

The role of Bangladesh judiciary in establishing and promoting the rule of law in the country: An evaluation

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Abstract

As an important organ of the state, the ultimate responsibility of the judiciary is to enforce and upgrade the rule of law in the State. For doing this, the judiciary either subordinate or higher is empowered to dispose of disputed matters among the litigants (between individual and individual, individuals and government) brought before the courts without any discrimination in the open courts in accordance with law or by law (Bangladesh Constitution, arts. 31 & 35); and the higher judiciary (the Supreme Court of Bangladesh) are also empowered by the Constitution under Article 102 to examine the actions of the executive, legislature or even the functions of the lower judiciary on the ground of ultra vires or arbitrary actions. Therefore, the judiciary must be separate and independent for discharging its onerous responsibility. Bangladesh Judiciary particularly judicial magistrate courts are formally separated on 1st Nov. 2007. After from this separation about 13 years have passed. Within the last several years particularly from 2008, what role the judiciary has discharged with a view to enforcing and upgrading the rule of law in the country, has been evaluated by applying mix methodology; from the study it is found that due to lack of effective separation and independence and other factors, the judiciary could not upgrade the rule of law in the said period though it has shown some positive role in the judicial pronouncements and directions for upgrading the rule of law and discharging mentionable disposal in case of criminal cases by judicial magistrates courts. It is also revealed that in upgrading the rule of law, the disposal rates of other courts are lesser than filing of cases in the said period which creates backlogs twice or thrice in comparison with pre-separation period and consequently it is not helpful anyway to upgrade the rule of law in the country.

Keywords: judiciary, separation of judiciary, rule of law, Bangladesh etc

Introduction

As an important organ of the state, the ultimate responsibility of the judiciary is to enforce and upgrade the rule of law in the State. For doing this, the judiciary either subordinate or higher is empowered to dispose of disputed matters among the litigants (between individual and individual, individuals and government) brought before the courts without any discrimination in the open courts in accordance with law or by law (Bangladesh Constitution, arts. 31 & 35); and the higher judiciary (the Supreme Court of Bangladesh) are also empowered by the Constitution under Article 102 to examine the actions of the executive, legislature or even the functions of the lower judiciary on the ground of ultra vires or arbitrary actions.

The Preamble of the Constitution urges the rule of law as one of the objectives (others are fundamental human rights and freedom, equality and justice) to be secured for all citizens. In *Anwar Hossain Chowdhury* case (popularly known as Eight Amendment Case) [1989 BLD (SPL) 1] it was observed that “it is the Judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective”. And it is the Judiciary which upgrades the rule of law and ensures the protection of citizens’ legal and constitutional rights even by issuing directions, recommendations and guidelines if there is vacuum in the law until a suitable law is enacted.

It is observed in *BLAST & Others v Bangladesh & Others* (2015) ISCOB AD 2 that in order to achieve the rule of law the Constitution has assigned an onerous task upon the

Judiciary and it is through the courts, the rule of law unfolds its contents where legal certainty will be ensured; each citizen will be treated as equal before the law. And an independent judiciary can establish the rule of law by judicial review of administrative, legislative or even judiciary’s actions (Dr. Kamal, 16th Amendment Case).

As the prime responsibility of the judiciary is to uphold the rule of law and if the judiciary can do it, the ruler will be prevented from abusing its powers which ensures the establishment of rule of law and justice to the affected citizens (the 16th Amendment case). It is also observed in the same judgment that unless the rule of law is established the citizens of a country will be deprived of the fruits of justice and also of citizens’ rights. Because of the rule of law requires the protection of the fundamental rights of the citizens against the government.

It is mentioned earlier that the independence of the Judiciary is an essential element for rule of law but the notion of independence of the Judiciary is not limited to the concept that there will be no interference from the Legislature or the Executive as the Judiciary manned by the Judges are not independent, then how can say that the Judiciary is independent? Therefore, in order to establish rule of law and upgrade it, the Judiciary and its Judges must discharge their responsibilities without any pressure from the legislature or the executive or from any other pressure from any quarters of the society. Therefore, the judiciary must be separate and independent for discharging its onerous responsibility. Bangladesh Judiciary particularly judicial magistrate courts are formally separated on 1st Nov. 2007. After from this

separation about 13 years have passed. Within these periods, what role the judiciary discharged with a view to enforcing and upgrading the rule of law in the country has been evaluated in this paper.

Objectives of the Study

What goals a researcher intends to achieve at the end of a research are called research objectives which are helpful in conducting a research. In this paper the researcher has determined the objectives as under:

- To evaluate the role of Bangladesh Judiciary in ensuring and upgrading the rule of law in the last several years particularly from 2008.
- To identify the problems for which the Judiciary cannot discharge its onerous responsibility in ensuring and upgrading the rule of law.

Research Questions

Research questions are the questions determined at beginning of the study to answer in the study and therefore, accordingly, research methodology and methods are used to conduct research (Austin, 2017). In this paper, the following are determined as research questions:

- What role the judiciary has discharged with a view to enforcing and upgrading the rule of law in the country in the last several years particularly from 2008 upto the time?
- What are the reasons for which the Judiciary cannot discharge its onerous responsibility in ensuring and upgrading the rule of law?

Theoretical Framework

The rule of law has different meanings; firstly it means that everything must be done in accordance with law; secondly it means that the government should work within a fixed frame-work of rules and principles, for which transgression the judiciary can interfere to ensure citizens' rights either fundamental or non –fundamental; and thirdly it means that the disputes as to the legality of acts of government are to be decided by the judiciary without any pressure from the executive (*Idrisur Rahman v. Bangladesh*, 2009). A. V. Dicey's concept on rule of law has also three meanings from similar approach: (i) the supremacy of regular laws as opposed to the influence of arbitrary power by the persons in authority, (ii) equality before law where every citizen, whatever his rank or position is subject to ordinary laws and the jurisdiction of the courts and (iii) individual liberties legally protected not through any bill of rights but thorough the development of common law. It's true that A. V. Dicey's theory on rule of law were criticized by the critics from different angles but his emphasis on the subjection of every person to the ordinary law of the State, absence of arbitrary power and legal protection for certain basic human rights remains undisputed theme of the doctrine of rule of law (cited in 16th Amendment case). Davis in his book "Administrative Law" (1959) mentions seven principal meanings of the theory 'rule of law' which is presently more acceptable than Dicey's theory of rule of law: (i) law and order, (ii) fixed rules, (iii) elimination of discretion, (iv) due process of law or fairness, (v) natural law or observance of the principles of natural justice, (vi) preference for judges or ordinary courts of law to execute authorities and administrative tribunals, and (vii) judicial review of administrative actions (cited in *Bangladesh & ors v BLAST*

& ors, 2016). And these theories are guiding principles to address the role of the judiciary in upgrading the rule of law in the society. These principles are very settled and recognized in our constitution and court practices. As the citizens are entitled to enjoy his rights in accordance with law, under law and by law, where the judiciary or courts are bound to discharge its responsibility according to law, under law and by law for ensuring free and fair justice and upgrading the rule of law.

Methodology

Within research period, what role the judiciary discharged with a view to enforcing and upgrading the rule of law in the country, has been evaluated by applying mix methodology. Quantitative data collected from the registrar office of the Supreme Court Bangladesh, data also collected by applying the observation method; Primary data are collected from constitutional law, general laws, case laws; secondary data are also collected from judgments, jurist opinions, different relevant books, journal articles, online based, newspapers, govt. reports, etc articles etc. Qualitative the data were collected through content analysis, document study, case study, and observation method. Collected data have been presented with the help of MS Word and Excel.

The Role of Judiciary

There are three organs of a State: (a) the Legislature, (b) the Executive and (c) the Judiciary where these three limbs of the state have a close connection to each other in maintaining rule of law particularly the judiciary has to play important role in ensuring rule of law. The judiciary of a country comprises all courts and tribunals which interpret law, settle legal disputes, enforce rights of citizens and impose penalty to the offenders and examine the functions of the executive, legislature and even subordinate judiciary and thus upgrade the rule of law in country. The Judiciary of Bangladesh can be drawn broadly by the Supreme Court (higher judiciary) and subordinate courts (lower judiciary). What was the role of judiciary in ensuring and upgrading the rule of law in the country in the last several years particularly from 2008 particularly after separation of the magistrate courts from the Executive is a matter of research. For the purpose of the study, judicial magistrate courts, district civil courts from the subordinate judiciary & writ courts (Benches of HCD) from the higher judiciary are selected as targeted courts. By analyzing the performance of the concerned courts in the post separation period and comparing with the performances of pre-separation period, the role of judiciary can be determined in upholding the rule of law in the said period.

District Civil Courts

There are five kinds of civil courts in each district of the country: i) the court of District Judge, ii) the court of additional District Judge, iii) the court of Joint District Judge, iv) the court of Senior Assistant Judge and v) the court of Assistant Judge. These courts dispose of suits of civil nature. And it is the onerous obligation of civil courts to provide remedies to the victims on the basis of law and evidence produced by parties. In order to know what performance has been shown by district civil courts in the last several years particularly from 2008 up to the time (from 2008-2016 yearly basis data collected to be analyzed), it is required to compare between filing and disposing of

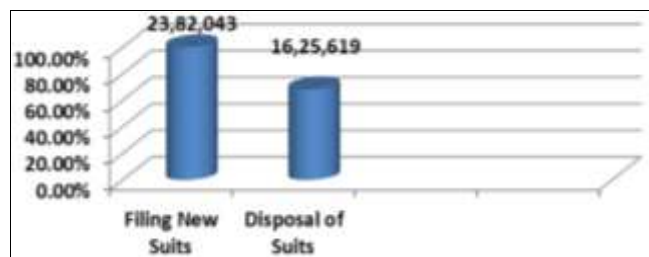
suits in the mentioned courts in yearly basis:

Table 1: Number of Filing & Disposal of Suits in the District Civil Courts during the Period (2008-2016)

Year	Filing New Suits	Disposal of Suits	Remarks
2008	1,65,339	1,10,003	Disposal < Filing
2009	2,18,275	1,16,711	Disposal < Filing
2010	2,17,537	1,71,604	Disposal < Filing
2011	1,08,689	46,111	Disposal < Filing
2012	2,26,754	58,923	Disposal < Filing
2013	4,36,196	2,36,220	Disposal < Filing
2014	4,33,210	3,22,461	Disposal < Filing
2015	3,32,677	2,66,333	Disposal < Filing
2016	2,43,366	2,24,615	Disposal < Filing

Source: Annual Reports, 2008-2016, HCD, Supreme Court of Bangladesh

From the above table, one thing is very clear that the disposal rate is lesser than filing in this period particularly from the year-2008 to 2016. At the end of year-2007, there were 4, 56,604 suits pending for disposal (Annual Report, 2008, HCD, Supreme Court). And at the end of year-2016, pending suits stand as 12, 05,254 (Annual Report, 2016, HCD, Supreme Court). Therefore, new pending suits stand in this period as 7, 48,650 (Seven Lakh Forty Eight Thousand Six Hundred Fifty) in the said period. The new pending cases in this period are almost thrice in comparing with pre-separation period (1972-2007).



Source: Table 1.1

Fig 1: Trend of Filing and Disposal of Cases by District Civil Courts during the Period (2008-2016)

From the above data mentioned in Table No. 1.1 & Figure No. 1.1 it is evident that 68.24% of the total filing suits have been disposed of by the district civil courts in the period of (2008-2016) excluding backlog of cases of previous years (before 2008). The trend of filing, disposing of and pending of suits in the district civil courts can be exposed in the following figure:



Source: Table No. 1.1

Fig 2: Trend of Filing, Disposal of and Pending of Suits by District Civil Courts during the Period (2008-2016)

Judicial Magistrate Courts

Under the Code of Criminal Procedure, 1898 (hereinafter as CrPC)

there shall be two classes of Criminal Courts in Bangladesh besides the Supreme Court and the Courts constituted under any law, namely:- (a) Courts of Sessions ; and(b) Courts of Magistrates; Magistrate court is of two types, namely:- (a) Judicial Magistrate; and (b) Executive Magistrate whereas Judicial Magistrate is of four types: (a) Chief Metropolitan Magistrate in Metropolitan Area and Chief judicial Magistrate to other areas; (b) Magistrate of the first class, who shall in Metropolitan area, be known as Metropolitan Magistrate; (c) Magistrate of the second class; and (d) Magistrate of the third class (CrPC, s. 6).

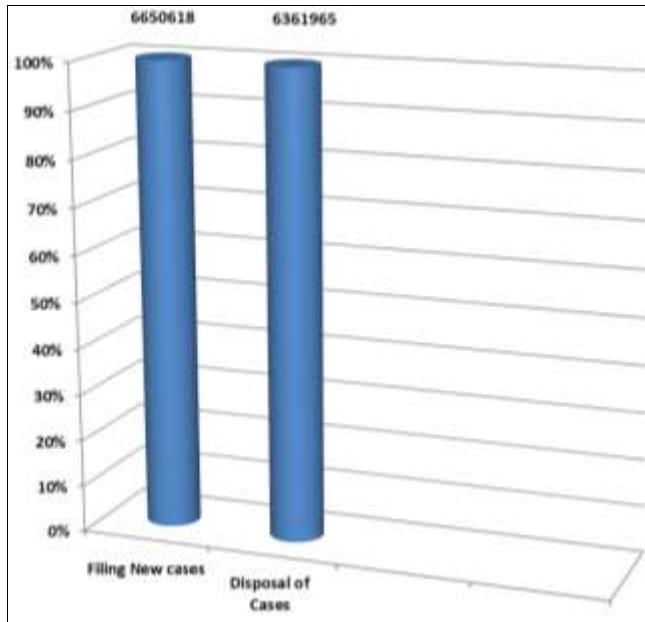
The Courts of Magistrates may pass sentences in the following ways: (a) Courts (of Metropolitan Magistrates and) of Magistrates of the first class: Imprisonment for a term not exceeding (five years) and fine not exceeding (ten thousand taka); (b) Courts of Magistrates of the second class: Imprisonment for a term not exceeding (three years),and Fine not exceeding (five thousand taka); (c) Courts of Magistrates of the third class: Imprisonment for a term not exceeding (two years) and Fine not exceeding (two thousand taka) (CrPC, s.32,). Chief Metropolitan Magistrate (Chief Judicial Magistrate or any Additional Chief Judicial Magistrate) can try as a Magistrate all offences not punishable with death; Metropolitan Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with transportation or with imprisonment for a term exceeding ten years. (CrPC, s. 29C). It is said earlier that judicial magistrate courts have been separated from the executive since 1st Nov. 2007. Therefore, what performance has been shown by these in the last several years particularly from 2008 up to the time (from 2008-2016 yearly basis data collected to be analyzed) is a matter of research. In order to determine the role of the mentioned courts in the said period, it requires presenting a comparative yearly basis data on the number of filing and disposal cases in the mentioned courts:

Table 2: Number of Filing & Disposal of Cases by the Judicial Magistrate Courts during the Period (2008-2016)

Year	Filing New Cases	Disposal of Cases	Remarks
2008	7,58,578	4,42,725	Disposal < Filing
2009	5,92,008	4,62,235	Disposal < Filing
2010	7,41,838	7,09,112	Disposal < Filing
2011	7,06,069	6,71,628	Disposal < Filing
2012	8,00,282	7,25,523	Disposal < Filing
2013	7,51,180	6,62,022	Disposal < Filing
2014	7,92,433	7,34,359	Disposal < Filing
2015	7,76,181	8,47,398	Disposal > Filing
2016	7,32,049	7,80,805	Disposal > Filing

Source: Annual Reports, 2008-2016, HCD, Supreme Court of Bangladesh

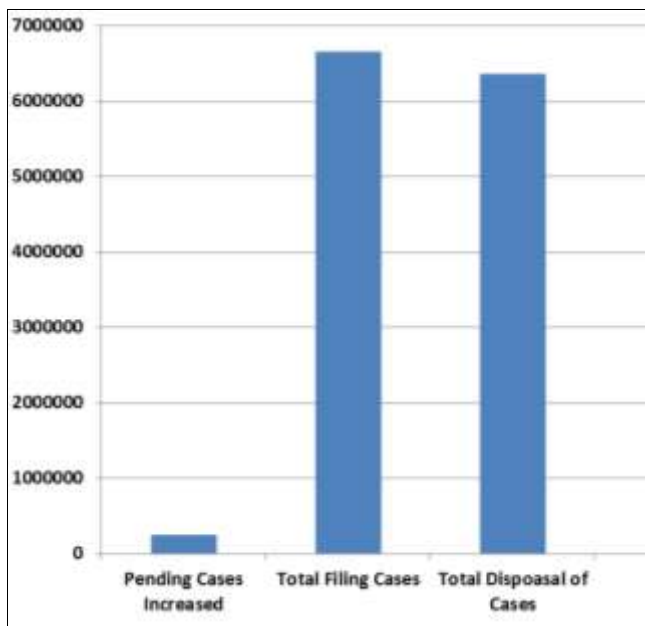
From the above table it is clear that disposal rate was lesser than filing of cases in first seven years (2008-2014) after separation whereas in the years 2015-2016, it is more than filing of cases. In the end of year-2007, there were 6, 18,671 cases as pending in the magistrate courts (Annual Report, HCD, 2008) but at the end of year-2016, the number of pending cases stood as 8,65,536 (Eight Lakh Sixty Five Thousand Five Hundred Thirty Six). As a result, new backlog of cases in this period stands as 2, 46,865 (Two Lakh Forty Six Thousand Eight Hundred Sixty Five) (Annual Report, HCD, 2008 & 2016).



Source: Table 1.2

Fig 3: Trend of Filing and Disposal Rate in the Judicial Magistrate Courts during the Period (2008-2016)

It is evident from the above table and figure said that 95.65% (63, 61, 965) have been disposed of among filing cases 66, 50,618 excluding pending cases of previous years (before 2008) in the period (2008-2016). The trend of filing, disposing of and pending of cases can be exposed in the following figure:



Source: Table 1.2

Fig 4: Trend of Filing, Disposal and Pending of Cases by Judicial Magistrate Courts in the Period (2008-2016)

Higher Judiciary

The Constitution empowers the HCD as custodian to protect the citizens’ fundamental rights (Article 44) and upgrade the rule of law in the country by applying judicial review conferred upon Article 102 of the constitution to examine the activities of the executive legislature and even lower judiciary

With a view to ensuring citizens’ rights and establishing the rule of law.

Generally writ bench of the higher judiciary is empowered to discharge these responsibilities.

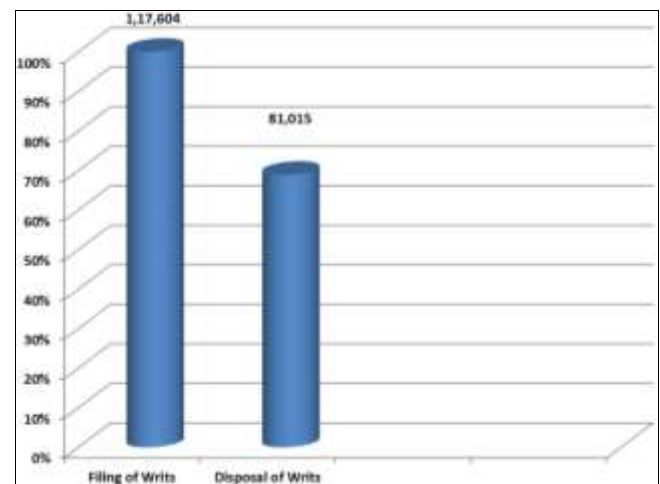
The performance of the writ court in the last several years particularly from 2008 up to the time (from 2008-2016 yearly basis data collected to be analyzed) is as under:

Table 3: Number of Filing and Disposal of Writs in Writ Courts during the Period (2008-2016)

Year	Filing New writs	Disposal of Writs	Remarks
2008	11,402	8915	Disposal < Filing
2009	8,848	6370	Disposal < Filing
2010	10,175	7303	Disposal < Filing
2011	11,421	10924	Disposal < Filing
2012	17,876	8028	Disposal < Filing
2013	12,958	7473	Disposal < Filing
2014	12843	8688	Disposal < Filing
2015	14,284	13457	Disposal < Filing
2016	16,965	9857	Disposal < Filing

Source: Annual Reports, 2008-2016, HCD, Supreme Court of Bangladesh

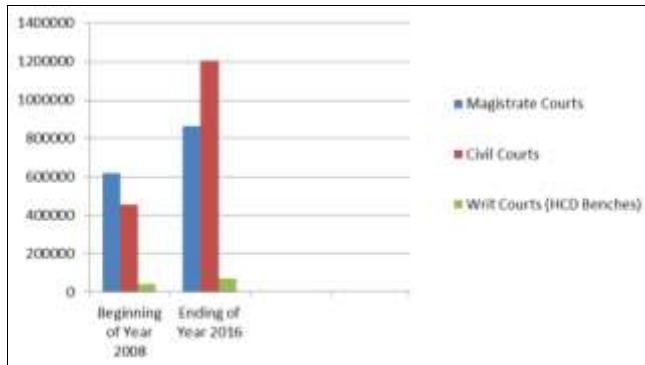
From the above table, one thing is revealed that the number of disposal of writs is lesser than number of filing writs in each year particularly from the year-2008 to year- 2016. At the end of year-2007, there were 40,980 (Forty Thousand Nine Hundred Eighty) writs as pending for disposal and the total number of pending writs stands as 69,326 (Sixty Nine Thousand Three Hundred Twenty Six) at the end of year-2016 (Annual Reports, 2008-2016, High Court Division). Therefore, in the period (2008-2016) new pending writs stand as 28346 (Twenty Eight Thousand Three Hundred Forty Six). On an average about 3150 new pending writs have been increased per year in the said period whereas in the pre-separation period (1972-2008) it was 1139 per year. Therefore, the number of pending writs has been increased thrice in the period (2008-2016).



Source: Table No. 1.3

Fig 5: Trend of Filing and Disposal Rate in Writ Courts during the Period (2008-2016)

It is found from the above Table No. 1.3 and Figure No. 1.5 that 68.89% writs have been disposed of in the period (2008-2016) excluding the pending writs of pre-separation period (1972-2007).



Source: Table No. 1.1, 1.2 & 1.3

Fig 6: Comparative Trend of Pending Cases in Magistrate, Civil & Writ Courts at the End of 2007 and at the End of 2016

From the graph it is very clear that the number of pending cases has become almost twice in the period (2008-2016) and therefore, the citizens' sufferings has been increased automatically and justice delayed or the affected citizens are getting back their infringed rights from the courts in delay which means justice is denied and under these circumstances the rule of law may not be upgraded.

The Reflection of the Rule of Law in Judicial Pronouncements

The judiciary is discharging its onerous responsibility of by disposing the cases and giving judicial pronouncements in which the spirit of rule of law is reflected. Several relevant cases disposed and uttered judicial pronouncements by the Judiciary in the period (2008-2016) have been selected and studied in order to determine the role of judiciary in upgrading the rule of law as under:

In the case of *Habib Khan v State* (2012) 64 DLR 462 it is held by the HCD that the court can certainly interfere when the liberty of a citizen is taken away and the freedom of right of a citizen is taken away by the subordinate court. In the leading case *BLAST v Bangladesh* (2011) ^[8] 63 DLR 1 the court declared the imposition and execution of extra judicial punishment by the name of Fatawa as void, having no legal effect without proper lawful authority and violative of fundamental rights enshrined in the Constitution. The Court also gave some directions to be implemented by the government to prevent the imposition and execution of extra judicial punishment by the name of Fatawa from the society. In the case of *HRPB v Bangladesh* (2011) ^[8] 63 DLR 71 it is opined that the government is bound to protect life and property of the people in the discharge of its constitutional obligation; the Government has been directed to make available sufficient necessary equipment for rescue of the citizens soon after occurrence of a severe earthquake. In the case of *BLAST v Bangladesh* (2011) ^[8] 63 DLR 643 the higher judiciary declared corporeal punishment as absolutely prohibited, inflicting it be deemed as misconduct of the concerned teachers, and gave directions to the concerned authorities of the Government to take necessary steps. In *Ain-o-Salish Kendra v Bangladesh* (2011) 63 DLR 95 the court declared child workers aged between 8-16 years working in the 'Bidi' Factories as illegal and unconstitutional and gave some directions to the government authority to ensure compulsory education for children.

In the case of *State v Anjali Devi* (2009) 61 DLR 738 the HCD re-established the right of citizens to fair trial. The

lower court gave death penalty to the condemned prisoner/accused appellant, Anjali Devi alias Monju Devi under section 6(1) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 for human trafficking though the HCD found that the prosecution proved the case of abduction in the negative way but not the case of trafficking. The HCD also said in their judgment that for this offence the court could award lesser sentence and warned the learned Judge of trial court.

In the case of *Emdadul Haque v DG, Education* (2008) 60 DLR the court gave decision that the withdrawal of the name of the petitioner from the MPO list without giving any notice and affording an opportunity of being heard to the petitioner is a clear violation of the principle of natural justice; and is of no legal effect; the respondents was directed to pay the petitioner the MPO salary from May, 2008. In the case of *Z. I. Khan Panna v Bangladesh & ors* (2016) 7 SCOB HCD 7 it is held that the law-enforcing agencies cannot take the law into their own hands. It is also held that in a writ proceeding under Article 102 adequate compensation can be awarded to the victims of human rights violations in the custody of law enforcing agency/ joint forces. In the case of *AKM Shafiuddin v Bangladesh* (2012) 64 DLR 508 an important direction is given on the doctrine of separation of power and judicial review as follows in the Para 33 of the Judgment:

"Every organ is free to act in its own field according to powers conferred on it. If it is not done and one organ transgresses the limit, there is a provision of the Constitution under Article 102 whereby a judicial review of its action is possible. It is the Judiciary which is entrusted with the task of keeping every organ of the State within the limits of law. Any attempt by the legislature to usurp the judicial function is ultra vires."

Reasons behind Poor Performance and Failure to Upgrade the Rule of Law in the Said Period

In order to discharge the constitutional responsibility and ensure and upgrade the rule of law in the country, the judiciary was separated in 2007 but in the research period in the last several years particularly from 2008 up to the time it is revealed in the previous sections of the paper that the judiciary could not show better performances. Under these circumstances the reasons are identified as under:

Ineffective Separation of Powers

According to the Article 109 of the Constitution the High Court Division has control and superintendence over all subordinate courts and tribunal in the country but present Articles 115 & 116 make an obstacle to the higher judiciary in exercising such powers as these Articles declare that the appointment, posting, promotion and grant of leave and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall be exercised by the President in consultation with the Supreme Court. This dual rule system prevents quick appointment, posting of the judicial officers in the sub-ordinate courts or lower judiciary at district level where there are vacancies of judicial officers which creates complexity and delay in providing justice to the citizens and establishing the rule of law in the society.

Shortage of Judges/ Inadequate of Number

At the end of June, 2019 the number of pending cases stands about 3.88 million over the subordinate judiciary (Supreme

Court Annual Report-2019) and the main reason behind it is inadequate number of judges in comparing with total population of the country; it is revealed when a comparison is drawn as under:

Table 4: Comparative data on judicial officers

Name of Country	Number of Judges per 10 Lakh Citizens
USA	107
Canada	75
UK	51
Australia	41
India	18
Bangladesh	10

Source: Law Commission

Double Judiciary

The trial by mobile courts held by the executive magistrates creates double judiciary and raise questions among the people as regards the independence of judiciary in the country and such trials often violate rights of citizens (The Daily Star, 6th Aug. 2015) due to not ensuring the fair and open trial enshrined in Article 35 of the Constitution; it is an indirect interference by the executive with the functions of judiciary under which the Judiciary cannot upgrade the rule of law unless mobile court comes to direct supervision of the higher judiciary.

Lack of Digital Approach

Our trial system is based on analogue system; there is lack of digital approach in case of maintaining digital recording of the cases, examining the witness through video conferences etc. It is a matter of hope that digital application has been started in the Supreme Court activities. Latest case judgments and cause list of the Supreme Court are appeared on the Supreme Court website-www.supremecourtbd.com. And in the Corona Pandemic, virtual courts have been introduced for providing justices under The Usage of Information and Technology in Court Ordinance-2020. If digital methods are applied in trial system by changing the provisions of Evidence Act, 1872, the disposal rate of cases will be increased rapidly.

District Headquarter Based Subordinate Judiciary

Currently the subordinate judiciary including upazilla based courts is giving service from the district headquarters; here only financial capable people may come rather than poor victims. Therefore poor victims are depriving of access to justice by which rule of law may not be established and upgraded unless few necessary courts are established at the upazilla level. It is apt to state that assistant judge court or magistrate court worked for seven years at upazilla level before withdrawing them in 1992 and still few courts are working at about fourteen upazillas. For establishing the rule of law, people must give to access to justice. Therefore, at the Upozila Level at least a "Legal Aid and ADR Court" should be established.

Absence of Separate Investigation Cell

It is apt to say that only disposal of cases are not ensuring justice and upgrading the rule of law. It is often seen in the criminal proceedings that the accused are getting acquitted due to want of proper evidence and proof against him. The main reason behind this is absence of separate investigation cell under the Judiciary and consequently a fair, creditable

and quick investigation is not possible where the police are more interested to arrest the accused than to present witnesses (The Daily Ittefaq, 25th Dec. 2016) [20]; under this circumstance, evidences are being spoilt. It is also seen in a NHCR survey that the conviction rate is only 10% among the cases at the trial stages (Daily Star, 24th December, 2011). Besides, the witnesses are also not interested to give evidence against the accused due to lack of security.

Old and Backdated Laws

The judiciary is facing problems from backdated laws in ensuring and upgrading the rule of law. Most of the basic laws regarding trial and disposal of cases are backdated, can be said British period laws (As for example, The Code of Criminal Procedure, 1898, The Evidence Act, 1972, The Code of Civil Procedure Act, 1908, The Limitation Act, 1908, The Contract Act, 1872, The Penal Code, 1860 etc.) which are not suitable at the present time. In order to ensure quick disposal of cases by the Judiciary the procedural laws, especially the Code of Criminal Procedure, 1898, the Evidence Act, 1972, the Code of Civil Procedure Act, 1908 are to be updated and reformed and introduced quick alternative disposal process to draw the people in bringing their disputes to the courts. The then chief justice said that "under the present judiciary system people could not get justice immediately or quickly; even 2nd or 3rd generation of them might get it which was totally doing fun with them; the whole system should be changed" (The Prothom Alo, 3rd April, 2016).

Absence of Financial Independence

Officially the judiciary is separated from the Executive in 2007 but the judiciary has no financial independence due to having no self-fund of it; the revenue coming from the court fees are deposited to the Govt. fund; the Judiciary has to depend on the government and the govt. what amount allocated for judiciary each year for the development of judiciary is inadequate (The Prothom Alo, 29th June, 2016). In the financial year-2016, only 112 cores were allocated for judiciary which was very poor for infrastructure development of the judiciary but the govt. earns more from court fees. And under these circumstances, the then chief justice also urges for financial independence of the judiciary so that the judiciary can discharge its onerous responsibility to upgrade the rule of law (The Prothom Alo, 27th January, 2016). The current state of financial independence and budget for the judiciary are not improving at all as in the financial year (2019-2020) only 195 cores are being proposed for the Supreme Court of Bangladesh where for whole judiciary it is 1650 cores which is only. 352 percent of total budget in spite of being one of the three organs of the State whereas the allocated budget for BTV or Fishing Department is far more (Shamim, 2019). Under this poor budget it is quite impossible to work as an effective independent organ to upgrade the rule of law in the country.

Lack of Adequate Accommodation

The Judiciary-either higher or lower both face extremely accommodation crisis. At 2016, 170 judicial officers were sharing the court-room by shifting which interrupts the judicial activities and waste the judicial working hours (BD CJ, 2016). Besides, the government often creates new special courts- woman and child torture prevention tribunal, Speedy Trial Tribunal, Environment Court, Land Survey

Tribunal, Labour Tribunal, and Administrative Tribunal etc under existing and new laws without considering the distinct establishment for them which also creates accommodation crisis for judicial officers and hamper their regular activities and makes slow the disposal rate of the cases where the citizens suffer lots and gradually lose their confidence upon the judiciary and rule of law.

Interference by the executive

If the pending cases are withdrawn on political consideration by executive order without fair trial by competent courts, rule of law in the society may not be upgraded by the judiciary; people will lose confidence upon the judiciary. In 2009 a national committee was formed under the then law minister to withdraw cases on political consideration. This committee had recommended 7111 cases including murder cases as politically motivated for withdrawal (Daily Star, 6 August, 2013). Thus principles of rule of law are not maintained where the principle of fair trial in the open court by the competent court intervened by the executive.

Findings and Concluding Remarks

The onerous responsibility of the judiciary to dispose of disputes brought before it between individual and individual, individual and state and individual and different organs of the state without any discrimination, by law and under law; the judiciary is also assigned to examine the activities of the executive, legislature or even the activities of lower judiciary to upgrade the rule of law in the country. Accordingly, in the paper in an inquiry to evaluate the role of the judiciary in establishing and upgrading the rule of law in the last several years particularly from 2008 up to the time it is found that total disposal rate was very poor or lesser than filing of cases except the disposal rate of cases in judicial magistrate courts for last two years (2015-2016) (see Table No. 1.1, 1.2 & 1.3). As a result, the number of pending cases has been increased rapidly in civil courts, judicial magistrate courts and even in writ courts in the said period. At the end of year-2007 the pending cases were 4, 56,604 in civil courts, 6,18,671 in magistrate courts and 40,980 in writ courts whereas it stands as 12,05,254 in civil courts, 865,536 in judicial magistrate courts and 69,326 in writ courts respectively at the end of year-2016.

In the pre-separation period (1972-2007) the total numbers of pending cases in the mentioned three courts were 1.12 million for 36 years and on an average, it was 30,993 (Thirty Thousand Nine Hundred Ninety Three) per year whereas in the period (2008-2016) it is 1.02 million for only nine years and on an average it is 1, 13, 762 (One Lakh Thirteen Thousand Seven Hundred Sixty Two) per year. It can be said that the number of pending cases has increased rapidly more than twice or in some cases thrice in the said period which is not helpful to upgrade the rule of law in the country. Under these circumstances, the judiciary could not upgrade the rule of law in the society; the consequence of which the terms 'a society of absence of justice' come in the news of newspapers, talk shows of TV Channels and discussions of the people though it is also revealed in the paper that in several judicial pronouncements that the judiciary has shown positive role in upgrading the rule of law in the country in the said period.

The ineffective separation of power & independence of judiciary, double judiciary, shortage of judicial officers, lack

of separate investigation cell under the judiciary, backdated laws, dual rule, analogue system, inadequate accommodation and slow infrastructure development, are actively responsible for the failure of the judiciary in upgrading the rule of law in the said period.

An independent Judiciary is important for preserving the rule of law which allows citizens to seek protection of their rights and redress against government actions (61 DLR 565). It can also be said that in the language of Mr. Ajmal Hossain, 61 DLR 532 opined in the same case that it (An independent Judiciary) is also necessary for guardianship of the constitution and for the establishment of the rule of law. But at the same time it should be kept in the mind of each citizen that the Judiciary alone cannot establish the rule of law in the country except the positive performance of other two organs as it does not possess a magic wand. Besides, rule of law means all organs of a State shall maintain the rule of law (8SCOB AD1).

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