



Research Monograph
on
**“Rethinking Judicial Independence: Limitations of Separation from
the Executive”**

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Letter of Transmittal

To,
Sonargaon University

Subject: For the submission of thesis paper titled "Rethinking Judicial Independence: Limitations of Separation from the Executive"

Dear Sir,

With due respect and humble submission, I am honored to present my thesis paper titled "Rethinking Judicial Independence: Limitations of Separation from the Executive" which has been prepared as a partial requirement for the completion of my Bachelor of Laws (LL.B Honours) under the Department of Law at Sonargaon University.

This research has been carried out with utmost sincerity and dedication. I have made every effort to maintain the required academic standards and present a comprehensive analysis on the chosen topic. I respectfully submit this work for your kind perusal and academic evaluation.

If any clarification or further information regarding this thesis is needed, I will remain available at your convenience.

Yours faithfully,
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Certification of Supervisor

This is to certify that Rina Akter, bearing ID No. LLB2201025040, Batch: 25th, is a bona fide woman student of the Department of Law, Sonargaon University.

She has completed the research monograph entitled “Rethinking Judicial Independence: Limitations of Separation from the Executive” under my supervision and guidance.

To the best of my knowledge, this work is original and has not been submitted, either in part or in full, to any other university or institution for the award of any degree or diploma.

I wish her every success in her future academic and professional endeavors.

Signature of the Supervisor:

Muhammad Ali
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Declaration

I do hereby declare that the dissertation submitted to the Department of Law, Sonargaon University in the partial fulfillment of the requirements for the degree of the LLM (1 Year) Degree. It is carried out by me under the guidance and supervision of **Muhammad Ali, Lecturer & Course Coordinator, Department of Law, Sonargaon University**. Research method and approaches strictly have been followed during undertaking the work. Sources consulted are duly referred, quoted and incorporated in the text and references included at the end of the work which is based on my research. I hereby declare that this dissertation is original and free from plagiarism and it has not been submitted earlier partly or wholly to any other university or institution for any degree or diploma.

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Finally, appreciation is extended to all individuals and institutions whose direct or indirect support facilitated the completion of this research.

Student Signature

Abstract

This paper critically examines judicial independence in Bangladesh by moving beyond the traditional emphasis on separation of the judiciary from the executive. It argues that formal separation alone is insufficient to ensure true judicial autonomy in practice. The study highlights structural, institutional, and socio-political constraints, including executive influence, appointment and promotion processes, financial dependence, and informal pressures. By analyzing these limitations, the paper emphasizes the need for a broader understanding of judicial independence that incorporates accountability, transparency, institutional capacity, and constitutional culture. The paper ultimately calls for comprehensive reforms to strengthen both the functional and substantive independence of the judiciary in Bangladesh.

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Introduction

An independent judiciary is the sine qua non of a democratic system of government. Judicial independence is closely linked to the doctrine of separation of powers, which allocates governmental authority among three distinct organs: the legislature, the executive, and the judiciary. The legislature enacts laws, the executive implements and administers them, and the judiciary interprets and applies the law in concrete disputes. While the legislative function is prospective, general, and prescriptive, the judicial function is retrospective, specific, and determinative.

The doctrine of separation of powers, originating in classical constitutional theory, seeks to prevent the concentration and abuse of power through a system of checks and balances among the three branches of government. Judicial independence requires not only institutional autonomy of the judiciary but also decisional independence of individual judges, free from influence by the executive, legislature, or other extraneous forces. Executive dominance has also been reinforced through the frequent use of emergency powers and constitutional amendments. Historical experiences particularly during periods of military rule and emergency governance have normalized executive intervention in constitutional processes. Even under democratic governments, the executive has demonstrated a tendency to prioritize political stability and control over constitutional restraint. On the other hand, Despite the formal separation of the judiciary from the executive in 2007, executive dominance over the lower judiciary in Bangladesh continues to persist in both overt and subtle forms. This dominance is most evident in matters relating to judicial appointments, career progression, administrative control, and functional authority, revealing the limitations of structural reform without corresponding institutional and cultural change.

One of the most significant areas of executive dominance lies in judicial appointments, particularly to the higher judiciary. Although the Constitution envisions judicial independence, it grants the executive a decisive role in the appointment of Supreme Court judges through presidential authority exercised on the advice of the Prime Minister. In practice, this arrangement has resulted in allegations of politicization, favoritism, and lack of transparency. Articles 55 and 56 vest executive authority in the Prime Minister, who exercises significant control over state administration. This concentration of power has limited the capacity of Parliament to function as

an effective check on executive actions. As a result, constitutional safeguards designed to ensure checks and balances remain weak in operation, reinforcing executive dominance across institutions, including the judiciary. Scholars argue that executive control over appointments creates a system of anticipatory compliance, where judges may consciously or unconsciously align their decisions with executive preferences. This undermines the substantive independence of the judiciary, even when formal separation exists.

In Bangladesh, judicial independence is recognized as a fundamental constitutional principle. Article 22 of the Constitution of the People's Republic of Bangladesh mandates the separation of the judiciary from the executive, underscoring its role as a basic feature of the constitutional framework. The effectiveness of the higher judiciary depends upon the protection and enforcement of this independence. This study examines the state of judicial independence in Bangladesh in light of three internationally recognized standards—the Montreal Declaration (1983), the UN Basic Principles on the Independence of the Judiciary (1985), and the Beijing Statement (1995)—with comparative reference to India and Pakistan. We will also examine what are the limitations beyond the executive separation in the judiciary system of Bangladesh and show how we get over from it by tracking the institutional faults.

Chapter One

Literature Review and Conceptual Analysis

Literature Review

1. Judicial Independence: Traditional Conceptions

Judicial independence has long been conceptualized as the freedom of courts and judges from inappropriate influence by the other branches of government, especially the executive. Classic legal theory situates this principle within the doctrine of separation of powers, which assigns distinct roles to the legislature, the executive, and the judiciary to preserve democratic governance and the rule of law. Under this model, judicial autonomy primarily means that the judiciary must be institutionally insulated from executive interference in decision-making, appointments, transfers, promotions, and disciplinary actions. Separation of powers, in its strictest interpretation, posits that executive control over courts undermines impartial adjudication and erodes public trust in justice systems.

Scholars argue that without judicial independence, the judiciary cannot act as a check on state power or protect fundamental rights. Typical indicators used in such studies include appointment procedures, tenure security, financial autonomy, and freedom from political retaliation. A review of judicial independence literature notes that judicial appointments and transfers often become controversial due to perceived executive influence, weakening institutional autonomy. This view remains foundational in both comparative constitutional law and democratic theory.

2. Constitutional Guarantees and Separation

Many constitutions explicitly require the separation of judicial and executive functions. For example, Bangladesh's constitution mandates the separation of the judiciary from the executive to strengthen independence. Similarly, many post-colonial and common law jurisdictions enshrine separation in constitutional texts and statutes. The basic assumption in this body of scholarship is that formal separation—structural demarcation—is a necessary condition for independence. The

intellectual foundation of this approach can be traced back to Montesquieu, who argued in *The Spirit of Laws* that liberty cannot exist where judicial power is not separated from executive authority. Moreover, A. V. Dicey, one of the foundational thinkers in law discipline, posited his famous book about judicial independence per se, Dicey's articulation of rule of law principles underpins much modern scholarship on why an independent judiciary matters. Dicey's ideas are frequently used as a normative benchmark against which independence and separation are assessed. (Introduction to the Study of the Law of the Constitution, 1885)

In practice, constitutional texts often operationalize separation through institutional demarcation. For example, constitutions may prohibit executive officials from exercising judicial functions or restrict executive involvement in judicial administration. In post-colonial states, including Bangladesh, India, and Pakistan, constitutional separation has been viewed as a corrective to colonial legacies where executive officials routinely performed judicial roles. Bangladesh's Constitution, for instance, mandates separation of the judiciary from the executive with the explicit aim of ensuring independence, impartiality, and accountability within the justice system. Recent research work in Bangladesh by S. M. Masum Billah in his magnum opus work "Judicial Independence and the Masdar Hossain Legacy" depicts that Masdar Hossain case reshaped the legal framework for judicial independence in Bangladesh. It shows how judicial autonomy is shaped not just by separation but by judicial interpretation, legal culture, and institutional practice.

However, these traditional frameworks mainly address visible institutional structures and administrative arrangements. They emphasize the removal of overt executive control (such as executive supervision of court registries or direct management of judicial budgets) but tend to treat separation and independence as synonymous concepts.

3. Critiques of the Classical Separation Model

Despite the broad acceptance of separation as foundational, recent scholarship highlights significant limitations of this paradigm. Experts suggest that formal separation does not inherently guarantee substantive judicial autonomy. Judges may be institutionally separated yet still subject to political pressures, informal influence, and systemic bias that formal separation does not address.

Alexander Bickel in his influential book, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (1962), examines the paradox of judicial independence and legitimacy, describing what he calls the counter-majoritarian difficulty that an unelected judiciary can invalidate actions of democratically elected branches. This challenges simplistic views that independence is purely structural. His normative analysis emphasizes the role of judicial restraint, legitimacy, and consent of the governed pushing scholars to reconsider independence beyond separation of powers.

Some Critics also point out that public trust in judicial institutions depends less on constitutional text than on perceptions of impartiality, procedural fairness, transparency, and accountability. Cases of executive influence or the perception thereof can erode legitimacy even when formal separation exists. These perspectives underscore that independence is multi-dimensional: institutional, behavioral, perceptual, and normative. Comparative constitutional research further reveals that separation is often implemented unevenly. While adjudicative functions may be formally separated, administrative and financial control of the judiciary frequently remains under executive authority. This partial separation undermines the effectiveness of constitutional guarantees by enabling indirect forms of influence. In recent constitutional discourse, therefore, separation is increasingly viewed as the starting point rather than the endpoint of judicial independence. While constitutional guarantees remain indispensable, their effectiveness depends on complementary mechanisms that address informal power relations, political culture, and accountability structures. The prominent research, *Courting Peril: The Political Transformation of the American Judiciary* by Charles Gardner Geyh (2016), emphasizes judicial conduct, selection, accountability, and political pressures, arguing that true independence must be understood in light of institutional design, ethics, and transparency, not just formal separation. Christopher Wolfe states that how judicial review transforms constitutional practice, showing that independence is not purely separation but also a dynamic interpretive power that interacts with political structures. *The Rise of Modern Judicial Review: From Judicial Interpretation to Judge-Made Law* (1986)

One of the most significant constraints on judicial independence in Bangladesh lies in the appointment and promotion process. Although the judiciary is constitutionally separate, the executive retains decisive influence over judicial careers, particularly at the higher judiciary level. Appointments to the Supreme Court are often perceived as politically motivated, raising concerns about loyalty, conformity, and judicial restraint. Legal scholars argue that when judges' career

advancement depends on executive discretion, formal separation becomes largely symbolic. M. Rafiqul Islam describes this phenomenon as a constitutional paradox: the judiciary is formally independent yet functionally constrained by political considerations. Such influence can create a chilling effect, discouraging judges from delivering decisions that challenge executive authority. We will examine what are the limitations beyond the executive separation in the judiciary system of Bangladesh and show how we get over from it by tracking the institutional faults.

Conceptual Analysis

From the proposed title of the Assignment “Only separation of the Judiciary from the Executive is not enough to ensure the independence of the Judiciary in Bangladesh” we have got two basic concepts namely separation of powers and independence of judiciary. We need to discuss two basic concepts distinctively.

1.Independence of Judiciary:

Independence of judiciary means a fair and neutral judicial system of a country, which can afford to take its decisions without any interference of executive or legislative branch of government. The ‘most central and traditional meaning of judicial independence is the collective and individual independence of judges from the political branches of the government, particularly from the executive and government.¹

A comprehensive definition of judicial independence is given by Green. He defines as follows:

The capacity of the Courts to perform their Constitutional function free from actual or apparent influence by and to the extent that it is constitutionally possible, free from actual or apparent dependence upon any persons or institutions including, in particular, the executive arm of government, over which they do not exercise direct control.²

1..Mauro Cappelletti(1989),*The Judicial Process In Comparative Perspective*, Clarendon Press,Oxford,1991at p 69.
2 .Guy Green, ”The Rationale and Some Aspects of Judicial Independence,(1985)59,*Australian Law Journal* 135, at p 135.

The definition emphasizes that in exercising judicial functions judges should be free from any direct or indirect interference by the executive government, any institution or any private individuals.

Independence of judiciary truly means that the judges are in a position to render justice in accordance with their oath of office and only in accordance with their own sense of justice without submitting to any kind of pressure or influence be it from executive or legislative or from the parties themselves or from the superiors and colleagues.

However, the contemporary concept of judicial independence envisaged in numerous international instruments requires as well that judges should be free to decide cases impartially, without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.³ The concept of judicial independence as recent international efforts to this field suggests, comprises following four meanings of judicial independence.⁴

(i) Substantive Independence of the Judges: It is referred to as functional or decisional independence meaning that in the discharge of their judicial functions and other official duties, judges are subject to nothing but the law and their conscience.⁵ The substantive independence of judges requires that in performing all the administrative, procedural and substantive duties a judge should be free from any direct or indirect interference, improper influence or pressures.⁶

(ii) Personal independence: Personal independence signifies that, the tenure of judges and the terms and conditions of their service are adequately secured so as to ensure that individual judges are not subject to executive control.⁷ In order to secure the administration of justice a judge should be placed in a position where he or she has nothing to lose by doing what is right and little to gain by doing what is wrong.⁸ Such a position can be guaranteed by ensuring the personal independence of a judge.

3. *Universal Declaration on the Independence of Justice (Montreal Declaration) 1983, Art 2.02.*

4. *Bari, 1993, 2; Rahman, 2000*

5. *Shimon Shetreet and J Dechenes, Judicial Independence: The Contemporary Debate, 1985, at p 630.*

6. *Ibid, at p 630.*

7. *International Bar Association Code of Minimum Standards of Judicial Independence, 1982.*

8. *R M Dawson, The Government of Canada (University of Toronto Press, 1954) at p 486.*

(iii) Collective Independence: That means institutional administrative and financial independence of the judiciary as a whole vis-à-vis other branches of the government namely the executive and the legislative .This aspect of judicial independence has a great impact on the individual independence of judges. Collective or institutional independence is associated with court administration, which includes assignment of cases, control over administrative personnel, maintenance of court buildings and preparation of judicial budgets and allocation of resources. The Montreal Declaration-1983 and the Beijing Statement-1995 emphasis that the main responsibility for court administration should be vested in the judiciary.⁹

(iv) Internal Independence: That means independence of judges from their judicial superiors and colleagues. It refers to, in other words, independence of a judges or a judicial officer from any kind of order, indication or pressure from his judicial superiors and colleagues in deciding cases. In this regard, the Montreal Declaration 1983 provides:

In the decision making process, judges shall be independent vis-à-vis their judicial colleagues and superiors. Any hierarchical organisation of the judiciary and any difference in grade or rank shall in no way interfere with the right of the judge to pronounce his or her judgement freely.¹⁰

Similarly, the Beijing Statement 1995 provides:

In the decision making process, any hierarchical organisation of the judiciary and any difference in grade or rank shall in no way interfere with the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgement.¹¹

Hence, internal independence of judges is relevant to both the procedural and substantive aspects of judicial duties.

2.Separation of Powers

9 .*Montreal Declaration*1983, Art 2.40; *Beijing Statement 1995*,Art 36.

10 . *Montreal Declaration 1983*, Art 2.03.

11 . *Beijing Statement 1995*, Art 6.

Judiciary is one of the three branches of government which plays an important role in resolving disputes between citizens as well as between citizens and government. Separation of judiciary is the precondition of the sound and independent judiciary. The idea of this separation of powers is traceable to Aristotle.¹² Jean Bodin also advocated separation of powers. Bodin said, “To be at once legislator and judge is to mingle together justice and the prerogative of mercy, adherence to the law and arbitrary departure from it”. But the writings of Locke¹³ and Montesquieu¹⁴ gave the theory of separation of powers a base on which modern attempts to distinguish between Legislative, Executive and Judicial power are grounded. Locke distinguished what is called:

1. Discontinuous legislative power
2. Continuous executive power
3. Federative power.

He included within ‘discontinuous legislative power’ the general rule making power called into action from time to time and continuously. ‘Continuous executive power’ included all those powers which we now call executive and judicial. By ‘federative power’ he meant the power of conducting foreign affairs.¹⁵

Generally, the concept of separation of the judiciary from the executive refers to a situation in which the judicial branch of government acts as its own body free from intervention and influences from the other branches of government particularly the executive. So the theory of separation of powers signifies that;

1. The legislative, the executive and the judicial powers of a government should be separated into three organs, and each will be entrusted to different body or authority.
2. Each organ will be limited to its own sphere; and
3. Within its own sphere each will be independent and supreme.¹⁶

12 .Aristotle: *Politics*,IV,14.

13 .*Second Treaties of civil Government*, Chs.12 and 13.

14 .*L’Espnt desLois*,(1748),Ch 12.

15 .DR.S.M.Hassan Talukder; *Independence of Judiciary in Bangladesh: Law and Practice*, 2nd edition, p 128.

16 . *Ibid*, p, 129.

The constitution of Bangladesh is the first defense of judicial independence, presiding over all the “Republic’s affairs and framing the organization and administration of the government. While constitutional flows exist, regarding separation of the judiciary, there are adequate provisions for formal judicial independence. Complete separation is relatively unheard or outside of theory, meaning no judiciary is completely severed from the administrative and legislative bodies because this reduces the potency of checks and balances and creates inefficient communication between organs of the state (Hadley; 2004). A high degree of separation, however, can be a strong guardian of judicial independence. Though, Separation of judiciary is the precondition of the sound and independent judiciary, independence of judiciary depends on some other certain conditions like mode of appointment of the judges, security of their tenure in the office and adequate remuneration and privileges. Satisfactory implementation of these conditions enables the judiciary to perform its due role in the society thus inviting public confidence in it. Now we will discuss in detail, why only separation of judiciary is not enough to ensure the judicial independence of judiciary. What are others condition which to be fulfilled for satisfactory standards of independence of judiciary?

Chapter Two

Importance of Judicial Independence

Judicial independence is an important value in any democratic system of government. As Larkin says, ‘ an independent judiciary is the essential-indeed indispensable-component of a free and democratic society.’¹⁷ In every society, the judiciary is primarily entrusted with the function to resolve disputes between citizens or between citizens and the government. In performing this function, the judiciary needs to be independent from the executive, the legislature or any other sources of influence or interference. A modern state is governed by the three branches of government, the executive, the legislature and the judiciary. Among the three branches of government, the judiciary is considered the weakest branch. In fact, the power of the judiciary is limited only to pronouncing judgement; it has no additional power to enforce its decision. The enforcement of judicial decision is the function of the executive government and therefore, the power of the judiciary is ultimately dependent on the executive government. Despite this weakness, the judiciary being an essential organ of government critically contributes to maintaining the peace and order of a society by resolving legal disputes.¹⁸In any democratic society the judiciary has the authority to resolve legal disputes with the object of playing two important roles: social service and protection of citizens rights. This authority of the judiciary comes from public confidence in the judicial system. As Frankfurter says, the Court’s authority, consisting of neither the purse nor the sword, rests ultimately on substantial public confidence in its moral sanction.¹⁹Public confidence can be sustained only when the independence of the judiciary is adequately ensured.²⁰Judicial independence enables judges to make judicial decisions without fear or favour even when the decisions are unpopular or difficult.²¹An independent judiciary can protect the rights of citizens by the fair administration of justice. In the absence of an independent judiciary, the fair administration of justice or protection of rights of citizens cannot be secure.

17 .Francis J Larkin, ‘The Variousness, Virulence and Variety of Threats to Judicial Independence, (1997) 36 *Judges’ Journal* 4, at p 7.

18 .M Ershadul Bari, *Importance of an Independent judiciary in a Democratic State*; (1993), 4(1) *Dhaka University Studies (Part F)* 1, at p 8.

19 .*Baker v Carr*(1961) 369 US 186, 267.

20 . Bari, above at p 9.

21 .Stephen Parker and B Petrie- Repar, *Judicial Independence in Australia*, 1999.

Chapter Three

Independence of Judiciary in Constitution : Walk to Separation

Firstly, we will discuss the Constitutional provisions regarding the judicial independence and the separation of the judiciary in the Constitution of the People's Republic of Bangladesh.

Judicial Independence in the Constitution

Part VI of the constitution deals with the judiciary. Art. 7 provide that all powers in the Republic shall be effective only under and by authority of the constitution. The responsibility of seeing that no functionary of the state oversteps the limit of his power is, a necessity, on the judiciary. Art. 35(3) of the constitution provide "Every person accused of a criminal offence shall have right to a speedy and public trial by an independent and impartial court or tribunal established by he law. Article 116A provides for independence in the subordinate judiciary while Article 94(4) demands independence of the Supreme Court Judges. Article 116A, while requiring judicial independence, was part of the detrimental changes to the constitution made in 1974 and 1975 discussed later in the paper: Subject to the provisions of the constitution, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions.

Separation of the Judiciary in the Constitution

The judicial independence of all judicial officers is unconditional according to the constitution of Bangladesh. This ideal is protected primarily through the concept of separation of the judiciary from the other organs of government. Article 22 states directly and unquestionably: The state shall ensure the separation of the judiciary from the executive organs of state. Article 95(1) addressed the method of appointment for the Supreme Court: the president shall appoint The Chief Justice and other Judges. The Appointment and control of judges in the subordinate judiciary (judicial service) are described in Articles 115 and 116 stating respectively: Appointment of persons to offices in the judicial service or as magistrates exercising judicial be made by the President with the rules made by him in that behalf. The control (including the power of posting, promotion and grant of leave) and discipline o f persons employed in the judicial service and magistrates

exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court.

It is principally through the above articles that the executive branch has been able to gradually intrude upon and influence the judiciary in Bangladesh, creating enormous problems regarding the quality of jurisdiction and the extent of judicial independence. Recently, separation of the judiciary from the executive has been argued as a necessity based on the unconstitutionality of the present organization and while this may well be true, it appears to be the consequential improved functional independence of the judiciary that is the fundamental reason for separation with unconstitutionality being only an argument to ensure its enactment.²²

Walk To Separation and Masdar Hossain Case

Separation of judiciary is the precondition of the sound and independent judiciary. Since the beginning of the British colonial rule, the question of separation of judiciary from the executive has been a continuing debate. Separation of judiciary from the executive and judicial independence appears to have become an endless process. The debate started in the late 18th century and continues even now. At a glance After the division of the sub-continent in 1947, the first attempt was taken. Our constitution of 1972 is fairly developed towards the separation and independence of judiciary. Fourth amendment of the constitution was destroyed the independence of judiciary. In 1987 initiatives were taken to separate magistracy by amending Code of Criminal Procedure, 1898. But bill could not be placed before the Parliament for unknown reason. After the autocratic rule in 1990 expectation was high to separate the judiciary. Bangladesh Nationalist Party (BNP) and Awami League first included separation of the judiciary in their agenda during anti- Ershad movement. Two governments of 1991 and 1996 were silent about it. In 1995 by a writ petition number 2424 Masder Hossain along with 441 judicial officers who were judges in different civil court; alleged inter alia that: • Inclusion of judicial service in the name of BCS (Judicial) under the Bangladesh Civil Services (Re-organization) Order, 1980 is ultra virus the constitution; • Subordinate Judiciary forms chapter II of the PART VI of the Constitution and there by the

22 . Dr. Kamal Hossain, 5th March, 2004.

Subordinate Judiciary has already been separated by the Constitution. Only the rules under Article 115 of the Constitution and/or enactments, if necessary, are required to be made for giving full effect to this separation of judiciary; • Judges of the subordinate Judiciary being the presiding judges of the courts cannot be subordinate to any tribunal and as such. The judicial officers are not subject to the jurisdiction of the Administrative Tribunal. The court delivered its historic judgment with 12 directive points on 7th May 1997 (reported in 18 BLD 558). The Government preferred an appeal by leave (Civil Appeal No. 79/1999) and the Appellate Division partly reversed the decision of the High Court Division by its judgment delivered on 2nd December 1999 (reported in 52 DLR 82). In its landmark Masdar judgment, the Appellate Division addressed head-on certain concerns regarding executive control over the judiciary. It reaffirmed the principle of independence of the judiciary, and elaborated on the constitutional position and practice regarding separation of the judiciary from the executive. Most importantly, it laid down twelve declarations and directions ('the twelve commandments') for implementation by the Government in this regard.

This decision originated in a constitutional challenge brought before the High Court by 218 persons in judicial service, including Masdar Hossain. They argued that the subordinate courts were part of the judiciary and therefore persons in judicial service could not be included within the Bangladesh Civil Service Reorganization) Order 1980, nor could they be controlled as though they were a part of the Bangladesh Civil Service, as defined by the Bangladesh Civil Service Rules 1981 ('the BCS Rules'). The High Court Division held in favour of Hossain and the other judges, and after the Government appealed this decision and lost, the Appellate Division affirmed the High Court's judgment.

In this judgment, the Appellate Division affirmed that a separate Judicial Service should be established, distinct from the Executive and Administrative Cadres of the Bangladesh Civil Service. It also noted that this separate Judicial Service should include both persons in judicial service and magistrates exercising judicial functions.

It stated that these two categories formed a class distinct from other services of the Republic, and that they could not be 'treated alike or merged or amalgamated with any other service, except a service of an allied nature'. In consequence, the Court held that the Government's inclusion of judicial officers within the Bangladesh Civil Service (Reorganization) Order 1980 as the

Bangladesh Civil Service (Judicial) was beyond the terms of the Constitution.

The judgment identifies five key characteristics of independence of the judiciary, namely: security of tenure; recruitment to the Judicial Service as permanent and through a transparent Judicial Service Commission; security of emoluments including pension etc.; institutional functional independence of the Subordinate Judiciary from Parliament and the Executive; and financial autonomy within the sphere/funds allocated.

The judgment contains twelve specific directions on the Government for measures to ensure the separation of the judiciary, by creating a new Judicial Service to include the magistracy. These directions, among others, required the Government:

- to set up two separate bodies, the Judicial Service Commission (JSC) (to recruit persons in judicial service, including judicial magistrates), and the Judicial Pay Commission (JPC) (to fix pay scales for members of the judicial service), specifying the nature of their composition, powers and functions.
- to frame and bring into force four sets of rules relating to the establishment of the JSC (for recruitment of members of the Judicial Service), establishment of the JPC (for fixation of their pay and benefits), for ensuring the manner of the constitution, composition, recruitment and suspension of members of the service, and for ensuring matters relating to posting, promotion, and other service conditions.
- for the purpose of incorporating magistrates within the judicial service, to frame amendments to the Code of Criminal Procedure and other laws that empower Magistrates to try criminal cases, so that all references to ‘Magistrate’ in existing laws would be replaced by the term ‘Judicial Magistrate’.

In the said land mark ruling in 1999 which is popularly known as the Masdar Hossain case, the Appellate Division directed the Government to implement its 12 point directives, including for formation of separate Judicial Service Commission (JSC) to serve the appointment, promotion and transfer of members of the judiciary in consultation with the Supreme court. A further 12-point directive called for a separate Judicial Service Pay Commission, amendment of the criminal

procedure and the new rules for the selection and discipline of members of the Judiciary. On an extensive examination of constitutional provisions relating to subordinate courts and services of Bangladesh the Appellate Division held that judicial service is fundamentally and structurally distinct and separate service from the civil executive and administrative services of the Republic with which the judicial service cannot be placed on par on any account and that it cannot be amalgamated, abolished, replaced, mixed up and tied together with the civil executive and administrative services. It also directed the government for making separate rules relating to posting, promotion, grant of leave, discipline, pay, allowance, pension and other terms and condition of the service consistent with article 116 and 116A of the constitution. As a matter of fact, the independence of judiciary and the impartial judicial practice are related concepts, one cannot sustain without the other. . In essence, the case was decided on the issue of how far the independence of judiciary is guaranteed by our Constitution and whether the provisions of the Constitution have been followed in practice. Separation of judiciary from the executive and judicial independence appears to have become an endless process. The debate started in the late 18th century and continues even now.

Post-Masdar Developments

After the decision of the Appellate Division of the Supreme court of the Bangladesh, the successive government was taken time to delay the process. The care taker government of 2001 was tried to separate judiciary, but was stopped by request of two big political parties Awami League and BNP. Elected government of 2001 BNP leaded coalition was working slowly towards the separation. Finally the Caretaker government officially announced the separation of the judiciary on November 1, 2007 by adopting the following appropriate Rules in 2007 to ensure separation of the judiciary from the executive, which can be said praiseworthy to ensure independence of judiciary in the subordinate courts in Bangladesh:

1. The Bangladesh Judicial Service Commission Rules, 2007;
2. The Bangladesh Judicial Service (Pay Commission) Rules, 2007;
3. The Bangladesh Judicial Service (Constitution of Service, Appointment to Service, Suspension, Dismissal and Removal) Rules, 2007;

4. The Bangladesh Judicial Service (Posting, Promotion, Grant of Leave, Control, Discipline and Other Conditions of Service) Rules, 2007;
5. Code of Criminal Procedure, 1898(Amendment) Act-2009.
6. Mobile Court Act-2009.

Now Judiciary is separated. Mere separation of judiciary from the Administration means nothing. The objective of separation will be to uphold justice in any circumstances without fear or favour, to convey the justice to the door of the poor and to deliver justice without any delay .Will our judiciary be able to fulfill these objectives? Will they be able to come up to give judgments against the establishment and the powerful if they are found on the wrong footing? Are the all the judges strong enough in character and conviction?

However, now it is important to examine the present structure of the judiciary to be able to understand how much the Judiciary is independent now and what are the obstacles and how these affect the independence of the judiciary. This assignment attempts to explore to what extent initiatives, have been taken to separate the judiciary from the executive and what are the obstacles available to implement the initiatives in this path.

Chapter Four

Present scenario of the Judiciary in Bangladesh : A Critical Analysis

Present Court structure of Bangladesh

Bangladesh's Constitution came into force on December 16, 1972, the first anniversary of the country's independence. It contains fairly stringent safeguards for the independence of the judiciary in Article 95 (Appointment of Judges), Article 96 (Removal of Judges), and Article 99 (Prohibition on Further Employment of Judges) . Over the years, its safeguards for judicial independence, rather than being strengthened and consolidated, have been diluted through a number of constitutional amendments. At a glance The judiciary in Bangladesh, headed by the Chief Justice, consists of the Supreme Court and the Subordinate Courts. The Supreme Court has two divisions, the Appellate Division and the High Court Division²³. They have separate functions and separate appointments are made to each. The Subordinate Courts comprise: • The Civil Courts, in descending order of hierarchy, including the Courts of the District Judge, the Additional Judge, the Joint District Judge, and the Assistant Judge ²⁴ • The Criminal Courts, again in descending order, including the Courts of Sessions, Additional Sessions Judge, Assistant Sessions Judge, Metropolitan Magistrate, Magistrate of the First Class, Magistrate of the Second Class and Magistrate of the Third Class²⁵ . The Special Courts and Tribunals, including – in relation to civil matters -- the Administrative Tribunal²⁶, the Environment Court, the Family Court, the Juvenile Court, the Labour Court and the Labour Appellate Tribunal, the Money Loans Court, the Court of Settlement and the Taxes Appellate Tribunal, and – in relation criminal cases -- the Special Tribunal on Violence against Women and and the Special Tribunal for Speedy Trials. The persons presiding over all subordinate courts (other than Magistrates' Courts in some special cases) are persons in judicial service.

23 . *As per Article 94 of the Constitution of Bangladesh.*

24 . *Section 3, Civil Courts Act 1887.*

25 . *Section 6, The Code of Criminal Procedure 1898.*

26 . *As per Article 117 of the Constitution of Bangladesh.*

Constitutional Provisions Relating to Judiciary

Appointment to Subordinate Courts:

Regarding the appointment of persons to subordinate courts, Article 115 of the Constitution of Bangladesh says :

“Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf.”

By this Article, the powers in relation to appointment of persons to subordinate courts have been vested on the President, who is the Highest body of the Executive²⁷. So, it can easily be said that, subordinate courts i.e. the lower courts are under the direct control of the executive, which is not praiseworthy.

Control and Discipline of Subordinate Courts:

Provision relating to control and discipline of subordinate courts is given in Article 116 of the Constitution of Bangladesh. This Article says:

“The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the 67 President 68 and shall be exercised by him in consultation with the Supreme Court .“

By this Article the power of controlling the subordinate courts have been vested in the President , who is the head of the executive, who shall exercise these powers in consultation with the Supreme Court.

²⁷ .DR.S.M.Hassan Talukder; *Independent of Judiciary in Bangladesh:Law and Practice*,2nd Edition, at p 131.

Appointment of Judges to the Supreme Court

The provisions relating to appointment of Judges of the Supreme Court In Bangladesh are given in Article 95 of the Constitution . This Article, introduced by the Constitution (15th Amendment) Act, 2011, provides:

“(1) The Chief Justice and other Judges shall be appointed by the President and other Judges shall be appointment by the President after consultation of the Chief Justice.

(2) A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and-

(a) has, for not less than ten years, been a advocate of the Supreme Court, or

(b) has, for not less than ten years, held judicial office in the territory of Bangladesh; or

(c) has such other qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court.

(3) In this articles, "Supreme Court" includes 'a Court which at any time before the commencement of the Second Proclamation (Tenth Amendment) Order, 1977, exercised jurisdiction as a High Court or Supreme Court in the territory now forming part of Bangladesh.”

This Article gives the President sole authority of appointment provided that, the Chief Justice of Bangladesh and other Judges were to be appointed by the President and once the Chief Justice was appointed, other Judges could only be appointed after the consultation with the Chief Justice. From this Article, it is clearly seen that, the President, who is Head of the executive, has been given exclusive authority to appointment of Chief Justice. This is also an executive control over the Judiciary, which is not expected for an independent judiciary.²⁸

Tenure of Office of the Judges:

As regards the tenure of office of Judges, Article 96 says,

“(1) Subject to the other provisions of this article, a Judge shall hold office until he attains the age of 60 sixty-seven years.

(2) A Judge shall not be removed from office except in accordance with the following provisions of this article.

28 .DR.S.M.Hassan Talukder;Independence of Judiciary in Bangladdesh: Law and Practrice, 2nd Edition, at p 161.

(3) There shall be a Supreme Judicial Council, in this article referred to as the council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges:

Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.

(4) The function of the Council shall be-

(a) to prescribe a Code of Conduct to be observed by the Judges; and

(b) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge.

(5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge-

(a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or

(b) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding.

(6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office.

(7) For the purpose of an inquiry this article, the Council shall regulate its procedure and shall have, in respect of issue and execution of processes, the same power as the Supreme Court.

(8) A Judge may resign his office by writing under his hand addressed to the President.”

From Article 96 aforesaid, it is seen that the Constitution of Bangladesh does not prescribe any fixed tenure for the office of a Supreme Court Judge. However, present provisions in relation to the tenure of office of the Judges are acceptable and not detrimental to judicial independence.²⁹

Temporary Appointment of Chief Justice:

Regarding temporary appointment of Chief Justice, Article 97 says-

“If the office of the Chief Justice becomes vacant, or if the President is satisfied that the Chief Justice is, on account of absence, illness, or any other cause, unable to perform the functions of his office, those functions shall, until some other person has entered upon that office, or until

29 . *DR.S.M.Hassan Talukder; Independence of Judiciary in Bangladesh: Law and Practrice, 2nd Edition, at p 163.*

the Chief Justice has resumed his duties, as the case may be, be performed by the next most senior Judge of the Appellate Division.”

Under this Article , the authority was given to the President to appoint and he is free to appoint any Judge of the Court as the Acting Chief Justice. However, these existing provisions of the Constitution of Bangladesh may be deemed as conducive to judicial independence.

Disabilities of the Judges:

As regards disabilities of the Judges, Article 99 of the Constitution says-

“(1) Except as provided in clause (2), a person who has held office as a Judge otherwise than as an Additional Judge shall not, after his retirement or removal there from, plead or act before any court or authority or hold any office or profit in the service of the Republic not being a judicial or quasi-judicial office 60a or the office of Chief Adviser or Adviser .

(2) A person who has held office as a Judge of the High Court Division may, after his retirement or removal there from , plead or act before the Appellate Division.”

Actually, the object of this Article is to make a Judge free from the allurements of getting any favour from the Executive after the termination of this office which might otherwise have influenced his action while in office. In this context, it is, therefore, pointed out by critics that the Government must not give jobs to Judges after their retirement or removal. Because, it is contended that the practice of giving jobs to Judges after their retirement or removal is not strictly in accordance with the independence of the Judiciary³⁰and such practice may badly influence a Judge and his action while in office before his retirement or removal.

Now, it may, therefore, be concluded that, Article 99, relating to disabilities of the Judges, is not proper and complete to maintain independence of Judiciary in actual practice.

Advisory Jurisdiction of the Supreme Court:

As regards the advisory jurisdiction of the Supreme Court , Article 106 says-

“If at any time it appears to the President that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the Appellate Division for consideration and the division may, after such hearing as it thinks fit, report its opinion thereon to the President.”

30 .V.D.Mahajan's *Select Modern Government(1972) Part-III, chapter 8, p.192.*

Actually it is undesirable to turn the highest court of the country into a consultative department of the executive of the day. It is inadvisable for Courts to give opinion on question of law unless they come before the Courts in concrete form in course of actual legislation. If the Courts give their opinion on abstract questions of law, the interest of future litigants may be prejudiced.

Action in aid of the Supreme Court:

As regards action in aid of Supreme Court, Article 112 provides-

“All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court.”

This provision is also of vital importance to keep the Judiciary strong and independent.

Art 22 in unequivocal term states that ‘the state shall ensure the separation of the judiciary from the executive organs of the state’ as one of the fundamental principles of state policy. It is not readily judicially enforceable. Nevertheless the state cannot ignore it for long. There was under current of demand of implementation of constitutional obligation from the very inception of Bangladesh.

Chapter Five

Constitutional Promise and The Reality

Independence of Judiciary is a constitutional promise of a new born state Bangladesh in 1972. But after a long walk Judiciary has been separated from the Executive on November 1, 2007. Now Judiciary is separated. Mere separation of judiciary from the Administration means nothing. The objective of separation will be to uphold justice in any circumstances without fear or favour, to convey the justice to the door of the poor and to deliver justice without any delay.

Will our judiciary be able to fulfill these objectives? Will they be able to come up to give judgments against the establishment and the powerful if they are found on the wrong footing? Are the all the judges strong enough in character and conviction? The chief justice himself expressed doubt about the integrity of the judges and he told it will take many years to clean the system. Our legal experts reiterated that the judicial system must be cleared of those appointments which were given on political motivation and where qualities were compromised. How the present judicial system would be cleared of its own wastes?

Selection of judges in future should be through a fair and solid process. How they are going to ensure best selection of the judges at the senior level? How they are going to overcome the pressure that would come from the future political governments? Also how they are going to make themselves accountable? Is the conscious of a judge is enough? Is the appointment of a legal Ombudsman is the answer to prevent their excess?

However in our country the actual scenario is completely different as our judiciary system is heavily influenced by the executive or legislative bodies. In practice, all the judges in the lower courts or Honorable Justices in the Supreme Court are appointed on political foundation and therefore those politically appointed judges always fall short in establishing justice when political questions arises due to their own personal interest .On the other hand recent BBC news reveals that Pakistan's Supreme Court has found Prime Minister Yousuf Raza Gilani guilty in a contempt of court case. Therefore it proves that Pakistan's judicial system is so powerful and independent where the judges are not dependent on government in any way whereas in our Bangladesh it is next to impossible.

Chapter Six

Historical Background and a Comparative Development

In the post-colonial period, separation of the judiciary has been a central focus of constitutional and political reform for South Asian states. Here it may be useful to consider how efforts to achieve separation developed in two states – namely India and Pakistan -- with similar judicial and legal frameworks to those operating in Bangladesh. Such a comparison yields useful lessons regarding the nature of challenges faced in the process and the key factors for effecting change.

Developments in India

The Constitution of India 1950 provides for the State to consider the separation of the judiciary as a fundamental principle of state policy at both Central and State levels. The constitutional provisions have been reflected in and implemented through legislation or executive orders or interpretation in judicial decisions. A key role in effecting separation of the lower judiciary from the executive has been played by the Law Commission of India, as well as the Supreme Court. In 1958, the Law Commission first examined the question of separation of the judiciary from the executive in its Fourteenth Report titled ‘Reforms of Judicial Administration’, and found that several States had not taken adequate measures in this direction, despite a number of efforts in this regard made even prior to independence. The Law Commission continued to pursue this matter in its subsequent reports until its Forty-First Report, which led to the revision and replacement of the Criminal Procedure Code of 1898 by the Criminal Procedure Code of 1973 (‘the 1973 Code’), enacted by Parliament. The 1973 Code provided for the separation of judicial magistrates from the executive throughout the country, including in the so called metropolitan areas (any area with a population exceeding one million and so designated by the State Government). It provided for separate powers and functions and for separate lines of control and administration for judicial and executive magistrates respectively. Under these provisions, Judges of the Sessions Courts, Judicial Magistrates of the First and Second classes and the Metropolitan Magistrates are appointed by the respective High Courts. The High Courts also appoint from amongst the Magistrates of the First class a Chief Judicial Magistrate and an Additional Chief Judicial Magistrate and, in metropolitan areas, a Chief Metropolitan Magistrate and an Additional Chief Metropolitan Magistrate. The High

Courts may also appoint Special Magistrates on the request of the Central or State governments. In contrast, the Executive Magistrates, including the District Magistrate, Additional District Magistrates and Special Magistrates, are appointed by the concerned State Governments

The difference between judicial and executive magistrates is that the former (judicial magistrates of the first or second class or Metropolitan Magistrates) are responsible for trying offences under the Indian Penal Code. The executive magistrates as their name implies, perform only non-judicial functions such as passing orders for arrest, security for keeping peace and good behaviour, removal of public nuisance, dealing with urgent cases of nuisance or apprehended danger, etc. Thus the judiciary in criminal matters has been completely and uniformly separated from the executive throughout the country, with regard to their powers and functions. However concerns remained regarding the control and administration of judicial magistrates in practice. In 1992, the Supreme Court, through a notable ruling in the All India Judges Association Case, followed by subsequent clarifications and expansion, substantially secured and enhanced the independence of the lower judiciary.

The Court held that for purposes of their service conditions the members of the judiciary are comparable to the members of the other two branches of the government, namely, the legislative and the executive, and not to the civil servants or administrative staff of the government. It accordingly directed the Union of India and the States to take various necessary steps, including the creation of an all India judicial service, prescribing certain minimum qualifications for recruitment to lower judiciary, and providing various improvements to their service conditions. Pursuant to the directions of the Court, the Government of India appointed the First National Judicial Pay Commission ('the Shetty Commission') on 21 March 1996. The Commission recommendations included:

- Framing of Rules by the High Courts for the retirement of judges, specifying particular age;
- Establishing appropriate nomenclature for the judicial officers;
- Providing for the Chief Judicial Magistrate to have the same position as the District Judge;
- Formulating recruitment and promotion norms for different cadres of judicial officers and taking steps for judicial education and training.

Following the principles laid down by the Supreme Court in the All India Judges' Association case that the judges should be at par with the political executive and legislature and not with the administrators, the Shetty Commission also made recommendations in relation

- to pay scales for the judicial officers' allowances and facilities

including providing domestic help allowance for retired judicial officers, and • the creation of an All-India Judicial Service.

The Supreme Court then directed the concerned State Governments to implement\ the Commission's recommendations (as modified) with regard to pay and terms and conditions of service. The recommendations, as modified by the Supreme Court, have been implemented in almost all States and Union Territories to date. Wherever, they have not yet been implemented, imminent action is expected. Thus, the civil courts have been effectively separated in most respects, with administrative control vesting in the High Courts at State level, except with regard to budgetary allocations which remained the domain of the Legislature.

However, while the High Courts exercised control over the lower civil judiciary, in respect of determination of service conditions, age of retirement, salaries, allowances and other facilities, the Governor of each State remained responsible for the appointment, posting and promotion of District Judges, in consultation with the concerned High Court. Only a person who is either already in the legal service of the Union or of the State or has been an advocate for at least seven years, and is recommended by the High Court can be appointed a District Judge. In interpreting this provision, the Supreme Court of India has held that normally, the State Government should accept the High Court's recommendations, and the Governor should act on the same in making appointments.

The State Government should communicate to the High Court any differences it might have with the latter's recommendation, giving 'good and weighty' reasons, and a decision should only be reached following 'full and effective' consultation with the High Court. Government Counsel, who are also advocates, are not disqualified for appointment. The Governor also makes appointments to posts in the judicial service of the State below the rank of District Judge in accordance with the rules made after consultation with the State Public Service Commission and the High Court. Disciplinary action against the members of the lower judiciary such as suspension and removal from job and matters such as interse seniority are determined and decided by the High Court.

Developments in Pakistan

In Pakistan, following the provision for separation mandated by the Constitution of 1956, other than some ad hoc measures in Punjab and the framing of legislation (never brought into force) for East Pakistan, no steps were taken to effect separation in practice for 25 years. Following the end of martial law and the restoration of democracy in 1972, the first step towards comprehensive law reform in this area came with the framing of the Law Reforms Ordinance 1972 (Act XII of 1972) ('LRO'), in compliance with the Recommendations of the Hamoodur Rahman Law Commission. This proposed dividing the Magistracy into an Executive Magistracy and a Judicial Magistracy, keeping intact the Executive Magistracy under the District Magistrate and placing the Judicial Magistrates under the Sessions Judge and the High Court. However, as with the earlier 1957 Act, notifications were never published to bring the LRO into force. In addition, no practical steps were taken towards separation, for example with respect to planning how to revise the terms and conditions of judicial officers (to account for some of their functions being performed by the proposed Judicial Magistrates), restructure the service or work out related financial or administrative arrangements.

In 1973, the new Constitution provided that the state should ensure progressive separation of the judiciary from the executive and set a timeline of three years (Art. 173). However, no immediate steps were taken in this regard, with the Government periodically extending the timeline for compliance, ultimately to fourteen years. Eventually in 1994, following a legal challenge brought by a leading Karachi lawyer and others, the Supreme Court of Pakistan gave a landmark judgment mandating separation in *Government of Sindh and others v Sharaf Faridi and others*. In this judgment, the Court:

- directed the four Provincial Governments (of Balochistan, Punjab, Sindh and North West Frontier Province) to issue notifications within a fixed timeline (by April 1994) to bring the LRO into force and so separate the Judicial Magistracy from the Executive Magistracy, placing the Judicial Magistracy under the High Court's control;
- directed each Provincial Government to issue instructions to ensure compliance with its directions within fixed timelines and
- held that neither the Federal nor the Provincial Governments could request either the Supreme Court or the High Courts to seek the respective Government's prior approval for incurring any expenditure in funds allocated for their annual budgets provided these amounts fell within the sanctioned budgets. The Supreme Court dismissed applications by all the Provincial

Governments for time to ensure compliance (one such application requested an extension of upto ten years!). However, it permitted some relaxation of its directions, allowing for example, Executive Magistrates in Punjab Province to try certain offences punishable with imprisonment up to three years.

Ultimately, in 1996, notifications in compliance with the Supreme Court's directions were issued in respect of the Province of Punjab and the Islamabad territory. But implementation on the ground remained unachievable, given the reluctance of Executive Magistrates to join the Judicial Service without any prior assurances regarding the terms and conditions of service or prospects of promotion, the related reluctance of the High Courts to induct them in judicial service at equivalent levels to their counterparts in Judicial Service, and the overall reluctance of the Executive centrally to part with powers of criminal justice at the frontlines.

In 1999, after the military take-over, the Federal Government took several legal and administrative measures to further separation. First, the new National Reconstruction Bureau (NRB) examined the question of devolution of power to the grass roots levels. Its aims included to free the district judicial system from structural constraints and to achieve efficacious delivery of justice through decentralization and establishment of alternate dispute resolution mechanisms. These resulted, among others in the creation of the post of Nazim (Head of Local Government) of each District. Second, several news laws were promulgated as part of a stated policy objective of seeking more efficacious delivery of justice. This included amendment in 2001 of the Code of Criminal Procedure, resulting in the abolition of the offices of 'District Magistrate' and 'Executive Magistrate', and of a new definition of 'Magistrate' as meaning only 'Judicial Magistrate' or 'Special Judicial Magistrate'.⁵⁰ The responsibilities which had earlier pertained to the Executive Magistrate then devolved, with some exceptions, on the Judicial Magistrate/Sessions Judge. The powers which had earlier been exercised by Executive Magistrates under Section 144 CrPC now devolved on the District Police Chief and the Nazim (Head of the Local Government.) of each District. Third, the Government of Pakistan (with the support of the Asian Development Bank) launched a programme on judicial capacity building, which focused on providing diagnostic inputs, remedial and corrective measures, and training judges. This programme did not directly address the issue of separation – which at the time remained under consideration by the Supreme Court – but it did seek to address the practical problems underlying and resulting from lack of

separation. It also helped to raise awareness within the judiciary of comparative experiences of the importance of and training in using incentivisation improving judicial capacity, and thus building a constituency of support for separation.⁵¹ Its programmes also suggested certain practical measures, such as establishing an Annual Conference of Judges or the appointment of a Judicial Ombudsman, which could have contributed to monitoring the process of separation, but these have not been adopted to date.

There have been mixed reports of the success of the separation measures. Reportedly, the lack of adequate advance planning, together with the absence of any central guiding authority, has caused major difficulties. One commentator has identified the High Court's failure to take a pragmatic approach to the issue, by refusing to integrate Executive Magistrates within the judiciary, as further exacerbating the problems following separation.

As a result of this, when the offices of District magistrate and Executive Magistrate were abolished and all criminal files were brought before Civil Judges, there were inadequate personnel to deal with them, contributing to further backlogs and delays. This also contributed to a mishandling of criminal cases following separation, since given Civil Judges' lack of experience in trying or overseeing criminal cases they were also not able to ensure effective control and supervision of the Police, resulting in greater indiscipline in handling of the cases and more widespread abuse of police power.

Steps taken by Bangladesh

The first attempt was taken after the division of the sub-continent in 1947, Pakistan government enacted East Pakistan (then Bangladesh was under Pakistan government) Act No. XXIII of 1957, which provided for separation of judiciary from the executive. The law was still hanging for a simple gazette notification. As regards independence and separation of judiciary, our constitution of 1972 is fairly developed. But the framers of Supreme Law of the land made an unfortunate insertion in article 115 and 116 as 'Magistrates exercising judicial functions', which still remain unattended. Art 22 in unequivocal term states that 'the state shall ensure the separation of the judiciary from the executive organs of the state' as one of the fundamental principles of state policy. It is not readily judicially enforceable. Nevertheless the state cannot ignore it for long.

There was under current of demand of implementation of constitutional obligation from the very inception of Bangladesh. But the Fourth Amendment undermined the constitutionalism itself, which obviously destroyed the independence of judiciary. The subsequent upheavals of politics rather by passed it. In 1976 law commission recommended that subordinate judiciary on the criminal side should be separated from the executive . In the mean time, we witnessed two extra-constitutional processes. In 1987, initiatives were taken to separate the magistracy by amending code of Criminal Procedure, 1898. For unknown reason the Bill could not placed before the Parliament. After the fall of autocratic rule in 1990, exception was high to ensure separation of judiciary. But the next two governments of 1991 & 1996 did nothing in this regard except\ spoiling its tenure. In 1999, the Supreme Court issued 12-point directives in famous Mazdar Hossain case to ensure separation of judiciary from the executive. The successive governments have taken time again and again to delay the process. It may be recalled that the caretaker government (2001) has all measures to ensure separation but stop at the request of AL and BNP two major parties of the country. 2001 BNP leaded coalition was working slowly towards the separation. Finally the Caretaker government officially announced the separation of the judiciary on November 1, 2007. In the mean time judicial service commission and various institution has been found in the favour of judicial independence. The most recent judicial developments in Bangladesh:

1. Judicial Independence Strengthened : The government issued the Supreme Court Secretariat Ordinance, 2025, establishing an independent secretariat for the Supreme Court and giving it administrative and financial autonomy, a major step toward judicial independence.

2. Specialized Commercial Courts : Bangladesh is moving forward with commercial courts to handle business and trade disputes more efficiently, seen as important for economic growth and investor confidence.

3. Digital and Procedural Innovations:

a. e-Family Court: The launch of Bangladesh's first fully paperless e-family court in Dhaka is designed to make family-law justice more accessible and efficient.

b. Bench Book for Human Trafficking Cases: A judicial guidebook has been introduced to standardise court responses to human trafficking, reflecting specialization in judicial practice.

Chapter Seven

International Standards of Judicial Independence

To assess the independence of judiciary in a country, there are now three internationally recognised standards. These are the Montreal Declaration-1983, the UN Basic Principles-1985 and the Beijing Statement-1995. Now we will discuss here the important provisions from above regarding independence of judiciary.

Montreal Declaration

The Montreal Declaration has comprehensively dealt with the founding principles of independent judiciary. On the independence of judiciary, it says:

2.02 Judges individually shall be free, and it shall be their duty, to decide matters before them impartially, in accordance with their assessment of the facts and their understanding of the law without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

2.03 In the decision-making process, judges shall be independent vis-a-vis their judicial colleagues and superiors. Any hierarchical organization of the judiciary and any difference in grade or rank shall in no way interfere with the right of the judge to pronounce his judgment freely.

2.04 The judiciary shall be independent of the Executive and Legislative.

2.05 The judiciary shall have jurisdiction, directly or by way or review, over all issues of a judicial nature. -

2.06 a) No ad hoc tribunals shall be established;

b) Everyone shall have the right to be tried expeditiously by the established ordinary courts or judicial tribunals under law, subject to review by the courts;

c) Some derogations may be admitted in times of grave public emergency which threatens the life of the nation but only under conditions prescribed by law, and only to the extent strictly consistent with internationally recognized minimum standards and subject to review by the courts;

d) in such times of emergency

I. Civilians charged with criminal offences of any kind shall be tried by ordinary civilian courts, expanded where necessary by additional competent civilian judges;

H. Detention of persons administratively without charge shall be subject to review by ordinary courts by way of habeas corpus or similar procedures, so as to insure that the detention is lawful, as well as to inquire into any allegations of ill-treatment;

e) The jurisdiction of military tribunals shall be confined to military offences committed by military personnel. There shall always be right of appeal from such tribunals to a legally qualified appellate court. Its power shall be exercised so as to interfere with judicial process.

b) The Executive shall not have control over judicial functions.

c) The Executive shall not have the power to close down or suspend the operation of the courts.

d) The Executive shall refrain from any act or omission which preempts the judicial resolution of a dispute or frustrates the proper execution of a court decision.

2.08 No legislation or executive decree shall attempt retroactively, to reverse specific court decisions, nor to change the composition of the court to affect its decision-making.

2.09 Judges may take collective action to protect their judicial independence 2.10 Judges shall always conduct themselves in such a manner as to Preserve the dignity of their office and the impartiality and independence of the judiciary. Subject to this principle, judges shall be entitled to freedom of belief, expression, association and assembly.

On the qualification, selection and training, it says;

2.11 candidates for judicial office shall be individuals of integrity and ability, well trained in the law. They shall have equality of access to judicial office.

2.12 In the selection of judges, there shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status,

subject however to citizenship requirements. 2.13 The process and standards of judicial selection shall give due consideration to ensuring a fair reflection by the judiciary of the society in all its aspects.

2.14 a) There is no single proper method of judicial selection provided it safeguards against judicial appointments for improper motives.

b) Participation in judicial appointments by the Executive or Legislature is consistent with judicial independence, so long as appointments of judges are made in consultation with members of the judiciary and the legal profession or by a body in which members of the judiciary and the legal profession participate.

2.15 Continuing education shall be available to judges.

On posting, promotion and transfer, the rules are;

2.16 The-assignment of a judge, to a post within the court to which he is appointed is an internal administrative function to be carried out by the judiciary.

(Explanatory Note: Unless assignments are made by the court, there is a danger of erosion of judicial independence by outside interference. It is vital that the court not make assignments as a result of any bias or prejudice or in response to external pressures. These comments are not intended to exclude the practice in some countries of requiring that assignments be approved by a Superior Council of the judiciary or similar body.)

2.17 Promotion of a judge shall be based on an objective assessment of the candidate's integrity and independence of judgment, professional competence, experience, humanity and commitment to uphold the rule of law. Article 2.14 shall apply to promotions.

2.18 Except pursuant to a system of regular rotation, judges shall not be transferred from one jurisdiction or function to another without their consent, but such consent shall not be unreasonably withheld.

On tenure of judges, the provisions are;

2.19a) The term of office of the judges, their independence, security, adequate remuneration and conditions of service shall be secured by law and shall not be altered to their detriment.

b) Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or expiry of their term of office, where such exists.

2.20 The appointment of temporary judges and the appointment of judges for probationary periods is inconsistent with judicial independence. Where such appointments exist, they shall be phased out gradually.

2.22 Retirement age shall not be altered for judges in office without their consent.

2.23 The executive authorities shall, at all times, ensure the security and physical protection of judges and their families.

Regarding disqualification of judges, the Declaration says;

2.26 Judges may not serve in an executive or a legislative capacity unless it is clear that these functions are combined, without compromising judicial independence.

2.27 Judges may not serve as chairmen or members of committees of inquiry, except in cases where judicial skills are required.

2.28 Judges shall not be active members of, or hold positions in, political parties. 2.29 Judges may not practice law.

2.30 Judges shall refrain from business activities, except as incidental to their personal investments or their ownership of property.

2.31 A judge shall not sit in a case where a reasonable apprehension of bias on his part may arise.

On Court administration, the main rules are;

2.40 The main responsibility for court administration shall vest in the judiciary.

2.41 It shall be a priority of the highest order, for the state to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency, judicial and administrative personnel, and operating budgets.

2.42 The budget of the court shall be prepared by the competent authority in collaboration with the judiciary. The judiciary shall submit their estimate of the budget requirements to the appropriate authority.

2.43 The judiciary shall alone be responsible for assigning cases to individual judges or to sections of a court composed of several judges, in accordance with law or rules of court.

2.44 The head of the court may exercise supervisory powers over judges on administrative matters.

Thus, it is found in the above principles the basic pre-condition of an independent judiciary and a safe and dependable guide to the Judiciary of any country.

The UN Basic Principles-1985

The 7th U.N. Congress on prevention of crime and treatment of offenders held in Milan, Italy in September, 1985, adopted some basic principles on the independence of judiciary.³¹ These principles were unanimously endorsed by the U.N. General Assembly on 29 November, 1985. These principles are;

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

31 . These general principles have been universally accepted.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

These principles were considered before the 6th Conference of Chief Justices of Asia and the Pacific and was unanimously adopted on 19th August, 1995, which is known as the Beijing Statement of Principles of the Independence of Judiciary.

Chapter Eight

Challenges for Ensuring the Independence of the Judiciary in Bangladesh

Now Judiciary is separated. Mere separation of judiciary from the Administration means nothing. The objective of separation will be to uphold justice in any circumstances without fear or favour, to convey the justice to the door of the poor and to deliver justice without any delay.

Will our judiciary be able to fulfill these objectives? Will they be able to come up to give judgments against the establishment and the powerful if they are found on the wrong footing? Are the all the judges strong enough in character and conviction?

What are the challenges here for ensuring the independence of judiciary in Bangladesh? Now we will point out the existing challenges in the judicial arena in Bangladesh.

Lack of Consciousness: Of the total people constituting the electorate of our country, I am sure more than 10% voters do not know what actually is mean by the separation of the judiciary and for that matter what is the bright side of the proposed separated judicial system. To address these questions we should have at least an average knowledge of our present judicial system. Lack of consciousness people's have no strong movement for this reasonable and demandful wants.

Executive Dominated Judiciary: Appointments of persons in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf. It is noticeable in this article that the President with exercising this power is not required to consult the Chief Justice of Bangladesh. We know that the President cannot exercise his powers whatever, without the advice of the Prime Minister, except of course his power to appoint the Prime Minister. This is how the executive organ of our state is controlling the judiciary. Their appointments, postings, transfers, promotions, punishments etc. are at the hands of the President or for that matter, the government.³²

Lack of Democratic Culture: We have reached upon 43th years of our independence from the dictatorial and autocratic rule of Pakistan. In 1991 we claim to have set up a democratic government. But we have so far made little progress in practicing parliamentary culture. Our

³² . Article 115 of the constitution

leadership instead of guiding the nation toward setting up a strong parliamentary democracy has so long been engaged in the politics of mutual hatred and vengeance. Tolerance and respect for opposition party is now foreign in our politics. Such intolerance and enmity between political parties have adversely affected the nation as a whole and virtually has divided the nation into some group antagonistic to each other. This inimical attitude of our political parties has not only polluted the politics of our nation but has created groupings among public servants in general and bureaucrats in particular. Of late the highest judiciary has reportedly been politicized.³³

Overlapping Competencies: Often, executive branch ministries to work as their legal officers recruit judges from the subordinate judiciary. Generally ministries do not have legal officers of their own, and the public prosecution service is an adhoc arrangement. Arguably, judicial independence is compromised when a person acts as both a prosecutor and a judge. Law officers have to defend government positions while judges might rule against the government. A directive of the Masdar Hossain Judgment calls for the roles of judges and prosecutor to be separated. Unfortunately, so far this directive has not been carried out.

Lack of Pro-Active Approach by the Judiciary: Unlike neighboring India, where legal aid, access to justice and alternative dispute resolution were largely judge-pioneered initiatives, the situation is completely different in Bangladesh. The very wide powers of the highest court to deliver justice have been under-utilized. Less than a dozen-suomoto case during the last ten years have succeeded, perhaps reflecting judicial conservatism.

Lack of Political Will: Any kind of meaningful changed, political will is mandatory because our democratic polity deals by various political parties. And Government formed by citizen's mandate with their representatives. So, if the political parties (both government and opposition) have no interest to ensure the independence of judiciary it would be impossible. Though most of the political parties have commitment to ensure the independence of judiciary but after formation of government they technically avoid the matters. That's why the process of ensuring the independence of judiciary is going on endlessly.

33 .(Rahman, 2004).

Martial Law: Martial Law rule is the single biggest threat to independent judiciary. And it is based on massive concentration of state power mostly in the hands of military oligarchy. It is contrary to democratic rule and based on force, not on equity, justice and good conscience.³⁴

Lack of a united voice from the Bar:As expected, many lawyers have been extremely vocal in demanding that the Government take expeditious steps towards ensuring , the independence of judiciary with the leadership being given by the Supreme Court Bar Association, the elected representatives of lawyers of the apex court, the Bangladesh Bar Council, the elected representatives of all lawyers in Bangladesh, and many eminent lawyers. However, the division of the Bar on partisan political lines as with so much of civil society, has resulted in the lack of a unified voice in support of these demands, and of related actions.

Corruption in Judicial sector: There is extensive corruption and abuse of court process concerning bail, in the court practice and it is believed by the common people. These are now common features in the judiciary. The chief justice³⁵ himself expressed doubt about the integrity of the judges and he told it will take many years to clean the system. Such practices, contrary to judicial independence, are vitiating the atmosphere in the judiciary and undermining public confidence in the administration of justice.³⁶ Moreover, there is a widespread belief that judges in our country receive bribes. It is now convincing that, independence of judiciary in Bangladesh is being jeopardized because of irregularities and moral Contravention in the administration of justice.³⁷ Judiciary is now 2nd corrupted sector in Bangladesh.³⁸

Internal Influence: Internal influence means influence of judges from their judicial superiors and colleagues. It refers to, in other words, influence of a judges or a judicial officer from any kind of order, indication or pressure from his judicial superiors and colleagues in deciding cases. This is also a big challenges for ensuring judicial independence. The Montreal Declaration says that;

“In the decision-making process, judges shall be independent vis-a-vis their judicial colleagues and superiors. Any hierarchical organization of the judiciary and any difference in

34 .Justice Ibrahim Memorial Lecture on “ Independent Judiciary in Developing Countries ’’ by Justice Kemaluddin, Part III(1986), pp109-110

35. Ex Chief Justice A.B.M.Khairul Haque.

36.The New Nation, 31 March, 1989.

37. DR.S.M.Hassan Talukder; Independence of Judiciary in Bangladesh: Law and Practice, 2nd Edition, at p 144.

38.This factor is 70% liable for non-ensuring the independence of judiciary.

grade or rank shall in no way interfere with the right of the judge to pronounce his judgment freely.”³⁹

Political Consideration in appointment of Judges of Higher Court: It is common feature in Bangladesh, in every government of Bangladesh, each political party governing the state, appointed judges in the higher court in both Division of the Supreme Court of Bangladesh , even in the appointment of Chief Justice also. As a result , Judges can’t take collective action to protect their judicial independence. Montreal Declaration says;

“Judges may take collective action to protect their judicial independence.”⁴⁰
As a result, our judiciary is now under the control of the Executive. Even now, only executive is not responsible for non-ensuring the independence of judiciary, but also, the judiciary is responsible for that. So, in order to ensuring the independence of judiciary, the above challenges should be resolved for regaining the public confidence about the judiciary.

³⁹.*Montreal Declaration 1983, Art 2.03.*

⁴⁰. *Montreal Declaration 1983, Art 2.09.*

Chapter Nine

Towards a Sustainable Solution

This assignment has sought to identify some of the key impediments to ensuring the independence of judiciary and to suggest ways and means for overcoming such obstacles . Through a combination of law reform, administrative changes and other practical management measures, as suggested below, independence of the judiciary is a practicable and realisable goal, and one that is essential to ensure the rule of law and enforcement of basic rights to access to justice, and safety and security. Many of these measures (including those suggested below for the long-term) could be adopted almost straightaway by the Judiciary itself, and could contribute to enhancing its capacity to deliver justice, as well as transparency in its processes, even without any further steps being taken by the executive.

Amendment of the Constitution

The present constitutional position is that, the President is the sole authority to appoint a Judge, though previously there was a constitutional provision of prior consultation with the Chief Justice. Apparently there is a deviation, although the consultative practice is conventionally followed, and if the convention is firmly entrenched, it will furnish more effective safeguard than a mere precept⁴¹. The Government may consider amendment of the Constitution so as to restore the original Articles 115 and 116 of the Constitution providing for full control and discipline of the subordinate courts in the Supreme Court (in line with the observation in the Masdar Hossain Judgment).

41. DR.S.M.Hassan Talukder; *Independence of Judiciary in Bangladesh: Law and Practice, 2nd Edition, at p 188.*

No scope of any government employment after retirement

The judges, after retirement or removal, should not be allowed to practice before any court of law or accept any employment under the Government. Because, such practices of judges, after retirement or removal, are not strictly in accordance with the independence of judiciary.⁴²

Creating Financial Independence

The most serious dependence is that the financial matters of the Supreme Court is made by the Ministry of Finance. This enormous financial power handled by the executive organs seriously hampers the independence of judicial administration ensuring the rule of law⁴³. So, financial independence of judiciary is a vital essentials to ensure the independence of judiciary.

Keeping Democratic Environment

Historically, we find that, the growth of an independent judiciary has no inherent relation with either geography or past history; rather it depends on the political growth of a country. If the character of the State is not democratic and if the State is under Martial Law, the judiciary can not be an independent forum or an independent organ of the State.⁴⁴

Separation of Tribunals from the Executive

To ensure the functioning of tribunals in accordance with the independence of judiciary, the following steps may be taken;

- a. From tribunal, general right of appeal to the ordinary superior court may be given. It is exigent to mention here that appeal and review are in theory two distinct procedures, appeal being concerned with merits and review being concerned with legality.
- b. While embodying the principles of natural justice, a uniform code of procedure applicable to all tribunals may be codified and enforced.

42. DR.S.M.Hassan Talukder; *Independence of Judiciary in Bangladesh: Law and Practice*, 2nd Edition, at p 186.

43. DR.S.M.Hassan Talukder; *Independence of Judiciary in Bangladesh: Law and Practice*, 2nd Edition, at p 189.

44. *Ibid*, at pp 186-187.

- c. Separation of tribunals from the executive department to ensure impartiality of justice may be confirmed and enforced.⁴⁵

Systematic training and continuing education

Training and continuing education for all judicial officers should be systematic, and could be carried out through the Judicial Administration Training Institute, and also through other initiatives. For example, whenever a new law comes into force, all judges could be briefed on its objects, purposes, scope and application

Regular and full inspection of the courts in the Districts

High Court Judges must conduct full periodical inspections of all courts in the District, in order to obtain a first hand understanding of their problems, working conditions and environment. This would provide an opportunity for High Court judges to hear individual grievances, ascertain their causes and suggest or provide appropriate remedies suggested or provided.

Setting targets

As part of the process of performance review, targets could be established for judicial performance, and regular reviews of targets held. This would assist in establishing an alternative and objective set of criteria for assessing the performance of judicial officers for purposes of advancement, and assist in insulating them from executive interference.

System of Annual Recognition and Reward

Establishing a performance based incentive system, and ensuring that this is managed by the Supreme Court, in place of the current system in which advance is largely dependent on political patronage, would help to change the work culture for the subordinate judiciary. While the nature of incentives to be provided would require further consideration, these could include formal letters of commendation from the superior courts, an honourable mention regarding a particular court or judicial officer in their Annual Confidential Report, providing them with better posting stations,

45. DR.S.M.Hassan Talukder; *Independence of Judiciary in Bangladesh: Law and Practice*, 2nd Edition, at p 188.

accelerated or out of turn promotion.

Greater commitment and more proactive role of the High Court Division

Being constitutionally charged with the superintendence and control of the subordinate judiciary, the High Court Division is responsible for planning the present and future needs of the judiciary. This could for example be done by the General Administration Committee establishing sub-committees to effectively monitor the functioning of the subordinate judiciary.

Greater transparency re judicial administration through Annual Conferences and publication of Annual Reports

Problems, difficulties and needs regarding the proper functioning of the judicial system can be highlighted and brought to public attention through Annual Conferences of various levels of the judiciary, and by publication of relevant data in Annual Reports. Demands for administrative and financial provisioning which are identified through such processes may be communicated to the Government for necessary action. These tasks could be directly authorised by the Honourable Chief Justice.

However, Bar Association may take more responsibility to safeguard the integrity of this legal profession. On the other hand, we need a framework of constant monitoring and supervising the performance of the clerks, peons, peshakars, sherestadars and judicial officers of the lower courts to avoid irregularities in the court process. Finally, the salary and other facilities of the personnel of the courts should be increased so that they can enjoy better living conditions.

Concluding Remarks

Judiciary forms the basic element of the statehood shaped by deliberate policies to establish social justice and equality of all citizens. In a modern society it must, therefore, reflect the fundamental principle of state policy as well as universal value and ethics of international human rights regime, which are not fundamentally altered by cultural or class differences. In order to meet the challenge of the next century and to accomplish the constitutional goal, to secure equal justice in economic, political and social life, it is important to extend the judicial mind and the due process in all spheres of administrative dealings with the affairs of men and society. Pressure on the government to implement the 12-point directive⁴⁶ continues to mount in the current heat of Bangladeshi politics. First of all the government has to take steps to remove all the impediments. Such as recently the Govt. has separated the Judiciary from the executive, which will play an important role to make the judiciary independent. But it is also true that all the roads of justice may not be opened even after the separation of judiciary. Civil society should come forward, and the politicians and executive authority should understand that a sound judicial system keeps equilibrium of a society. If the judicial edifice weakens, the democratic system will not function, and social fabric will be broken down. So, here all the people concerned with judiciary have to play active and effective role from honest point of view. Then the independence of judiciary will bring effective fruits in future.

46. *Secretary, Ministry of Finance vs. Masdar Hossain*, 52 DLR(2000) AD 86.

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