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## Corruption by the Court Staffs has been increasing the litigation cost of the litigants: A critical analysis.

By

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### Abstract

Bangladesh is a densely populated country and the judges of the judiciary of this country are very much low proportionately considering population. As the judges are very much overburden for giving judgment and others essential orders passed by them as such they cannot control and take care all about the court function. Sometimes they are very much depended on their staffs as such staffs sometimes misguide them on various issues which are not directly related with the trial. There are happening many incidents which are out of the judges as well higher authority of the judiciary but such activities are the main problems and painful for the litigants. Litigants are bound to follow the order of the courts staffs which is also out of the knowledge of the concerned lawyers. In order to control such situations there should have a job policy for the staffs in the lower judiciary regarding various steps of the litigation proceedings so that staffs cannot misguide litigants, sittings judges and the litigation cost must be decreased even lengthy proceedings shall be decreased.

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## 1. Introduction

There has been an increase in the number of lawsuits filed in Bangladeshi courts, but no corresponding change in the number of cases that have been satisfactorily resolved, all because some court officials have participated in unethical actions. Though somewhere the sitting judges are honest and cordial to disposal of the cases, their staffs are not showing their attitude to disposal the case as such the back log of cases is increasing gradually in the justice system of Bangladesh. Further, the staffs are demanding money from the dealing lawyers even the litigants of the concerned case which ultimately occurred to increase case cost. Without extra money the staffs are not interested to deal the suit file and lawyers and their clients become helpless and to overcome the situations they are bound to pay extra money to the courts staffs to get their service smoothly.

## 2. Literature Review

It is necessary to pay bribe in every step in the judicial system. In this respect, Transparency International Found that "Many employees of the courts do not do anything without getting bribes, the amount of which depends on the type and importance of the

case, number of plaintiffs and defendants, and the justice seekers' capacity to pay"<sup>1</sup>. Further it is impossible to file case in the court without giving bribe to the staff of the court<sup>2</sup>. Lawyers, Assistants of lawyers, Clerks even service seekers are bound to pay bribe to the court staffs frequently in every steps of the court proceedings<sup>3</sup>. In this respect, The Attorney General of the People republic of Bangladesh said, "a large portion of court officials and employees is involved in corruption"<sup>4</sup>. People are paying bribe to the court staffs on various occasions.

Particular	Percentage (%)
Streamlining the trial process	56.3%
Influencing a trial's verdict	32.7%
Assembling paperwork	22.2%
Scheduling a later hearing date	6.3%

<sup>1</sup>'Bribery at every step', *The Daily Star*, December 01, 2017.

<sup>2</sup>*Dhaka Tribune*, October 10, 2019

<sup>3</sup>*Dhaka Tribune*, October 10, 2019

<sup>4</sup>*Dhaka Tribune*, February 04, 2018



Keeping records secret	1%
Justice system employees	24.5%

**Table- 1 -Transparency International Bangladesh, 2010**

The information in Table 1 suggests that there are several contexts in which bribery takes place in the court system. As an illustration, 56.3% of families paid bribes to have their trials expedited, 32.7% to have their verdicts influenced, 22.2% to have documents collected, 6.3% to have the hearing delayed, and 1% to keep records secret. by those working for the court—24.5%. Further, judges corruptions are interlink with the corruption of the staffs. Maximum cases judges are taking bribe through court staffs. A First Information Report, filing of charges, structure of charges, witness testimony, presentation of arguments, and ultimate disposition are all steps in the criminal justice system's distinct method for each judgment<sup>5</sup>. There are some differences between a criminal case and a civil lawsuit, including the following: case filing; witness statements; issue framing; settlement date; peremptory hearing; further hearing; argument placing; delivering judgment<sup>6</sup>. The criminal and civil justice systems are severely understaffed, which causes cases to move at a snail's pace cases<sup>7</sup>. And in those every steps court are taking money from the lawyers, service seekers<sup>8</sup>. Further, Obstacles' decision to buy extra time through bribery caused delays and if the bribe is not paid the case shall be lengthy and due to giving bribe case disposed within short time<sup>9</sup>. In addition to the above, in all steps of civil or criminal or any other cases, the concerned lawyers and clients are bound to pay bribe to the staffs of the court<sup>10</sup>. Overall in steps the court staffs are taking money and without money no order has been passed from the hon'ble court even an honest judge cannot control them<sup>11</sup>.

### 3. Methodology of the study

**Places to find data and how to gather it:** The data has been compiled from secondary sources, such as scholarly publications, the annual report of the Supreme Court of Bangladesh, and similar papers. In addition to these textual works. The Shariatpur District Clerk, attorneys, and clients were also part in the survey. Additionally, we wanted to know their thoughts on how officials' misconduct impacts trust in the legal system.

**3.1. Duration inclination:** The study focuses mostly on the years 2010–2020. Looking back over these last 10 years

<sup>5</sup> Summary Report on Court Services Situation Analysis, December 2013, Judicial Strengthening Project (JUST), Supreme Court of Bangladesh, p-18

<sup>6</sup> Summary Report on Court Services Situation Analysis, December 2013, Judicial Strengthening Project (JUST), Supreme Court of Bangladesh, p-18

<sup>7</sup> Summary Report on Court Services Situation Analysis, December 2013, Judicial Strengthening Project (JUST), Supreme Court of Bangladesh, p-18

<sup>8</sup> Dhaka Tribune, October 10, 2019

<sup>9</sup> Summary Report on Court Services Situation Analysis, December 2013, Judicial Strengthening Project (JUST), Supreme Court of Bangladesh, p-22

<sup>10</sup> DBC News at 9.00 PM dated 18.11.2019

<sup>11</sup> Bangla Tribune, July 30,2020, No case move in the High court without Tadbir.

helps to shed light on the current state of court processes in Bangladesh.

## 4. Corruption in Several parts in the judicial system

### 4.1. In civil Case-

As discussed earlier, Civil lawsuits differ in that they begin with the filing of the case, then proceed to the following: witness statements, issue formulation, settlement date, peremptory hearing, subsequent hearing, argument placement, and return or recognition of service due judgment<sup>12</sup>.

#### 4.1.1. Filing of the case-

In order to initiate a lawsuit, a plaint or other legally required document must be provided<sup>13</sup> and the suit shall file in the *Sheristadar*<sup>14</sup>. At the time of filing suit, there shall follow few steps and in each steps the lawyers and clerks are bound to pay bribe to the Sheristader and his assistants<sup>15</sup>.

#### 4.1.2. Service Summons-

The process server are very much reluctant to serve the summon they serve the summon by sitting their office due to their corruption<sup>16</sup> but per the rules of civil procedure, process servers are tasked with the duty of delivering court summonses to defendants or other parties involved in a dispute.

The court's process server causes a delay in the issuance of summonses, the second stage in a civil lawsuit. It has come to light that certain process servers omit key details when documenting the service of summons<sup>17</sup>. Furthermore, due to process server fraud, the majority of summonses wind up back in court, causing the court to wait months, if not years, for their return. It is not possible to serve summon within time, if the interested party shall not communicate with *Nejarat*<sup>18</sup> section of the court by giving bribe<sup>19</sup>. Further, it appears that a process server should manage

<sup>12</sup> Summary Report on Court Services Situation Analysis, December 2013, Judicial Strengthening Project (JUST), Supreme Court of Bangladesh, p-18

<sup>13</sup> The Code of Civil Procedure, 1908, section 26.

<sup>14</sup> Sheristader is the Chief Ministerial Officer of a Civil Court. A court clerk who works in a separate place apart from the court room and who keeps and maintains all the records except the case records which are 'part-heard' (the cases in which some of the witnesses have been examined and some of the witnesses have been partly examined, and the recording of evidence is yet to be completed).

<sup>15</sup> Dr. Md. Akhtaruzzaman, "Case Management and Court Administration in Bangladesh, Advocate Razia Khatun, Dhaka, 1<sup>st</sup>, 2014. P-209

<sup>16</sup> Dr. Md. Akhtaruzzaman, "Case Management and Court Administration in Bangladesh, Advocate Razia Khatun, Dhaka, 1<sup>st</sup>, 2014. P-80

<sup>17</sup> Dr. Md. Akhtaruzzaman, "Case Management and Court Administration in Bangladesh, Advocate Razia Khatun, Dhaka, 1<sup>st</sup>, 2014. P-77

<sup>18</sup> A department of the civil court where the matters of service of notice or summons are dealt with. A clerk designated as *najir* supervises and controls the service of summons by the process servers who are known as *Jarikarakas*. A judicial officer is appointed to supervise the activities of *Nejarat* and he is designated as *judge-in-charge* of the *Nejarat*.

<sup>19</sup> Md. Shariful Islam, Politics – Corruption Nexus in Bangladesh, An Empirical Study of the Impacts on Judicial Governance, Asian Legal Resource Centre, 2010, Hong Kong, p-77

Nazir by means of giving money to get summon, and the process server usually demand money from the plaintiff for serving notice even demand money from defendants for not to serve summon<sup>20</sup>. Further, Nazir is obligated to physically check process service on a frequent basis according to Rule 108 of the Civil Rules and Orders (Volume I), but he is unable to do so due to his corruption. However, if the summons is not issued within five working days, the court officer is held accountable for misconduct pursuant to the principles of civil process<sup>21</sup>, no action has been taken against him.

#### 4.1.3. Written statement-

At the time of filing written statement by the lawyers, they are bound to pay bribe or baksis to the *peshkar* otherwise they are unwilling to receive the written statement from the defendants lawyers even they become non-cooperative upon the lawyers.

#### 4.1.4. Alternative Dispute Resolution

Now section 89 A of the code of civil procedure has been incorporated 'mediation' with a view to early settlement or disposal of the case but the concerned staffs i.e. peskar, serestadar of that case are not showing interest to settle the case through settlement. Further they have taken money from the mediators and dealings lawyers for accepting mediations even they deploy the mediators according to their choice specially who are usually pay money them.

#### 4.1.5. Framing Issue

The sitting judges usually defer to the Bench Assistant (Peshkar) when it comes to framing the judgment. Before deciding to define the issue, Peshkar routinely asks the parties involved for compensation, and his conclusions are often swayed by their interests<sup>22</sup>.

#### 4.1.6. Setting date, preemptory hearing

Maximum civil cases are pending in this stage. Among other things, the presiding judge is liable for determining when peremptory hearings will take place and how many cases can be scheduled for each day of those hearings. But the court staff is essential for sitting judges to accomplish this<sup>23</sup>. Furthermore, it is mentioned that there is a limit of six cases each date, regardless of whether they are disputed or not. No judge or court employee would take on more cases if they weren't paid for their time and effort. The judge presiding over the case should personally determine the peremptory hearing date within the "settling date," as specified in the High Court's Rules and Orders, Civil (Volume I, Chapter 7, Part I, Rule 144), a practical guide for the

<sup>20</sup>Md. Shariful Islam, *Politics – Corruption Nexus in Bangladesh, An Empirical Study of the Impacts on Judicial Governance*, Asian Legal Resource Centre, 2010, Hong Kong,p-77

<sup>21</sup> *The Code of Civil Procedure Code, 1908, Order5, Rule-1.*

<sup>22</sup>Dr. Md. Akhtaruzzaman, "Case Management and Court Administration in Bangladesh, Advocate Razia Khatun, Dhaka, 1<sup>st</sup>, 2014. P-93

<sup>23</sup> *Rule 124 Civil Rules and Orders (Volume I) cited in Siddiqur Rahman Miah, Commentary on Civil Rules and Orders, Dhaka: New Warsi Book Corporation, 2001, p. 82.*

administration of civil disputes. Giving the secretarial staff the power to set the dates is a surefire recipe for chaos and abuse.

#### 4.1.7. Judgment and Decree-

A decision must be rendered by the court no later than seven days after the conclusion of the case hearing<sup>24</sup>. The unfortunate reality is that once a decision has been reached, the bench officer or court personnel will attempt to conceal the truth in order to financially exploit the people involved even more. After a civil lawsuit result is announced, the next step is to draft the decree. Despite being primarily responsible for formulating the decree, paying the sheristadar expedites the procedure<sup>25</sup>.

#### 4.1.8. Execution of Decree-

It is not uncommon for the execution process to take significantly longer than the original case. However, the learned court's final order of execution does not launch the Nezarat's duty; the victorious party must pay the additional fee before execution can begin. Under extraordinary circumstances, the nazir may inform the court that the execution is difficult owing to unforeseen circumstances and that not even the police can offer help due to a lack of funds. It should be noted that the nine acres of land that the Chittagong Railway authority had ordered recovered could not be recovered from the illegal users as the police had refused to obey the order<sup>26</sup>.

#### 4.1.9. Obtaining Certified Copy

To obtain certified copy it is necessary to pay money to the staffs of the certified copy as there need two working days for collecting certified copy but this is not possible if there do not pay money to the staffs<sup>27</sup>.If money does not pay to them then there need 15 or 20 days for obtaining certified copy<sup>28</sup>. Further, they lost the petition intentionally.

#### 4.1.10. Others steps-

Court staffs are demanding money others steps of the court proceeding. Lawyers are usually filing injunction petition, local inspection petition, Appointment of receiver, Local Investigation, Expert opinion etc. and for all the petitions lawyers are bound to pay the court staffs otherwise they do not co-operate the concern case. It is further appeared that court staffs help to reject the case by taking money from the other parties.

#### 4.2. In Criminal Case-

##### 4.2.1. During Filing/Lodging of a Case:

As soon as a case is entered, corruption among court staff begins. The bench assistants, known as Peshkars, demand payment before they will accept and document a case. The case file could be "lost"

<sup>24</sup> *Order XX Rule 1 of the Code of Civil Procedure, 1908*

<sup>25</sup> Md. Shariful Islam, *Politics – Corruption Nexus in Bangladesh, An Empirical Study of the Impacts on Judicial Governance*, Asian Legal Resource Centre, 2010, Hong Kong,p-86

<sup>26</sup> *The Daily Jugantor, May 22, 2009.*

<sup>27</sup> *Practice and procedure in the Supreme Court, Md. Abdul Halim, CCB Foundation: Lighting the Dark. 2<sup>nd</sup> edition, 2008, Dhaka, P-150.*

<sup>28</sup> *Practice and procedure in the Supreme Court, Md. Abdul Halim, CCB Foundation: Lighting the Dark. 2<sup>nd</sup> edition, 2008, Dhaka, P-150.*

or not recorded if you refuse to comply with their criteria. Paying a particular charge to the peshkar is typically required to initiate a case in most courts. However, more advantages will be more expensive. Peshkars will also demand payment in full if their clients want their cases heard more quickly. A written statement and an oath test may be necessary for the petitioner to be administered in a complaint proceeding. On the deposition page, the deponent must either sign or make a thumb impression. People who file complaints often have to wait as the court official isn't there to sign the documents. The issuance of process following the taking of cognizance of a crime is treated by the court officials as an extremely severe order. They want to hide the summonses and warrants in a desk drawer and ignore the court's orders until they amass a significant sum of money. The peshkar might be stashed away in a drawer with the arrest warrant. After that, he orders his thugs to contact the defendant clandestinely using the address from the petition of complaint. The peshkar will request payment to postpone the issuance of the arrest warrant if the accused responds. The offender has an opportunity to evade police custody while he is preparing to surrender to the court. Staff and umedars of the courts receive a share of the funds received in this manner<sup>29</sup> at the end of the day.

**4.2.2. Investigation/Inquiry Stage:**

Investigation stages are very much vital part of criminal cases. In this stage accused should present before the learned court as and when required by the learned court. In these stages, the accused as well as complainant may submit various petitions for various purposes but the staffs of the GR section in GR cases and others staffs of CR sections usually demand money from the lawyers for each petitions.

**4.2.3. Cognizance Stage:**

Paying the additional expenses to the experts who serve summonses or instructions from the learned court is crucial in a CR case once the magistrates have taken notice of all the accused parties. In case of FIR case when the charges has come to the court and if the dealing lawyers wants to see charge sheet then the staffs are demanded extra money. If the informant of FIR case wants to file Narazi petition then the staffs want money to receive the Narazi petition.

**4.2.4. Pre-Trial stage**

The transfer of the case file from the cognizance court to the trial court signifies that the matter is prepared for trial once the court has taken cognizance of the offense and all of the accused have been present. If an accused person is not present when the proceedings begin, it becomes relevant to ensure their presence in court. There are several sorts of corruption and harassment that occur throughout the lengthy and complicated pre-trial phase.

**4.2.5. Trial Stage**

Trial stage is comprised with framing charge, examination of witness, examination of accused's persons, argument and

<sup>29</sup>Umedars are the non-employed persons working in the court and assisting the court staffs. Generally the bench officers pay them on daily basis and they are to work as per the wishes of the bench officers.

judgment. Each stages of trial the court staffs are taking bribe, they do not frame charge if the money has not been paid. No witness shall call without taking bribe. If anyone shall not pay the court staffs the court staffs keep; long date for argument and judgment.

**5. Analysis of reported court Data of Sharitpur**

Survey was conducted through a questionnaire to know the respondents view and level of consciousness on the subject of this article. The summary of findings of the survey carried out for the purpose of this article is given below:

**5.1. Factual Information of the Respondents:**

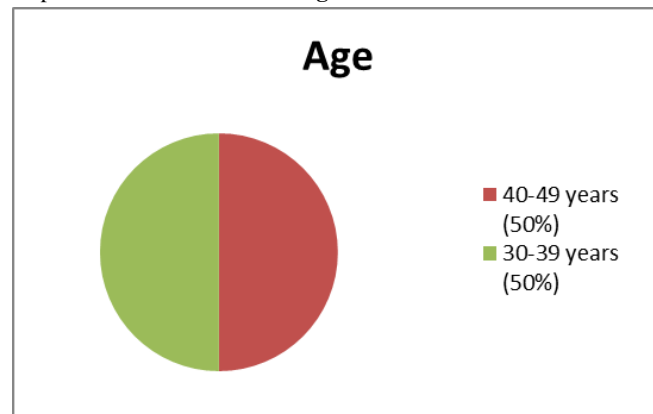
Out of the ten respondents, eight are male and two are woman as women in law profession are very few and women try to avoid litigation. Percentage of gender of the respondents is shown in the **Table no. 5.1**

Respondents	Percentage
Male	80%
Female	20%
Total	100%

**Table: 5.1. Percentage of gender of the respondents**

**5.2. The Respondents' Age :**

Out of the total respondents, it is found that 05 belong to 30 – 39 years age, 05 belong to 40 – 49 years age. The number of the respondents is shown in the **diagram no.5 .2**



**Diagram no. 5.2: Number of respondents by age**

**5.3. No. of years working in the Court:**

Of the respondents, it is found that 9 respondents are experienced more than 5 years as dealing cases in the court, 1 respondent are experienced about 2 years to deal a case in the lower court .The number of the respondents is shown in the **diagram no. 5.3.**

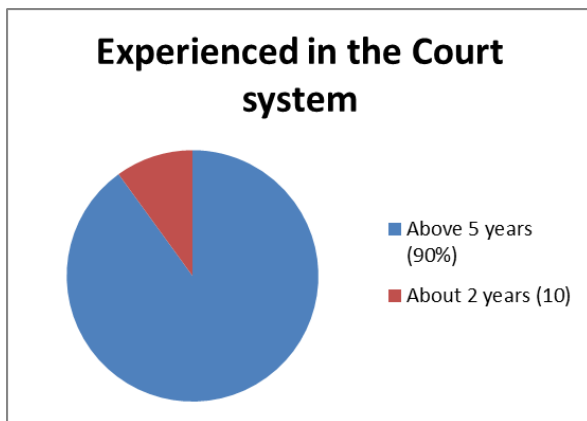


Diagram no. 5.3: No. of years working in the Court System

5.4. Major findings:

Now, the judicial sectors have been facing critical problems due to increasing corruption of the court staffs. Reply of the respondents appears that 89% court staffs are very much corrupted in the judicial system. They are receiving money from the lawyers, clerks as well clients in various steps of a case. Details respondents' reply of the receiving money is given below:

Criminal case		Civil case	
Steps	Average Taka	Steps	Average Taka
Filing	200	Filing case	500
Summon Execution (CR Case)	500	Any petition	200
Bail petition (CR Case)	200	Time petition	100
Bail petition (GR Case)	200	Misc. case	300
Bail Bond in all types of cases	500	Witness	200
Witness	200	Argument	100
Time Petition	100	Judgment	200
Certified copy collection	1000	Decree	700
Judgment	300	Certified copy	2000
Seeing record	200	Affidavit	200
Court GRO at the time of bail hearing in GR case.	1000	Seeing record	100

5.5. Reason for corruption of the court staffs:

5.5.1. Bar Association Liability:

There is huge liability of the bar association for increasing corruption of the staffs of the court. In this respect 90 percent of the respondents said that the leaders of the bar association is reluctant to control staffs corruption. They do not take action against the staffs for their corruption. Sometimes the leaders of the bar are taking illegal advantage through staffs of the courts.

5.5.2. High Ambition

High ambitions of the court staffs are liable for increasing their corruptions. Without bribe they do not want to works. In this respect, 30 percent respondents replied that due to high ambition of the court staffs the rate of their corruption is increasing day by day. Even the court staff specially peskar, serestader have been engaged corruption and contact with the defendant to reject the case by showing absence the plaintiffs as such they torn out the presence sheet of the plaintiffs on several dates and lastly show to the presiding judges that the plaintiff is absent from the case as such the learned court reject the case.

5.5.3. Local Staffs

Local staffs are very much corrupted than remote areas staffs as the maximum people and lawyers are known by them before entering the jobs which makes them corrupted whereas remote areas staffs are comparatively low corrupted as they feel afraid of the local people as well as lawyers. 30 percent respondents replied that local staffs are much corrupted than remote staffs.

5.5.4. Political power

Due to political reasons the staffs are showing their powers, no judges or higher authority cannot take any action against corrupted staffs as they have been showing political power during taking action. In this respect 30% respondents replied that due to political power staffs become corrupted in the court, they never bother the action of the higher authority even threat the higher authority f the district level as such higher authority sometimes avoid making collusion against such types of staffs.

5.5.5. Sitting Judges Negligence

As the judges are depending on logistic support from the court staffs, they are very much negligence of the corruption of the staffs. Maximum judges know about the corruption of the staffs but they normally do not take action against their staffs as such staffs are decreasing their corruption gradually. In this respect, 20 percent respondents replied that sitting judges are showing very much negligence to take action against their staffs. Further, sometimes the sitting judges are taking undue advantage from the staffs which make them negligence against the staffs.

5.5.6. Getting Jobs by Money:

Now, it is very alarming that maximum staffs are taking jobs by means of bribe which ultimately make bound the staffs to do corruption as their prime intention to recover money by taking bribe. As 40 percent respondents replied that maximum court staffs are getting jobs by giving bribe at the time of appointment themselves as such they are bound to take bribe in order to serve the people.

5.5.7. Others Reason:

It is now commonly seen that sometimes clients are directly communicate with the courts staffs and offered them to complete their works and in that situations staffs have been accepting their offers whether they can do the works or not. In this ways clients are apprehended by the court staffs and practically clients pay professional fees to the lawyers on fixing date and also pay money to the staffs. Further, there is created a custom from time immemorial to pay the courts staffs on various steps of the case. Moreover, 20 percent respondents replied that as maximum government employees are corrupted as such courts staffs are corrupted.

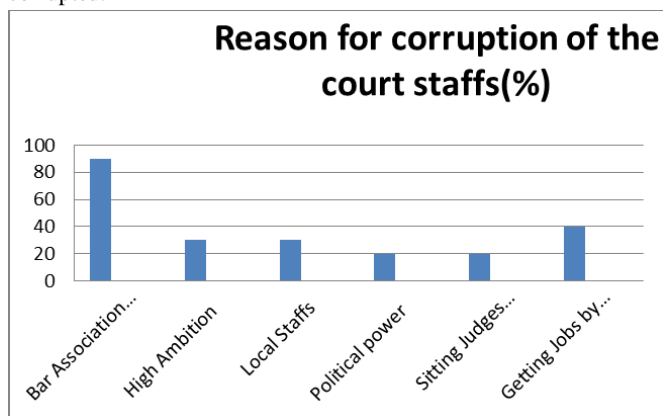


Diagram no. 5.5: Reason for corruption of the court staffs

6. Control of corruptions:

In this respect, the respondents are replied that by applying some policy the corruption of the staffs may be decreased. Details are given in the following diagram.

Particular	Percentage %
Strong role of the Bar	30
Interfere by the judges	30
Fare selection and job through merit	30
Control corruption.	70

Table 7.1- Decreasing Corruption of the staffs

It appears from the above table 6.1 that more than 30% respondents replied that if the concern bar association shall be strong it is possible to control the corruption. Further 30 percent respondents replied that if the judges shall interfere to control the corruption then it is possible to control corruption of the staffs and 30 percent respondents relied that fare section may decrease corruption if the staffs are selected through merit without any bribe. Further controlling corruption may decrease the expenditure of the clients. Further, respondents reply that if all the hazira and any petitions are received by the concerned courts staffs then they are alert about their functions, even they may provide commissions due to their extra works that commission shall be calculated maintain register. Furthermore, some respondents replied that all staffs should be under accountability and responsibility to provide

documents from the concerned court as well any record room as per urgency of the petitions which is determined by the court staffs by court fees.

7. Recommendations

Based on the study's findings, researchers have proposed the following actions for future investigations and recommendations to court officials.

- All papers shall be provided by the courts staffs by paying court fees and all fees must be included in a register and in that case application date, time for submission of that application should be included in the register.
- Court staffs should be bound to give case record according to court fees and court fees must be slap i.e. instantly, within one hour, within one day etc.
- All petitions shall be accepted within 4.00 PM if delay filing then court fees may be increased.
- Court fees income except usual cost of the case as court fees may be allocated among the staffs according to designation.
- All petitions, hazira shall be received by the court staffs so that they shall not hide the hazira and petitions of any case even no case shall be dismissed without informing the dealing lawyers as digital communication is available.
- Political power should be removed for appointment of the staffs.

8. Conclusion

It is crystal clear that the court staffs are very much related with the court function. This is very difficult to ensure quick and speedy justice upon the people by the sitting judges without assistance of the court staffs. In these situations, it is necessary to control the corruptions of the court staffs at any cost to ensure fair and speedy justice upon the people so that the general people shall be confident to court as well as the lawyers.

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