

Role of Judiciary in Making Governance Good in Bangladesh: An Empirical Study Focusing on Present Reform in Judicial System

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Abstract: *In this study two interrelated issues are examined to see whether and how each one is affected by another. The goal to make governance good of a country is to streamlining the system of accountability, establishing rule of law, responsiveness, equity, effectiveness and efficiency. A country's judicial system can play vital role in establishing rule of law, achieving equity, efficiency and effectiveness, when it enjoys separate and independent status. The pivotal concern of this study is to review the role and contribution of judiciary emphasizing on its present reform in making governance good in Bangladesh. For examining the role of judiciary in making governance good, some parameters of good governance are selectively studied. Through analyzing the efforts of judiciary, especially the present reform efforts, an attempt is to be taken to see of what extent judiciary is able to attain the rule of law and responsiveness, equity, effectiveness and efficiency for better governance that ensures equitable allocations of country's resources. The study is basically developed on first hand data particularly based on survey. Along with, secondary literatures are also studied for this purpose. Findings of this study have shown that present status of judiciary alone can not make governance good, more allied factors are strongly influenced the governance pattern. And above all, until actual separation of judiciary will not be made, governance pattern does never be accelerated.*

Introduction:

The concept of governance has over the years gained momentum and a wider meaning. Apart from being an instrument of public affairs management, or a gauge of political development, governance has become a useful mechanism to enhance the legitimacy of the public realm.

Good governance depends on having in place mechanisms that hold the government accountable to the public in a way that ensures the equitable treatment of all its citizens. This requires respect for the rule of law, based on an honest and fair judicial system and effective law enforcement. Effective accountability depends on systems and processes respected by everyone concerned, with effective and consistent sanctions applied when transgressions occur (Temple, 2002).

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Anyway, Good governance has become the buzzword of international financial institutions as a key factor for sustained economic growth. This has also been picked up as a slogan by almost every government, particularly in developing countries. Good governance is nothing but a set of principles or ethics to conduct public affairs of government. So, institutionalizing this concept, nationally or internationally huge resources are expended to conduct research and other related activities.

Judiciary is the last resort for obtaining redress of one's grievances. It must be able to act as an institution without fear or favor. This will be possible if there is separation of the judiciary from the executive in the truest sense of the term. Separation adherences through enactment of legal provision prevailed in the constitution which also strengthens capacity status of judiciary. The basis of the separation of judiciary is contained in Article 22 (Part II, Fundamental Principle of State Policy) of our constitution, which states that the state shall ensure separation of the judiciary from the executive. Independent and separate judiciary generates a congenial atmosphere where parameters of good governance i.e., rule of law, equity, effectiveness etc., can easily be achieved. At the same time, free and fair political environment as a whole just society can only developed an independent judicial system. A historical legacy in making free and independent our judicial system is found from very beginning of colonial administration. From that time, several attempts have been taken by different regimes to separate judiciary from executive domain. A historical event has been initiated in this legacy while the Caretaker Government took action to separate judiciary from executive in the 1st November, 2007. Apparently it may be regarded as effective one to separate judiciary, but ins and outs analysis diminishes this prospects and possibilities. However, the Parliamentary Standing Committee on Law suggested that this power of cognizance will be given to executive magistrates for maintaining law and order situation and this has nothing to do with the trial and giving punishment. The strength of this easy logic of mere cognizance power is being cemented by another argument that the provisions in Article 22 of the constitution on the basis of which separation has been done are not judicially enforceable (The Daily Star, March 28th, 2009). In fact, the jurisdiction of judiciary has interrupted again by the domain of executive. Anyway, the present study is an attempt

to justify the role and contribution of judiciary in establishing rule of law, equity, efficiency and effectiveness, and responsiveness through which good governance for realm of the most vulnerable and poorest in the country.

1.1 Objective of the Study

1. To study the underlying variables of governance which are the prerequisites to make governance good in Bangladesh.
2. To review the present reform status of judiciary along with its major drawbacks to ascertain whether it capable or not to make governance good in Bangladesh.
3. To assess the role of judiciary in establishing rule of law for elevating the state of governance.
4. To examine whether the present judicial system is responsive or not for accelerating the governance status.
5. To see the effectuality of judiciary in achieving equity and speedy justice to actualize the constitutional provision of protecting people's fundamental rights.

1.2 Methodology of the Study

In this part of the study, the procedures to investigate data and information and materialize the research themes are dealt. Firstly, the location, sources and methods of required data and, sample size and units are mentioned. And then, to operationalize the present research problem, conceptual dimensions of good governance have been studied.

Location: The present research work is basically conducted on five districts' judge courts named Kushtia District Judge Court, Jenaidah District Judge Court, Narshingdi District Judge Court, Vola District Judge Court, and Meherpur District Judge Court. These are brought under as sample unit to survey the opinion of judges regarding their roles in enriching the governance issues in Bangladesh.

Sample units and size: Total forty (40) respondents categorized into three have been selected randomly from five districts. The selected three categories are judge, lawyer and civil society. Selected research areas, respondents and their size are shown in the table 1.

Table 1: Research Areas and Sample Size

Research areas	Units of sample	Size of sample	(%)
Kushtia District Judge Court	Judges of Kushtia District Judge Court	5	12.5
Narshingdi District Judge Court	Judges of Narshingdi District Judge Court	4	10
Jhenidah District Judge Court	Judges of Jhenidah District Judge Court	6	15
Vola District Judge Court	Judges of Vola District Judge Court	3	7.5
Meherpur District Judge Court	Judges of Meherpur District Judge Court	2	5
Kushtia, Jhenidah	Lawyer	10	25
Kushtia, Jhenidah, Islamic University	Civil society	10	25
Total		40	100

1.2.1 Sources of Data

Primary source has been given priority to collect relevant data and information for the present research work. The methods applied to collect data from primary source are; i) circulation of questionnaire to the respondents, ii) interviewing the respondents, iii) close observation and focused group discussion etc. The secondary data source is also utilized for getting conceptual vision and frame clearly about research theme. For this, relevant documents and literatures are reviewed and studied. A questionnaire with 32 questions divided into two parts both structured and open was prepared for collecting data on the working of present judicial system in affecting positively the respective governance parameter. First part of the questionnaire has covered the personal profile of the respondents while second part is concentrated on the achievement judiciary in making governance good. To study these aspects, respondents were selected from three categories. They were selected from the category of judge, lawyer and civil society following random sampling method.

1.3 Dimensions to Operationalize the Research Problem

Governance and good governance are conceptualized by different exponents and from different dimensions and perspectives. All are not possible to study to operationalize the present research theme. So, operationalizing the state of governance and contribution of judiciary to make governance good, the dimensions of good governance approached by World Bank, IMF are studied here.

2.0 Parameters of Good Governance

For the purposes of this paper, four parameters of good governance i. e., rule of law, responsiveness, equity and, efficiency & effectiveness, are explicitly discuss here to ascertain the concern of judiciary in elevating the state of governance in Bangladesh.

2.1 Rule of Law

Legal frameworks should be fair and enforced impartially, particularly the laws on human rights. The rule of law also includes protection of property rights.

2.2 Responsiveness Institutions and processes try to serve all stakeholders.

2.3 Equity

All men and women have opportunities to improve or maintain their well-being. It also includes the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources,

2.4 Effectiveness and Efficiency

Processes and institutions produce results that meet needs while making the best use of resources. It also includes the quality of policymaking and public service delivery

3.0 Focus on Key Concepts

3.1 Governance

Governance is a broader notion than government, state, and regime, and is the interaction between formal institutions and civil society. It is seen as a process whereby elements in society wield power, authority, and influence and enact policies and decisions concerning public life, and economic and social development (<http://www.gdrc.org/u-gov/work-def.html>). In this context governance is defined as "a system" of government concentrating on effective and accountable institutions, democratic principles and electoral process, representation and responsible structures of government, in order to ensure an open and legitimate relationship between the civil society and the State (Halfani et al. 1994:4).

Governance is a multifaceted concept with wide ramifications. This is so because of the fast-changing and interdependent global environment. No country can afford to continue with a governance system that is outdated, slow, ineffective, expensive and corrupt in this age of globalization (Khan, 2003). In general terms, it can also denote "how people are ruled, how the affairs of the state are administered and regulated as well as a nation's system of politics and how this functions in relation to public administration and law" (Landell-Mills and Serageldin, 1991:304).

Governance is assessed by researchers from a three dimensional perspective (Kaufmann; Kraay and Zoido-Lobotón, 1999):

- a. the process by which governments are selected, held accountable, monitored, and replaced;
- b. the capacity of governments to manage resources efficiently and formulate, implement, and enforce sound policies and regulations; and,
- c. the extent of participation of the citizens in the affairs of the state.

The contribution of Goran Hyden to bring greater clarity to the concept of governance needs special attention. He elevates governance to an "umbrella concept to define an approach to comparative politics", an approach that fills analytical gaps left by others. Using a governance approach, he emphasizes "the creative potential of politics, especially with the ability of leaders to rise above the existing structure of the ordinary, to change the rules of the game and to inspire others to partake in efforts to move society forward in new and productive directions". (Website of South Africa's National Party <http://www.gdrc.org/u-gov/governance-understand.html>).

3.2 Good Governance

Good governance is now-a-days a widely used term in developed as well as developing countries. Bangladesh is no exception to this global trend. Politicians both in power and in opposition talk of their quest to achieve good governance. To ensure sustainable human development, actions must be taken to work towards this ideal.

Good governance is characterized by an accountable government at the top, an independent judicial system, freedom of thought and expression, and above all, freedom of choice for its citizens. Good governance also implies a democratic structure, human rights and freedom of media.

Governance can be viewed as the sum of three major components: process, content and deliverables. The process of governance includes factors such as transparency and accountability. Content includes values such as justice and equity. Governance cannot be all process and values. It must ensure that the citizens, especially the poorest, have the basic needs and have a life with dignity. A dictatorship that delivers basic needs to the citizens is no doubt better than a dictatorship that does not, but it is not good governance. Similarly, regular elections alone do not translate into 'good governance'. Rule of law that is transparent, but unjust- such as apartheid- is certainly not 'good governance'. It is only when all these three conditions are fulfilled that governance becomes 'good governance' (Aminuzzaman, 2006).

4.0 Judiciary in Bangladesh

4.1 The present judiciary in Bangladesh has its origin in the Indian subcontinent. The subordinate judiciary in both civil and criminal has their legal basis in the Civil Court Act 1887 and the Criminal Procedure Code, 1898. Besides these two, the constitution of Bangladesh provides the structure and functioning of the Supreme Court of Bangladesh comprising of High Court Division and Appellate Division. For better understanding, the Courts in Bangladesh can be categorized under the following four heads:

- i) The Supreme court of Bangladesh;
- ii) Civil and General Court under general hierarchy;
- iii) Tribunals,
- iv) Special court under special laws.

4.1.1 Supreme Court of Bangladesh: Article 94(1) of the constitution provides that there shall be a Supreme Court for Bangladesh, to be known as the Supreme Court of Bangladesh, comprising the Appellate Division and the High Court Division. Both have their own jurisdiction.

4.1.2 Civil and Criminal Courts under the Lower Judiciary:

Civil Court under general hierarchy: Under section 3 of the Civil Court Act, 1887 as amended by the civil courts (Amendment) Act, 2001, the five classes of civil courts are:

- 1) District Judge's Court
- 2) Additional District Judge's Court

- 3) Joint District Judge's Court
- 4) Senior Assistant Judge's Court
- 5) Assistant Judge's Court

Each of these courts is a separate Court and has jurisdiction assigned to it by the Civil Courts Act or by any other law which may be either original jurisdiction, appellate jurisdiction or transferred jurisdiction.

Criminal Courts in General Hierarchy:

The ordinary Criminal Courts have their legal basis in the Code of Criminal Procedure, 1998. Section 6 of the Code provides that besides the Supreme Court and the courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in Bangladesh. These are:

- 1) Court of Sessions
- 2) Metropolitan Magistrate's Court
- 3) Magistrate of the 1st Class
- 4) Magistrate of the 2nd Class
- 5) Magistrate of the 3rd Class

4.1.3 Tribunals: In Bangladesh, there are numbers of tribunals, some of which have their basis in the Constitution itself, some in some special laws. In Bangladesh, most of the tribunals e. g. Administrative Tribunals, Special tribunals under the Special Power Act, VAT Tribunals under special laws are quasi judicial in the sense of their formation. They are composed of both judicial and non judicial members but from the viewpoint of their function and jurisdiction they are judicial in nature.

4.1.4 Special Court: Special courts may be of different types. The Parliament by its legislative power may create special courts with special jurisdiction. Whatever may be their jurisdiction as a special court, one common element attached to them is that they are all subordinate courts under the supervisory power of the High Court Division of the Supreme Court (Rahman ed. 2006).

4.2 Present Reform Efforts of Judiciary

After 36 years of independence as well as passing the same duration of developing constitution, such separation of judiciary has taken place. By this separation, the trails of criminal actions under code of criminal procedure are vested under the control and supervision of reputed District Judges from the jurisdiction of Establishment or Defense or District Administration. At the same time, the judicial responsibility of Hill-tracts District Judges has now been vested to the hands of District Judges. Earlier this was performed by Divisional Commissioner.

Another important issue is that investigation of police case / Cr Case or Criminal cases, the prevention and detection of crime, apprehending and detaining offenders and trial is to be conducted by the judicial magistrates. Though the trials of police cases are to be conducted by the judicial magistrates, the trial would be based on the police FIR. So, FIR, investigation, apprehending and detaining offenders- all are conducted by the police and whether these are not conducted with transparently, then fair justice would not be possible.

Circulating different gazette notification, all judicial documents, records and cases under metropolitan magistracy and executive magistracy are vested to the judicial magistracy. For example, the criminal procedure code (Amendment) ordinance, 2007 will be activated from November 1st, 2007. On the other hand, the Adalat Ordinance has been issued under which limited Magisterial and judicial powers are vested upon the executive magistrates for the petty criminal cases at immediate spot for maintaining law and order and preventing crime. According to the Criminal Procedure Code Amendment 2007, 103(4), the Upzilla Nirbahi Officers are given authority to apply the 144 of criminal procedure at their respective Upzilla. As preparatory attempt, to make free judiciary from executive, government issued four code of criminal procedure ordinance (amendment) in 22nd January, 2007. Later, January 16th, government issued four rules and conducts relating to judicial service in Gazette notification. The four rules and conducts are:

- i) Judicial Service Commission Rules 2007;
- ii) Judicial Service Pay Commission Regulation, 2007;
- iii) Judicial Service (composition, recruitment, temporary suspension and removal) Regulation, 2007;

- iv) Judicial Service (placement, promotion, leave of grant, control, disciplinary actions, and other conditions of services) Regulation, 2007.

Separating judiciary from executive along with elevating the degraded status of judges, an action was taken by a number of judges leading by assistant judge Masder Hossain in 1995 and he appealed a writ case in High court at that time. This writ was a challenge against the discriminatory facilities between two services i. e., Judicial Service Cadre and BCS Administration Cadre. The resulted impact of this writ is that the full bench of the appellate division of Supreme Court exposed 12-point instructions for the government in 2nd December, 1999 for implementing their demands. In these 12-point instructions, for the purpose of separating judiciary, four posts of judicial magistrates were created. These are:

- a) Metropolitan magistrate and chief judicial magistrate;
- b) Additional chief metropolitan and judicial magistrate;
- c) Senior judicial magistrate (magistrate of class 1/ metropolitan magistrate Special magistrate);
- d) Judicial magistrate (class 2).

Based on this decision, an amendment ordinance of Cr.P.C. was published in the gazette notification on 11th February, 2007, where magistrates were divided into two categories. Their job allocation, power and jurisdiction of exercising power were described in the clauses 36 and 38 of Cr.P.C. by adding schedule 3 & 4. In this stage of reforming judiciary, the full bench session of Appellate Division and High Court were decided to activate the amendment. Cr.P.C. for the purpose of separating judiciary from 1st November, 2007 with the chair of Chief Justice Mohammad Ruhol Amin. As a result, the judicial power is transferred to the hands of judicial magistrates from the District Commissioner and Assistant Commissioner. It is also decided that the judicial magistrates will be under District Judge.

While the process of separating was going to be done as per decision of full bench session of Supreme Court and issuing gazette notification to activate the amendment Cr.P.C., the member of Admn Cadre (BCS) exhort their demands not to divest them from their exercising of judicial power and to minimize the discrimination as opined by themselves in newly formulated

rules regulations raised by Supreme Court. In this background, The Mobile Adalat Ordinance / The Mobile Court Ordinance has been issued under which limited magisterial and judicial powers are vested to the hands of executive magistrates. Under this Ordinance, the jurisdictions are defined to exercising power by the executive magistrates are:

- a. Public Gambling Act;
- b. Railway Act;
- c. Electricity Act;
- d. Cinematograph Act;
- e. Public Examination Act;
- f. Pure Food Ordinance;
- g. Brick Burning Control Act;
- h. Protecting Environment Act.

The executive magistrates are given some sorts of power to exercise in selective areas of Cr.P.C., including the mentioned areas. Under the Mobile Court Ordinance, provision to imposing fine is kept. Except fine, no kinds of fine are to be imposed by the executive magistrates. If the accused person fails to pay fine, executive magistrates have authority to send the respective person to jail for 3 months highest without labor. The magistrates of executive department can not deal judiciary functions by sitting in the Azlas.

The executive magistrates oversee the law and order situation including performing the duties in public examination hall, in meeting, procession of political parties etc., like as earlier. They are regulated under administrative ministry.

While the Caretaker Government took action to separate judiciary from executive in the 1st November, 2007, 202 judges and 16 judicial magistrates were working at the lower courts. Judicial power and action were withdrawn from the hands of executive magistrates by this process, and for that reason about four lacks cases were relocate upon the judicial magistrates. At this context, increase of manpower especially recruiting judges was needed urgently. Getting support of new additional manpower and other infrastructural facilities, 600 posts of judicial magistrates and above four thousands staffs for all courts of country were immediately approved in the meeting of NICAR (National Implementation Committee for Administrative Reform). The proposal for recruiting 56 to 60 metropolitan magistrates and required transports, other infrastructural

developments were also approved. 655 posts are created among 218 are only recruited. Among them 16 are absorbed from executive magistrates. 138 court rooms or azlas and khash rooms are being established for using as judicial magistracy. Eighty six court rooms or azlas and khash rooms are established for metropolitan magistrates. Total 4237 posts are created including 655 judicial magistrates through Ministry. Later, Judicial Commission will appoint them phase out (Dainek Naya Diganta, 2nd November, 2007).

The Code of Criminal Procedure (Amendment) Bill passed on 7th April, 2009 in the parliament allowing the government discretion to empower executive magistrates to take cognizance of offences in any situation for trial (The Daily Star, 8th April, 2009). Through re-enacting this ordinance promulgated by the immediate past interim government following Masder Hossain Case, widely known as separation of the judiciary case has been getting resolution the controversial issues of separating judiciary continuing for a long course of time. Giving cognizance power to executive magistrate, government has raised a very simple question; will it be an executive and/ or administrative power or judicial power? It has been repeatedly held by apex court in line with consistence decision in Indian sub continent that taking cognizance is a judicial power and any misuse or abuse of such power is to be corrected through judicial process. So, while cognizance power is vested upon the executive magistrates, then how the apex court will exercise its supervisory power? If we turn our attention to the caretaker regime 2007, what we see? According to the article 22, 1st November, historical event of separating judiciary from executive organ had been initiated by the Caretaker Government. By this separation, the trials of criminal actions under Code of Criminal Procedure are vested to the control and supervision of district judges from the jurisdiction of Establishment or Defense or District Administration. At the same time, The Mobile Adalat Ordinance has been issued under which limited magisterial and judicial powers are vested upon the executive magistrates to try petty criminal cases at spot for maintaining law and order situation. After taking power by the political regime, initiatives taken by the Caretaker government are withdrawn instead of enacted and issued an amendment in Code of Criminal Procedure by inserting a subsection into section 190 of the Code of Criminal Procedure. Any way, the separation controversy continued from the period of British-Indian dynasty, is yet to unresolved as like the attempts taken by various regimes around the duration.

5.0 Findings and Analyses

Judiciary and its role to make governance good in Bangladesh have been analyzed through materializing the five aspects of umbrella concept of good governance. The conceptual underpinnings of the five aspects are already discussed earlier. In light of these aspects, the role of Judiciary in enriching the present status of governance is examined below.

5.1 Establishment of Rule of Law

Independent judicial system of a country obviously can play effective and positive role in making governance good. Establishing rule of law through equity justice is the prime objective of judiciary. All are equal before law-implementing this commitment of constitution, judges should have free and autonomous environment. Logically speaking, diminishing influence of executive department within the domain of judiciary acts as prerequisite for equity justice.

At present time, a query is raised that the effort to make governance good through a separated judicial system is being achieved? The findings have shown frustrating results in this regard. The reason behind such case is that there is no chance for the judges to work independently. The present working environment of judiciary is not free from political influence and particular vested group or class as well as in global domination. Any unbiased observer if review the ongoing activities of judiciary, he compels to conclude that justice is done apparently by the judges, but the process of dispensing justice is actually patronaged and manipulated by other agencies especially by the executive organ, which is intelligible to all. And that's why, establishment of rule of law through judiciary will be difficult until when these undue influences will not be dead ended. While respondents' opinion were sought to justify the role of judiciary in establishing rule of law, they viewed different aspects in achieving this parameter of good governance. Following analyses have been developed concerning these various aspects.

5.2 Role of Law Enforcing Agencies

Proper enforcement of law does not depended on only separation of judiciary. The role of law enforcing agencies is equally important for this purpose. Because, before issuing trial, different law making agencies are involved directly to the whole judgment procedure. While these agencies unable to play transparent role in information collecting, keeping,

processing and preparing report case and schedule for proceedings, establishing rule of law will be difficult. In this connection, while respondent's were asked about the role of law making agencies in establishing rule of law, cent percent respondents opined in these respect that from Ministry of Law, each and every agency i. e., National Security Intelligence (NSI), Detective Branch (DB), District Security Branch (DSB) and finally Police Administration have no transparent role in detecting, apprehending criminal and filing cases for establishing rule of law. In fact, proper enforcement of law does not only depend on separation of judiciary. Some law enforcing agencies have also room to make effective appropriation of law.

As for example, the field and police administration. To justify the preliminary investigation report of CR (Court Register) cases, the court delegates this responsibility to the respective UP chairman, social welfare officer, thana fisheries officer, Assistant Commissioner-AC (land), Ansar VDP (Village Development Programme) officer etc.,. On the other hand, SI (Sub Inspector) or ASI (Assistant Sub Inspector) is vested responsibility to justify the preliminary report of GR (General Register) cases by the respective thana officer. A crucial point of establishing rule of law lies here. The responsible agencies, whatever may be SI or ASI, UP (Union Parishad) chairman, social welfare officer, thana fisheries officer etc., are involve to justify reports, fail to perform their assigned duties with sincerity, that means if they do not visit the spot or occurrence duly or conceal the actual fact or making a false report convinced by offender for getting illegal rewards, how judicial magistrates able to give judicious verdict depending on such manipulated information? In many cases, it is found that with the cooperation of law enforcing agencies or getting chance of their indifferent activities, concealing real fact through false witnesses, investigation agencies try to victimize innocent person. Justice turn back and penalty goes toward the innocent where as actual criminal get rid of due penalty.

Incorruptible police administration has significant role in establishing rule of law alongside lawyer and judges. For example, in a GR case after FIR (First Investigation Report) entry, police is liable for investigating the FIR record entry in the case file. At the time of investigation, if police officer do not investigate righteously or giving biased CS (Charge Sheet) or FRT (Final Report Truth) report, then the lawyer or judge, whatever they may be sincere and honest, have no chance to dispense fair justice for establishing rule of law. On the other hand, if police administration as

a whole or police individually is incorruptible and submit an actual CS or FRT report through fair investigation and judgment proceedings are being conducted based on this report, rule of law might be established. In Case of filing complaints, submission FIR, and apprehending and detaining offenders, police should avoid biased ness, corrupt attitudes, irregularities, negligence for ensuring speedy justice.

5.3 Role of Doctor

Justice does not solely depended on judge. In many circumstances, doctors have significant role along with other agencies in dispensing proper justice. While doctors are assigned responsibility to certify medical fitness or status of injury of victim after examining, he has chance to practise in submitting actual report or manipulating report. If doctor certifies serious injury as normal or normal injury as serious or reporting suicide case as killed by making breathlessness and there by submit such kind of manipulating medical report, justice will never be established.

5.4 Role of Lawyer

Making effect the separation of judiciary and bringing good governance characteristics through establishing rule of law, lawyers have significant role in fair judgment with the judges. Making intelligible this tangle relationship between judge and lawyer, the term Bar and Bench is used in judiciary. The good relation and sincere counseling between bar and bench open the passage to establish justice. In absence of good relationship between Bar and Bench, judges fail to make justice properly. For example, if the court is annoyed or dissatisfied to the lawyer's behavior in particular case for any reason, it is not out of suspect that the orders of the court issuing for those cases will may be unexpected or distinct to lawyer's perceptions. It would not be if relation between two [judge and lawyer] were good. Another benefit of judge-lawyer good relations is that it facilitates easy access of justice for the victim. For example, at the day of witness, the prosecution attends in the court with witness. But, the lawyer of defense can seek and appeal another date to the court for cross examination by showing any reason if he intends to non-cooperate the court as well as convinced by prosecution witness illegally. Just after getting the appeal of lawyer for another date of witness, the court grants immediately. Unnecessary delay or canceling a date of witness is only happened as because of lawyer's indifferent attitude and insincerity. As a result, both parties, plaintiff and depended

are affected economically. Reverse that, if lawyer cooperate the court by taking cross examination of witness, the petitioner easily sees the result of case. If judges have chance to make judgment independently, then lawyers will cooperate judges by withdrawal the long drawn process of mitigating cases.

5.5 Efficiency and Effectiveness

There is no concrete instruction in Cr.P.C. of preparing FIR/ Police Verification for sacking transparency. Judgment procedures are handicapped with administrative complications. Some times police distort and conceal information while filing the cases. This is one of the procedural problems. As because of that judges have to face problems to identify the real criminal and punishment there by.

In spite of present reorganization of judiciary, a basic structural change can maximize the effort of equity justice and redress of people. While respondents were asked that does present reform make judiciary efficient and effective? Most of the respondents [90 percents] opined negatively. They identify organogramme -centered lacking in the present judiciary. About cent percent respondent judges opined that investigation and dealings of cases are undoubtedly a complex subject. Assistant Sub Inspector (ASI) and Sub Inspector (SI) are assigned to perform such investigation operation. That is, the police dept. is basically involved to verify and investigate the records of trial. In our country, corrupt practice in giving trial starts from here. If false C.S or F.I.R. report is submitted, rest of the process of trial follows a false trend and end up with incorrect verdict. It is needless to mention that how much corrupt and false information are provided in most of the cases by the police while cases are filled. Interestingly, there is no legal mechanism in Cr.P.C. to make sure about the transparency of investigation or FIR. According to the Cr.P.C. 154, while a person informs about occurrence in written documents or verbally to the near thana authority, then the authority [OC] receives that information and record it as primary input of filing case. Whether this information is right or wrong, authority has no legal chance to prove it. It is also pressed in the Act 154 is that whatever may be the primary information is, it is obligatory for the authority to accept it. Undoubtedly, it is a major procedural problem in ensuring quality and strength of justice. Since, there is no legal framework to ensure transparency in preparing FIR, so ASI/SI is not accountable to authority. Immediate reform in Cr.P.C. 154 makes judiciary efficient to dispense trial smoothly.

Yes, present separation will be helpful for more effective i) to stop unnecessary delay, 2) To simplify trial process and procedures 3) To make day to day work list and to prepare monthly statement of the work performed by judges, 4) To make sure working hours, 5) To create, nurse, preserve and protect self-regard and self-respect of the judges, 6) To ensure personal, family and social justice as a whole, 7) The government has to inject morality, equity, equality and liberty to every human being of the state and so on. I am not sure. It may be accessible.

Justice should always be cheap and accessible. We know, here is a question of doing and giving. So, we need to give justice free of cost and to make it accessible,

The theory based on strict legality in its rigorous form should not be treated as just and moral. It would be regulated by morality. Otherwise, it may not hesitate to take away the essence of humanity in the name of punishment.

5.6 Equity

Man and the natural laws are coeval. The morals of a society should be implemented and protected by laws. Liberties are the natural upshot of man's basic rights. Law is supposed to safeguard the liberties of man. Equality is supposed to be maintained by law. Therefore in short, It is to say, that let us to make i) the quality laws, ii) the quality judges. It is hoping that if we could ensure the above two matters, the other will automatically be done and the justice may be ensured for all.

It is expected that judges will be above on or aloof from making error and wrong doings for achieving equity for all. Sometimes, wrong doings are done by the judges. There are evidences that the verdict of lower court are changed or modified by the higher court. For example, there is provision and practice that life sentence or capital sentence issued by lower court may be reemitted by higher court if victim appeals for that. A crucial point in this connection might be raised here. Most of the people of our country, who are living at below poverty line, have no financial capacity to appeal at higher court. Sometimes they become floating by purchasing properties including dwelling place for meeting the cost of court. People, having no ability to appeal at the higher court, there is no alternative path to escape without surrendering with the verdict of lower court. If that verdict is life sentence or capital sentence or same others, victim has to accept the punishment because he has no capability to file writ petition to

the higher court. So, effective system of answerability for the judges must be activated to check such negative consequences of above mentioned happenings for which inhumane verdict are produced.

5.1 Responsiveness

Justice is vital requisite for good governance. For this, judiciary must have the quality of responsiveness to the mass interest. To justify this aspect of judiciary, respondents' opinions were sought. A good number [69] of respondents opined that judiciary does not show its responsive role solely. But, present reform may make it responsive, expressing this hoping view, respondents put effective suggestions. In a formal sense, some mechanisms are developed to make responsive our judiciary. For example, provision of judicial review. There are judicial review, writs and motion in our legal system and there are provision in our constitution to be the guardian of the citizen and fundamental rights. The Supreme Court can take step at any time and moment *Sua motto* for public good and public policy. On the other hand, there is the scope of Public Interest Litigation (PIL).

"Justice delay justice denied", Justice hurried justice buried"--- Based on this universal message, an important aspect of judiciary was reviewed sharing with the view of respondents. Sometimes it is found that without clear cut complaints or without lodge a suit, some people are harassed through arresting and custody for infinite days. In this regard, respondents were asked that does judiciary have any measure as the protector of fundamental rights of people when we characterized judiciary as responsive. Their response informed that legal protection against such type of undue harassment is prevailed in the article no. 33 [p] [2] of the constitution and the police act 54, 55, 56 of v 1861. In fact, implementation of these legal protection can make judiciary responsive towards people's interests.

Since judiciary is the supreme authority to protect fundamental rights of citizens. Hence, in some cases it might be emergently needed to detect and arrest some one who seems to be suspect and threatened to state or rule of law. After arresting, law enforcing agency should investigate rigorously to detect complaints against that particular person. Depending on the genuine information gathered, the victim will either be accused or released. However, this should be provision and authorization for the law enforcing agencies to apprehend suspect person. Again, through proper investigation, authority should justify the complaints against victim. If, victim is proved

innocent he should get free as protecting fundamental rights. The illegal arrest and custody is not desirable and there is legal protection in this law and court can have the authority to help out in this line.

It was also try to find out the respondent's opinion regarding impact of separation in making judiciary speedy, cheap accessible to mass people. A number of respondents [52 percent] identified as somewhat helpful in favor of making judiciary speedy, cheap and accessible. Since judiciary is now enjoining independent status, according to the respondents, to disseminate justice without executive interference and enhancing judges' power, hence justice will get speed. Making speedier, duration of each case should be fixed up and also implementing effective monitoring whether it rightly followed or not. Moreover, a powerful committee and an extensive project is working on this matter, i. e., for the speedy trail now. In addition to that, it is needed to simplify the process of trial and to amend the law in this regards.

What type of actions is taken by judiciary to reduce or dismiss the number of cases that have been hanging for ever? It was also a query to respondents for giving resolution of frozen cases. Whatever may be the attempt taken for this purpose, does not regard as core issues. Rather, transparency in judgment proceedings, protecting undue influence of executive and elite classes of society, and transparency of law making agencies are priority need to expedite the dealings of frozen cases. The number of judges should be increased satisfactorily along with improving the financial, technical and procedural capacities of judiciary is also an urgency need to make easy the process of dismissing hanging cases.

6.0 Conclusions and Recommendations

Judiciary is not possible to separate from executive which is clear from past experience of British Colonial Government and Pakistan era. It is certainly a fact that in the name of efficiency, simplicity, energy and economy, all regimes tried to empower the collector later renamed District Magistrate (DM) in order to ensure of getting supports for maintaining so called stability of government and there by to control the political destabilization of local administration. Like as the amendment in Cr.P.C. at present opens a passage for government to raise some conflicting issues. In this amendment, the parliament vests authority to the government to empower executive magistrates to take cognizance in the 'extraordinary circumstances or in all circumstances and then to send the same for trial to judicial magistrates. The Parliamentary Standing

Committee on Law suggested that this power of cognizance will be given to executive magistrates for maintaining law and order situation and this has nothing to do with the trial and giving punishment. The consequence of this amendment will lead to a very sordid picture in ensuring rule of law in the country. The strength of this easy logic of mere cognizance power is being cemented by another argument that the provisions in Article 22 of the constitution on the basis of which separation has been done are not judicially enforceable (The Daily Star, March 28th, 2009). In fact, the focus of Masder Hossain case has not been regarded in separating judiciary and again the jurisdiction of judiciary has interrupted by the domain of executive. However, some recommendations are put forward in strengthening the role of judiciary to elevate the status of governance in Bangladesh.

6.1 Strengthening physical and ethical capacity of law enforcing agencies

6.1.1 From Ministry of Law, each and every agency i. e., NSI (National Security Intelligence), DB (Detective Branch), D/B, DSB (District Special Branch) and finally police administration should have transparency, honesty and sincerity in detecting, apprehending criminal and filing cases for establishing rule of law. At the same time, if constituting 3 or 4 members committee inducting SI (Sub Inspector) or ASI (Assistant Sub Inspector) for investigating the information of General Register (GR) cases will bring success to some extent in fair judgment.

6.1.2 There should be a separate wing for police verification and investigation; there must be an overhead watch dog system to monitor this work and to make sure the accountability. There also should have government litigation cell in the department of police or in the court under the aspiration of judiciary for collecting, protecting, examining and monitoring the information. The private criminal investigating centre can certainly be encouraged at large.

6.1.3 Change in Criminal Act that has taken under present reform is not sufficient to make judiciary independent. Respondent judges' opinion is that the criminal Act 154 needs to be changed.

6.1.4 Convention of veiling and writ petition to the high court should be abolished. All criminal cases especially the trial of murder cases must be finalized without giving the chance of Vail petition. Power to impose fine of magistrate should also be abolished.

6.1.5 Judges' respondents opined that it would not be rational that Magistrates will exercise the power of Summery Trial and article 145 of Cr.P.C. So, they opined that all powers to exercise verdict should be vested upon the hands of Judicial Magistrates.

6.2 Equity

6.2.1 It is recommended to establish Thana and Union level courts step by step or phase to phase around the country. The task of the laws should be to bring about the maximum happiness of each individual, for the happiness of each will result in happiness for all. The present requirement for our nation and the world is to make standard good quality laws.

6.2.2 Strengthening judiciary for equity justice, provision should be developed to verify whether actual information for particular case is recorded or not. Respondent judges proposed in this line to change the 154 of Cr.P.C. Amending this Act, a new clause should be adhered here. Before recording primary information, provision would be incorporated in this clause is that authority investigate the authenticity of data source and diagnosis about accuracy of the recoded data. After getting confirmation about the validity of the occurrence and statement, then it will be considered as FIR. It is also recommended to introduce a legal body under judiciary, named "Independent Judicial Investigation Authority", that acts as an investigating authority to justify whether correct data is recorded or not.

6.2.3 Achieving equity, justice, a credible and trustworthy procedure for trial, start from very beginning while a case is filed up is to be followed. For this, a permanent department needs to be established to look into this matter day to day. At the same time, quality laws and the quality of the judges need to be fixed up for dispense of justice.

6.3 Effectiveness

6.3.1 It will be conducive both for judges and all classes' people if a high powered authority is given responsibility to check and balance the extent of power exercised by the judges. Controlling system practising in police administration can be cited here as for example. Police, who achieve challenging goals and participate in risk actions, are rewarded by the authority through giving incentive or promotion. Having reputation in their career, they are motivated to be succeeding performer. So, for overseeing the performance of judges, an authority is needed, who evaluate their performance. And by this process, judges will be encouraged to avoid wrong courses of action in the process of giving verdict.

6.3.2 Proactive initiatives are suggested by most of the respondents in arresting corruption. Orienting the judges about anti-corruption norms, values through implementing training, learning and socialization program, satisfactory pay scale, increase manpower strength, statement account of property, minimum one year foundation training with a gross salary after joining as a judge, working relation and involvement towards lower courts should be extended.

6.3.3 If any judge is accused to corruption and misusing power, necessary actions should be taken against him to penalize in replace of transfer. Simultaneously, Supreme Court should also take the responsibility to protect judges of lower courts from undue pressures and influence of politico-administrative authority.

6.3.4 It is recommended strongly to effectualize Supreme Judicial Council equipping with all components of representative body for overseeing the activities of lower court's judges, as well as all judges.

6.3.5 In case of documenting complaints, recording and submitting FIR, apprehending and detaining offenders, police should avoid biased and corrupt attitudes, irregularities and negligence for avoiding unfairness in justice.

6.3.6 Actual freedom and congenial political atmosphere in giving trial should be created. Gap between policy announcements and procedure for implementation should be minimized effectively. It means, executive organs should withdraw its interferences over judiciary while judiciary is going to play its working role according to legal basis.

6.3.7 Judiciary should be given authority to review and take action against illegal affairs committed by any organs of government and contradictory to the constitutional law.

6.3.8 Judges of Supreme Court should have optimal neutral role beyond executive domination for keeping fair relation to the clients and dispense justice.

6.3.9 The code of conduct & rules of business can not ensure anything because it can not do anything itself. we need to fix the slandered of quality laws and the quality of the judges to dispense justice. Separation without cooperation is meaningless. So, to ensure justice, cooperation from every sector concerned is required.

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