

## Chapter 1

### **INTRODUCTION**

Judiciary has been finally separated from executive at the beginning of November look and expectation of people is mounting day by day. Ensuring justice for vulnerable people, Particularly women and children. would be a priority lost for independent judiciary. Although the task is challenging, but if is morning that shows the day. In order to achieve a good result, there must be a good start.

Our legal system has immense impact on the rule of law. The fabric of a legal system is very complex and interrelated laws are the legal materials and the legal intuitions are the fabricators of a legal system upon which the building of a legal system is constructed. Legal system has been spilt in attempt to give an exact definition of the term laws because of several difficulties.

Firstly, the term is embodied is philosophical perplexities.

Secondly, the traditional method of definition is totally adequate for our purpose.

Thirdly, the term possesses a high emotive contents.

Fourthly, it deals with both just and unjust.

Fifthly, as widest sense, it modules any rule of action. Law is the main material of a legal system upon which the entire legal system resolves. The subject of legal history comprises the growth, evolution end development of the legal system of a country, The legal system of a country at a given time is not the creation of one of one day; it represents the cumulative fruit of the endeavor, experience, thoughtful planning and patient labour of a large number of people through generations. To comprehend understand and appreciate the present legal system adequately, it necessary, there tone to acquire a background knowledge of course of its growth and development.

The truth is that the traditions of the past have made our modern legal system what it is and still live on it. Without proper historical background, it may be difficult to appreciate as to why a particular feature of the system is as it is. The historical perspective throws light on the anomalies that exist here and there of the systems.

The judicial system on the whole, is tolerable adequate. A hierarchical network of court spreads in the country to dispense justice. Law is mostly codified, and uniform throughout the courting in basic branches of human relationship. However, to say all this is not to say that the legal system is perfect.<sup>1</sup>

### **1.1 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.<sup>2</sup> Taking into consideration some of the recent discussions made in the Beijing Statement of Independence of the Judiciary (a statement resulting from the cumulated views of thirty-two Asian and Pacific Chief Justices)<sup>3</sup> Judicial independence is defined, in this report as a Judiciary uninhibited by outside influences which may jeopardize the neutrality of jurisdiction, which may include, but is not limited to, influence from another organ of the government (functional and collective independence), from the media (personal independence), or from the superior officers (internal independence)<sup>4</sup>. According to the Beijing Statement of Independence of the Judiciary the following principles were adopted as independence of Judiciary:

1. The Judiciary is an institution of the highest value in every society.

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<sup>1</sup> Ansar Ali Khan, *Legal System of Bangladesh*, (Dhaka: National Law Book House, 1998), pp.19-20.

<sup>2</sup>Awal Hossain, Steps for Separation of Judiciary, [http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan020065.pdf, accessed on 20 January 2010].

<sup>3</sup> As Amended at Manila, 28 August 1997.

<sup>4</sup> Mizanur Rahman, 'Governance and Judiciary', *Governance: South Asian Perspective*, Hasnat Abdul Hye ed. (Dhaka: University Press Ltd., 2000), p.11.

2. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(1)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable to the implementation of this right.

3. Independence of the Judiciary requires that;

a) The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and

b) The judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature.

4. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law.

5. It is the duty of the judiciary to respect and observe the proper objectives and functions of the other institutions of government. It is the duty of those institutions to respect and observe the proper objectives and functions of the judiciary.

6. 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 in accordance with Article 3 (a). The judiciary, on its part, individually and collectively, shall exercise its functions in accordance with the Constitution and the law.

7. Judges shall uphold the integrity and independence of the judiciary by avoiding impropriety and the appearance of impropriety in all their activities.

8. To the extent consistent with their duties as members of the judiciary, judges, like other citizens, are entitled to freedom of expression, belief, association and assembly.

9. Judges shall be free, subject to any applicable law, to form and join an association of judges to represent their interests and promote their professional

training and to take such other action to protect their independence as may be appropriate.<sup>5</sup>

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.<sup>6</sup> The concept of judicial independence as recent international efforts to this field suggests, comprises following four meaning of judicial independence:<sup>7</sup>

*Substantive Independence of the Judges*

It referred to as functional or (i) decisional independence meaning the independence of judges to arrive at their decisions without submitting to any inside or outside pressure;

*Personal independence*

That means the judges are not dependent on (ii) government in any way in which might influence them in reaching at decisions in particular cases;

*Collective Independence*

That means institutional administrative and (iii) financial independence of the judiciary as a whole vis-à-vis other branches of the government namely the executive and the legislative; and

*Internal Independence*

That means independence of judges from their (iv) 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.

Independence of judiciary depends on some certain conditions like mode of appointment of the judges, security of their tenure in the office and adequate

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<sup>5</sup> Beijing Statement of Principles of the Independence of the Judiciary.

<sup>6</sup> Abdul Halim, *Constitution, Constitutional Law and Politics: Bangladesh Perspective*, (Dhaka: CCB Foundation, 1998), p.299.

<sup>7</sup> Mizanur Rahman, *ibid*, p.14.

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 “Independence of the judiciary”, it is maintained, “lends prestige to the office of a judge and inspires confidence in the general public”.<sup>8</sup>

## **1.2 Separation of the Judiciary**

Separation of the judiciary has been argued both as a cause and a guardian of formal judicial independence. 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. Influence may originate in the structure of the government system where parts or all of the judiciary are integrated into another body (in the case of Bangladesh: the executive).<sup>9</sup> For example, in Bangladesh the president in consultation with the Supreme Court according to the constitution appoints judicial officers. Other circumstances include functional aspects of the judicial system when the administration of justice is in some way, affected by executive orders or actions –. Executive abuse of this constitutional order result in biased appointment of judges, and other officers of the judicial cadre, favoring individuals who support the governing political party. Dr. Kamal Hossain, a respected advocate of the Supreme Court, explains the concept of separation of the judiciary through the idea of double standards. An executive officer follows plans, which are of a vertical nature, with the higher offices guiding the decisions of the lower officers, who look for the best possible ways to further the plans established by those higher in the pecking order. Executive decisions are made in lines of policy; law is not a policy. Judges or magistrates performing judicial functions must examine what evidence is given and find a way

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<sup>8</sup> *The Daily Star*, (20 June 2004), p.14.

<sup>9</sup> Awal Hossain, Steps for Separation of Judiciary,

[<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan020065.pdf>, accessed on 20 January 2010].

to best apply it to the law; there is less room for an individual's perceptions in judicial decisions.<sup>10</sup>

Complete separation is relatively unheard of 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. A high degree of separation, however, can be a strong guardian of judicial independence, as this paper will attempt to prove.

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.<sup>11</sup>

### **1.3 Judicial Independence in the Constitution**

Part VI of the constitution<sup>12</sup> of 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 the 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

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<sup>10</sup> Sierd Hadley, 'Separation of Judiciary and Judicial Independence in Bangladesh', 2004, [dhaka.net/School\_Library/senior%20Projects/04\_Hadley\_judiciary. Pdf, accessed on 20 January 2010].

<sup>11</sup> *Ibid.*

<sup>12</sup> *Constitution of the People's Republic of Bangladesh.*

the judicial service and all magistrates shall be independent in the exercise of their judicial functions.

#### **1.4 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 state 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 of 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 he consequential improved functional independence of the judiciary that is the fundamental reason for separation with unconstitutionality being only an argument to ensure its enactment.

## Chapter 2

# COURTS OF CIVIL JURISDICTION IN BANGLADESH

### 2.1 Civil courts in Bangladesh under the Civil Courts Act

Sub-ordinate courts shall be consisted with the district & magistrate courts. It has power to observe both civil and criminal matters and situated in different district and metropolitan area.

According to the section 3 to the *Civil Courts Act 1887* five types of civil courts namely:

- The court of the District judge
- The court of Additional district judge
- The Court of Joint district judge
- The Court of Senior assistant judge
- The Court of Assistant judge.<sup>13</sup>

#### 2.1.1 *The court of District Judge*

District judge is the head of civil judiciary in each district. It has administrative control over all civil courts situated in local limits<sup>14</sup>. They are appointed through promotion form the amongst additional district judge. Its pecuniary jurisdiction is unlimited. Its jurisdiction are as follows:

- a. Pecuniary jurisdiction
- b. Appellate jurisdiction
- c. Administration and transfer jurisdiction.
- d. Revisional jurisdiction
- e. Double capacity

#### 2.1.2 *Courts of Additional District Judge*

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<sup>13</sup> *The Civil Courts Act, 1887, Sec 3.*

<sup>14</sup> Mofizul Islam Patwary, *Legal System of Bangladesh*, (Dhaka, Humanist and Ethical Association of Bangladesh, 1997), p.54.



The courts of additional district is comprised with the additional district judge who is appointed through promotion amongst the joint distinct judge. His pecuniary jurisdiction is unlimited. Usually he tries those cases which are transfer to his court from the court of the district judge. Sometimes he is appointed as additional session judge.

### ***2.1.3 The court of the Joint District Judge***

They are appointed through the promotion from the amongst the senior assistant judge. Its pecuniary jurisdiction states with taka 4 lack sometimes it acts as a small cases court and assistant session judge.<sup>15</sup>

### ***2.1.4 The courts of Senior Assistant Judge***

This court is consisted with a senior assistant judge they are appointed through promotion of amongst assistant judge. Its a pecuniary jurisdiction does not exceed 4 lack taka.

### ***2.1.5 The court of Assistant Judge***

This court shall be consisted with an assistant judge. Its pecuniary jurisdiction does not exceed 2 lac taka. It has small revisional power in all petty civil cases coming from village courts.<sup>16</sup>

## **2.2 Special tribunals in civil courts**

Special tribunal established in a our legal system in to tow ways.

- a. Established by constitution
- b. Established by statute

The formation and function of the administrative tribunal deals with the constitution.<sup>17</sup>

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<sup>15</sup> *The Civil Courts Act, 1887, sec. 25*

<sup>16</sup> *Village Courts Ordinance 1976.*

<sup>17</sup> Article 117 of the *Constitution of the People's Republic of Bangladesh.*

### ***2.2.1 Administrative tribunal***

Administrative tribunal deals such dispute which are relating to employment between the government and its employers. Each administrative Tribunal Consist of one member who is appointed by the government from amongst person who are or have been district judge.<sup>18</sup> It has exclusive jurisdiction to have and determine application made by any persons in the service of the people republic of an statutory public authority in respect of the terms and conditions of his service.<sup>19</sup>

### ***2.2.2 The Arbitration tribunal***

According to the section 11 of the arbitration act. The parties shall be free to determine the number of arbitration. And under the provision of this act the parties are able to consist of arbitration tribunals. According to the provision of sec 12 of the arbitration tribunal act 2001 parties may be appointed arbitrator to follow the requirement of the arbitration under this act. According to the provision of sec 17 of the arbitration act 2001 provided that if the party is disagreed then the tribunal may exercise its own jurisdiction-

- a. There is existence of a valid Arbitration agreement.
- b. The arbitration tribunal is properly constitute
- c. Whether the arbitration agreement against the public policy
- d. The arbitration is unable to preformed

What matter have been submitted to arbitration is accordance with the arbitration of agreement.

## **2.3 Labour Court**

The Government may by notification in the official gazette established labour court as it necessary. A labour court shall be consisted a chairman and two members but in respect of any matter under chapter ten and twelve it shall be consisted by a chairman alone.

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<sup>18</sup> *The Administrative Tribunal Act 1980*, sec 3.

<sup>19</sup> *Ibid*, sec.4.

The chairman may be appointed from the amongst of the judges or additional district judge. According to the labour court act 2006 sec 214 sub (10). A labour court shall have exclusive jurisdiction on the following matters namely:

- To adjudicate and determine industries dispute on to try any offence under this code.
- To examine and adjudicate any implementation on violations of a settlement which is refried by the government.
- To exercise any rower referred by this code.

And provision contain in chapter 35 of the *CrPC* shall apply to labour court.

According to the Sec 215 of the labour court 2006 this court shall follow as namely as parable summary procedure for CRPC to try any offence. It has the same power as like the fist class magistrate under the CRPC to trying any offence and for the purpose of punishment it has the same power as like court of session. According to section 216 of the labour court act 2006 except the adjudicating and determining any criminal cases this court shall be deemed as a civil court.<sup>20</sup>

### ***2.3.1 Labour Appellate Tribunal***

According to the sec 218 of the Bangladesh labour law 2006 labour appellate tribunal shall be consisted by chairman and such number of members. And such chairman shall be appointed from among person who is one has been a judge or an a additional judge of the supreme court labour tribunal shall followed as namely as possible the provision of civil code procedure to hear appeal. This tribunal has power to modification awarded decision, judgment or section given by the labour court. If any person aggrieved on the decision of the labour appellate tribunal than the aggrieved person may appeal to the high court decision.<sup>21</sup>

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<sup>20</sup> Abdul Halim & Masud Siful Rahman , *Bangladesh Labour Code 2006*, (Dhaka, CCB foundation, 2006), pp-320-2.

<sup>21</sup> *Ibid*, pp.324-25.

## **2.4 The Artha Rin-Adalat**

The Artha Rin Adalat was established under section 104 of the Artha-Rin-Adalat Ain act 2003. Every financial institution as listed in section 2 will file suits for recovery of money against a loan under this act. This Adalat follows its own proceeding as well as the proceeding of CPC and application will be filed to the court through affidavits. A joint district judge will be appointed as judge of this court.<sup>22</sup>

## **2.5 The Family Court**

Family courts have been established under the ordinance 1985. The assistant judge is the judicial officer of this court.

The court has jurisdiction over the following matters.

- a. Desolution of marriage
- b. Dower
- c. Restitution of conjugal rights
- d. Maintenance
- e. Guardianship and custody of children.<sup>23</sup>

## **2.6 Small Causes court**

According to section 25 of the *Civil Courts Act 1887* small causes court was established for the settlement of small and petty claims matters between parties.

There is no separate court for small cause but some regular judges, the joint district judge, Senior assistant judge and assistant judge have jurisdiction to try cases of small cases. According to section 15 of the *Civil Courts Act 1887* all suits of civil nature of which value does not exceed 25 thousand taka shall be cognizable by the court of small causes and it is the highest pecuniary jurisdiction of this court. According to section 25 of the *Civil Courts Act 1887*.

- a. Small causes suit valued up to taka six thousand is to be filed in the court of assistant judge.

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<sup>22</sup> *Ibid*, p.140

<sup>23</sup> Md. Anser Ali, p. 272

- b. Suit valuation up to taka 10 thousand to be filed in the senior assistant judge court of the local area.
- c. Suit valuation up to taka 20 thousand is to be filed in the joint district judge court of the local area vested with small causes lower.<sup>24</sup>

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<sup>24</sup> *Ibid*, p.158.

## Chapter 3

### COURTS OF CRIMINAL JURISDICTION IN BANGLADESH

*The Code of Criminal Procedure* 1898 is the legal basis of the criminal courts in Bangladesh. According to the section 6 of the code of criminal procedure beside the Supreme Court there shall be two kinds of criminal court in Bangladesh. They are given below.

#### **3.1 Session court**

In every district there is a court of session. District Judges has power to worked as court of session. Basically district judge and additional district judge in same person when he operate civil cases he called district judge. When session are located in what reposition area then is called metropolitan session court. The jurisdiction of the session court may be divided in to following categories.<sup>25</sup>

##### **Original Jurisdiction**

This court try any criminal offence authorized by code of criminal procedure this court given death sentence subject of confirm by the High court division.

##### **Appellate jurisdiction**

This court have jurisdiction to hear appeal.

##### **Provisional jurisdiction**

This court have revisioinal power according to the section 435 of criminal procedure code. According to sec 526 as well as 528 of the criminal procedure code.

#### **3.1.1 Additional Session court**

The court of additional session judge shall have exercise same powers of like session judge court when additional session judge situate in matropolitioin area is called additional metropolitan.

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<sup>25</sup> Abdul Halim and N.E. Siddiki, *Legal System of Bangladesh after Separation*, (Dhaka: University Publication, 2008), p.134.

### **3.1.2 Joint Session court**

Joint session judge may exercise any power authorize by law except a sentence of death or a term exceeding ten years on of imprisonment when join session judge located in metropolitan area is called joint that repository join session court.

### **3.2 Magistrate Court**

Magistrate court are divided in to two classes.

- a. Judicial magistrate
- b. Executive

According to the sec 6 (3) of code of criminal proceeding judicial magistrate are classified in 4 class.

- a. In the metropolito9n area chief metropolitan magistrate. Out of metropolitan area chief judicial magistrate.
- b. In the metropolis area metropolitan magistrate. Out of metropolitan area fist class Magistrate.
- c. Second class judicial magistrate
- d. Third class juridical magistrate.

According to the section 7 (1) of the Court of criminal procedure there shall be more session division in Bangladesh and according to the Court of criminal procedure very session division shall have one district or more district. According to the section 7 (2) of the Court of criminal procedure government have been change to number or area in division or district.<sup>26</sup>

According to the sec 9 of the Court of criminal procedure government has been established one session court for every session division and one judge shall have appointed for this court.

According to the section 31 of the *Code of Criminal Procedure*(CrPC) session judge and additional session judge give any sentence which is approve in law. It will be need approved of high court division when session judge or

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<sup>26</sup> Shekh Mohammad Azad, *A New Best Advocate ship Guide*, ( Dhaka: Kamrul Book House, 2008), p.249.

addition all session judge gives death sentence. Beside this according to the session 31 of CRPC joint session judge give any sentences beside death sentences or up to 10 years imprisonment. Given a table below about jurisdiction of Court of Session.

### ***3.2.1 1<sup>st</sup> Class Magistrate***

According to the section 32 (1) of the CRPC metropolitan magistrate or 1<sup>st</sup> class magistrate may give any sentence up to 5 years and fine up to taka ten thousand.

### ***3.2.2 2<sup>nd</sup> Class Magistrate***

According to the section 32 of the criminal procedure code 2<sup>nd</sup> class magistrate may pass imprisonment up to 3 years including solitary confinement and give fine up to rive thousand taka.

### ***3.2.3 3<sup>rd</sup> Class Magistrate***

According to the section 32 of the criminal procedure code 3<sup>rd</sup> class magistrate give imprisonment up to two thousand taka.<sup>27</sup>

## **3.3 Executive magistrate**

According to the sec 10 of the criminal procedure code the executive magistrate have he following function and powers.

- In every metropolitan area and district area the government shall appoint any persons to be an executive magistrate and among them shall appoint district magistrate.
- The government may appoint any executive magistrate to be an additional district magistrate and they have the same powers like district magistrate.
- The government or district magistrate define local area time to time within which executive magistrate may exercise its power.

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<sup>27</sup> Abdul Halim and N.E. Siddiki , *ibid* , p.134.



- According to section 4.2.6 the executive magistrate shall not exercise any judicial function. This court shall do such work as like administrative or executive nature such as granting of a license sanctioning a procreation on withy drawing from procreation etc.<sup>28</sup>

### **3.4 Special Magistrate**

Sec 12 of the code of criminal procedure provide power and function of special magistrates. The government may confer up to any persons all or any of the power conferred to executive magistrate such person is called special executive magistrate the government may appoint such officer to do work for a certain period such meditative will be appointed out side metropolitan area. Such power will not confer on such person who is in below grade of the any person like judicial magistrate of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> and class magistrate.<sup>29</sup>

### **3.5 Nari-o-shisu nirjatan Daman Tribunal**

Nari-o-shishu Nirjatan Doman Tribunal has been established under the provision of the Nari-o-shishu Nirjatan domon Ain 2000. According to th3e section 26 every district there must be a tribunal of such cases. If the government think necessary may consist more tribunal in each district.<sup>30</sup>

The tribunal shall be consisted by one judge who is appointed for amongst the district judge.

### **3.6 The speedy trial tribunal**

According to the section 4<sup>th</sup> the speedy trial act 2002 the government may be notification in the official gazette, may consist one more tribunal if he think fits and may notify the local limited of each tribunal the president may appoint as session judge on retired session judge of be the judge or special tribunal.<sup>31</sup>

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<sup>28</sup> Md. Abul Kalam Azad, *Criminal Procedure Code*, (Dhaka: Lipi Law Book House, 2008), p.23.

<sup>29</sup> *Ibid*, p.26.

<sup>30</sup> A.K.M. Moniruzzaman, *ibid*, pp.124-5.

<sup>31</sup> *Ibid*, p.236.

According to the sec 5 of the speedy tribunal act the government may by notification of the official gazette may confer any offence to try this tribunal.

### **3.7 The Environmental court**

The environment court was established under section 4 of the environment court act 2000 consisting at one judge hold port as joint district judge and it will be situated in every head quarters of the division.<sup>32</sup> The government may appoint special magistrate to try any offence for which the punishment is not exceeding 2 tens imprisonment and 10 thousand taka fine the offence mentioned in section 15 of this act where the highest punishment is up to 10 year imprisonment and 10 lakh fine or both.

#### ***3.7.1 The Environmental Appellate Tribunal***

The environmental court act 2000 provided the provision of established on environment appellate tribunal under section 12 comprising of a judge port of district judge.<sup>33</sup>

The government may empowered a district and session judge to worth as a judge to the environment appellate court as an extra change and they will follow the proceeding of criminal procedure code in criminal cases and proceeding toe civil procedure code in civil case suit.

### **3.8 The Special Tribunal**

The special tribunal has been established under the special power act 1974 with the session judge as special judge of the tribunal. It deal with the offence as special in the schedule of the act for offence punishable under the special power act 1974. The arms act 1818 the explosive substances act 1908. Rule made under the emergency power act 1975. Section 376 of the penal code 1860 etc.<sup>34</sup>

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<sup>32</sup> Abdul Halim and N.E. Siddiki , *ibid* , p.163.

<sup>33</sup> *Ibid*,p.164.

<sup>34</sup> *Ibid* , p.152.

## Chapter 4

### **BACKLOGS OF PROBLEM IN OUR JUDICIARY**

#### **4.1 Backlog of cases**

Judiciary of Bangladesh is caught in a vicious circle of delays and backlogs. Backlog of cases causes frustrating delay in the adjudicative process, which is eating away our judiciary. While delay in judicial process causes backlog, increasing backlog puts tremendous pressure on present cases and vice versa. This process goes on with on apparent remedy in vies. Present rate of disposal of cases and backlog is alarming for justice. Rule of law and economic development of the country.<sup>35</sup>

Delay in our judiciary has reach in a point where it has become a factor of injustice, a violator of human rights. Praying for justice, the parties become part of a long, protracted and torturing process, not knowing when it will end. Where it should take one to two years for the disposal of a civil suit, a case is dragged for 10 to 15 years, or even more. By the time judgment is pronounced the need for the judgment in certain cases is on more required., Moreover, in a society of class differentiation, the lengthy process, which is adversarial and confrontational in nature, puts the economically stronger party at an advantageous position. If the judiciary functions substantively and in accordance with the procedural laws an existing wide scope for delays, can transform it into a system which becomes procedurally hostile towards marginalised sections of our people, defeating the goals of social justice.<sup>36</sup>

The reasons for delays in our civil justice system are both systemic and subjective. They may be identified as follows.

1. common law oriented adversarial of accusatorial character of the civil process as against inquisitorial as practiced in continental Europe, meaning that

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<sup>35</sup> Shah Alam, 'Alternative Dispute Resolution by Early Judicial Intervention: A Possible Way out of Delay and Backlog in Our Judiciary', Shah Alam, ed., *Manual for Clinical Education* (Chittagong: Homeland Press and Publication, 2001), p 328.

<sup>36</sup> *Ibid.*

the litigation is party-controlled which provides wide maneuvering power to the lawyers, and presupposes lesser initiative and relative passivity of the judges.

2. Slow process of service of the summons which can be further slowed down by the intentions of the parties concerned, indicating a poor state of court administration.

3. Too much reliance on the resort to interim injunctive relief and orders, leaving the hearing of the main contentions and issues to infinity.

4. Frequent adjournments of the trial caused by the insistence of the lawyers. And reluctance of the judges to limit these adjournments, such reluctance being explained partly by heavy case-load and partly by their unpreparedness to continue and complete the process.

5. Vested interest of the lawyers for lingering and delaying the process, for they are often paid by their appearances in the court.

6. Commonly made interlocutory orders and appeals which fracture the case into many parts and effectively stay the trial.

7. scope for frequent amendments of the plaints and written statements at any stage of the trial.

8. Reluctance of the judges, accentuated by their statutory non-compulsion, to use preexisting rules and orders to expedite the trial, or to sanction the parties for failing to follow the procedural requirements, meaning that the judges do not take initiative to employ procedural power already within their reach, nor do they make use for their rule making power to achieve procedural effectiveness.

9. Absence of lawyer-client accountability giving the lawyer monopoly to conduct the case the way he considers best suited to his own interest.

10. Little scope for client to client interaction which hinders potentiality for alternative dispute resolution and intensifies confliction nature for the proceedings.

11. Failure of the parties to present the witnesses sometimes genuine, sometimes deliberate.

12. Vagueness in the terms and wordings of the plaint and written statement, charging on the court time to clarify the issues, and the failure of the judges to impose costs for frivolous suits and pleadings.

13. Rotation and transfer of judges, often meaning that the same judge who heard testimony may not decide the dispute, taking away thereby much of his incentive to push forward the proceedings to judgment and seriously impeding the process of continuous trial the new judge may have to repeat some of the procedural requirements already fulfilled.

14. Inadequate administrative and logistic support system, enormous work load of the judges , poor salaries and poor working conditions all having negative impact on the initiative and efficiency of the judges.

15. Insufficient internal discipline and accountability.<sup>37</sup>

#### **4.2 Loopholes in appointment procedure**

Actually our constitutional provisions for the appointment of justice are not sufficient to spare from the government to appoint a person loyal to it. A person who has been practising law in the Supreme Court for ten years or who has been performing judicial functions in the territory of Bangladesh for ten years may be appointed as judge of the Supreme Court by the president. Here lies some loopholes for the government to manipulate the appointment procedure.

Firstly, it is not mentioned here that such person must have regular practice in the court. One may get enrollment in the Supreme Court by passing an enrollment examination. And after ten years he may get appointment as the judge of the court without having good record of practicing law if he is in the good book of the government.

Secondly, the Constitution does not define the term 'judicial officer'. According to the decision of the *Masdar Hossain* case<sup>38</sup> only the person who performs the judicial functions will be treated as the judicial officer. One who is the secretary of the Ministry of Law, Justice and Parliamentary Affairs shall not

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<sup>37</sup> Shah Alam, *ibid*, p. 330.

<sup>38</sup> *Secretary, Ministry of Finance v. Md. Masdar Hossain*, 20 (2002) BLD, AD, 134.

be treated as the judicial officer. But last time an officer of the law ministry was appointed as the judge of the Supreme Court which is clear violation of the directions of the abovementioned case.

Thirdly, the president is entrusted with the sole power to appoint judges in the Supreme Court. There is no check and balance on it. In our original Constitution of 1972 there was a provision for consultation with Chief Justice in the matter of appointment of judges in the Supreme Court which is out dated by the constitutional fourth amendment. And now the president has the unfettered power to appoint judges in the highest court which may be influenced by the decision of the government. Because, in our country decision of the president merely derails from the decision of the party in power. Although it is said that there is a convention that president should consult Chief Justice before exercising his power in appointment of judges, but it has no binding force.<sup>39</sup>

#### **4.3 Inadequate Salary and other facilities**

The most crucial aspect of ensuing challenge for smooth functioning of separation of judiciary is tiny salary and fragile remuneration of judicial officers. The highly expensive market frowns the judicial officers. There is hardly any commission in Bangladesh like this which consisting of such mighty personnel hailed from all the major policy levels to propose the rational enhancement of salary, remuneration and concomitant advertence of judicial officers in the lower tier. This commission apparently looks very powerful and robust, but the judicial officers have recorded the vulnerability of this pay commission when the government has turned down its recommendation to enhance salary and allowance. It is the greedy bureaucracy driven executive organ knows whose recommendation they would heed to if such powerful pay commission's recommendation is set at naught. Actually, the inference is 'if the phantom is in mustard who would eradicate the phantom'. Bird's eye view without any optics stages the diarchy, paradoxical and dichotomy of the degenerated bureaucracy to perish the Pay Commission's recommendation.

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<sup>39</sup> [<http://www.thedailystar.net/law/200311/02/index.htm>, accessed on 21 January 2010].

The young judicial officers appointed by the Judicial Service Commission have come with the motto of rudimentary change for justice but they are highly fed up as the authorities failed to materialize the promise of providing reasonable salary and other benefits. Many brilliant juridical officers are counting the moment to quit as they have lucrative offers in other arena.<sup>40</sup>

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<sup>40</sup> *Ibid.*

## Chapter 5

### **SEPARATION OF JUDICIARY AFTER *MASDER HOSSAIN CASE***

#### **5.1 Separation of the Judiciary from the Executive: A Brief History**

In any part of the world, it is one of the Constitutional mandates as well as commoner's desire that the judiciary should be independent from the other organs of the state. It is viewed as a device to protect the righteous and impartial judicial power from the intervention of other segments of the government and powerful individuals. This idea of independence of judiciary was first devised by Montesquieu, the sixteenth century French philosopher. Montesquieu in his famous articulation of "Theory of Separation of Power" described division of political power among the three organs of the state, i.e. executive, legislature and the judiciary. Despite certain criticisms, Montesquieu's theory of separation of power is taken for granted in modern discussions of the good governance and implemented in many Constitutions throughout the world. It has become one of the core principles in ensuring independence of judiciary and took concrete shape in Constitutional documents and Constitutional instruments. In commensurate with the globally recognized principle, the framers of the Constitution of Bangladesh also inserted in Article 22 that, - 'The State shall ensure the separation of the Judiciary from the executive organs of the State', being one of the Fundamental Principles of State Policy as well as one of the core spirit of the Constitution. However it took almost 35 years for Bangladesh to implement the directives of Article 22 and the journey has not been a smooth one. A brief historical background of separation of judiciary in Bangladesh is described below.

##### ***5.1.1 British Period***

During the British rule there was a demand for separation of judiciary from the executive. The British administration did not take any concrete steps aiming at separation of judiciary as there was apprehension that it might go against their



colonial interest. In 1919, the matter of separation of judiciary was raised in the House of Commons but it was not discussed on the contention that it was a matter within the jurisdiction of provincial government. In 1921, a resolution regarding separation of judiciary was passed in the Bengal Legislative Assembly which was followed by formation of a committee. The committee reported that there was no practical problem in separation. However, nothing more was done during the British rule.

### ***5.1.2 Pakistan Period***

After independence of Pakistan in 1947, the first Constitution in independent Pakistan was adopted in 1956. Unlike the Government of India Act 1935 (Ss 253, 254, 255 and 256) and the Constitution of India (Art.233 to 237) Pakistan Constitution of 1956 did not include any provision regarding 'subordinate courts' or 'magistracy'; these were regulated by the Code of Civil procedure and the Code of Criminal Procedure and thus had been under substantial executive control. In 1957, the East Pakistan Provincial Assembly passed the Code of Criminal Procedure (East Pakistan Amendment) Act 1957 (Act no 36) with a view to separating the judicial and executive functions of the magistrates. In 1958 the Pakistan Law Commission recommended to bring the judicial magistrates under the control of the High court. In 1967 the Law Commission again recommended to give effect to the Cr. P. C Amendment Act 1957. However, it was never given effect during the whole of Pakistan Period.

### ***5.1.3 Bangladesh Period***

In 1972, after independence of Bangladesh the Constitution of the Peoples' Republic of Bangladesh was adopted. Provision was made in Article 22 as a Fundamental Principles of State Policy that the state shall ensure the separation of the judiciary from the executive organs of the state. This was not merely a fundamental principle of state policy which was devised as not to be judicially enforceable, rather it meant more than that. In fact, the insertion of Article 22 was to ensure reflection of the spirit of the Constitution as laid down in its Preamble as

"Further pledging that it shall be a fundamental aim of the State to realize through the democratic process to socialist society, free from exploitation-a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens". Without ensuring an independent judiciary all these aspirations stipulated in the Constitution meant nothing but decorations of the Constitution. But unfortunately no constructive initiatives were taken by the successive governments to implement the directives of Article 22. In 1976, a Law Committee headed by Justice Kemaluddin Hossain recommended to implement separation of subordinate judiciary in three stages which are as follows:

First Stage: The government may by notification, appoint some particular magistrates at each station exclusively for judicial work, thus to ensure that the same person is not exercising judicial and executive function at the same time. . This can be given effect forthwith without any additional expenses or administrative difficulties.

Second Stage: There should be separation of judicial functions from executive as envisaged in the Code of Criminal Procedure ( East Pakistan Amendment) Act, 1957 (Act no.36).

Final Stage: The final stage would be not only to complete separation of judicial functions from executive but also to constitute a separate and integrated Judicial Service under the control of the High Court Division for civil and criminal work right up to the level of the District and Session Judge. The Committee also recommended that for creation of an integrated judicial service it would be necessary to enact new legislation.

A Bill for separation of judiciary by an amendment to the Criminal Procedure Code was prepared in 1987. However, it was later thrown to cold storage. In Pakistan, separation of Judiciary was done in 1973 and in India; it was done in 1974 by an amendment to their respective Criminal Procedure Code. In 1990, the issue of separation of judiciary was put into the manifesto of the Three- Party Alliance movement against the regime of that time. In every election after 1990 all

major political parties had a commitment in their manifesto to separate judiciary from the executive.

In 1991, a private member's Bill namely the Constitution (14th Amendment) Bill was introduced for further amendment of Articles 95, 98, 115 and 116 of the Constitution, for ensuring separation of the subordinate judiciary from the executive branch. The Bill was sent to a select committee which had carried out about 13 meetings to consider the proposal. However, no further steps were taken to pass the Bill.

### **5.2 Masdar Hossain Case<sup>41</sup>**

In 1995 Masdar Hossain along with 441 judicial officers who were judges in different civil courts filed Writ Petition No. 2424. The petitioners alleged inter alia that:

i) Inclusion of judicial service in the name of BCS (Judicial) under the Bangladesh Civil Services (Re-organization) Order, 1980 is *ultra vires* the Constitution;

ii) Subordinate Judiciary forms chapter II of the PART VI (THE JUDICIARY) of Constitution and thereby the 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.

iii) 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 matter came up for hearing on 13.06 .1996. However, because the petitions for time on behalf of the government were allowed for several times, it could not be heard ultimately before 01.04.1997. After a long hearing with valuable comments and citations by Dr. Kamal Hossain, Syed Istiaq Ahmed and Mr. Amir-ul Islam the court delivered its historic judgment on 7th may 1997

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<sup>41</sup> *Secretary Ministry of Finance v. Md. Masdar Hossain and others*, 52(2000), DLR, 82.

(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). The Appellate Division directed the Government to implement its 12 point directives, including for formation of separate Judicial Service Commission (JSC) and Judicial Service Pay Commission to separate the judiciary from the control of the executive, a long cherished desire of the people of Bangladesh.

### **5.3 Implementation of the Judgment in Masder Hossain Case**

Since the judgment was pronounced by the Appellate Division in 1999, the successive governments took 23 adjournments to implement the judgment on various plea up to February, 2006. During these 7 years time, the government took very slow steps towards the way of separation of judiciary.

The Caretaker Government from the very beginning adopted a positive and firm outlook with a determination to separate the judiciary from the executive based on the constitutional directive principles and Appellate Division's judgment in the Masder Hossain's Case. Accordingly 4 service rules namely (a) Bangladesh Judicial Service Commission Rules, 2007, b) Bangladesh Judicial Service (Pay Commission) Rules 2007, (c) Bangladesh Judicial Service Commission (Construction of Service, Appointments in the Service and Suspension, Removal & Dismissal from the Service) Rules, 2007 and (d) Bangladesh Judicial Service (Posting, Promotion, Grant of Leave, Control, Discipline and other Condition of Service) Rules, 2007 have been enacted and changes were brought in the existing Code of Criminal Procedure 1898 by Ordinance No II and No. IV of 2007. This is considered to be a major change paving the way for dispensation of Criminal Justice at the level of magistracy by the officers belonging to Bangladesh Judicial Service and thereby removing all impediments in the separation of Judiciary from the executive control. Finally the historic journey of the judiciary separated from the executive started functioning from 01, November 2007.

### ***5.3.1 New Laws for Separation of Judiciary***

In pursuance of separation of judiciary as sanctioned by the highest judiciary in *Masdar Hussain's* case the four new regulations are enacted as

1. *The Judicial Service Commission Rule 2007,*
2. *Bangladesh Judicial Service Pay Commission Rule 2007,*
3. *Bangladesh Judicial Service (Service Constitution, Composition, Recruitment, Suspension, Dismissal and Removal) Rules 2007,* and
4. *Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Condition) Rules 2007.*

There are multidimensional rationalities of differentiated arrangement for judicial officers as observed by the Supreme Court, in the *All India Judges' Association Case*<sup>42</sup> in the following maneuver:

"The judicial service is not service in the sense of employment. The Judges are not employees. As members of judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and members of the legislature. The judiciary is above the administrative executive and any attempt to place it on par with the administrative executive has to be discouraged." The Supreme Court went on to state :(i) "The exertions involved in the duties of the Judge cannot be compared with the duties of other services."(ii) "It is fallacious to compare the judicial service with other services for any purpose, since the judicial service by its very nature stands on a different footing and should be treated as such."(iii) "The earlier approach of comparison between the service conditions of the Judges and those of the administrative executive has to be abandoned and the service conditions of the Judges which are wrongly linked to those of the administrative executive have to be revised to meet the special needs of the judicial service."

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<sup>42</sup> (1992), AIR, SC,165

### ***5.3.2 Separate Judicial Pay Commission***

Under Article 115 of the constitution there has to be a separate Judicial Pay Commission which is to review the pay, allowances, and other privileges of the judicial officers. To address the pitiable salary reality of judicial officers in lower judiciary, pay commission has been established consisted of 9 members. The commission, headed by Appellate Division judge Mohammad Fazlul Karim, also includes High Court judge Nazmun Ara Sultana, a member of the law commission, registrar of the Supreme Court, Comptroller and Auditor General, finance secretary, establishment secretary, law secretary and a district judge. Meetings of the Commission shall be convened at stated intervals of 5 years to keep the review process continuous. It, however, has the power to make interim recommendation for reorganization of the pay structure for the judicial officers, the rules stipulate. Reorganize the pay structure for the judicial officials, the judges of the lower courts is the prime and number one priority task of it.<sup>43</sup>

After separation, the judicial pay Commission has reviewed the present pay structure of judges and sent proposals to the executive for endorsement. The Judicial Pay Commission has made recommendations for 100% judicial allowance, increase of House Rent allowance and robe allowances. Only robe allowance has been enhanced a bit.

The most crucial aspect of ensuing challenge for smooth functioning of separation of judiciary is tiny salary and fragile remuneration of judicial officers. The highly expensive market frowns the judicial officers. They can not provide minimum support to their old and hapless parents who are already in wicket cycle of poverty but grow up their offspring denying any pleasure of life. Judicial officers can not supply basic needs to their family in terms of education, food, garment, health and shelter. Judicial officers are cursed by their kith and kin who expect from them, without knowing the mendacity of the officers. After curtailing various charges, the judicial officers get Tk. 6000/- 7000/- per month and it is

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<sup>43</sup> K.M.Mukta, Judges should get better emoluments,  
[ <http://ebiz.ittefaq.com/issues/2009/02/05/news0460.htm>, accessed on 21 January 2010].

beyond imagination to lead life by this amount where the race of crazy price horse is soaring up to the sky.

There is hardly any commission in Bangladesh like this which consisting of such mighty personnel hailed from all the major policy levels to propose the rational enhancement of salary, remuneration and concomitant advertence of judicial officers in the lower tier. This commission apparently looks very powerful and robust, but the judicial officers have recorded the vulnerability of this pay commission when the government has turned down its recommendation to enhance salary and allowance. It is the greedy bureaucracy driven executive organ knows whose recommendation they would heed to if such powerful pay commission's recommendation is set at naught. Actually, the inference is 'if the phantom is in mustard who would eradicate the phantom'. Bird's eye view without any optics stages the diarchy, paradoxical and dichotomy of the degenerated bureaucracy to perish the Pay Commission's recommendation.

### ***5.3.3 Separation of Judiciary from executive magistracy***

Criminal administration of justice as inherited by the judicial magistrates via separation of judiciary is nothing but relic of total institution where people can not repose any trust or confidence for justice. For a long period of time, the criminal administration of lower court is controlled by the executive organ of the state authenticating amalgamation of state organs which is the surname of injustice and sufferings of the citizen who are the real owner of republic.

The criminal administration of justice in the lower tier of judiciary was quagmire and tinted with injustice in the profane touch of executive machineries devoid of public acceptability.

After partial separation of judiciary, the direct encroachment of greedy executive entities is terminated but their intrigue to grasp the lost illegal power in judiciary is ceaseless and leaving no stone unturned to swoop whenever there is minimum chance as proved in melodrama to appoint Judicial magistrates as mobile court for national election. One would be simply surprised to visualize the left malpractices and injustice by the then executive magistrates in the name of

justice. They would not maintain the basic normatic aspect of justice, like natural Justice whereas nepotism, corruption etc. where the usual course of business.

After separation of Judiciary there is a landmark amelioration of dispensation of criminal justice with quality and quantity. The justice seekers and lawyers are no longer observing orders inside the veil without hearing or knowing anything. All the stake holders are envisaging win-win situation except the ghetto executive magistrates who can not sustain the separation of judiciary as they are no longer capable of enjoying the illegal cream of criminal administration as surplus activities by the deprivation of hapless have-nots.

After separation of judiciary from November 01, 2007 to upwards, the criminal administration of justice has got its new face, in terms of qualitative and quantitative justice. There is a win-win situation for the wider stake holders, except the personnel of the administrative cadre who are desperate to serve their vested interests through efforts to capitalise on people's desire for justice by an independent judiciary. The disposal rate is enhancing at a geometrical progression. A higher degree of transparency, neutrality and accountability is already established in criminal administration of justice. The justice-seekers have interactions with the judicial magistrates in an open court environment, without any hide- and-seek game of corruption which was a usual course of business before the separation of judiciary. Separation of judiciary has already helped translate justice into a reality. This seems to have been done through saving time and labour etc., of all concerned.

The judicial magistrates with robust legal background are delving deep into the cases with nitty-gritty of law, setting aside any political interference and nepotism. Such welcome indicators about the separation of judiciary would ensure good governance in the near future and not a single victim would thus hopefully without a remedy. <sup>44</sup>

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<sup>44</sup> [<http://www.thefinancialexpress-bd.com/2009/03/25/62143.html>, accessed on 21 January 2010].



## Chapter 6

### RECOMMENDATIONS AND CONCLUSION

Chief Justice Mr Nasirullah Beg of Allahabad High Court said that ' the best test for determining the height of civilization in a society is to be found in the extent of honour, respect and regard paid in that society to the Judiciary. The greater the respect, higher the civilization.'

From the above discussion we can rightly say that Judiciary of Bangladesh has been separated after *Masder Hossain case*<sup>45</sup> but it can also be seen that the independence of Judiciary is yet to achieve. We propose for recommendations for achieving independence of judiciary in true sense.

The constitution of Bangladesh speaks about social justice which is the key pillar of the constitution. We must not fail to ensure our citizens right to access to law and justice. The need for reform of legal education is must to achieve this goal, Judges, lawyers, law teachers, law students, professional groups, member of civil society and various legal institution throughout the country should come forward to act for this.

#### 6.1 Encouraging ADR

Focusing on the experiences of some other countries including the USA and with an optimistic view that our age – old culture provides to settle any dispute through mediation, a carefully devised mechanism which involves proper court administration, effective case management and amicable consensual dispute resolution , can revolutionise our entire civil justice delivery system . The essence of the concept is that after the filing of the plaint and submission of the written statement ,attempts would be made to resolve the dispute through various forms of alternative dispute resolution (ADR) by early judicial intervention . In short , it is mandatory recourse to ADR or CDR (Consensual Dispute Resolution ) by the trial

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<sup>45</sup> *Secretary, Ministry of Finance v. Md. Masdar Hossain*, 20 (2002) BLD, AD, 80.

judge's order in the pre-trial stage of a case .Court administration and case management are to prepare the ground for the success of ADR. It may be mentioned that in some of the states of the USA (for example California ) 90 per cent of the cases are resolved at the pre-trial stage through ADR by early judicial intervention , and only the remaining 10 per cent go to the trial.<sup>46</sup> In our country the picture is just the reverse. So, one of the way the backlog of cases in the court can removed is encouraging ADR in pre trial stage.

## **6.2 Appointment of Judges**

The Supreme Court had another option at least to direct the legislatures to revive the provision of "consultation with chief justice" in the matter of appointment of judges of the highest court, which was in the original Constitution. Independence of judiciary is the basic structure of the Constitution which is not attainable without participation of the Chief Justice in the appointment procedure. Therefore, re-introduction of the provision of the original Constitution will ensure the participation of the court in appointment procedure of its judges. And the highest court left it in a limbo.<sup>47</sup>

## **6.3 Adequate salary and other facilities**

To reap the positive aspect separation of Judiciary, there would be no alternative of accommodating energetic brilliant officers with proper remuneration and logistic support with the special consideration devoid of any comparison with other employment/ service as the judicial officers are not employee and they are unparallel to exercise sovereign judicial capacity. To retain the prolific success of separation of judiciary, the state should invest the basic requirements like rational salary and logistic support.

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

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<sup>46</sup> Shah Alam, *ibid*, p. 331.

<sup>47</sup> [<http://www.thedailystar.net/law/200311/02/index.htm>, accessed on 21 January 2010].

have to play active and effective role from honest point of view. Then the independence of judiciary will bring effective fruits in future.<sup>48</sup>

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<sup>48</sup> [<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan020065.pdf>, accessed on 23 January 2010].

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