigation must be completed within seven days. It is questionable whether it is possible to conduct a proper and neutral enquiry within such a short time. According to the statements of people from among the accused, the investigation in 60% of the cases was not fully proper and neutral, while 17.6% thought the investigation was not at all proper or neutral. On the other hand people from among the defendants thought that investigation in 45.6% of the cases was conducted absolutely neutrally and justly.

### **Comment by the Investigating Officer About the Enquiry**

45.3% of the investigating officer think that it is being possible to give sufficient time for proper and neutral investigation. 23.2% of the investigating officers considered 'it is not possible to give enough time', but almost one-third of the respondents have avoided the question or refused to answer the question. On the other hand, to do speedy investigation for speedy trials, it was asked whether this work is interfering with the investigation work of general cases, or whether this work was influencing the other work in any way, more than half the investigating officers (51.2%) responded in the affirmative. The number of those answering in the negative was almost one-third of the total number.

### **The Lawyers' Comment about the Investigation**

The lawyers in the concerned courts think that the investigation in almost half the cases cannot be done properly nor neutrally. They think that the problem does not lie in the matter of seven days. The problem lies in the fact that the investigating officer has other work to do. As a result he has to rush through the work to submit the investigating report, so that the investigating report is not correctly presented.

### **Transaction of Illegal Money**

The accused or their relatives in the cases being tried under the law for speedy trial, and sometimes even the plaintiff (in cases where the government is not the plaintiff) state that there is occurrence of corruption when they come to court for services. Statements of the people who are accused shows that in more than two-thirds of the cases illegal money has

been taken from them (67.6%). On the other hand, in one-third of the cases, money was taken illegally from members of the aggrieved party.

### **Party Taking Illegal Money**

Those who had to be paid money illegally included magistrates, lawyers, bench clerks and other people engaged in different capacities in the court. According to the people of the accused party, foremost among those taking illegal money were the bench clerks of the concerned court. They extort this illegal money to give different information to the accused, and on the pretext of getting favours from the magistrates. Apart from this, sometimes the magistrate and sometimes the lawyers themselves on different pretexts. Foremost in extorting money from the aggrieved are their own lawyers. They charge this money above their fees. They talk of getting them bail, and take illegal money on the pretext of giving money to the judge so that the judgment will be in their favour

### **The Amount of the Illegal Money**

In the case of the illegal money taken from the defendant and the plaintiff, for each case in 32.7% of the cases, the money taken from the defendant amounts to tk 201-500. In 30.6% of the cases, the money taken varied from tk 501 – 1000, while in 14.2% of the cases the money taken was above tk 5000. Money was also taken from the plaintiff's side in most cases, of amount varying from tk 201-500. But in no cases was the amount of illegal money taken from the plaintiffs less than tk 100, while in 10.2% of cases the money taken was above tk 5000.

### **The Law for Speedy Trial in the eyes of the Public**

Some specific questions were asked to the defendants in the cases filed, the plaintiffs, and the people involved in the work of the court, and common people about the law for speedy trial. Among the defendants, 45.3% think that it is a black law while 31.6% consider that it was promulgated for achieving political intents.

Only 23.1% of the accused thought it was a good law. But since the accused in 65.5% of cases have been punished, it is natural that they, particularly those who have been punished by the court will not be in favour of the law.

On the other hand, the plaintiffs concerned give a view that is almost opposite to that of the accused. 41% of these people consider it to be a good law, while 44.2% of the people engaged in different profession in the court (bench clerks, magistrates, investigating officers, lawyers, etc.) are of the opinion that the law was promulgated for political ends. But the common people have different idea of the law: 57.2% of the general population are not aware of this law.

### **The Number of Appearances Made in Court for Each Case**

As the cases under the law for speedy trial have to be decided within limited time, these cases go to court a comparatively fewer number of times than for cases in other courts at a comparable level, and so the expenditure made in such cases is less than that made in cases in courts at comparable level. According to the cases in courts selected for this study, 91.4% of the cases went to court 3-5 times. In comparison, for cases in general courts at a comparable level, it requires people to appear 9-12 times for the case to be

judged. In the courts for speedy trial, each case appears in court three times on average, before the case is resolved. This means that for similar cases to be resolved in general courts it requires people to make three times more appearances in court.

### **Fees for Conducting Cases**

The government has affixed that the same fees be charged in the Courts for Speedy trials as that charged in general courts. The Speedy trial courts do not take any extra fees for adjudging cases in the shortest possible time. This as well as other reasons reduce the expenditure for conducting cases in the Speedy Trial courts than in general courts at the same level. The reasons for the lower expenditure in this court are:

- **Lawyers' fees.:** In most cases the lawyers' fees depend on the number of appearances made in court. Each time a lawyer appears in court, he charges fees. As the lawyers have to appear fewer times in court, in the Courts for Speedy Trial, one has to pay them less fees.
- **Travel Allowances:** The cost of a case depends on how many times the accused and the plaintiff or their people have to travel to court. As the cases under the law for Speedy Trial require one-third of the time taken in cases in general courts at a comparable level, the traveling costs are also reduced to a third of that incurred in general courts.
- **Illegal Expenditure:** Plaintiffs and the accused have to associate with the officers and staff at different levels in court for various purposes. The information received shows that for each time there is such an association between the lawyers and people, money is extorted illegally from both the accused as well as the plaintiff. This means, the more times people need to associate with the court personnel, higher the corruption. As the judgment in Speedy Trial courts is given in a minimum time, there is scope for far less association between the people and the court. Thus there is less corruption here.

### **Influence on Other Cases**

As the Law for Speedy Trials has stipulated that all work relating to a case has to be completed within a specified period, it was enquired whether this has any influence on the work of the general courts. 83.2% of the responding lawyers were absolutely sure that it had quite a lot of influence on the work of the general courts, while 11.3% thought that there was some influence. Among the magistrates, half considered that 'certainly there is some influence'. Among the bench clerks and investigating officers this rate is higher. Among the respondents, the number of people who have said that there is no influence is very low. Some respondents avoided the question or did not want to answer.

### **Recommendations**

The *Crime of Disruption of Law and Order Situation* (speedy trial), 2002 is a law that has been devised for speedy disposal of cases. There is no doubt that this has speeded up process of disposal of cases. But at the same we feel that there are a few issues related to law that need to be considered.

***(a) Reconsideration of the law in its amended form***

The law for *Crime of Disruption of Law and Order Situation* (speedy trial), 2002 is a temporary one. Initially it was passed for two years, and later on, through its amendment it was retained for two more years. Had its validity not been extended, its effectiveness would have expired on 10<sup>th</sup> April, 2004. The promulgator of the law was the present government who amended and extended its validity while in power. This means it will expire in 2006, and unless its validity is further extended at that time, or if it is not reconsidered, it will expire right then. Since all in the Opposition were against the passing of this law, we can presume that if any of them come to power, they will not consider the issue of extending the validity of this law. But there are no guidelines included within this law about what is to happen to cases under trial under this law after it becomes invalid. No such clauses were added even time that the law's validity was extended for the second time. Besides, the people punished under this law have the scope to appeal to higher courts. Consequently, many offenders are not only getting away under the long-winded system of higher courts and getting bail but also getting off scot free. We feel that the following issues related to the law need to be considered:

- ***To convert it into a permanent law:*** Law is generally a permanent matter. Laws promulgated over the years and decades remain in existence and are in existence for the need of the society and the nation. This law is being able to dispose of cases within a very short period of time at lesser costs, and should thus be made permanent with a few amendments.
- ***The Establishment of Higher Courts for Speedy Trials:*** Culprits punished under the Law for Speedy Trial are allowed to appeal in higher general courts, that do not dispose of cases speedily. Parties punished by the Speedy Trial Court take bail from these higher courts, and can continue on such bails for years on end, so this does not ensure speedy trials. For this reason, speedy trials need to be ensured in Courts of Appeal as well, just as in the *Law for Crime of Disruption of Law and Order situation (speedy trial)*, 2002.

**(b) Political cases**

A count of the cases considered in this research shows that one-fourth of the cases have been filed for political reasons. Within the process of the conduct of the trial it has also been seen that there is government interference. When ensuring Speedy trials, it is also necessary to see that justice is ensured in the process. The following may be considered for this.

- Cases may certainly be filed for achieving political ends. But government interference during the process of the trial can in no way allow the conducting of the trial to be just. A clause may be added to the law to stop exactly such interference. Even in cases filed for political reasons, justice has to be ensured through proper and neutral investigations into the matter.



### **(c) Proper and neutral investigation**

A main part of the statement of the defendants and plaintiffs in the cases gave the information that the investigation into the cases was not neutral nor correct. The investigators have said that the pressure of other work does not allow them to give sufficient time to this job. The lawyers have said that it is not possible to have proper and neutral investigation into cases with the existing manpower. Since, in the absence of correct and neutral investigation justice cannot be achieved, the following points may be considered in relation to this.

- ***To stop interfering in the work of the investigation:*** There should be such a clause added to the law so that along with the stoppage of political interference there should also be no interference in the work of the investigation.
- ***Investigation on Special Duty:*** The person entrusted with the work of investigation at a specific time and must be relieved from all other work at that time.

### **(d) Influence on other laws**

As this law was promulgated for the speedy disposal of cases the time limit was set for all activities at every stage. As a result, everyone concerned with the process of trial have to finish their different work within a stipulated time. However, no new staff was appointed for this court. From the information received, it can be seen that since the work of this court has to be finished within a fixed time, it becomes very difficult to set the dates for work of general cases in other courts. Besides this no new infra structure was set up for the completion of the process of trial at this court. It becomes necessary to postpone dates of hearing as there are no rooms available for this under the old facilities. There is no scope for postponement of the dates of hearing in the cases tried under the Speedy Trial Law. As a result of this lack of facilities the finalization of other cases is getting delayed. This means that in the general court the slow pace of disposal of cases is getting further delayed, and the entanglement of cases is getting more complex. This is creating the threat of a huge deadlock in the arena of court trials. It is never desirable that to hasten the process of one type of trials, the process of another type of trails be hampered and made to slow down, and it also interferes badly with the process of good governance. To remove these problems, it is essential to consider the following recommendations.

- To employ different new staff at all levels immediately
- To create new infrastructural facilities
- To offer modern facilities including computerization
- To allocate more funds for the courts in the budget.

### **(e) Independence of the Judiciary**

If one cannot assure the independence of the judiciary, one cannot assure justice in many situation. The issue of an independent judiciary has been discussed over time in our country. Different political parties have at different times promised to give such independence to judiciary in their election manifesto, but it has not been established as yet. The Caretaker Government of 2001 had taken a step towards this, but the present government has extended the time limit again and again so that the

concept of an independent judiciary has not seen the light of days as yet. We hope that in the interest of justice, government will sincerely consider it and help give judiciary the power to work fully independently as soon as possible.

#### **(f) Resistance to Corruption**

Corruption in the process of justice can never ensure proper and neutral dispensation of justice. Even in the process of speedy dispensation of justice, it is not desirable that corruption enters the process at any stage. It is essential that some steps be taken to resist corruption in courts.

- ***Appointment of a separate ombudsman for courts:*** According to Article 77 of the Constitution of Bangladesh, an office of an Ombudsman has been provided for. In the recent past, the government has been thinking of a tax ombudsman. In a similar way, a court ombudsman may be appointed to ensure transparency and accountability in the process of justice.
- ***Others:*** The steps that we have suggested for other organizations of the government can also be considered for the reduction of corruption in courts. Among the steps suggested were a strong and independent anti corruption Commission, modernization of anti corruption rules, political goodwill of the government, the creation of transparency and accountability at all levels, the creation of a separate court for dealing with corruption cases, administrative reforms, and adequate punishment of the corrupt people.

#### **(g) Other Laws**

It has been mentioned before that the slow pace of justice is one of the principal barriers to good governance. The law for *Crime of Disruption of Law and Order Situation* (speedy trial), 2002 is disposing of cases within the shortest time. But even in the other courts of our country, cases are lying undisposed for decades. Those cases are no less important and need to be disposed through the involvement of sufficient manpower and infrastructure so that speedy trials can be assured in all sectors.

#### **(h) People's Unawareness Versus Extensive Publicity**

This law was promulgated in the year 2002 and is a new law. The common man has practically no idea about it. It is only through its publication in the gazette and with the help of public media that have some people have become aware of it. So it is essential to dispel general people's lack of awareness of the law. The government can take the following steps to ensure this.

- Create public awareness through the radio, television and newspaper.
- Create public awareness through the Information Department of the government.

#### **Epilogue**

The saying 'Justice delayed is justice denied' is as valid about the different sectors of the judiciary department as is the saying 'Justice hurried is justice buried'. We definitely have to ensure justice within the shortest time possible, but the quality of that justice has to be correct, proper and neutral. For this one requires a system of

justice that is free of political and government influence, and corruption free. We firmly believe that it is essential to materialize the recommendations made above for a proper and neutral dispensation of justice.