



An overview study on mobile court in the context of Bangladesh

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Abstract

As an analogy, the term "mobile court" denotes a legal structure that is neither obvious nor specified. There are, however, a profusion of haphazard legal vintles and legal customs to provide a rich foundation nurturing and patronizing a mobile court for the highest good of the public and justice for those states that committed and pledged themselves to the constitution. Judicial independence is the first consideration in the administration of justice in a society. It is difficult to expect unprejudiced justice from a judiciary that is not independent. It is the third organ of the government. It is in charge of enforcing laws and resolving any conflicts. It is the most important pillar of the state.

Keywords: mobile court, judicial independence, Dhaka law report

Introduction

The adjective mobile refers to the ability to move or be moved easily from one location to another. In general, it refers to a legal organization where disputes and conflicts are heard, debated, and resolved. In other words, a court is an official, public forum established by authorized authority by a public power to adjudicate disputes.

1.1 Legal basis mobile court

The term "mobile court" has no specific and defined legal edifice as a legal institution.

However, there are a number of sporadic and scattered legislative provisions and legal traditions that provide fertile ground for nurturing and nourishing mobile courts for the highest motive of public welfare and justice, to which the state is obliged and bound under the constitution.

1.2 Mobile court functions under different laws

Mobile courts follow numerous laws when doing their functions. Because of the continuous success of the first established mobile court for the purpose of the anti-adulteration effort, the government has already expanded its region and invested powers under various laws. The mobile court is stationed in strategic spots across the city, inspecting the condition of motor vehicles and driver licenses, as well as the quality of edible food, and enforcing any necessary penalties on the spot.

The law in which mobile court can function its duties:

1. BSTI Ordinance, 1985
2. Drug Control Ordinance, 1982
3. The standard and Weight and Measures Ordinance, 1982
4. Trade mark Act, 1940
5. The Motor vehicle Ordinance, 1983
6. Tobacco Control Act, 2005
7. Brick Burn Restriction Act, 1989
8. Bangladesh Wildlife Preservation order, 1973
9. The gambling Act, 1867

1.3 Procedure of trial of mobile court

Most matters are resolved quickly in mobile court. Summary procedure must be followed when a case is tried summarily, according to Section "262 of the Code of

Criminal Procedure, 1898". The maximum sentence that can be imposed if a case is dismissed summarily is two years in prison.

In actuality, mobile courts fulfill their tasks far more quickly than traditional summary trials since the court comes to the scene, apprehends the offender on the spot, examines the witnesses, hears the accused, fulfills the procedural requirements, and sentences the offender immediately.

1.4 Horizontal success of mobile court to enforce laws

Due to the active operation of mobile court, the offender who had seldom been penalized for violations of many laws is now being tried and sentenced on a regular basis.

The offenses under the penal code which mobile court have put into practice are-

- Adulteration of intended-for-sale food or drink.
- Articles that can't be exported or are restricted.
- Penalty for hindering an inspector in the performance of his duties.

1.5 Citizen expectation from mobile court

The expectation of a mobile court is growing on a geometrical scale every day. People expect that the mobile court would take action to stop the trend, arrest and impose penalty on CNG and bus drivers. When it comes to environmental conservation and preservation, the mobile court can be extremely useful..

1.6 Impediment of Mobile Court

- a. There is no clear provision in the law.
- b. lack of human resources.
- c. Lack of logistic support.
- d. Lack of public awareness.
- e. Lack of comprehensive approach.
- f. Lack of coordination and collaboration among and amongst multi-dimensional stakeholders.
- g. Lack of monitoring mechanism of Mobile court.

II. Independence of judiciary in Bangladesh

The government's judicial branch is one of its organs. All courts and tribunals in a country's judiciary interpret the

law, adjudicate legal disputes, enforce citizens' rights, and punish offenders. The independence of the judiciary is the most important factor to consider while administering justice in a country. It is impossible to expect impartial justice from a judiciary that is not independent. The term "judicial independence" refers to a judge's ability to administer justice in accordance with their oath of office and alone according to their own sense of justice, free of any pressure or influence from the executive, legislative, or political branches, or from the parties themselves^[1].

2.1 History of Judiciary of Bangladesh

Bangladesh's judicial system dates back thousands of years. "Bangladesh's current legal system" has developed over time as a result of a long process spanning many periods in Indian history. "There was a Hindu time, a British period, and a post-independence period" are the four distinct periods in Bangladesh's legal history.

Religion and community conventions were all entwined in the old judicial system. The judicial, executive and legislative branches of government were all under the control of the king (raja). The diverse legal sources employed by monarchs at the time, included "shrutis, smritis, puranas, dharmashastras", and others. The "Arthashastra and the Manusmriti" were regarded as authoritative legal texts. The Hindu dynasty lasted around 1500 years.

With the first major Muslim invasion in 1100 A.D, the Muslim period began. The Muslim ruler followed the norms of the "Holy Quran, Sunnah, Ijma, and Qias". In the tenure the Muslim period, the Sultan was in charge of the Sultanate's highest court and civil administration. The Sultan was aided by two famous Muftis. Throughout the Muslim era, the court was administered by two Muslim codes: "Fiqh-e-firoz Shah and Fatwa-i-Alamgiri".

The British period begins with the establishment of British dominance in the middle of the eighteenth century and lasts nearly two centuries. Charles II granted the East India Company the ability to administer civil and criminal justice to the people who lived in the Company's factories or commercial centers in the three administrative towns of "Madras, Bombay, and Calcutta" in 1661^[2].

The British period begins with the foundation of British domination in the middle of the eighteenth century and lasts for more than two centuries. People who lived in the East India Company's industries or trading centers in the three administrative towns of "Madras, Bombay, and Calcutta" were granted the ability to administer civil and criminal justice in accordance with English law.

The Mayor's Court, founded in the presidency towns of "Calcutta, Madras, and Bombay" in 1728 under king George-Charter I's of 1726 to try all civil proceedings, is the forerunner of India's current judiciary.

The Charter also provided that the Governor and five senior members of the Council would have criminal jurisdiction in each presidential town and would serve as justices of the Peace, as well as provisions for India to appeal to England's Privy Council. In accordance with the Regulating Act of 1773, a charter for the Supreme Court of Judicature at Fort William was given in 1774. Between 1834 and 1861, two sets of courts were in charge of administering justice in India. The King's Court and the Company's Court formed a dual system of courts, each with its own authority. Following the Judicial Committee Act of 1833, the Privy

Council was renamed the Judicial Committee of the Privy Council.

The 1857 Mutiny necessitated reforming India's government to overhaul and reorganize its legal system. The East India Company was liquidated in 1858, and the Crown gained primary responsibility for the Indian government, making the integration of the two sets of courts considerably easier. As a result, the "Indian High Court Act of 1861" was passed. The Supreme Courts, as well as the Sadar Nizamat Adalat and Sadar Diwani Adalat courts, were dissolved by the Act of 1861, which allowed the Crown to establish High Courts of Judicature by Letters Patent in Calcutta, Bombay, and Madras.

The British Parliament passed the "Government of India Act, 1915", which established the constitution, governance, and powers of the Indian High Courts.

In India, "the Government of India Act, 1935", established a Federal Court in 1937, with the ability to hear appeals from High Court judgments. The aforementioned appellate power, which was limited to the interpretation of statutes in connection to the "Government of India Act", did not impair the Privy Council's jurisdiction to hear merits appeals from High Court rulings. The High Court of Bengal (Order) 1947 was issued in response to section 9 of the Indian Independence Act, 1947, and established the High Court of East Bengal at Dhaka as a separate High Court for East Pakistan. The Privy Council (Abolition of Jurisdiction) Act, 1950, and the Federal Courts Order 1947 were used to establish the Federal Court of Pakistan in Karachi. The appeals jurisdiction of the Privy Council was removed, and the same authority was handed to the Federal Court of Pakistan. With the entry into force of the Constitution of the Islamic Republic of Pakistan in 1956, the Supreme Court of Pakistan was established to replace the Federal Court as the country's highest court. Following Bangladesh's independence in 1971, the Acting President issued the Laws Continuance Enforcement Order, 1971, ensuring that all laws in existence on March 25, 1971 remained in effect. Over 740 statutes, 507 ordinances, and a few regulations now exist in Bangladesh.

2.2 Importance of judiciary

The judiciary is the government's third branch. It is responsible for enforcing the laws and resolving any disputes. Judges determine the genuine "meaning of law" as they make rulings in various situations^[3].

The judiciary is the most important department of government in the eyes of citizens because it protects them from the legislative and executive branches' possible excesses^[4].

Because of its function as the guardian-protector of the constitution and, as a result, the people's fundamental rights, the judiciary is held in higher regard than the other two departments. The legal system is interpreted by the judiciary. The Supreme Court and lower courts, as well as the organizations that support them, make up the judicial branch. The Appellate Division and hence the High Court Division will be combined into a Supreme Court for Bangladesh (to be referred to as the Supreme Court of Bangladesh).

It interprets constitutional matters and laws, declaring unconstitutional laws unconstitutional and declaring them not to be laws through judicial review. The Supreme Court is referred to as the Constitution's "Guardians." It is the

executive body's independent and completely separate organs.

2.3 Functions of Judiciary

1. To provide justice to the people.
2. Law interpretation and application.
3. Right protection by the Constitutional Guardian.
4. Power to enforce its decisions and judgments.
5. Special rule of a federation.
6. Administration of the judicial system.
7. Function of advice.
8. To carry out judicial inquiries.
9. Miscellaneous functions.

2.4 The following four pre conditions of judicial independence

- a. Substantive independence of judge.
- b. Personal independence of judge.
- c. Collective independence of judge.
- d. Internal independence of judge.
- e. Substantive independence of judge

The ability of a judge to make decisions in accordance with their oath of office ^[5] without being affected by any internal or external pressure ^[6] is known as substantive independence.

b. Personal independence of judge

Personal independence refers to the ability of judge to carry out their judicial tasks without influence from the executive or legislative interference. Individual judges' personal independence and judicial service conditions are sufficiently protected to ensure that they are not subject to executive or legislative intervention.

C. Collective Independence of judge

Collective independence refers to the structural, administrative, and financial independence of the judiciary, as well as the executive and legislative branches of government.

d. Internal independence of judge

The independence of judges from their superiors and peers is referred to as internal independence of the judiciary. In other words, the independence of a judge or judicial officer in settling conflicts from any type of instruction, indication, or pressure from his judicial superiors and colleagues ^[7]. Provided that the following conditions also be needed Independence of the judiciary is subject to the following some conditions which are as under:

- * Appointment mode.
- * Tenure security. and
- *Appropriate remuneration and benefits.

2.4 Independence of judiciary under Bangladesh Constitution

Article 22 of Bangladesh's constitution ensures an impartial and independent judiciary. The supremacy of executive autocracy over the constitutional need of separation of powers works against the establishment of an independent judiciary. This situation prompted Masdar Hossain, a lower court judge, to file a writ petition with the Supreme Court, asking for an order to "separate the judiciary from the

executive", as required by Article 22 of the constitution, and on November 1, 2007, Bangladesh declared its judiciary's independence during the Interim Caretaker Government's tenure ^[8].

2.5 Executive Dominated Judiciary

Article 115 of the constitution states that "the President shall appoint personnel in the judicial service or as magistrates performing judicial powers in accordance with rules imposed by him in that regard" ^[9].

It is conspicuous from this article that the President exercising this power does not need to consult Bangladesh's Chief Justice. We know that the President cannot exercise any power without the Prime Minister's approval, with the exception of appointing the Prime Minister. This is how the executive branch of our government maintains influence over the judiciary. The President, or the government for that matter, is in charge of their appointments, transfers, postings, promotions, and punishments, among other things.

2.6 Independence of Judiciary in the light of Masdar Hossain Case

The Constitution of the People's Republic of Bangladesh was adopted in 1972, following Bangladesh's independence. "Article 22 of the Fundamental Principles of State Policy" stipulates that the state. The government was given eight weeks by the High Court Division (HCD) in May 1999 to separate the judiciary, both higher and lower, from the executive branch ^[10].

In November 2000, the decision was upheld on appeal, and in June 2001, the Appellate Division reaffirmed it in a revision case (AD). In January 2007, the interim caretaker administration, which took power following October 2006, declared the split and passed four sets of rules to achieve it. These rules, which went into effect on July 1, 2007, made the Supreme Court independent and gave the SC control over magistrates who performed judicial functions ^[11].

This reform has yet to be implemented in the lower judiciary, which is still largely under executive authority. The judiciary shall be kept separate from the state's executive institutions will be ensured.

The state must ensure that the judiciary and executive branches of government are kept separate. If the judiciary is independent and apart from the organs, it can do whatever it wants, even if it's discretionary, illegal, wrongful, or a monarchy act that violates the constitution's highest law. As a result, the check and balance mechanism is a critical component for both developed and developing countries. Natural justice is ensured when a country maintains checks and balances. Otherwise, the judicial system is in violation of natural justice.

The Appellate Division and the High Court Division will form the Supreme Court of Bangladesh (to be referred to as the Supreme Court of Bangladesh). By judicial review, it interprets the constitution, statutes, and declares set aside laws that are inconsistent with the constitution. The Supreme Court is known as the constitution's guardians. It is made up of organs that are completely separate from the executive body.

III. Discussion Mobile Court and Independence of Judiciary

3.1 Mobile court by executive magistrate unconstitutional: HC:

The operation of mobile courts by executive magistrates has been declared illegal and unconstitutional by the High Court^[12]. Following the last hearing on three writ petitions in this matter, a High Court bench comprising “justice Moyeenul Isalm Chowdhury and justice Ashish Ranjan Das” handed down the verdict. According to the ruling, “11 sections of the Mobile Court Statute 2009” are in violation of the constitution, and so the mobile court cannot operate under the act. The 11 provisions of the statute, it argued, run against the core structure in terms of judicial independence and power decentralization.

The court, on the other hand, excused all previous legal decisions from the judgement, with the exception of those that had already been contested. The court declared section 5 of the Mobile Court Act-2009, which empowers an executive magistrate to conduct mobile court, as well as sections “6(1), 6(2), 6(4), 7, 8(1), 9, 10, 11, 13, and 15 of the Mobile Court Act-2009”, illegal and contradictory to the constitution, independence and supremacy of the judiciary, and the verdict in the Masdar Hossain case, according to the writ petitioner's lawyer, Hasan MS Azim. UNB adds that on September 14, 2011, Kamruzzaman Khan, chairman of Esthetic Properties Development Ltd, was punished for breaking various parts of the Building Construction Act by a mobile court.

On the 11th of October, Kamruzzaman was granted bail in the case and filed a writ petition with the High Court challenging several parts and subsections of the Mobile Court Act-2009. The HC issued a rule on October 19th, requesting the authorities to explain why provisions “5, 6(1), 6(2), 6(4), 7, 8(1), 9, 10, 11, 13, and 15” of the Constitution should not be declared illegal and contradictory to the Constitution.

Majibur Rahman, a house owner in the capital, filed another writ appeal in December of that year after a mobile court fined him tk 10 lakh and ordered him to serve 30 days in jail for violating the Building Construction Act. Following the writ petition, the HC made another ruling in this regard, staying the decision of the mobile court. On May 2, 2012, a group of 17 Dinajpur bakery operators filed the 3rd writ case, contesting certain portions of the Mobile Court Act-2009 and requesting a High Court order enacting a policy of maintaining food experts and appropriate food testing equipment with the mobile court. On the 8th of May, the HC issued a rule taking cognizance of the writ petition. The HC heard the three rulings in March 2017 and decided to keep the order pending. During the caretaker administration in 2007, the mobile court ordinance was passed^[13].

3.2 Mobile Court: Conflict of interest between the Judiciary and the Executive:

On the other hand, the use of judicial power by the Executive is incompatible with the principle of separation of powers. Any aggrieved individual may file an appeal to the competent District Magistrate under section 13 of the current Mobile Court Act, 2009 (part of Executive). It should have been a Judicial Magistrate to check any form of arbitrariness and ensuring due process of law^[14]. Some legal experts argues that using Executive Magistrates to administer mobile courts is illegal and goes against the spirit of the Supreme Court's landmark decision in the "Masdar Hossain case" on the separation of the judiciary and the executive branch.

The most popular mobile court functions are: -

1. Drive against adulteration,

2. Eviction of an Illegal establishment,
3. Arrears collection,
4. Environment Protection,
5. Sector of Transportation and Vehicles,
6. Stopping marriage of child,

3.3 Order of the High Court Division and Appellate division

3.3(a) High Court bench had declared:

The High Court had issued an order finding 14 sections and subsections of the relevant legislation illegal, and the High Court had released the full text of the 64-page judgement on June 7. Following a hearing on three writ petitions brought by those sentenced by mobile courts, the court issued the order. "If there are any mobile courts, they must be staffed by judicial magistrates or metropolitan magistrates, as the case may be." In other words, the mobile courts must be staffed by members of the Bangladesh Judicial Service, which is entirely in line with the constitution, and thus the Appellate Division passed the judgment in Masdar Hossain's case," the HC verdict stated^[15].

Article 102(1) of the constitution, is called writ jurisdiction, gives the High Court Division the authority to enforce basic rights. It says that the High Court Division, on the application of any person aggrieved (on the application of any person), may give any person or authority, including any person performing any function in connection with the Republic's affairs, such directions or orders as may be appropriate for the enforcement of any of the fundamental rights conferred by part III of this constitution. As a result, writ is used to keep checks and balances in place. The judiciary keeps the government in check.

3.3(b) Opinion of Appellate Division:

The executive magistrate can now run Mobile Court after the Supreme Court today extended its stay order on the High Court's decision declaring the procedures under which they operate such courts unconstitutional. Following three separate leave to appeal applications filed by the government challenging the HC judgment, a four-member bench of the Appellate Division headed by AD issued the order. He also sought for extension of the SC stay order and a six-week deferral of the hearing on the leave to appeal petition so that he could prepare for his arguments before the AD. The HC had already deemed the provision allowing the executive magistrate to administer mobile courts unconstitutional on May 11. The HC also stated in its decision on three writ petitions that giving executive magistrates judicial powers is "a frontal attack on the independence of the judiciary and a violation of the theory of separation of powers "^[16].

3.4 Observation regarding Mobile court and independence of judiciary:

These amendments will undoubtedly assist Executive Magistrates in successfully using their power effectively to protect people's rights and maintain peace and order^[17]. The legislative power of setting rules, the administrative power of enforcing those rules, and hence the judicial power of adjudicating conflicts by applying those rules are the three types of state power^[18]. These three powers are supposed to be allocated to three different state organizations in order to avoid autocratic exercise of state authority. If history is any indicator, the judiciary's independence in Bangladesh is

more theoretical than actual. Article 22 of the Constitution, on the other hand, states that "the State should ensure the separation of the judiciary from the State's executive institutions." The right to an independent judiciary is not only enshrined in our Constitution; it is also acknowledged in the Delhi Declaration of 1959.

Nonetheless, we constantly see attempts by the legislative and executive branches to limit the judiciary's autonomy, resulting in frequent clashes between the three organs of the state. It's still unclear how this ruling will protect the judiciary's independence. Independence is also a point of debate in the lower judiciary. The law ministry is still in charge of promoting, posting, and transferring judges in the lower judiciary. We desire a society built on the rule of law, in which the independence of the judiciary is a major criterion in a functioning democracy, not only development.

3.5 Reason for Delaying in the Implement of the Judgment:

The question of judicial separation from the executive branch of government is not new in our legal system. There are some frequent issues with judicial separation, which are listed below:

- a. Lack of authority in Consciousness.
- b. Lack of political will.
- c. Lack of Intention with other court.
- d. Lack of Strong Civil Society.

Conclusion

Mobile courts accomplish their tasks far more quickly than traditional summary trials, because the court attends the scene, apprehends the offender on the spot, interrogates the witnesses, hears the accused, completes the procedural procedures, and sentences the offender instantly. If any mobile courts exist, they must be staffed by judicial magistrates or metropolitan magistrates, depending on the situation. In other words, the mobile courts must be staffed. The term "judicial independence" refers to Judges' ability to administer justice in line with their oath of office and exclusively in accordance with their own sense of justice, free of any pressure or influence from the executive or legislative branches, the parties themselves, or superiors and colleges of the Bangladesh Judicial Service.

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