

Bangladesh Supreme Court and Rule of Law: Constitutional Approach and Practice

Md. Milan Hossain

Associate Professor, Department of Law, Britannia University, Bangladesh

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 country. For doing this, the judiciary 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; and Bangladesh Supreme Court is the highest court constitutionally mandated and assigned to establish the rule of law and enforce citizens' rights. For the purpose of establishing the rule of law in the country, the highest court is empowered by the Constitution under Article 102 to examine the actions of the executive and legislature on the ground of ultra vires or arbitrary actions; even the Supreme Court can examine the functions of the judiciary itself under Articles 103, 105 and 109. But in doing these, the judiciary either higher or subordinate must be separate, independent and competent. The paper examines the role of the Supreme Court in establishing the rule of law in the country. For doing this, last ten years' courts dealing with writ and criminal matters and last one year of SC's directions and verdicts are analyzed with a view to drawing an evaluation of its role on the issue. Another aim is to find out the existing problems and propose a solution.

Keywords: Judiciary, Supreme Court, 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 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; 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 and legislature on the ground of ultra vires or arbitrary actions; even the Supreme Court can examine the functions of the judiciary itself under Articles 101, 103, 105 and 109.

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) 1SCOB 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 the rule of law and upgrade it, the Judiciary either Supreme Court or Subordinate Courts 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. The constitutional responsibility of the Supreme Court is to upgrade the rule of law in the country and ensure people rights. Therefore, last ten years, what role the Supreme Judiciary has discharged in upgrading the rule of law in the country being 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 examine the role of the Supreme Court in ensuring and upgrading the rule of law in the country and draw an evaluation.

- To identify the restraints in discharging the onerous responsibility of the higher judiciary in ensuring and upgrading the rule of law and propose a solution.

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) [4]. In this paper, the following are determined as research questions:

- What role has the Supreme Court discharged in the last ten years (2009-2018) in upgrading the rule of law in the country?
- What are the barriers that really hamper the Court in discharging its prime responsibility in ensuring and upgrading the rule of law in the country and how can such restraints be overcome?

Methodology

In the last 10 years, what role the supreme 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 of Bangladesh, data also collected by applying the observation method upon last one year’s Supreme Court’s directions and orders; Primary data are collected from constitutional law, general laws, case laws; secondary data are also collected from judgments, different relevant books, journal articles, online based newspapers, govt. reports, etc. The qualitative data is 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 Higher 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 but particularly the higher judiciary has to play important role in ensuring rule of law as it is assigned by the constitution as its onerous responsibility (see preamble and article 102). The Supreme Court is the highest court in Bangladesh which interprets laws, settles legal disputes, enforces rights of peoples and impose penalty to the offenders and examines the functions of the executive, legislature and even subordinate judiciary and thus upgrade the rule of law in country (Articles 101, 102, 103, 105 and 109 etc). The Supreme Court has two branches viz., High Court Division (HCD) and Appellate Division (AD). What the role of the higher judiciary has discharged in enforcing and upgrading the rule of law in the country in the last ten years is a matter of research. For the purpose of the study, the superior court’s last 10 years dealings regarding writ and criminal matters from the higher judiciary are selected for analyzing the role. The last one year’s directions and orders of the Superior Court are also analyzed for the evaluation of the role.

Dealings of the Supreme Court regard Writ & Criminal Matters

The Constitution empowers the HCD as custodian to protect

the citizens’ fundamental rights (art. 44) and upgrade the rule of law in the country by applying writ jurisdiction (art.101) and judicial review conferred upon Article 102 of the constitution to examine the activities of the executive, and legislature and under Article 101, and 109 HCD can examine the functions of subordinate judiciary with a view to ensuring citizens’ rights, establishing and upgrading the rule of law in the country. Generally, writ benches of the higher judiciary are empowered to exercise writ jurisdiction, judicial review and discharge these onerous responsibilities. The performance of the writ benches for last ten years (2009-2018) will be compared with the period (1999-2008); in this section also criminal matters are also focused in the same way:

Table 1: Number of Filing and Disposal of Writs during the Period (2010-2018)

Year	Filing New writs	Disposal of Writs	Disposal Percentage (%)
2009	8,848	6370	71
2010	10,175	7303	71.77
2011	11,421	10924	95.65
2012	17,876	8028	44.91
2013	12,958	7473	57.67
2014	12843	8688	67.65
2015	14,284	13457	94.21
2016	16,965	9857	58.1
2017	19563	12119	61.95
2018	17234	12560	72.88
Total	142,167	96779	68.07

Source: Annual Report, 2018, Supreme Court of Bangladesh

Table 2: Number of Filing and Disposal of Writs during the Period (1999-2009)

Year	Filing New writs	Disposal of Writs	Disposal Percentage (%)
1999	5078	3162	62.26
2000	6345	5349	84.30
2001	7256	4614	63.27
2002	8782	7292	83.03
2003	7722	5127	66.39
2004	7192	4276	59.45
2005	9628	4433	46.04
2006	12693	4129	32.53
2007	11166	11122	99.61
2008	11,402	8915	78
Total	87264	58419	66.95

Source: Annual Report, 2018, Supreme Court of Bangladesh

From the above tables, one thing is revealed that the number of disposal of writs is higher in the period (2009-2018) in comparing with the period (1999-2008). In the period (2009-2018) the average disposal rate is 68.07% whereas it is 66.95% in the period (1999-2008). Total number of writ filing and restoration is 142167 in the period (2009-2018) but in the period (1999-2008) it is only 87264; it is revealed that more than 54903 writs were filed in research period and disposal is also higher in the said period; more than (96779-58419) 38360 writes have been disposed of in research period.

Table 3: Number of Filing and Disposal of Criminal Matters during the Period (2009-2018)

Year	Filing New Case	Disposal	Disposal Percentage (%)
2009	36725	8096	22.04
2010	39631	56705	143.8
2011	25573	52149	203.92
2012	31258	24108	77.13
2013	30137	12414	41.19
2014	39301	7745	19.71
2015	47870	19457	40.65
2016	45353	25837	56.97
2017	59491	19337	32.50
2018	63623	31923	50.18
Total	418962	257771	61.53

Source: Annual Report, 2018, Supreme Court of Bangladesh

Table 4: Number of Filing and Disposal of Criminal Matters during the Period (1999-2008)

Year	Filing New Case	Disposal	Disposal Percentage (%)
1999	10881	5910	
2000	12445	5790	
2001	15092	9219	
2002	27000	13192	
2003	21363	13300	
2004	18297	9332	
2005	25179	10760	
2006	27747	7833	
2007	27779	9035	
2008	34492	7071	
Total	220275	91442	41.51

Source: Annual Report, 2018, Supreme Court of Bangladesh

From the above tables, it is clearly revealed that the number of disposal of criminal matters is higher in the period (2009-2018) in comparing with the period (1999-2008). In the period (2009-2018) the average disposal rate is 61.53% whereas it is 41.51% in the period (1999-2008). Total number of criminal matters and restoration is 418962 in the period (2009-2018) but in the period (1999-2008) it is only 220275; it is found that more than 198687 cases were filed in research period and disposal is also higher in the said period; more than (257771-91442) 166329 cases have been disposed of in research period. In order to verify the accuracy of the results got regarding writ and criminal matters needs to analyze the total number of judges, number of filing and disposal of cases in the Supreme Court during the periods (2009-2018) and (1999-2008), yearly average disposal percentage as under:

Table 5: Total Number of Judges, Number of Filing and Disposal of Cases in the Supreme Court during the Period (2009-2018) and Disposal Percentage

Total No. of Judges	Yearly No. of Judges	Total Filing	Total Disposal	Yearly Disposal Rate	Yearly Disposal (Per Judge)
1019	101.9	713728	466605	65.37 %	45.79

Source: Annual Report, 2018, Supreme Court of Bangladesh

Table 6: Total Number of Judges, Number of Filing and Disposal of Cases in the Supreme Court during the Period (1999-2008) and Disposal Percentage

Total No. of Judges	Yearly No. of Judges	Total Filing	Total Disposal	Yearly Disposal Rate	Yearly Disposal (Per Judge)
628	62.8	427073	196019	45.90 %	31.21

Source: Annual Report, 2018, Supreme Court of Bangladesh

From the above tables 1.5 & 1.6, it is clearly revealed that there were about average 102 judges per year in the period (2009-2018) and yearly average disposal 65.37% whereas it was about 63 judges and 45.90% in the period (1999-2008). It is also found that each judge disposed 45.79 cases in the research period and 31.21 cases in the comparing period.

The Rule of Law in Judicial Pronouncements in the Period (2009-2018)

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 (2009-2018) 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) 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) 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) 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 Debi 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 *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.”

1. Directions of Supreme Courts in Last One Year in Establishing the Rule of Law:
2. Directions of Supreme Courts in Last One Year in Establishing the Rule of Law:

Prevention of the Abuse of the Power

The onerous responsibility of the Supreme Court is to establish the rule of law in the country by applying its judicial power vested in Article 102(2) of the constitution; the court can examine the activities of the executive, legislature and even judiciary for ultra vires or abuse of the power. And in the last one year we have observed many examples of the Supreme Court in dealing on the issue to upgrade the rule of law in the country:

- HC comes down hard on BB (The Daily Star, 2019 May 1, p. 16)
- HC questions legality on the BB Circular (The Daily Star, 2019 July 24, p. 5)
- HCD irked by govt. dillydallying in establishing separate tribunals to try narcotics cases (The Daily Star, 2019 October 21, p. 3)
- HC asks ministry to submit report on irregularities in Rooppur Power Plant (The Daily Star, 2019 May 21, p. 1)
- HC blasts BSTI for skirting onus (The Daily Star, 2019 June 24, p. 12)
- HC summons CEOs of two city corporations (The Daily Star, 2019 May 6, p. 3); HC summons DG of ACC, 3 govt. officials for jailing an innocent person named Jaha Alam (The Daily Star, 2019, January 29 p.16) HC summons Chapinababgonj tribunal judge for delay trial Alam (The Daily Star, 2019, April 11 p.4)
- HC issues injunctions on two drug officials (The Daily Star, 2019, July 19 p.5)
- Abuse of power-HC sentences the Rajuk stenographer to 11 years (The Daily Star, 2019, March 4 p.3)
- HC rebukes food authority for inactions (The Daily Star, 2019, May 24 p.1)

Protecting Public Interest

In the last year the Supreme Court has shown its strong role in establishing the rule of law for protecting public interest; we have observed many directions of the SC in ensuring public interest:

- a. HC says Petro Bangla, Titas “No needs for gas price rise if graft curbed” (The Daily Star, 2019 April 1, p. 16).
- b. HC directs to repair vulnerable school buildings in 3 months (The Daily Star, 2019 May 8, p. 3).
- c. HC annoyed at failure to test Wasa water (The Daily Star, 2019 May 14, p. 16).
- d. SC directs CMM to return Manna's passport (The Daily Star, 2019 May 14, p. 4).

- e. HC –directs not to call anyone fake freedom fighter (The Daily Star, 2019 May 15, p. 3).
- f. HC worried over milk adulteration (The Daily Star, 2019 May 16, p. 16).
- g. HC asks government to monitor fruit market, warehouses (The Daily Star, 2019 May 21, p. 2).
- h. HCD asks govt. to submit report on traffickers in 60 days (The Daily Star, 2019 July 2, p. 3).
- i. HCD directs for removing illegal structures from park spaces (The Daily Star, 2019 July 4, p. 3).
- j. HCD orders formation of rules for students with disabilities (The Daily Star, 2019 September 10, p. 4).
- k. Make people aware of expired drugs: HC (The Daily Star, 2019 July 7, p. 5).
- l. No bail for accused of serious crimes: SC Directives (The Daily Star, 2019 August 10, p. 16).
- m. HCD directs DNCRP to launch hotline within 3 months (The Daily Star, 2019 August 28, p. 3).

Ensuring Safe Food

Last one year the very active role of the higher judiciary we observed in ensuring safe food for the peoples of the country. HCD rebuked Bangladesh Food Safety Authority (BFSA) for their inactions (“Removal of 52 Food items”, 2019) and not complying with its earlier order to get 52 substandard food items off shelves. The court also came down heavily on the BFSA chairman, summoned him and issued a contempt of court rule against him for not complying with its order. On 8 the May, 2019, the court issue a suo moto rule asking the concerned authority regarding safe food. The Daily Star on its editorial column welcomed the High Court’s directives regarding immediate removal from the market 52 substandard food items and remarked them as time-befitting (High Court’s time befitting, 2019). On 15 May, 2019 the HCD showed its high anxiety milk adulteration and asked ‘How will the nation be built if health of its future generation is not sound?’ (HC worried over milk adulteration, 2019). On 20 May, 2019 HCD asked govt. to form teams to monitor fruit markets and warehouses across the country to prevent use of harmful chemicals (HC ask govt. to monitor fruit market, warehouses, 2019). On the 23 June, 2019, the Court expressed serious dissatisfaction on BSTI’s irresponsible statement over claiming it had no responsibility upon companies producing and supplying pasteurized milk and curd without license (HC blasts BSTI for striking onus, 2019). HCD again rebuked BSTI over misleading milk report (HC rebukes BSTI over milk report, 2019). On 29 July HCD gave observation for safe milk that the dairy farms and companies must produce pure, safe and hygienic milk and milk products maintaining international standards for ensuring sound health of the citizens of the country (HC for safe milk, 2019).

Protecting Rivers

The Supreme Court of Bangladesh has shown its historic role in protecting rivers. On 3rd February, 2019, the court gave a milestone judgment by declaring rivers as legal persons assigning the National River Commission (NRPC) as the legal guardian to act as their parents in protecting the rights of water bodies, canals, beels, shorelines, heels and forests (Khalequzzaman, 2019)^[16]. HCD also declared that

no polls participation and no bank loan for river grabbers and treat river graving as criminal offence (No polls, no loans for river grabbers, 2019). The court on the 6 July, 2019 in its full verdict declared that all rivers grabbing and pollution are criminal offences where killing a river virtually a collective suicide of all. In its verdict, the court gave 17 directions; stricter punishment for river grabbing and polluting, calling for an effective, independent national river commission etc. are most important directions (Ali & Sarkar, 2019) ^[3]

Protecting Environment

In the last one year the higher judiciary has given several directions in establishing the rule of law for protecting environment:

- HC issues injunction on earth filling (The Daily Star, 2019 April 1, p. 3).
- Close factories using tannery waste: HC (The Daily Star, 2019 April 3, p. 3).
- HC directed police to bring criminals proceedings immediately against the owners of illegal brick kilns (The Daily Star, 2019 May 21, p. 5).
- HC asks DoE for report on steps to curb air pollution in Dhaka (The Daily Star, 2019 March 14, p. 3).
- HC gives Landmark environmental law verdicts (calling river as legal person) (The Daily Star, 2019 June 4, p. 8)

Compensation for Victims

People are victimized and injured the mighty people, greedy people and naughty people but they are not getting proper compensation generally; even victims cannot seek compensation as a matter of rights (Huda, 2019) ^[11, 12]; where we have observed the firm approach of the Supreme Court in providing adequate compensation; we see some cases the court has expressed its angry approach to the wrongdoers; The court asked and directed in several notable cases which are helpful in establishing the rule of law in the country:

- HC asks green line to pay TK. 50 lakh to Russel (The Daily Star, 2019 April 13, p. 3)
- HC irked on Green line over delay (The Daily Star, 2019 May 23, p. 16).
- Make compensation or confiscation: HC (The Daily Star, 2019 April 5, p. 20).
- HC issues rule seeking 1 core compensation for Ranu's Family (The Daily Star, 2019 August 19, p. 3).
- Why should not rape victims get compensation?-HC Asks (The Daily Star, 2019 June 12, p. 1).
- State liability to pay compensation for rape victim-a necessary ruling from HC (The Daily Star, 2019 March 15, p. 14).

Ensuring Security/Safety:

The Supreme Court is guardian to protect citizen's rights, to ensure safety to all. In the last year we observed that the Court has given notable directions outside its general responsibility assigned by the constitution and statutes:

- HC seeks report on fire house safety measures in high-rises (The Daily Star, 2019 April 2, p. 3).
- HC for quick actions by city corporations in dengue (The Daily Star, 2019 July 26, p. 1).
- Judges Security in Courts-HC seeks info on taken (The Daily Star, 2019 July 18, p. 5).

Ensuring Justice

The responsibility of the Judiciary is to discharge according to law; at the same time, it is the responsibility of the judiciary to take necessary actions for ensuring justice in the country with a view to establishing the rule of law which we particularly in the last one year:

- HC hands DIG Mizan over to Police (The Daily Star, 2019 July 2, p. 1).
- HC would interfere if get negligence in the probe of Nusrat Murder Case (The Daily Star, 2019 April 4, p. 2).
- SC orders to immediate release of Azmat Ali (The Daily Star, 2019 July 16, p. 5).
- HC orders to file case five for Forging Docs to Secure Bail (The Daily Star, 2019 July 16, p. 5).
- 3 HCD Judges asked to keep from judicial activities-Facing Inquiry (The Daily Star, 2019 August 29, p. 1).

Existing Barriers in Upgrading the Rule of Law

In order to discharge the constitutional responsibility and upgrade the rule of law in the country, the higher judiciary is empowered with the power of the judicial review for purpose of examining the functions of different organs and institutions of the government. In the research period (2009-2018) it is revealed in the previous sections of the paper that the judiciary has shown better performances in disposing of cases in comparing with the period (1999-2008). But more disposal are not ensuring that more people getting justice from the courts; according to Justice Audit Bangladesh 2018, only 13 percent people of Bangladesh prefer going to courts to get justice, and the rest, despite having faith in the judiciary, refer their issues to community leaders to solve them (Only 13pc prefer courts for justice, 2019). Because still there are many barriers in the judiciary which needs to be removed and reduced so that the judiciary either higher or subordinate can efficiently discharge its onerous responsibilities in upgrading the rule of law in the country:

Ineffectiveness of Supreme Court's Decisions

The onerous responsibility of the Supreme Court is to establish the rule of law and upgrade citizens' rights though it's true that judiciary is weakest organ among three organs of the state but under the constitution it is declared that all of the State shall aid the Supreme Court for enforcement of its decisions (the Constitution, a. 112). But in the survey it is found that sometime law enforcing members ignore the directions of the superior court; sometimes concerned authority are not following the directions of the Supreme court; therefore the decisions of the Supreme Court turn into ineffective which is not at any way helpful for establishing the rule of the country; several such news appeared at the newspaper for last one year:

- Medical Exam of Rape Victims -Police not following HC Directives (Devnath & Mollah, 2019).
- 2010 HC directives ignored (Sarkar, 2019).
- House Rent Control-HC verdict ineffective (ibid)
- 10 yrs on, 60 pc school yet to act on HC order-Cell to Fight Sexual Harassment (Alamgir, 2019)
- HC compensation order in limbo for 28 months (Sarkar, 2019)
- Proceedings stalled in HC for 6 years (ibid).

Shortage of Judges and backlog of Cases

At present the total number of pending cases stands about

3.5 million over the judiciary and more than 5 lacs in the higher judiciary in the hand of 99 judges whereas at the time of separation of judiciary on 1st November, 2007, it was 1.57 million (5 Lakh cases in the hand of the supreme court judges, 2019) and the main reasons behind this huge backlog is inadequate number of judges and benches or courts in comparing with total cases (Kallal, 2019) and population of the country; it is revealed when a comparison is drawn as under:

Table 7: 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

At present each judge of the Appellate Division has to face about 3142 backlog of cases (Sarkar, 2019) which is overload for the judges under which justice in time for each case is quite impossible as a result, justice is delayed and therefore justice is denied which hinders in ensuring the rule of law in the country though it is found that the disposal rate of the Supreme Court is better than lower judiciary (Daily Star, 2019).

Absence of Specific Law and Detailed Rules for the Appointment of Judges in the SC

Under the constitution the separation and independence of the judiciary are declared and ensured (Articles 22, 94 and 116A); even the judges of the Supreme Court are declared as independent in exercising their judicial functions (article 94(4)) but still now no specific law and detailed rules are passed by the government for the appointment of competent judges in the higher judiciary though 12 directions were given by the higher judiciary in the *Idrisur Rahman v. Bangladesh* (2009) 61 DLR 523. As a result, in the case of appointment of judges in the higher judiciary politically reliable persons are always getting appointment by the government for which effective independence of judiciary is not becoming possible here.

Lack of Digital Approach

Our trial system is based on analogue system; there is lack of digital approach in 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 available on the Supreme Court website-www.supremecourtbd.com. If digital methods are applied in trial system the disposal rate of cases will be increased rapidly.

Capital Based Supreme Judiciary

The Supreme Court of Bangladesh is the highest court of law in the country having two branches-Appellate Division & High Court Division; all sit at the capital of the country but the subordinate judiciary including upazilla based courts is giving service from the district headquarters; as a result, only financial capable people come to the capital rather poor victims. Therefore poor victims are depriving of access to

justice by which rule of law may not be upgraded unless few necessary circuit courts are established at the District level for which already voices have been raised from different part of the country from different classes of the people (Khan, 2019) [13]. It is apt to state that in the constitution of 1972 there was also the provision of High Court circuit benches but unfortunately after establishing few High Court Permanent Benches on basis of Article 100 by the 8th Amendment of the Constitution by the H M Ershad's Government for reducing sufferings of the masses, they were declared void in the case of *Anwar Hossain Chowdhury v. Bangladesh* (1989) BLD (AD) (Special) 1. But now there is also opportunity under Article 100 of the constitution to set up temporary benches at any other places of the country which will certainly reduce the sufferings and save time and money of the mass people getting access to justice and rule of law will be upgraded.

8.6 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 acquittal due to want of proper evidence and proof against him. The main reason behind this is absence of separate investigation cell under the Higher 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); 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.

Ineffective Separation of Powers

In paper the judiciary is separate and independent but still today the judiciary either higher or lower has not gained financial independence due to having no self-fund of it; the revenue coming from the court fees are deposited to the Govt. fund; therefore, the Judiciary has to depend on the executive or government and the govt. what amount allocates 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). In the financial year 2019-2020 only 195 cores are 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 organ of the State where the allocated budget for BTV or Fishing Department is far more (Shamim, 2019) [25]. Under this poor budget it is quite impossible on part of the judiciary to upgrade the rule of law in the country. Due to having no financial independence, the supreme judiciary has to depend upon the government in case of appointment in the court and on many cases (Kallal, 2019).

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. In order to make the separation effective, there is no alternative of separate secretariat under the Supreme Court.

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 either by higher or subordinate, the procedural laws, especially the Code of Criminal Procedure, 1898, the Evidence Act, 1972, the Code of Civil Procedure Act, 1908 need 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).

Interference by the executive

In order to establish the rule of law in the country, the judiciary-either lower or higher judiciary must be separate and independent; from any corner of the government there should be no interference with the discharging of the functions of the judiciary or with promotion, posting or termination of the judges. 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, the principles of rule of law are not maintained where the principle of fair trial in the open court, by the competent court is skipped by the executive.

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 also 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.

Findings and Concluding Remarks

The onerous responsibility of the higher 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 Supreme Court 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 Supreme Court in upgrading the rule of law in the period (2009-2018) it is found that total disposal rate of writ matters was higher in comparing with the period (1999-2008). In the period (2009-2018) the average disposal rate of writs is 68.07% whereas it is 66.95% in the period (1999-2008). More than (96779-58419) 38360 writs have been disposed of in research period in comparing with the period (1999-2008).

It is also revealed that the number of disposal of criminal matters is higher in the period (2009-2018) in comparing with the period (1999-2008). In the period (2009-2018) the average disposal rate of criminal matters is 61.53% whereas it is 41.51% in the period (1999-2008). It is found that more than 198687 cases were filed in research period and disposal is also higher in the said period; more than (257771-91442) 166329 cases have been disposed of in research period in with the period (1999-2008).

It is also revealed that there were about average 102 judges per year in the period (2009-2018) and yearly average disposal 65.37% whereas it was about 63 judges and 45.90% in the period (1999-2008). It is also found that each judge disposed 45.79 cases in the research period and 31.21 cases in the comparing period.

It is also found that in the last one year, the Supreme Court has shown many active roles and given directions in upgrading the rule of law particularly in protecting rivers, environments, preventing the abuse of powers, ensuring safe food for all, making compensation for victims etc.

The ineffectiveness of the decisions of the higher judiciary, backlog of cases, shortage of judicial officers, backdated laws, ineffective separation of power & independence of judiciary, double judiciary, lack of separate investigation cell under the judiciary, analogue system, etc. are active barriers in the judiciary in upgrading the rule of law in the country.

An independent Judiciary is important for preserving the rule of law which allows citizens to seek protection of their rights and redress against government arbitrary 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 (*Bangladesh & ors v BLAST & ors* 8 SCOB [2016] AD1). Lastly on the basis of findings regarding existing barriers the following propositions may be adopted:

- Increasing the number of judges at least double in the Supreme Court,

- Establishing high court benches in temporary basis in each city corporation in the country for ensuring rule of law,
- Ensuring financial independence and increasing the financial budget for judiciary,
- Passing Specific law and detailed rules for the appointment of judges in the SC
- Appointing qualified, talented, honest and non-political persons as judges,
- Forming SC Monitoring Cell for scrutinizing the directions of SC whether they being followed and maintained.
- Establishing separate ADR courts/benches,
- Ensuring the digital system,
- Increasing the facilities for the judges.

References

1. Ahmed, Tofail. Britto O Brithantho: Bikendrikan, Shathania Shasan, Rajnithi O Unnayan Bhabna (in Bangla). Dhaka: Agamee Prokashani, 2011.
2. Alamgir, Mohiuddin. 10 yrs on, 60 pc school yet to act on HC order-Cell to Fight Sexual Harassment. *The Daily Star*, 2019, 1. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=1&date=2019-05-23>
3. Ali, Tawfique, Sarkar, Ashutosh. *The Daily Star*, 2019, 2. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=2&date=2019-07-02>
4. Austin, Caroline. Research Question. Retrieved from <https://www.quora.com/What-is-the-difference-between-a-research-question-and-a-resea>, 2017.
5. Bring criminal charges against 31 owner of illegal brick kilns: HC. *The Daily Star*, 2019, 5. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=5&date=2019-05-21>
6. Biswas, Dr. Zahidul Islam. 'Do We Have an Independent Judiciary?', 2012, 6(9). *Forum the Daily Star*. Retrieved from <https://works.bepress.com/zahid/8/download/>
7. Devnath, Bishakha, Mollah, Shaheen. Medical Exam of Rape Victims -Police not following HC Directives (Devnath & Mollah, 2019). *The Daily Star*, 2019, 16. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=16&date=2019-01-26>
8. "End 'dual rule' in judiciary", *The Daily Star*, 2016, 1.
9. Kallol, Kadir. 20 years of the judgment of Masdar Hossain Case: What extent the judiciary has been separated from the executive? *BBC*, 2019. Retrieved from https://www.bbc.com/bengali/news-50648685?ocid=socialflow_facebook
10. HC orders to file case five for Forging Docs to Secure Bail *The Daily Star*, 2019, 5. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=5&date=2019-07-16>
11. Huda, Taqbir. Compensation is a matter of right not sympathy. *The Daily Star*, 2019, 6. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=6&date=2019-02-09>
12. Huda, Taqbir. State liability to pay compensation for rape victim-a necessary ruling *The Daily Star*, 2019, 14. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=14&date=2019-03-15>
13. Khan, Aiman R. Can judicial decentralization become a reality in Bangladesh? *The Daily Star*, 2019, 7. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=7&date=2019-04-29>
14. Law Commission-Bangladesh, an Additional Report for Reducing Backlogs in Courts and Few Recommendations, 2015. Retrieved from <http://www.lc.gov.bd/reports.htm>
15. Khan, Mizanur Rahman 'An Interview with Mr. Anisul Haque, Honable, 2016.
16. Khalequzzaman MD. Can the historic High Court judgement save our River. *The Daily Star*, 2019, 6. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=6&date=2019-02-05>
17. Mashraf Ali. Landmark environmental law verdicts. *The Daily Star*, 2019, 8. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=8&date=2019-06-04>
18. Minister, Law & Justice, Govt. of Republic of Bangladesh' *The Daily Prothom Alo*, 2017, 1. Mobile Court Case (writ no. 8437 & 10482 of 2011, and 4879 of 2012) Retrieved from www.supremecourt.gov.bd/resources/documents/382548_WP8437of2011.pdf
19. No bail for accused of serious crimes: SC Directives (2019 August 10). *The Daily Star*, p. 16. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=16&date=2019-08-10>
20. Sarkar, Ashutosh. 2019 February 22). HC directives ignored (Sarkar, 2019). *The Daily Star*, 2010, 1. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=1&date=2019-02-22>
21. Sarkar, Ashutosh. (2019 May 19). House Rent Control-HC verdict ineffective. *The Daily Star*, p.18. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=18&date=2019-05-19>
22. Only 13pc prefer courts for justice. (2019, April 28). Retrieved from <https://www.thedailystar.net/backpage/news/only-13pc-prefer-courts-justice-1735798>
23. Sarkar, Ashutosh. HC compensation order in limbo for 28 months. *The Daily Star*, 2019, 5. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=5&date=2019-09-29> (2019, September 30). Proceedings stalled in HC for 6 years. *The Daily Star*, p.16. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=16&date=2019-09-30>
24. Sarkar, Ashutosh. 22000 cases for 7 judges. *The Daily Star*, 2019, 1. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=16&date=2019-08-18>
25. Shamim, Eqramul Haque, 2019. Retrieved from <http://lawyersclubbangladesh.com/2019/06/20/>
26. Sinha, Surendra Kumar, 2016. Address in Inaugural Session, National Judicial Conference, 24-25th December, 2016, Dhaka Bangladesh. Retrieved from http://www.supremecourt.gov.bd/resources/contents/CJ_Speech_National_Judicial_Conference_2016-Inaugural_Session.pdf
27. Sinha, Surendra Kumar, the Contribution of the Judiciary. *The Ittefaq*, 2016, 8. Retrieved from http://epaper.ittefaq.com.bd/?archiev=yes&arch_date=25-12-2016#
28. Malik, Shadin 'Hatee Gora Gelo Tol' (Horse Elephant Gone to Under). *The Prothom Alo*, 2016, 11.
29. Liton, Shakhawat and Sarkar, Ahuthosh 'Mobile Court Trials "often violate rights"' *The Daily Star* p.1. Removal of 52 Food Items. (2019, 24 May). *The Daily*

- Star*, 2015, 1. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=1&date=2019-05-24>
30. Repair vulnerable school buildings in 3 months: HC. *The Daily Star*, 2019, 16. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=3&date=2019-05-08>
 31. Staff Correspondent. 'Fair Justice Not Possible for Murder of Tanu under old laws'. *The Prothom Alo*, 2016, 1.
 32. *State v Anjali Devi*, 2009 61 DLR 738
 33. SC orders to immediate release of Azmat Ali the *Daily Star*, 2019, 5. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=5&date=2019-07-16>
 34. The High Court Division, Supreme Court of Bangladesh (2008-2016) Static on the Cases of Bangladesh, Annual Reports, 2018.
 35. The legal regime on food safety and human health. *The Daily Star*, 2019, 12. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=12&date=2019-05-14>
 36. Why should not rape victims get compensation?-HC Asks *The Daily Star*, 2019, 1. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=1&date=2019-06-12>
 37. HCD Judges asked to keep from judicial activities-Facing Inquiry (2019 August 29). *The Daily Star*, p.1. Retrieved from <http://epaper.thedailystar.net/index.php?opt=view&page=1&date=2019-08-23>
 38. 5 Lakh cases in the hand of the Supreme Court judges. (2019, September 8). <http://lawyersclubbangladesh.com/> Retrieved from <http://lawyersclubbangladesh.com/2019/09/08/>
 39. 16th Amendment case (Civil Appeal No.06 of, 2017. Retrieved from http://www.supremecourt.gov.bd/resources/documents/1082040_C.A.6of17.pdf