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# The Role of the Judiciary in Upholding the Rule of Law in Bangladesh

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## Abstract

The paper assesses the role of the judiciary in upholding the rule of law in Bangladesh. The study contends that the judiciary is minimally a necessary indicator that plays a vital role for upholding the rule of law in a country. Although this layer is not exhaustive in the measurement of degree of the rule of law but this is minimally a necessary yardstick for judging the rule of law prevalent in Bangladesh. The study argues that without progress of this area the rule of law to the large extent would remain meaningless and dysfunctional.

**Keywords:** Rule of Law, Citizens' Rights, Judiciary, Judicial Independence, Bangladesh.

## Introduction

The rule of law means from the highest in the country to the lowest, all must submit to law and law alone. The rule of law enjoins every citizen to be treated subject to law. It forms the basis for the functioning of all state organs to ensure greater welfare of the people. Among the state organs, the judiciary performs the delicate task of ensuring 'rule of law' interpreting laws, settling disputes, enforcing rights of the citizens and imposing penalty to the offenders. Under this general duty, ".....a pervasive element in the judiciary's role at every level is the protection of each person's constitutional, human, civil and legal rights. The judiciary also has an essential role in protecting us from the wrong-doing of others, protecting the weak from the strong, the powerless from the powerful as well as protecting individuals from unwarranted or unlawful exercise of power by the state. Moreover, the judiciary plays a crucial role in securing domestic tranquillity by providing a

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structured institutionalized forum for the resolution of discord and dispute and the vindication of civil and criminal wrong-doing” (John, 2000). Besides it was mentioned in *Punjab v. Khan Chand* (1974)<sup>3</sup> that the rule of law requires that any abuse of power by public functionaries should be subject to the control of courts. In order to achieve this goal judiciary as a co-equal organ with the other two organs of the state should be made functional, meaningful, and further strengthened in real sense by removing all sorts of challenges to provide cheap and immediate justice to the public. The main aims of the article are: to assess how far rule of law is being maintained by the judiciary and to reveal the obstacles for which the judiciary as one of the most important state organs lags behind in upholding the rule of law in Bangladesh. This paper will be descriptive in nature based on primary and secondary data collected from concerned law books, journals, daily newspapers, annual reports and other materials. It will be envisaged the role of the judiciary as minimally procedural indicator that can be considered as one of the main aspects for ensuring the rule of law. The study will give attention to some vital issues related to the judiciary for which it lags behind to ensure rule of law. For this very reason, the rule of law will be measured on the scale of minimal normative standard using a procedural indicator- ‘judicial approach to the rule of law’ in Bangladesh.

## Rule of Law

Aristotle said about two thousands year before regarding rule of law- *‘it is more proper that law should govern than any one of the citizens.’* It then passed on to many other languages. Professor Albert Venn Dicey includes three things of rule of law: equality before law, absence of arbitrary power and guarantees of citizen’s rights (Dicey, 2015). The modern concept of rule of law which has developed by the International Commission of Jurists in New Delhi known as the Declaration of Delhi, 1959 which was later on confirmed at Lagos Conference in 1961 saying that- *“The rule of law is a dynamic concept which should be employed to safeguard and advance the will of the people and the political rights of the individual and to establish social, economic, educational and cultural conditions under which the individual may achieve his dignity and realize his legitimate aspirations in all countries, whether dependent or independent”* (cited in Islam, 2012). Advancing the concept, the World Justice Project (2014)<sup>4</sup> defined the rule of law as a system in which the following principles are upheld:

- ❖ The government, its officials and agents are accountable under the law.
- ❖ The laws are clear and just and protect fundamental rights.

<sup>3</sup> AIR, SC 543.

<sup>4</sup> World Justice Project, Rule of Law Index, 2014 available at <http://data.worldjusticeproject.org/#/index/BGD>

- ❖ The process by which the laws are enforced and enacted is accessible, fair and efficient.
- ❖ Justice is delivered timely by competent and independent representatives.....

### **Independence of the Judiciary**

The UN basic principles on the independence of the judiciary are<sup>5</sup>:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

The apex court of Bangladesh referred to the essential conditions of independence of judiciary listed by the Canadian Supreme Court in *Walter Valenty v. Queen* (1985)<sup>6</sup> are: Security of tenure, (2) Security of salary and other remunerations, (3) Institutional independence i.e., it must be free from

<sup>5</sup> <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>.

<sup>6</sup> 2 SCR 673.

all kinds of governmental or non-governmental interference to decide on its own matters of administration and (4) The administrative or financial independence i.e., if the funds allocated to the Supreme Court in the annual budget are allowed to be disbursed within the limits of sanctioned budget by the Chief Justice without any interference by the executive [*Secretary, Ministry of Finance v. Masdar Hossain* (2000)].<sup>7</sup>

### **Rule of Law in the Constitution of Bangladesh**

Although there is no express mention about rule of law in Bangladesh constitution, the Preamble of the Constitution provides-“*it shall be a fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation- a society in which the rule of law, fundamental human rights and freedom, equality and justice, political economic and social, will be secured for all citizen.*”<sup>8</sup> In accordance with this pledge article 27 forbids discrimination in law or in state actions, while article 31 and 32 import the concept of due process, both substantive and procedural, and thus prohibits arbitrary or unreasonable law or state action. Moreover, in the constitution 18 fundamental rights have been guaranteed and constitutional arrangement for their effective enforcement has been ensured in Articles 44 and 102.

In accordance with Articles 7, 26 and 102(2) of the Constitution the Supreme Court exercises the power of judicial review whereby it can examine the extent and legality of the actions of both the executive and legislative and can declare any of their actions void if they do anything beyond their constitutional limits. Thus, the rule of law is a basic feature of the Constitution of Bangladesh.

### **Positive Aspects of the Role of the Judiciary in Upholding the Rule of Law in Bangladesh**

The constitution is a supreme law of the land and the Supreme Court of Bangladesh is the guardian of the constitution. The constitution incorporates all the important rights from the UDHR, 1948 in Part II (Fundamental Principles of State Policies, article 8-25) and Part III (Fundamental Rights, article 26-47) which are judicially enforceable by the Supreme Court. The constitution provides that the right to move the High Court Division in accordance with article 102, for the enforcement of Fundamental Rights that has been guaranteed in article 44 of the Bangladesh Constitution. The Constitution has conferred on the HCD writ jurisdiction under article 102 whereby it can enforce fundamental rights as guaranteed in part III of the

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<sup>7</sup> BLD (AD) 104.

<sup>8</sup> Constitution of the People's Republic of Bangladesh.

constitution allowing a writ petition from an aggrieved person. For example, on an average every year about 10,000 Writ cases are instituted under Article 102 of the Constitution for protection or enforcement of fundamental rights or judicial review of administrative or legislative actions (Sinha, 2015). Article 26 of the Constitution makes all laws inconsistent with fundamental rights void to the extent of such inconsistency and further enjoins upon the state not to make any law inconsistent with fundamental rights. The constitution has provided appellate jurisdiction to the Supreme Court under article 103. Moreover under Article 104 of the Constitution, the Appellate Division has jurisdiction to make any order or direction for doing complete justice in any case or matter before it. Article 109 of the constitution says that the HCD shall have superintendence and control over all courts and tribunals subordinate to it. The Supreme Court has statutory supervisory power under 115 of the C.P.C. and section 439 of the Cr. P.C. The Supreme Court advocates for social justice for the poor by way of Public Interest Litigation (PIL) that means litigation in the interest of public and not in the interest of the litigant himself. The notion of *suo muto* bears evidence of action by the Supreme Court. *Suo muto* is helpful in bringing remedies to the door of the victim. The Supreme Court is *pro-active* where human rights issues are of great serious nature and has wide concern. In that case involvement of the Supreme Court is more active that includes flexible interpretation of laws, such as extension of the concept of *locus standi* (right to sue). This approach is helpful in understanding the wide capacity of the Supreme Court to deal with human rights. Thus the SC can act in order to protect human rights and to uphold the rule of law accordingly.

**Table: 1. Procedural Indicators and Proxy Measures of the Role of the Judiciary in Upholding the Rule of Law into the Reality Mirror:**

Indicator	Procedure Measured	Proxy Measurements
1. Separation of judiciary and Judicial Independence.	Court system, the process of recruitment of the judges and the process of adjudicating.	(a) How far is the judiciary independent from the executive? (b) Is there any interference on the judiciary? (c) Is judiciary corrupted? (d) Access to justice system. (e) Whether the power of the courts has been curtailed. (f) How credible and transparent the recruitment process is? (g) Are judges recruited for political biasness? (h) Do the judges maintain professional independence in adjudication?

2. Prosecution System and complaint mechanism	The role of the lawyers, prosecutors and attorneys, due process in complaint system.	(a) Do lawyers facilitate corruption or the process of delaying trials? (b) How the process of prosecutorial and state attorney service? (c) Do they deal with cases with professional independence? (d) Are they recruited due to political allegiance? (e) Access to complaint mechanism. (f) Do the complainants have to pay bribes to file complaints?
3. Investigation system and security mechanism	The recruitment process of the police personnel, due process in investigation of cases, witness and victim protections.	(a) Is the system of investigation credible? (b) Do investigators extort undue benefit while investigating cases? (c) Do they use torture to extract confession? (d) Does the process accommodate intervention of political and financial elites? (e) How the police recruited or promoted? (f) Are victims and witnesses harassed or tortured (g) Are there any security mechanism?

## Independence of the Higher Judiciary

**Appointment Procedure:** One researcher (Biswas, 2012) revealed that, “in the absence of a legislation prescribing detailed qualification in appointment of judges in the Supreme Court of Bangladesh ‘the at least ten years’ experience as a lawyer or judicial officer appears as a board criterion, leaving room for political maneuvering in selection and appointment of judges to the Supreme Court”. As per Article 95, the present provision for appointments is that the Chief Justice and other judges shall be appointed by the President.<sup>9</sup> But being titular one the President in Bangladesh compulsorily appoints the judges on advice of the Prime Minister. In practice, the absolute power of the executive and parliament in the hands of Prime Minister. “Thus the appointment depends on the sole wish of the executive which may create personal favoritism and political bias in the appointments” (Halim, 1998). As per the statement of Asian Human Rights Commission the Chief Justice also happens to be appointed on political considerations in Bangladesh (Ashrafuzzaman, 2014).

**Crisis of Seniority in the Supreme Court Elevations:** The principle of seniority in the appointment of the Chief Justice as reflected in Article 96 and 97 of the Constitution as well as in *Bangladesh v. Md. Idrisur Rahman*<sup>10</sup> has

<sup>9</sup> Constitution of the People’s Republic of Bangladesh.

<sup>10</sup> 15 BLC (AD) 49.

been repeatedly violated. For example: during the BNP-led four-party alliance government, Justice KM Hassan and Justice Syed J.R. Modasser Hossain were appointed Chief Justice, respectively, following Ruhul Amin and Justice Mohammad Fazlul Karim violating seniority. In the caretaker government regime, Justice MM Ruhul Amin was appointed as the Chief Justice. Justice Tafazzal Islam was appointed Chief Justice after the Awami League-led Government overturning Justice Mohammad Fazlul Karim. The appointment of the former Chief Justice A. B. M. Khairul Haque in September 2010 was alleged to have involved the supersession of two more senior judges Justice MA Matin and Justice Shah Abu Nayeem Mominur Rahman. During the appointment of Mozammel Hossain again Justice Shah Abu Nayeem Mominur Rahman was took away. As a result, Justice Shah Abu Naeem Mominur Rahman resigned before the expiry of the validity period. The last of the cases of seniority violation of Justice Abdul Wahhab Mian was occurred on 02.02.2018 and he was resigned.<sup>11</sup>

**Provision of Consultation with the Chief Justice:** Although there is a convention of consultation with the Chief Justice in judicial appointments but the practice is violated now and then by government. For example, in the first instance in February, 1994 the then BNP government arranged appointment of 9 judges as additional judges without consulting the Chief Justice. In February, 2001 the AL government appointed 9 HC judges under Article 98 of the constitution. The BNP government did not confirm the services of 7 additional judges out of 9. In the second instance in July, 2001 AL government appointed 9 additional judges for HCD. The BNP government did not confirm the services of 4 of these 9 additional judges. In view of these incidents it is widely contented that this bad practice by the government in confirming the services of the judges ignoring the advice of the Chief Justice has already politicized the judiciary (Halim, 2014).

**Appointment in Profitable Post after Retirement:** Under Article 99 of the Constitution a retired or removed judge may be appointed by the President in judicial or quasi-judicial offices. For example, the former Chief Justice A. B. M. Khairul Haque has been appointed as the Chairman of the Law Commission after his retirement. But according to the International Law Commission's Report- "*Where there is any chance for the judges to be appointed in honorable post after their retirement or removal, impartial judgment may not be expected from them especially where the government itself is a party to a suit.*"

**Security of Tenure:** The Canadian Supreme Court in *British Colombia v. Imperial Tobacco Canada Ltd.* (2005)<sup>12</sup> referred that, security of tenure, financial security and administrative independence are the three 'essential conditions' of judicial independence. Moreover, the International Congress of

<sup>11</sup> Bangladesh Pratidin, February 03, 2018.

<sup>12</sup> 2 SCR 473.

Jurists held in New Delhi in 1959 suggested that ‘the grounds for removal of judges should be before a body of judicial character assuring at least the same safeguards to the judges as would be accorded to an accused person in a criminal trial (Halim, 1998). But on 30 July, 2009 the President by a notification had forced retirement of two judges- Mr. Abdul Gafur, the District & Sessions Judge of Dhaka and Mr. Md. Shahjahan Shaju, Judge of Women and Children Repression Prevention Tribunal of Gazipur. The apex court termed the decision illegal on the grounds that competent and fair trial to inflict punishment did not happen in this case and the decision without consulting the Supreme Court is a violation as per Article 116 of the Constitution.

**Arbitrariness in Judicial Action:** Biswas (2012) in his study pointed out that during almost the entire government regime the practice of feeling ‘embarrassment’ to hear some matters especially bail petitions of the member of the opposition in some cases is a common scenario in the Higher Judiciary of Bangladesh. Sometimes the manner of refusal of bail to political leaders raises concerns about the court’s functions freely. Withdrawal of cases on allegedly political considerations is also a controversial matter in the country. Sometimes the politically motivated cases in which the members of the ruling party are involved are withdrawn on political consideration but it cannot be seen in the cases in which the members of opposition are involved.

**Independence of Lower Judiciary:** Since the lower judiciary is the foundation of the judiciary, they must be independent and impartial for the establishment of rule of law. As per article- 116 of the Constitution of Bangladesh, the provisions dealing with constitutional safeguards of the lower courts are - the control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court. Moreover, Article-116A provides, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions. But the reality is little different. Firstly, there is no separate secretariat for the judiciary. Secondly, in many cases all acts of posting, promotion, grant of leaves etc. are done by the Ministry of Law, Justice, and Parliamentary Affairs and sometimes they do it without any approval of the Supreme Court. Although the Ministry obtains the approval as a mandatory one but in some cases some particular judges are harassed whom the Ministry has intention to harass. Such type of harassment is a great hindrance to the way of the judge to discharge impartial justice (Halim, 2014). Besides premature transfers, arbitrary postings, promotions and removals of the judges of the lower judiciary are happened on political biasness. Ashrafuzzaman (2014) observed that, the Ministry deals with the process of appointment, promotion, and dismissal in a whimsical fashion, prompted by the wishes of the incumbent political regime.



**Appointment of the Public Prosecutor:** This is a common practice in judiciary of Bangladesh that, the public prosecutors or the other persons of the office of the Attorney General are appointed from ruling party-affiliated lawyers. Every ruling party coming into power replaces almost the entire group of public prosecutors with the members or genuine supporters of the governing party. In Bangladesh, every regime appoints a group of lawyers of their choice to act as prosecutors or state attorneys. These lawyers get this opportunity because of their political loyalty—not professional skills—and often by corrupt means (*ibid*).

**Political Pressures and Interference on Courts:** In the history of the judicial system of Bangladesh political interference is a major impediment in dispensing and neutral justice. According to the statement of Asian Legal Resource Centre (2014/789) in Bangladesh the judiciary at all its levels entertains the instructions of the executive (cited by Ashrafuzzaman, 2014). Similarly, the World Justice Project, 2014 reported that the administrative agencies and courts in Bangladesh affected by corruption and political interference. But according to Durga Das Basu, (Basu, 1972) *“Independence of judges does not merely mean security of their tenure or a decent wages to keep themselves off from the worry for their daily bread, but a condition under which judges may keep their oath to uphold the constitution and the laws without fear and favor....”* (Cited in Islam, 2012).

### **Problem and Challenges in Bangladesh Judicial System**

**(1) The powers of the courts have been curtailed:** In a country where the rule of law exists, all the laws should be administered in the courts of law. But in Bangladesh, the powers of the Courts have been curtailed in certain laws. For example:

- (a) By the Speedy Trial Tribunal Act, 2002 the government is authorized to select and for holding quicker trials for murder, rape, and the possession of illegal firearms, explosives, or narcotics. The law has thereby allowed executive authorities to arbitrarily pick and choose cases for trial under this law.
- (b) The Mobile Court Act, 2009 by its Section 5 authorizes the government to assign an ‘Executive Magistrate’ or ‘District Magistrate’ to conduct trial of offences under this law. Sections 6 and 11 empower the ‘Executive Magistrates’ and ‘District Magistrates’ to punish with a maximum imprisonment of two years (Sec. 8) and monetary penalties. This law has mostly been used to punish opposition activists.
- (c) Under the constitution of Bangladesh the Administrative Tribunal has been kept outside the writ and supervisory jurisdiction of the High Court Division. Neither in Pakistan constitution (Art. 212) nor in Indian

constitution (Art. 323A) administrative tribunal is exempted from the power of judicial review by the Supreme Court.

- (d) Magistrates perform dual functions of both executive and judiciary. The Deputy Commissioner who is the Chief Executive in the district can arrest and prosecute a person. He also acts as a judge and tries some criminal cases. But conferring of judicial power of the executive magistrates, though in a small degree, is against the principle set out in Article 22 of the constitution (Islam, 2012)
- (e) Parliament can impeach the President and can adjudicate certain disputes. It has power to enforce its own privileges and to punish those who offend against them (*ibid*).

**(2) Declaration of Military Laws:** Since 1972 Martial Law had been declared many times, one in 1975-1979, another in 1982-1986 and lastly in January 11, 2007 ostensibly to save the country from political violence. But during the continuance of the Martial Law the Supreme Court could not call in question the proclamation of Martial Law and the Judiciary was made the subordinate organ of the executive (Patwary, 2004).

**(3) Confrontational Politics:** Bangladesh is in front of challenges in the path of the rule of law owing to the confrontational politics practiced by the two main political parties over the decades, reflecting longstanding personal enmity between Awami League (AL) and Bangladesh Nationalist Party (BNP) which are creating difficulties to separate the Judiciary from the Executive and Legislature.

**Lack of Check and Balance of Power:** In order to avoid autocratic exercise of powers of the state it is thought that the three powers (Executive, Legislative and Judiciary) should be entrusted to three different organs. But, the Appellate Division says that-

*“In the scheme of our constitution the division of power is not absolute. The executive can legislate under certain circumstances. Reference may be made of Articles 62(2), 93 and 115. Parliament cannot make law relating to the appointment of judicial officers and magistrates exercising the judicial functions which has to be provided for by the President under Article 115 of the Constitution. On the other hand parliament can cause a fall of executive Government and impeach the president. The parliament through its standing committees can review the execution of laws and investigate and enquire into the activities or administration of Ministries. Reference may be made of Article 76. Judiciary on the other hand under Articles 107 and 113 makes rules. The parliament at the same time can adjudicate certain disputes and hold the power to enforce its own privileges and to punish those who offend against them.”<sup>13</sup>*

<sup>13</sup> Bangladesh v. Md. Aftabuddin, (2010), BLD (AD) 1.

**Delay and Backlog of Cases:** The rule of law requires that justice will be delivered in timely manner. But the judiciary of Bangladesh is now overburdened in many ways and fails to do it for those very reasons. In a seminar titled- “Access to Justice: Judicial Remedy” held in CIRDAP auditorium, Dhaka on 25.04.2015 the Chief Justice S K Sinha said, 3,000,000 cases are pending in the courts of our country.<sup>14</sup> Similarly, as per the estimates provided in a Supreme Court Study released on June, 2015, every day 1,051 cases are added to the existing backlog. The study showed that (as of March 31, 2015) 3,098,569 cases were pending with all the courts across the country. Of them, 15,383 were with the Appellate Division, 369,813 with the High Court and 2,713,373 with the lower courts. Biswas (2008) in his study observed that in total our judiciary can resolve 150 cases daily and currently in total daily 250 cases submitted to the court. On the other hand, where a civil suit should take 1 to 2 years for the disposal but it continues for 10 to 15 years or sometimes more than that. It is found that the shortage of judges in the subordinate courts is the principal cause of delay in disposal of litigations. The former Chief Justice Khairul Haque said, “There is one judge for every 10,000 people in the USA and for 67,000 in India. But in Bangladesh, we have only one judge for more than 1 lakh people.” According to S K Sinha there are 1600 judges for 160,000,000 people and of them only 1100 judges take sit regularly in the courts.<sup>15</sup>

**Access to Justice:** The rule of law is meaningless unless there is access to justice for the common people. But most of the people think that law is for rich people and privileged, not for poor people. According to Mahmudul Islam having regard to the economic situation of the common people, the cost of litigation in Bangladesh is high and most people cannot afford to seek remedies in courts (Islam, 2012). Moreover, no arrangement has been made to deal with urgent civil matters in vacation. Although in *Manjil Morshed v. Bangladesh* (2009)<sup>16</sup> the High Court Division gave direction to the Government for holding vacation courts to deal with urgent civil matters but the civil courts go on in recess for 1 month in December every year.

**Corruption in Justice System:** Corruption is inseparable from every stage of a criminal case (Islam, 2010). As regards criminal cases, it is observed that there is extensive corruption and abuse of court process concerning bail. A survey in 2007 had found 47.7% corruption in the judiciary. Available statistics shows that more than three-fifths (63%) of the households involved in court cases to bribe the court officials. Cash for bribe is paid to the court employees by 71.3% of households (Rahman, 2005). The ‘Rule of Law Index 2014’ published by the World Justice Project (WJP) shows that, the worst score was in corruption and in civil and criminal justice, out of the eight indicators in implementing the rule of law. According to the index,

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<sup>14</sup> Bangladesh Protidin, April 26, 2015.

<sup>15</sup> Bangladesh Protidin, May 01, 2015.

<sup>16</sup> 61 DLR 94.

Bangladesh stands at 92<sup>nd</sup> position in civil justice, 94<sup>th</sup> in criminal justice, 95<sup>th</sup> in absence of corruption.<sup>17</sup>

**Prosecution and Investigation System:** Investigation in the criminal justice system is very much essential to collect pure evidence which helps the judiciary to administer of justice as well as to detect the actual offender. But an observation of the High Court Division in 4 MLR 87 can be mentioned here to get a clear idea of faulty investigation system in Bangladesh:

*“We have come across many cases in which due to faulty investigation accused get benefit of reasonable doubt in spite of consistent and uniform evidence of prosecution witnesses about the occurrence. As a result, people of our country have been losing faith in the present system of administration of justice mainly due to the failure of the police to properly investigate the case and collect the evidence. It is high time that the system of the investigation of the criminal cases by the police alone should either be abandoned or completely reformed.”*

**Lack of Security Mechanism:** Victim and witness play a vital role in justice system. But in Bangladesh, lack of victim and witness protection provisions they are harassed, intimidated threatened in different stages during the criminal procedure. Faruque and Rahman (2013) in their study observed that crime victims are often victims of the criminal process. Such claim has also been justified by Shazia Sultana (Sultana, 2014) that, at the time of reporting or after reporting the case the witness is afraid to come to the police station to give their statement. The witnesses are threatened at any stage of the investigation. Sometimes victim or witness is prevented from coming before the court to give statement. Furthermore, researcher Ashrafuzzaman (2014) in his study iterated that, those who dare contest cases against the law-enforcement personnel, influential persons associated with the ruling parties, and economically powerful persons, face dire threat to their lives, liberty, and property.

## Conclusion

The above mentioned discussion proved that, the foremost role of the judiciary as third branch of government is to uphold and assure the rule of law in a country. In order to achieve this goal the judiciary of a state should be effective and meaningful in a real sense. Although the rule of law is one of the basic principles of the Constitution of Bangladesh but the condition worsens by the day. Under the circumstances, a balance must be maintained to live in a society and that very balance is maintained by the judiciary administering justice. The study contended that the judiciary is minimally a necessary indicator that plays a vital role for upholding the rule of law and this is minimally a necessary yardstick for judging the rule of law prevalent in

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<sup>17</sup> World Justice Project, Rule of Law Index, 2014 available at <http://data.worldjusticeproject.org/#/index/BGD>.

Bangladesh. The study argued that without progress of this area the rule of law to the large extent would remain meaningless and dysfunctional. From this point of view, in the study it has emphasized to draw up the role of the judiciary in protecting rule of law in Bangladesh. It is the judiciary whose duty is to look after and supervise that everything is going on in accordance with the constitution of the Republic. Another reason is that the judiciary as one of the most important state pillars provides cheap and immediate justice to the public at their doorsteps. To attain this fundamental aim of the state it has shown that, as a co-ordinate and co-equal organ with the other two organs of the state, judiciary should be made functional to perform the delicate task of ensuring rule of law overcoming all kinds of loopholes. That is why, throughout the study it has been demonstrated some weaknesses of the judiciary that should be immediately removed as the supreme responsibility belongs to it.

### **Recommendations**

- (1) The Judiciary should be made full-fledged independent by removing all sorts of challenges that still remained on the path of its full independence. The executive authority of Bangladesh should not infringe on the independence of the judiciary. People should be more conscious about and judges as the guardian of the constitution should utter their voice against any external interference on the judiciary.
- (2) It should be stopped appointment of judges on political consideration and biasness. The appointment and the removal of Judges need to be fair, transparent and impartial. Seniority must be maintained in the appointment. Methods to transfer of judges should be strict. Judicial Reforms Commission to review appointments and related matters should be established.
- (3) Shortage of judges should be fulfilled and at the same time sufficient court buildings should be set up soon. The government should invest in this sector on top prior basis. The judges and the lawyers who are engaged in adjudication shall have the earnest co-operation, legal obligation and social responsibility to establish the rights of justice seeker.
- (4) Corruption should be minimized at the tolerable within the judiciary. Accountability of the entire judiciary including judges, lawyers and related sector should be ensured also.
- (5) Access to justice should be ensured for all. It should be stopped unnecessary adjournment of hearing of cases to get rid of delays and backlog of cases. Retired judges should be engaged in adjudication on contractual basis to reduce backlog which is a great hindrance on the path of access to justice.

- (6) Separate investigating agency should be set up and the system of the investigation of the criminal cases by the police completely reformed. The police should cooperate sincerely with the judiciary in investigation and related matters such as producing witness, making report etc.
- (7) Civil Society of Bangladesh should increase debates constantly within the country and pressure the government by exposing the defects and loopholes of the judicial process that remain as obstacles to the independence of the judiciary and the implementation of rule of law. Political parties of the country should be more sincere for establishment of the independence of judiciary and the rule of law accordingly.

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