

Independence of Judiciary: Challenges and Possibility

Md. Nazir Ahmed*

Abstract

The aim of this paper is to analyze the status of independence of the judiciary in Bangladesh. It is recognized worldwide that an independent judiciary is the sin qua non of democracy and good governance. However, without separation of the judiciary from other organs of the state absolute independence of judiciary is not possible. An attempt has been made in this paper to sketch the brief historical background of judicial system in Bangladesh through analyzing the meaning and basic principles of judicial independence and to what extent these principles exist in Bangladesh. Independence of judiciary is an indispensable element of a democratic government. And separation of judiciary is the precondition of the sound and independent judiciary. Since the beginning of the British colonial rule the question of separation of judiciary from the executive has been a continuing debate, though Bangladesh has past forty four years of its independence. I have also discussed in briefly the conceptual side and lastly concluded with some recommendation, so that policy of separation of judiciary from executive would be effective and helpful for the policy makers and implementations, namingly the executive, the legislature, and the judiciary. The constitution of Bangladesh vests the executive power to the executive, the legislative power to the parliament. Judiciary redress the grievances of the people and resolves dispute.

Keywords: *Independence, judiciary, executive, judicial independence, interference.*

Introduction

Independence of judiciary means a fair and neutral judicial system which can afford to take its decision without any interference of executive or legislative organ of the state. Independence of judiciary truly means that judges are in a position to render justice in accordance with their oath of office and only in accordance with their own sense of justice without submitting any kind of pressure or influence be it from the executive or legislative or from parties themselves or from the superiors and colleges. (Halim, 2014: 340) One of the

* Senior Lecturer, Dept. of Law, Prime University, Dhaka, Bangladesh & M.Phil Fellow, Dept. of Law, University of Rajshahi, Bangladesh, E-mail: nazirlawru@gmail.com.

three organs of the state is judiciary. A social structure remains coherent and cohesive with the aid of a sound judicial system. Judiciary redresses the grievances of the people and resolves disputes. Separation of judiciary universally ensures the independence of judiciary and safeguards the rights of the people. Therefore, it is impossible to ensure rule of law, fundamental human rights and freedom, without previously independent courts and tribunals to resolve disputes independently. So the complete independence of judiciary is the first major steps in the process of its developments. In Bangladesh the judicial norms and practice have been derogating for years. Recently a number of allegations have mounted surrounding the judiciary.

Objectives of the study

- To review the existing conditions of judicial independence and judicial accountability in Bangladesh.
- To analysis and assess the existing measures for ensuring judicial independence in Bangladesh.
- To analysis how judicial independence can be reconciled with judicial accountability in Bangladesh.
- To propose improvements of the conditions of judicial independence in Bangladesh.
- To discover general principles, policies, mechanisms and examples of best practice concerning judicial independence.
- To give some suggestions regarding independence of judiciary in Bangladesh.

Methodology of the study

This paper is of qualitative in nature. Data has been collected from various secondary sources. A number of books have been studied and consulted to find the necessary information. Various national and international articles by different authors have been critically observed. This has given a scope to find out the problematic issue in different views. Relevant literature has also been collected through internet browsing.

Principles of Independence of Judiciary

Independence of judiciary truly means that the judges are in a position to render justice in accordance with their oath of office and only in accordance with their own sense of justice without submitting to any kind of pressure or influence be it from executive or legislative or from the parties themselves or from the superiors and colleagues. This concept of independence of judiciary, as recent international efforts to this field suggests, comprises following five meanings of judicial independence. (Bari, 1993).

Individual Independence of the Judges

Individual independence of judges means that a judge is free to exercise judicial functions without any fear or anticipation of retaliation or reward. (Ali Akkas, 2004: 21) It requires that

a judge should decide cases in accordance with an impartial assessment of the facts and understanding of the law without any direct or indirect improper influence or interference from any source or for any reason.

In fact the first essential for an independent judiciary is that the individual judge should enjoy complete freedom in discharging his or her judicial functions and other official duties. (Ali Akkas, 2004 : 22).

Substantive Independence of the Judges

Substantive independence, which is also described as functional or decisional independence, means the - independence of judges to arrive at their decisions in accordance with their oath of office without submitting to any kind of pressure-outside or inside (from government and other centers of power, public and private; and on the other hand, the inside pressures from parties themselves) but only to their own sense of justice. (Halim, 2014:341) In determining the minimum standards of judicial independence the international Bar Association suggests in 1982 that in discharging of his judicial function a judge is subject to nothing but the law and the commands of his conscience.

Personal Independence of the Judges

Personal independence means that judges are in no way under any interference of the executive or legislative in discharging their judicial functions. In respect of personal independence of the judges the International Bar Association says that it means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control.

Collective Independence of the judges

Collective independence means the institutional independence, which is connected with responsibility for the effective operation of the judiciary as an organ of government. In its easiest form, judiciary as an institute must be free from interferences of the executive or the legislature. Financial autonomy of the judiciary is also related to the concept of collective or institutional independence. If the judiciary as an institution depends on the executive, the legislature or other institutions for its operation, this may affect the performance of judicial duties by individual judges

Internal Independence of the Judges

Internal independence of the judiciary means the independence of a judge from the interference of his judicial superiors and colleagues. In other words, it is the independence of a judge or a judicial officer from any kind of order, indication or pressure from his judicial superiors and colleagues in deciding disputes. Among these five types of independence of judges the substantive independence is most important, because it is the inner-strength of the judges which provides the steering-force for them to maintain their impartiality in discharging judicial functions. When a judge administers justice, it is presumed and expected that he will administer justice impartially.

Conditions for independence of judiciary

Independence of judiciary depends on some conditions which are as follows:

- a) Mode of appointment;
- b) Security of tenure; and
- c) Adequate remuneration and privileges.

Mode of appointment

As mentioned earlier, the conditions for appointment of judges should be a healthy one so that men of keen intellect, high legal acumen, integrity and independence of judgment from among the lawyers get opportunity to be judges. If there is any scope of personal favoritism and political bias in appointments, men of integrity and sense of justice will not be appointed as judges and when the judges lack these qualities, they will administer justice in a partial way resulting in low quality of judgment and such a situation will compel the people to withdraw their confidence from the judiciary. So the substantive independence which is the vital element of judicial impartiality depends on the mode of appointment. As Professor Garner says, "If the judges lack wisdom, probity and freedom of decision, the high purpose for which the judiciary is established cannot be realized. The existence of these necessary qualities depends in large measure upon the method by which the judges are selected." (Garner, 1935).

The existing methods by which judges are chosen in different countries of the world are given below:

- i. Election by the people;
- ii. Election by the legislature; and
- iii. Appointment by the executive.

Election by the people

This system of popular election of judges was first introduced in France in 1770. But this system was not a success, for the masses of voters do not always possess the understanding necessary to appreciate the soundness of judicial opinion. It was the result of the elections which took place in 1793 that most of those who were elected were engravers, stone-cutters, clerks, gardeners and common laborers who had no quality to administer justice. This is why with the advent of Napoleon the system of popular election was abolished.

This method, of course, is now in vogue in some of the States of the American Federal Union. The chief disadvantage of this method is that different political parties nominate their candidates and people being influenced by the parties elect a candidate though that particular candidate has no quality to administer impartial justice. Judges therefore, elected by this method become subject to popular passion and prejudice. It tends to lower the character of the judiciary. Again, it is impossible for a judge to put before the electorate either a programmed or a personal success concerning judicial conduct. This is why Laski says that "of all the methods of appointment that of election by the person at large is without exception the worst."

Election by the legislature

This method exists in Switzerland and in two States of American Federal Union. This system is not considered good because in this system judges are nominated by political parties in the parliament and the majority is sure to get his candidate elected whatever be his quality to administer justice. (Halim, 2014: 344). It is contended that when a judge is elected with the support of the majority party, he will have to appease that party and it will be quite impossible for him to deliver neutral justice.

Appointment by the executive

The appointment of judges by the executive is the most common and available method of choice and this system is in vogue almost all countries. This may be of two types—

- a) By the executive independently; or
- b) By the executive after consultation with the court or from a list of nominees presented by the court or with the consent of the legislature.

The first method is sometimes contended to be objectionable in the sense that personal favoritism or political consideration may determine the appointments and instances are cited from Britain, France, and USA and largely from third world countries. Mr. Briand, when was the Minister of justice of France in 1912 himself declared that the judges had become the pay of politicians.

The second method is most democratic and objective. Because when the court prepares a list or the Chief Justice consults, which is closely associated with the performance of Bar, will select the name of those lawyers who are men of high legal acumen, integrity, independence of justice etc. Such a method of appointing judges is conducive to the development of the standard of judicial decisions on the one hand and on the other hand, it is therefore, perfect to ensure impartial justice in the country.

Security of tenure

Security of tenure for the judges is most important in securing their independence and impartiality. Security of tenure means that-

- a) Either judge is to be appointed for the whole life i.e. 65 or 75 years.
- b) During this tenure the conditions of service must be such that they can fearlessly administer justice.

In other words, the power of transfer or removal of a judge must be a strict and difficult one. If the transfer or removal of a judge is to depend upon the pleasure of a particular person or the executive, neither independence nor impartiality can be ensured, because in such a situation judges will be under a constant fear of being removed or transferred from office, if they give decisions against the executive.

In UK judges are guaranteed their security of tenure; they can be removed by the King only when both the Houses pass a resolution presumed him for corruption or moral turpitude. In

the USA judges of the Supreme Court can be removed by impeachment. The process of impeachment is difficult in that the House of Representatives prefers the charges and the trial is held by the Senate.

Adequate Remuneration and Privileges

In order to ensure the independence of judiciary it is essential, next to the pertinence of office, to provide judges with adequate remuneration and privileges. Adequate remuneration and privileges include the following three things:

Firstly, the salaries, housing facilities, allowances and other privileges are to be such that they can easily maintain a standard life and they do not have to think of corruption or bribery. Again, if judges are ill-paid able persons may not be attracted to this profession.

Secondly, the conditions of salaries and other privileges must be such that they cannot be varied to their disadvantages during the tenure of their office. This is why in democratic countries judges are paid their salaries and allowances from the consolidated fund and there is no need for the approval of the parliament for these payments every year.

Thirdly: after retirement a judge should receive pension so that during his tenure he need not indulge in corrupt practices and he can lead a peaceful retired life.

Independence of Judiciary in the light of the Masdar Hossain case and a brief history of separation of judiciary in Bangladesh

British Period

During the British rule there was a demand for separation of judiciary from the executive. The British administration did not make this separation thinking that separation might go against their colonial interest. In 1919 the matter of separation of judiciary was raised in the House of Commons but it was not discussed on the contention that it was a matter within the jurisdiction of provincial government. In 1921 a resolution regarding separation of judiciary was passed in the Bengal Legislative Assembly which was followed by formation of a committee. The committee reported that there was no practical problem in separation. However, nothing moiré was done.

Pakistan Period

After separation and independence in 1947 no step was taken in East Pakistan. The United Front included the idea of separation in its 21 points formula in 1954. The first constitution in independent Pakistan was adapted in 1956. Unlike the government of India Act 1935 and the constitution of India Act this Pakistan constitutions of 1956 did not provide for any provision regarding 'subordinate courts' or 'magistracy'; these was to be regulated by the court of civil procedure and the code of criminal procedure. In 1957 the East Pakistan Provincial Assembly passed the code of criminal procedure (East Pakistan Amendment) Act 1957. which dealt with separation. However, this Act was never given effective.

Bangladesh Period

After independence of Bangladesh the Constitution of the Peoples' Republic of Bangladesh was adopted in 1972. Provision was made in Article 22 in the fundamental principles of state policy that the state shall ensure the separation of judiciary from the executive organs of the state. In 1987 by an amendment to the criminal procedure code Ex President H.M Ershad prepared a bill for separation of judiciary. However, the bill did not see the light of the day. In Pakistan separation was done in 1973 and in India in 1974 by an amendment to the criminal procedure code. In 1990 the issue of separation of judiciary was put into the manifesto of the three-party alliance movement against H.M Ershad regime. In every election after 1990 both the BNP and AL had breached commitment in their manifesto that if they going to power they would separate judiciary from the executive. In 1991 a private member's bill by Mr. Salauddin Yousuf namely the constitution (14th Amendment) bill 1991, was introduced for further amendment of Articles 95,98,115 and 116 of the constitutions. The bill was sent to a select committee which had about 13 meetings to consider it. The bill tried to restore the provisions of the 1972 original constitution envisaged by the constitution-makers. The revised Bill was submitted in parliament in 1994. The comparison of the original bill and the revised bill reveals that 'the BNP has come out as the champion for the 4th amendment of the constitution though it is the BNP which never misses any opportunity to condemn AL for the 4th amendment of the constitution. (Rashid, 46, DLR). However, nothing was done to pass the Bill. The Bill, however, did not deal with anything about the separation of subordinate judiciary. The government side did not accept any proposal for amendment of Article 115 and 116 of the constitution. By not agreeing to restore the original provisions of Article 115 and 116 the government has unmistakably demonstrated that they are opposed to the separation of the subordinate judiciary from the executive. Shekh Hasina as the Prime Minister of 7th parliament kept deep her commitment that she would do all for separation of judiciary. A committee was formed headed by the secretary of Law, Justice and Parliamentary Affairs Ministers Abdul Matin Khasru stated that a bill for separation of judiciary from the executive was under way but nothing more was done. Finally, the last care taker government on 1st November, 2007 implements some direction of Masdar Hossain case of the Supreme Court regarding the separation of the judiciary and brought some change in code of criminal procedure. That was the bright day of separation of judiciary in the history of Bangladesh.

Secretary to the Ministry of Finance Vs Masdar Hossain. 52, DLR (AD) 2000, P-82.

The operative part of the judgment is as follows: The Supreme Court gave 12 directions to the government to ensure the independence or separation of the judiciary. These are given below:

1. It is declared that the judicial service is the service of the republic within the meaning of article 152(1) of the constitution, but it is a functionally and structurally distinct and separate service from the civil executive and administrative service of the republic with which the judicial service cannot be placed on par on any account and that it cannot be

amalgamated, abolished, replaced, mixed up and tried together with the civil executive and administrative services.

2. It is declared that the word “appointments” in article 115 means that it is the President who under article 115 can create and established a judicial service and also a magistracy exercising judicial functions, make recruitment rules and all pre-appointment rules in that behalf, make rules regulating their suspensions and dismissal but article 115 does not contain any rule making authority with regard to other terms and conditions of service and that article 133 and article 136 of the constitutions and the (services) re-organization and conditions Act, 1975 have no application to the above matters in respect of the judicial service and magistrates exercising judicial functions.
3. It is declared that the creation of BCS (judicial) cadre along with other BCS executive and administrative cadres by Bangladesh civil service re-organization order 1980 with amendment of 1986 is conducive to the constitution; it is also declared that Bangladesh civil service recruitment Rules 1981 are applicable to the judicial service.
4. The appellant and the other respondent to the writ petition are defected that necessary steps to be taken forthwith for the President to make rules under article 115 to implement its provisions which are a constitutional mandate and not a more enabling power. It is directed that the nomenclature of the judicial service shall follow the language of the constitution shall be designated as the judicial service of Bangladesh or Bangladesh Judicial Service. They are further directed that either by legislation or by framing rules under article 115 or by executive order having the force of rules a judicial service commission be established forthwith with majority of members from the senior judiciary of the supreme court and the subordinate courts for recruitment to the judicial service on merit with the objective of achieving equality between men and women in the recruitment.
5. It is declared that under article 133 law or rules or executive orders having the force of rules relating to posting, promotion, grant of leave, discipline (except suspension and removal) , pay, allowances, pension (as a matter of right) not favor and other terms and conditions of service, consistent with article 116 and 116A as interpreted by us, be enacted or framed or made separately for the judicial service or magistrates exercising judicial functions keeping in view the constitutional status of the said service.
6. The impugned orders in the writ petitions dated 28.02.1994 and 02.11.1995 are declared to be conducive to the constitution for the reasons to the judgment. The appellant and the other respondents to the writ petitions are directed to establish a separate judicial pay commission forthwith as a part of the rules to be framed under article 115 to review the pay, allowances and other Privileges of the judicial service which shall convene at stated intervals to keep the process of review a continued one. The pay etc. of judicial service shall follow the recommendations of the commission.
7. It is declared that exercising control and discipline of person’s employer in the judicial service and magistrate exercising judicial functions under article 116 the views and opinion of the Supreme Court shall have primacy of those of the executive. It is

- declared that exercising control and discipline of person's employer in the judicial service and magistrate exercising judicial functions under article 116 the views and opinion of the Supreme Court shall have primacy of those of the executive.
8. The essential conditions of judicial independence in article 116A, elaborate in the judgment, namely, a. security of tenure or obscurity of salary and other benefits and pension and institution independence from the parliament and the executive shall be secured in the law and rules made under Article 133 or in the executive orders having the force of rules.
 9. It is declared that executive government shall not require the supreme court of Bangladesh to seek their approval to incur any expenditure on any item from the funds allocated to the supreme court in the annual budgets, provided the expenditure included falls within the limit of the sanctioned budgets, as more fully explained in the body of judgment. Necessary administrative instructions and financial delegations to ensure compliance with this directions shall be issued by the government to all concerned including the appellant and other respondents to the writ petition by 31.05.2000.
 10. It is declared that the members of the-judicial-service are within the jurisdiction of the administrative tribunal. The declaration of the high court division to the opposite effect is set aside.
 11. The declaration of the high court division that for separation of the subordinate judiciary from the executive no further constitutional amendment is necessary is set aside. If the parliament so wishes it can amend the constitution to make the separation more meaningful, pronounced, effective and complete.
 12. It is declared that until the judicial pay commission gives its first recommendation the salary of judges in the judicial service will continue to be governed by status quo as on 8.1.94 vide paragraph 3 of the order of the same date and also by the further directions of the high court division in respect of assistant judges and senior assistant judges. If pay increases are affected in respect of other services of the Republic before the judicial pay Commission gives its first recommendation the members of the judicial service will get increases in pay etc commensurate with their special status in the constitution and in conformity with the pay etc, that they are presently receiving.

Steps for Separation of judiciary in Bangladesh

The first attempt was taken after the division of the sub-continent in 1947, Pakistan government enacted East Pakistan (then Bangladesh was under Pakistan government) Act no .111 of 1957, which provided for separation of judiciary from the executive. As regards independence and separation of judiciary, our constitution of 1972 is fairly developed. But the framers of the supreme law of the land made an unfortunate insertion in article 115 and 116 as magistrates exercising judicial function, which will remain unattended. Article 22 is unequivocal term states that the state shall ensure the separation of the judiciary from the executive organs of the state as one of the fundamental principles of state policy. It is not readily judicially enforceable. Nevertheless the state cannot ignore it for long. There was

under current of demand of implementation of constitutional obligation from the very inception of Bangladesh. But the fourth amendment undermined the constitutionalism itself, which obviously destroyed the independence of judiciary. The subsequent upheavals of politics rather by passed it. In 1976 law commission recommended that subordinate judiciary on the criminal side should be separated from the executive. (Hussain, M.M, 2007).

In the meantime, we witnessed two extra-constitutional processes. In 1987, initiatives were taken to separate the magistracy by amending code of criminal procedure, 1898. For unknown reason the bill could not placed before the Parliament. After the fall of autocratic rule in 1990, exception was high to ensure separation of judiciary. But the next two governments of 1991 and 1996 did nothing in this regard except spoiling its tenure. In 1999 the Supreme Court issue 12 point directives in famous Masdar Hossain case to ensure separation of judiciary from the executive. The successive governments have taken time again and again to delay the process. It may be called that the caretaker government (2001) has all measures to separate the judiciary but stop at the request of AL and BNP two major parties of the country. It is a pleasure that Judicial Service Commission and Judicial Pay Commission have been created various rules and amendment in the relevant sections of code of criminal procedures 1898 are under consideration of parliament of late the law. Law and Parliamentary Affairs Ministers announced that it would take additional six years to ensure separation of the judiciary from the executive .Dated 20.06.2004 this statement is reflective of how indifferent the government is about separation of judiciary. The demand separation of judiciary from executive is universal to ensure the independence of judiciary and safeguard the rights of the people. It is quite unfortunate that the government is moving towards at hail's pace. (Bari, H.M, Fazlul, 2008).

It may be noted here that Pakistan and India have taken necessary steps for free the judiciary from executive at all levels in 1973 and 1974. Ensuring justice and independence of judiciary will remain a far very until lower judiciary is separated from the executive. It is mandatory and constitutional obligation of the government to ensure separation of judiciary from the executive.

The last caretaker government passed some rules regarding the independence of judiciary by amending section 4,6,8,9,11,12,17,17A,18,29B,29C,31,36,37.41.42.45 and some other section of Code of Criminal Procedure on Nov 1,2007.

Finally, the last caretaker government issue some rules and regulation in accordance with the judgment of famous Masdar Hossain case. The laws which are related to separation of judiciary are given below:

1. Bangladesh Judicial Service Commission Procedures, 2007
2. The formation of Bangladesh Judicial Service, Commission, appointment in procedures of temporary dismisses and removes, 2007
3. Bangladesh Judicial Service (ascertainment of field if service, giving promotion, system of control and discipline including grant if vocation and the term of service) procedure, 2007
4. Bangladesh Judicial Service pays commission procedure, 2007
5. The Code of Criminal Procedure 1898 (Amendment) Ordinance 2007

Challenges Regarding Independence of Judiciary

The question of separation of judiciary from the executive organ of the state is not new for our judicial system. There have certain barrier regarding the independence of judiciary which is given below:

Lake of consciousness: Of the total people constituting the electorate of our country, I am sure more than 10% voters do not know what actually is mean by the separation of the judiciary and for that matter what is the bright side of the proposed separated judicial system. (Mollah, Md. Awal Hossain , 2011). To address the question we should have at least an average knowledge of our present judicial system. Lake of consciousness peoples have no strong movement for this reasonable and remindful wants.

Lake of political will : Any kind of meaningful changed, political will is mandatory because our democratic policy deals by various political parties. Government formed by citizens mandate with their representatives. So, if the political parties (both government and opposition) have no interest to separate the judiciary from the executive it would he impossible. Though most of the political parties have committed to separation of judiciary but after formation of government they technically avoid the matters. That's why the process of separation of judiciary is going on endlessly.

Lack of interaction with other courts : Lake of interaction of the judges in Bangladesh with their counterparts in other countries is a possible factor for their insular understanding of law. Of course, the courts scarce reasons limit the opportunities for such interaction and, the very limited judicial interaction with foreign courts, when it does occur is arranged in hierarchical order. This means that older judges, who are less amenable to fresh ideas and have less time left on the bench, undertake such interactions most often , receiving the most limited results possible.

Lack of strong civil society: Civil society now a days plays a very important role any positive change of a country. The civil society of our country is not so strong that's why they also failed to compel the government to separate the judiciary from the executive.

Lack of democratic culture : We have reached upon years of our independence from the dictatorial and autocratic rule of Pakistan. In 1991 we claim to set up a democratic government but we have so far made a little progress in practicing parliamentary culture. Our leadership instead of guiding the nation toward setting up a strong parliamentary democracy has so long been engaged in the politics of mutual hatred and vengeance. Tolerance and respect for opposition party is now foreign in our politics. Such intolerance and enmity between political parties have adversely affected the nation as a whole and virtually has divided the nation into some group antagonistic to each other. This inimical attitude of our political parties has not only populated the polities of our nation but has created groupings among public servants in general and bureaucrats in particular. Of late the highest judiciary has reportedly been politicized. (Rahman, S.M, Matiur, 2011).

Executive dominated judiciary : Article 115 of our constitution; Appointment of persons in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf. It is noticeable in this Article that the President with exercising this power is not required the Chief Justice of Bangladesh. We know that the President cannot exercise its powers whatever, without the advice of Prime

Minister. This is how the executive organ of our state is controlling the judiciary. There appointments, posting, transfer, promotions, and punishment etc. are at the hands of the President or for that matter, the government.

Overlapping Competencies : Often, executive branch ministers to work as their legal officers recruit judges from the subordinate judiciary. Generally ministers do not have a legal officer of their own, and the public prosecution service is an adhoc arrangement. Arguably, judicial independence is comprised when a person acts 'as both a prosecutor and a judge. Law officers have to defend government positions while judges might rule against the government. A directive of the Masdar Hossain judgment calls for the roles of the judges and prosecutor to be sepersted. Unfortunately, so far this directive is not completely carried out.

Corrupted Lawmakers : The air of separation of judiciary is entering; side by side it has also bad smell. Maximum judges and lawmakers are corrupted. They take bribe spontaneously and make the case diverted. It is a very common phenomenon in our country. So if the independent judiciary is vested upon the dishonest lawmakers, there must be disorder in law and order situation of Bangladesh. It is alarming news that maximum lawmakers are concerned with any of the major parties of the country. So it a matter of great tension whether public will get justice or not that is why, first of all politics among them must be banned. Otherwise there will bear no result of separation of judiciary from the executive.

Findings:

- In respect of judicial discipline there is no specific system of making complaints against judges and it is almost impossible for a general public.
- The criteria for appointment of judges of higher court in Bangladesh are not explicitly published.
- The executive enjoys indirectly exclusive power in appointing of judges at all levels.
- Although judges have a fixed tenure of office, in some cases their security of tenure is not adequate.
- Although member of the legal profession play a crucial role in maintaining judicial independence.
- Judicial corruption is a serious problem for the judiciary in Bangladesh.
- Delay in the disposal of cases is a significant weakness of the judicial system in Bangladesh.

Recommendations

Form the above discussion I have some recommendations for removing the judicial problems and judicial independence in Bangladesh.

1. The citizen and the government must have more respect for judicial decisions. This would go a long way in centralizing the notions of rule of law, defining the limits of government, creating parameters of accountability, and ensuring other necessary preconditions for an ordered and predictable society.

2. In Bangladesh with immediate technical assistance for carrying out the directives of the Masdar Hossain case, particular knowledge of how the functional separation of powers is initiated and implemented in other countries should be seriously considered. The creation of judicial service commission implies a drastic expansion of administrative responsibilities for the Supreme Court, a burden that it is currently ill suited and to shoulder. The rudimentary technical competence of the administration of Supreme Court is an area of concern, and courts in general are in need of more technical assistance.
3. The appointment of judges of the Supreme Court, currently done by the President is susceptible to external influences in a selection process that is nontransparent. A change in the system of selecting and appointing judges of High Court Division is another aspect requiring attention. The courts themselves must encourage ordinary citizens to seek justice through their chambers. At present, lower courts are mistrusted and the judiciary in general, if it is to be effective, must encourage and support citizen's access to justice.
4. High Social Status the judge must be accorded a high social status. This will ensure the flow of competent and qualified persons to the profession and will ensure the integrity and impartiality of the judges. Courts must have sanctity behind them. This is shy in India and elsewhere, a person may be punished for contempt of court, if he in any way disregards the dignity of the court or the judges.
5. Adequate emoluments adequate emoluments should be paid to the judges. Otherwise, qualified persons, especially advocates of high repute, would not like to opt for such offices at the cost of financial loss. Judges of the Supreme Court and High Courts in India are well paid.
6. Importance of merit for maintaining the independence of judiciary, it is quite essential that judges should be appointed on merit. The appointment should be based on certain definite qualifications. They should have thorough knowledge of law.
7. Security of service the judge can remain independent only when they enjoy security of service. A judge cannot be able to deliver a decision against a person or organization that has the authority to remove him. Therefore, the judges should have security of job for discharge their duties impartially and independently. The method of removing the judges of the Supreme Court in India is very difficult, which assures the independence of judiciary.
8. The mode of appointment of judges the mode of appointment of the judges also has considerable influence over the independence of the judiciary. The election of judges by the people or the legislature is not conducive to the achievement of judicial independence. Even in case of executive appointment, the executives should not be in a position to remove the judges like any other civil servants. The India constitutional provisions relating to judicial appointment are ideal. Only qualified persons in law can be nominated by the President of India to function as judges.
9. Implementation of 12 point directive of Supreme Court through Masdar Hosen Case The government should implement all the 12 point directives as set by the honourable Supreme Court of Bangladesh.

10. The Appropriate Authority must ensure that no judicial post is kept vacant for any length of time. In identifying the cadre strength, it is necessary to pay attention to issues of deputation and training. The deputation of judicial officers in other departments will develop a bad trend of biasness to executive body.
11. Preparation of a realistic annual budget and placing it before the government on time. The appropriate Authority could prepare a realistic annual budget estimate for the lower judiciary, and ensure that this is duly placed before the relevant government body and sanctioned, as a prior step to full financial and administrative autonomy.
12. Systematic training and continuing education. Training and continuing education for all judicial officers should be systematic, and could be carried out through the Judicial Administration Training Institute (JATI), and also through other initiatives. For example, whenever a new comes into force, all judges could be briefed on its objects, purposed, scope and application.
13. Regular and full inspection of the courts in the districts. High Court Judges must conduct full periodical inspections of all courts in the district, in order to obtain a firsthand understanding of their problems, working conditions and environment. This would provide an opportunity for High Court judges to hear individual grievances, ascertain their causes and suggest or provide appropriate remedies suggested or provided.
14. System of Annual Recognition and Reward: Establishing a performance based incentive system, and ensuring that this is managed by the Supreme Court, in place of the current system in which advance is largely dependent on political patronage, would help to change the work culture for the subordinate judiciary. While the nature of incentives to be provided would require further consideration, these could include formal letters of commendation from the superior courts, an honourable mention regarding a particular court or judicial officer in their Annual Confidential Report, providing them with better posting stations, accelerated or out of turn promotion, training opportunities within the country and abroad.
15. Greater transparency re judicial administration through Annual Conferences and publication of Annual Reports. Problems, difficulties and needs regarding the proper functioning of the judicial system can be highlighted and brought to public attention through annual conferences of various levels of the judiciary, and by publication of relevant data in annual Reports. Demands for administrative and financial provisioning which are identified through such processes may be communicated to the Government for necessary action.
16. The criteria for appointment of judges should be made explicit and publicly known.
17. The mechanisms for judicial appointment should be made transparent and open to publish scrutiny.
18. For the appointment promotion, transfer and discipline of judges at all level an independent commission should be established.
19. Judicial vacancies should be advertised and all appointment should be made by open commission.

20. The law of contempt of court should be amended to specify clearly the liability for contempt.
21. Greater transparency re judicial administration through Annual Conferences and publication of Annual Reports. Problems, difficulties and needs regarding the proper functioning of the judicial system can be highlighted and brought to public attention through annual conferences of various levels of the judiciary, and by publication of relevant data in annual Reports. Demands for administrative and financial provisioning which are identified through such processes may be communicated to the Government for necessary action.
22. The criteria for appointment of judges should be made explicit and publicly known.
23. The mechanisms for judicial appointment should be made transparent and open to public scrutiny.
24. For the appointment, promotion, transfer and discipline of judges at all level an independent commission should be established.
25. Judicial vacancies should be advertised and all appointment should be made by open commission.
26. The law of contempt of court should be amended to specify clearly the liability for contempt.
27. The mode of appointment of the judges also has considerable influence over the independence of the judiciary. The election of judges by the people or the legislature is not conducive to the achievement of judicial independence. Even in case of executive appointment, the executives should not be in a position to remove the judges like any other civil servants. The India constitutional provisions relating to judicial appointment are ideal. Only qualified persons in law can be nominated by the President of India to function as judges.

Conclusion

From above discussion we can conclude that the judiciary of our country is not in fact independent. It is evident that there have direct and indirect influences by the executive over the judiciary, while separation of judiciary is essential for every country. It is impossible to ensure rule of law, upon which other human rights depends, without providing independent courts and tribunals to resolve dispute independently. The complete independence of judiciary is the first major step in the process of its development. Though separation of judiciary has been made but appointment of High Court Judges with political interference shall keep the separation of judiciary in pen and paper which is true and unlawful but to some extent we the general people are responsible for this situation. However, It is alarming that political interference in the judiciary system is one of the main reason for our political instability. If we are aware of our right as a responsible citizen of the country then we can change and establish an independence judiciary system without having any political interference.

References:

- Ali Akkas, Sarkar, (2004). *Independence & Accountibility of Judiciary*, 1st ed. (Dhaka, pp 21-22.
- Bari M. Ershadul, *Dhaka University Studies* part F Vol. IV, No. 1 (1993) P-3.
- Bari, H.M, Fazlul. *Separation of Judiciary, How long it will take?* The Daily Star on 8th August 2008.
- Garner, James Wilford, (1935). *Political Science & Government*, Calcutta: The World Press Private Ltd.
- Halim Md. Abdul, (2014). *Constitution, Constitutional law and politics; Bangladesh perspective*, 6th ed. Dhaka, pp.340- 344.
- Hussain, M.M, “*Reporting on bail requires Thinking*” The Daily Star on 11 November, 2007.
- Mollah, Md. Awal Hossain. *Separation of Judiciary and Judicial Independence in Bangladesh*. The Daily Star on 1st March, 2011.
- Rahman, S.M, Matiur. “*The problem of Separation of Judiciary from the Executive*” The Daily Star 28th January 2011.
- Rashid, Md. Abdur. *Challenges to the Independence of Judiciary*. 46, DLR.
- Secretary Ministry of Finance Vs Masdar Hossain. 52, DLR (AD) 2000, P-82.