



"FUNCTIONAL AUTONOMY AND PROCEDURAL MODERNIZATION: A BLUEPRINT FOR REFORMING THE SUBORDINATE CIVIL JUDICIARY OF BANGLADESH"

Submitted To:
Ms. Sharmin Jahan Runa
Assistant Professor & Head of LAW Department

Course Title: Research Monograph

Submitted By:
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ID No: LLMP2401030007

**LL.M. (2 YEARS) PROGRAM
SONARGOAN UNIVERSITY (SU)**



UGC & Govt. Approved
Sonargaon University (SU)
সোনারগাঁও ইউনিভার্সিটি (এসইউ)

Thesis Paper on:

**"Functional Autonomy and Procedural Modernization: A
Blueprint for Reforming the Subordinate Civil Judiciary
of Bangladesh"**

Submitted To:

Ms. Sharmin Jahan Runa

Assistant Professor & Head of LAW Department

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To

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147/I, Green Road, Panthapath, Dhaka

Subject: Submission of Research Monograph on Functional Autonomy and Procedural Modernization: A Blueprint for Reforming the Subordinate Civil Judiciary of Bangladesh

Respected Madam,

I, **Kazi Md. Miraj Hossain**, a student of the **LL.M Program** at Sonargaon University, humbly seek your kind approval to undertake my thesis on the following:

Thesis Title:

“Functional Autonomy and Procedural Modernization: A Blueprint for Reforming the Subordinate Civil Judiciary of Bangladesh”

The objective of this research is to critically examine the existing structure, functions, and operational challenges of the subordinate civil judiciary of Bangladesh and to explore the scope for institutional autonomy, procedural updates, and technology-based reforms. The study intends to provide a comprehensive, practical, and forward-looking blueprint for strengthening the effectiveness, transparency, and efficiency of civil courts at the trial level.

I strongly believe that this topic is timely, academically significant, and aligned with the broader need for judicial reform in Bangladesh. I will be grateful if you kindly approve this topic as my LL.M thesis.

Thank you very much for your time and consideration.

With sincere regards,



Kazi Md. Miraj Hossain

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DECLARATION

I hereby solemnly declare that the research work presented in this thesis report is the outcome of my own independent study and has not been previously submitted, either in whole or in part, to any other university or institution for any degree, diploma, or academic qualification.

I further declare that this research does not infringe upon any copyright. Wherever the works of others have been used, due acknowledgment has been made through proper citation and referencing. I also undertake full responsibility to indemnify the University against any loss or damage arising from any breach of the above declarations.

The views and opinions expressed in this research are entirely my own, except where otherwise acknowledged. I do not claim that the views expressed herein are correct from every perspective. Any errors, omissions, shortcomings, or inaccuracies that may remain are solely my responsibility.

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SUPERVISOR CERTIFICATION

This is to certify that the thesis paper entitled “**Functional Autonomy and Procedural Modernization: A Blueprint for Reforming the Subordinate Civil Judiciary of Bangladesh**” has been prepared and submitted by **Kazi Md. Miraj Hossain, FCS**, bearing **ID No: LLMP2401030007**, in partial fulfillment of the requirements for the degree of **Master of Laws (LL.M)** under the course **Research Monograph (Course Code: LAW 5408)**.

I further certify that this research work has been carried out under my direct supervision and guidance. To the best of my knowledge and belief, the thesis is an original work of the student and has not been submitted, either in whole or in part, to any other university or institution for any academic degree or qualification.

The thesis is found to be satisfactory in terms of its academic standard, research methodology, analysis, and presentation, and is hereby recommended for submission to the Department of Law, Sonargaon University (SU), for evaluation.

Sharmin Jahan Runa
Assistant Professor & Head
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ABSTRACT

This thesis critically examines the jurisdictional architecture and functional performance of the subordinate civil courts of Bangladesh, with a particular focus on the interplay between pecuniary, territorial, and subject matter jurisdiction, and the systemic challenges that undermine effective access to justice. The purpose of the study is to assess how jurisdictional clarity or the lack thereof affects judicial efficiency, caseload distribution, consistency in adjudication, and the overall credibility of the civil justice system. While existing scholarship discusses the broader problems of case backlog and judicial delay, a comprehensive doctrinal analysis of jurisdictional overlaps, misuse of procedural law, and the structural tensions between trial courts and specialized tribunals remains noticeably underexplored. This research seeks to fill that gap.

Methodologically, the thesis adopts a doctrinal qualitative approach grounded in statutory interpretation, case law analysis, and scrutiny of judicial practice. It draws upon primary legal sources such as the Civil Courts Act, 1887 (as amended), the Code of Civil Procedure, 1908, the Suits Valuation Act, 1887, and a wide corpus of judicial decisions of the subordinate courts and the Supreme Court of Bangladesh. Secondary sources including law commission reports, judicial reform literature, and empirical assessments by institutions such as Transparency International Bangladesh (TIB) support the analysis of functional challenges such as manpower shortages, resource constraints, and governance deficiencies. While doctrinal in nature, the study also integrates insights from administrative law, institutional design, and comparative judicial reform to illuminate the broader policy implications of jurisdictional clarity.

The core research gap addressed lies in the intersection of jurisdictional rules and trial level functionality. Although pecuniary limits and court hierarchy are well established, little prior academic work interrogates how litigants and lawyers exploit ambiguities relating to valuation, forum selection, and ouster clauses creating procedural detours that overburden trial courts. Likewise, Bangladesh's expanding network of specialized tribunals (e.g., Family Courts, Administrative Tribunals, Money Loan Courts) has generated parallel systems of civil adjudication, but their jurisdictional boundaries remain imprecise, giving rise to frequent conflicts between civil courts and tribunal forums. The absence of a unified jurisdictional framework has resulted in delays, conflicting judicial interpretations, and inconsistent remedies.

Key findings reveal that jurisdictional uncertainty is a major catalyst for procedural delay in the trial courts. First, pecuniary jurisdiction continues to be a contested area due to widespread valuation manipulation and inconsistent application of statutory rules. While amendments in 2016 and 2021 raised pecuniary thresholds to ease High Court congestion, trial courts still struggle with under and overvaluation claims that consume precious judicial time. Second, subject matter jurisdiction is increasingly blurred by the proliferation of specialized tribunals whose enabling statutes rely on ouster clauses that often conflict with the civil courts' general jurisdiction under Section 9 of the CPC. This results in litigants filing overlapping suits or invoking civil court oversight whenever tribunal decisions appear unfair or ultra vires, thereby creating a cycle of parallel proceedings. Third, territorial jurisdiction though conceptually straightforward is frequently implicated in forum shopping practices, especially when litigants deliberately select distant or congested courts to delay the progress of suits.

The study also finds that jurisdictional misuse is exacerbated by structural constraints: insufficient judicial manpower, disproportionate caseloads, lack of modern case management tools, and inadequate training on complex jurisdictional matters. Many Assistant and Senior Assistant Judge Courts operate under severe logistical and administrative limitations, resulting in adjournment culture, inconsistent application of procedural rules, and increased vulnerability to strategic litigation tactics. Furthermore, although the Masdar Hossain reforms significantly strengthened judicial independence, residual administrative and posting related influences still indirectly affect trial level autonomy particularly in politically sensitive cases.

The thesis concludes that without resolving jurisdictional ambiguities and strengthening trial level capacity, broader judicial reforms will remain incomplete. It proposes a set of targeted recommendations previewed here: legislative clarification of tribunal civil court boundaries; uniform valuation guidelines to curb manipulation; expansion of judicial manpower proportionate to population and caseload; adoption of nationwide digital case management systems; enhanced professional training on jurisdictional doctrines; and establishment of a centralized jurisdictional "gateway" mechanism to ensure that suits are filed in the correct forum at the outset. Together, these reforms aim to enhance predictability, reduce litigation costs, improve case flow management, and restore public trust in the civil justice system. Ultimately, the study argues that jurisdictional clarity is not merely a procedural technicality but a foundational precondition for ensuring efficient, transparent, and equitable civil adjudication in Bangladesh.

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Functional Autonomy and Procedural Modernization: A Blueprint for Reforming the Subordinate Civil Judiciary of Bangladesh

Chapter 1: Introduction

1.1 Background of the Study

The civil justice system is the **cornerstone of a nation's legal infrastructure**, ensuring the fair resolution of disputes, upholding the rule of law, and safeguarding individual and collective rights. For Bangladesh, a jurisdiction classified under the **common law tradition**¹, the efficiency and clarity of this system are fundamental to its democratic and socio-economic development. This study anchors itself in the vital need to understand and critique the current jurisdictional structure of the subordinate civil courts, the primary mechanism for civil dispute resolution in the country.

Historical Evolution of Civil Justice from Colonial to Modern Bangladesh

The evolution of Bangladesh's legal system is a layered narrative, shaped by successive political and legal regimes. Before the advent of **British colonial rule**, social and legal affairs were largely governed by a combination of traditional customs and **Islamic jurisprudence**. The fundamental shift occurred with the British introduction of a codified system, **largely based on English common law**, implemented through the Bengal Regulations during the 18th and 19th centuries. This colonial legacy laid the operational foundation for the modern court structure, a blend that continues to reflect traditional influences, colonial remnants, and contemporary legal principles.

Post-independence, the legal architecture of Bangladesh preserved much of this inherited structure, adapting it through the Constitution and subsequent legislative acts. The **subordinate civil courts** the focus of this thesis were established under the **Civil Courts Act, 1887**, which, despite multiple amendments, remains the foundational statute governing their hierarchy and powers.² The journey from the British and Pakistani eras to the present day has been characterized by efforts to institutionalize judicial independence and streamline the process of justice.

Importance of Jurisdictional Clarity

Jurisdictional clarity is not merely a technical or procedural matter; it is a **prerequisite for access to justice**. The fundamental legal tenet, *ubi jus ibi remedium*³ (where there is a right, there is a remedy), mandates that an aggrieved litigant must be able to institute a civil suit in a **competent** court to avail relief. Jurisdiction is defined as the "power of a court predetermined by the government or by law" to hear and determine a case. Consequently, the proper delineation of a court's authority is the **first and most crucial step** in any legal proceeding, as a lack of jurisdiction renders any subsequent judgment void or voidable.

¹ Glenn, H. P. (2014). *Legal traditions of the world: Sustainable diversity in law*. Oxford University Press.

² Civil Courts Act, 1887 (Act No. XII of 1887) (Bangladesh).

³ Broom, H. (1845). *A selection of legal maxims, classified and illustrated*. T. & J. W. Johnson.



The jurisdiction of civil courts in Bangladesh is typically classified into three core types:

- **Pecuniary Jurisdiction:** This refers to the financial limit of the subject matter that a court is competent to try. This limit has been subject to amendment, such as the changes introduced by the Civil Courts (Amendment) Act, 2021, to align with evolving socio-economic realities and caseload management.
- **Territorial Jurisdiction:** This defines the geographical limits within which a court can exercise its power, determined by factors such as the location of the immovable property or the residence/business of the defendant.
- **Subject-Matter Jurisdiction:** This determines the nature of the suit a court can try, generally covering all suits of a **civil nature** unless expressly or impliedly barred by statute.

The intricate interplay of these three factors, coupled with the distinction between original, appellate, and provisional jurisdictions, necessitates an environment of absolute clarity. Without it, litigants face procedural hurdles, increased costs, and ultimately, a denial of their fundamental right to effective judicial remedy.

1.2 Statement of the Problem

Despite continuous efforts towards judicial reform, the civil justice system in Bangladesh is fraught with persistent systemic issues that fundamentally undermine its intended function. The primary manifestation of these problems lies in the pervasive lack of jurisdictional clarity, which acts as a catalyst for procedural delays and complex legal disputes.

Confusion, Overlaps, and Delays Due to Jurisdiction Disputes

The subordinate court system is known to be **overburdened**, leading to significant **case backlogs** and restricted access to swift and effective justice. While governance challenges, inadequate infrastructure, and issues of judicial accountability contribute to this state, a key operational bottleneck is the frequent dispute over the appropriate court of jurisdiction. Jurisdictional challenges, whether related to pecuniary limits, territorial boundaries, or subject matter, can lead to:

1. **Prolonged Litigation:** Initial challenges to jurisdiction consume valuable judicial time, delaying the trial on the merits and contributing significantly to the overall case backlog.
2. **Increased Costs for Litigants:** Jurisdictional uncertainty forces litigants to file cases in incorrect forums or engage in protracted interlocutor proceedings, adding to financial burdens and compounding their restricted access to justice.
3. **Irregular Exercise of Judicial Power:** Where jurisdiction is wrongly assumed or denied, the resulting decrees are vulnerable to being declared void or voidable, perpetuating uncertainty and demanding subsequent corrective legal action.

Increasing Complexity in Tribunal vs. Civil Court Jurisdiction

A particularly acute area of concern is the **jurisdictional overlap and conflict** arising from the parallel existence of the ordinary civil courts and a growing number of **specialized tribunals** created under various statutes. Tribunals, such as the Administrative Tribunal, Family Court, and Financial Loan Court, are established to handle specific categories of cases, often with the intent of ensuring speedy and expert resolution.

The jurisdictional complexity arises primarily from the legislative practice of granting **exclusive jurisdiction** to these specialized bodies, often involving "ouster clauses" that expressly bar the cognizance of ordinary civil courts in those specific matters. For instance, the Administrative Tribunal has exclusive jurisdiction over service matters concerning persons in the service of the Republic. However, this separation is not always clear-cut, leading to disputes where:

- **Ambiguous Subject Matter:** The nature of a suit may not clearly fall within the exclusive domain of a tribunal, prompting litigants to attempt to access the civil courts, or vice versa.
- **Functional Overlap:** Functionally, many tribunals possess the "trappings of a Court," blurring the distinction between a quasi-judicial and a full judicial body, making the determination of the correct forum difficult for litigants and practitioners.
- **Concurrent Jurisdiction and Forum Shopping:** In cases where concurrent jurisdiction is alleged to exist, parties may strategically file in the forum they perceive to be most favorable, further complicating the system and leading to potential conflicts and wasted judicial resources.

This tension between the ordinary courts, whose jurisdiction is preserved under Section 9 of the **Code of Civil Procedure, 1908**, and *the special statutory jurisdiction of tribunals is a major source of litigation and systemic inefficiency.*

Lack of Reform Despite Amendments

While the legal landscape has witnessed reforms, the problem persists, indicating that the amendments have been palliative rather than curative in addressing the core jurisdictional fault lines. The **Civil Courts (Amendment) Act, 2021** notably increased the pecuniary jurisdiction of subordinate civil courts⁴, aiming to redistribute the caseload and reduce the burden on higher courts. Likewise, the emphasis on modern solutions like **Alternative Dispute Resolution (ADR)** and the proposed "**E-judiciary**" project represents forward movement in enhancing efficiency.

However, the problem statement persists because:

- **Structural Gaps Remain:** Despite these improvements, fundamental structural and governance challenges, such as the need for strict compliance with conduct rules and better monitoring of court activities, remain insufficiently addressed.

⁴ Civil Courts (Amendment) Act, 2021 (Bangladesh).



- **Jurisdictional Complexity Unresolved:** The amendments have primarily addressed pecuniary limits but have not resolved the structural complexity regarding subject-matter jurisdiction and the tribunal-court dichotomy, which fuels conflicts and uncertainty.⁵
- **Need for Continuous Reform:** The persistent nature of the backlog and access to justice issues underscores that the changes enacted so far are insufficient, demanding a study that re-evaluates the system and emphasizes the need for **continuous, comprehensive reforms**.

1.3 Research Objectives

1. To examine the jurisdictional structure and hierarchy of trial-level civil courts in Bangladesh.

This objective seeks to analyse the statutory foundations, historical evolution, and functional dynamics of the subordinate civil courts established under the Civil Courts Act, 1887 and the Code of Civil Procedure, 1908, with particular attention to the roles of Assistant Judges, Senior Assistant Judges, Joint District Judges, and District Judges.

2. To identify legal and practical conflicts arising from jurisdictional overlaps.

This includes studying the nature and impact of overlapping jurisdiction between civil courts and specialized tribunals (such as Family Courts, Administrative Tribunals, and Money Loan Courts), ambiguities created by ouster clauses, and disputes involving arbitration and administrative bodies.

3. To evaluate the role of pecuniary and territorial jurisdiction in case delays.

This objective focuses on understanding how valuation disputes, forum-shopping, delayed jurisdictional objections, and misapplication of territorial rules contribute to case backlog, prolonged litigation, and structural inefficiencies at the trial stage.

4. To study comparative models and suggest reforms.

This involves reviewing jurisdictional models from comparable common-law jurisdictions, assessing best practices in judicial administration, and proposing context-appropriate reforms to enhance jurisdictional clarity, reduce procedural conflicts, and strengthen functional autonomy of Bangladesh's trial courts.

1.4 Significance of the Study

This thesis, focusing on the jurisdictional architecture and functional challenges of the civil judicial system in Bangladesh, holds significant value across academic, policy, and practical domains.

Academic Value

This research seeks to contribute substantially to the relatively limited body of scholarly work concerning the **trial-level judicial system** and its jurisdictional intricacies. By providing an in-depth, systematic analysis of the historical evolution, current structure,

⁵ Hassan, S. (2023, August 9). *Judiciary of Bangladesh*. [Legal Blog/Article].



and specific points of failure particularly the complexities arising from the interaction between ordinary civil courts and specialized tribunals the thesis aims to:

- **Fill a knowledge Gap:** Offer a comprehensive, up-to-date exposition of civil court jurisdiction, which is crucial for understanding the procedural and substantive hurdles faced by litigants.
- **Provide Analytical Framework:** Develop a robust analytical framework for evaluating the effectiveness and functional independence of the subordinate judiciary in achieving its constitutional mandate.

Policy and Legal Reform Implications

The core findings of this study are intended to have direct, actionable implications for policymakers and legislative bodies engaged in justice sector reform. The thesis will:

- **Inform Law Reform:** Provide evidence-based recommendations for legislative amendments that can clarify jurisdictional boundaries, particularly in areas involving ouster clauses and the jurisdiction of specialized tribunals.
- **Promote Efficiency and Transparency:** Contribute to the ongoing efforts to create a more **efficient, transparent, and accountable judiciary**. By identifying specific governance and structural challenges, the study can guide the implementation of more effective case management systems and institutional oversight.
- **Guide ADR Integration:** Offer insights into how jurisdictional clarity can support the successful integration and promotion of alternative dispute resolution mechanisms, thereby alleviating the burden on the formal court system.

Relevance to Judiciary, Lawyers, and Litigants

Finally, the practical significance of the research extends directly to the key stakeholders within the civil justice ecosystem:

- **Judiciary:** The study offers judges a clear map of the current jurisdictional structure, aiding them in making definitive and consistent rulings on competency, thereby reducing procedural confusion at the trial and appellate levels.
- **Lawyers and Legal Professionals:** It provides practitioners with a comprehensive resource for navigating the complex web of jurisdiction between civil courts and tribunals, improving the quality of legal advice and the efficiency of case filing.
- **Litigants and Citizens:** Ultimately, by advocating for jurisdictional clarity and systemic efficiency, the research aims to ensure improved **access to justice** for the citizens of Bangladesh. A clear, predictable jurisdictional framework reduces the risk of having a case dismissed on technical grounds, offering a faster and more cost-effective path to the effective remedy (*ubi jus ibi remedium*) that the civil system promises.



1.5 Research Questions

This thesis is structured around a central objective: to critically evaluate the existing framework of the subordinate civil court system in Bangladesh, focusing on its jurisdictional dimensions, operational efficiency, and the implications for access to justice. To achieve this, the study seeks to answer the following research questions:

- 1. What is the existing jurisdictional structure of civil courts in Bangladesh, and what are the key legal sources that define the pecuniary, territorial, and subject-matter jurisdiction of the subordinate courts established under the Civil Courts Act, 1887?**
 - This question establishes the foundational legal and structural context, exploring the hierarchy of the courts (Assistant Judge, Senior Assistant Judge, Joint District Judge, Additional District Judge, and District Judge) and the current financial limits assigned to each court.
- 2. Is the trial-level hierarchy of the subordinate civil courts effective and functionally efficient in resolving civil disputes, particularly in light of judicial independence and the issue of case backlog?**
 - This question moves beyond the legal structure to examine the *functionality* of the system. It investigates how factors like resource constraints, administrative control, and the increase in pecuniary limits (e.g., via the 2021 Amendment) have impacted judicial efficacy, workload management, and the overall pace of litigation at the trial stage.
- 3. What specific disputes and challenges arise due to jurisdictional overlaps, particularly those between the ordinary civil courts and specialized judicial and quasi-judicial tribunals (e.g., Family Courts, Administrative Tribunals, and Money Loan Courts) in Bangladesh?**
 - This is the core problem-oriented question, focusing on the confusion caused by "ouster clauses" and concurrent jurisdiction. It aims to identify specific legal conflicts, judicial pronouncements, and practical problems related to determining the correct forum for suits of a specialized civil nature.
- 4. How can the existing jurisdictional structure of the subordinate civil courts be improved through targeted legislative, judicial, and institutional reforms to ensure greater clarity, efficiency, and enhanced access to justice for litigants?**
 - This question is prescriptive, seeking to develop evidence-based recommendations for reform. It will explore structural changes, the rationalization of tribunal jurisdiction, and the role of technology and enhanced governance in ensuring an effective, transparent, and accountable civil judicial system.

1.6 Research Methodology

Mixed-Method Research Design

The study adopts a **mixed-method approach**, combining both doctrinal (qualitative, desk-based) and empirical (field-based) methods to ensure a comprehensive understanding of jurisdictional issues in Bangladesh's civil justice system.



A. Doctrinal Research

This component involves an in-depth analysis of legal texts and judicial interpretation, including:

- **Case Law Analysis:**
Examination of landmark and contemporary judgments concerning civil court jurisdiction, tribunal–court conflicts, valuation disputes, revisional scrutiny, and the application of Section 9, Section 115 CPC, and relevant special statutes.
- **Statutory Interpretation:**
Analysis of the Civil Courts Act, 1887; the Code of Civil Procedure, 1908; the Suits Valuation Act, 1887; the Civil Courts (Amendment) Act, 2021; and special statutes establishing tribunals.
- **Historical Methods:**
Tracing the development of civil jurisdiction from the colonial judicial system to the post-independence structure of Bangladesh, highlighting continuity and reforms over time.

B. Empirical Research

Empirical insights will complement doctrinal findings to understand the ground realities of jurisdictional issues.

- **Interviews with Judges and Lawyers:**
Semi-structured interviews with judicial officers (Assistant Judges to District Judges) and experienced litigators to identify practical challenges related to jurisdictional conflicts, backlog, transfer of suits, and tribunal interaction.
- **Survey on Litigants' Experience:**
Short surveys targeting civil litigants to assess their understanding of jurisdiction, experiences with case delays, and perceptions of forum-shopping or procedural obstacles.
- **Visits to Court Premises:**
Observation of daily court operations, filing counters, cause lists, record rooms, and interactions between litigants and court staff, in order to document infrastructural and procedural realities that influence jurisdiction-related delays.

1.7 Scope and Limitations

The scope of this thesis is deliberately focused to allow for a rigorous, in-depth analysis, while its limitations acknowledge the practical constraints inherent in academic research.

Scope of the Study

- **Focus on Civil Courts Only:** The research is strictly confined to the **subordinate civil courts** in Bangladesh, as established under the **Civil Courts Act, 1887**, and their functioning under the **Code of Civil Procedure, 1908 (CPC)**. The analysis



will concentrate on the principles and practical application of pecuniary, territorial, and subject-matter jurisdiction concerning these courts.⁶

- **Emphasis on Jurisdiction:** The primary focus is on the **jurisdictional framework**, its clarity, and the resulting challenges. While other issues like case management and judicial accountability will be discussed, they will be examined only to the extent they are influenced by or influence the jurisdictional structure.
- **Civil vs. Tribunal Overlaps:** A significant part of the study will be dedicated to analyzing the specific **jurisdictional conflicts and overlaps** arising from the proliferation of **specialized tribunals** and their interaction with the general civil jurisdiction, utilizing relevant case law for illustration.
- **Exclusion of Criminal and Shariah Courts (Except Related Overlaps):** The internal operations and complete jurisdictional hierarchy of the criminal and Shariah (Family) courts are beyond the scope. Discussion on these courts will be limited to instances where their jurisdiction directly intersects with or affects the civil courts' cognizance, for example, the special jurisdiction of Family Courts or the distinction between criminal and civil proceedings for similar disputes.

Limitations of the Study

- **Limited Empirical Field Access:** The study primarily relies on **doctrinal research**, encompassing statutes, case laws, legal commentaries, and secondary academic literature. Due to time, resource, and ethical constraints, the thesis is limited in its ability to conduct extensive primary **empirical field research**, such as surveying a large sample of judges, lawyers, or litigants to generate original quantitative data on delays or jurisdictional error rates.
- **Reliance on Published Materials:** The analysis of judicial efficiency and backlog relies mainly on available public statistics, reports from bodies like Transparency International Bangladesh (TIB)⁷, and the observations of legal commentators. The full, non-public operational data of the courts remains inaccessible.
- **Focus on Law as it is (Lex Lata):** While the thesis offers recommendations for law reform (*lex ferenda*), its primary analytical foundation is the interpretation and critique of the law and legal structure *as it currently exists*.

1.8 Structure of the Thesis

The thesis, titled "**Jurisdictional Clarity and Functional Efficiency: A Critical Analysis of the Subordinate Civil Court System in Bangladesh**," will be divided into the following chapters:

⁶ Code of Civil Procedure, 1908 (Act No. V of 1908) (Bangladesh).

⁷ Transparency International Bangladesh (TIB). (n.d.). *Executive summary: Subordinate court system of Bangladesh*. Transparency International Bangladesh.

Chapter	Title	Brief Summary of Content
Chapter 1	Introduction	Establishes the background, problem statement, and significance of the study. It outlines the research questions, defines the scope, and presents the overall structure of the thesis.
Chapter 2	Conceptual and Historical Framework of Civil Jurisdiction	Provides a detailed examination of the legal sources (Civil Courts Act, 1887 and CPC, 1908) and fundamental concepts of jurisdiction (pecuniary, territorial, subject-matter). It traces the historical evolution of the civil court hierarchy from the colonial era to the present day.
Chapter 3	The Subordinate Civil Court Hierarchy and Functional Effectiveness	Analyzes the current structure of the five subordinate civil courts (from Assistant Judge to District Judge), detailing their original, appellate, and revisional jurisdictions. It critically assesses the functional effectiveness and challenges, including case backlog and the impact of the 2021 pecuniary limit amendments.
Chapter 4	Jurisdictional Overlaps: Civil Courts vs. Specialized Tribunals	This core analytical chapter explores the specific conflicts arising from the parallel existence of specialized bodies (e.g., Administrative, Family, and Financial Loan Tribunals). It investigates the effect of "ouster clauses" and concurrent jurisdiction on procedural complexity and legal certainty.
Chapter 5	Governance Challenges and the Quest for Judicial Efficiency	Examine the non-jurisdictional yet system-critical challenges, including governance deficits, the need for strengthening accountability, the implementation of case management systems, and the potential of e-judiciary initiatives for enhancing efficiency.
Chapter 6	Conclusion and Recommendations	Summarizes the key findings of the research, restates the main conclusions on jurisdictional clarity and efficiency, and proposes specific, targeted legislative and institutional recommendations for a more effective and just civil judicial system in Bangladesh.

This structure ensures logical progression from defining the problem to analyzing the current legal and institutional framework, identifying key challenges, and finally, proposing constructive solutions.



Chapter 2: Conceptual Framework and Jurisprudence of Jurisdiction

2.1 Concept and Meaning of Jurisdiction

The efficacy of the civil justice system in Bangladesh hinges fundamentally on the concept of **jurisdiction**, which acts as the legal cornerstone defining the limits and scope of a court's adjudicatory authority. In the context of the subordinate civil courts, jurisdiction determines whether a court is competent to entertain, try, and decide a particular suit. The term itself is derived from the Latin terms *Juris* (law) and *dicto* (to speak), literally meaning "I speak by the law".

While the Code of Civil Procedure (CPC), 1908, the procedural backbone of civil litigation in Bangladesh, does not provide a formal definition, it has been established through jurisprudence, notably in the landmark case of *Hriday Nath vs. Ram Chandra* (AIR 1921 Cal 34)⁸, that **jurisdiction** is the power of a court to hear and determine a case, to adjudicate, or exercise any judicial power in relation to it. This power is paramount, as a court lacking jurisdiction cannot legally accept or proceed with a suit, regardless of whether any party raises an objection.

The foundational principle enabling the civil justice system is the maxim '*ubi jus ibi remedium*' (where there is a right, there is a remedy)⁹. Accordingly, Section 9 of the CPC establishes a presumption that civil courts have jurisdiction to try all suits of a civil nature unless their cognizance is either **expressly or impliedly barred** by any statute. This general presumption highlights the civil court as the default forum for resolving civil grievances.

The Tripartite Classification of Jurisdiction

For a subordinate civil court to be competent, it must possess three primary types of jurisdictions over the matter simultaneously. This is often referred to as the "triple test" of jurisdiction:

1. Subject-Matter Jurisdiction (Subjective):

- This refers to the court's authority to try a suit based on the **nature** of the cause of action or the class of suit it involves.
- The Civil Courts Act, 1887, along with Section 9 of the CPC, grants civil courts jurisdiction over disputes of a **civil nature** (e.g., contracts, property, personal rights).
- Conversely, subject-matter jurisdiction is denied for matters that are inherently criminal, or where the legislature has conferred **exclusive jurisdiction** upon specialized courts or tribunals (e.g., Administrative Tribunals, Money Loan Courts, Family Courts). The conflict arising from this exclusion is a core challenge to jurisdictional clarity in Bangladesh.

⁸ *Hriday Nath Roy v. Ram Chandra Barna Sarma*, AIR 1921 Cal 34 (India).

⁹ Law Help BD. (n.d.). *Jurisdiction of civil courts in Bangladesh* [PDF]. Law Help BD.



2. Pecuniary Jurisdiction:

- This dictates the financial limit or monetary value of the suit that a court is legally permitted to try.
- Section 6 of the CPC and the Civil Courts Act, 1887 (as amended, most recently in 2021) set the pecuniary thresholds for the different subordinate courts (Assistant Judge, Senior Assistant Judge, etc.).
- The mandate under Section 15 of the CPC requires every suit to be instituted in the **lowest grade** of court competent to try it. This principle is essential for managing judicial workload and ensuring that superior courts (like the Joint District Judge or District Judge) are not unnecessarily burdened with lower-valued cases.

3. Territorial Jurisdiction (Local):

- This defines the geographical boundaries within which a court can lawfully exercise its power. A court cannot exercise authority beyond its delineated territorial limits.
- The limits are governed by Sections 16 to 20 of the CPC, which provide rules based on the nature of the suit:
 - Suits related to **immovable property** must generally be instituted where the property is situated (Section 16).
 - Suits related to **movable property** or compensation for wrong to person may be instituted where the defendant resides or where the cause of action arises (Section 19-20).

Jurisdictional Error

A **jurisdictional error** occurs when a court acts outside the boundaries of the authority legally conferred upon it. This concept is crucial for distinguishing between an illegal or irregular exercise of power (a jurisdictional error) and a mere incorrect decision within the court's competence (an error of law or fact).

Jurisdictional error is categorized into three types, which align with the tripartite classification of jurisdiction, often leading to the higher court's intervention under revisional jurisdiction (Section 115, CPC):

1. **Excess of Jurisdiction:** When a court tries a case that falls outside its legal competence (e.g., a Senior Assistant Judge trying a case exceeding their pecuniary limit, or a civil court trying a matter exclusively reserved for a specialized tribunal).
2. **Failure to Exercise Jurisdiction:** When a court refuses to try a case that clearly falls within its legal competence.
3. **Illegal or Irregular Exercise of Jurisdiction:** When a court acts correctly within its limits but violates fundamental principles of procedure or law, resulting in a grave injustice.

The legal consequences of such errors are significant, as a judgment passed by a court that fundamentally lacks **subject-matter jurisdiction** is often considered a **nullity** void *ab initio* (from the beginning).

2.2 Types of Jurisdictions Applicable in Civil Courts

Beyond the foundational classification of Subject-matter, Pecuniary, and Territorial, the authority of civil courts in Bangladesh is characterized by the nature of the judicial power exercised over a case. The three primary functional jurisdictions are:

1. Original Jurisdiction

Original jurisdiction is the power and authority of a court to hear and determine a case for the first time, i.e., at the **trial stage**. In the context of the subordinate civil courts, this is the main function of the lower-tier courts:

- The **Court of Assistant Judge** and the **Court of Senior Assistant Judge** exercise original jurisdiction over suits according to the pecuniary limits prescribed by the Civil Courts Act, 1887.
- The **Court of Joint District Judge** also exercises original jurisdiction, usually having no pecuniary limit on certain matters, making it the primary court of first instance for high-value disputes.

2. Appellate Jurisdiction

Appellate jurisdiction is the power of a higher court to review, reverse, or modify the judgment or decree of a court subordinate to it. It allows a litigant, aggrieved by an original decree, to challenge the findings on grounds of law or fact.

- Appellate courts do not retry the case but review the record of the lower court.
- The hierarchy for appeals from the subordinate civil courts is governed by the CPC (Sections 96 to 112):
 - Appeals from the Court of Assistant Judge and Senior Assistant Judge lie to the **Court of District Judge** (or Additional District Judge), provided the value of the suit is within the prescribed limits.
 - Appeals from the Court of Joint District Judge lie directly to the **High Court Division** of the Supreme Court, as the Joint District Judge enjoys a significantly higher (or unlimited) pecuniary jurisdiction.

3. Revisional Jurisdiction

Revisional jurisdiction is a non-appellate, supervisory jurisdiction, primarily governed by **Section 115 of the CPC**, which grants superior courts the power to call for the record of any case decided by a subordinate court to ensure that justice is not denied due to illegal or irregular exercise of.

- The primary purpose of revision is to **correct errors of jurisdiction** (failure, excess, or irregularity in exercise) rather than mere errors of fact or law. This distinguishes it from an appeal, where both facts and law can be scrutinized.
- In the subordinate system, the **Court of District Judge** and the **High Court Division** possess revisional jurisdiction.



- The High Court Division may revise a decree or order passed by any subordinate civil court.
- The District Judge Court may also revise an order passed by the Court of Joint District Judge, Senior Assistant Judge, and Assistant Judge.

2.3 Theoretical Foundation

The legal framework of civil court jurisdiction in Bangladesh is not merely a set of procedural rules but is deeply rooted in several core constitutional and jurisprudential theories inherited from the common law tradition. These theories provide ethical and structural legitimacy for the exercise of judicial power.

1. A.V. Dicey's Rule of Law

The concept of the **Rule of Law**, as articulated by A.V. Dicey¹⁰, is enshrined as a fundamental aim in the Preamble of the Constitution of Bangladesh and is legally guaranteed by Article 31, which ensures the inalienable right to protection of the law¹¹. The structure of the civil court system directly implements Dicey's two core principles:

- **Supremacy of Regular Law:** Dicey advocated for the **absolute supremacy of regular law** over arbitrary or wide discretionary power. The civil court system embodies this by restricting judicial action to the explicit parameters defined by the Civil Courts Act and the CPC. The requirement for a court to establish **jurisdiction** before proceeding is the quintessential application of this principle, ensuring that no judge acts capriciously or beyond the authority granted by the legislature.
- **Equality before the Law:** The second principle mandates the **equal subjection of all citizens** to the ordinary law of the land administered by the ordinary courts. By establishing a clear, unified hierarchy of subordinate civil courts (Assistant Judge to District Judge) that apply the same civil procedure to all litigants, the system ensures that justice is delivered without favor or discrimination based on social or political status (Article 27 of the Constitution). The civil court is thus the universal and primary mechanism for enforcing rights for all.

2. Natural Justice Theory

The theory of **Natural Justice** (or *Jus Naturale*) forms the procedural and ethical bedrock of the civil justice system, ensuring fairness in judicial proceedings. Its two fundamental rules are indispensable to a court's valid exercise of jurisdiction:

1. **Audi Alteram Partem (Hear the Other Side):** This requires that no person should be condemned unheard. The CPC operationalizes this through mandatory provisions for the service of summons, the right to file a written statement, the opportunity to present evidence, and the right to cross-examine witnesses. The

¹⁰ Dicey, A. V. (1959). *Introduction to the study of the law of the constitution* (10th ed.). Macmillan.

¹¹ Constitution of the People's Republic of Bangladesh, 1972, art. 31.



fairness of the jurisdiction is intrinsically linked to the fairness of the procedure adopted¹².

2. ***Nemo Judex in Causa Sua* (No One Should Be a Judge in His Own Cause):** This rule ensures the impartiality of the deciding authority. A judge must not have any direct or indirect pecuniary or personal interest in the subject matter of the suit. This is a fundamental test of subject-matter jurisdiction, and a violation of this principle is a serious error that can render a decree void.

The adherence to natural justice is so fundamental that civil courts retain the authority to examine whether a statutory tribunal has acted in conformity with these fundamental judicial principles, even when the civil court's jurisdiction is otherwise barred by an ouster clause¹³.

3. Separation of Powers Doctrine

The constitutional principle of **Separation of Powers** is foundational to the functional independence of the civil judiciary.

- **Constitutional Mandate:** Article 22 of the Constitution explicitly mandates the State to ensure the **separation of the judiciary from the executive organs**¹⁴. This mandate acknowledges that truly independent judiciary is essential for the effective administration of civil justice.
- **Judicial Independence and Jurisdiction:** The separation is not merely theoretical but functional. It ensures that when a subordinate civil court exercises its statutory jurisdiction (pecuniary, territorial, or subject-matter), the decision-making process is free from the interference or undue influence of the Executive. The landmark *Masdar Hossain* case (1999) cemented this requirement, leading to the formal separation in 2007¹⁵.
- **Role in Constitutional Scheme:** The civil judiciary, as one of the three coordinate organs of the State, is tasked with the critical function of judicial review (Articles 7, 26, and 102 of the Constitution), allowing it to assess the constitutionality and legality of actions taken by the Legislature and the Executive. This unique power confirms that the civil court's jurisdiction is not merely administrative, but a core constitutional safeguard necessary to maintain the balance of power and uphold the rule of law.

2.4 Jurisdictional Doctrines

The exercise of jurisdiction by Civil Courts in Bangladesh is governed by several fundamental doctrines enshrined primarily in the Code of Civil Procedure, 1908 (CPC). These doctrines ensure procedural fairness, prevent multiplicity of suits, and regulate the territorial and pecuniary competence of the courts.

¹² Binney, S. (1991). *The principles of natural justice*. Oxford University Press. (This supports the theoretical foundation of procedural fairness in civil litigation).

¹³ Wade, H. W. R., & Forsyth, C. F. (2014). *Administrative law* (11th ed.). Oxford University Press.

¹⁴ Constitution of the People's Republic of Bangladesh, 1972, art. 22.

¹⁵ *Secretary, Ministry of Finance v. Masdar Hossain*, 52 DLR (AD) 2000 (Bangladesh).

2.4.1 Doctrine of *Res Sub Judice* (Stay of Suit)

The doctrine of *Res Sub Judice*, codified in **Section 10** of the CPC, is a rule of procedure that prevents a court from trying a suit where the matter in issue is **directly and substantially** in issue in a previously instituted suit between the same parties, litigating under the same title, in a court having jurisdiction to grant the relief claimed.

- **Purpose:** Its primary purpose is to **prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating two parallel suits** regarding the same matter, thereby avoiding the possibility of conflicting decisions.
- **Condition for Stay:** The subsequently filed suit is not dismissed but is merely **stayed** (put on hold) until the previously institute suit is disposed of.

2.4.2 Doctrine of *Res Judicata*

The doctrine of *Res Judicata*, encapsulated in **Section 11** of the CPC, is a rule of substantive law that bars a court from trying a suit or issue that has already been directly and substantially in issue in a **former suit** between the same parties, or parties litigating under the same title, and has been finally decided by a competent court.

- **Purpose:** It is based on the maxim "*interest reipublicae ut sit finis litium*" (it is in the interest of the State that there should be an end to litigation) and ensures the finality of judicial decisions, limiting the power of the court to re-examine matters already conclusively settled by a court of competent jurisdiction¹⁶.
- **Constructive Res Judicata: Explanation IV** to Section 11 extends the doctrine to cover matters which **might and ought** to have been made a ground of defence or attack in the former suit, even if they were not explicitly raised.

2.4.3 Doctrine of Place of Suing (Venue)

The rules governing the **place of suing** or venue are elaborated in **Sections 15 to 20** of the CPC, determining which territorial court is competent to entertain a suit. These rules are crucial for ensuring the trial is held in a convenient and appropriate location.

- **Mandatory Rule (Section 15):** Every suit must be instituted in the **lowest grade** of Civil Court competent to try it.
- **Suits Related to Immovable Property (Sections 16–18):** Suits for the recovery, partition, foreclosure, or sale of immovable property must be instituted in the court within the local limits of whose jurisdiction the property is situated (**Section 16**). Special rules exist for properties situated within the jurisdiction of different courts (**Section 17**) or where the local limits of jurisdiction are uncertain (**Section 18**).
- **Suits Related to Movables or Compensation (Section 19):** Suits for compensation for wrongs to the person or movable property may be instituted at

¹⁶ Casad, R. C., & Clermont, K. M. (2001). *Res Judicata: A handbook on its theory, doctrine, and practice*. Carolina Academic Press. (This provides a global perspective on the doctrine of finality in litigation).



the place where the wrong was done, or where the defendant resides, carries on business, or personally works for gain.

- **Residual Rule (Section 20):** All other suits must be instituted where the defendant, or one of the defendants, resides or carries on business, or where the **cause of action**, wholly or partly, arises.

2.4.4 Doctrine of Forum Non Conveniens

While not expressly codified in the CPC of Bangladesh, the common law doctrine of *Forum Non-Conveniens* ("**an inconvenient forum**") is an auxiliary doctrine that influences the court's discretionary jurisdiction in international or multi-jurisdictional matters.

- **Definition:** It allows a court to **decline to exercise its jurisdiction** (even if properly invoked) if it finds that another forum is **substantially more appropriate** or convenient for the trial, considering the private interests of the parties (witnesses, evidence) and public interests (court congestion, local law).
- **Relation to CPC:** This doctrine is related to the court's powers under **Sections 22 to 24** of the CPC, which deal with the transfer and withdrawal of suits, though the latter provisions deal with transfers *within* the national judicial system, whereas *Forum Non-Conveniens* typically deals with dismissals in favor of a foreign jurisdiction.

2.5 Jurisdictional Error & Legal Consequence

A jurisdictional error occurs when a court acts either **beyond** its legally conferred powers or authority (*ultra vires*) or **fails to exercise** a jurisdiction vested in it. The legal consequence of such an error depends critically on the **nature of the defect**.

2.5.1 Types of Jurisdictional Errors

Jurisdictional errors can be categorized based on the extent of the defect:

1. **Total Lack of Jurisdiction (Inherent/Subject-Matter):** The court possesses no legal authority to try the class of suit or the matter in question (e.g., a Civil Court trying a matter exclusively reserved for a Criminal Court).
2. **Excessive Jurisdiction:** The court possesses jurisdiction but exceeds it in the case (e.g., a court of a lower grade trying a suit exceeding its pecuniary limit).
3. **Irregular Exercise of Jurisdiction:** The court has jurisdiction but commits a procedural irregularity or a legal error while exercising it.

2.5.2 The Distinction between Curable and Incurable Defects

The legal consequence of a jurisdictional error is determined by whether the defect is **incurable (rendering the decree void)** or **curable (rendering the decree merely irregular or voidable)**.

Type of Defect	Governing Law	Legal Consequence
Incurable Defect (Void)	Absence of inherent Subject-Matter Jurisdiction or Patent Lack of Competence .	A decree passed is a Nullity (<i>void ab initio</i>). It can be challenged at any stage of the proceedings (appeal, revision, collateral proceedings) because the court lacked the fundamental power to try the suit.
Curable Defect (Irregularity)	Absence of Pecuniary or Territorial Jurisdiction (Place of Suing).	The defect is considered a procedural Irregularity . The decree is not automatically void.

a. The Nullity Doctrine (Incurable Defects)

The nullity doctrine holds that a decree passed by a court that fundamentally lacks **subject-matter jurisdiction** is non-existent in the eyes of the law. This is because jurisdiction over the subject matter is derived from the law itself and cannot be waived or conferred on by the consent of the parties.

b. The Curability Doctrine (Section 99 and Section 21, CPC)

The CPC explicitly addresses the curability of defects in pecuniary and territorial jurisdiction:

- **Section 21 (Objection to Place of Suing):** This section dictates that an objection to the **territorial jurisdiction** (place of suing) of a court **shall not be allowed** by any appellate or revisional court unless three cumulative conditions are met:
 1. The objection was taken in the court of first instance.
 2. It was taken at the earliest possible opportunity (at or before the settlement of issues).
 3. There has been a consequent **failure of justice**.

By imposing these strict conditions, **Section 21** converts a defect in territorial jurisdiction from an incurable error into a **curable irregularity**. The rationale is that if a party knowingly allows the trial to proceed and suffers no prejudice, they cannot raise the objection later merely to overturn an unfavorable decision.

- **Section 99 (General Rule for Appeals):** This section further solidifies the curability principle in appeals, stating that no decree shall be reversed or varied on appeal due to any error, defect, or irregularity in the proceedings that does **not affect the merits of the case or the jurisdiction of the Court**. This provision prevents minor procedural errors (including those related to venue and, generally, pecuniary limits) from vitiating a judgment that was otherwise decided fairly on its merits.

In summary, the CPC clearly distinguishes between a **total want of jurisdiction (subject-matter)** which results in a **void decree**, and a mere **irregularity in the exercise of jurisdiction (pecuniary/territorial)** which, if not objected to promptly and resulting in a failure of justice, is **curable** and does not invalidate the final decree.

The following content is prepared for the first two sections of your chapter on the Civil Courts in Bangladesh.



Chapter 3: Historical Development & Current Hierarchy of Civil Courts in Bangladesh

3.1 Evolution of Civil Courts in the Indian Subcontinent

Bangladesh's civil justice system is deeply rooted in historical legacies, reflecting a blend of traditional customs, pre-colonial legal systems, and significant colonial influences. The current structure is a direct descendant of the judicial framework established during the British Raj in the Indian Subcontinent.

The Regulating Act 1773

The **Regulating Act of 1773** marked the formal beginning of the British Parliament's involvement in the governance of the East India Company (EIC) and laid the initial foundation for a formal, centralized judicial system in India¹⁷.

- **Establishment of the Supreme Court:** A key provision was the establishment of the **Supreme Court of Judicature at Fort William** in Calcutta in 1774. This court was the first formal judicial institution to introduce British legal principles and the English legal system, which provided the ultimate foundation for the Indian judiciary.
- **Limited Jurisdiction and Conflicts:** The Court's jurisdiction was initially focused on British subjects and EIC officials in Calcutta, and it was empowered with civil, criminal, and ecclesiastical jurisdiction. However, the Act was vague, leading to conflicts over authority between the Governor-General-in-Council (the executive) and the Supreme Court (the judiciary).
- **The Act of Settlement 1781:** To address these flaws, the British Parliament passed the **Amending Act of 1781** (or the Act of Settlement). This Act clarified the Supreme Court's jurisdiction, excluding revenue matters and, importantly, required the application of the parties' personal laws (Hindu or Muslim law) for Indian natives in matters of personal status, thus integrating local legal traditions with the imported British framework.

Indian Civil Courts Act 1887

The civil court system, as it operates today, received its definitive statutory structure with the enactment of the **Indian Civil Courts Act of 1887** (Act No. XII of 1887).

- **Consolidation and Standardization:** The 1887 Act was enacted to consolidate and amend the law relating to Civil Courts. It systematically established the classes of subordinate civil courts, defined their pecuniary and territorial jurisdiction, and provided for the appointment of judges, transfer of cases, and appellate rights, thereby standardizing the civil judiciary across the region.

¹⁷ Jain, M. P. (2010). *Outlines of Indian legal and judicial history* (6th ed.). LexisNexis. (This is a foundational text for understanding the evolution of the court system in the Indian subcontinent).



- **Foundation of the Subordinate Judiciary:** This Act provided the direct legal basis for the hierarchy of subordinate courts below the High Court (later High Court Division), defining the core institutions that handle original civil suits, a structure that has been largely maintained and adapted to the present day.

Legacy Carried into Pakistan & Bangladesh

The framework established by the British, particularly the **Civil Courts Act, 1887**, demonstrated remarkable continuity across post-partition legal transitions.

- **Continuity in Pakistan Era:** The English legal system, which formed the basis of the civil judiciary, was largely retained during the Pakistan period. The country continued to operate according to the provisions of the Government of India Act 1935, along with the Indian Independence Act 1947. The structure of the civil courts, defined by the 1887 Act, persisted with minimal changes in the subordinate judiciary.
- **Adoption by Bangladesh:** After independence in 1971, the newly formed Bangladesh government adopted and adapted the existing body of laws. The **Civil Courts Act, 1887** remained in force, with necessary adaptations and amendments. The most significant post-independence amendment, the **Bangladesh Laws (Revision And Declaration) Act, 1973**, formally replaced territorial terms like "East Bengal" and "East Pakistan" with "Bangladesh" in the original Act, officially incorporating the colonial-era law into the national legal framework. This continuity highlights the enduring foundational role of the 1887 Act in Bangladesh's subordinate civil judiciary.

3.2 Present Hierarchical Structure

The hierarchical structure of the subordinate civil courts in Bangladesh is governed by the **Civil Courts Act, 1887**, as amended by subsequent acts, including the Civil Courts (Amendment) Act, 2001 and 2021. This structure is designed to distribute the burden of civil litigation based on the value and nature of the suit.

Section 3 of the Civil Courts Act, 1887, as amended, establishes the following five classes of Civil Courts, listed here in descending order of authority and typically ascending order of original pecuniary jurisdiction limits for an ordinary suit:

District Judge Court

- **Position:** This is the highest court in the subordinate civil judiciary. It is generally subordinate only to the High Court Division of the Supreme Court.
- **Jurisdiction:** The District Judge's Court exercises original jurisdiction over all civil suits not otherwise provided by law, though its primary function is appellate and supervisory. It also holds revisional jurisdiction over orders passed by the Joint District Judge, Senior Assistant Judge, and Assistant Judge Courts.



Additional District Judge Court

- **Position:** The Court of the Additional District Judge stands parallel to the Court of the District Judge, established when the business pending before the District Judge requires aid for speedy disposal.
- **Jurisdiction:** Additional District Judges discharge any of the functions of a District Judge that the District Judge may assign to them and exercise the same powers as the District Judge in the discharge of those functions.

Joint District Judge Court

- **Position:** This court is positioned beneath the District Judge Court and previously held the designation of "Subordinate Judge".
- **Jurisdiction:** The Joint District Judge Court has extensive original jurisdiction, subject to the Code of Civil Procedure, 1908. It handles civil suits where the value of the subject matter exceeds the limits of the Senior Assistant Judge Court, often representing the second-highest level of pecuniary jurisdiction at the trial level.

Senior Assistant Judge Court

- **Position:** This court is one of the two lowest trial-level courts, previously called the Senior Civil Judge Court.
- **Jurisdiction:** The Senior Assistant Judge Court possesses original jurisdiction to try civil suits up to a specific pecuniary limit, as periodically amended by law (e.g., up to Taka 25 lakhs before the 2016 amendment, which was subsequently increased).

Assistant Judge Court

- **Position:** This is the lowest tier of the civil court hierarchy in Bangladesh, previously called the Civil Judge Court.
- **Jurisdiction:** The Assistant Judge Court exercises original jurisdiction over all civil suits up to the lowest specified pecuniary limit, as determined by law (e.g., up to Taka 15 lakhs after the 2016 amendment).

The following sections, **3.3** and **3.4**, detail the operational structure and jurisdictional dynamics of the trial-level Civil Courts in Bangladesh, as governed primarily by **The Civil Courts Act, 1887** (as amended) and **The Code of Civil Procedure (CPC), 1908**.

3.3 Roles and Powers of Trial-Level Civil Courts

The subordinate Civil Courts in Bangladesh serve as the primary courts of first instance (trial courts). Their roles and powers are clearly stratified based on pecuniary limits, territorial limits, and the hierarchy of the judiciary.

3.3.1 Original Jurisdiction Distribution

The distribution of original jurisdiction is founded on the principle enshrined in **Section 15 of the CPC**, which mandates that every suit must be instituted in the court of the

lowest grade competent to try it. This ensures an efficient distribution of judicial workload.

Court of Original Jurisdiction	Statutory Provision	Role and Competency
Assistant Judge Court	Section 19(1) of Civil Courts Act, 1887	The lowest grade of civil court, competent to try suits its specified pecuniary limit.
Senior Assistant Judge Court	Section 19(1) of Civil Courts Act, 1887	Competent to try suits of a higher pecuniary value than the Assistant Judge Court.
Joint District Judge Court	Section 18 of Civil Courts Act, 1887	Possesses unlimited original jurisdiction in all original suits for the time being cognizable by Civil Courts. In practice, it tries suits exceeding the pecuniary limit of the Senior Assistant Judge Court.
District Judge Court	Section 18 of Civil Courts Act, 1887	Also possesses unlimited original jurisdiction . However, the District Judge primarily exercises administrative and appellate functions, rarely entertaining fresh original suits.

3.3.2 Transfer of Suits

The power to transfer suits is a crucial administrative tool vested in the District Judge and the High Court Division to ensure convenience, expedite disposal, and prevent injustice.

- **Power of the District Judge:** The District Judge has the authority under **Section 24 of the CPC** to transfer any suit, appeal, or other proceeding pending before it to any subordinate court competent to dispose of it, or to withdraw a suit from a subordinate court and either try it itself or transfer it to another competent subordinate court. This power may be exercised either on the application of any party or *suo motu* (on its own motion).
- **Transfer on Vacancy: Section 11 of the Civil Courts Act, 1887**, also empowers the District Judge to transfer pending proceedings from a Joint District Judge's court to his own court or to any other subordinate court in case the Joint District Judge's office becomes vacant.

3.3.3 Appellate Hierarchy

The trial court decree is subject to a mandatory **First Appeal** to a superior court, followed by a potential **Second Appeal** (on a question of law) to the High Court Division.

- **Appeal to the District Judge:**
 - An appeal from a decree or order of an **Assistant Judge** or **Senior Assistant Judge** shall lie to the **District Judge** (Section 21(2) of the Civil



Courts Act, 1887). The District Judge's court is the primary court for first appeals within the district.

- **Bifurcated Appeal from Joint District Judge:** Following the latest amendments, the appellate path for a decree/order of a **Joint District Judge** is determined by the value of the original suit:
 1. Appeal lies to the **District Judge** where the value of the original suit did not exceed **Tk. 5 crore**.
 2. Appeal lies directly to the **High Court Division (HCD)** where the value of the original suit **exceeded Tk. 5 crore** (Section 21(1) of the Civil Courts Act, 1887, as amended).
- **Revisional Power:** The **District Judge** and the **High Court Division** both possess revisional jurisdiction under **Section 115 of the CPC** to correct any error of jurisdiction by a subordinate court, ensuring the trial courts operate within the bounds of law.

3.4 Pecuniary Jurisdiction: Legal Framework vs. Practical Realities

3.4.1 Legal Framework: Pecuniary Limits under The Civil Courts Act 1887 (as amended)

Pecuniary Jurisdiction defines the monetary value limit of the subject matter of a suit that a court is legally competent to try. The limits have been significantly increased over the years, most recently by the **Civil Courts (Amendment) Act, 2021** (following the 2016 amendments), primarily to reduce the overwhelming caseload burden on the High Court Division.

Court Grade	Latest Pecuniary Jurisdiction Limit (Original)
Assistant Judge Court	Up to Tk. 15,00,000 (Fifteen Lakh Taka)
Senior Assistant Judge Court	Up to Tk. 25,00,000 (Twenty-Five Lakh Taka)
Joint District Judge Court	Unlimited (Tries suits whose value exceeds Tk. 25 Lakhs)

Note: For the purpose of first appeal, the District Judge has jurisdiction for suits up to Tk. 5 Crore, highlighting the dual function of the pecuniary value in determining both trial and appellate forums.

3.4.2 Practical Realities: Problems of Valuation Fraud and Under-valuation

Despite the clear statutory limits, the determination of pecuniary jurisdiction remains one of the most litigated and challenging aspects of civil procedure, often giving rise to issues of *mala fide* (bad faith) valuation.

1. Incentive for Manipulation:

- **Undervaluation:** Litigants often intentionally **undervalue** their suits to bring them within the jurisdiction of a **lower court** (e.g., the Assistant Judge Court). The reasons may include lower court fees (as court fees are



often *ad valorem* and determined by the declared value under the **Court-fees Act, 1870**), quicker disposal, or the convenience of a nearby court.

- **Over-valuation:** Conversely, a party might **over-value** a suit (especially those tried by the Joint District Judge) to ensure that any appeal goes directly to the **High Court Division** (by claiming a value exceeding **Tk. 5 crore**) rather than the District Judge, potentially hoping for a more favorable outcome at the higher judicial level.

2. Legal Check against Manipulation (The Suits Valuation Act, 1887):

- The law provides a mechanism to challenge erroneous valuation under **Section 11 of The Suits Valuation Act, 1887**.
- Crucially, an appellate court will not overturn a trial court's decision merely on the grounds of **over-valuation** or **under-valuation** affecting jurisdiction unless two stringent conditions are met:
 - The objection was raised in the trial court at the earliest opportunity (at or before the framing of issues).
 - The appellate court is satisfied that the erroneous valuation **prejudicially affected the disposal of the suit on its merits**.
- This strict proviso aims to prevent objections to jurisdiction from being used as a tactical tool on appeal, but it simultaneously forces courts to continuously deal with the complexities of subject-matter valuation. The judicial interpretation of how to value properties (e.g., in partition suits where the entire property's value determines jurisdiction, not just the plaintiff's share) remains a significant practical reality.

3.5 Other Jurisdictions of Civil Courts: Territorial, Subject Matter, and Inherent Powers

Beyond **Pecuniary Jurisdiction** (the monetary value limit), the competence of a Civil Court in Bangladesh is determined by **Subject-Matter Jurisdiction** (the nature of the suit) and **Territorial Jurisdiction** (the geographical location of the cause of action or property).

3.5.1 Territorial Jurisdiction

Territorial Jurisdiction dictates the specific geographical area within which a court can exercise its authority. The rules are laid down in Sections 16 to 20 of the Code of Civil Procedure (CPC), 1908:

1. Suits relating to Immovable Property (Section 16, CPC):

- Suits for recovery, partition, foreclosure, sale, redemption, determination of right/interest, or compensation for wrong to **immovable property** must be instituted in the court within the local limits of whose jurisdiction the **property is situated**.
- *Exception:* If the relief sought can be entirely obtained through the defendant's **personal obedience** (e.g., a suit for specific performance of a



contract to sell land), the suit may be instituted where the defendant resides or carries on business.

2. Suits relating to Wrong to Person or Movable Property (Section 19, CPC):

- Suits for compensation for a wrong done to a **person** or **movable property** (e.g., defamation, injury, damage to goods) may be instituted in the court where:
 - The **wrong was done** (the cause of action arose), OR
 - The **defendant resides** or carries on business or personally works for gain.

3. Other Suits (Section 20, CPC):

- All other suits (residual category, e.g., suits for breach of contract, recovery of debt) must be instituted in the court within the local limits of whose jurisdiction:
 - The **defendant resides** or carries on business, OR
 - The **cause of action** wholly or partly arose.

3.5.2 Subject-Matter (Subjective) Jurisdiction

Subject-Matter Jurisdiction refers to the court's authority to hear and determine a particular class of case or suit.

- **Principle of General Jurisdiction (Section 9, CPC):** The foundational principle is that the Civil Courts shall have jurisdiction to try **all suits of a civil nature**, unless their cognizance is **expressly or impliedly barred** by any enactment.
 - A 'suit of a civil nature' involves the determination of a civil right, such as a right to property, right to office, breach of contract, etc.
- **Barred Suits:** Examples of suits barred from ordinary Civil Courts include matters reserved exclusively for specific tribunals or authorities, such as tax disputes, industrial disputes, or certain land/revenue matters reserved for Special Courts.
- **Specific Jurisdictions:** While generally of a civil nature, certain civil matters are exclusively assigned by separate statutes, such as family disputes to **Family Courts** and minor disputes in rural areas to **Village Courts**.

3.5.3 Inherent and Special Jurisdictions

1. Inherent Jurisdiction (Section 151, CPC):

- This is the extraordinary, unspecified power vested in all Civil Courts (from the Assistant Judge to the Appellate Division) to pass any orders necessary **to secure the ends of justice or to prevent abuse of the process of the Court**.
- It is a residual power that is only exercised when there is no specific statutory provision to address a situation.

2. Special Jurisdiction (Transfer, Review, Revision):

- **Review (Section 114, CPC):** All Civil Courts have the power to **review** their own decree or order, on specific grounds, as an exception to the rule that a court becomes *functus officio* after passing a judgment.



- **Revision (Section 115, CPC):** The **High Court Division** and the **District Judge** have revisional jurisdiction to call for the record of any case decided by a subordinate court to ensure the court did not commit any jurisdictional error.

3.6 General Principles Governing Civil Litigation: *Res Sub Judice* and *Res Judicata*

The efficiency and finality of the civil judicial system are maintained by fundamental procedural rules that prevent unnecessary multiplicity of proceedings and ensure disputes are resolved conclusively. The two most critical are *Res Sub Judice* and *Res Judicata*.

3.6.1 Bar to Trial of a Pending Suit: *Res Sub Judice* (Section 10, CPC)

The principle of *Res Sub Judice* (literally "a matter under judgment") mandates the **stay** of a trial in a subsequent suit.

- **Rule:** No court shall proceed with the trial of any suit in which the matter in issue is also **directly and substantially** in issue in a **previously instituted suit** between the **same parties**, litigating under the same title, where such suit is pending in the same or any other competent court in Bangladesh.
- **Purpose:** To prevent courts of concurrent jurisdiction from simultaneously trying two suits on the same matter, thereby avoiding the possibility of **two conflicting decrees** being passed. The later suit is halted until the former suit is decided.

3.6.2 Bar to Re-trial of a Decided Suit: *Res Judicata* (Section 11, CPC)

The principle of *Res Judicata* (literally "a matter judged") bars the institution of a new suit on an issue that has already been finally decided by a competent court.

- **Rule:** No court shall try any suit or issue in which the matter **directly and substantially** in issue has been **directly and substantially** in issue in a **former suit** between the **same parties**, litigating under the same title, which has been heard and **finally decided** by such court.
- **Fundamental Maxims:** This principle is based on three fundamental maxims:
 1. *Nemo debet bis vexari pro una et eadem causa* (No one should be vexed twice for the same cause).
 2. *Interest reipublicae ut sit finis litium* (It is in the interest of the State that there should be an end to litigation).
 3. *Re judicata pro veritate accipitur* (A judicial decision must be accepted as correct).
- **Constructive Res Judicata (Explanation IV):** This is a critical extension of the rule, stating that any matter which *might* and *ought* to have been made a ground of attack or defence in the former suit shall be **deemed** to have been a matter directly and substantially in issue in that suit, thus barring it from being raised in a subsequent suit.



3.7 Administrative Control, Independence of Judiciary, and Case Management Challenges

3.7.1 Administrative Control of the Subordinate Judiciary

The administration and operational control of the subordinate Civil Courts in Bangladesh follow a strict hierarchical structure, ensuring uniformity and accountability, while maintaining the separation of powers.

1. **Role of the District Judge:** The **District Judge** serves as the head of the judiciary within a district. Under **Section 9 of The Civil Courts Act, 1887**, the District Judge has **administrative control** over all subordinate Civil Courts within the local limits of his jurisdiction. This includes overseeing the overall functioning, discipline, and efficiency of the Assistant Judge, Senior Assistant Judge, and Joint District Judge Courts¹⁸.
2. **Role of the High Court Division (HCD):** The administrative control of the District Judge is exercised **subject to the superintendence of the High Court Division (HCD)** of the Supreme Court. The HCD, and ultimately the **Chief Justice of Bangladesh** (who is the head of the whole judicial establishment), exercises ultimate supervisory and disciplinary power over the subordinate judiciary. This includes transfers, promotions, and disciplinary actions concerning subordinate court judges.

3.7.2 Independence of the Judiciary

The independence of the judiciary is a **constitutional mandate** in Bangladesh, established to ensure the impartial dispensation of justice and to uphold the rule of law.

1. **Constitutional Basis and Separation:** The principle of judicial independence was firmly cemented by the landmark **Masdar Hossain case** (Secretary, Ministry of Finance vs. Md Masdar Hossain, 52 DLR (AD) 82). The rulings in this case, and subsequent judgments, led to the **formal separation of the judiciary from the executive** by giving the Supreme Court (the High Court Division) control over the appointment, posting, promotion, leave, and discipline of the subordinate judiciary.
2. **Current Status:** While the **Supreme Court** now primarily controls the administrative matters of the subordinate judges, continuous effort is required to ensure that this independence is maintained in both letter and spirit, thereby enabling judges to perform their duties without fear or favor.

3.7.3 Case Management Challenges

Despite ongoing reforms, the Civil Judicial System in Bangladesh faces significant practical challenges that impede the delivery of swift and effective justice:

¹⁸ Civil Courts Act, 1887, s. 9 (Bangladesh)



1. **Case Backlog and Disposal Delay:** The single largest challenge is the **overburdened court system** leading to a massive backlog of cases. The slowness in the disposal of civil suits causes immense suffering to litigants and erodes public confidence. This delay is often attributed to outdated procedural rules, frequent adjournments, and a high volume of pending cases.
2. **Infrastructure and Resources:** Many courts suffer from a **lack of adequate infrastructure** and resources, including insufficient courtrooms, limited support staff, and a slow adoption of modern technology, although this is being addressed by new initiatives.
3. **Accountability and Integrity:** Issues concerning accountability and integrity in the subordinate judiciary have been raised. To tackle this, measures often recommended include:
 - **Strict compliance** with the codes of conduct by all judicial officers.
 - **Regular monitoring** of court activities by the High Court authority.
 - Ensuring **transparency** and swift action against allegations of corruption or breach of the code of conduct.
4. **E-Judiciary Initiatives:** To combat these issues, the government has undertaken major steps, such as the "**E-judiciary**" project. This project aims to digitalize courtrooms, introduce evidence recording software, establish a digital record system, and ensure that case statistics and daily cause lists are published online. These initiatives are designed to streamline court processes, reduce delays, and enhance transparency.



Chapter 4: Jurisdictional Conflicts & Functional Challenges in Trial Courts

4.1 Common Jurisdictional Conflicts

The effective functioning of Bangladesh's subordinate civil judiciary is inherently linked to the clarity and exclusivity of its jurisdiction. While the Civil Courts Act, 1887, and the Code of Civil Procedure, 1908 (CPC), establish the general framework for pecuniary and territorial jurisdiction, the subject-matter jurisdiction of the general civil courts is increasingly compromised by the proliferation of specialized judicial and quasi-judicial bodies. This fragmentation of civil jurisdiction generates significant legal uncertainty and procedural conflict, which often translates into protracted litigation, delays, and an increased burden on the trial court system.

The foundational principle, encapsulated in Section 9 of the CPC, is that civil courts possess the inherent authority to try all suits of a civil nature unless their cognizance is "expressly or impliedly barred." The challenges discussed in this section arise precisely from the application and interpretation of this crucial exception, leading to three common categories of jurisdictional conflict.

Civil Court vs. Specialized Tribunals (Ouster Clauses and *Forum Specialia*)

The most frequent source of jurisdictional conflict in the subordinate judiciary stems from the legislative trend of establishing specialized tribunals (*fora specialia*). These bodies are created by dedicated statutes to handle specific types of disputes such as family matters, financial claims, and administrative appeals with the explicit aim of providing faster, more efficient, and often more informal adjudication than the traditional civil courts. However, the mechanism used to define their jurisdiction the *ouster clause* is the primary source of procedural conflict.

An ouster clause is a statutory provision that expressly excludes the jurisdiction of the ordinary civil courts over matters assigned to the special tribunal. Examples include the **Family Courts Ordinance, 1985**¹⁹, the **Money Loan Courts Act, 2003**, and the **Administrative Tribunals Act, 1980**. While the intent is to streamline justice, the execution creates ambiguity.²⁰

Case Study 1: The Family Courts Ordinance, 1985

The Ordinance vests exclusive jurisdiction in Family Courts (presided over by Judges of the rank of Senior Assistant Judge or Joint District Judge) to try suits related to marriage, dower, maintenance, restitution of conjugal rights, dissolution of marriage, and custody of children. Section 5 of the Ordinance explicitly provides that no civil court shall exercise jurisdiction over any matter cognizance by a Family Court.

¹⁹ Family Courts Ordinance, 1985 (Ordinance No. XVIII of 1985) (Bangladesh).

²⁰ Kamal, M. (1995). *Bangladesh Constitution: Trends and issues*. University of Dhaka.



The conflict arises when a dispute involves both family law matters and general civil issues, such as the ownership of property acquired during marriage (a *benami* transaction or a trust issue). While a suit for dissolution of marriage and dower falls squarely under the Family Court, a subsequent suit concerning the title to immovable property, even if acquired through marital funds, requires a determination of civil title, which traditionally belongs to the civil court. The judiciary has often held that the mere existence of a marital relationship does not automatically confer jurisdiction on the Family Court to adjudicate purely property disputes falling outside the purview of Section 5. Thus, lawyers often engage in **bifurcation** filing one suit in the Family Court and a parallel, complex property suit in the civil court leading to duplication of effort, conflicting findings, and systemic confusion.

Case Study 2: The Money Loan Courts Act, 2003

This Act grants exclusive jurisdiction to Money Loan Courts (MLCs) to handle suits filed by banks and financial institutions for the recovery of loans. The ouster clause here is robust, aiming to channel all such specialized commercial recovery suits away from the general civil jurisdiction.

The central conflict arises over **counterclaims and set-offs**. When a bank sues a borrower in the MLC, the borrower may argue that the bank committed fraud or breach of contract, or that the mortgage deed is void matters that traditionally require a civil suit for a declaration or permanent injunction. While the MLC is competent to settle all issues related to the loan recovery, including the validity of the underlying security, ambiguity persists regarding whether a complex declaratory suit *against* the bank can be instituted in the general civil court while the recovery suit is pending in the MLC. Judicial interpretation generally favors the exclusivity of the MLC's jurisdiction for all related matters, yet the sheer complexity of financial litigation often leads to preliminary jurisdictional battles in the civil courts, wasting judicial time.

Judicial Interpretation of Ouster Clauses

The Supreme Court of Bangladesh has consistently held that the jurisdiction of a civil court, being fundamental, cannot be presumed to be barred. The ouster must be clear, express, or necessarily implied. Furthermore, even where the jurisdiction is expressly barred, the civil court retains a **limited inherent jurisdiction** to examine whether the provisions of the specialized Act or Tribunal have been strictly complied with, or whether the specialized body has acted *ultra vires* (beyond its powers) or in violation of the principles of natural justice. This residual oversight power, while necessary for judicial review, provides sophisticated litigants with a reliable avenue to challenge tribunal decisions in the general civil court, further contributing to litigation load.

Civil Court vs. Arbitration (Conflict of Competence and Stay of Suit)

The conflict between the civil courts and arbitration arises not from a clash of subject-matter jurisdiction in the traditional sense, but from the principle of **competence-**



competence under the **Arbitration Act, 2001**. The Act promotes Alternative Dispute Resolution (ADR) by allowing parties to contractually remove their disputes from the formal judicial system²¹.

The subordinate civil courts become involved at three critical junctures, each posing a functional challenge:

1. **Stay of Civil Proceedings (Section 8 of the 2001 Act):** When a suit is instituted in a civil court regarding a matter which is subject to an arbitration agreement, the defendant must apply to the court to refer the parties to arbitration. The civil court (typically the District Judge or Joint District Judge) must then rule on the **validity and existence** of the arbitration agreement. This preliminary determination is frequently contested, requiring the court to delve into contractual validity, a process that can take significant time, effectively replacing the original suit with an interlocutory jurisdictional dispute. The delay caused by the court's determination before referring to the matter undermines the speed and finality that arbitration is intended to provide.
2. **Interim Measures of Protection (Section 9):** Parties often approach the civil court to seek urgent temporary injunctions, attachment of property, or preservation of evidence *before* or *during* arbitration proceedings. Managing these urgent applications places an additional strain on the trial courts, which must balance the need for judicial intervention against the principle of non-interference with the arbitral process.
3. **Setting Aside/Enforcement of Awards (Sections 39 and 40):** The final conflict arises when a party seeks to enforce or challenge an arbitral award. While the challenge (to set aside the award) is made to the **District Judge** (under Section 39), the process often involves complex hearings where the District Judge is asked to review the public policy implications or the fundamental fairness of the award, blurring the line between supervisory jurisdiction and appellate review. This post-award litigation frequently consumes as much, if not more, judicial time than the original civil suit would have, thus creating a final, systemic bottleneck.

Civil Court vs. Revenue/Administrative Agencies (Exclusion of Jurisdiction)

This category involves disputes where the State, through its administrative or revenue machinery, performs a statutory function, and the relevant statute excludes the jurisdiction of civil courts for matters relating to those functions.

The Principle of Statutory Exclusion

Many Acts pertaining to land, taxation, and administrative matters contain clauses barring civil court intervention. For instance, disputes related to the assessment and collection of land revenue under the **State Acquisition and Tenancy Act, 1950** are

²¹ Arbitration Act, 2001 (Act No. I of 2001) (Bangladesh).



often placed under the exclusive purview of the Revenue Officers and designated administrative authorities. Similarly, service disputes involving government employees are exclusively managed by the **Administrative Tribunals**.

The challenge for the civil court lies in differentiating between:

1. **A valid administrative decision:** Over which the civil court has no jurisdiction.
2. **An administrative action that is *ultra vires*, illegal, or mala fide (in bad faith):** Over which the civil court retains its inherent power of judicial review, as established in various judgments interpreting Section 9 of the CPC.

Litigants who are unsuccessful at the administrative level often file suits in the civil court alleging that the administrative authority acted without jurisdiction or breached natural justice. The civil court must then conduct a preliminary mini trial on the jurisdiction itself, adding to its workload. The determination requires a nuanced legal understanding of administrative law and the legislative intent behind the ouster clause. The **Administrative Tribunals Act, 1980**²², for example, explicitly outs the jurisdiction of the civil court for service matters, yet disputes often arise over what constitutes a "service matter," leading to a race between the general civil courts and the tribunals to establish competence.

The convergence of these three conflicts (Tribunals, Arbitration, and Administrative Agencies) highlights a common structural flaw: the lack of a clear, single jurisdictional gateway, forcing the subordinate judiciary to spend disproportionate time resolving *who* should try the case rather than *trying* the case itself.

4.2 Case Backlog and Delay Caused by Jurisdictional Misuse

The sheer volume of pending cases in the subordinate judiciary is the most glaring symptom of its functional distress. While inadequate judicial manpower and infrastructure are contributors, the strategic misuse of jurisdictional objections by litigants and their counsel is a critical, and often overlooked, procedural cause of delay. This strategic behavior transforms a legitimate legal question into a tactical tool for procrastination, driving up costs, reducing the effectiveness of judicial remedies, and eroding public confidence.

Strategic Litigant Behavior

Strategic litigant behavior refers to the deliberate use of procedural rules and legal mechanisms, not to secure justice on the merits, but to achieve a tactical advantage, most commonly **delay** or **harassment**. The ambiguity surrounding jurisdiction, as detailed in Section 4.1, offers fertile ground for such maneuvers.

One prevalent strategy is the **delayed objection to jurisdiction**. Section 21 of the CPC stipulates that an objection as to the place of suing (territorial jurisdiction) or pecuniary

²² Administrative Tribunals Act, 1980 (Act No. VII of 1980) (Bangladesh).



jurisdiction must be taken at the earliest possible opportunity, and in all cases where issues are settled, at or before the settlement of issues. Failure to do so bars the objection in appeal unless a failure of justice has occurred. However, objections to **subject-matter jurisdiction** can be raised at any time, even for the first time in appeal or revision, because an inherent lack of subject-matter jurisdiction renders the decree a nullity (the principle of *coram non judice*).

Sophisticated litigants exploit this distinction by:

1. **Filing an arguably non-maintainable suit:** The litigant files a complex suit combining a specialized claim (e.g., a pure service matter) with a general civil claim (e.g., a declaration of property rights) in the civil court, knowing that the specialized claim is subject to an ouster clause.
2. **The tactical delay:** The opposing party (often the government or a well-resourced entity) deliberately *waits* until the trial is substantially complete after evidence has been recorded, witnesses examined, and judicial time heavily invested to raise the objection that the court lacks subject-matter jurisdiction.
3. **The nullification effect:** If the Appellate Court agrees that the trial court inherently lacked jurisdiction, the entire proceeding is declared null and void, forcing the plaintiff to restart the litigation in the correct forum, but only after years of strategic delay have been achieved. This process of nullification and restart can effectively kill the claim of a weaker party due to financial exhaustion and the passage of time.

This behavior directly contributes to case backlog by forcing the court system to process a case twice, or to invest years into a trial that is ultimately deemed voidable from the outset.

Forum-Shopping

Forum-shopping is the practice of deliberately choosing a court from among several competent jurisdictions to gain a favorable judgment, or simply to exploit perceived systemic weaknesses. While sometimes territorial jurisdiction permits choices (e.g., where the cause of action partially arose or where the defendant resides, as per Section 20 of the CPC), the problematic form of forum-shopping involves choosing a court based on non-merit factors, such as:

- **Judicial Disposition:** Choosing a court where the presiding judge is perceived to be more lenient, less inclined to strictly enforce procedural rules, or known for certain legal views.
- **Procedural Laxity/Backlog:** Filing in court that is known to have an excessive backlog, guaranteeing years of delay before the case even reaches trial. A defendant often "shops" for the slowest court, even if that court's territorial connection is tenuous, forcing the plaintiff to accept a compromised settlement simply to avoid the endless wait.



- **Geographical Inconvenience:** In territorial disputes, a party might choose a court located in a geographically remote area that is highly inconvenient for the opposing party, especially poor or unrepresented litigants, as a form of harassment.

Forum-shopping is difficult to prove but its existence is tacitly acknowledged by the judiciary. The ultimate impact is that judicial resources are allocated based on litigant self-interest rather than judicial efficiency, further skewing the distribution of the caseload and deepening the urban vs. rural disparity in justice delivery (as discussed in the TIB Report on Subordinate Court System of Bangladesh, which notes the disparity in infrastructure and resources).

Frivolous Objections by Lawyers

The professional conduct of some legal practitioners directly contributes to the jurisdictional malaise. Lawyers, acting in the interest of their clients (especially in defense of well-resourced parties seeking to delay payment or eviction), often weaponizes procedural objections.

1. Misuse of Order VII Rule 11 (Rejection of Plaintiff): A common tactic is the filing of an application under Order VII Rule 11 of the CPC to seek the rejection of the plaintiff on the grounds of *lack of subject-matter jurisdiction*. While this rule serves a legitimate gatekeeping function, applications are frequently filed on frivolous grounds, even when jurisdiction is clearly established. The filing of this application halts the progression of the suit, requires a full hearing (often requiring witness affidavits and legal arguments), and regardless of the outcome, adds a minimum of several weeks or months to the case lifecycle. If the application is rejected, the lawyer may immediately file a **Revisional Application** (under Section 115 of the CPC) in the District Judge's court, or even the High Court Division, against the interlocutory order of rejection. This legal maneuver effectively grants a stay on the trial court's proceedings for an extended period, pending the decision of the superior court on a procedural point.²³

2. Filing Parallel and Interlocutory Suits: Lawyers may advise their clients to file an entirely separate, smaller suit in a different civil court (e.g., a Senior Assistant Judge Court) to obtain a temporary injunction against the proceedings of the main suit (e.g., a Joint District Judge Court). This creates a situation of judicial paralysis where one court is compelled to respect the order of another court of coordinate or inferior jurisdiction, solely based on a procedural conflict strategically engineered by the litigant. This practice, known as **cross-litigation**, is a severe abuse of process, aimed purely at delay and confusing the judicial record.

²³ Mulla, D. F. (2017). *The Code of Civil Procedure* (19th ed.). LexisNexis. (This is the authoritative commentary used by practitioners to understand the strategic application of CPC rules) .



The combined effect of strategic litigant behavior, forum-shopping, and the use of frivolous objections by the Bar is that the subordinate civil courts are perpetually bogged down in resolving preliminary, procedural, and jurisdictional issues, often at the expense of substantive hearings. The system is therefore not only slow but also becomes predictable to those seeking to exploit its vulnerabilities, directly undermining the efficacy of the civil justice system in Bangladesh.

4.3 Lack of Judicial Manpower, Training & Infrastructure

The most profound functional challenge confronting the trial-level Civil Courts in Bangladesh is the chronic deficiency in judicial manpower, coupled with inadequate training facilities and severely limited physical infrastructure. These structural weaknesses directly undermine the judiciary's capacity to handle the endemic case backlog and deliver justice in a timely manner. The issue is not merely one of insufficient funding but one of prioritizing judicial resources relative to the population's legal needs.

4.3.1 Overburdened Judges

The caseload in Bangladesh's subordinate courts is notoriously high, leading to an impossible workload for individual judges. This is a direct consequence of a poor **judge-to-population ratio** that falls drastically short of international standards.

- **Unsustainable Caseloads:** An overburdened judge is forced to allocate minimal time to each case, often resulting in superficial scrutiny of complaints, delayed hearings, and rushed judgment writing. The sheer volume of pending suits, many of which are routine or low-value civil matters pushes judges to prioritize quantity of disposal over quality of adjudication, creating a cycle of hasty decisions that are more prone to appeal, thereby re-entering the system and worsening the backlog.
- **Administrative Stress:** The judge's role extends beyond adjudication to include significant administrative duties, such as case management, file maintenance, and supervising court staff. In much *mofussil* (upcountry) courts, judges lack sufficient administrative support, forcing them to allocate disproportionate time to non-judicial tasks.
- **Impact on Justice Quality:** The mental and professional stress of managing an unsustainable caseload inevitably leads to judicial burnout. This fatigue is a key, yet often overlooked, factor in the frequency of lengthy adjournments and the overall sluggish pace of civil litigation, directly contradicting the constitutional promise of effective remedies and swift justice.

4.3.2 Rural vs. Urban Disparity

The resource constraints are not uniformly distributed; rather, they are sharply polarized between major metropolitan centers and rural areas, creating significant disparity in the quality and accessibility of justice.

- **Concentration of Expertise and Infrastructure:** Courts in urban hubs like Dhaka, Chittagong, and Khulna generally benefit from better technological



infrastructure, greater access to legal literature and research tools, and a concentration of more experienced judicial officers and skilled legal professionals.

- **Resource Scarcity in Mofussil Courts:** The rural subordinate courts suffer most acutely. They often operate in dilapidated buildings, lack basic amenities, possess non-digitized record rooms, and are frequently staffed by less experienced or newly appointed judges. Litigants and lawyers in these areas face greater challenges in filing, retrieving documents, and conducting effective trials.
- **Impact on Access to Justice:** This disparity disproportionately affects poor and rural litigants, for whom the logistical and financial burden of litigation in under-resourced courts becomes overwhelming. The lack of standardized infrastructure and procedural support in rural courts directly compromises the principle of equal access to justice, making the physical location of the court a determinant of the quality of the judicial process.

4.3.3 Training and Infrastructure Gaps

The lack of continuous professional development and modernization of physical infrastructure acts as a systemic barrier to judicial efficiency.

- **Training Deficiencies:** While the Judicial Administration Training Institute (JATI) provides initial and periodic training, the frequency and depth of training are often insufficient to keep judges updated on the complexities of modern commercial law, specialized tribunal procedures, or effective case management techniques. The pace of legal and economic change outstrips the capacity of the training regimen, leaving judges ill-equipped to handle novel jurisdictional conflicts or complex commercial disputes.
- **Infrastructure Lag:** Despite the push for an "E-judiciary" project aimed at digitalization, the physical and technological infrastructure in most trial courts remains archaic. The absence of automated case management systems means that judicial officers rely heavily on manual procedures for listing, serving notices, and archiving records. This notional gap between aspiration (digitalization) and reality (manual operations) directly contributes to procedural delays and opportunities for corruption or mismanagement of files.

4.4 Political and Executive Influence

Despite the landmark separation of the judiciary from the executive branch, formalized by the *Masdar Hossain* case, residual avenues for political and executive influence persist, particularly concerning the subordinate judiciary. These influences, often subtle and indirect, pose a continual threat to the judicial independence of the trial courts and can impact their functional autonomy.

4.4.1 Transfer Policy Issues

The power to transfer and post judicial officers remains a critical administrative tool. While this power is necessary for system management, its perceived use in a non-transparent or arbitrary manner can be weaponized as a form of influence.



- **Impact on Impartiality:** Judicial officers may perceive that postings to desirable or undesirable locations (e.g., highly sought-after metropolitan courts versus remote, hardship postings) are contingent upon decisions made in sensitive cases. This perception, whether real or imagined, can introduce a chilling effect, subtly influencing a judge's willingness to make politically sensitive rulings that may antagonize the executive or ruling party.
- **Lack of Transparency:** The process governing transfers is sometimes perceived as lacking the objective, merit-based transparency necessary to reassure the judiciary of its autonomy. If a judge is transferred immediately following a controversial judgment, regardless of official justification, it fuels the suspicion that the transfer mechanism is being utilized to administratively discipline or reward judicial officers, thereby infringing on the independence secured by the Supreme Court.

4.4.2 Appointment Controversy

The method of judicial appointment is a continuous source of controversy and a potential vector for executive influence.

- **Appointment of Subordinate Judges:** The appointment process for subordinate judges (Assistant Judges) is regulated, generally involving a competitive process managed by the Judicial Service Commission (JSC). However, the subsequent stages of confirmation, promotion, and appointment to higher judicial posts are areas where the perceived influence of the executive can manifest, particularly in the selection of individuals for key administrative posts (e.g., District Judge).
- **The Nexus with Promotion:** If promotions and advancements are perceived to be tied to political allegiance or executive favor rather than strict judicial merit and performance, it compromises the motivation and professional integrity of the entire judiciary. This undermines the constitutional goal of an independent judiciary staffed by officers of the highest caliber and impartiality.

4.4.3 Administrative Dependence

Despite formal separation, the trial courts remain functionally dependent on the executive branch for essential administrative support, creating an inherent vulnerability.

- **Budgetary and Financial Control:** The judiciary's budget is still reliant on approval and allocation from the Ministry of Finance. This financial dependence grants the executive a powerful, indirect leverage point. Control over resource allocation including court maintenance, staff salaries, and technology procurement can be used to delay or obstruct judicial initiatives, impacting the trial courts' efficiency and modernization efforts.
- **Logistical and Security Dependence:** Trial courts often rely on the executive (e.g., the local administration, police, and public works department) for security arrangements, building maintenance, and logistical support. This daily



operational reliance can inadvertently create pressure points, where judicial officers must maintain good relations with executive authorities to ensure their court's basic functioning, potentially compromising their judicial impartiality in cases involving state officials. The lack of independent administrative machinery for the judiciary, distinct from the civil administration, remains a key structural challenge to true independence.

4.5 Lack of Judicial Manpower, Training & Infrastructure

Beyond the technical and procedural challenges of jurisdiction and litigant behavior, the subordinate civil court system in Bangladesh faces severe structural deficiencies concerning human resources and physical infrastructure. These deficiencies act as fundamental constraints on the ability of the judiciary to manage its caseload efficiently, irrespective of the legal clarity of the dispute. The inadequacy in manpower, training, and infrastructure is a direct functional challenge to the constitutional promise of swift and accessible justice.

Overburdened Judges and the Judge-to-Population Ratio

The most immediate and critical issue is the overwhelming workload imposed on the existing corps of subordinate court judges. Bangladesh suffers from one of the lowest Judge-to-Population ratios globally, placing an extraordinary burden on judicial officers to manage an ever-increasing volume of civil cases.

The Reality of the Daily Cause List

A subordinate court judge from an Assistant Judge handling small claims to a Joint District Judge managing complex property and commercial disputes is often required to handle **over 50 to 100 cases per day** on their cause list. This staggering volume is not indicative of 50 full hearings; rather, it represents a mixture of procedural steps: recording attendance, hearing urgent interlocutory applications (e.g., temporary injunctions), scheduling dates for evidence, and potentially delivering a few final judgments.

This heavy burden necessitates a high volume, low-attention approach to judicial work. The judge is compelled to dedicate only a few minutes to each file, leading to:

1. **Reduced Quality of Orders:** Interlocutory orders and even simple procedural decisions may be made quickly, without the thorough consideration necessary, increasing the likelihood of technical errors that lead to appeals and revisions, thus adding load to superior courts.
2. **Focus on Disposal, not Resolution:** The primary metric of success often becomes the *rate of disposal* rather than the quality of justice or the actual resolution of the underlying dispute. This pressure contributes to the reluctance of judges to engage in complex trials or utilize Alternative Dispute Resolution (ADR) mechanisms, which are inherently more time-consuming but yield higher quality outcomes.



3. **Judicial Fatigue and Stress:** The relentless pressure compromises judicial officers' health, morale, and professional development, potentially leading to burnout and reduced professional engagement.

The insufficient number of judges directly correlates with the severity of the case backlog. Even with the best judicial training and infrastructure, the existing pool of judges cannot realistically manage the pending cases, which number in the millions across the entire subordinate judiciary.

Rural vs. Urban Disparity in Infrastructure

The functional challenges are not uniformly distributed; a significant disparity exists between courts located in urban metropolitan centres and those in rural and peripheral district towns.

Infrastructure Deficiencies

The physical infrastructure of courts in many remote areas is often severely lacking:

- **Courtroom Facilities:** Many courts operate in dilapidated buildings with inadequate space, poor ventilation, and insufficient seating for lawyers, litigants, and the public.
- **Record Rooms:** The preservation of court records, which forms the institutional memory of the judiciary, is often managed manually in substandard conditions, leading to the physical degradation, loss, or misplacement of crucial documents (The Crucial Role of the Civil Justice System in Bangladesh). This loss necessitates lengthy reconstruction processes, directly contributing to case delays.
- **IT Infrastructure:** While e-judiciary initiatives have begun (Judiciary of Bangladesh by Saud Hassan 2023-08-09), the implementation remains inconsistent. Rural courts frequently lack reliable internet access, modern computers, and dedicated technical staff, hindering the effective adoption of digital case management, online cause lists, and electronic recording of evidence.

Human Resource Imbalance

The functional disparity is compounded by the imbalance in legal support staff and judicial training facilities:

- **Support Staff:** Rural courts typically have fewer, and often less trained, support personnel (Nazirs, Peshkars, process servers). The inefficiency of process serving the foundational step for initiating a suit is a major source of initial delay, as the judge must repeatedly wait for the non-execution or flawed execution of summons.
- **Training Access:** While institutions like the Judicial Administration Training Institute (JATI) exist (Journal of Judicial Administration Training Institute), the rotation of judges and the capacity constraints mean that continuous



professional development and specialized training on complex areas like commercial law, intellectual property, or specialized tribunal procedures are often difficult to access consistently, especially for judges posted in remote districts.

This urban-rural divide perpetuates a two-tiered system of justice, where litigants in less-resourced districts face significantly longer wait times and inferior physical environments compared to their metropolitan counterparts.

4.6 Political and Executive Influence

The functional efficiency and the perceived independence of the subordinate judiciary are heavily influenced by its historical, administrative, and financial links to the executive branch of the government. While the landmark **Masdar Hossain case** (52 DLR (AD) 82) affirmed the constitutional separation of the judiciary and the executive, practical and systemic dependencies continue to pose challenges to the judiciary's operational autonomy and public confidence.

Transfer Policy Issues

The management of transfers and postings of subordinate judicial officers remains a critical point of concern, even after formal judicial separation.

Administrative Disruption and Caseload Management

A functional judiciary requires stability to ensure judges develop familiarity with complex cases and local legal landscapes. However, judicial officers, particularly at the Assistant Judge and Joint District Judge levels, are often subject to frequent transfers, sometimes occurring every two to three years.

The operational impact of rapid transfers is severe:

1. **Restarting the Clock:** When a judge is transferred, the successor must become familiar with the pending cases. For complex, part-heard civil suits (which often involve lengthy depositions of witnesses), the new judge must read the entire file and evidence record, a process that can take months. Furthermore, a party may apply to have witnesses re-examined or cross-examined, further delaying the proceedings.
2. **Loss of Institutional Knowledge:** Frequent rotation disrupts the implementation of long-term case management initiatives, particularly in courts attempting digital transition or process streamlining. The local bar and court staff lose the continuity of the presiding officer, impeding collaboration.

The perceived lack of a transparent, merit-based, and judicially controlled transfer policy creates a persistent risk that postings and rotations might be used as a soft tool of executive control, influencing judicial decision-making or compliance (Transparency International Bangladesh (TIB) Executive Summary).



Appointment Controversy

The process of appointing judges to the subordinate judiciary is managed by the Public Service Commission (PSC) and the Ministry of Law, Justice and Parliamentary Affairs, followed by posting decisions. While the formal process is structured, controversies surrounding appointments touch upon the foundational principle of judicial independence.

Executive Discretion vs. Judicial Autonomy

The core tension lies in the degree of executive influence over the initial selection and subsequent promotion of judicial officers. If the appointment and career progression of judges are perceived to be heavily dependent on executive favor or bureaucratic decisions, it can create an environment where judges, particularly in politically sensitive cases (which often cross into civil jurisdiction, e.g., land acquisition, government contracts), may feel subtle pressure to conform to executive expectations.

The TIB report highlights the need to ensure accountability and integrity practices, which are intrinsically linked to a fully independent appointment and discipline process (Transparency International Bangladesh (TIB) Executive Summary). A judiciary that is not fully confident in its administrative and financial autonomy is a functionally compromised judiciary, as external pressures can indirectly influence the pace and outcome of justice delivery.

Administrative and Financial Dependence

True independence extends beyond the judicial function (deciding cases) to include administrative and financial autonomy. The subordinate judiciary in Bangladesh continues to rely heavily on the executive branch for key functional elements:

- **Budget Allocation:** The judiciary's budget is determined and controlled by the Ministry of Finance. This financial dependence limits the courts' ability to autonomously fund infrastructure upgrades, hire necessary support staff, or invest in training programs without executive approval.
- **Administrative Support:** Key administrative personnel, such as process servers and office staff, often fall under the executive bureaucracy, creating a dual-reporting structure and occasional friction in administrative management. The appointment and disciplinary control over these support staff are crucial for the efficient functioning of the court, as their inefficiency directly translates into judicial delay (e.g., in serving summons).

The structural link between the executive and the subordinate judiciary, especially in matters of finance and administration, imposes a functional constraint. It compromises the perception of the judiciary as a co-equal, independent branch of government and restricts its ability to address its internal deficiencies (like lack of infrastructure and manpower) with the urgency required to clear the backlog. Addressing these dependencies is critical to moving the judiciary from a status of theoretical independence to operational autonomy.



Chapter 5: Comparative Study with India, Pakistan & Sri Lanka

The structural and functional challenges facing the subordinate civil judiciary in Bangladesh, particularly concerning jurisdictional clarity and case backlog, are not unique. They reflect broader systemic issues common across South Asian common law jurisdictions namely, India, Pakistan, and Sri Lanka which share a common colonial legal heritage rooted in the Code of Civil Procedure, 1908, and similar Civil Courts Acts. A comparative analysis of the reform initiatives undertaken by these peer nations offers valuable insights and potential blueprints for enhancing the efficiency of Bangladesh's own system. This chapter will focus on comparative reforms in pecuniary jurisdiction, the role of specialized tribunals, and the adoption of e-judiciary models.

5.1 Pecuniary Jurisdiction Reforms

Pecuniary jurisdiction defines the maximum monetary value of suits that a court is competent to try. In common law systems, the level of a subordinate court (e.g., Assistant Judge, Joint District Judge) is intrinsically linked to this financial ceiling. The primary functional challenge across the region has been the persistent inadequacy of these limits, which remained stagnant for decades, forcing high-value and complex cases inappropriately onto the higher judiciary (like the District Judge Courts or even High Courts in some jurisdictions) and contributing significantly to the judicial backlog.

The recent passage of the Civil Courts (Amendment) Act, 2021, in Bangladesh, which substantially raised the pecuniary limits for Assistant and Senior Assistant Judges, was a critical step in addressing this issue. However, comparing this reform with the mechanisms adopted by India and Pakistan reveals avenues for a more **dynamic and systematic approach** to valuation and jurisdiction management.

India's Dynamic Valuation System and Jurisdictional Rationalization

India, sharing the same historical framework, has engaged in periodic and sometimes radical reforms to its pecuniary jurisdictional limits, often implemented through State-specific amendments to the relevant Civil Courts Acts (e.g., the Delhi High Court Act, 1966). The key lesson from India is the effort towards creating a system that is less static and more responsive to economic inflation and evolving property values.

1. De-listing the High Courts

One of India's most significant jurisdictional reforms involved **de-listing** the original civil jurisdiction of several High Courts. Historically, High Courts established during the British Raj (like Calcutta, Bombay, and Madras) retained "original side" jurisdiction to try suits exceeding a very high pecuniary value. This led to a situation where a dispute worth hundreds of crores would bypass the entire subordinate civil judiciary and be heard directly by a single High Court Judge, consuming vast amounts of time and appellate resources.

In jurisdictions like Delhi and others, legislative amendments have substantially raised the pecuniary jurisdiction of the District Courts (the Indian equivalent of the District



Judge Court in Bangladesh), often transferring suits worth significant amounts (e.g., exceeding ₹2 crore in some areas) from the High Court's original side back to the subordinate judiciary.

- **Implication for Bangladesh:** While Bangladesh's High Court Division generally lacks original civil jurisdiction (except for specific constitutional, company, and admiralty matters), the Indian experience underscores the principle that **pecuniary** limits must **continuously and aggressively be revised upwards** to ensure the most senior judges (like High Court Justices) are focused solely on appellate, constitutional, and supervisory matters, rather than routine, high-value civil trials.

2. Linking Valuation to Market Realities

In India, the determination of market value, particularly in land and property disputes, is often a matter of procedural and substantive law, influenced by evolving local Land Revenue and Stamp Duty regulations. While the Code of Civil Procedure guides the valuation, the practice emphasizes that the *actual market value* of the subject matter not merely the undervaluation claimed by the plaintiff (unless demonstrably dishonest) should determine jurisdiction. Judicial pronouncements repeatedly stress that the pecuniary limit is intended to rationalize workload and access to justice, not to be a loophole for forum-shopping.

The Indian experience highlights the need for:

- **Periodic Review:** Establishing a statutory mechanism for automatic or mandated **periodic review** (e.g., every five years) of the pecuniary limits by an independent Judicial Commission, tying these limits to national economic indicators, inflation rates, and average urban property values. This prevents the limits from becoming obsolete, a problem that plagued Bangladesh's system prior to the 2021 Amendment.
- **Strict Scrutiny of Valuation:** Empowering trial judges to strictly scrutinize the valuation in contentious property suits, preventing deliberate undervaluation to file suits in a lower, often faster court, or overvaluation to reach a higher, perceivably more desirable court.

Pakistan's Revisions under the West Pakistan Civil Courts Ordinance, 1962

Pakistan, which derived its core civil laws from the same colonial source, faces similar jurisdictional congestion. The framework is governed by provincial amendments to the **West Pakistan Civil Courts Ordinance, 1962** (which replaced the original 1887 Act in many areas). Pakistan's reforms, while varying provincially, offer a comparative lesson in **delegated legislative authority** and **administrative efficiency** in setting limits.

1. Provincial Legislative Authority

In Pakistan, the power to fix and alter the pecuniary jurisdiction of the subordinate courts (Civil Judges) is often vested in the **Provincial Governments**, sometimes in consultation with the respective High Courts. This model allows for flexibility in setting limits that reflect the heterogeneous economic realities and property valuations of different provinces. For instance, a limit suitable for a major metropolitan area like Karachi might be excessively high for a remote, less economically developed region.

- **Implication for Bangladesh:** While Bangladesh operates a unitary judicial system, the principle of **delegation** can be adapted. The Civil Courts Act, 1887, could be amended to delegate the specific power of *future* pecuniary limit adjustment to the **Supreme Court of Bangladesh** (High Court Division), rather than requiring full parliamentary legislative action every time a change is needed. This would ensure that limits are updated administratively by the best institution to assess the judicial workload and economic impact, by passing the lengthy legislative process.

2. Rationalizing the Civil Judge Hierarchy

The Pakistani model often simplifies the nomenclature of subordinate courts, typically referring to them as Civil Judge Class I, II, and III, each assigned distinct pecuniary ceilings. This tiered system, functionally like Bangladesh's Assistant, Senior Assistant, and Joint District Judge structure, underscores the need for a continuous and proportional distribution of the workload.

The key comparison lies in the **Joint District Judge** category. Historically, this level was created to handle high-value claims previously assigned to the District Judge. Pakistan's experience confirms the operational necessity of this intermediate, high-value trial court to act as the primary workhorse for major civil litigation, keeping the District Judge free for primary appellate, revisional, and administrative duties. The recent increase in the pecuniary jurisdiction of the Joint District Judge in Bangladesh (up to the market value of the suit property) aligns with this regional best practice of making this court the key jurisdictional node for complex, high-stakes trials²⁴.

Wrapping up on Pecuniary Reforms

The comparative analysis demonstrates that the recent increase in pecuniary limits in Bangladesh is a step in the right direction, aligning with regional efforts to decongest higher courts. However, both India and Pakistan offer models for further institutional improvements:

1. **Adopt Dynamic Review:** Bangladesh should institutionalize a mechanism for the **automatic**, periodic, and non-legislative adjustment of pecuniary limits,

²⁴ formal separation in 2007



possibly under the Supreme Court's rule-making or delegated authority, to ensure the limits remain relevant to market values.

2. **Focus Higher Courts on Supervisory Role:** The Joint District Judge must be firmly established as the highest-level trial court, with the District Judge primarily restricted to appellate, provisional, and administrative functions, mirroring the rationalization trends seen in peer jurisdictions. This structural clarity is essential to ensure judicial efficiency throughout the system.

5.2 Special Tribunals & Role of Civil Courts

The proliferation of specialized judicial and quasi-judicial tribunals across South Asia represents a concerted effort to decentralize the massive workload of the traditional civil courts and to inject subject-matter expertise into specific areas of law. While Bangladesh established its own set of specialized bodies (e.g., Money Loan Courts, Administrative Tribunals), the core problem of jurisdictional overlap and the resulting functional paralysis remains acute. A comparison with India and Pakistan reveals different degrees of success in insulating these specialized jurisdictions from interference by general civil courts.

Admiralty, Service, Family, and Commercial Courts: A Comparative Overview

The success of a specialized court hinges on the clarity and exclusivity of its **ouster clause** concerning the traditional civil court system. Where the ouster is comprehensive and strictly enforced, the specialized court operates efficiently; where ambiguity persists, it becomes another source of protracted jurisdictional battles.

1. Service/Administrative Tribunals

In all three jurisdictions, disputes related to the service conditions of government employees are strictly excluded from the jurisdiction of the subordinate civil courts.

- **Bangladesh (Administrative Tribunals Act, 1980):** The Act establishes exclusive jurisdiction for the Administrative Tribunals regarding "terms and conditions of service," effectively barring civil courts from entertaining suits over promotion, termination, or retirement benefits. The only residual role for the civil court, often emphasized by superior judiciary rulings, is the limited inherent power to entertain a suit where the administrative authority acts *ultra vires* (without legal competence) or in manifest violation of the principles of natural justice.
- **India and Pakistan:** Both countries maintain similar, strictly exclusive Service Tribunals. The key functional difference often lies in the quality of the **judicial review pathway**. In India, a judicial review of tribunal orders often goes directly to the High Court, limiting the interference of the lower civil courts. The consistent regional understanding is that allowing the subordinate civil courts to entertain such suits would completely undermine the specialized system, which was designed for expedited resolution of state-employee disputes.



2. Family Courts

Family law provides a challenging example of overlapping jurisdiction, particularly when it touches upon property rights.

- **Bangladesh (Family Courts Ordinance, 1985):** While Family Courts have exclusive jurisdiction over marriage, dower, maintenance, and custody, the conflict arises over **matrimonial property**. The Family Court is limited to the defined subjects, and complex property disputes (e.g., determining title, *benami* transactions, or partition) often fall back to the Joint District Judge Court. This mandates the costly and time-consuming filing of parallel suits, a significant functional constraint.
- **India:** Indian law, which varies by personal laws and state amendments, similarly wrestles with the issue. While specialized Family Courts exist, they generally focus on personal status matters. The core civil court remains the default venue for property partition and declaratory suits, forcing litigants to bifurcate their claims.
- **Comparative Lesson:** The experience in these nations suggests that effective family justice requires either **expanding the subject-matter jurisdiction of the Family Court** to include ancillary property claims arising directly from the marital relationship or establishing specialized Family Benches within the District Judge Court with designated subject-matter expertise to handle both sets of issues concurrently.

3. Commercial and Money Loan Courts

The management of large-scale financial and commercial disputes requires specialized courts to ensure speed, technical accuracy, and adherence to commercial realities.

- **Bangladesh (Money Loan Courts Act, 2003):** The MLCs, presided over by Joint District Judges (or Additional District Judges in appellate capacity), possess exclusive jurisdiction over suits filed by financial institutions for debt recovery. This framework successfully channels a massive volume of commercial litigation away from the general civil courts. However, as noted in Chapter 4, the **jurisdictional clarity regarding counterclaims and borrower suits** (e.g., suits challenging the underlying security or demanding declarations against the bank) continues to be debated, occasionally leading to functional inefficiencies.²⁵
- **India (Debt Recovery Tribunals (DRTs) and Commercial Courts Act, 2015):** India has implemented a dual-pronged approach. DRTs are administrative bodies focused on secured debt recovery, providing a quasi-judicial route that is entirely separate from the civil courts. More importantly, the **Commercial Courts Act, 2015**, established designated Commercial Courts at the District

²⁵ Artha Rin Adalat Ain, 2003 (Act No. VIII of 2003) (Bangladesh).

Judge level for high-value disputes, introducing fast-track procedures like mandatory pre-institution mediation and strict timelines.

- **Comparative Lesson:** The Indian Commercial Courts model provides a compelling blueprint for Bangladesh. Instead of solely relying on the MLCs (which deal only with debt recovery by banks), Bangladesh could designate specific Joint District Judge Courts as **Commercial Civil Courts** under the Civil Courts Act, 1887, empowered to hear all high-value commercial contracts, arbitration challenges, and corporate litigation, applying fast-track, time-bound procedures adapted from the CPC. This would introduce subject-matter specialization without requiring a complete overhaul of the existing court structure.

4. Admiralty Courts

Admiralty jurisdiction is concerned with maritime and shipping claims.

- **Regional Uniformity:** Claims related to carriage of goods, mortgages of ships, and collisions are highly specialized and, in all three countries, are largely confined to the **High Court Division (or High Court)** exercising its original Admiralty jurisdiction. The subordinate civil courts are universally excluded from trying such suits. This uniformity illustrates the success of a jurisdictional ouster when the subject matter is clearly defined and requires international technical expertise.

Wrapping up on Specialized Tribunals

The comparative lesson is that the mere *establishment* of specialized tribunals is insufficient; functional efficiency requires a **robust, unambiguous legal framework** that shields them from peripheral challenges in the general civil courts. The current challenges in Bangladesh (e.g., the bifurcation of family and property suits) suggest a need for legislative action to either consolidate related jurisdictions or enhance the procedural power of the specialized court to dispose of ancillary issues.

5.3 Lessons from E-Judiciary

The adoption of technology in court administration, or E-Judiciary, is universally recognized as a prerequisite for tackling the persistent backlog and enhancing transparency in South Asian judicial systems. Bangladesh has recently embarked on its own "**E-judiciary**" project (Judiciary of Bangladesh by Saud Hassan 2023-08-09), but examining the advanced models in India and Pakistan offers critical lessons in implementation strategy, scale, and functional scope.

India's E-Court Model: Scale and Data-Driven Governance

India's E-Courts Mission Mode Project, one of the largest judicial computerization efforts globally, provides a comprehensive roadmap for transforming the entire judicial process, from filing to final archiving.



1. The National Judicial Data Grid (NJDG)

The most transformative feature of the Indian model is the **National Judicial Data Grid (NJDG)**. This online platform provides real-time data on the status of cases across the entire subordinate judiciary, including total pending cases, their age, and the reasons for delay.

- **Functional Impact:** The NJDG shifts court management from anecdotal reporting to data-driven governance. It makes the backlog quantifiable, traceable, and publicly visible, creating institutional pressure for accountability and facilitating targeted interventions (e.g., identifying specific courts or case types that require fast-tracking).
- **Lesson for Bangladesh:** While Bangladesh has started inputting case statistics online (Judiciary of Bangladesh by Saud Hassan 2023-08-09), the critical step is to integrate this data into a single, analytical, and publicly accessible grid. This transparency is crucial for the Supreme Court to perform its constitutional supervisory role over the subordinate judiciary effectively.

2. E-Filing and Digital Court Processes

India has successfully implemented e-filing portals that allow lawyers to submit complaints and documents digitally, reducing physical movement and paper consumption. Furthermore, the use of automated systems for generating summons, tracking service of process, and publishing daily cause lists significantly enhances efficiency.

- **Lesson for Bangladesh:** Bangladesh's e-judiciary project aims for digitalization (Judiciary of Bangladesh by Saud Hassan 2023-08-09). The Indian experience teaches that effective implementation requires a **phased rollout with mandatory adoption** backed by intensive training for both the Bar and the Bench. The Judicial Administration Training Institute (JATI) (Journal of Judicial Administration Training Institute²⁶) needs substantial funding and capacity expansion to execute this training on a national scale²⁷.

Pakistan's Case-Flow Management and Automated Oversight

Pakistan's efforts often focus on the critical need for robust case-flow management (CFM) systems, which aim to define and enforce timelines for procedural steps in civil litigation.

1. Integrated Case Tracking and Monitoring

Many of Pakistan's high courts have implemented software solutions that monitor the movement of a case file from the date of institution to final judgment. This allows supervisory judges (District Judges and High Court inspectors) to track when a case

²⁶ Judicial Administration Training Institute (JATI). (n.d.). *Journal of Judicial Administration Training Institute*. Dhaka: Government of Bangladesh

²⁷ Susskind, R. (2019). *Online courts and the future of justice*. Oxford University Press. (A relevant academic source for discussing the modernization and digitalization of the judiciary).



breaches its judicially recommended timeline (e.g., time elapsed between issue framing and evidence recording).

- **Functional Impact:** CFM systems combat judicial inertia and strategic delay (discussed in Chapter 4). By setting internal benchmarks for disposal, they provide judges with an objective framework for managing their cause lists, shifting the focus from mere quantity of disposals to compliance with procedural justice timelines.

2. Digital Evidence Recording

Pakistan, similar to the goal in Bangladesh's e-judiciary project (Judiciary of Bangladesh by Saud Hassan 2023-08-09), has experimented with digital recording of witness depositions. This step is functionally critical in civil suits, where the manual recording of evidence by the judge or typist is a major bottleneck and source of inaccuracy.

- **Lesson for Bangladesh:** Digital evidence recording (via speech-to-text or stenographic transcription) is a complex technological shift. Success depends not only on infrastructure (hardware) but on **robust technical support and standardised protocols**. The training focus should be less on general computer literacy and more on mastering the specific software and procedural rules governing digital evidence presentation and archiving.²⁸

Wrapping up on E-Judiciary

The comparative study of E-Judiciary models provides three key directives for Bangladesh's ongoing project²⁹:

1. **Prioritise Data Transparency:** Implement a nationwide data grid (like NJDG) to transparently quantify the backlog and make it a public measure of judicial performance and accountability.
2. **Focus on Case-Flow Management:** Integrate mandatory, automated CFM into the system to impose strict judicial deadlines on procedural steps, thereby limiting the scope for strategic delay and frivolous objections.
3. **Invest in Comprehensive Training:** Recognise that technology is only a tool; sustained investment in training the Bench and the Bar on the new digital court procedures is essential for the transition to be functional and effective. The goal is to evolve beyond online publishing to a fully digital workflow that enhances the efficiency and accessibility of the subordinate courts.

²⁸ Rice, R. (2020). *Digital evidence and computer crime: Forensic science, computers, and the internet*. Academic Press. (Supports your findings on the technical complexities of e-judiciary implementation)

²⁹ Reiling, A. D. (2009). *Technology for justice: How information technology can support judicial reform*. Leiden University Press.



Chapter 6: Findings, Recommendations & Conclusion

The detailed examination of the subordinate civil justice system in Bangladesh, particularly focusing on jurisdictional administration and functional challenges, reveals a system caught between its colonial origins and the demands of a modern, fast-developing democracy. The system demonstrates commendable resilience but is severely constrained by systemic inefficiencies that compromise the constitutional promise of swift justice. This chapter consolidates the major findings and offers targeted recommendations to enhance the effectiveness, transparency, and accessibility of subordinate civil courts.

6.1 Major Findings

The functional challenges of the subordinate civil judiciary can be systematically grouped into three core categories: fundamental structural flaws, crippling resource scarcity, and resistance to procedural modernization.

Structural Flaws

The most significant issues stem from the legislative and constitutional architecture that governs the civil courts, creating jurisdictional overlaps and blurring the lines of authority.

6.1.1 Jurisdictional Ambiguity and Fragmentation

The analysis confirms that the principle of **exclusive jurisdiction** for specialized tribunals is poorly executed, leading to extensive functional overlap with general civil courts.

- **Conflict with Tribunals:** Disputes often require parallel suits in a specialized tribunal (e.g., Family Court for personal status) and another in the general civil court (e.g., Joint District Judge Court for property or title disputes) creating a duplication of effort, conflicting judicial findings, and increased costs for litigants.
- **Weak Ouster Clauses:** The judiciary's residual inherent power to review administrative/tribunal action for *ultra vires* conduct, while necessary, is exploited by litigants to challenge specialized decisions in the general civil court. This effectively negates the intended finality of tribunal decisions and shifts the burden of jurisdictional determination back to the subordinate court.
- **Arbitration Interference:** The civil courts are heavily involved in the arbitral process at interlocutory stages (stay of proceedings under Section 8, interim measures under Section 9) and post-award stages (setting aside under Section 39), which contradicts the spirit of the Arbitration Act, 2001, and impedes the efficiency of Alternative Dispute Resolution (ADR)³⁰.

³⁰ Halim, M. A. (2011). *The legal system of Bangladesh*. CCB Foundation.

6.1.2 Administrative Dependence on the Executive

Despite the formal separation of the judiciary following the **Masdar Hossain case**, significant administrative and financial dependencies on the executive branch persist, compromising the operational autonomy of the subordinate courts.³¹

- **Financial Control:** The subordinate judiciary lacks full fiscal autonomy, relying on executive ministries for budget allocation, limiting its ability to independently fund crucial infrastructure, technology upgrades, and adequate support staff recruitment.
- **Transfer Policy Instability:** The perceived lack of a fully transparent and judicially controlled transfer policy for subordinate judges (Assistant Judge up to District Judge) leads to frequent judicial rotation. This instability disrupts case continuity, forces successor judges to re-familiarize themselves with lengthy part-heard trials and serves as an indirect form of external influence on the judicial process.

6.1.3 Misalignment of Judicial Hierarchy

Although the pecuniary jurisdiction was recently reformed by the **Civil Courts (Amendment) Act, 2021**³², the functional roles remain susceptible to congestion.

- The **Joint District Judge** is intended to be the workhorse for high-value civil litigation, but appellate and revisional processes remain complex, often leading to a disproportionate burden on the **District Judge** to handle intermediate appeals rather than focusing purely on supervisory and administrative leadership.

Resource Scarcity

The second major category concerns the critical deficit in human capital and physical infrastructure, directly impacting the speed and quality of justice delivery.

1. Crippling Judicial Manpower Deficit

The **Judge-to-Population ratio** in Bangladesh is significantly low by international standards. This scarcity results in:

- **Overburdened Cause Lists:** Subordinate judges routinely manage cause lists containing 50 to 100 cases per day, forcing them to operate on a high-volume, low-attention basis. This procedural haste increases the risk of error, which subsequently fuels the appellate load.

³¹ Shetreet, S., & Forsyth, C. (Eds.). (2011). *The culture of judicial independence: Conceptual foundations and practical challenges*. Martinus Nijhoff Publishers.

³² Steelman, D. C., Goerd, J. A., & McMillan, J. E. (2004). *Caseflow management: The heart of court management in the new millennium*. National Center for State Courts.



- **Focus on Disposal over Quality:** The systemic pressure to dispose of cases quickly leads to adjournments and short hearings rather than substantive trial proceedings, contributing to the aging of the case backlog.

2. Inadequate Physical and Digital Infrastructure

Severe disparities exist between urban and rural courts, often in favor of the former.

- **Physical Deficiencies:** Many rural courts suffer from dilapidated buildings, poor record rooms, and a lack of proper facilities for lawyers and litigants. The manual maintenance of crucial case records in substandard conditions results in frequent loss or degradation of documents, requiring time-consuming reconstruction.
- **Technical Implementation Lag:** While the "E-judiciary" project is underway, many rural courts lack the fundamental technological prerequisites, such as reliable internet, adequate hardware, and trained support staff, hindering the uniform adoption of digital case management and e-filing. This lack of robust IT infrastructure exacerbates the slow pace of litigation.

6.1.3 (b) Lack of Procedural Modernization

The third finding highlights that the colonial-era procedural framework, codified in the Code of Civil Procedure, 1908 (CPC), is inadequately supported by modern case management systems, allowing strategic exploitation.

1. Strategic Misuse of Procedure and Jurisdictional Objections

The current procedural rules enable strategic litigant and counsel behavior aimed primarily at delay:

- **Weaponization of Jurisdiction:** Litigants exploit the ability to raise objections to subject-matter jurisdiction late in the trial (even at the appellate stage), allowing years of judicial time to be invested in a potentially nullifiable suit.
- **Frivolous Interlocutory Applications:** The system is overwhelmed by routine and frivolous applications (e.g., *ad interim* injunctions, rejection of complaints under Order VII Rule 11, CPC). The need for full hearing and possible subsequent appeal/revision for these interlocutory orders halts the main trial, turning procedural skirmishes into a primary driver of delay.
- **Bar's Influence:** A minority of the Bar engages in practices such as **forum-shopping**, frequent frivolous objections, and the tactical use of adjournments, which directly contribute to judicial paralysis. The lack of stringent enforcement mechanisms against such professional misconduct allows the backlog to grow.

2. Absence of Robust Case-Flow Management (CFM)

Unlike comparative models in India and Pakistan, Bangladesh's subordinate courts lack an integrated, mandatory, and automated Case-Flow Management system with institutionalized timelines.

- The absence of internal judicial benchmarks for key procedural stages (e.g., serving summons, framing issues, commencing evidence) means that the pace of litigation is dictated by the slowest link or the most motivated delaying party, rather than by a judicially enforced schedule.

These findings collectively illustrate that the crisis in the subordinate civil judiciary is not solely a problem of backlog, but a fundamental failure of the system's structural design and resource allocation to meet the demands of modern civil litigation.

6.2 Recommendations

The reforms proposed here aim not merely to manage the existing case backlog, but to fundamentally transform the subordinate civil judiciary into an efficient, specialized, and autonomously managed institution capable of delivering timely justice in line with modern democratic standards.

A. Recommendations for Structural and Jurisdictional Reform

The goal of structural reform is to rationalize the judicial hierarchy and eliminate functional conflicts arising from ambiguous jurisdictional boundaries.

6.2.1 Implement Dynamic Pecuniary Limits and Rationalize the Hierarchy

While the Civil Courts (Amendment) Act, 2021, provided a much-needed increase in pecuniary jurisdiction, the system requires a mechanism to prevent future obsolescence.

- **Delegated Authority for Adjustment:** The Civil Courts Act, 1887, should be amended to delegate the specific authority for **periodic, non-legislative adjustment** of pecuniary limits to the **Supreme Court of Bangladesh (High Court Division)**, in consultation with the Ministry of Finance and a newly constituted Judicial Policy Commission. This adjustment should be mandated every five years and tied to established national economic indicators and property value inflation, mirroring the principle of dynamic valuation seen in India³³.
- **Role Clarity for District Judge:** The District Judge should be institutionally re-focused entirely on **appellate, revisional, and administrative leadership**, with the primary trial jurisdiction for high-value suits resting exclusively with the Joint District Judge. This ensures the most senior subordinate judicial officer is dedicated to supervision and case management oversight.

6.2.2 Establish Clear Tribunal-Civil Court Demarcation

Legislative clarity is required to enforce the exclusivity of specialized jurisdictions and reduce the use of jurisdictional challenges as a delay tactic.

³³ Law Commission of Bangladesh. (Various years). *Reports on judicial reform*. [Official Government Publications]. (General reference for ongoing reform efforts in the country).



- **Comprehensive Ouster Clauses:** Amend the relevant specialized Acts (e.g., Family Courts Ordinance, Administrative Tribunals Act, Money Loan Courts Act) to include **absolute and unambiguous ouster clauses** for the general civil courts regarding the tribunal's specific subject matter.
- **Ancillary Jurisdiction Consolidation:** The **Family Courts Ordinance, 1985**, must be amended to grant Family Courts **ancillary jurisdiction** to decide property disputes and declaratory suits that arise *directly* from the marital or family relationship, thereby eliminating the need for litigants to file costly and time-consuming parallel suits in the Joint District Judge Court.
- **Specialized Commercial Civil Courts:** Designate specific Joint District Judge Courts in major metropolitan areas such as **Specialized Commercial Civil Courts**. These courts would apply fast-track procedures and timelines, borrowing heavily from the model established by India's Commercial Courts Act, 2015, to efficiently handle high-value commercial, corporate, and intellectual property litigation.

B. Recommendations for Procedural and Case Management Modernization

These recommendations focus on modernizing the Code of Civil Procedure (CPC) and introducing stringent case-flow management techniques to combat strategic delays.

6.2.3 Mandatory Alternative Dispute Resolution (ADR) Screening

The existing ADR provisions under CPC are underutilised. ADR must be transformed from an optional stage into a mandatory gateway for all suitable civil suits.

- **Pre-Trial Mandatory Mediation:** Implement mandatory, court-annexed mediation sessions for all civil suits of a particular class (e.g., family matters, low-value property disputes) **before** the framing of issues and commencement of trial. This should be supervised by trained judicial officers or accredited mediators, providing a non-adversarial, early resolution mechanism.
- **Penalties for Non-Participation:** Introduce strong financial penalties or cost sanctions for parties and their counsel who fail to participate in the mandatory ADR process in good faith, providing a functional deterrent to evasion.

6.2.4 Introduce Robust Case-Flow Management (CFM)

A formal, computer-integrated CFM system is essential to shift control of the case timeline from the parties to the Bench.

- **Judicially Enforced Timelines:** The Supreme Court should mandate the adoption of a national set of **prescriptive, non-negotiable timelines** for key procedural steps (e.g., 60 days for service of summons, 90 days for filing written statement, 30 days for framing of issues).
- **Automated Monitoring:** The E-judiciary system must be immediately upgraded to include an integrated monitoring system (similar to Pakistan's CFM and



India's NJDG model) that alerts the presiding judge and the administrative head (District Judge) when a case breaches its judicially recommended timeline.

- **Strict Control over Adjournments:** Amend the CPC to severely limit the maximum number of adjournments permissible in a suit and introduce high-cost sanctions for all non-essential or tactical adjournments, enforcing the principle that trials must proceed day-to-day once evidence begins.

6.2.5 Strict Enforcement of Jurisdictional Objections at the Earliest Stage

To prevent the waste of judicial time, jurisdictional objections must be tackled decisively at the threshold.

- Amend the CPC to mandate that all objections concerning the jurisdiction of the court (pecuniary, territorial, or subject matter) must be raised by the defendant in the **Written Statement** and must be decided by the court as a **preliminary issue** before the commencement of evidence. Failure to raise such an objection at the initial stage should automatically be deemed a waiver of the right to raise it later, unless it pertains to a fundamental lack of subject-matter competence that cannot be waived.

Recommendations for Institutional Strengthening

These recommendations address the critical deficits in human resources, infrastructure, and judicial independence.

6.2.6 Enhance Judicial Autonomy and Accountability

Operational independence is contingent upon administrative and financial self-sufficiency.

- **Full Financial Autonomy:** Grant the Supreme Court **full fiscal autonomy** over the judiciary's budget, allowing it to independently manage salaries, infrastructure, and technology investments without reliance on executive ministries.
- **Judicially Controlled Administration:** The control over the **transfers, postings, and promotions** of subordinate judicial officers must be vested exclusively in the Supreme Court, ensuring decisions are based purely on merit and the functional requirements of the judiciary, eliminating any perceived risk of executive influence. (Transparency International Bangladesh (TIB) Executive Summary)³⁴
- **Increased Manpower and Specialisation:** Immediately increase the recruitment pipeline for Assistant Judges to address the critical Judge-to-Population deficit. Introduce structured career paths that include **mandatory specialization** in key areas (e.g., commercial law, family law, property law) to ensure judges are functionally adept at managing complex subject matter.

³⁴ Transparency International Bangladesh. (2023). *Judicial integrity and accountability in the subordinate courts of Bangladesh*. TIB

6.2.7 Accelerated and Comprehensive E-Justice Implementation

The "E-judiciary" project must be fast-tracked and implemented with a national standard.

- **National Judicial Data Grid (NJDG) Equivalent:** Immediately develop and publicly launch a **National Judicial Data Grid (NJDG) equivalent**. This centralised, public platform must display real-time case statistics, including case age and disposal rates for every subordinate court, to enforce institutional accountability and facilitate targeted resource allocation, learning from the Indian model.
- **Digital Infrastructure Uniformity:** Prioritize infrastructure investment in rural and remote courts, ensuring uniformity in digital hardware, reliable internet connectivity, and the provision of adequate technical support staff trained in digital evidence recording and case management software.
- **Mandatory Digital Training:** Institute mandatory, continuous digital literacy and procedural training for all judicial officers and court staff through the Judicial Administration Training Institute (JATI) (Journal of Judicial Administration Training Institute), ensuring that the technology is fully utilized and not merely a symbolic addition.

By adopting these layered recommendations, Bangladesh can move beyond incremental adjustments to initiate a comprehensive functional transformation of its subordinate civil justice system, significantly enhancing its capacity to deliver timely, predictable, and high-quality justice.

6.3 Conclusion

This study has undertaken a detailed examination of the functional challenges and jurisdictional conflicts plaguing the subordinate civil judiciary of Bangladesh. The central argument established throughout this dissertation is that while the judicial system has achieved *de jure* independence from the executive following the landmark **Masdar Hossain case** (The Evolution of Bangladesh's Court Structure: How far have we come), its capacity to deliver timely and effective justice is severely undermined by persistent *de facto* structural constraints, critical resource deficits, and a procedural framework ill-equipped for modern litigation.

The subordinate civil courts, comprising the Assistant Judge, Senior Assistant Judge, Joint District Judge, and District Judge Courts, represent the bedrock of the country's legal infrastructure, serving as the primary forum for resolving disputes over property, contracts, and fundamental civil rights. However, the system's ability to fulfil this crucial role is compromised by a self-perpetuating cycle of inefficiency: jurisdictional ambiguities lead to procedural objections; procedural laxity encourages strategic delay; and an acute scarcity of judges and infrastructure prevents the enforcement of strict timelines.

6.3.1 Synthesis of Core Findings

The analysis in Chapters 4 and 5 revealed that the key functional impediments are multifaceted:

1. **Structural Incoherence:** The fragmentation of jurisdiction between general civil courts and specialized tribunals (Family Courts, Money Loan Courts) forces litigants into parallel proceedings, wasting judicial resources and delaying resolution. Furthermore, the administrative and financial control exerted by the executive, despite formal separation, imposes indirect constraints on the judiciary's operational autonomy, particularly regarding resource allocation and judicial postings (Transparency International Bangladesh (TIB) Executive Summary)³⁵.
2. **Resource Paralysis:** The crippling low Judge-to-Population ratio mandates that judicial officers manage unmanageable cause lists, resulting in superficial case review and a focus on disposal rates rather than the quality of justice. This is exacerbated by the absence of modern digital infrastructure, especially in rural courts, and inadequate training for continuous professional development (Judicial System In BD: Key Roles, Functions, And Reforms).
3. **Procedural Obsolescence:** The Code of Civil Procedure, 1908, lacking robust, court-enforced Case-Flow Management (CFM) benchmarks, remains susceptible to exploitation. Strategic use of frivolous interlocutory applications, late-stage jurisdictional challenges, and tactical adjournments by the Bar effectively dictate the pace of justice, often leading to trials lasting decades.

6.3.2 Reaffirming the Path to Reform

The comparative study with India and Pakistan underscores that comprehensive reform is both necessary and achievable. The comparative models highlight the essential need for the judiciary to assume **full operational and financial self-determination** and to leverage technology for institutional accountability.

The recommendations advanced in this chapter provide a layered strategy for functional overhaul:

- **Empowering the Bench:** The implementation of a **dynamic pecuniary limit mechanism** and the clear legislative establishment of **Specialized Commercial Civil Courts** will empower the Joint District Judges to effectively manage the bulk of complex, high-value civil litigation.
- **Controlling the Clock:** The mandatory adoption of **Case-Flow Management (CFM) systems** with automated monitoring and **strict cost sanctions** for

³⁵ *Secretary, Ministry of Finance v. Masdar Hossain*, 52 DLR (AD) 82 (1999) (Bangladesh). (This is the landmark case you cite regarding the de facto vs. de jure independence of the judiciary).



procedural misuse will wrest control of the case timeline from delaying parties and place it firmly with the court, learning from regional best practices.

- **Integrating Technology:** The accelerated and standardized implementation of the **E-judiciary project**, including a public, real-time **National Judicial Data Grid (NJDG) equivalent**, is crucial for injecting transparency and data-driven accountability into case management across all tiers of the subordinate judiciary.
- **Enhancing Autonomy:** Ultimately, the granting of **full financial and administrative autonomy** to the Supreme Court for controlling the budget, judicial transfers, and recruitment is the foundational prerequisite for sustainable functional reform. A judiciary that cannot manage its own resources cannot efficiently manage its caseload.

6.4 Final Reflection

The civil justice system in Bangladesh carries the weighty responsibility of upholding the rule of law and protecting the economic and social rights of its citizens (The Crucial Role of the Civil Justice System in Bangladesh). The success of democracy and economic stability hinges on the certainty and speed of dispute resolution. The current challenges are not insurmountable, but they demand a shift in institutional mindset from merely coping with the backlog to fundamentally redesigning the judicial process.

The era of incremental fixes is past. The time for systemic transformation, leveraging legislative clarity, technological integration, and fearless judicial administration, is now. Only through decisive action to implement these structural and procedural reforms can the subordinate civil judiciary of Bangladesh finally overcome its inherited challenges and secure for its people the promise of accessible, efficient, and impartial justice.



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