

Annual Report on the Judiciary, 2007



Architectural view of the Supreme Court Building



ANNUAL REPORT ON THE JUDICIARY, 2007



Supreme Court of Bangladesh

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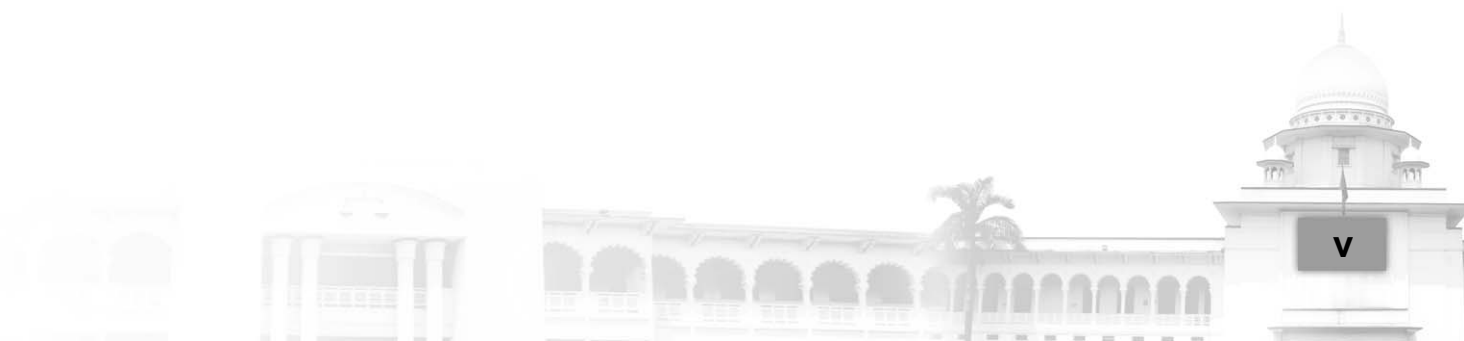
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Preface

The Supreme Court of Bangladesh in its long history of more than 37 years has for the first time published its annual report containing information concerning different activities of the Supreme Court as well as subordinate courts. Like Bangladesh, in almost all the countries of the world, the Supreme Court is the highest seat of judiciary and the Supreme Courts of most of the countries publish their annual report.

The idea of publishing this annual report first came from the Hon'ble Chief Justice Md. Ruhul Amin and under his active support and guidance the task of publishing this annual report was undertaken.

Supreme Court is regarded as guardian of the Constitution and it often has the occasion to give decisions on important matters by interpreting different Articles of the Constitution. Some of those important decisions have been incorporated in this annual report.

The Judges of the Supreme Court including the Hon'ble Chief Justice occasionally inspect different District Courts and after inspection submit reports. In an inspection report there is threadbare discussion about judicial as well as administrative ability of each of the officers serving in any particular station. The latches and lacunas found in both judicial and administrative matters during the period of inspection are also reflected in the report. These reports act as guidance for smooth functioning of the subordinate Courts. One of such reports has found place in this annual report.

The Hon'ble Chief Justice, as well as other Judges, sometimes goes abroad for attending international conference, seminar, workshop, roundtable, colloquium, etc. After end of visit usually a report is submitted which speaks about the objectives and goals attained from such attendance. Three such reports have been included in this annual report.

The report also includes, amongst others, a brief history of separation of judiciary from the executive, statistical statements of both Supreme Court and District Courts, salient features of the amended Code of Criminal Procedure, brief description on Judicial Service Commission and Judicial Service (Pay) Commission.

This annual report will be fruitful for the law students, legal academics, advocates, legal researchers, all persons interested in the affairs of the Supreme Court and Judges of the Supreme Court as well as subordinate Judiciary for having overall idea about the administration of Justice.

Publication of the annual report is expensive and due to this, in spite of having all good intention, the idea of publishing annual report could not have been materialized. This publication has become possible as Asian Development Bank through its Good Governance Programme has extended necessary financial and logistic support. We sincerely acknowledge their cooperation. Further, the sincere effort of the officers of the Registry in particular A.Q.M. Mostafa, Md. Golam Sarwar and Morshed Imtiaz merits appreciation.

It is hoped that this annual report is the beginning of its kind and this effort will continue in the years to come with a report at the beginning of each of the years.

Ikteder Ahmed
Registrar, Supreme Court of Bangladesh
&
Editor, Annual Report on the Judiciary, 2007



Mr. Justice Md. Ruhul Amin
Chief Justice of Bangladesh

Foreword

It is a great pleasure on my part to see for myself the publication of the Annual Report on the Judiciary, 2007 during my tenure in the office of the Chief Justice of Bangladesh.

In fact the idea of publishing such annual report first came in my mind in May 2007 when I attended the Asia Pacific Judicial Reform Forum (APJRF) roundtable meeting in Kuala Lumpur, Malaysia. There I had the occasion to see the annual report published by the Supreme Court of Malaysia.

I am very happy to see that this report contains valuable information with regard to functioning of the Supreme Court itself and its superintendence and control over the subordinate courts.

At present there are 14 judicial officers working in the Supreme Court on deputation from judiciary and all these officers are working in a team spirit and their untiring efforts made it possible to publish this annual report in a short span of time.

I am very happy to know that Asian Development Bank, a good development partner of Bangladesh has undertaken the project for strengthening the judiciary and as part of that project extended support for publishing this annual report.

This annual report will enable the law students, teachers of the faculty of law of different universities, persons doing research work in the legal arena, Judges of different tiers, the lawyers and other stakeholders to know about the composition, powers, functions and activities of the Supreme Court and other relevant information concerning the judiciary. This report has been designed to accommodate all the developments taken place in respect of highest seat of the judiciary as well as subordinate judiciary in the last one year.

This annual report has been published in a time when judicial officers in the rank ranging between Assistant Judge to Additional District Judge are performing the functions of the Magistrates of different categories under the direct subordination of the Sessions Judge as well as Chief Judicial Magistrate/ Chief Metropolitan Magistrate. This arrangement is designed to effectuate separation of the judiciary and this is a historic event in the context of judiciary of Bangladesh. Various facets of separation of the judiciary are addressed in the report.

I sincerely believe and also wish that a new era which has started with the publication of this report will be followed by my successor in office and I will be the happiest person if I see the continuity of this report.

Md. Ruhul Amin
Chief Justice of Bangladesh

Profile of the Chief Justice of Bangladesh and Other Judges of the Appellate Division of the Supreme Court of Bangladesh

The Supreme Court of Bangladesh comprises the Appellate Division and the High Court Division headed by the Chief Justice of Bangladesh. According to the constitutional provision, the Supreme Court consists of the Chief Justice and such number of other Judges as the President may deem it necessary to appoint to each division. At present the number of Judges in the High Court Division is 61 while the Appellate Division consists of 7 Judges including Chief Justice. A short profile of the Chief Justice and Judges of Appellate Division are presented.



Mr. Justice Md. Ruhul Amin
Chief Justice of Bangladesh



Elevated as Judge of the Appellate Division of the Supreme Court of Bangladesh in January 11, 2001. Assumed the office of Chief Justice of Bangladesh on March 1, 2007.

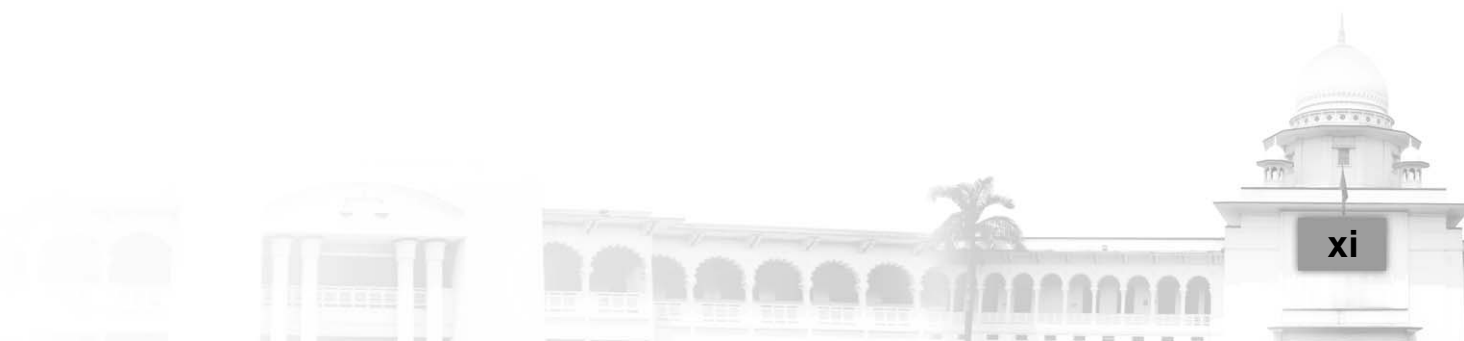
Born in Lakshmipur, Graduated from Victoria College in 1960. Obtained M.A. in Political Science from the University of Dhaka in 1962 and LL.B. from the same University in 1965.

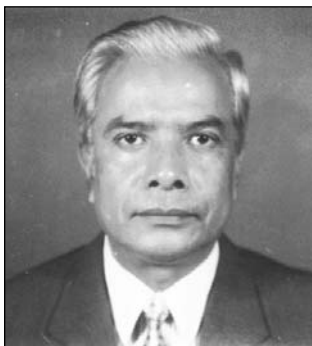
Enrolled as an Advocate in the High Court of the then East Pakistan on 28 September, 1966 and as an Advocate in the Appellate Division of Supreme Court of Bangladesh in 1981. Appointed Judge of the High Court Division of Supreme Court of Bangladesh in February 18, 1992.

Participated in different international conferences, seminars, workshops, roundtable-discussions and visit programs held in a number of countries. Presented papers in international workshops and colloquium organized by UNHCR and other organizations.

Steered the implementation of separation of the judiciary as Chief Justice of Bangladesh since March 2007.

Due to retire on May 31, 2008.





Mr. Justice Mohammad Fazlul Karim

Elevated as Judge of the Appellate Division of the Supreme Court of Bangladesh on May 15, 2001. Prior to that, appointed Additional Judge of the High Court Division on November 1, 1992 and Judge of the same Division on November 1, 1994.

Born in the renowned family of Abdul Karim Shahitya Bisharad in 1943 in Patiya, Chittagong. Obtained LL.B. from the University of Dhaka in 1964. Called to the Bar of England and Wales from the Lincoln's Inn in 1969.

Enrolled as an Advocate and Joined the Chittagong Bar in 1965. Joined, as an Advocate in the High Court of Judicature in Dhaka in 1970 and the Appellate Division of the Supreme Court in 1979.

Elected as the Secretary of the Supreme Court Bar Association in 1982 and later as a member of the Bangladesh Bar Council in 1992.

Served as a member of the Court Administration and Court Management Scheme of Capacity Building under the aid of Asia Pacific Advisory Forum on "Judicial Education on Gender Equality Issue" and Scheme for Mediation and Alternative Dispute Resolution under the aid of USIS.

Participated in a number of international conferences.



Mr. Justice M.M. Ruhul Amin

Elevated as Judge of the Appellate Division of the Supreme Court of Bangladesh on July 13, 2003. Holding the office of the Chairman of the Bangladesh Judicial Service Commission from 2004 as well. Appointed as Additional Judge of the High Court Division on February 10, 1994 and Judge of the same Division in 1996.

Born in 1942 in Lakshmipur. Obtained MA in 1963 from the University of Dhaka and LL.B in 1966 from the same university. Joined the Judicial Service in 1967 and promoted as District Judge in 1984. Worked as a District and Sessions Judge successively in four districts before his elevation as a High Court Judge.

Participated in an extensive course on administration and case management at National Judicial College of USA in 1990. Visited, as a member of the Supreme Court Project Implementation Committee of the Legal and Judicial Capacity Building Project, different courts and institutions in USA to observe Case Management, Alternative Dispute Resolution, and Court Administration.

Also visited India, Nepal and Sri Lanka to observe the service and pay structure of the judicial officers and presented report thereon to the concerned authority.



Mr. Justice Tafazzul Islam

Elevated as Judge of the Appellate Division of the Supreme Court of Bangladesh in 2003. Prior to that, discharged his functions as Judge of the High Court Division from 1994.

Obtained B.A. (Honours) and M.A. in History in 1961 and 1962 respectively from the University of Dhaka. Obtained LL.B. from the same university in 1963.

Called to Bar of England and Wales from the Lincoln's Inn in 1967.

Enrolled as an Advocate in the High Court Division in 1969. Practiced mostly in corporate, civil and constitutional cases. Served as a member of Corporate Law Commission and Chairman of a Judicial Enquiry Commission. Attended various seminars at the Commonwealth and SAARC level and chaired a number of sessions.



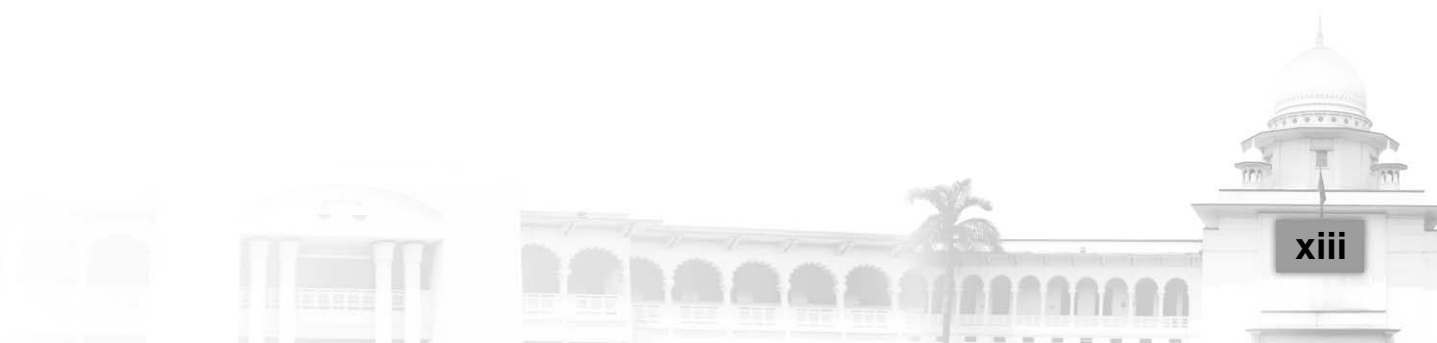
Mr. Justice Md. Joynul Abedin

Elevated as Judge of the Appellate Division of the Supreme Court of Bangladesh on August 24, 2006. Joined as Judge of the High Court Division of the Supreme Court on June 1, 1996.

Born in 1943 in Chuadanga. Obtained LL.B from the University of Dhaka and became Barrister-at-Law, as a member of the Lincoln's Inn, in 1967.

Practiced, as an Advocate of the Supreme Court for 27 years, mostly in writ, company and admiralty matters.

Chaired various enquiry commissions including the Judicial Inquiry Commission on the incident of bomb attack on Awami League Rally in 2004.





Mr. Justice Md. Hassan Ameen

Elevated as Judge of the Appellate Division of the Supreme Court of Bangladesh on March 19, 2007. Prior to that, appointed Additional Judge of the High Court Division on May 30, 1996 and Judge of the same Division on May 30, 1998.

Born in 1941 in Chapai-Nawabgonj. Obtained B.A. from Carmichael College in 1961 and LL.B. from the Rajshahi University in 1964. Enrolled as an Advocate and Joined Chapai-Nawabgonj Bar in 1965.

Joined the then East Pakistan Judicial Service in 1967 and gradually promoted as District and Sessions Judge in 1985. Promoted to the rank of Joint Secretary, Ministry of Law and Parliamentary Affairs in August 1995.

Participated abroad in various international conferences, seminars and discussions.



Mr. Justice Md. Abdul Matin

Elevated as Judge of the Appellate Division of the Supreme Court of Bangladesh on September 19, 2007. Before that, appointed as Additional Judge of the High Court Division in 1996 and Judge of the same Division in 1998.

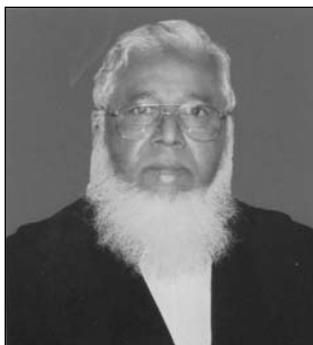
Born in 1943. Obtained B.A. from the University of Dhaka in 1963 and LL.B. from the same university in 1965. Called to the Bar in 1966 and practiced in various important civil, criminal and constitutional matters.

Served as Chairman of the Review Board for reviewing cases of detention, member of Enrollment Committee of Bangladesh Bar Council and member of General Administrative Committee of the High Court Division.

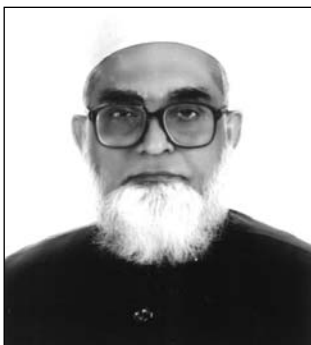
Was Legal Advisor of Bangladesh Text Book Board and Penal Advocate of various Banks.

Participated in various international dialogues, seminars and meetings. Led the delegation and presented paper at the Seminar on "Human Rights in Judgments in South Asia" held in India in 2007.

Judges of the High Court Division of the Supreme Court



Mr. Justice Shah Abu Nayeem
Mominur Rahman



Mr. Justice Md. Abdul Quddus



Mr. Justice Md. Abdul Aziz



Mr. Justice B. K. Das



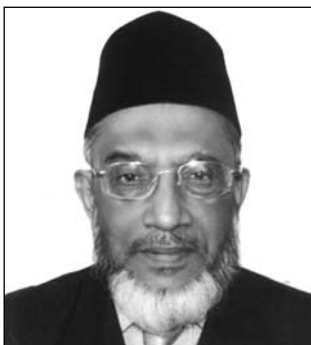
Mr. Justice A.B.M. Khairul Haque



Mr. Justice Md. Muzammel Hossain



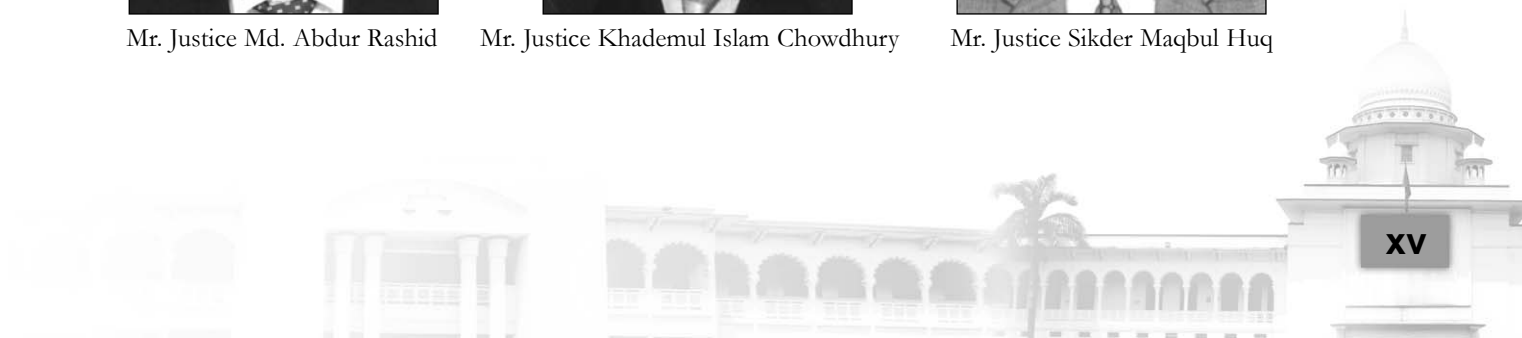
Mr. Justice Md. Abdur Rashid



Mr. Justice Khademul Islam Chowdhury



Mr. Justice Sikder Maqbul Huq





Mr. Justice Surendra Kumar Sinha



Mr. Justice Md. Abdul Wahhab Miah



Madam Justice Nazmun Ara Sultana



Mr. Justice Md. Arayesuddin



Mr. Justice Syed Mahmud Hossain



Mr. Justice Md. Imman Ali



Mr. Justice Sheik Rezowan Ali



Mr. Justice Mohammad Anwarul Haque



Mr. Justice Nozrul Islam Chowdhury



Mr. Justice Syed Muhammad
Dastagir Husain



Mr. Justice Mirza Hussain Haider



Mr. Justice Khondker Musa Khaled



Mr. Justice Mir Hasmat Ali



Mr. Justice Mashuque Hosain Ahmed



Mr. Justice A.K.M Fazlur Rahman



Mr. Justice Siddiqur Rahman Miah



Mr. Justice Abdul Awal



Mr. Justice Sharif Uddin Chaklader



Mr. Justice Mizanur Rahman Bhuiyan



Mr. Justice Syed A.B. Mahmudul Huq



Mr. Justice Tariq ul Hakim



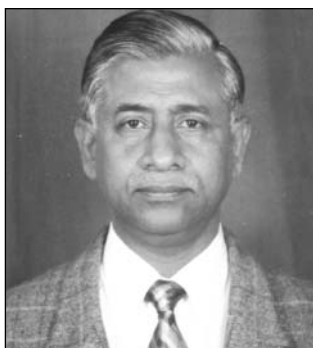
Madam Justice Salma Masud
Chowdhury



Mr. Justice Afzal Hossain Ahmed



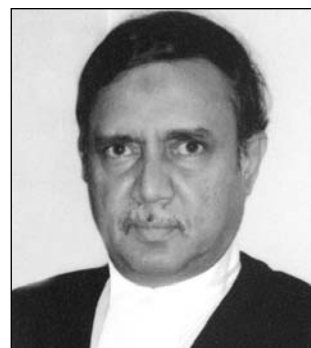
Mr. Justice A.F.M Ali Asgar



Mr. Justice Farid Ahmed



Mr. Justice Shamim Hasnain



Mr. Justice A.F.M Abdur Rahman



Mr. Justice Md. Abu Tariq



Madam Justice Zinat Ara



Mr. Justice Muhammad Abdul Hafiz



Mr. Justice Syed Refaat Ahmed



Mr. Justice A.T.M. Fazle Kabir



Mr. Justice Md. Miftah Uddin
Choudhury



Mr. Justice A.K.M Asaduzzaman



Mr. Justice Md. Ashfaquul Islam



Mr. Justice Zubayer Rahman Chowdhury



Mr. Justice Syed Abu Kowser
Md. Dabirush-shan



Mr. Justice Shahidul Islam



Mr. Justice Md. Abdul Hye



Mr. Justice Quamrul Islam Siddiqui



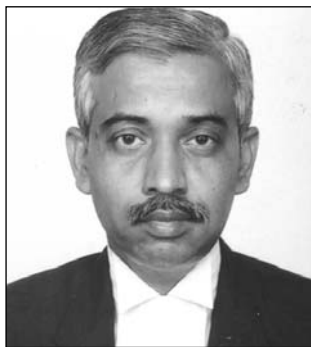
Mr. Justice Md. Fazlur Rahman



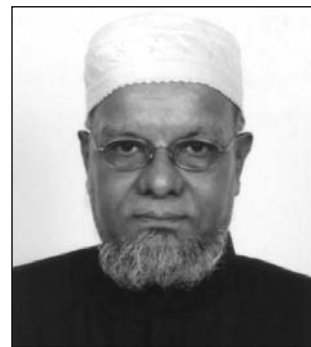
Mr. Justice Moyeenul Islam
Chowdhury



Mr. Justice Md. Emdadul Huq



Mr. Justice Md. Rais Uddin



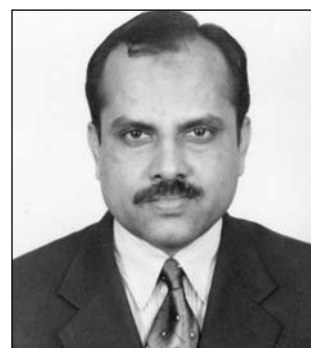
Mr. Justice Md. Emdadul Haque Azad



Mr. Justice Md. Ataur Rahman
Khan



Mr. Justice Syed Mohammad Ziaul
Karim



Mr. Justice Md. Rezaul Haque



Mr. Justice Sheikh Abdul Awal



Mr. Justice S.M. Emdadul Hoque



Mr. Justice Mamnoon Rahman



Madam Justice Farah Mahbub



Profile of the Registrar of the Supreme Court

Mr. Ikhteder Ahmed
Registrar, Supreme Court of Bangladesh



Appointed Registrar of the Supreme Court of Bangladesh in March 2007. Joined in the Bangladesh Civil Service (Judicial) Cadre in 1981 and gradually promoted as a District and Sessions Judge in February 1998.

Obtained LL.B. (Hons.) from the University of Dhaka in 1976 and LL.M. from the same university in 1977. Did Post Graduation on Juvenile Justice Administration from United Nations Asia and Far East Institute for Prevention of Crime and Treatment of Offenders (Japan), on International Labour Standards from International Training Centre of International Labour Organisation in Collaboration with University of Turin (Italy) and on Intellectual Property Rights from World Intellectual Property Organization (Switzerland).

Attended a range of international training programme, seminar, workshop, conference and meeting. Member of various reputed organisations and author of a number of publications.

Served, amongst other offices, as Chairman of the Court of Settlement, Secretary of the Law Commission, Director of the Judicial Administration Training Institute, Deputy Secretary (Law) of the Election Commission. Has also been working as examiner, guest speaker and resource person of various University, Training institute and Academy.

Name & Designation of Officers of the Supreme Court

Sl. No.	Name	Designation
1.	Mr. Ikhteder Ahmed	Registrar, Supreme Court of Bangladesh
2.	Mr. Farid Ahmed Shibli	Additional Registrar, Appellate Division
3.	Mr. Syed Enayet Hossain	Additional Registrar-1, High Court Division
4.	Mr. Md. Dalil Uddin	Additional Registrar-2, High Court Division
5.	Mr. Abul Quasem Md. Mostafa	Special Officer, High Court Division
6.	Mr. Md. Ali Akbar	Deputy Registrar-1, High Court Division
7.	Mr. Md. Aminul Haque	Deputy Registrar-2, High Court Division
8.	Mr. Md. Golam Sarwar	Deputy Registrar-3, High Court Division
9.	Mr. Md. Mafizul Islam	Deputy Registrar, Appellate Division
10.	Mr. Md. Abdul Kader Miah	Deputy Registrar-4, High Court Division
11.	Mr. Md. Habibur Rahman Khan	Deputy Registrar-5, High Court Division
12.	Mr. Md. Abdur Razzaque Dewan	Deputy Registrar-6, High Court Division
13.	Mr. Md. Mahfuzul Karim Akhand	Deputy Registrar-7, High Court Division
14.	Mr. Md. Nazrul Islam	Deputy Registrar-8, High Court Division
15.	Mr. Md. Fazle-Elahi Bhuiyan	Research & Reference Officer, Appellate Division
16.	Mr. Sheikh Hafizur Rahman	Assistant Registrar-1, High Court Division
17.	Mr. Md. Badrul Alam Bhuiyan	Assistant Registrar-2, High Court Division
18.	Mr. Mohammad Taufiq Aziz	Assistant Registrar-3, High Court Division
19.	Mr. Md. Sabbir Faiz	Assistant Registrar-4, High Court Division
20.	Mr. Mohammad Morshed Imtiaz	Assistant Registrar-5, High Court Division
21.	Mr. Md. Ishaq Miah	Assistant Registrar, Appellate Division
22.	Mr. F.A. Aminul Haque	Assistant Registrar, Appellate Division
23.	Mr. James Rechard Crush	Assistant Registrar, Appellate Division
24.	Mr. Md. Abdul Quader	Assistant Registrar-6, High Court Division
25.	Mrs. Momtaz Begum	Assistant Registrar-7, High Court Division
26.	Mr. A.N.M Khorshed Alam	Assistant Registrar-8, High Court Division
27.	Mr. Dewan Alamgir Ahmad Choudhury	Assistant Registrar-9, High Court Division
28.	Mr. Md. Abdul Quayum	Assistant Registrar-10, High Court Division
29.	Mr. Md. Abdul Mannan	Assistant Registrar-11, High Court Division

1

Composition, Powers and Functions of the Judiciary

The Judiciary is an institution of the highest value in every society. As one of the three major organs of the government, it upholds the supremacy of the constitution, maintains rule of law and administers civil and criminal justice.

Part VI of the Bangladesh Constitution concerns the Judiciary. It comprises three chapters: Chapter-I deals with the Supreme Court, Chapter-II touches upon subordinate courts and Chapter-III provides for the establishment of the administrative tribunals.

The Civil Courts Act 1887 and the Criminal Procedure Code 1898 elaborate the structure and powers of the civil and criminal courts respectively.

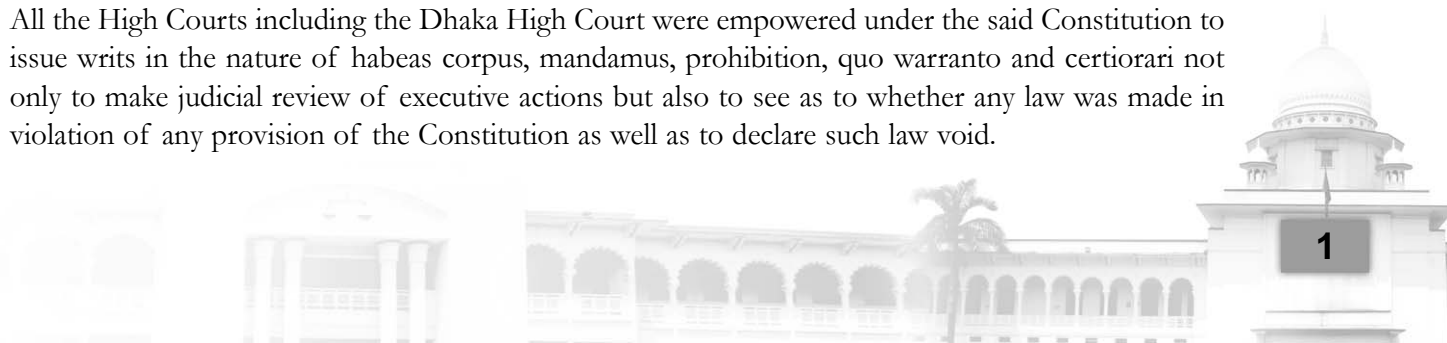
1.1 Supreme Court

During the British rule in the Indian Sub-continent, Bangladesh was part of Bengal and Calcutta was the capital of Bengal. At the initial stage of the colonial rule, Calcutta was the capital of British India and the King George III issued a charter in 1774 establishing the Supreme Court in Calcutta.

Under the provisions of the Indian High Courts Act, 1861, Letters Patent was issued by the Queen in 1862 to establish Calcutta High Court and for abolishing the Supreme Court. Newly established High Court of Judicature at Fort William in Calcutta was empowered to exercise all powers hitherto exercised by the abolished Supreme Court.

The High Court of Bengal (Order) 1947 promulgated under the provisions of section 9 of the Indian Independence Act, 1947 provided for establishing a separate High Court for East Bengal known as the High Court of Judicature for East Bengal at Dhaka. The said High Court became popularly known as Dhaka High Court. It was vested with all the appellate and revisional jurisdictions of the Calcutta High Court and also the original jurisdiction of that Court as far as practicable. The province of East Bengal was subsequently renamed as East Pakistan under the Constitution of Pakistan, 1956. With the coming into operation of the Constitution of the Islamic Republic of Pakistan in 1956, the Supreme Court of Pakistan was established in place of the Federal Court as the apex court of the country and that Court was vested with the appellate jurisdiction from the decisions of the High Courts including Dhaka High Court.

All the High Courts including the Dhaka High Court were empowered under the said Constitution to issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari not only to make judicial review of executive actions but also to see as to whether any law was made in violation of any provision of the Constitution as well as to declare such law void.



After the independence of Bangladesh, the High Court of Bangladesh Order, 1972 was promulgated on 17 January, 1972. The said order provided that High Court of Judicature at Dhaka in East Pakistan (known as High Court of Dhaka) existing on the 25 March, 1971 would cease to exist on 26 March, 1971. The Constituent Assembly of Bangladesh had framed and passed, on the 4 November, 1972, the Constitution of the People's Republic of Bangladesh and provided that the Constitution shall come into force on 16 December, 1972. Part VI of the Constitution relates to the judiciary. Chapter I of this part makes provisions for the Supreme Court of Bangladesh.

Article 94 to Article 113 of the Constitution of Bangladesh delineates the organizational structure as well as jurisdiction of the Supreme Court and terms and conditions of service of judges in that court.

1.1.1 Establishment of Supreme Court

The Supreme Court of Bangladesh comprises the Appellate Division and the High Court Division. The Supreme Court consists of the Chief Justice and such number of other Judges as the President may deem it necessary to appoint to each division. The Chief Justice and the Judges appointed to the Appellate Division, sit only in that Division and the other judges sit only in the High Court Division. (Article 94)

1.1.2 Appointment of Judges

The Chief Justice and other Judges are appointed by the President. A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and has for not less than ten years been an advocate of the Supreme Court or has, for not less than ten years, held judicial office in the territory of Bangladesh or has such other qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court. (Article 95)

1.1.3 Tenure of office of Judges

A Judge shall hold office until he attains the age of 67 years [Article-96(1)].

1.1.4 Supreme Judicial Council and its functions

The Supreme Judicial Council consists of the Chief justice of Bangladesh and the two next senior Judges. The Council may inquire into the capacity or conduct of a judge upon the direction of the President and report its finding to him. The President may make such direction where, upon any information, he has reason to believe that such judge may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity or may have been guilty of gross misconduct. Considering the report of the Supreme Judicial Council in which the Judge is found to be incapable of performing his functions or guilty of gross misconduct, President shall, by order remove the Judge from his office [Article-96(3)(4)(5)(6)].

1.1.5 Temporary appointment of Chief Justice

If the office of Chief Justice becomes vacant, or if the President is satisfied that the Chief Justice is on account of absence, illness, or any other cause, unable to perform the functions of his office, those functions shall, until some other person has entered upon that office or until the Chief Justice has resumed his duties, as the case may be, be performed by the next most senior Judge of the Appellate Division [Article-97].

1.1.6 Appointment of Additional Judges

If the President is satisfied that the number of the Judges of a division of the Supreme Court should be for the time being increased, the President may appoint one or more duly qualified persons to be Additional Judges of the division for a period not exceeding two years [Article-98].

1.1.7 Disabilities of Judges

A Judge of the Supreme Court otherwise than as an Additional Judge shall not, after his retirement or removal therefrom, hold any office of profit in the service of the Republic not being a judicial or quasi-judicial office or the office of Chief Adviser or Adviser [Article 99].

1.1.8 Seat of Supreme Court

The permanent seat of the Supreme Court, shall be in the capital, but sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the President, from time to time appoint [Article-100].

1.1.9 Jurisdiction of High Court Division

The High Court Division have such original appellate and other jurisdictions, powers and functions as are or may be conferred on it by the constitution or any other law [Article-101].

1.1.10 Powers of High Court Division to issue certain orders and direction etc.

Under its writ jurisdiction, The High Court Division, on the application of any person aggrieved, may give such direction or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of the constitution [Article 102].

1.1.11 Jurisdiction of Appellate Division

The Appellate Division have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division. Such appeal shall lie as of right where the High Court Division-

- certifies that the case involves a substantial question of law as to the interpretation of the constitution; or
- has sentenced a person to death or the imprisonment for life; or
- has imposed punishment on a person for contempt of that division.

Such Appeal may also lie in those cases as may be provided for by Act of Parliament. In other cases, an appeal to the Appellate Division shall lie only if the Appellate Division grants leave to appeal [Article-103].

1.1.12 Issue and execution of process of Appellate Division

The Appellate Division has power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it [Article-104].

1.1.13 Review of judgments or orders by Appellate Division

The Appellate Division has power to review any judgment pronounced or order made by it [Article-105].

1.1.14 Advisory jurisdiction of Appellate Division

The Appellate Division may, after such hearing as it thinks fit, report to the President its opinion on any question of law referred by the President to the Appellate Division for its consideration [Article-106].

1.1.15 Rule-making power of the Supreme Court

Subject to any law made by Parliament the Supreme Court may, with the approval of the President, make rules for regulating the practice and procedure of each division of the Supreme Court and of any court subordinate to it [Article 107].

1.1.16 Supreme Court as court of record

The Supreme Court is the court of record and it has all the powers of such a court including to make an order for the investigation of or punishment for any contempt of itself [Article-108].

1.1.17 Superintendence and control over courts

The High Court Division has superintendence and control over all courts and tribunals subordinate to it [Article-109].

1.1.18 Transfer of cases from subordinate courts to High Court Division

If the High Court Division is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, or on a point of general public importance, the determination of which is necessary for the disposal of the case, it shall withdraw the case from that court and may either dispose of the case itself or determine the question of law and return the case to that court together with its judgment on such question [Article-110].

1.1.19 Binding effect of the Supreme Court judgments

The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it [Article-111].

1.1.20 Action in aid of Supreme Court

All authorities, executive and judicial, in the republic shall act in aid of the Supreme Court [Article-112].

1.2 Subordinate Judiciary

Article 114 of the Constitution provides for the establishment by law of courts subordinate to the Supreme Court. Article 115 empowers the President to appoint the Judges of the judicial service

and Magistrates exercising judicial functions according to rules made by him in that behalf. Article 116 has vested in the President 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 and the President has to exercise the control in consultation with the Supreme Court.

The Subordinate judiciary may broadly be categorized as I) Civil Courts and II) Criminal Courts.

1.2.1 Civil Courts

According to section-3 of the Civil Courts Act, 1887 there are 5 classes of Civil Courts in Bangladesh. These are :

- The court of the District Judge.
- The court of the Additional District Judge
- The court of the Joint District Judge
- The court of the Senior Assistant Judge
- The court of the Assistant Judge

Civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Every civil suit shall be instituted in the court of the lowest tier competent to try it.

a. The Court of District Judge

A District Judge exercises administrative control over all civil courts within the local limit of his jurisdiction. A District Judge does not try original suit unless required under any special Act, for example, Insolvency or Probate and Administration cases. He can hear appeals from decrees or orders passed by a Senior Assistant Judge or Assistant Judge Court. He can also hear appeals from the decrees or orders of Joint District Judges, where the value of original suit has not exceeded Five Lac Taka. He can hear and determine revision from orders of Joint District Judge, Senior Assistant Judge and Assistant Judge.

b. The Court of Additional District Judge

The judicial function of an Additional District Judge is similar to that of a District Judge. He deals with those cases which are transferred to his court from the court of the District Judge.

c. The Court of Joint District Judge

A Joint District Judge generally tries those original suits the valuation of which exceeds Four Lac taka. He may also hear any pending appeal from the decree or order of a Senior Assistant Judge or Assistant Judge if required so by a District Judge.

d. The Court of Senior Assistant Judge

The Senior Assistant Judge Court is a court of first instance and it exercises original jurisdiction in the suits the value of which does not exceed taka Four Lac. He also exercises

the power of Small Cause Court where the value of the suit does not exceed Twenty five thousand Taka.

e. *The Court of Assistant Judge*

The pecuniary jurisdiction of the Court of Assistant Judge extends to the suits the value of which does not exceed Taka Two Lac. It has revisional power in petty civil matters coming from Village Courts.

1.2.2 Criminal Courts

According to Section 6 of the Cr.P.C., in addition to the Supreme Court, there are two classes of Criminal Courts in Bangladesh, namely :-

- Courts of Sessions; and
- Courts of Magistrates.

1.2.2.1 Court of Sessions

Bangladesh consists of 66 sessions divisions. In addition to the districts, each of the metropolitan areas of Dhaka and Chittagong is deemed to be a sessions division. The court of session for a metropolitan area is called the Metropolitan Court of Session.

a. *Sessions Judge/Additional Sessions Judge*

Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law, but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court Division.

b. *Joint Sessions Judge*

A Joint Sessions Judge may pass any sentence authorized by law, except a sentence of death or of imprisonment for life or a term exceeding ten years.

1.2.2.2. Court of Magistrates

There are two classes of Magistrate, namely: Judicial Magistrate and Executive Magistrate; The tiers of Judicial Magistrates are as follows:

- Chief Metropolitan Magistrate in Metropolitan Area and Chief Judicial Magistrate to other areas;
- Magistrate of the first class, who shall in Metropolitan Area, be known as Metropolitan Magistrate;
- Magistrate of the second class; and
- Magistrate of the third class.

a. Metropolitan Magistrates

In every Metropolitan area, the Chief Metropolitan Magistrate, Additional Chief Metropolitan Magistrate and other Metropolitan Magistrates are appointed from among the persons employed in the Bangladesh Judicial Service [Section 18 of the Code].

b. Judicial Magistrates

In every district outside a Metropolitan Area, the Chief Judicial Magistrates, Additional Chief Judicial Magistrates and other Judicial Magistrates are appointed from the persons employed in the Bangladesh Judicial service.[Section-11 of the Code].

c. Special Magistrates

The Government may in consultation with the High Court Division confer upon any Magistrate all or any of the Powers conferred or conferrable by or under this Code on a judicial Magistrate in respect of particular cases or a particular class or classes of cases or in regard to cases generally in any local area outside a Metropolitan Area [Section-12 of the Code].

1.2.2.3 Sentencing, Appeal and Revision

Sentences which Magistrates may pass

The Court of Magistrates may pass the following sentences, namely;

Court of Metropolitan Magistrates and of Magistrates of the first class. - Imprisonment for a term not exceeding five years. Fine not exceeding ten thousand taka.

Court of Magistrates of the second class.- Imprisonment for a term not exceeding three years. Fine not exceeding five thousand taka.

Court of Magistrates of the thirds class.- Imprisonment for a term not exceeding two years; Fine not exceeding two thousand taka. [Section 32 of the Code]

The Court of a Magistrate specially empowered under section 29C of the Cr.P.C., may pass any sentence authorized by law, except a sentence of death or of imprisonment for life or imprisonment for a term exceeding seven years. [Section 33A of the Code]

Appeal

Appeal from sentence of Magistrate of the second or third class shall lie to the Court of Chief Judicial Magistrate. [Section 407 of the Code]

Appeal from sentence of Joint Sessions Judge or Magistrate of the first class lie to the Court of Session. However, if any sentence of imprisonment is passed by a Joint Session Judge for a term exceeding five years the appeal shall lie to the High Court Division [Section 408 of the Code]

Appeal from sentence of Court of Sessions Judge and Additional Sessions Judge lie to the High Court Division. [Section 410 of Code]

Revision

The controlling and final power of revision, in some cases, rests with the High Court Division [Section 439 of the Code]. The Sessions Judge may exercise all or any of the powers which may be exercised by the High Court Division under section 439 [Section 439A of the Code].

1.3 Administrative Tribunals

Article 117 provides for the establishment of Administrative Tribunals by Act of Parliament. Such Tribunals have been established to exercise jurisdiction in respect of matters relating to or arising out of the terms and conditions of persons in the service of the republic including the matters provided for in part IX of the constitution (which deals with the services of Bangladesh) and the award of penalties or punishments. A Judge, in the rank of District Judge is the member of such Tribunal.

In addition to the above courts, there are some Special Courts and Tribunals established by Law. The Family courts have been established to try and dispose of the matters relating to dissolution of marriage, dower, maintenance and guardianship. All courts of Assistant Judges and Senior Assistant Judges are deemed to be Family Courts. Besides, the Artharin Adalat, Divisional Special Judge Courts, Special Judge Courts, Droota-Bichar Tribunal, Nari-O-Shishu Nirjatan Tribunal and other special tribunals are functioning in Bangladesh.



Conference Room of the Supreme Court

2

Separation of the Judiciary from the Executive: A Brief History

In any part of the world, it is one of the Constitutional mandates as well as commoner's desire that the judiciary should be independent from the other organs of the state. It is viewed as a device to protect the righteous and impartial judicial power from the intervention of other segments of the government and powerful individuals. This idea of independence of judiciary was first devised by Montesquieu, the sixteenth century French philosopher. Montesquieu in his famous articulation of "Theory of Separation of Power" described division of political power among the three organs of the state, i.e.. executive, legislature and the judiciary. Despite certain criticisms, Montesquieu's theory of separation of power is taken for granted in modern discussions of the good governance and implemented in many Constitutions throughout the world. It has become one of the core principles in ensuring independence of judiciary and took concrete shape in Constitutional documents and Constitutional instruments. In commensurate with the globally recognized principle, the framers of the Constitution of Bangladesh also inserted in Article 22 that, -- 'The State shall ensure the separation of the Judiciary from the executive organs of the State', being one of the Fundamental Principles of State Policy as well as one of the core spirit of the Constitution. However it took almost 35 years for Bangladesh to implement the directives of Article 22 and the journey has not been a smooth one. A brief historical background of separation of judiciary in Bangladesh is described below.

British Period

During the British rule there was a demand for separation of Judiciary from the executive. The British administration did not take any concrete steps aiming at separation of judiciary as there was apprehension that it 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 more was done during the British rule.

Pakistan Period

After independence of Pakistan in 1947, the first Constitution in independent Pakistan was adopted in 1956. Unlike the Government of India Act 1935 (Ss 253, 254, 255 and 256) and the Constitution of India (Art.233 to 237) Pakistan Constitution of 1956 did not include any provision

regarding 'subordinate courts' or 'magistracy'; these were regulated by the Code of Civil procedure and the Code of Criminal Procedure and thus had been under substantial executive control. In 1957, the East Pakistan Provincial Assembly passed the Code of Criminal Procedure (East Pakistan Amendment) Act 1957 (Act no 36) with a view to separating the judicial and executive functions of the magistrates. In 1958 the Pakistan Law Commission recommended to bring the judicial magistrates under the control of the High court. In 1967 the Law Commission again recommended to give effect to the Cr. P. C Amendment Act 1957. However, it was never given effect during the whole of Pakistan Period.

Bangladesh Period:

In 1972, after independence of Bangladesh the Constitution of the Peoples' Republic of Bangladesh was adopted. Provision was made in Article 22 as a Fundamental Principles of State Policy that the state shall ensure the separation of the judiciary from the executive organs of the state. This was not merely a fundamental principle of state policy which was devised as not to be judicially enforceable, rather it meant more than that. In fact, the insertion of Article 22 was to ensure reflection of the spirit of the Constitution as laid down in its Preamble as "Further pledging that it shall be a fundamental aim of the State to realise through the democratic process to 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 citizens". Without ensuring an independent judiciary all these aspirations stipulated in the Constitution meant nothing but decorations of the Constitution. But unfortunately no constructive initiatives were taken by the successive governments to implement the directives of Article 22. In 1976, a Law Committee headed by Justice Kemaluddin Hossain recommended to implement separation of subordinate judiciary in three stages which are as follows:

First Stage: The government may by notification, appoint some particular magistrates at each station exclusively for judicial work, thus to ensure that the same person is not exercising judicial and executive function at the same time. . This can be given effect forthwith without any additional expenses or administrative difficulties.

Second Stage: There should be separation of judicial functions from executive as envisaged in the Code of Criminal Procedure (East Pakistan Amendment) Act, 1957 (Act no.36).

Final Stage: The final stage would be not only to complete separation of judicial functions from executive but also to constitute a separate and integrated Judicial Service under the control of the High Court Division for civil and criminal work right up to the level of the District and Session Judge. The Committee also recommended that for creation of an integrated judicial service it would be necessary to enact new legislation.

A Bill for separation of judiciary by an amendment to the Criminal Procedure Code was prepared in 1987. However, it was later thrown to cold storage. In Pakistan, separation of Judiciary was done in 1973 and in India, it was done in 1974 by an amendment to their respective Criminal Procedure Code. In 1990, the issue of separation of judiciary was put into the manifesto of the Three- Party Alliance movement against the regime of that time. In every election after 1990 all major political parties had a commitment in their manifesto to separate judiciary from the executive.

In 1991, a private member's Bill namely the Constitution (14th Amendment) Bill was introduced for further amendment of Articles 95, 98, 115 and 116 of the Constitution, for ensuring separation of the subordinate judiciary from the executive branch. The Bill was sent to a select committee which had carried out about 13 meetings to consider the proposal. However, no further steps were taken to pass the Bill.

Masdar Hossain Case

In 1995 Masder Hossain along with 441 judicial officers who were judges in different civil courts filed Writ Petition No. 2424 . The petitioners alleged inter alia that:

- i. Inclusion of judicial service in the name of BCS (Judicial) under the Bangladesh Civil Services (Re-organization) Order, 1980 is ultra vires the Constitution ;
- ii. Subordinate Judiciary forms chapter II of the PART VI (THE JUDICIARY) of Constitution and thereby the Subordinate Judiciary has already been separated by the Constitution. Only the rules under Article 115 of the Constitution and/or enactments, if necessary, are required to be made for giving full effect to this separation of judiciary.
- iii. Judges of the subordinate Judiciary being the presiding judges of the courts cannot be subordinate to any tribunal and as such. the judicial officers are not subject to the jurisdiction of the Administrative Tribunal.

The matter came up for hearing on 13.06 .1996. However, because the petitions for time on behalf of the government were allowed for several times, it could not be heard ultimately before 01.04.1997. After a long hearing with valuable comments and citations by Dr. Kamal Hossain, Syed Istiaq Ahmed and Mr. Amir-Ul Islam the court delivered its historic judgment on 7th may 1997 (reported in 18 BLD 558). The Government preferred an appeal by leave (Civil Appeal No. 79/1999) and the Appellate Division partly reversed the decision of the High Court Division by its judgment delivered on 2nd December 1999 (reported in 52 DLR 82) . The Appellate Division directed the Government to implement its 12 point directives, including for formation of separate Judicial Service Commission (JSC) and Judicial Service Pay Commission to separate the judiciary from the control of the executive, a long cherished desire of the people of Bangladesh.

Implementation of the Judgment in Masder Hossain Case

Since the judgment was pronounced by the Appellate Division in 1999, the successive governments took 23 adjournments to implement the judgment on various plea up to February, 2006. During these 7 years time, the government took very slow steps towards the way of separation of judiciary.

The present Caretaker Government from the very beginning adopted a positive and firm outlook with a determination to separate the judiciary from the executive based on the constitutional directive principles and Appellate Division's judgment in the Masder Hossain's Case. Accordingly 4 service rules namely (a) Bangladesh Judicial Service Commission Rules, 2007, b) Bangladesh Judicial Service (Pay Commission) Rules 2007, (c) Bangladesh Judicial Service Commission (Construction of Service, Appointments in the Service and Suspension, Removal & Dismissal from the Service) Rules, 2007 and (d) Bangladesh Judicial Service (Posting, Promotion, Grant of

Leave, Control, Discipline and other Condition of Service) Rules, 2007 have been enacted and changes were brought in the existing Code of Criminal Procedure 1898 by Ordinance No II and No. IV of 2007. This is considered to be a major change paving the way for dispensation of Criminal Justice at the level of magistracy by the officers belonging to Bangladesh Judicial Service and thereby removing all impediments in the separation of Judiciary from the executive control.. Finally the historic journey of the judiciary separated from the executive started functioning from 01, November 2007.



*Inaguration of Metropolitan Magistracy and Judicial Magistracy, Dhaka
01 November 2007*

3

The Directives of the Supreme Court Judgment Concerning Separation of the Judiciary

The directives given by the Appellate Division of the Supreme Court relating to separation of the judiciary from the executive in civil appeal no. 79/1999 are as below:

1. It is declared that the judicial service is a 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 services 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 tied 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 establish 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 suspension 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 Constitution and the services (Reorganisation 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 B.C.S. (Judicial) cadre along with other B.C.S. executive and administrative cadres by Bangladesh Civil Service (Reorganisation) Order, 1980 with amendment of 1986 is ultra vires the Constitution. It is also declared that Bangladesh Civil Service Recruitment Rules, 1981 are inapplicable to the judicial service.
4. The appellant and the other respondents to the writ petition are directed that necessary steps be taken forthwith for the president to make Rules under Article 115 to implement its provisions which is a constitutional mandate and not a mere enabling power. It is directed that the nomenclature of the judicial service shall follow the Language of the Constitution and 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 Services 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 directed 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 Articles 116 and 116A, as interpreted by us, be enacted or framed or made separately for the judicial service and magistrates exercising judicial functions keeping in view the constitutional status of the said service.

6. The impugned orders in the writ petition dated 28.02.1994 and 02.11.1995 are declared to be ultra vires the Constitution for the reasons stated in the judgment. The appellant and the other respondents to the writ petition 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 the judicial service shall follow the recommendations of the Commission.
7. It is declared that in exercising control and discipline of persons employed in the judicial service and magistrates exercising judicial functions under Article 116 the views and opinion of the Supreme Court shall have primacy over those of the Executive.
8. The essential conditions of judicial independence in Article 116A, elaborated in the judgment, namely, (1) security of tenure, (2) security of salary and other benefits and pension and (3) institutional independence from the Parliament and the Executive shall be secured in the law or rules made under Article 133 or in the executive orders having the force of Rules.
9. It is declared that the 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 incurred falls within the limit of the sanctioned budgets, as more fully explained in the body of the judgment. Necessary administrative instructions and financial delegations to ensure compliance with this direction 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 by 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 ante 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 effected 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.

4

Bangladesh Judicial Service Commission and Bangladesh Judicial Service Pay Commission

(A) Bangladesh Judicial Service Commission

In view of Supreme Court Directives no 4, as rendered in the Masdar Hossain case, the President on January 28, 2004 passed the Bangladesh Judicial Service Commission Rules, 2004 for establishing Judicial Service Commission. But the composition of Judicial Service Commission was not in conformity with the directions given by the Appellate Division. Considering this fact, the present Caretaker Government on January 16, 2007 has made an amendment to the existing Bangladesh Judicial Service Commission Rules 2007.

Accordingly, the Commission comprises the following members:

- a. One judge of the Appellate Division of the Supreme Court to be nominated by the President in consultation with the Chief Justice, who shall also be its Chairman;
- b. Two judges of the High Court Division of Supreme Court to be nominated by the President in consultation with the Chief Justice;
- c. Attorney General for Bangladesh, ex-officio;
- d. One member of the Law Commission to be nominated by the President;
- e. Secretary, Ministry of Establishment, ex-officio;
- f. Secretary, Ministry of Finance, ex-officio;
- g. Secretary, Ministry of Law, Justice & Parliamentary Affairs, ex-officio;
- h. One Dean of Law of either Dhaka or Rajshahi or Chittagong University;
- i. Registrar, Bangladesh Supreme Court, ex-officio;
- j. District Judge, Dhaka, ex-officio;

Power, Function & Responsibilities of the Commission

- a. To conduct scrutiny and examination for nomination of suitable persons to be appointed in the entry post of Judicial Service and of recommend names of candidates to the President;
- b. To advise the President when opinion of the Commission is sought in respect of appointment in the service or any other matter related there of or when a matter relating to the responsibility of the Commission is referred to the Commission;
- c. To discharge other responsibilities determined by Law or Rules formulated under Article 115 or 133 of the Constitution;

- d. To determine the procedure of meeting of the Commission subject to other provisions of this Rule;
- e. To submit to the president every year an Annual Report stating the acts performed by the Commission in the preceding year; and
- f. The Commission, for the purpose of this Rules, may make regulation, not inconsistent with this Rules, with the prior approval of the President by a notification in the official gazette.

Performance of the Commission

The main responsibility of the Commission is to select competent candidates who has the adequate intellectually and ethical capabilities to discharge the judicial function and to recommend their names to the President for appointment in the entry post of Judicial Service and also to conduct departmental examination of Probationer Assistant Judges and to publish the result thereof. Ministry of Law, Justice and Parliamentary Affairs vide its three office Memorandums respectively dated 14.03.07, 25.07.07 and 23.10.07 requested the Commission to select total 391 suitable candidates for filling up vacant posts of Assistant Judges. Through an extensive process of competitive examination, the Judicial Service Commission recommended, on 17.03.2008, for the appointment of 394 Assistant Judges.

(B) Bangladesh Judicial Service Pay Commission

In view of Supreme Court Directives no. 6 as rendered in the Masdar Hossain Case, the Government of Bangladesh formulated rules regarding Judicial Service Pay Commission in the name of "Bangladesh Judicial Service (Pay Commission) Rules-2007" and constituted a nine-member Judicial Service Pay Commission.

- a. One Judge of the Appellate Division of the Supreme Court to be nominated by the President in consultation with the Chief Justice, who shall also be its Chairman;
- b. One Judge of the High Court Division of Supreme Court to be nominated by the President in consultation with the Chief Justice, who shall be its member.
- c. One member of the Law Commission to be nominated by the President;
- d. Comptroller and Auditor-General of Bangladesh, ex-officio;
- e. Secretary, Ministry of Finance, ex-officio;
- f. Secretary, Ministry of Establishment, ex-officio;
- g. Secretary, Ministry of Law, Justice & Parliamentary Affairs, ex-officio;
- h. Registrar, Supreme Court of Bangladesh, ex-officio;
- i. One Judicial officer in the rank of District Judge working in Dhaka to be nominated by the Chief Justice.

Functions of the Commission

The cardinal functions of the Commission are to review the pay, allowances, and other privileges, benefits etc of the members of the Judicial Service in conformity with the inflation rate, price level

of the essential commodities for living and considering other factors relevant to the dignity and judicial independence of the Judicial officers. This Pay Commission is of a permanent nature which will sit at least twice in a year. This Commission will place recommendation before the Government regarding the Pay-Structure (Pay and Allowances) of members of the Bangladesh Judicial Service at the interval of each five years.

Meeting of the Judicial Service Pay Commission

First meeting of the Judicial Service Pay Commission was held on 24 July 2007 with Hon'ble Mr. Justice Mohammad Fazlul Karim in the chair. The meeting decided to collect information about the standard of Pay Structure of the members of Judicial Service of our neighboring countries like India and Pakistan. The said meeting also formed a Technical Assistance Committee, whose responsibility was to collect relevant information about the pay, allowances and other privileges of the Judges of the neighboring countries and submit a comprehensive report to the commission.

In the first meeting of the Technical Assistance Committee a proposal was made considering all the relevant things as said above and later on the same was submitted before the honorable Commission for taking into it's kind consideration which was as follows:

Technical Assistance Committee proposed to raise the medical allowance from TK. 500/- to Tk. 1,000/- and robe allowance to Tk. 5,000/- each year instead of earlier Tk. 3,500/- five times throughout the career. It has also agreed to raise the house rent allowance from Tk. 35-50% to Tk. 60% in Metropolitan areas and Tk. 50% in other areas.

Recommendations of the Commission to the Government

In the 3rd meeting of the Judicial Service Pay Commission, the member secretary of the commission made a proposal to enhance the pay scale for the Judges of all tires of Subordinate Judiciary. However it was decided there that instead of increased pay scale as proposed the Judges of all tires of the Subordinate Judiciary should be given Judicial Allowance equal to that of the pay of each Judicial officer and recommendations have been made in this regard. Further, the Commission endorsed the proposal of the Technical Assistance Committee and recommended accordingly.

5

Salient Features of the Code of Criminal Procedure (Amendment) Ordinance, 2007

In order to give effect to the constitutional obligations and to the directives given by the Appellate Division of the Supreme Court relating to separation of judiciary from the executive in civil appeal no.79/1999, the Code of Criminal Procedure has been amended in 2007. The implications of the amendments are outlined below.

A. Classes of Criminal Courts

Before this amendment there had been five classes of criminal Courts in Bangladesh namely - (i) Courts of Sessions, (ii) Metropolitan Magistrates, (iii) Magistrates of the first class, (iv) Magistrates of the second class and (v) Magistrates of the third class. At present, the amended provisions of section 6 of the Cr. P. C. are as follows:

Classes of Criminal Courts

Besides the Supreme Court and the Courts constituted under any law for the time being in force, other than this Code, there shall be two classes of Criminal Courts in Bangladesh, namely

- a. Courts of Sessions; and
- b. Courts of Magistrates.

There shall be two classes of Magistrate, namely

- a. Judicial Magistrate; and
- b. Executive Magistrate.

There shall be four classes of Judicial Magistrate, namely

- a. Chief Metropolitan Magistrate in metropolitan Area and Chief Judicial Magistrate to other areas;
- b. Magistrate of the first class, who shall in Metropolitan Area, be known as Metropolitan Magistrate;
- c. Magistrate of the second class; and
- d. Magistrate of the third class.

B. Appointment of Executive and Judicial Magistrates

Section 10, 11 and 12 of this Ordinance have replaced section 10, 11, 12, 13, 13A and 14 of the Code.

Section 10: Executive Magistrates

1. In every District and in every Metropolitan Area, the Government shall appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.
2. The Government may also appoint any Executive Magistrate to be an Additional District Magistrate, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force, as the Government may direct.

Section 11: Judicial Magistrates

1. In every district outside a Metropolitan Area, the Chief Judicial Magistrates, Additional Chief Judicial Magistrates and other Judicial Magistrates shall be appointed from the persons employed in the Bangladesh Judicial Service.
(IA) An Additional Chief Judicial Magistrate shall have all or any of the powers of the Chief Judicial Magistrate under this Code or any other law for the time being in force, as the Government may direct.
2. The Government may, or subject to the general or special orders issued by the Government in consultation with the High Court Division, the Chief Judicial Magistrate may, from time to time, define local areas within which the Judicial Magistrates may exercise all or any of the powers with which they may be invested under this Code, and except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

Section 12: Special Magistrate

1. The Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on an Executive Magistrate in respect of particular cases or a particular class or classes of cases or in regard to cases generally in any local area outside a Metropolitan area.
2. The persons on whom the powers under sub-section (1) are conferred shall be called Special Executive Magistrates and shall be appointed for such term as the Government may by general or special order direct.
3. The Government may, in consultation with the High Court Division confer upon any Magistrate all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the first, second or third class in respect of particular cases or a particular class or classes of cases or in regard to cases generally in any local area outside a Metropolitan Area.

4. The Magistrate on whom the powers under sub-section (3) are conferred shall be called Special Magistrates and shall be appointed for such term as the Government may, in consultation with the High Court Division, by general or special order direct.
5. The Government may in consultation with the High Court Division confer upon any Metropolitan Magistrate all or any of the powers conferred or conferrable by or under this Code on Metropolitan Magistrate in respect of particular cases or a particular class or classes of cases, or in regard to cases generally in any Metropolitan Area.
6. The persons on whom the powers under sub-section (5) are conferred shall be called Special Metropolitan Magistrates and shall be appointed for such term as the Government may in consultation with High Court Division by general or special order direct.

Provisions before the amendment of 2007

Previously, the role of Chief Judicial Magistrate in the administration of criminal justice was played by the District Magistrate who was a member of administration cadre in the service of Bangladesh. There had not been any distinction of executive and judicial magistrate and the members of the administration cadre were appointed in different tiers of magistracy.

In case of special magistrates as well, there had not been any classification of Special Executive Magistrate, Special Magistrate or Special Metropolitan Magistrate. The substituted section 14 of the Cr. P.C. provided that the Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside a Metropolitan Area and such Magistrates shall be called Special Magistrates.

C. Section 18: Appointment of Metropolitan Magistrates

In a Metropolitan Area, the Government in consultation with the High Court Division shall appoint an Additional Sessions Judge to be the Chief Metropolitan Magistrate and shall appoint as many Metropolitan Magistrates as it may deem fit.

D. Section 17: Subordination of Executive, Judicial and Metropolitan Magistrates

1. All Executive Magistrates appointed under section 10 and 12 (1) shall be subordinate to the District Magistrate who may, from time to time, give special order consistent with this Code as to the distribution of business among such Magistrates.
2. All Judicial Magistrates appointed under section 11 and 12(3) and all Benches constituted under section 15 shall be subordinate to the Chief Judicial Magistrate who may, from time to time give special orders consistent with this Code and rules made by the Government under section 16 as to the distribution of business among such Magistrate and benches.
3. All Metropolitan Magistrates including Additional Chief Metropolitan Magistrate, and Special Metropolitan Magistrate appointed under section 12(5) and Benches constituted under section 19, shall be subordinate to the Chief Metropolitan Magistrate, who may, from time to time, give

special orders consistent with this Code and rules made by the Government under section 16 as to the distribution of business among such Magistrates and Benches.

4. All Judicial Magistrates including the Chief Judicial Magistrate shall be subordinate to the Sessions Judge and all Metropolitan Magistrates including the Chief Metropolitan Magistrate shall be subordinate to the Metropolitan Sessions Judge.

Previously, all Magistrates appointed under sections 12, 13 and 14 and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches.

E. Section 41: Withdrawal of powers

Earlier the Government may withdraw all or any powers conferred under this Code on any person by it or by any officer subordinate to it. But now according to amended section 41, where the conferring of power is, under this Code, required to be made in consultation with the High Court Division, the withdrawal thereof shall be made in consultation with that Court.

F. Section 164: Power to record statements and confessions

Statements under section 164 of the Code will be recorded by Judicial Magistrates by implication of sub-section 1(a) of section 4A of the Ordinance. It says "any reference without any qualifying word to a Magistrate shall be construed as a reference to a Judicial Magistrate".

G. Section 167

Section 167 of the Cr.P.C. authorises a Magistrate to make an order for detention of the accused in such custody as he thinks fit for a term not exceeding fifteen days on the whole. Unless the accused is brought before the Court, no remand order can be passed.

After the amendment, it is the "nearest Judicial Magistrate" instead of the "nearest Magistrate" to whom the accused has to be sent along with a copy of the entries in the diary in cases where investigation can not be completed within 24 hours. Through the amendment, sub section (4) of section 167 has been replaced by new sub section (4) and sub section (5) has been added. These are as follows:

4. If such order is given by a Magistrate other than the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it to the Chief Metropolitan Magistrate or to the Chief Judicial Magistrate to whom he is subordinate;
5. If such order is given by a Chief Metropolitan Magistrate or a Chief Judicial Magistrate, he shall forward a copy of his order, with reasons for making it to the Metropolitan Sessions Judge or to the Sessions Judge to whom he is subordinate.

H. Section 190: Cognizance of offences by Magistrates

Earlier the Metropolitan Magistrate, District Magistrate could take cognizance of any offence. From 1 November, 2007, Chief Metropolitan Magistrate, Metropolitan Magistrate, Chief Judicial

Magistrate, Magistrate of the first class and any other Magistrate specially empowered in this behalf under sub-section (2) or (3) may take cognizance of any offence -

- a. upon receiving a complaint of facts which constitute such offence;
- b. upon a report in writing of such facts made by any police officer;
- c. upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

Sub-section (2): The Government may, and subject to any general or special order issued in this behalf by the High Court Division, the Chief Judicial Magistrate may empower any Magistrate of the second or third class to take cognizance under sub-section (1) clause (a) or clause (b) of offences which he may try or send for trial.

Sub-section (3): The Government may empower any Magistrate of the second class to take cognizance under sub-section (1) clause (c), of offences for which he may try or send for trial.

I. Section 407 and 408 : Appeal

Appeal from sentence of Magistrate of the second and third class: According to the amended Section 407, any person convicted on a trial held by any Magistrate of the second or third class may appeal to the chief Judicial Magistrate who may himself hear and dispose of the appeal or transfer it to an Additional Chief Judicial Magistrate for disposal, and may withdraw an appeal so transferred.

Appeals from sentence of Joint Sessions Judge and Magistrates of the first Class: According to amended Section 408, any person convicted on a trial held by a Joint Sessions Judge, Metropolitan Magistrate or any Judicial Magistrate of the first class, may appeal to the Sessions Judge;

Provided as follows:

- a. When in any case a Joint Sessions Judge passes any sentence of imprisonment for a term exceeding five years, the appeal of all or any of the convicted persons shall lie to the High Court Division;
- b. When any person is convicted by a Metropolitan Magistrate or Judicial Magistrate specially empowered to try an offence under section 124A of the penal Code, the appeal shall lie to the High Court Division.

J. Some important functions of District and Executive Magistrates

After the amendment of the Cr. P.C, the District and Executive Magistrates will enjoy the following powers.

- i. Power to require security to keep peace to be enjoyed by a District Magistrate or any other Executive Magistrate. (Section-107)
- ii. Power to require security for good behavior from persons disseminating seditious matter to be exercised by a District Magistrate or any other Executive Magistrate. (Section-108)
- iii. Power to require security for good behavior from vagrants and suspected persons to be exercised by a District Magistrate or any other Executive Magistrate. (Section -109).

- iv. Power to require security for good behavior from habitual offenders to be exercised by a District Magistrate or any other Executive Magistrate. (Section-110).
- v. Power to release persons imprisoned for failing to give security to be exercised by the District Magistrate. (Section-124).
- vi. Power to command unlawful assembly to disperse by Executive Magistrates. (Section-127).
- vii. Power to use of civil force to disperse unlawful assembly by Executive Magistrate. (Section-128).
- viii. Power to require military force to be used to disperse unlawful assembly to be enjoyed by an Executive Magistrate. (Section-130).
- ix. Power to make orders as to local nuisance to be exercised by the District Magistrate and any other Executive Magistrate. (Section-133).
- x. Power to order a person not to repeat or continue public nuisance by the District Magistrate or any other Executive Magistrate. (Section 143).
- xi. Power to issue order absolute at once in urgent cases of nuisance or apprehended danger to be enjoyed by the District Magistrate or any other Executive Magistrate. (Section-144).
- xii. Powers to take measures in dispute concerning land or water or boundaries thereof which is likely to cause breach of peace to be enjoyed by the District Magistrate, or an Executive Magistrate specially empowered by the Government in this behalf. (Section-145)
- xiii. Power to attach subject of dispute to be enjoyed by the District Magistrate, or an Executive Magistrate specially empowered by the Government in this behalf. (Section-146).
- xiv. Disputes concerning rights of use of immovable property to be enjoyed by the District Magistrate or an Executive Magistrate specially empowered by the government in this behalf. (Section-147).

6

Important Judgments of the Appellate Division of the Supreme Court in 2006-2007



Court Room of the Chief Justice of Bangladesh



6.1 Md. Iftekhar Hasan @ Al Mamun and others v. The State

PRESENT

Mr. Justice Syed J. R. Mudassir Husain,
Chief Justice

Mr. Justice Md. Ruhul Amin

Mr. Justice Mohammad Fazlul Karim

Mr. Justice M. M. Ruhul Amin

Mr. Justice Md. Tafazzul Islam

Mr. Justice Amirul Kabir Chowdhury

Mr. Justice Md. Joynul Abedin

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.444 of 2006

AND

JAIL PETITION NOS.04, 06, 07, 08, 09 and 10 of 2006

(From the judgment and order dated 29 and 31 August 2006 passed by the High Court Division in Death Reference No.47 of 2006 with Jail Appeal No.457 of 2006.)

Md. Iftekhar Hasan @ Al Mamun and others

Versus

The State

Date of hearing:

19, 26 & 27 November, 2006.

J U D G M E N T

Syed J. R. Mudassir Husain, C.J.

I have gone through the draft judgment prepared by my learned brother Mr. Amirul Kabir Chowdhury, J and the separate dissenting note written by my learned brother Mr. Md. Joynul Abedin, J.

The author Judge, Mr. Justice Amirul Kabir Chowdhury has elaborately narrated the facts and circumstances and thereupon arrived at his conclusion dismissing all the petitions.

Having regard to the facts and circumstances of the case, the provisions of Article 31 of the Constitution, in my view, cannot be applied because of the fact that the convicts were tried by a competent Court of the country in accordance with law and upon due compliance of all the necessary formalities and in such view of the matter, jurisdictional question is rather redundant.

In the result, I also dismiss all the petitions and I fully concur with the judgment delivered by Mr. Amirul Kabir Chowdhury, J.

Md. Ruhul Amin, J.

I have gone through the draft judgment prepared by brother Mr. Amirul Kabir Chowdhury, J. and the separate note written by brother Mr. Md. Joynul Abedin, J. agreeing with the conclusion arrived at and made by brother Mr. Amirul Kabir Chowdhury, J.

I am sorry that I differ with the view expressed by my brother Md. Joynul Abedin, J. as to the provision of Article 31 of the Constitution relating to the matter of awarding of sentence of death under the provision of the Penal Code or any other special law. Since the four convicts, as to whom my brother Joynul Abedin, J's separate note relates, were tried by the competent Court in accordance to the law of land and as such jurisdictional question raised by the convicts was quite not relevant. Moreover where law of the land provides for sentence of death in respect of certain offence and one who has been sentenced to death quite in accordance to law for the commission of the offence providing sentence of death, his contention referring to provision of Article 31 of the Constitution so far provision thereof relates to 'right to life' is not well founded in law.

I agree with the judgment as well as the conclusion arrived at by my brother Mr. Amirul Kabir Chowdhury, J.

Mohammad Fazlul Karim, J.

Perused the attached note of my brother Md. Joynul Abedin, J along with the contention in appeal raised by the four convicts who have been sentenced to death by the trial court in accordance with law.

Since the convicts have disowned the jurisdiction of this Court thereby remained satisfied with the judgment under appeal displaying certain purely religious sentiments which a Court of law established by law has nothing to do and on my perusal of the impugned judgment no illegality is apparent therein to be interfered with, I am of the view that the provision of Article 31 of the Constitution has no manner of application in the instant case.

In the result, I agree with the judgment and order of my learned brother Amirul Kabir Chowdhury, J.

M. M. Ruhul Amin, J.

I have gone through the judgment proposed to be delivered by my learned brother Amirul Kabir Chowdhury, J and the separate notes added by my learned brother Md. Joynul Abedin, J. agreeing with the judgment of Amirul Kabir Chowdhury, J.

In my view the provisions of Article 31 of the Constitution as mentioned by Md. Joynul Abedin, J. are not applicable in the present case as the convicts were tried by a competent court as per provisions of law of the land after complying with all necessary legal formalities and as such the jurisdictional question as raised by the convicts are rather irrelevant. I agree with my learned brother Amirul Kabir Chowdhury, J.

Md. Tafazzul Islam, J.

I have gone through the draft judgment prepared by brother Amirul Kabir Chowdhury, J. and also the separate note added by brother Md. Joynul Abedin, J. agreeing with the conclusion arrived at by my brother Amirul Kabir Chowdhury, J. but expressing the view that in view of the fundamental right guaranteed under Article 31 of the Constitution and the condemned prisoners having taken the ground that courts below did not have jurisdiction to try the condemned prisoners, a substantial question of law has been raised warranting this Court to look into the legality and propriety of their conviction and sentence. I differ with the above view expressed by my brother Md. Joynul Abedin, J. as the condemned convicts were tried by a competent Court in accordance with law of the land which provides for sentence of death in respect of offence under which the condemned prisoners were tried and so they cannot take shelter of the provisions of Article 31 of the Constitution. I agree with the judgment as well as the conclusion arrived at by my brother, Amirul Kabir Chowdhury, J.

Amirul Kabir Chowdhury, J.

Jail Petition No.04 of 2006 has been preferred by petitioner (1) Md. Iftekhar Hasan @ Al-Mamun, Petition No.07 of 2006 is at the instance of (2) Shayekh Abdur Rahman Ibne Abdullah @ Ehsan @ Maolana Abdur Rahman, Petition No.08 of 2006 is by (3) Md. Siddiquil Islam @ Azizul Islam @ Omar Ali @ Litu Miah @ Bangla Bhai, Petition No.09 of 2006 arises at the instance of (4) Md. Aatur Rahman @ Tariq Sani Ibne Abdullah while Petition No.10 of 2006 is at the instance of (5) Abdul Awal @ Arafat @ Samad @ Asif hereinafter referred to as the petitioners. The judgment and order dated 29 and 31 August 2006 in Death Reference No.47 of 2006 with Jail Appeal No.457 of 2006 passed by the High Court Division against the aforesaid petitioners (condemned prisoners) gives rise to the petitions mentioned above.

Md. Faruk Hossain Khan @ Faruk @ Khaled Saifullah @ Amjad, another condemned prisoner, on the other hand, submitted Jail Petition No.06 of 2006 regarding the aforesaid judgment and order but later filed Criminal Petition for leave to appeal registered as Criminal Petition for Leave to Appeal No.444 of 2006 and Mr. M. Shamsul Alam learned Counsel representing him did not press the said Jail Petition in view of filing of the fresh petition for leave.

The learned Additional Sessions Judge, Jhalakati by judgment and order dated 29.05.2006 in Sessions Case No.28 of 2006 convicted the aforesaid six petitioners and co-accused Ashadul Islam @ Arif, who is absconding althrough, under Sections 120B and 324/302/34 of the Penal Code and sentenced each of them to death. Another accused Md. Sultan Khan has however been acquitted. The learned Additional Sessions Judge after passing the said judgment submitted proceedings to the High Court Division under Section 374 of the Code of Criminal Procedure on the basis of which Death Reference No.47 of 2006 was started. The aforesaid Jail Appeal No.457 of 2006 was preferred by condemned prisoner Md. Iftekhar Hasan @ Al-Mamun @ Shiheb against the aforesaid judgment and order of the trial court. The Death Reference and the aforesaid jail appeal being heard together the High Court Division by the impugned judgment and order accepted the Death Reference and dismissed the jail appeal.

Md. Abdur Rahman Bin Abdullah Bin Fazal in his lengthy petition stated, inter-alia, 0AivR Avgvtf` i t`tk bex (mt) Gi wePvi cwi nvi Kti gmnj gvbiv Kvtdit` i %Zix wePvi e`e`vq wePvi c0_x`h`Q|

AZGe hviv gvmfI i `Zix Kiv msweavb, weavb ev AvBtbi KvQ wePvi c0_Pnq Zviv vbtRt` i tK gnmj gvb `vex Kijt I Zviv Bgub`vi bq etj DciD³ AvqvtZ Avj -vnZvj v Rmbtq w` tqtQb| KvRb hw` tKn Bgub weaYskx KvR Kti Zte gnmj g `vex Kijt B Zvti tinvB t` qv hvtebv|

G t_tK Gt`tki wbhZZ gnmj g RbMYtK gP Kivi Rb` 150 (t`okZ) ermi ci Avevtiv 0Rvgv0Zj gRvnn`xb0 evsj vt`k| Gt`tk Avj -vni AvBbtK ev`evtbi Rb` Avj -vni vbt`KZ mk`i; wRnv` `i` Kti tQ, Avj nvq`vj j -vn| tR,Gg, we, Gi gvI `B GKkZ gRvnt` i dnmfZB G t`tk Bmj vg c0Z0v ntebv, Avj -vn Pvt`Qb Avtiv wKQyAvj -vni ev`v Zui weavb c0Z0vi Rb` Rxb`vb Ki`K Zvi ci wZvb Zvi ev`vt` i c0Z mS0 ntq G t`tk Bmj vgx AvBb c0Z0v Kti w` teb BbkvAvj -vn|0

Md. Siddiquil Islam Bangla Bhai in his petition stated, inter-alia, 0Awmg Bmj vg kwi qv tgvZvteK wePvi Kwi tj Avcxj Kwi e0| 0Avj -vn etj bt Zng wK Zvnmw`MtK t`L bvB hvnviv `we Kti th, tZvgvi c0Z hvnv AeZxY©nBqvQ Ges tZvgvi cte©hvv AeZxY©nBqvQ ZvntZ Zvni wekym Kti, A_P Zvnniv Zv`tZi KvQ wePvi c0_PnBtZ Pvq, hw` Dnv cZ`vLvb Kivi Rb` Zvnmw`MtK vbt`R t` qv nBqvQ Ges kqZvb Zvnmw`MtK fxlbfvte c_ao Kwi tZ Pvq0| (miv vbm-60) Awmg GKRb gnmj g wntmte wePvti i `i` ntZ tKvAvb I nwm 0viv Avgvi wePvi Kivi AvnevB Kti tQ wKs` Zv`tZi Zj cx evnK wePvi K Zv bv Kti eis ewJtki tMvj vg evbvtbv AvBtb wePvi Kti Avgvi gZj `0vt`k c0vb Kti tQb| Avj -vn etj bt weavb w`evi AwaKvi tKej Avj -vni (miv BDmcl-40) Zvb gnmj xg wntmte G AvBtb wePvi c0_Pntj Cgub vKtebv Awmg tKvtU©Avcxj Kwi e bv|

The petitioner Abdul Awal in his petition stated 0Avgvi wei`tx, th gZi `0vt`k c0vb Kiv ntqtQ, tm weiq ntZ Awmg m0Y©vbtRtK vbt`R gtB Kwi | Awmg Avcxj KitiZ PvB, hw` AvgvtK AvZc¶ mg_0bi mthvM t` qv nq Ges Bmj vg Abjhvx wePvi Kiv nq|

Awmg Avkv Kwi, D`P Av`vj tZ Dcw`Z ntq, AvZc¶ mg_0 I Bmj vg Abjhvx wePvi c0_Pnl qvi mthvM t` qv nte AvgvtK| G Qvov Ab` tKvb e`e`v M0Y Kiv ntj, Avj -vni wBKU c0Z`vtbi Avkvq `ah©avib Kie BbkvAvj -v0|

Avgvi gZi `0 KvhrKix Kivi wei`tx gnvgvb` D`P Av`vj tZ wj f UzAvcxj KitiZ B`QK, hw` AvgvtK AvZc¶ mg_0bi mthvM t` qv nq Ges Bmj vgx weavb Abjhvx wePvi KvhrKix Pj bv Kiv nq|0

The petitioner Abdul Awal in his petition further stated 0AZGe Avgvi gZi `0vt`k KvhrKix Kivi wei`tx D`PZi Av`vj tZ Bmj vgx Ryo teW©MVb Kti Avj -vni AvBtb cpivq wePvi Kivi Avte`b KiwQ Ab`_vq m0e bv ntj Avgvi wePvi ZvMZX AvBtb bv Kivi Avte`b KiwQ|0

Other Accused Md. Faruk Hossain Khan filing petition for leave to appeal challenged the impugned judgment and order of his conviction and sentence and has been represented by his learned Counsel Mr. M. Shamsul Alam.

Prosecution case in brief is that on 14.11.2005 at about 8.50 A.M. Md. Sultan Ahmed Khan (P.W.1) driver of the judgeship of Jhalakati took out the vehicle as usual and proceeded to pick up the judges namely, Jagannath Parey, Sohel Ahmed and others for taking them to the court and accordingly he collected the aforesaid two Judges who were on board in his vehicle and he also took Abdul Mannan Howlader (P.W.14) a peon in the said vehicle and that after taking them he proceeded to pick up another Judge namely, Mr. Abdul Awal and stopped the vehicle in the gate of Mr. Awal and while he was calling Mr. Awal he heard a huge monstrous sound and coming out from the house of Mr. Awal he found the vehicle, damaged to pieces and Judge Sohel Ahmed was found hanging with the vehicle while the other Judge Jagannath Parey was lying with injuries and

that he found Mannan (P.W.14) and another person named Badsha Mia (P.W.11) also lying there with injuries and that he also saw another man lying there with bleeding injuries on the ground and that the injured persons were taken to hospital on rickshaw and he narrated the occurrence to the police and also about the other injured person that the said person was found immediately before the occurrence by him with a bag in his hand and later from his possession some leaflets claiming introduction of Quaranic Law were also recovered and that the witness was told by peon Mannan that aforesaid other injured person showed a paper to Judge Sohel Ahmed and taking advantage of handing over the paper on the plea of collecting address, the aforesaid person, whose name transpired as Mamun, exploded bomb through the window of the vehicle and two others namely, Badshah and Mannan (P.Ws.11 and 14) were thus injured and the two Judges Sohel Ahmed and Jagannath Parey were thus killed. On the basis of the statement of this witness, Jhalakati P.S. Case No.12 dated 14.11.2005 was started against condemned prisoner Mamun and others under Sections 302/34 of the Penal Code.

During investigation accused (1) Shayekh Abdur Rahman, (2) Md. Siddiqui Islam Bangla Bhai, (3) Md. Ataur Sani, (4) Abdul Awal, (5) Md. Iftekhar Hasan @ Al-Mamun and (6) one Sultan Khan were arrested. The investigating officer visited place of occurrence, seized alams and examined witnesses.

On 24.11.2005 accused Md. Iftekhar Hasan @ Al-Mamun was produced before Mr. Md. Safiq Anwar, Metropolitan Magistrate, Dhaka (P.W.41) to whom the accused gave a confessional statement recorded by the aforesaid learned Magistrate. After investigation P.W.44 Munshi Atiqur Rahman submitted chargesheet on 21.03.2006 against the petitioners and absconding accused Asadul Islam Arif and one Md. Sultan Khan under Sections 120B/326/302/427/109/34 of the Penal Code. The case thereafter being sent for trial was registered as Sessions Case No.28 of 2006 in the Court of the learned Sessions Judge, Jhalakati and was transferred to the learned Additional Sessions Judge for trial.

The trial court framed charges against the accused under Sections 120B/302/34 and Section 326 of the Penal Code. Co-accused Md. Faruk Hossain Khan @ Faruk @ Khaled Saifullah @ Amjad and accused Arif being then in abscondence could not be examined while other accused were examined accordingly.

Accused (1) Shayekh Abdur Rahman, (2) Md. Siddiqui Islam Bangla Bhai, (3) Md. Ataur Rahman Sani, (4) Abdul Awal and (5) Md. Iftekhar Hasan @ Al-Mamun in reply to the charge did not deny the charges in so many words and claimed to be tried according to law of Allah (Arj -vni AvBtb wPvi PVB). Accused Sultan Khan (since acquitted) pleaded absolute innocence and claimed to be tried.

Mr. Md. siddique Hossain a Senior Advocate of local Bar was appointed as State defence lawyer to represent all accused as they did not appoint any lawyer of their choice. During the trial prosecution produced 44 witnesses while defence did not examine any one. As already mentioned above this is a case in which the petitioners did not raise plea of innocence rather they claimed to have taken their stand against the present law of the country in order to establish law of Allah.

P.W.1 Md. Sultan Ahmed Khan driver attached to the judgeship of Jhalakati is the informant of the case who in his deposition narrated the occurrence as already mentioned while describing the prosecution case. In his deposition he stated that at the time of occurrence of explosion of bomb in the vehicle the two Judges were killed and two others namely, Mannan and Badshah were injured. He further deposed that another person who was also injured was found by him carrying a bag in

his hand before the occurrence and after the occurrence some leaflets were also found in his possession wherein it was written *Ógybe i wPZ AvBb gmb bv, tKvi Avtbi AvBb Pvj yKi Ó* and that some bombs were also found in his possession and later his name was disclosed as Mamun. The witness identified condemned petitioner Mamun on dock. He also proved the ejaher lodged by him. In cross-examination he admitted that he did not know accused Mamun from before.

P.W.2 Abdul Barek Khan, a shopkeeper having his shop near the place of occurrence deposed that during April-May 2005 he saw a man selling honey and on query the man disclosed his name as Mehdhi and used to come to his shop off and on and that Mehdhi told him that he was linked with an Islamic party and through constant discussion the witness also felt interested in Islamic party and seeing interest, the witness was invited to Mirdha Bari situated at Rupatali Laldigir Par and he went there and found aforesaid Mehdhi along with some others and that thereafter on one occasion Mehdhi took a loan of TK.500/- from the witness and the witness in the first week of October had been to the aforesaid house at Mirdha Bari for the money and found Mehdhi along with some other persons coming to the house at about 10/10-30 P.M. and he found amongst others accused Mamun (petitioner in Jail Petition No.04 of 2006) and Arif (absconding accused) and that the witness was told that the leaders of the Islamic party about whom the witness was told earlier would come to the house and the witness was asked to wait and accordingly he waited there and at about 12 to 12.30 at night five other persons came and on query Mehdhi disclosed their names as 1) Shayekh Abdur Rahman, (2) Md. Siddiquil Islam Bangla Bhai, (3) Md. Aatur Rahman @ Tariq Sani, (4) Abdul Awal, and (5) Amzad @ Khaled Saifullah (the petitioners in Jail Petition Nos.07 of 2006, 08 of 2006, 09 of 2006, 10 of 2006 and Civil Petition No.444 of 2006 respectively). Thereafter some other persons also came and a meeting took place. The witness narrating the meeting deposed *ÓgyUs G emqv kvqL Ave`j ingvb, evsj v fvB etj th, Bmj vgx AvBb ev`- evqb Gi Rb` 17 AvMó mviv t`tk tevgv weto`vi b NUvb nBqvQ ZvntZl mi Kvti i UbK bto bvB| ZLb etj th, GLb nBtZ RR, cjj k ckvmb Gi Dci tevgv nvjj v Kiv nBtj Bmj vgx AvBb ev`-evqb mnR nBte| AvZvDi ingvb mwb Ges Ave`j AvDqvj ZLb AvgRv`tK etj th, AvgRv` fvB Avcwb ewi kvj wfvM Gi cãvb| Avcwb ej b th, tKv_vq tevgv nvjj v Kiv mnR nBte| Revte AvgRv` fvB etj th, tm me RvqMv Nyi qv t`wlvqQ ewi kvj wfvM Sj KwV Ges ei bqv tevgv nvjj v Kiv mnR nBte| ZLb kvqL Ave`j ingvb mthvM gZ tevgv nvjj v Kivi Rb` AvgRv`tK wbt` R t`q| Avav NbUvi tekx wgyUs Kw qv tbZex` i v Pwj qv hvq|Ó*

The witness identified the aforesaid five accused present in dock i.e. the present petitioners except petitioner Mamun. He also deposed that in the newspaper he read the news about the death of two judges out of bomb explosion. Seeing the picture of Mamun therein he could identify easily that the man who was also present in the aforesaid meeting was Mamun and the said Mamun was identified on dock. In cross-examination he admitted that the proceeding of the meeting was not recorded. He denied that he did not see Shaiakh Adbur Rahman in the meeting or that he was not present in the meeting. In cross-examination he also reiterated that he saw Bangla Bhai in the meeting. He did not remember the date of the meeting. He stated in cross-examination that the meeting was attended by 10/12 persons including Mamun and (1) Shaiakh Abdur Rahman, (2) Bangla Bhai, (3) Md. Aatur Rahman @ Tariq Ibne Abdullah Sani, (4) Abdul Awal, (5) Md. Iftekhar Hasan @ Al Mamun and (6) Md. Faruk Hossain Khan @ Faruk @ Khaled Saifullah @ Amjad (all other six petitioners). He denied that he did not see the accused in the meeting or that deposed falsely.

P.W.3 Md. Abul Khair deposed that he was Imam of a mosque situated at Ruptali Mirdha Bari and that in March 2005 one Moulana Miraz came to him to get information about the owner of the house hanging a signboard "To-let" and in reply he told that owner of the house stayed at Dhaka

and one Md. Nazmul Huda Liton (P.W.7) was the caretaker and then he went to Liton along with the man and the house was rented to the said person @ Tk.1000/- as monthly rent and the name of another person coming with Moulana Miraz was disclosed to be Mehdhi and that they were in the house for about one and half months and that he learnt from Liton that thereafter they fled away without paying the rent and that after occurrence of bomb blast at Jhalakati, police took Mamun to the said house and seeing him the witness could identify the person to be one of the inmates of the said rented house. In cross-examination he stated that he saw Mamun about 3 to 4 times before the occurrence and denied the suggestion that he did not see Mamun or that he himself was a member of J.M.B and that he advised the accused to kill the Judges.

P.W.4 Pallabi Mukharjhee is wife of deceased Judge Jagannath Parey who narrated the prosecution case as already mentioned before and was not cross-examined.

P.W.5 Rawsan Ara Begum deposed that a boy named Shaon took her house on rent and that along with him another boy disclosing his name to be Shehab @ Mamun also used to reside with him in the house and that after 25th Ramadan aforesaid Shehab @ Mamun was not traced out and that on query Shaon told her that Mamun left for his home to attend his ailing father. She deposed further that after the occurrence leading to killing of two Judges police went to her house and showed her Shehab @ Mamun whom he recognised and identified as aforesaid Mamun residing in her house and she also identified accused Mamun on dock.

P.W.6 Md. Serajul Islam the imam of Rupatali Jame Mosque in his evidence corroborated P.W.3 Md. Abul Khair regarding letting out of the house at Rupatali Laldegi Mirdha Bari to Shaon.

P.W.7 Md. Nuzmul Huda Liton in his evidence corroborated P.W.5 about letting out the house and identified accused Mamun on dock.

P.W.8 Uttam Kumar Das in his deposition identified accused Mamun to be a person residing in the house at Mirdha Bari and also identified him as such on dock.

P.W.11 Badsha Mia is a vendor selling milk to various persons visiting their houses. He deposed that on 14.11.2005 at about 8.45 A.M. while after delivering milk in the house of Judge Abdul Awal and a lady Magistrate he was coming out therefrom he found a person talking in front of the house of Judge Abdul Awal and then Mannan (P.W.14) was also standing in front of the house of Judge Abdul Awal and he heard sudden sound and he himself was injured with splinter of bomb exploded there and being thus injured he was taken to Jhalakati and from there to Barisal Hospital and that the man whom he saw in front of the house of Judge Abdul Awal with a bag in his hand was named Mamun and he identified him on the dock. In cross-examination he replied that except Mamun he did not know other accused.

P.W.12 Md. Shamim Bahar supported the evidence of P.W.2 in toto deposing, inter-alia, Bmj vgx `tj i tbZvi v Awmtj AvgvK cwi Pq Ki vBqv w`te ewj qv etj Ges AvgvK _wKtZ etj | wKQm b cti tbZe, Avtm Zvnt`i bvg tkL Ave`j ingvb, evsj v fvB, AvZDi ingvb mmb, Avaj AvDqv, AvgRv` I ttd Ltj` mmdDj -v| AvgRv` ewi kvj wfvM Gi tbZv| wKQmgq cti Avti K Rb tj vK Avtm| Zvni bvg tgvj -v I gi | wKQmgq cti wguS i`i` nq| wguS G kvqL Avaj ingvb I evsj v fvB etj th mvi v t`tk Bmj vgx AvBb Pij j Rb` th tevgv nvgj v nBqvQ ZvntZ mi Kvi Gi tKvb tPZbv nq bVB| GLb nBtZ RR, g`wRtOt`i Dci Ges Av`vj tZ tevgv nvgj v Kwi t`j mi Kvi Gi tPZbv nBte ewj qv Zvni v etj | mmb I AvDqv ZLb AvgRv` tK wRAvmv Kti th, ewi kvj wfvM tKvb RvqMq tevgv nvgj v Kiv mnR nBte? ZLb AvgRv` mvne etj th, tm mvi v wfvM Ngi qv t`wLqvQ| Svj KwX ev ei _bv tRj vq tevgv gvi mnR nBte| ZLb tkL Avaj ingvb I evsj v fvB Bnv AvgRv` mvnetK

Only cross-examination put to this witness is 0Awg th wguUs G Dcw~Z wQj vg Zvrvi Zwi L Awg ewj tZ Cwi bv|0 So his evidence goes unchallenged and thus is taken as admitted by the accused.

P.W.16 Md. Sabir Hossen is the owner of a shop near Chadkathi Ebadullah Mosque who deposed that on 14.11.2005 at about 8 to 8.15 A.M. while he was sitting in his shop a man came there with a bag in his hand and purchased banana and bread from him and the witness left the shop keeping his brother Md. Jubayer P.W.17 in the shop asking him to take Tk.8/- from the man and after a while he heard big sound, on hearing which he came out of his house and saw many persons in front of the house of Judge Abdul Awal and later saw in the paper that Judges Soheli Ahmed and Jagannath Parey have been killed by the bomb blast and Badsha was also injured and on seeing the picture of the other injured person he identified him to be the man who purchased banana and bread from him and the said person was recognised as accused Mamun whom he identified as such on the dock.

P.W.44 Munshi Atiqur Rahman after conclusion of the investigation submitted charge sheet against the accused as already mentioned above.

Similarly accused Siddique Bangla Bhai stated that he felt himself proud being a member of 0gRwjj tk mj 0 (JMB) and he also did not deny the allegation against him. Accused Khaled Saifullah stated, inter-alia, G tk i mi Kvti hviv Awar0Z Zvt i m0utK0j dtj U weZiY Kti Bmj vgx AvBb Pj j tP0v KtiwQ cti Avgiv mk`iRnv` Gi c_ Ae j b KtiwQ| kvqL Avaj ingyb Gi wbt`K Awig Sjv KwWtZ teigv nvqjvi msNUb I `BRb wePvi K nZv Ki tZ tcti Awig MweZ |0

Md. Ataur Rahman Sani also in his statement did not deny the prosecution case and stated that due to prevalence of corruption and absence of Islamic law in the country, he felt compelled to wage jihad. Accused Abdul Awal stated that he was a muslim mujahid and to fulfil the demand of his iman he resorted to the path.

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Hence are these petitions.

Mr. Khalilur Rahman, the learned State defence Lawyer represented the petitioners in Jail Petition Nos.7,8 and 9 of 2006 preferred by condemned prisoners (1) Shaiakh Abdur Rahman Ibne Abdullah @ Easa @ Moulana Abdur Rahman, (2) Md. Siddiqui Islam Pramanik/alias Azizul Islam/alias Omar Ali alias Litu Miah alias Bangla Bhai and (3) Md. Ataur Rahman alias Tariq Sani Ibne Abdullah respectively.

Placing the materials on record including the impugned judgment, the learned Advocate submits that the petitioners have been convicted on the basis of emotion having no evidence warranting their conviction.

He further submits that the witnesses deposing against his clients are procured witnesses and they in fact did not see any occurrence and deposed falsely at the instance of the police. Being confronted as to what prevented his clients from cross-examining the witnesses and/or even denying the prosecution case in so many words, the learned Advocate found it difficult to answer and of course submitted that the petitioners were not defended properly in the trial court.

He however submits that this court being the highest court of the country could consider the facts and circumstances and exercise the jurisdiction and acquit the petitioners as there was no cogent evidence against them.

Mr. Salahuddin, learned Advocate represented the petitioners in Jail Petition Nos.04 of 2006 and 10 of 2006 namely, Md. Iftekhar Hasan @ Al-Mamun and Md. Abdul Awal @ Arafat @ Samad @ Asif respectively.

He adopts the submissions made by Mr. Khalilur Rahman and submits that there has not been adequate legal assistance to the petitioners and as such the case has not been properly conducted in the trial court.

He however emphasizes that this court in its jurisdiction to do complete justice may look into the materials which if examined thoroughly would reveal that in fact the prosecution case could not be proved against the petitioners beyond shadow of doubt and as such they are entitled to acquittal.

Mr. M. Shamsul Alam, learned Counsel appearing for the petitioner in Criminal Petition for Leave to Appeal No.444 of 2006 preferred by condemned prisoner Md. Faruk Hossain Khan @ Faruk @ Khaled Saifullah @ Amjad has taken us through the impugned judgment and submits, inter-alia, that there is at all no direct or indirect evidence to implicate his client with the charge under Sections 302/34 of the Penal Code and as such he is entitled to clean acquittal of the said charge.

Regarding conviction under Section 120B of the Penal Code the learned Counsel submits that out of 44 witnesses produced by the prosecution only two witnesses, namely, P.W.2 Md. Anisur Rahman and P.W.12 Md. Shamim Bahar deposed as to taking part of his client in criminal conspiracy but the said two witnesses are not natural witnesses and in fact they have been procured by the police and the prosecution totally failed to prove that his client was party to any criminal conspiracy for committing the alleged offence of killing the two Judges and as such the conviction under Section 120B of the Penal code cannot be maintained at all against his client.

He submits thereafter that the defence being not conducted properly the petitioner has been deprived of adequate legal assistance.

Referring to the statement of his client made in his examination under Section 342 of the Code of Criminal Procedure the learned Counsel submits that the inculpatory portion of the statement under no circumstances can be the basis of his conviction and that apart from such alleged statement of the accused the prosecution is bound to prove the charge beyond shadow of doubt producing unimpeachable evidence and in the present case, according to the learned Counsel, the prosecution simply failed to discharge the onus and as such the order of conviction and sentence is liable to be set aside.

He further submits that admittedly the name of the petitioner is not in the FIR and no allegation has at all been made against him in the said FIR.

According to the learned Counsel, not a single witness deposed against the petitioner as to his involvement in the alleged murder of the two Judges and as such conviction under Sections 302/34 of the Penal Code falls through at once.

Referring to the charge of criminal conspiracy against the petitioner the learned Counsel submits that even according to prosecution P.W.2 Md. Anisur Rahman and P.W.12 Md. Shamim Bahar are the only witnesses produced by the prosecution to the effect.

He thereafter submits that P.W.2 hails from Barisal while P.W.12 hails from Jhalakati and both of them have been procured by the police to depose in the case implicating the petitioner.

He advanced grievance of failure of the investigating agency to search the P.O. (place of occurrence) of the alleged conspiracy and submits that in the meeting of such a grave nature conspiring to kill the Judges, it is not believable that the two outsiders i.e. P.Ws.2 and 12 would be allowed to attend and as such their evidence is neither believable nor acceptable and relying on their evidence, the petitioner cannot be convicted for alleged criminal conspiracy and as such the order of conviction and sentence is liable to be set aside.

Mr. Abdur Razzaque Khan, learned Additional Attorney General appearing on behalf of the State submits, inter-alia, that in view of the statements made by the petitioners in reply to the charge, in their statements under Section 342 of the Code of Criminal Procedure and confessional statement of condemned petitioner Md. Iftekhhar Hasan @ Al-Mamun (the petitioner in Jail Petition No.06 of 2006) admitting the guilt, disowning the existing law of the land and also even denying the jurisdiction of the court of the country, the plea raised on behalf of the petitioners before this court for doing complete justice does not arise.

Placing the provisions of Articles 103 and 104 of the Constitution, the learned Additional Attorney General submits that Article 103 of the Constitution is invoked if any point is found in the impugned judgment involving substantial question of law.

He further submits that in view of clear indication of the petitioners (except the petitioner in Jail Petition No.444 of 2006 and Jail Petition No.04 of 2006) disowning jurisdiction of this court question of raising the plea of getting complete justice from this court does not arise and referring to the materials on record the learned Additional Attorney General submits that the plea of getting complete justice is not warranted in a case like this in which there are clear admissions of the guilt by the petitioners in their replies to the charges, statements under Section 342 of the Code of Criminal Procedure and in the case of petitioner Mamun in Jail Petition No.04 of 2006 in his aforesaid confessional statement and further, failure even to cross-examine the prosecution witnesses proving the charge to the hilt.

He refers to the seizure list dated 14.11.2005 marked as exhibit-15/1 and submits that from the house, the place of occurrence of the conspiracy, 31 items were seized on 16.11.2005, within two days of the occurrence which included a number of books containing exciting message for movement to introduce Islamic law, registers of delegates, plastic box, a number of PBC pipes, sunlight battery, a piece of glass, green wire etc. and thereafter he submits that from the nature of the articles it goes beyond doubt that the evidence of P.Ws.2 and 3 as to making conspiracy in the house for the murder by bomb explosion by the petitioners has been established.

Thereafter referring to the evidence of P.W.2 the learned Additional Attorney General submits that his evidence clearly proved involvement of the petitioners including the petitioner of Petition No.444 of 2006 that they were involved in the conspiracy resulting in the murder of the two Judges. P.W.2 though was cross-examined, his evidence could not be shaken at all. He then submits that though P.W.12 in his evidence corroborated P.W.2 in toto, he was not at all cross-examined even denying the vital part of the evidence against petitioners and as such the submissions of Mr. Alam, according to the learned Additional Attorney General, are of no use. Regarding other petitioners, according to the learned Additional Attorney General, nothing could be represented by the learned Advocates appearing for the accused to hold that their conviction has been unfair or illegal in any way. Moreso, in view of their statements, quoted above and their failure to cross examine the witnesses, thereby admitting the evidence against them the order of conviction cannot be found fault with. He reiterated that the petitioners amongst others were present in the meeting making the conspiracy as already mentioned above. He thereafter submits that the petitions are liable to be dismissed.

The learned Additional Attorney General submits that the two victims had no enmity with the petitioners and still they have been done to death by the petitioners and the reason indicated by the petitioners is nothing but a mad cry to establish alleged Islamic law in the country. In this view of the matter, according to the learned Additional Attorney General, the sentences imposed against the petitioners are absolutely justified.

Lastly he submits that it appears from the record that either the trial court or the High Court Division did not fail to exercise their jurisdiction or did not commit any error or illegality whatsoever in the judgment and as such the petitions have no leg to stand and are therefore liable to be dismissed.

We have considered the submissions made at the Bar and perused the materials on record. Out of 7 convicts one of them namely Asadul Islam @ Arif being in abscondence did not prefer any petition and so there are 6 petitioners before us filing six petitions as mentioned above. During trial the petitioners were asked to reply to the charge of entering into criminal conspiracy as a result of which two Judges namely Shohel Ahmed and Jagannath Parey have been killed on 14.11.2005 at Purbachandkathi, Jhalakati committing thereby offences publishable under Sections 120B and 302/34 of the Penal Code. Prosecution produced 44 witnesses in support of the charge. P.W. 1 Md. Sultan Ahmed Khan, Driver of the Judgeship of the Jhalakati is the informant of the case who in his evidence narrated the occurrence as already mentioned by us herein before. He stated that petitioner Mamun was found by him carrying a bag in his hand before the occurrence who was again found after the occurrence lying on the road near the place of occurrence with injuries on his person out of bomb explosion whose name was later disclosed as Mamun and that some leaflets were also found from his possession wherein it was written *Ögvbe iWZ AvBb gwlb bv,*

†Kvi Av†bi AvBb Pvj y KiÔ-RwqZj †gvRv†nw`b, evsjv†`k|Ô and the witness identified the accused petitioner Mamun on dock.

P.W. 2 Anisur Rahman in his evidence deposed that he attended a meeting held in a house at Rupatali Laldigirpar, Mirdha Bari which was attended, amongst others by Mamun and all other petitioners i.e. (1) Shayekh Abdur Rahman, (2) Bangla Bhai, (3) Ataur Rahman Sani, (4) Abdul Awal, and (5) Khaled Saifulla. Similarly P.W. 3. Md. Abul Khair, P.W. 5 Rawsan Ara Begum, P.W.7 Md. Nazmul Huda Liton, P. W. 8 Uttam Kumar Das, P. W. 16 Md. Sabir Hossen, P.W. 17 Md. Jubayer, P. W. 18 Md. Eklas Mia and P. W. 20 Md. Tarek Hossen all in one voice deposed disclosing involvement of petitioner Mamun in the meeting of conspiracy and also in the occurrence itself resulting in the murder of the two Judges. In this connection P. W. 11 Badsa Mia and P. W. 14 Abdul Mannan Hawlader, both injured in the bomb blast, in their evidence made categorical statements that the petitioner Mamun exploded the bomb inside the vehicle resulting in the death of two Judges. In answer to his examination under Section 342 of the Code of Criminal Procedure Mamun admitted to have committed the offence and stated that he felt proud being able to kill the two Judges. In his confessional statement recorded under Section 164 of the Code of Criminal Procedure Mamun again admitted that according to premeditated plan of his leaders Abdur Rahman, Bangla Bhai he committed the occurrence at Jhalakati. It may be mentioned that while P. W. 41 Md. Safiq Anwar, learned Metropolitan Magistrate, Dhaka deposed to prove the aforesaid confessional statement Mamun did not deny the statement nor even made any suggestion challenging the voluntariness or truthfulness of the statement. The aforesaid confessional statement and the clear admission made by the petitioner Mamun in his examination under section 342 of the Code of Criminal Procedure coupled with evidence on record therefore clearly proves prosecution case against him.

Let us now quote Section 120B of the Penal Code which is as under:

"120B-(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, (imprisonment for life) or rigorous imprisonment of a term of two years or upwards shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

..... "

In this connection Section 120A of the Penal Code, defining criminal conspiracy may also be mentioned which runs as follows:

"120A. When two or more persons agree to do, or cause to be done,-

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

From the evidence of witnesses specially P.Ws.2 and 12 as mentioned already it is proved that two or more persons i.e. petitioner Mamun along with other petitioners, held meeting and conspired to blast bomb upon the Judges and others in the administration resulting in the murder of the two Judges and petitioner Mamun being one of them, his action comes within the mischief of offence punishable under Section 120B of the Penal Code as well. Moreover from the evidence of witnesses, specially P.Ws.1 (informant), 11 (Badsha Mia) and 14 (Abdul Mannan Howlader) the

offence of killing the two Judges by him has been well proved and as such his conviction under Sections 120B and 302/34 of the Penal Code cannot be found fault with. So the petition of the petitioner Mamun is found to have no substance at all.

Regarding other petitioners namely, (1) Shayekh Abdur Rahman, (2) Siddiquil Islam Bangla Bhai, (3) Aatur Rahman Sani and (4) Abdul Awal, the evidence of prosecution witnesses already mentioned above may be referred to. P.W. 2 Anisur Rahman, as already noticed, in his evidence clearly proved the holding of a meeting held at the house at Repatali Laldigirpar Mirdha Bari before the occurrence attended by, amongst others, the aforesaid petitioners. The witness deposed

ৱগ্নীস্ G এন্নম্ কব্ৰী Ave`j i ngvb, evsj v fvb etj th, Bmj vgx AvBb ev`evqb Gi Rb` 17 AvMó mvi v t` tk tevgv weûib NUvb nBqvTQ ZvrvTZI mi KvTti UbK bto bvB| ZLb etj th, GLb nBtZ RR, cji k ckvmb Gi Dci tevgv nvj v Kiv nBtj Bmj vgx AvBb ev`evqb mnR nBte| AvZvDi ingvb mmb Ges Ave`j AvDqvj ZLb AvgRv` tK etj th, tKv`vq tevgv nvj v Kiv mnR nBte| Revte AvgRv` fvb etj th tm me RvqMvq Nji qv t`wLqvTQ ewi kvj wefvT M Sj KvX Ges ei ,bvq tevgv nvj v Kiv mnR nBte| ZLb kvqL Ave`j i ngvb mthvM gZ tevgv nvj v Kivi Rb` AvgRv` tK wbt` R t` q| Avav NvUvi tekx wgnUs Kw qv tbZex` iv Pij qv hvq| ivtZ Awg gav ewotZB NgvB| tgn`x fvb UvKv bv t` lqv KtqKw b cti wMqv Avevi t`wL th, Nti i` i Rvq Zvj v j vMvTbv| 0

He thereafter identified the petitioners. In cross examination nothing tangible was brought out from this witness. Similarly P.W.12 Md. Samim Bahar corroborated evidence of P.W.2 in toto. Surprisingly enough, no suggestion even was given to this witness denying the conspiracy participated by aforesaid petitioners. The seizure list marked as Exhibit-15/1 of the articles seized from the house of conspiracy, the description of which has been given earlier goes to strengthen the charge of Criminal conspiracy of the petitioners in the house in question to commit the offence of bomb blast etc. In such view of the matter coupled with evidence of other witnesses as already mentioned hereinbefore in the evidence of these two witnesses (P. Ws. 2 and 12) the charge against the aforesaid petitioners in entering into criminal conspiracy resulting in the death of the two Judges has been proved beyond shadow of doubt. Moreover in their reply to the charge and in their examinations under Section 342 of the Code of Criminal Procedure, none of them denied the prosecution case and rather admitted to have committed the offence. The above mentioned clear admissions of the petitioners together with the categorical statements of witnesses made in their deposition disclosed clearly the participation of the petitioners in the offence of criminal conspiracy that resulted in the murder of the two Judges. In such view of the matter it is crystal clear that the prosecution has been able to prove the charge against the aforesaid petitioners beyond shadow of doubt. The petitions of the petitioners namely, (1) Shayekh Abdur Rahman, (2) Siddiquil Islam Bangla Bhai, (3) Aatur Rahman Sani and (4) Abdul Awal are thus bereft of any substance.

Let us now consider the case of Md. Faruk Hossain Khan @ Faruk @ Khaled Saifullah @ Amjad, petitioner in Criminal Petition No.444 of 2006 who has been represented by Mr. M. Shamsul Alam, learned Counsel. It is true that his name does not find place in the First Information Report. The First Information Report was lodged by P. W. 1 Md. Sultan Ahmed Khan who witnessed the occurrence at the very time of occurrence who saw the petitioner Mamun with injuries on his person on the spot on whose possession some incriminating leaflets were found. He is a witness of the occurrence of bomb blast and as such he mentioned the name of only accused Mamun in the First Information Report and the name of the present petitioner Faruk Hossain could not be mentioned. There is therefore no reason to have adverse inference for the omission. It may

however be mentioned that in view of the circumstances revealed P.W.1, the informant added in the FIR 0Avgi v`p wekljm Avmgx gvgb GKRb mpxq` tj i mpxq m`m`| ceCwi Kí bv Kwi qv Mvxi gta` _vKv wmbqi mnKvi x RR 0qtK tevgv gwi qv weCwi b NUVBqv Lp Kwi qvtQ| GKB Dtí tk` Zvni m½ Ab`vb` AÁvZbvgv Avmgxi v RwoZ|0 which speaks for itself. The evidence of P. W. 2 Md. Anisur Rahman and P.W.12 Md. Samim Bahar has already been mentioned above wherefrom it is clear that this petitioner Faruk Hossain @ Amjad was the head of Barisal Division who was asked as to the places convenient for blasting bomb aimed at Judges and police administration in order to establish Islamic law and that in reply Amjad i.e. the petitioner told that Jhalakati and Bargona would be suitable for bomb blasts and then Shaiakh Abdur Rahman gave orders to petitioner Amjad for blasting bomb. Similarly P.W.12 Md. Samim Bahar corroborated the said witness verbatim as already noticed. Nothing tangible could be elicited from P. W. 2 in cross examination and P. W. 12 was not even cross-examined denying the involvement of the petitioner in the aforesaid conspiracy. Though it has been argued by the learned counsel that the witnesses have been procured by the police but there is nothing on record to show that there was any enmity between the petitioner and the witnesses nor any suggestion was given denying the occurrence. The plea now raised by the learned Counsel is too late for the day which was not raised by the accused at any stage nor any such suggestion was even given to the effect.

As already mentioned the petitioner in his examination under Section 342 of the Code of Criminal Procedure, clearly stated that he felt proud to be able to cause the bomb blasting and killing the two Judges. The learned Counsel persistently argued that this incriminating part of the statement of the accused petitioner in his examination under Section 342 of the Code of Criminal Procedure cannot be the basis of conviction. In this connection he has referred to the decision in the case of Shah Alam Vs. State in 10 BLD, AD 25. It appears that the facts are absolutely different in the said decision and the decision does not come to any use to the petitioner. Moreover we find that the inculpatory statement made by the petitioner in his examination under section 342 of the Code of Criminal Procedure is not the only material for recording his conviction. We have examined the evidence of witnesses including P.W.2 and P.W.12. The evidence clearly leads us to an irresistible opinion as to the guilt of the petitioner. In such view of the matter we do not find any substance in the submissions of the learned Counsel. In such circumstances we are of the view that, there is no reason to find the petitioner Md. Faruk Hossain Khan @ Faruk @ Khaled Saifullah @ Amjad not guilty of the charges and so his petition is also devoid of any substance.

We have perused the impugned judgment. The High Court Division after considering the facts and circumstances observed ". From what has been discussed the convicts knowingly, and deliberately made the criminal conspiracy and in furtherance of the common intention generated from the conspiracy, they caused the bomb blast leading to the death of the two Judges. The Prosecution could prove its case beyond all reasonable doubt. Therefore we hold that the condemned convicts are guilty of the charges under Section 120B, and 302/34 of the Penal Code. They deserve no leniency and the sentence of death is the appropriate penalty for them."

We have ourselves given anxious consideration to the submissions and the materials on record. We are of the view that the facts and circumstances in the case are conclusive evidence of killing the two Judges through criminal conspiracy made by the petitioners. The learned Advocates representing the petitioners appealed for taking compassionate view in the matter as they have not been adequately defended in the trial court.

Except Md. Iftekhhar Hasan @ Al-Mamun and Md. Faruk Hossain Khan, the petitioner in Jail Petition No.04 of 2006 and Criminal Petition No.444 of 2006 other petitioners have not sought justice from this court. It may be mentioned that all citizens of this country are bound by law of this country. Section 2 of the Penal Code provides for trial of any Bangladeshi according to the provision of the said Code for any act done by him. Under Section 5 of the Code of Criminal Procedure, all offences under the Penal Code shall be tried in accordance with the provisions of the Code of Criminal Procedure. Under Article 101 of the Constitution the High Court Division shall have jurisdiction, powers and functions as are or may be conferred on it by the Constitution or any other law. The urge of the petitioners to get their matter disposed of by the High Court Division or by this Division through Islamic law has got no leg to stand in view of the aforesaid provisions. Under Article 152 of the Constitution the word "law" means any Act, Ordinance etc. having the force of law in Bangladesh. The urge of the petitioners for trying their cases in accordance with Islamic law is nothing but an imaginary dream as the said so-called law is not recognised now by our constitution or in any other law except the sharia law codified as the law of the land. In this view of the matter urge of the petitioners to dispose of their case under Islamic law is an utopian concept unknown to our legal jurisprudence.

Islam is a religion of peace. It is derived from the word "Salam" meaning peace. Using the holy name of Islam, the petitioners have engaged in a wild mad struggle jeopardizing the law and order of the country resulting in killing of innocent people as has been done in the present case of killing the two Judges. Does Islam permit killing of such innocent persons? Are those illfated Judges responsible for not implementing Islamic law in this Country? Is it the job of the Judges to legislate Islamic law in Bangladesh? Is there even any allegation against them of murdering any other persons or any adversary or being themselves Murtad? Islam does not encourage use of force, in the matter of religion. The way the petitioners resorted to outrageous atrocities in the name of Islam killing innocent persons has been prohibited clearly in Islam. The Quran says, ". whosoever killeth a human being for other than man-slaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind. " Surat 5 : Al Maidah : 32. The facts disclosed in the case revealed the conspiracy made by the petitioners in committing horrible offence of creating law and order situation in the country and killing innocent persons one after another and as such they are traumatic threat to the survival of the social order. The activities of the petitioners are undoubtedly premeditated, cold blooded and deliberate, backed by persistent ferocity and as such their elimination from the society is the only solution to preserve and protect the existing norms and thus the only proper sentence to be passed against them is one of death. Hence we find that the learned Additional Sessions Judge has rightly sentenced all the petitioners to death and the High Court Division in its turn considering the facts and circumstance came to correct decision in accepting the Death Reference and as such we do not find any reason to interfere or decide otherwise. All the petitions are accordingly dismissed.

Md. Joynul Abedin, J

I have had the opportunity to go through the main judgment delivered by my brother, Mr. Justice Amirul Kabir Chowdhury, and agree to the conclusion reached. I would however like to dilate and add my own views on the contention raised by the learned Additional Attorney General, Mr. Abdur Razzak Khan that save the condemned prisoner Md. Faruk Hossain Khan @ Faruk @

Khaled Saifullah @ Amjad other condemned prisoners having failed to raise any substantial question of law do not deserve any consideration and interference by this court with regard to their conviction and sentence passed by the learned Sessions Judge, Jhalakati and maintained by the High Court Division.

Elaborate fact of the case has been stated in the main judgment and I refrain from making any repetition in the interest of brevity of the judgment. Condemned Prisoner Md. Faruk Hossain Khan @ Faruk @ Khaled Saifullah @ Amjad has only sought for interference with his conviction and sentence by this court by filing Criminal Petition for Leave to Appeal No.444 of 2006. Rest of the condemned prisoners, namely (1) Md. Iftekhar Hasan @ Al-Mamun, (2) Shayekh Abdur Rahman Ibne Abdullah @ Ehsan @ Maolana Abdur Rahman, (3) Md. Siddiquil Islam @ Azizul Islam @ Omar Ali @ Litu Miah @ Bangla Bhui, (4) Md. Ataur Rahman @ Tariq Sani Ibne Abdullah and (5) Abdul Awal @ Arafat @ Samad @ Asif have not filed any criminal petition for leave to appeal and they only filed jail petition admitting their guilt (particulars of which are stated in the main judgment) stating in effect that they are not liable to be tried under the law of the land and by the courts established thereunder. They however claimed to be tried under the Islamic or the Sharia law and by the courts established thereunder. One thing has been found common in them that all the aforesaid condemned prisoners except Md. Faruk Hossain Khan having admitted the offence denounced and renounced the jurisdiction of the court as well as the conviction and sentence passed by it against them.

In this background of the case, the learned Additional Attorney General has sought to argue that since the offence has been admitted by the said condemned prisoners they should not be considered to have raised any substantial question of law by filing the aforesaid jail petitions warranting interference with their conviction and sentence passed by the court below and affirmed by the High Court Division.

In this context, it is pertinent to mention that these condemned prisoners not only took up aforesaid stand before this court but they also took the same stand during their trial before the court of the Sessions Judge, Jhalakati and also before the High Court Division of the Supreme Court. But both the courts below engaged State defence counsel for the condemned prisoners to defend their case pursuant to Chapter 12 of the Legal Remembrancer's Manual. Even this court in the light of its Rules has also caused appointment of the State defence counsels for these condemned prisoners to defend their case. These go to show that despite the aforesaid stand taken by the condemned prisoners both the trial court as well as the High Court Division did not abandon them and refrain from holding a trial as per law of the land and they were therefore rightly tried in accordance with law for the offence charged in view of section 2 of the Penal Code and section 5 of the Code of Criminal Procedure.

Since the above condemned prisoners by filing jail petitions raised jurisdictional point by reiterating their earlier plea that courts under the law of the land did not have the jurisdiction to try them, they should be deemed to have challenged their conviction and sentence and thus to be considered to have raised substantial question of law warranting this court to look into and examine the propriety and illegality of their conviction and sentence passed by the courts below. This is all the more necessary and required in view of the fundamental right guaranteed to them as enshrined under Article 31 of the Constitution that no action detrimental to the life, liberty and body shall be taken against any citizen except in accordance with law. Article 31 of the Constitution

guarantees protection of life and liberty to every citizen. The term cannot be confined only to taking away of life, but it means something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.

6.2 National Tea Company Limited Versus The Deputy Commissioner, Hobiganj and others

PRESENT

Mr. Justice Md. Ruhul Amin
Chief Justice

Mr. Justice Mohammad Fazlul Karim
Mr. Justice M.M. Ruhul Amin

CIVIL APPEAL NO. 47 OF 2001

*(From the Judgment and Order dated January 19, 2000 passed by
the High Court Division in Writ Petition No. 3827 of 1998)*

National Tea Company Limited Versus The Deputy Commissioner, Hobiganj and others.

Date of hearing : The 5th September, 2007

J U D G M E N T

MD RUHUL AMIN, CJ

The appeal, by leave, has arisen out of the judgment and order dated January 19, 2000 of a Division Bench of the High Court Division in Writ Petition No. 3827 of 1998 discharging the Rule.

The writ petition was filed impugning Memo No. AJRPOHO/REVENUE/JA:MA/14/6/11/98-1958 dated 01.11.1998 issued by the Respondent No.2 purportedly granting lease of Balumahal locates within the writ petitioner's Tea Estate (Annexure -"A") in favour of the respondent No.4 and Notification No. AJRPOHO/REVENUE/JA:MA/14/6/2-2(4)/98-68 dated 22.04.1998 issued by the Respondent No.1 demarcating and declaring part of the petitioner's Tea Estate as Balumahal (Annexure- 'A(1)').

Facts in the background whereof the writ petition was filed, in short, that the writ-petitioner-appellant is the public limited company and carrying business of plantation, cultivation, production and processing of tea and other allied products, the appellant and the Deputy Commissioner, Habiganj entered into an agreement on March 19, 1988 and thereof the appellant was granted lease of Chundeecherra Tea Estate for a period of 35 years for the purpose as stated

hereinbefore, the Government on July 15, 1978 transferred 12 Tea Estates to the appellant which also includes the above mentioned Tea estate and the appellant by the aforementioned agreement became the absolute owner in possession and control of the estate. The appellant came to know that on April 22, 1998 the Additional Deputy Commissioner (Revenue), Habiganj demarcated and declared part of aforementioned Tea Estate as Balumohal and in pursuance of that the Deputy Commissioner, Habiganj invited tender to grant lease of the Balumohal which locates well within the appellant's tea estate. The appellant raised objection through its representation on May 11, 1998 to the Deputy Commissioner, Habiganj and also to the Divisional Commissioner upon referring to the Memo No. Land-7-Misc.-63/97/179 (6) dated June 29, 1998 issued by the Ministry of land wherein it was clearly spelt out that lease of Balumahal cannot be given to any outsider other than the Tea Estate, that inspite thereof the Additional Deputy Commissioner (Revenue) (Respondent No.2) by the order dated November 1, 1998 granted lease of Balumohal to the respondent No.4-Shamim Ahmed for the year 1405 B.S.

As against the said action the appellant moved the High Court Division in writ jurisdiction impleading the respondents and obtained Rule.

The Rule was opposed by the respondent No.4

It was contended on behalf of the writ petitioner-appellant that he is the lessee of the Chundeecherra tea estate for 35 years and as per terms of the lessee deed the respondent Nos. 1 and 2 have no authority to lease out the property of the appellant to some other persons, that on the basis of lease the appellant has acquired vested right in respect of the property of the tea estate and as such the same cannot be taken away during the period of lease by grating lease to some other persons for collection of sand from the appellant's property, that the respondent Nos. 1-3 are competent only to control any part of the Tea Estate on discovery of mineral resources in the light of the Clause 17 of the agreement and that lease to the respondent No.4 having been given for the purpose other than as in Clause 17 of the agreement as because sand does not come within the definition of 'Mineral' and as such the said respondents cannot enter into an agreement or allow a third party for collection of 'Sand' from the Tea Estate which is the property of the appellant.

It was the contention of the respondent No.1, that the respondent No.1 has invited tender for leasing out Balumohal inside the tea Estate as per instruction of the Ministry of Land, that the writ petitioner and others participated in the auction and the respondent No.4 being the highest bidder lease of the Balumohal was granted to him for the year 1405 B.S., that in the lease agreement between the writ petitioner and the government it has not been mentioned that the government will have no right to grant lease of Balumohal inside the Tea Estate to outsider, that there was a meeting at the initiative of the Ministry of Land wherein Tea Garden owners and the representative of the Tea Association and the representative of the Ministry of Commerce were present and the Ministry of Land in the light of the decision of the government made proposal to the Tea Garden owners for leasing out the Balumohal and the said proposal was not accepted and the Ministry of Land also rejected the proposal of the Tea Garden owners for leasing out the Balumohal for a token amount and in the background of the aforesate of the matter the government invited tender for leasing out Balumohal, that the writ petitioner being aware of the government decision for leasing out the Balumohal by inviting tender did not raise any objection and the said behaviour of the writ petitioner amounts to waiver on their part and as such the contention that the tenders were invited without hearing and notice to the writ petitioner is not correct.

The respondent Nos. 1-3 did not file any affidavit-in-opposition, but at the time of hearing a Law Officer of the Government appeared for the said respondents.

The High Court Division discharged the Rule upon observing "From the aforesaid annexures we are of the view that the petitioner company was very much aware of leasing of the Balumohal inside the Tea Estate of the petitioner company, the petitioner company thus accepted the authority of the respondent No.1 regarding the right to lease out Balumohal inside the Tea Garden and admitted the ownership of the government thereof since 1992 as found from the various annexures referred to above and as such the petitioner company acquired no vested right in the Balumahal.

Now from the reading of the contents of Annexure-1 of the affidavit-in-opposition of the respondent No.4 it is very clear that the government being the owner of the Balumohal (offered to the petitioner company to take lease of the Balumohal) at the 10% enhanced rate than that of the previous rent but the representative of the petitioner company expressed their unwillingness and they, wanted to take the lease just at a token price to which the government did not agree and the tender notice was issued and subsequently granted the lease of Balumohal in favour of the respondent No.4. We therefore hold that the impugned Annexure-A and A(1) can not be declared to have been issued without any lawful authority inasmuch as the petitioner company had already waived their right and conceded the said granting of lease to third party".

Leave was granted to consider the submissions that in terms of the lease granted by the Government in favour of the company the entire property covered by Chundeecherra Tea Estate belong to the company and actual possession was delivered to the company and they are enjoying the same and at that stage a notification was issued by respondent No.2 for leasing out an alleged Balumohal which is situated within the tea estate and that it being not a mineral product can not be done in view of the agreement and as such the act complained by the appellant is illegal, arbitrary and without lawful authority, that the company acquired a vested right in the said Chundeecherra Tea Estate which can not be interfered with by granting lease to respondent No.4 for collection of sand from the appellant tea estate, that if mineral resources are found inside the tea estate in that case the respondents may control any part of the estate but not otherwise and said provision was included in Clause 17 of the agreement dated 19.3.1988 but in the present case lease has been granted to respondent No.4 for the purpose other than as stated in Clause 17 of the said agreement as collection of sand does not come within the definition of mineral for which the respondent can enter into or allow any third party to enter into the tea estate for this purpose, that illegality has been committed by the High Court Division in holding that respondent Nos. 1-3 have authority to lease out the so called Balumohal without realizing that the petitioner is the lawful lessee under the provision of the state Acquisition and Tenancy Act 1950 and its vested right as lessee can not be affected in such manner unless Clause 17 of the lease deed is attracted, that the High Court Division has not given any decision as to Clause 17 of the lease deed under which the Government is authorized to lease out the mineral resources found beneath the surface and other than that it has no power to allow any person to collect ordinary sand from the so called Balumohal of the tea estate more so when there is no such Balumohal in the said tea estate, that the area from where sand is to be collected is within the control and management of the tea estate and if a third party is allowed to enter in the tea estate area for any other purpose the industry will suffer and there may arise complications and the High Court Division failed to appreciate this factual aspect of the matter.

At the outset it has been submitted by the learned Counsel for the appellant that after the expiry of the lease period i.e. lease for the year 1405 B.S. granted to the respondent No.4 the Government has not leased out the Balumohal for any further period and in that view of the matter though apparently it may be argued by the respondents, particularly the respondent No.4, that this appeal has become infructuous or in other words the hearing of the appeal on merit and disposal thereof in either way is academic, is not wholly correct, since the other point involved in the appeal needs to be decided for the future or in other words the appeal needs to be disposed of upon deciding the points, other than the one as mentioned above, raised in the appeal.

On going through the leave granting order we are of the view that the submission of the learned Counsel for the appellant for disposal of the appeal upon deciding the points, other than the one mentioned hereinbefore, raised in the appeal to avoid complications in future appears to be of merit.

The learned Counsel for the appellant has submitted that the High Court Division was in error in not considering the lease deed dated March 19, 1988 as well as the schedule of the said deed where admittedly there is no Balumohal within Tea Estate in question which has been leased out to the appellant and in that view of the matter leasing out of the appellant's land by the government treating same Balumahal was illegal. It has also been submitted that the High Court Division was in serious error in not holding that the appellant has acquired vested right to own and possess the land as treated by the respondents Balumohal if any within the Tea Estate on the basis of the lease deed dated March 19, 1988 executed by the government, unless the provision of Clause 17 of the lease deed is attracted.

The undenied provision is that the appellant is the lessee of Chundeecherra Tea Estate for 35 years on the basis of the lease deed dated March 19, 1988 and the Balumohal is within the aforesaid Tea Estate.

The government, as seen from Clause 17 of the lease agreement, reserved its right in respect of the properties as mentioned in the said Clause 17 of the lease deed inspite of the fact that the said properties are within Tea Estate of the appellant.

Clause 17 reads as follows: *BRvi v`vZv BRvi vaxb Rvgi Dcwi fvM ev Af`Šti i mKj LwbR m`u` /AvKwi K Gi AwaKvi Ges Zrmn Abjfc c0KwZK m`u` w` AbnUvb, msMh, Lbb, DfEvj b, c0mms I `vbsŠt BZ`w` Kvhtgi Rb` c0qvRbxq Ab`vb` mKj mthvM mjeaw` i AwaKvi msivM iZ ivtLb| GB m`u` i Dci BRvi v`ti i tKvb AwaKvi _vKtebv Ges Zrvvi tKvb AvciE I MhYthvM` nBtebv0|*

From Clause 24 of the lease deed it is seen that the government reserved its right to have earth from the leased out land for the purpose as mentioned therein.

Clause 24 reads as follows: *BRvi vaxb Rvg msj MafKvb mi Kvix iv`v-bogY I tgi vgtZi c0qvRtb gvuU Avek`K nBtj BRvi v`vi Dnv webv MZc`tY c0vb Kwi tZ eva` _vKtebv0|*

It is also seen from the Clause 21 of the lease agreement that in case leased out land or part thereof if is required for public purpose the lessee would be required to handover the said land to the lessor and the lessee would be entitled to get compensation. The other matters in the said Clause 21 of the agreement are not necessary for our present purpose. Clause 24 of the lease agreement is also not relevant to the subject matter of the appeal.

As seen from the schedule of the Tender published for leasing Balumahal in question and the lease Agreement dated March 19, 1988 land measuring 7.77 acres leased out to the respondent No.4 for

the year 1405 B.S. is within Chundeecherra Tea Estate. It appears from the schedule of the lease agreement dated March 19, 1988 entered into between the government and the appellant that Plots shown in the schedule of the Tender notice for leasing out Balumahal are also the Plots shown in the schedule attached to the lease agreement.

No case from the side of the Government has been placed before the Court that the land proposed to be leased out treating as Balumahal is outside the Chundeecherra Tea Estate or that outside the land described in the schedule attached to the lease agreement dated March 19, 1988. It may also been mentioned that no case was placed before the Court to show that the sand extracted from the Balumahal in question འུལ་པ་རྩ་མཐུ་འོ or in other words sand used for construction purposes is འུལ་པ་རྩ་མཐུ་/AvKwi KÓ|

The learned Counsel for the respondent No.4 in the background of the materials on record could not make out a case that the sand for the extraction whereof lease has been granted is mineral resource. It appears that the sand for extraction whereof Balumahal has been leased out is ordinary sand and used for construction purpose or for some other purpose allied thereto.

Because of the matters in Clause 17 of the lease agreement Government would be in a position to enter upon the land of Chundeecherra Tea Estate when there is mineral resources as well as similar kind of natural resources either on the surface or beneath the surface of the land of Chundeecherra Tea Estate and for the exploration, extraction and collection thereof can take necessary steps as reflect in Clause 17 of the lease agreement.

As no case was made out before Court that the sand that would be extracted by the respondent No.4 from the leased out Balumahal is mineral resources, in our view the government was not competent to lease out the land of the Chundeecherra Tea Estate to the respondent No.4 which has already been leased out to the appellant for 35 years by the lease agreement dated March 19, 1988. Since the appellant was the lawful lessee of the land of the Chundeecherra Tea Estate and as such the right so acquired by the lessee cannot be affected unless there are situations as contemplated in Clauses 17, 21 and 24 of the lease agreement present.

As stated hereinbefore on perusal of the schedule of the tender notice it is seen that the land that has been advertised for leasing as Balumahal is also the land as in the schedule attached to the lease agreement of the appellant. It has already been mentioned that no case was placed before the Court that the land advertised for leasing as the Balumahal is not part of the land of the Chundeecherra Tea Estate that has been leased out to the appellant or in other words that the land so advertised for leasing out as Balumahal is outside the land of the Chundeecherra Tea Estate leased out to the appellant.

In the aforestate of the matter we are of the opinion that unless the matters in Clause 17 of the lease agreement are present in respect of the land of Chundeecherra Tea Estate as leased out to the appellant or that there occurs situations as are in Clauses 21 and 24 of the lease Agreement the government during the lease period is not competent to enter upon the land that has already been leased out to the appellant and as such the action of the government i.e. leasing out the land inside the Chundeecherra Tea Estate treating the same as Balumahal had no legal sanction and hence the action taken by the respondent Nos. 1-3 was not legal.

It is seen from the Judgment of the High Court Division that the said Division as to the contention of the appellant relating to leasing out of the Balumahal has observed that the matter of leasing

out the land in question was known to the appellant and thereby accepted the authority of the government to lease out the land within Tea garden as Balumohal. It has further been observed by the said Division that since the appellant wanted to take lease of the Balumohal on token price but to that the government did not agree and by the said conduct the appellant "had already waived their right and conceded the said granting of lease to the third party".

It may be mentioned in the background of the point raised in the appeal there is no question of accepting the authority of the government to lease out land inside the Tea garden as Balumahal and thereby accepting or conceding to the action of the government as valid and that thereby there was waiver on the part of the lessee of the Tea garden, since the lessee's steps to take lease of the Balumohal on a token price, to which government did not agree, is not material and relevant in the background of the facts and the question calling for determination. The sole question is how far the Government in the absence of attracting the provisions of Clauses 17, 21 and 24 of the lease agreement in respect of the land of the Tea garden i.e. Chundeecherra Tea Estate is competent to lease out or dealt with the land so leased out during the period of the lease or in other words in leasing out to the third party the part of the land that has already been leased out to the appellant by the lease deed dated March 19, 1988 treating the same as Balumohal.

We are of the view in a case where matters as in Clause 17 of the lease agreement are present in the leased out land or in case of matter(s) as is or are in Clauses 21 and 24 of the lease agreement the Government would be competent to enter upon the lease out land and take over possession or to deal with the said land in the manner decided and in no other case the lessor, either describing the leased out land Balumahal or ascribing any other description to the leased out land, would be competent to enter into the land that has been leased out, as in the instant case by the lease agreement dated March 19, 1988.

In the background of the discussions made hereinabove as we find merit in the appeal, as such calls for interference with the judgment of the High Court Division.

The action of the government in leasing out the land of the lessee describing the same as Balumohal being within the Chundeecherra Tea Estate leased out by the lease agreement dated March 19, 1988 was not legal and the said action was taken without lawful authority.

Accordingly, the appeal is allowed without any order as to costs.

6.3 Samudra Ejazul Haque and others v. Farhana Azad and another

Present: Mr. Justice Md. Ruhul Amin, Chief Justice, Mr. Justice M.M. Ruhul Amin, Mr. Justice Md. Tafazzul Islam, Mr. Justice Md. Hassan Ameen

Civil Petition for leave to appeal no. 346 of 2007, (From the Judgment and Order dated 1.3.2007 passed by the High Court Division in Writ Petition No. 770 of 2007)

MD RUHUL AMIN, CJ

The respondent No.1 in Writ Petition No. 770 of 2007, which was filed questioning custody of two minors, a boy and a girl born on December 11, 2002 and August 30, 2000 respectively, has

filed this petition for leave appeal against the judgment and order dated March 1, 2007 passed in the aforesaid writ petition.

The writ petition was filed by the mother of aforementioned boy and girl, alleging inter alia that the said boy and girl are being detained illegally by the writ respondent Nos. 1-3 i.e. father, grand father and grand mother.

The High Court Division made the Rule obtained in the aforementioned writ petition absolute in the following terms: "two minors, namely, Sagorika Noami Azad Huq and Mehrab Faraj Huq are being held in the custody of the respondent Nos. 1-3 without lawful authority and in an unlawful manner. The respondents are directed to handover the above two minors to the custody of the petitioner by the noon of March 14, 2007". The High Court Division also made the direction about the visiting or seeing the minors by the writ respondents to the effect " the respondents shall have the liberty to see the minors twice in a week at the residence of the petitioner or at a place to be agreed upon between the parties. If any dispute (seeing the minors) arises in this regard it will be taken care of by the Family Court".

The High Court Division also directed the 5th Court of Additional Assistant Judge and Family Court, Dhaka to dispose of the Family Case No. 51 of 2007 within 3 (three) months from the date of receipt of the copy of the judgment.

The writ petition was filed alleging, inter alia, that the writ petitioner was married to the respondent No.1 on January 15, 1993, that she was subjected to torture and oppression and was in continuous physical pressure, that two minors Sagorika Noami Azad Huq (daughter) and Mehrab Faraj Huq (son) were born to the writ petitioner and the writ respondent No.1 on August 30, 2000 and December 11, 2002 respectively, that while writ petitioner's husband, respondent No.1, was in USA from February 4, 2005 she was tortured by the writ respondent Nos. 2 and 3 and that inspite of the torture she for the sake of her two minor children did not take any steps to come out of the marital life, that respondent Nos. 2 and 3 without caring about her children and the welfare of the minors compelled the writ respondent No.1 to divorce the writ petitioner on April 23, 2006, that the respondent No. 3 upon playing a dubious role kept the writ petitioner in the house of the respondent Nos. 2 and 3 for 90 days assuring reconciliation between her and the respondent No.1 but after 90 days the respondent Nos. 2 and 3 called writ petitioner's brothers and made unfounded allegations against the writ petitioner and that upon obtaining signature on blank stamp papers drove the writ petitioner out of her conjugal home i.e. from the house of the writ respondent Nos. 1-3 detaining the minors in the house of the respondent Nos. 2-3. The writ petitioner has also alleged that she was allowed to visit her son and daughter on two occasions during the period of 8 months and that writ petitioner was not allowed to talk to her son and daughter over telephone and that she was also not allowed after the afore mentioned period to see her children. It has further been alleged by the writ petitioner that children were pressurized not to talk their mother. It was contended by the writ petitioner that the children being minors the mother under the law is entitled to have the custody of the minors, that the respondents upon illegally detaining the children deprived them of the care as well as love and affection of the mother, that the children being minors the mother is the appropriate person for the custody of the minors in the background of the question of welfare of the minors. It has been stated by the writ petitioner that the respondent No. 1 returned to Bangladesh with a wife and going to hold wedding reception, that the respondent Nos. 2 and 3 on the basis of the forged under taking denying the

writ petitioner from seeing her children. It has been alleged by the writ petitioner that the respondent No.1 is under contemplation to take the minor children to U.S.A. and the children if so taken to the United States they would be taken to a house which is not their mother's house but step mother's home and in that case the welfare and best interest of the children will be seriously neglected and disregarded.

It has been asserted by the writ petitioner as the children, who are minors, are being detained illegally in the custody of the respondent Nos. 1-3 and as respondent No.1 had married upon divorcing the writ petitioner the mother of the minors, consequently as the children's welfare interest would be seriously prejudiced if they are being detained in the custody of the respondent Nos. 1-3, the writ petition is being compelled to file the writ petition seeking custody of the minors.

The Rule obtained by the writ petitioner was jointly opposed by the respondent Nos. 1-3 denying the averments made in the writ petition except the fact that respondent No.1, in the writ petitioner, and the writ petitioner were married on 15 January, 1993 and that out of their marriage a boy and a girl born on December 11, 2002 and August 30, 2000 respectively. It was the case of the respondents that writ petitioner has not come before the High Court Division with clean hands and that although mother has right to the custody of the children but the writ petitioner being guilty of immoral activities has lost the right of custody of the children, that in deciding question of custody of minors the primarily question would be before the Court welfare and interest of the minors, that custody and guardianship of a minor is being dealt with by the Guardians and Wards Act, 1890 and the Family Courts Ordinance, 1985 and that writ petition having had filed Family Case No. 61 of 2007 in the 5th Court of Additional Assistant Judge and Family Court, Dhaka in the right of the provision of the Family Courts Ordinance, 1985 the writ petition is not legally well conceived one, that the writ petition has been filed raising the question already raised in the Family Case No. 61 of 2007 and as such the writ petition is not maintainable, that the respondent Nos. 1-3 are father, grandfather and grandmother respectively of the minors and as such the custody of the minors with the respondents cannot be said to be illegal or that the minors are detained illegally in the custody of the respondents, that under no circumstance the minor would be taken out of Bangladesh and that the writ petitioner would be allowed to see the minors at agreed time and place without any hindrance till the matter of custody of the minors is decided by the Family Court. It has been alleged by the respondents that respondent No.1 while in USA from February 4, 2005, he on query came to know that the writ petitioner was spending his time with her old and new boy friends in restaurants and parks leaving the children in the custody of others, that respondent No.1 has also "irrefutable evidence that the petitioner established illicit relationship, with a lover whom she was meeting regularly" and that respondent No.1 on his return from USA on further inquiry was satisfied about illicit relationship of the writ petitioner and that in that state of the matter the respondent No.1 divorced the writ petitioner on April 23, 2006 on "the ground of infidelity", that because of the life style of the writ petitioner she is not entitled to the custody of the minors.

It was contended on behalf of the writ petitioner that she is entitled to custody of the minors till the question of custody is otherwise adjudicated by the competent Court and that till that time writ petitioner has absolute right to have the custody of the minors and that because of the settled principle of law the custody of the minors can not be with the respondent Nos. 1-3.

As against that it was contended on the side of the respondents that the writ petition is not maintainable since the question of custody will be taken care by the Family Court in Family Case

No. 61 of 2007 and that in the background of the facts stated by the respondent Nos. 1-3 in their affidavit-in-opposition and the supplementary affidavit the writ petitioner can not claim custody of the minors since she has resorted to a life style which is prejudicial to the welfare and best interest of the minors. It has also been contended from the side of the respondents that till the question of custody of the minors is being adjudicated by a competent Court the minor should be with the respondents and in the custody of the respondent Nos. 1-3, that the writ petitioner so filed is a misconceived one since the minors are not in the custody of the respondents without lawful authority.

The High Court Division in making the Rule absolute observed :- "In deciding the question of custody of the minor children the paramount consideration before the Court is welfare of the minors. The term welfare must be read in the largest possible sense which means that every circumstance must be taken into consideration and the Court must do what under the circumstances a wise parent acting for the true interests of the child would do or ought to do. It is difficult for us in the habeas corpus petition to take evidence without which the question as to what is the interest of the child cannot satisfactorily be determined. Till the custody of the minors is decided by a competent Court, mother is legally entitled to retain the custody of her minor children. Before adjudication of the custody of the minors by a competent Court if they remain in the custody of anybody other than the mother, that custody will be without lawful authority. The Family Court will take care of all aspects of the case and will come to a definite finding as to who is/are entitled to the custody of the minors taking into consideration the paramount question of welfare of the minors but till then the minors shall remain in the custody of the mother as provided under the law".

It is seen from the judgment of the High Court that in opposing the Rule the respondents primarily contended that the writ petitioner leading an immoral life and as such she should not be allowed the custody of the minor children and her previous conduct shows she cannot look after the welfare of the minors and that having been divorced by the respondent No.1 she would not be able to maintain the Children.

The allegation as to leading of immoral life by the writ petitioner is too wide and that the matter of incapability of the writ petitioner to maintain the children is the matter to be adjudicated by the Family Court while deciding the question of custody of the children. It may be mentioned before the writ Court no substantial material was brought on record to establish the allegation of leading an immoral life by the writ petitioner.

It is interesting to notice that some time the writ respondents were opposing the custody of the minors with their mother alleging that the writ petitioner being divorced would not be able to maintain the minors and at the same time it was stated that the writ petitioner is a teacher at Scholastica School, Dhaka and as such it is not possible on the part of the writ petitioner look after the minors. The High Court Division considered these contentions of the respondents and thereupon has observed "It cannot be said that a working woman divorced by her husband is unworthy of the custody of her minor children".

The learned counsel appearing in support of the petition for leave to appeal has submitted that the High Court Division wrongly made the Rule absolute without taking into consideration that the matter of custody of the minors is awaiting adjudication by the Family Court in Family Suit No. 61 of 2007 filed by the writ petitioner, respondent No.1 herein and in that state of the matter the

High Court Division ought not have exercised its jurisdiction under Article 102(2)(b)(I) of the Constitution and thereupon ought to not have declared custody of the minors with the father and the grand parents as without lawful authority or in an unlawful manner, that in the background of the fact that with regard to the custody of the minors Family Suit No. 61 of 2007 is now pending before the Family Court, Dhaka, the Writ Petition, having been filed on the self same issue being not maintainable and that facts brought on record being highly contentions and disputed which cannot be decided in a proceeding which is adjudicated upon affidavits and in a summary manner the High Court Division was in error in making the Rule absolute on the view that the mother has the legal right to have the custody of the minors but totally left out of consideration the material fact that the mother i.e. the writ petitioner lost right of custody of the minors "being a mother habituated with illicit relationship and guilty of immoral activities", that the High Court Division in making the Rule absolute did not consider the facts brought on record showing that life style of the mother of the minors is pre-judicial to the best welfare and interest of the minors, that the High Court Division was in error in making the Rule absolute while the said Division itself observed "It is difficult for us in the habeas corpus petition to take evidence without which the question as to what is the interest of the child can not satisfactory be determined" and that also without considering the fact that writ petitioner has filed a case, Family Case No. 61 of 2007 in the 5th Court of Additional Assistant Judge, and Family Court, Dhaka under the provision of Guardian and Wards Act, 1890 and the Family Courts Ordinance, 1985 seeking the relief as to the custody of the minors, that the High Court Division was in error in making the Rule absolute in that the writ petition is misconceived one and the same was not maintainable since as regard the relief sought to be obtained from the High Court Division the writ petitioner has filed as suit before the Family Court and the said suit awaits adjudication involving the issue of custody of the minors, that the High Court Division failed to take into consideration that the respondent Nos.1-3 being father and paternal grand parents respectively and the minors are being in their custody relief sought upon invoking the provision of Article 102(2)(b)(I) of the Constitution was not maintainable and that the High Court Division has also lost sight of the fact that custody of the minors with the writ respondent Nos. 1-3 is on the basis of the express consent of the mother in the background of the undertaking given by the mother on July 7, 2006 and as such the writ petitioner was debarred from taking any exception as regard to the custody of the minors with the petitioners herein.

The contentions so made have already been addressed by the High Court Division and in that view of the matter we do not find any merit in the contentions upon making which leave to appeal is sought. It is suffice to say the undisputed fact is that the children whose custody is being sought by the mother are minors and under the law unless the mother disqualifies herself for having the custody of the minors she is entitled to the custody of the minors for the period as provides by law. The minors in question have not reached that age or that are not of the age disentitling the mother to have the custody of the minors in question. It is seen that the petitioner No.1 (respondent No.1 in the writ petition) has already married for the 2nd time upon divorcing the writ petitioner. In the state of the matter the minors, if allowed to be in the custody of the writ respondent No. 1 would certainly be in the house of their step mother, which fact as we find from the judgment of the High Court Division was rightly considered, will not be congenial to the best welfare and interest of the minor. In the background of the facts on consideration whereof High Court Division made order as to custody of the minors with their mother cannot be considered

unsustainable in law. Contention as to the maintainability of the writ petition has also been considered by the High Court Division upon referring the case of Abdul Jalil and others Vs. Mrs. Sharon Laily Begum Jalil reported in (1998) 18 BLD (AD) 21 where in the background of the facts similar to the facts of the case before us and in the background of facts alleging which writ petition was filed under Article 102(2)(b)(I) of the Constitution seeking custody of the children by the mother, the question of maintainability of the writ petition having been raised it has been observed "aggrieved mother has the right to move the High Court Division under Article 102(2) of the Constitution for immediate custody of the children which may be ordered in the interest and for the welfare of the said children". We have already observed that the allegation of leading immoral life by the mother made from the side of the writ respondents were not substantiated by tangible material and moreover the said allegation would be adjudicated by the Family Court on consideration of the evidence, if any, brought before the said Court and in that state of the matter we are of the view the High Court Division was correct in not considering the contention of the petitioners herein as to leading of immoral life by the respondent No.1 herein and thereupon in not disentitling her from the custody of the minors.

The High Court Division while making the Rule absolute has also made the provision for visiting the minors by the father as well as the grand parents while the minors are in the custody of the mother and that in case of difference as to the time and place of visiting the minors the final decision has been left with the Family Court before whom Family Case No. 61 of 2007 is pending.

In the background of the discussion made above and in the stated matter we do not find any reason to interfere with the judgment of the High Court Division.

Accordingly, the petition is dismissed.

6.4 Md. Abu Safa v. Abdul Momen Chowdhury and others

Present:

Mr. Justice Md. Ruhul Amin, Chief Justice
Mr. Justice Mohammad Fazlul Karim
Mr. Justice M. M. Ruhul Amin,
Mr. Justice Md. Tafazzul Islam,
Mr. Justice Md. Joynul Abedin,
Mr. Justice Md. Hassan Ameen,

CIVIL APPEAL NO. 57 OF 2006

*(From the Judgment and order dated 24th May, 2005 passed by
the High Court Division in writ Petition o. 2561 of 2005)*

Md. Abu Safa Versus Abdul Momen Chowdhury and others

Date of hearing

The 11th December, 2007

ORDER

On 28th November, 2007 Mr. Md. Nawab Ali, Advocate-on-record for the appellant was directed to ensure appearance of the appellant Mr. Md. Abu Safa, who was not a party in the writ petition, but with the leave of the Court has filed the appeal since he alleged that he was aggrieved by the Judgment and order of the High Court Division dated 24-5-2005 passed in writ Petition No. 2561 of 2005.

From the Respondents' (Respondent Nos. 1-3) side identity of the appellant was seriously disputed stating that the appellant is a fictitious person and somebody else by fabricating papers has filed the appeal i.e. Civil Appeal No.57 of 2006 against the judgment and order dated 24.5.2005 of the High Court Division passed in the writ Petition No. 2561 of 2005.

In that background Mr. Md. Nawab Ali, Advocate-on-record was directed to ensure appearance of Mr. Md. Abu Safa, the appellant before the Court today. In compliance of the Court's Order dated November 28, 2007. Mr. Nawab Ali, learned Advocate-on-record to-day i.e. 11.12.2007 has filed an affidavit, purported to be compliance of the Court's order dated November 28, 2007. We have gone through the statements made in the affidavit so filed by Mr. Md. Nawab Ali, the learned Advocate-on-record and other martial's attached thereto. The statements made in the affidavit and the papers attached thereto have no relevance to the context of this court's order dated 28.11.2007. In view of the nature and kind of statements made in the affidavit and papers attached to the affidavit it can reasonably be considered that same has been done only to avoid compliance of the Court's order directing the learned Advocate-on-record to ensure appearance of the appellant in the court. The learned Advocate-on-record made submissions in the context of the affidavit he filed in the light of the direction of the court made by the order dated 28.11.2005. The learned Advocate-on-record submitted that the appellant being apprehensive of odd situation is avoiding appearance before the court. We asked the learned Advocate-on-record to furnish particulars of the place where his client staying but he avoided. Because of kind and nature of the affidavit filed by the learned Advocate-on-record the same is no way be considered compliance of the order of this court to ensure the appearance of the Appellant Mr. Md. Abu Safa in the Court.

Upon hearing the learned Advocate-on-record Mr. Md. Nawab Ali and on perusal of the Affidavit filed by him as the pretext of compliance of the Court's order dated 28.11.2007, it is difficult to consider and to accept, as the learned Advocate submitted, that the appeal in question has been filed by a person by name Md. Abu Safa.

In the background of the aforestated matter we are of the view that the appeal being Civil Appeal No.57 of 2006 was filed by non-genuine person upon using imaginary name of a person and that upon using fabricated papers. Such manner of filing a case is highly depreciable one and as such strongly dis-approved by the Court. The Advocate-on-record is cautioned as well as warned from repeating such kind of thing in the future.

Since the appeal has been field by fabricating papers which highly condemnable in law and consequently there being no appeal in the eye of law we are not entering into the merit of the appeal.

The appeal is dismissed since the appeal was filed by using fabricated and non-genuine papers and for non-compliance of the court's order dated November 28, 2007.

7

Visit Program of the Hon'ble Chief Justice Abroad

A. Report on 2nd APJRF Roundtable Meeting Held in Kuala Lumpur from 27-30 May, 2007

Hon'ble Chief Justice of Bangladesh Mr. Justice Md. Ruhul Amin accompanied by the Registrar of the Supreme Court of Bangladesh Mr. Ikteder Ahmed participated in the Asia Pacific Judicial Reform Forum (APJRF) roundtable meeting held in Kuala Lumpur, Malaysia from 27-30th May, 07. The other participating countries were Afghanistan, Australia, Brunei Darussalam, Cambodia, People's Republic of China, India, Indonesia, Kazakstan, Laos, Malaysia, Nepal, Pakistan, Philippines, Singapore, Solomon Islands, Thailand, Timor, Tonga, Vanuatu and Vietnam.

In the roundtable meeting, most of the countries were represented by the respective Chief Justices while some others by the representatives of the Chief Justices. Besides, three development agencies namely, World Bank, UNDP and IALDF and the Faculty of Law of UITM attended the roundtable as observer.

During the roundtable, constitution of APJRF was finalized and progress of development of judicial reform handbook was also discussed. It was the 2nd roundtable meeting of the APJRF following the 1st roundtable meeting of the APJRF in Sydney in March 2006.

The APJRF is a network of superior courts and justice sector agencies in the Asia Pacific Region who have joined together to contribute to and cooperate in judicial reform in the region. It resulted from the Manila Declaration on Judicial Reforms in 2005, which called for a forum to learn from judicial reform successes and failures.

At present, The APJRF is engaged in developing practical tools to help member countries implement judicial reform programs. The initial focus is on developing a judicial reform handbook for the Asia and Pacific. This handbook will define good practice in a number of areas on judicial reforms including (a) improving access to justice by marginalised groups, (b) expediting cases by developing a case backlog reduction model, (c) facilitating judicial education and information sharing and (d) identifying and defining judicial independence.

It is believed and thought that the work of APJRF will increase opportunities for judicial reform in the Asia Pacific Region and develop collective solutions to meet challenges facing the judiciary by (a) sharing knowledge on judicial reform; (b) creating a common vision of judicial development (c) supporting partnership with organizations and institutions, supporting human rights based justice reforms, (d) developing practical tools for successful judicial reform and supporting country level implementation.

The other subjects discussed in the APJRF 2nd roundtable meeting were Enhancing Efficiency in the Malaysian Courts, Procedural Reforms in China, Caseload Audit and Backlog Reduction, Case Management Reforms, Self Administration, Access to Justice Initiative, Court and Tribunal Administrative Reforms, Judicial Education, etc.

During the question and answer sessions of the roundtable, the experiences and challenges faced by each of the countries were discussed to help finding out suitable solutions to various issues. In the roundtable, Bangladesh raised, amongst other things, the issue of backlog of cases and all the participating countries including Bangladesh were impressed to know how Indonesia had addressed the similar problem. The Indonesian delegate informed that they have been able to reduce backlog to a considerable stage merely by adopting certain technique and methodology.

The roundtable ended with the hope and aspiration that it would pave the way for greater understanding and mutual cooperation amongst countries of the region towards attaining goal and objectives of the APJRF. Bangladesh participated in the APJRF roundtable with the fund provided by the UNDP and this cooperation has been duly acknowledged.

B. Report on 12th Chief Justices Conference of Asia and Pacific and the 20th Lawasia Conference Held in Hong Kong from 4-8 June, 2007

12th Conference of Chief Justices of Asia and the Pacific and the 20th LAWASIA conference were held in Hong Kong Specialized Administrative Region of the People's Republic of China from 4-8 June, 2007. Hon'ble Chief Justice of Bangladesh, Mr. Justice Md. Ruhul Amin along with the Registrar of the Supreme Court of Bangladesh Mr. Ikhtedder Ahmed attended the aforesaid conferences. The other countries which participated in the Conference of Chief Justices were Australia, Brunei Darussalam, Canada, French Polynesia, Guam, Hong Kong, SAR, PRC, India, Indonesia, Japan, Kiribati, Korea, Macau, SAR, PRC, Malaysia, Marshall Islands, Mongolia, Nepal, New Caledonia, New Zealand, Northern Mariana Islands, Palau, People's Republic of China, Philippines, Russia, Samoa, Singapore, Thailand, Tonga and Tuvalu. In the LAWASIA conference in addition to aforesaid countries there were participants from Israel, Pakistan, Papua New Guinea, Poland, Germany, Sri Lanka, United Kingdom, USA and Vietnam as well.

The topics discussed in the conference of Chief Justices of Asia and Pacific included (a) Developments in judiciaries in the region (b) How to provide necessary training for Chief Court Administrators (c) The selection of judges and their continuing judicial development, (d) Overcoming backlogs (e) Continuing issues in judicial ethics (f) Technology developments in Hong Kong courts (g) Comparative perspective on the office of Chief Justice in the area of oversight authority (h) Asian Law Information Institute and (i) The role and relevance of informal legal mechanisms in post-disaster and post-conflict situations. In total 29 countries participated in 12th conference of Chief Justices of Asia and the Pacific and almost all the countries were represented by the Chief Justice and the Registrar.

The LAWASIA provided its expertise and networking in organizing the Chief Justices Conference of the Asia and the Pacific. In fact the host country i.e. Hong Kong, SAR, PRC provided all the logistics, administrative support and local hospitality to the conference.

All the participants who attended the Chief Justices conference spent one day i.e. 6th June in the LAWASIA conference and in the said day the topics which were discussed included amongst other:

(a) The role of a judge in a criminal trial (b) Role of the courts in nurturing an ethical and viable legal profession (c) Judicial control of administrative action and (d) effective way of resolving dispute by arbitration.

In the conference of the Chief Justices of Asia and the Pacific two main issues namely, the backlog of cases and training of the Chief Court Administrators received highest attention. All the participating countries in an unequivocal voice opined that the Chief Court Administrators should be given necessary training for coping with the challenges faced by the judiciary at present. The matter of backlog was considered to be of great concern for the countries of Indian sub-continent and the Chief Justices of this sub-continent felt that they must find out an effective mechanism for overcoming the problem of backlogs. They were of the view that mere increase in number of judges in all tiers could not resolve the problem. They agreed that innovative methodology and technique together with efficiency and ability of judges concerned might be an effective tool in this regard.

The conference ended with the declaration that the Chief Justices of the region as well as their chief court administrators would work together so that cases in the respective jurisdiction could be disposed of within shortest possible time having due regard to the ethics and morality. It was also felt that they have to play instrumental role in implementing different reforms and for that there is necessity for continuity in attending the conference. Bangladesh attended this conference with the fund provided by UNDP, which is providing continued support to the cause of judicial reforms in Bangladesh.

C. Report on 15th Commonwealth Law Conference, 2007 and the Patron Chief Justices' Conference of Commonwealth Judicial Education Institute Held in Nairobi, Kenya from 9-13 September, 2007

Hon'ble Chief Justice of Bangladesh Mr. Justice Md. Ruhul Amin accompanied by the Registrar of the Supreme Court of Bangladesh Mr. Ikhtedder Ahmed participated in the Patron Chief Justices' Meeting and the 15th Commonwealth Law Conference. The Patron Chief Justices' Meeting was held on 9 September and was attended by 19 Chief Justices including the Lord Chief Justice of England and Wales. The 15th Commonwealth Law Conference was attended by 53 member States of the Commonwealth and 4 specially invited countries.

The topics discussed in the Patron Chief Justices' Meeting included (a) Consultation on developing an intensive study program for delay reduction, (b) Consultation with the World Bank to develop judicial training programs on the judicial impact of HIV/AIDS and (c) CJEI networking and judicial education information exchange.

The 15th Commonwealth Law Conference was opened by the President of the Kenya Mr. Kibaki in the Kenyatta International Conference Centre. The theme of the 2007 conference was governance, globalization and the Commonwealth. The topics discussed in the 15th Commonwealth Law Conference included: (i) Constitutionalism, Human Rights, Governance and the Rule of Law, (ii) Corporate and Commercial Law, (iii) The Legal Profession, (iv) Law in a Globalized Economy and (v) Contemporary Legal Topics. Under these five thematic areas, several related issues were discussed in the conference.

The closing ceremony of the conference was addressed amongst others by Noble Laureate Wangery Mathai. Her deliberation was highly applauded by all the members attending the 15th Commonwealth Law Conference.

The conference ended with the hope and aspiration that the issues discussed in the conference would pave the way for greater understanding and mutual cooperation towards attaining goal and objectives of the Commonwealth Law Conference.

Bangladesh participated in the Commonwealth Law Conference with the fund provided by the DFID and their cooperation has been duly acknowledged.



Annex Building of the Supreme Court of Bangladesh

8

Monitoring, Supervision and Control over the Subordinate Judiciary by the Supreme Court

As part of its supervisory power over the subordinate judiciary, the Hon'ble Chief Justice and other judges of the Supreme Court made several visits to different parts of the country. A brief description of those visits are presented below.

A. Inspection by the Hon'ble Chief Justice

The Hon'ble Chief Justice of Bangladesh Mr. Md. Ruhul Amin accompanied by the Registrar of the Supreme Court Mr. Ikhtedder Ahmed paid a visit to Comilla to observe how the Judicial Magistracy is functioning after coming into effect of the separation of Judiciary in the 1st November 2007.

Comilla was chosen for inspection as the first district amongst 64 districts, since it was convenient for inspection keeping in mind the busy schedule of the Hon'ble Chief Justice and also because it was a project district. During inspection, The Hon'ble Chief Justice observed performance of the newly appointed judicial magistrates sitting in various *ejlas* of different courts.

After a brief meeting with the heads of police, administration and the judiciary, he took seat in the *ejlash* of the District and Sessions Judge Comilla Mr. Md. Showkat Hossain at 11:00 a.m. During the presence of the Hon'ble Chief Justice in the *ejlash*, hearing of various Criminal Miscellaneous Cases and bail petition took place. The Hon'ble Chief Justice observed the hearing of aforesaid cases for about 15 minutes and found the Sessions Judge's manner of disposing of urgent criminal petitions in accordance with highest norms and standards.

Thereafter, The Hon'ble Chief Justice observed the judicial function of the Chief Judicial Magistrate of Comilla for an hour from 11:15 a.m to 12:15 p.m. The C.J.M of Comilla is Mrs. Fatema Nojib who's substantive posting is Additional District and Sessions Judge. While sitting in her *ejlash*, the Hon'ble Chief Justice had the occasion to see for himself the ability of the newly appointed Chief Judicial Magistrate in giving decisions on different judicial matters.

The Chief judicial Magistrate was found to be very prompt and active in giving decisions in different Judicial matters and her handling and management of the *ejlash* was found to be in accordance with set rules and procedures.

Then, the Hon'ble Chief Justice took seat in the *ejlash* of Judicial Magistrate Mr. Mominul Hasan who is the Magistrate of the 2nd class. The Hon'ble Chief Justice was in the *ejlash* of the Judicial Magistrate for about 15 minutes and during his presence the Judicial Magistrate passed orders in relation to a few G.R cases. The approach of this young and energetic officer in dealing with the cases during the presence of Hon'ble Chief Justice is found to be satisfactory.

In the last part of observing performance of the Judicial Magistrates, the Hon'ble Chief Justice took seat in the eijlash of Additional Chief Judicial Magistrate Mr. Moidul Islam at 12:45 p.m and he was in his eijlash for about half an hour. During the presence of the Hon'ble Chief Justice at the eijlash of Additional Chief Judicial Magistrate, the hearing of a speedy tribunal case and a G.R case was going on. His manner and conduct in the management of the eijlash and also giving decisions to the judicial matters were consistent with the existing procedures.

After observing court proceedings of aforesaid courts, the Hon'ble Chief Justice planted a olive sapling in the court premises and then he paid a quick visit to the Comilla Bar Association building wherein leaders of local Bar brought to his notice the paucity of the accommodation of the learned advocates in the existing Bar Association building in view of shifting of the Court of Magistrates from the premises of the District Magistrate to the premises of the District Judgeship. They also put emphasis on the necessity of erection of additional multistoried structure and for that also sought support of the Hon'ble Chief Justice.

The members of the executive committee of the Comilla Bar Association along with leading learned advocates of Comilla bar in total numbering about 30 met the Hon'ble Chief Justice in the conference room of the Circuit House in the afternoon. After the introductory speech of the Hon'ble Chief Justice, the learned advocates had open discussion with the Hon'ble Chief Justice. The learned Advocates of Comilla Bar assured him of their firm commitment and all possible assistance for attaining the objectives of the separation of judiciary. All of them in an unequivocal voice expressed their solidarity for upholding the image, prestige and dignity of the Judiciary. They have opined that Separation of Judiciary is a result of their movement and it is their baby and it is also their responsibility to nourish it.

During the discussion, the issue of inadequate number of officers in the Magistracy came up and the Hon'ble Chief Justice made an assurance that there would not be paucity of the officers after the completion of the recruitment of 391 Assistant Judges soon.

The leaders of Comilla Bar Association also brought to the notice of the Hon'ble Chief Justice the poor performance of 3 Judges (the Judge of the Nari-o-shisu Nirjatan Daman Tribunal, the Judge of Jana Nirapatta Bignokari Aparadh Daman Tribunal and the Special Judge of Comilla) in the rank of District and Sessions Judge in comparison to the performance of the District and Sessions Judge himself.

At the last stage, the Judges of the Comilla Judgeship met with the Hon'ble Chief Justice where the Hon'ble Chief Justice reminded the Judges of their responsibility in the dispensation of Justice as well as observing all the legal formalities. He also reminded them to cautiously acknowledge the fact that the Judiciary is the last resort of the people and the confidence of the people towards Judiciary is the strength of Judges and in addition to that the honesty of Judges is their security. The Hon'ble Chief Justice hoped and believed that none of the Judges would fail in fulfillment of their obligations towards achieving aims and objectives of the Separation of the Judiciary for more effective functioning and betterment of the Judiciary.

B. Inspection by other Judges of the High Court Division of the Supreme Court

According to constitutional provisions of Article 109 of the Constitution the High Court Division has superintendence and control over all courts and tribunal sub-ordinate to it. To ensure

Inspection during annual vacation of the Supreme Court from June 8, 2007 to July 19, 2007

Sl. no.	Name of Judges	Duration of inspection	District
01.	Mr. Justice Md. Muzammel Hossain	30.06.2007 to 06.07.2007	Kishorgonj (All Courts including District Magistrate Courts)
02.	Mr. Justice Md. Arayesuddin	02.07.2007 to 11.07.2007	Jessore & Satkhira. (All Courts including District Magistrate Courts)
03.	Mr. Justice Syed Mahmud Hossain	03.07.2007 to 05.07.2007	Chandpur. (All Courts including District Magistrate Courts)
04	Mr. Justice Nozrul Islam Chowdhury	22.06.2007 to 30.06.2007	Barisal & Barguna. (All Courts including District Magistrate Courts)
05	Mr. Justice Mirza Hussain Haider	08.06.2007 to 14.06.2007	Jamalpur. (All Courts including District Magistrate Courts)
06	Mr. Justice Khondker Musa Khaled	12.06.2007 to 25.06.2007	Rangpur & Thakurgaon. (All Courts including District Magistrate Courts)
07	Mr. Justice Abdul Awal	01.07.2007 to 06.07.2007	Cox's Bazar. (All Courts including District Magistrate Courts)
08	Mr. Justice Afzal Hossain Ahmed	15.06.2007 to 23.06.2007	Chittagong. (All Courts including District Magistrate Courts)
09	Mr. Justice A.T.M. Fazle Kabir	17.06.2007 to 28.06.2007	Naogoan & Chapainowabgonj. (All Courts including District Magistrate Courts)
10	Mr. Justice Shahidul Islam	30.06.2007 to 06.07.2007	Sherpur. (All Courts including District Magistrate Courts)
11	Mr. Justice Quamrul Islam Siddiqui	23.06.2007 to 29.06.2007	Jhenida & Magura. (All Courts including District Magistrate Courts)
12	Mr. Justice Md. Emdadul Huq	23.06.2007 to 10.07.2007	Gopalganj & Kustia. (All Courts including District Magistrate Courts)

Inspection in different Chief Judicial Magistrate Courts and Chief Metropolitan Magistrate Courts in view of separation of the judiciary from the executive with effect from November 01, 2007

Sl. no.	Name of Judges	Duration of inspection	District
01.	Mr. Justice Md. Abdul Matin	10.11.2007 to 14.11.2007	Sunamganj Moulavi Bazar, Habigonj, Jakiganj
02.	Mr. Justice Shah Abu Nayeem Mominur Rahman	15.11.2007	Dhaka
03.	Mr. Justice A.B.M. Khairul Haque	16.12.2007 to 19.12.2007	Panchagar, Thakurgaon, Dinajpur
04	Mr. Justice Md. Abdur Rashid	17.12.2007 to 19.12.07	Narsingdi, Narayanganj, Manikganj
05	Mr. Justice Sikder Maqbul Huq	14.11.2007 to 20.11.2007	Jhalakathi, Borguna, Bhola
06	Mr. Justice Md. Abdul Wahhab Miah	11.11.2007 to 12.11.2007	Kishoreganj, Netrokona
07	Mr. Justice Syed Mahmud Hossain	17.11.2007 to 19.11.2007	Pabna, Sirajganj
08	Mr. Justice Sheikh Rezowan Ali	18.11.2007 to 20.11.2007	Kushtia
09	Mr. Justice Mohammad Anwarul Haque	12.11.2007 to 16.11.2007	Chapainawabganj, Natore, Naogaon
10	Mr. Justice Mirza Hussain Haider	07.11.2007 to 08.11.2007	Jamalpur
11	Mr. Justice Khondker Musa Khaled	14.11.2007 to 17.11.2007	Jessore, Rajbari, Faridpur, Gopalganj
12	Mr. Justice Siddiqur Rahman Miah	12.12.2007 to 15.12.2007	Patuakhali, Pirojpur
13	Mr. Justice Afzal Hossain Ahmed	18.11.2007 to 25.11.2007	Gaibanda, Kurigram, Nilfamari
14	Mr. Justice Quamrul Islam Siddiqui	18.11.2007 to 22.11.2007	Bagerhat, Satkhira
15	Mr. Justice Moyeenul Islam Chowdhury	01.12.2007 to 03.12.2007	Sherpur

accountability and transparency of the Judicial Officers of sub-ordinate judiciary, it is essential that their performance are kept under constant supervision and monitoring. With that view, the Judges of the Supreme Court regularly makes meticulous inspection to observe the subordinate courts throughout the country as per the directives made by the Chief Justice on that behalf. In addition to that the Judges may also go for surprise visit of any court throughout the country as and when it is seems necessary. A list of the inspection program of the Judges of the Supreme Court conducted in the year 2007 is presented.

The inspecting Judges submitted inspection reports after completion of inspection as per schedule stated above. The report contain not only appreciation of the performance of judicial officers, but also faults, irregularities and even misconducts in respect of administrative and judicial function suggesting appropriate actions against concern judicial officers. The office of Registry of Supreme Court has submitted these reports before Chief Justice for suitable directives and orders.

C. Submission of Annual wealth statement of the Judicial officers

With the Separation of Judiciary from the Executive from November 01, 2007, powers, functions and responsibility of the Judicial Officers have increased manifold. In the perspective, it has now become more imperative to ensure transparency, integrity and objectivity of the Judicial Officers and to uphold the image of the Judiciary. With that end in view, there is no alternative but to keep the performance and conduct of the subordinate judiciary under constant supervision and monitoring. As a part of monitoring mechanism, assets and wealth statements of the Judicial Officers are required to be collected regularly. Although there is provision in the CRO for submission of assets and wealth statements by the Judicial Officers every year, it has not been in practice for years. Relevant provisions of Civil Rules and Orders (CRO) Volume-I and Form No. (S) 31 Table X (Civil) Volume-II are reproduced below:

Rule 807 of CRO, Vol-I

District Judges shall submit to the Supreme Court (High Court Division), along with the annual returns and statements, a report for the year to which these refer upon the administration of civil justice. Tabular statements in Forms Nos. (S) 22 to (S) 31, Volume II, shall accompany the report, with opposite remarks as to any increase or decrease of business, or the like, shown in each. These tables shall include the figures for all the courts of small causes and the regular civil courts in each district, separate totals being given for each of these classes of courts. District Judges should be careful to avoid treating their annual reports as matters of routine, and are expected to see that the entries in the tables included in them, and those in the corresponding annual statements, agree, as they must do, exactly. The failure to explain discrepancies between figures given in two successive reports, which, in the absence of special reason, ought to be identical, is also a matter which leads to much unnecessary correspondence, and should be avoided.

FORM No. (S) 31. Table X (Civil)

Showing the Name of the Uncovenanted Judicial Officers employed in the district of _____ on the last day of the year 19... , and the immovable Property held acquired, or disposed of by them, or held by and managed by their Wives, or other Members of their Families living with, and in any way dependent on them.

Name and official designation of office	Village, thana and district where property is situated	Nature of property (if house, the use to which they are put. if lands whether used for agriculture or garden or any other purpose) and extent of interest held	Whether held in his own name, or in the name of another, or held by and managed by wife, or other member of family living with, and in any way dependent on him	How acquired and from whom acquired or in whose favour relinquished	Year., month and date of deed	Price paid or obtained for the property	If held under superior landlord, his name and place of residence with district	Remark
1	2	3	4	5	6	7	8	9

Recently Supreme Court has decided to activate the provision of CRO in respect of assets and wealth statements of the Judicial Officers with a view to collecting and preserving assets and wealth statements of Judicial Officers in the Supreme Court for reference as and when necessary. Accordingly all the Judicial Officers are directed to submit their assets and wealth statements by the end of February 2008. So far, out of the 927 judicial officers, 903 have submitted their statements while statements of the rest of the officers are in the process of submission.

9

Statistics on the Institution and Disposal of Civil Cases in the Appellate Division of the Supreme Court

9.1 Statement showing institution & disposal of Cases during the year of 2007

9.1.1. Petitions

INSTITUTION			DISPOSAL				
Cases	Pending from last year	Instituted during 2007	Total	Leave granted	Dismissed	Total	Pending for disposal
Civil	4376	1948	6324	222	1933	2155	4169
Criminal	936	581	1517	31	534	565	952
Civil Review	140	174	314	4	192	196	118
Crl. Review	17	18	35	4	17	21	14
Jail Petition	27	22	49	4	9	13	36
Total	5496	2743	8239	265	2685	2950	5289

9.1.2. Misc Petitions

Cases	Pending from last year	Instituted during 2007	Total	Disposed of	Pending for disposal
Civil Misc. Petition	1508	757	2265	475	1790
Crl. Misc. Petition	364	282	646	143	503
Total	1872	1039	2911	618	2293

9.1.3. Appeals

Cases	Pending from last year	Registered during the year	Total	Disposed of	Pending for disposal
Civil	1574	234	1808	626	1182
Criminal	177	74	251	26	225
Jail	5	3	8	-	8
Total	1756	311	2067	652	1415

9.1.4. Consolidated Statement

Nature of cases	Pending from last year	Instituted during 2007	Total	Disposed of	Pending for disposal
Petition	5496	2743	8239	2950	5289
Misc. Petition	1872	1039	2911	618	2293
Appeal	1756	311	2067	652	1415
G/T	9124	4093	13217	4220	8997

9.2. Statement showing institution & disposal of Cases during the year of 2006

9.2.1. Petitions

INSTITUTION			DISPOSAL				
Cases	Pending from last year	Instituted during 2006	Total	Leave granted	Dismissed	Total	Pending for disposal
Civil	3470	1744	5214	152	686	838	4376
Criminal	477	581	1058	24	98	122	936
Civil Review	144	92	236	4	92	96	140
Crl. Review	18	5	23	1	5	6	17
Jail Petition	22	13	35	2	6	8	27
Total	4131	2435	6566	183	887	1070	5496

9.2.2. Misc Petitions

Cases	Pending from last year	Registered during the year	Total	Disposed of	Pending for disposal
Civil Misc. Petition	665	1016	1681	173	1508
Crl. Misc. Petition	195	183	378	14	364
Total	860	1199	2059	187	1872

9.2.3. Appeals

Cases	Pending from last year	Registered during the year	Total	Disposed of	Pending for disposal
Civil	1597	184	1781	207	1574
Criminal	179	34	213	36	177
Jail	3	3	6	1	5
Total	1779	221	2000	244	1756

9.2.4. Consolidated Statement

Nature of cases	Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal
Petition	4131	2435	6566	1070	5496
Misc. Petition	860	1199	2059	187	1872
Appeal	1779	221	2000	244	1756
G/T	6770	3855	10625	1501	9124

9.3. Statement showing institution & disposal of Cases during the year of 2005

9.3.1. Petitions

INSTITUTION			DISPOSAL				
Cases	Pending from last year	Instituted during 2006	Total	Leave granted	Dismissed	Total	Pending for disposal
Civil	2914	1775	4689	202	1017	1219	3470
Criminal	324	419	743	41	225	266	477
Civil Review	153	132	285	2	139	141	144
CrI. Review	22	10	32	-	14	14	18
Jail Petition	24	9	33	3	8	11	22
Total	3437	2345	5782	248	1403	1651	4131

9.3.2. Misc Petitions

Cases	Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal
Civil Misc. Petition	487	583	1070	405	665
CrI. Misc. Petition	100	193	293	98	195
Total	587	776	1363	503	860

9.3.3. Appeals

Cases	Pending from last year	Registered during 2005	Total	Disposed of	Pending for disposal
Civil	1535	253	1788	191	1597
Criminal	178	28	206	27	179
Jail	-	3	3	-	3
Total	1713	284	1997	218	1779

9.3.4. Consolidated Statement

Nature of cases	Pending from last year	Instituted during 2005	Total	Disposed of	Pending for disposal
Petition	3437	2345	5782	1651	4131
Misc. Petition	587	776	1363	503	860
Appeal	1713	284	1997	218	1779
G/T	5737	3405	9142	2372	6770

9.4. Statement showing institution & disposal of Cases during the year of 2004

9.4.1. Petitions

INSTITUTION			DISPOSAL				
Cases	Pending from last year	Instituted during 2004	Total	Leave granted	Dismissed	Total	Pending for disposal
Civil	2653	1675	4328	180	1234	1414	2914
Criminal	149	334	483	23	136	159	324
Civil Review	187	109	296	3	140	143	153
Crl. Review	27	15	42	-	20	20	22
Jail Petition	8	21	29	1	4	5	24
Total	3024	2154	5178	207	1534	1741	3437

9.4.2. Misc Petitions

Cases	Pending from last year	Registered during 2004	Total	Disposed of	Pending for disposal
Civil Misc. Petition	598	501	1099	612	487
Crl. Misc. Petition	116	99	215	115	100
Total	714	600	1314	727	587

9.4.3. Appeals

Nature of cases	Pending from last year	Instituted during 2004	Total	Disposed of	Pending for disposal
Civil	1473	235	1708	173	1535
Criminal	195	31	226	48	178
Jail	-	1	1	1	-
Total	1668	267	1935	222	1713

9.4.4. Consolidated Statement

Nature of cases	Pending from last year	Instituted during 2004	Total	Disposed of	Pending for disposal	Remarks
Petition	3024	2154	5178	1741	3437	Increased by 413
Misc. Petition	714	600	1314	727	587	Decreased by 127
Appeal	1668	267	1935	222	1713	Increased by 45
G/T	5406	3021	8427	2690	5737	Increased by 331

9.5. Statement showing institution & disposal of Cases during the year of 2003

9.5.1. Petitions

INSTITUTION			DISPOSAL				
Cases	Pending from last year	Instituted during 2003	Total	Leave granted	Dismissed	Total	Pending for disposal
Civil	2467	1685	4152	264	1235	1499	2653
Criminal	122	215	337	44	144	188	149
Civil Review	89	171	260	4	69	73	187
Crl. Review	18	13	31	-	4	4	27
Jail Petition	8	14	22	-	14	14	8
Total	2704	2098	4802	312	1466	1778	3024

9.5.2. Misc Petitions

Cases	Pending from last year	Registered during 2003	Total	Disposed of	Pending for disposal
Civil Misc. Petition	622	543	1165	567	598
Crl. Misc. Petition	77	111	188	72	116
Total	699	654	1353	639	714

9.5.3. Appeals

Cases	Pending from last year	Instituted during 2003	Total	Disposed of	Pending for disposal
Civil	1235	387	1622	149	1473
Criminal	143	73	216	21	195
Jail	-	-	-	-	-
Total	1378	460	1838	170	1668

9.5.4. Consolidated Statement

Nature of cases	Pending from last year	Instituted during 2003	Total	Disposed of	Pending for disposal
Petition	2704	2098	4802	1778	3024
Misc. Petition	699	654	1353	639	714
Appeal	1378	460	1838	170	1668
G/T	4781	3212	7993	2587	5406

9.6. Consolidated Statement

9.6.1. Year-wise consolidated statement of Petitions

Years	Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal
2003	2704	2098	4802	1778	3024
2004	3024	2154	5178	1741	3437
2005	3437	2345	5782	1651	4131
2006	4131	2435	6566	1070	5496
2007	5496	2743	8239	2950	5289

Year-wise consolidated statement of Petitions has been graphically shown as follows:

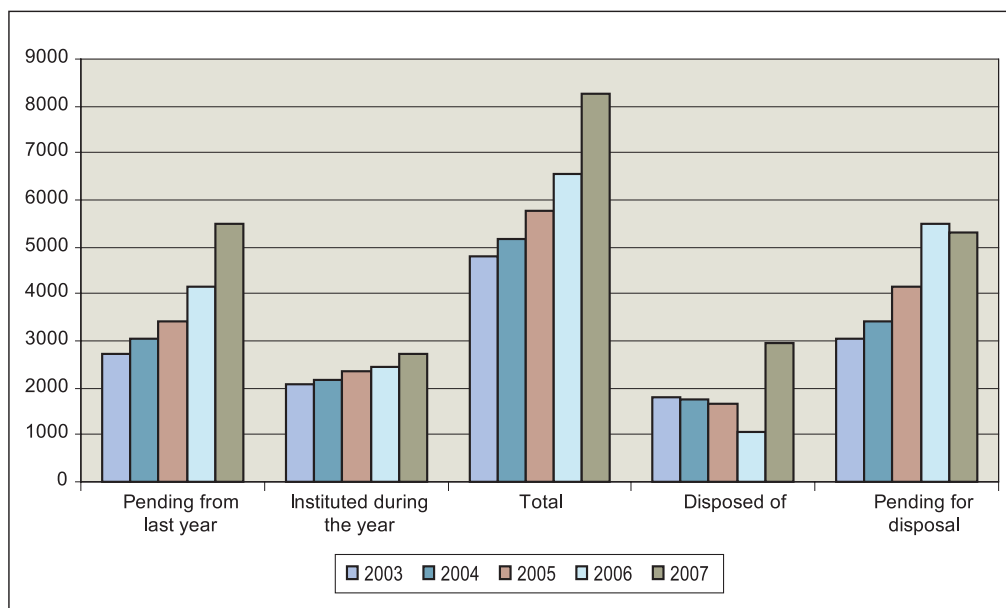


Figure 1: Vertical Bar Chart of Petitions

9.6.2. Year-wise consolidated statement of Misc. Petitions

Years	Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal
2003	699	654	1353	639	714
2004	714	600	1314	727	587
2005	587	776	1363	503	860
2006	860	1199	2059	187	1872
2007	1872	1039	2911	618	2293

Year-wise consolidated statement of Misc. Petitions has been graphically shown as follows:

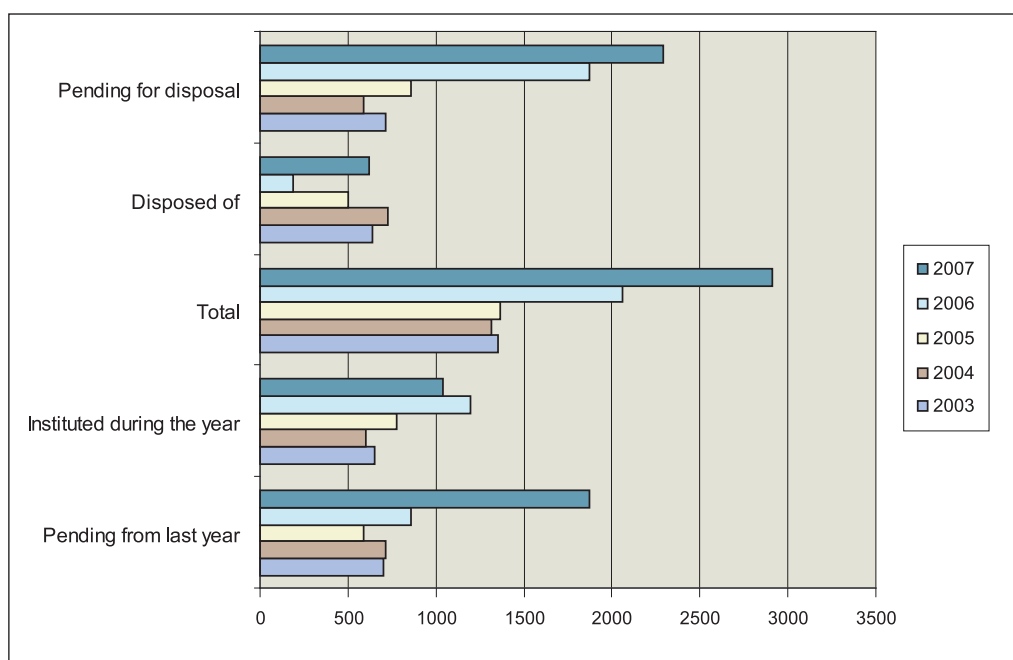


Figure 2: Horizontal Bar Chart of Misc. Petitions.

9.6.3. Year-wise consolidated statement of Appeals

Years	Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal
2003	1378	460	1838	170	1668
2004	1668	267	1935	222	1713
2005	1713	284	1997	218	1779
2006	1779	221	2000	244	1756
2007	1756	311	2067	652	1415

Year-wise consolidated statement of Appeals has been graphically shown as follows:

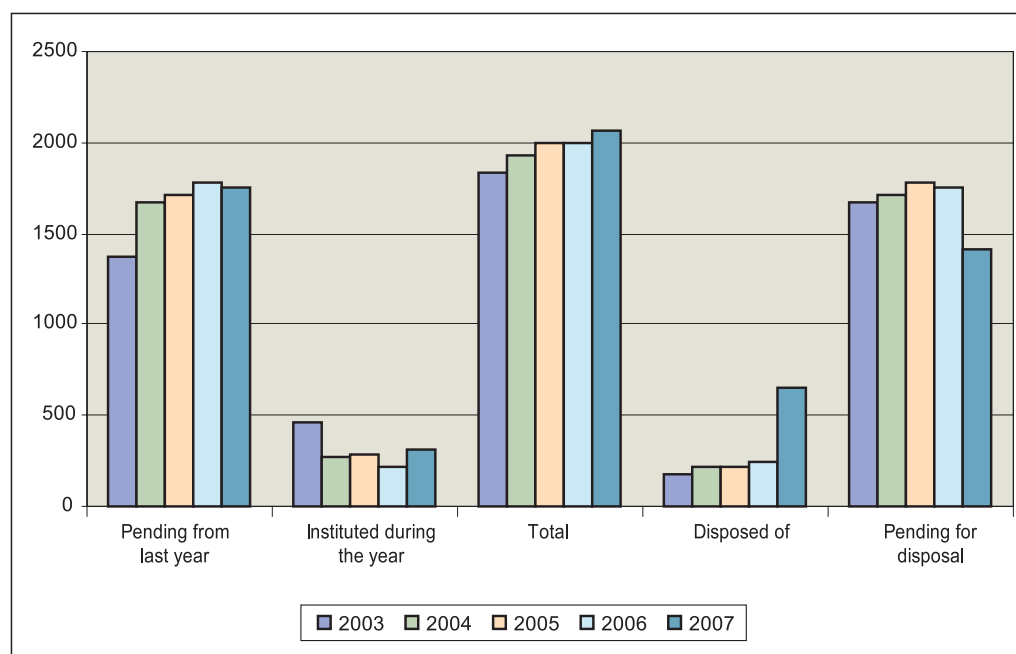


Figure 3: Vertical Bar Chart of Appeals

9.7. Some visible trends

9.7.1. Petitions

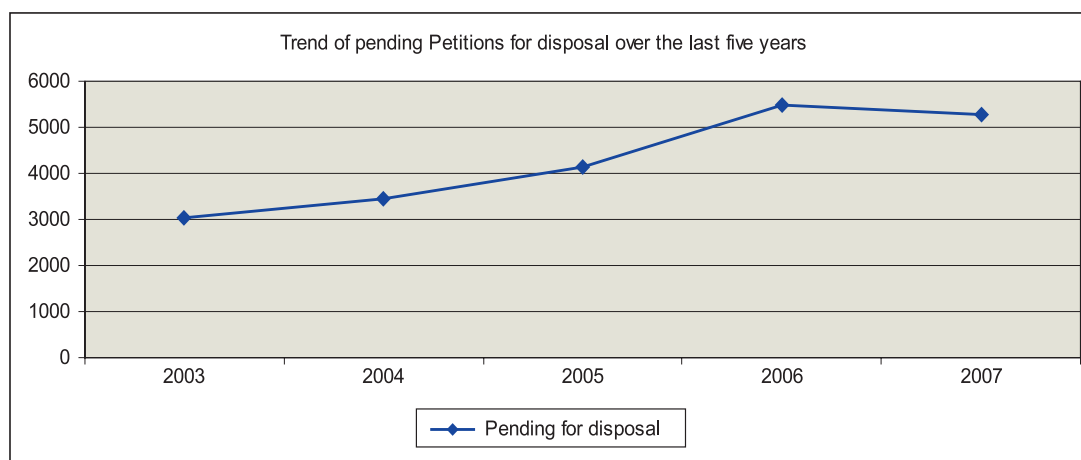


Figure 4: Line graph of pending petition cases.

From the line graph of pending petition cases, it is observed that the trend is rising upward from 2003 to 2006. However, it has slightly decreased in the year 2007.

9.7.2. Misc. Petitions

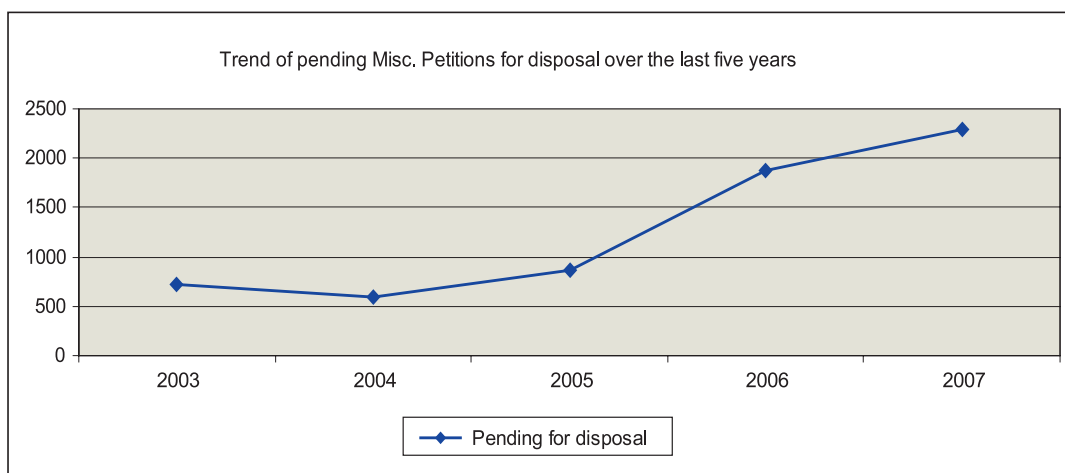


Figure 5: Line graph of pending Misc. Petition cases.

The trend line of pending Misc. Petition cases indicate that it has slightly decreased from 2003 to 2004. However, from 2004 onwards, it has increased sharply.

9.7.3. Appeals

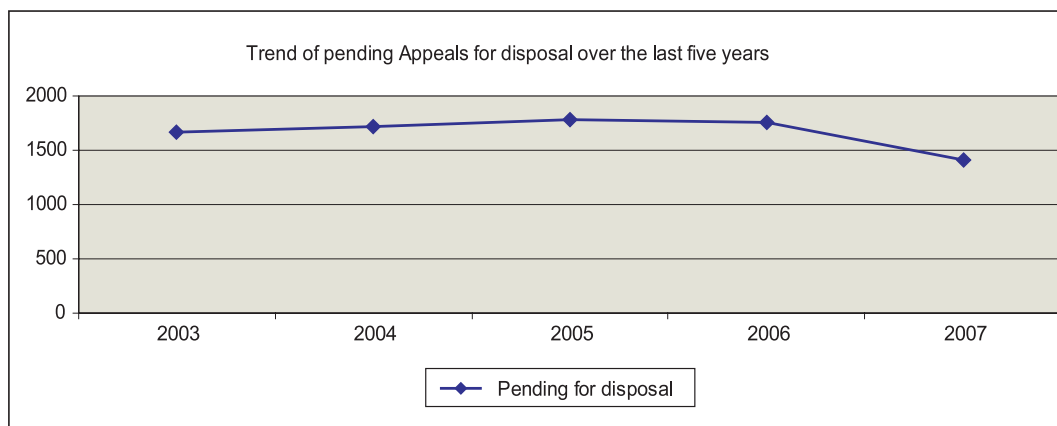


Figure 6: Line graph of pending Appeal cases.

The trend line of pending Appeal cases clearly indicates that it had continued to rise from 2003 to 2005 and it has decreased from 2005 onwards.

9.8. Some Comparative Charts

9.8.1. Petitions

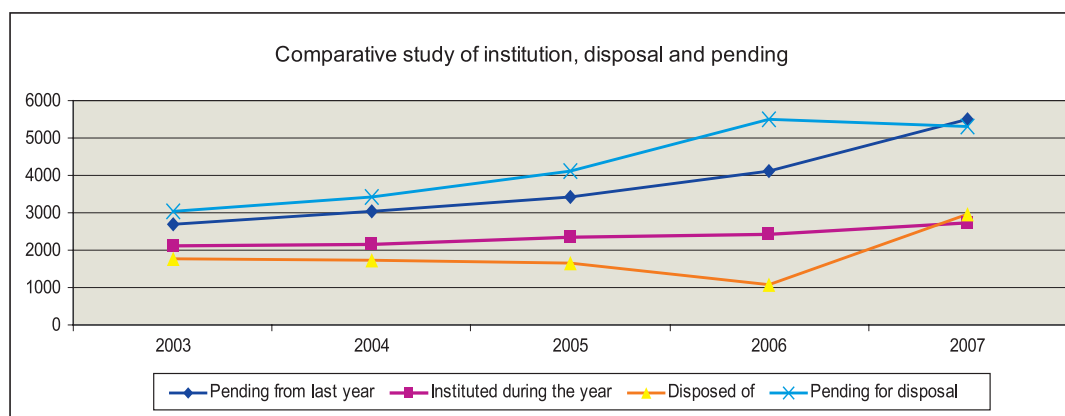


Figure 7: Comparative Chart of institution, disposal and pending Petitions.

From the comparative study of institution, disposal and pending Petitions, it is observed that the instituted cases have increased but the disposed cases have decreased comparatively up to 2006. As a result, the pending cases are increasing gradually.

9.8.2. Misc. Petitions

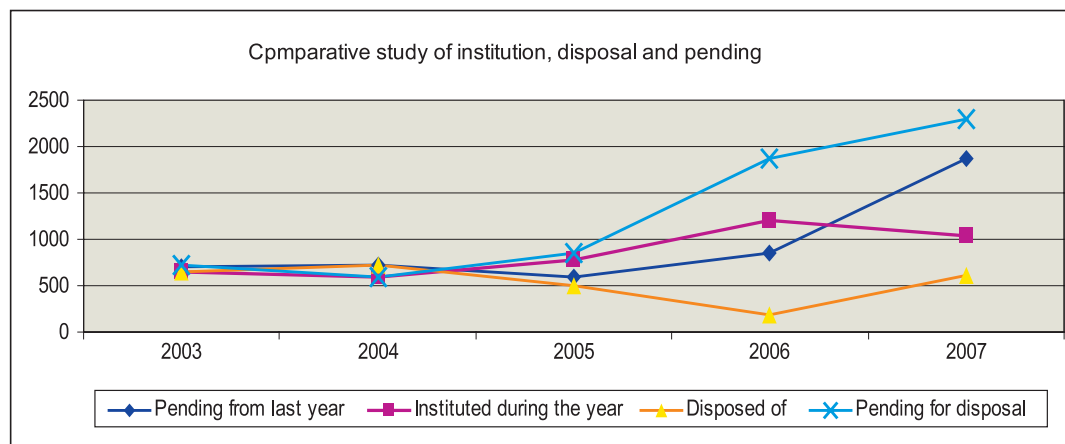


Figure 8: Comparative Chart of institution, disposal and pending Misc. Petitions.

The comparative study of institution, disposal and pending Misc. Petitions reveals that the instituted cases have increased up to 2006 whereas the disposed cases have decreased up to 2006. On the other hand the trend has reversed from 2006 to 2007. In case of pending cases, the trend rises sharply from 2005 to 2007.

9.8.3. Appeals

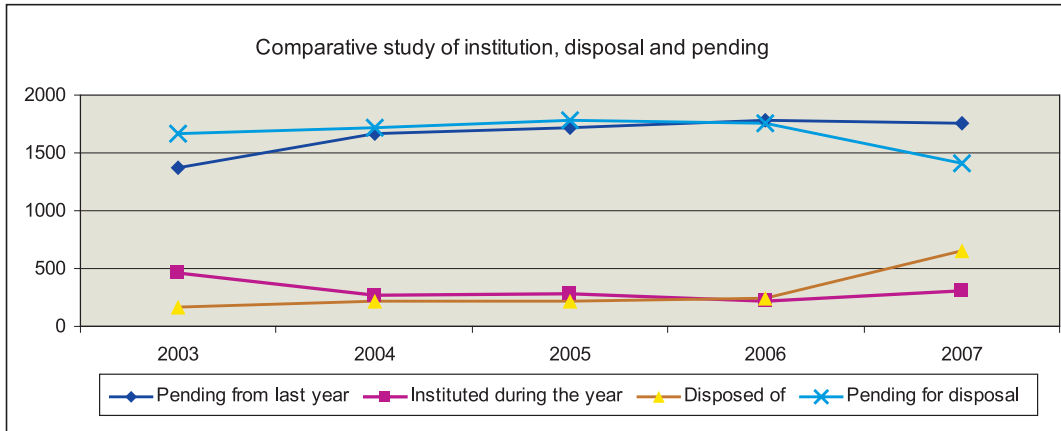


Figure 9: Comparative Chart of institution, disposal and pending Appeals.

From the comparative study of institution, disposal and pending Appeals, it is found that the trend of pending cases has gradually decreased from 2004 to 2007 because the number of disposed cases supersedes the number of instituted cases during the same period

9.9. Ratio of Pending Cases for Disposal at the end of 2007

The "Ratio of Pending Cases for Disposal" shows how long the Court will take, at the current rate of disposal, to dispose the balance cases pending at the end of the year.

The ratio can be calculated from the data provided in the table. The calculation is as follows:

$$\frac{\text{Pending balance for the year} \times 100}{\text{Cases disposed of during the year}}$$

A ratio result of 100 means one year, 50 means six months, and 25 means three months and so on.

Thus, if the number of pending cases were 15000 at the end of the year, while those disposed of were 10000, the calculation will be as follows:

$$\frac{15000 \times 100}{10000} = 150$$

This means, it will take the court one year and six months to dispose of the balance.

9.9.1. Ratio table of Petitions: The ratio when applied to these cases provides the following results:

Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal	Pending cases to Disposal (Ratio)
5496	2743	8239	2950	5289	179.2881

Pending Balance of Petitions: The ratio result of Petitions is 179.2881, which indicates that the court will take approximately additional one year nine months two weeks and two days to dispose of all the pending petitions at the current rate of disposal. This does not include the new cases to be filed during the period; therefore, the word "additional" is added.

9.9.2. Ratio table of Misc. Petitions: The ratio when applied to these cases provides the following results:

Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal	Pending cases to Disposal (Ratio)
1872	1039	2911	618	2293	371.0356

Pending Balance of Misc. Petitions: At the current rate of disposal, the Court would take additional three years eight months two weeks and two days approximately to dispose of all the Misc. Petitions

9.9.3. Ratio table of Appeals: The ratio when applied to these cases provides the following results:

Pending from last year	Instituted during the year	Total	Disposed of	Pending for disposal	Pending cases to Disposal (Ratio)
1756	311	2067	652	1415	217.0245

Pending Balance of Appeals: At the current rate of disposal, the court will take additional two years two months one week and four days approximately to dispose of all the pending appeals.

10

Statistics on the Institution and Disposal of Civil Cases in the High Court Division of the Supreme Court

10.1. Statement on civil, writ, original and criminal cases

Year	Nature of Cases	Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 3, 4 & 5	Total Disposal of Cases	Total Pending at the end of the year [Column (6-7)]
2002	Civil	55594	8715	305	64614	6400	58214
	Writ	20176	8658	124	28958	7292	21666
	Original	1072	824	1	1897	454	1443
	Criminal	59037	26920	80	86037	13192	72845
2003	Civil	58214	7189	258	65661	4656	61005
	Writ	21666	7620	102	29388	5127	24261
	Original	1443	1202	0	2645	372	2273
	Criminal	72845	21288	75	94208	13300	80908
2004	Civil	61005	7547	361	68913	3801	65112
	Writ	24261	7081	111	31453	4276	27177
	Original	2273	820	0	3093	444	2649
	Criminal	80908	18241	56	99205	9332	89873
2005	Civil	65112	6913	340	72365	3723	68642
	Writ	27177	9554	74	36805	4433	32372
	Original	2649	840	0	3486	406	3083
	Criminal	89873	25130	49	115052	10760	104292
2006	Civil	68642	6669	198	75509	3693	71816
	Writ	32372	12571	122	45065	4129	40936
	Original	3083	749	0	3829	307	3525
	Criminal	104292	27736	11	132039	7833	124206
2007	Civil	71816	7424	297	79537	4881	74656
	Writ	40936	11019	147	52102	11122	40980
	Original	3525	889	0	4411	651	3763
	Criminal	124206	27729	50	151985	9035	142950

10.1.1. Statement of Civil (Appeal & Revision) Cases

Year	Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 2, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (5-6)]
2002	55594	8715	305	64614	6400	58214
2003	58214	7189	258	65661	4656	61005
2004	61005	7547	361	68913	3801	65112
2005	65112	6913	340	72365	3723	68642
2006	68642	6669	198	75509	3693	71816
2007	71816	7424	297	79537	4881	74656

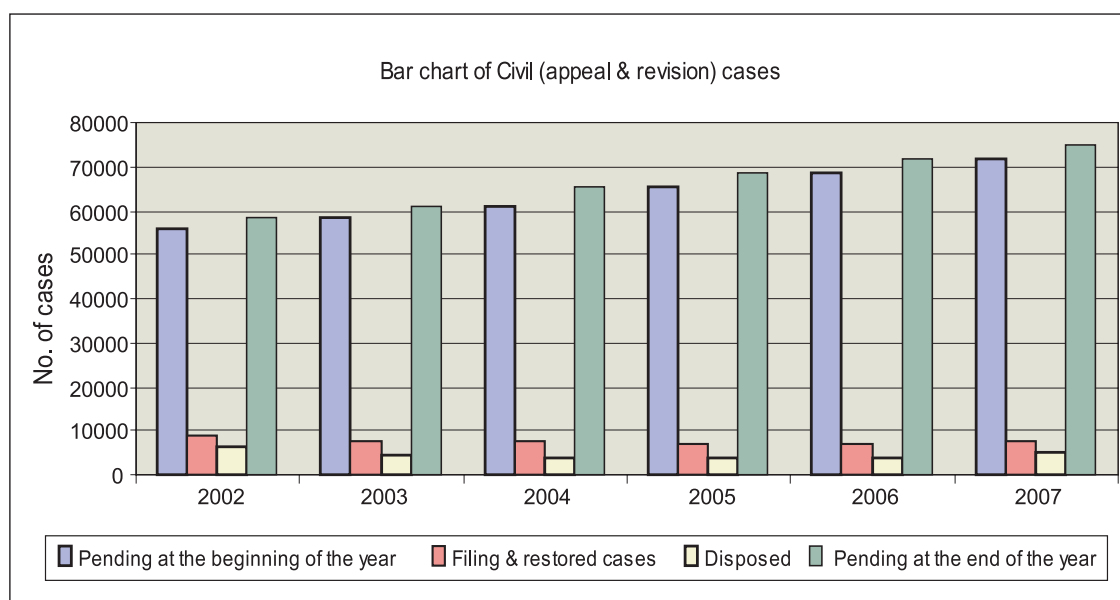


Figure 10: Bar diagram of Civil (appeal & revision) cases

10.1.2. Statement of Writ Cases

Year	Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 2, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (5-6)]
2002	20176	8658	124	28958	7292	21666
2003	21666	7620	102	29388	5127	24261
2004	24261	7081	111	31453	4276	27177
2005	27177	9554	74	36805	4433	32372
2006	32372	12571	122	45065	4129	40936
2007	40936	11019	147	52102	11122	40980

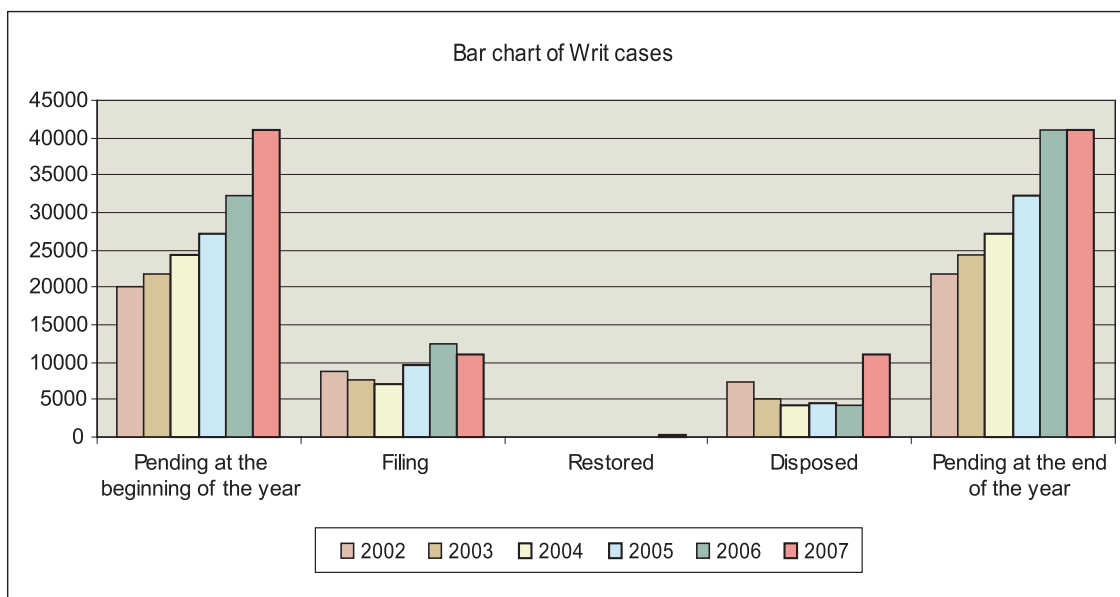


Figure 11: Bar diagram of Writ cases

10.1.3. Statement of Original Cases

Year	Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 2, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (5-6)]
2002	1072	824	1	1897	454	1443
2003	1443	1202	0	2645	372	2273
2004	2273	820	0	3093	444	2649
2005	2649	840	0	3486	406	3083
2006	3083	749	0	3829	307	3525
2007	3525	889	0	4411	651	3763

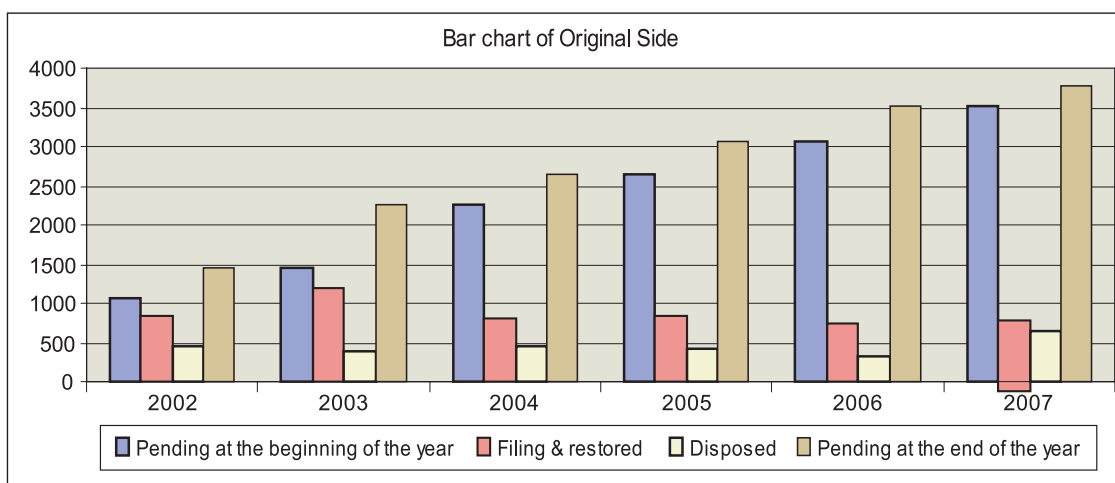


Figure 12: Bar diagram of Original cases

10.1.4. Statement of Criminal Cases

Year	Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 2, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (5-6)]
2002	59037	26920	80	86037	13192	72845
2003	72845	21288	75	94208	13300	80908
2004	80908	18241	56	99205	9332	89873
2005	89873	25130	49	115052	10760	104292
2006	104292	27736	11	132039	7833	124206
2007	124206	27729	50	151985	9035	142950

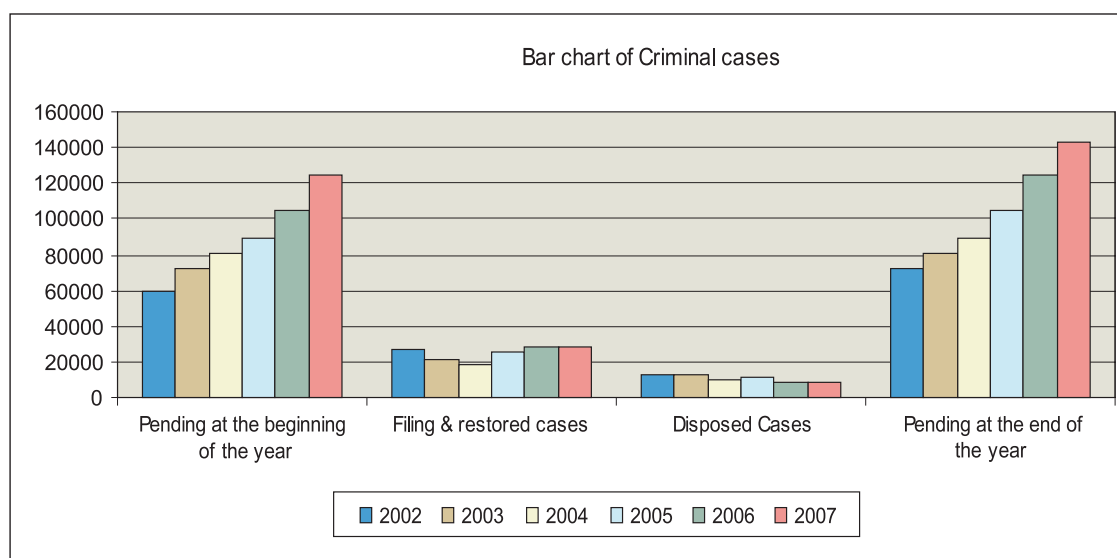


Figure 13: Bar diagram of Criminal cases

10.2. Consolidated Statements, High Court Division

10.2.1 Year - 2007

Year	Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 2, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (5-6)]
Civil	71816	7424	297	79537	4881	74656
Writ	40936	11019	147	52102	11122	40980
Original	3525	889	0	4414	651	3763
Criminal	124206	27729	50	151985	9035	142950
Total	240483	47061	494	288038	25689	26234

10.2.2. Year - 2006

Year	Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 2, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (5-6)]
Civil	68642	6669	198	75509	3693	71816
Writ	32372	12571	122	45065	4129	40936
Original	3083	749	0	3832	307	3525
Criminal	104292	27736	11	132039	7833	124206
Total	208389	47725	331	256445	15962	240483

10.3. Year wise consolidated statement (2006 & 2007)

Year	Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 2, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (5-6)]
2006	208389	47725	331	256445	15962	240483
2007	240483	47061	494	288038	25689	262349

10.4. Year wise consolidated statement (2002-2007)

Year	Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 2, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (5-6)]
2002	135879	45117	510	181506	27338	154168
2003	154168	37299	435	191902	23455	168447
2004	168447	33689	528	202664	17853	184811
2005	184811	42437	463	227711	19322	208389
2006	208389	47725	331	256445	15962	240483
2007	240483	47061	494	288038	25689	262349

10.5. Some Visible Trends

Year-wise pending cases (2002 to 2007)

10.5.1 Civil cases

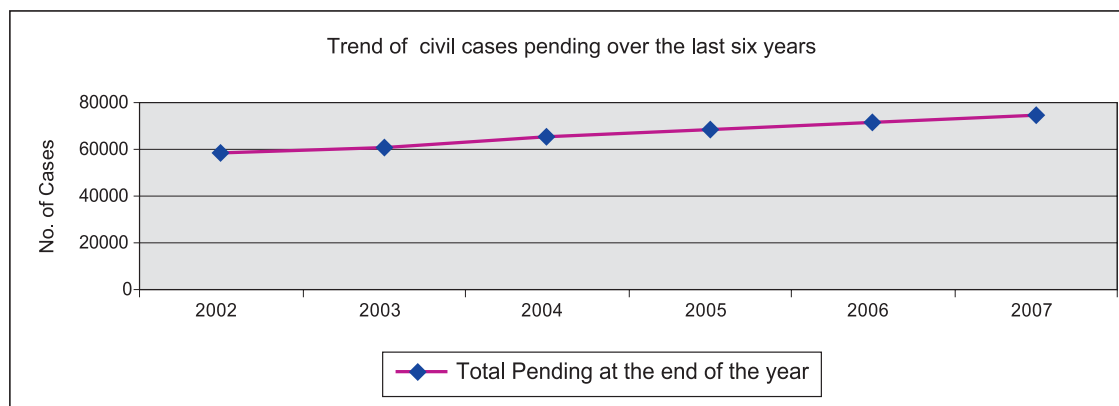


Figure 14: Line diagram of pending civil cases

Comment: Line diagram clearly indicates that the pending cases are increasing year by year

10.5.2. Writ Cases

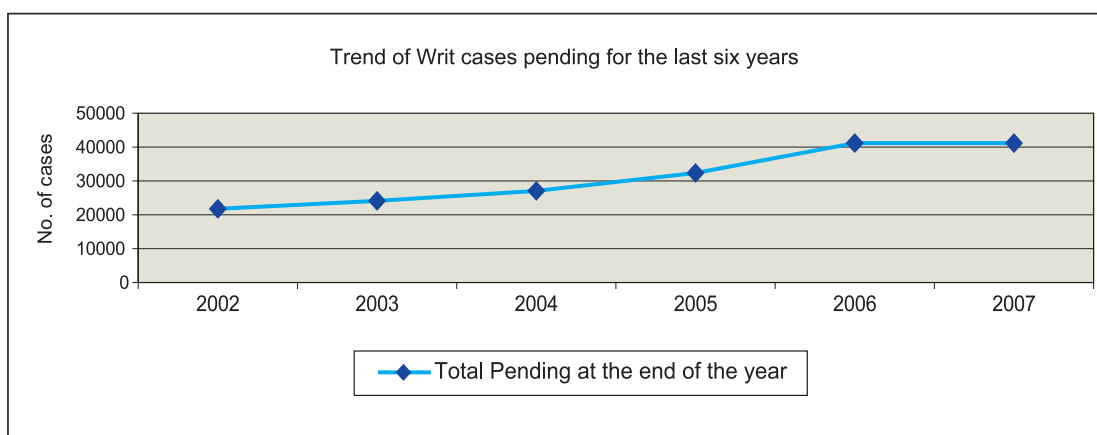


Figure 15: Line graph of writ cases.

Comment: The pending balance of Write cases continued to rise over the last 2002 to 2006 year and it is not increased only the last year

10.5.3. Original Cases

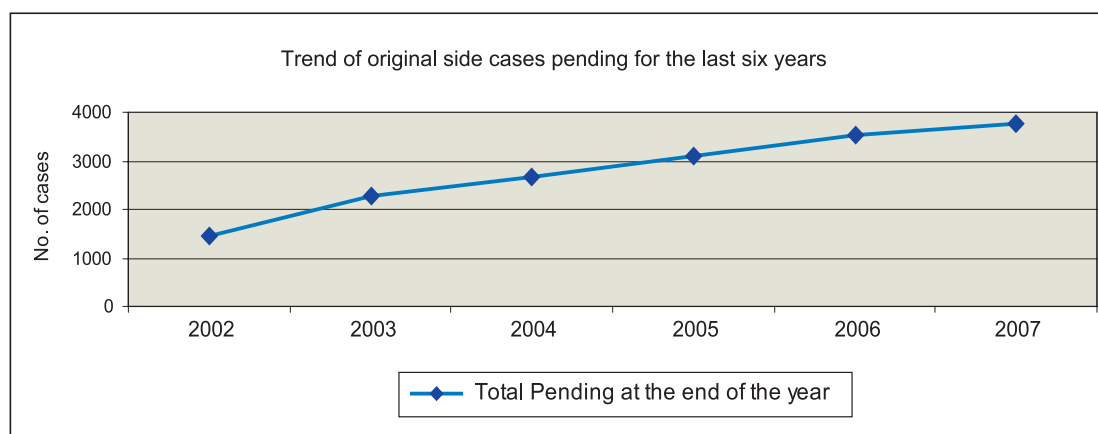


Figure16: Line graph of original side pending cases.

Comment: The pending balance continued to rise over the last six years.

10.5.4. Criminal Cases

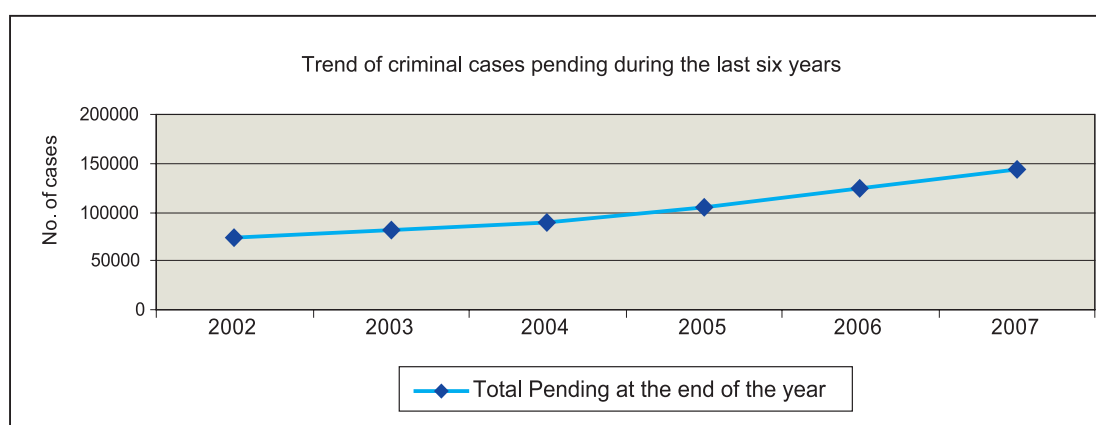


Figure 17: Line graph of criminal cases.

Comment: Criminal cases continued to rise over the last years.

10.6. Some Comparative Charts

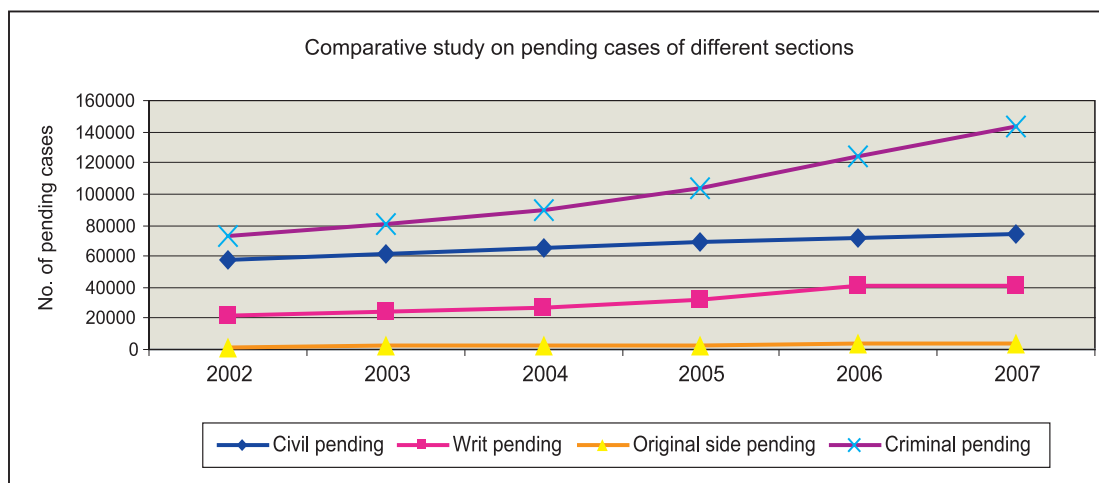


Figure 18: Comparative chart of different pending cases

Comment: All of the pending cases are increasing year by year. Of them, the pending criminal cases have highly increased over the last three years

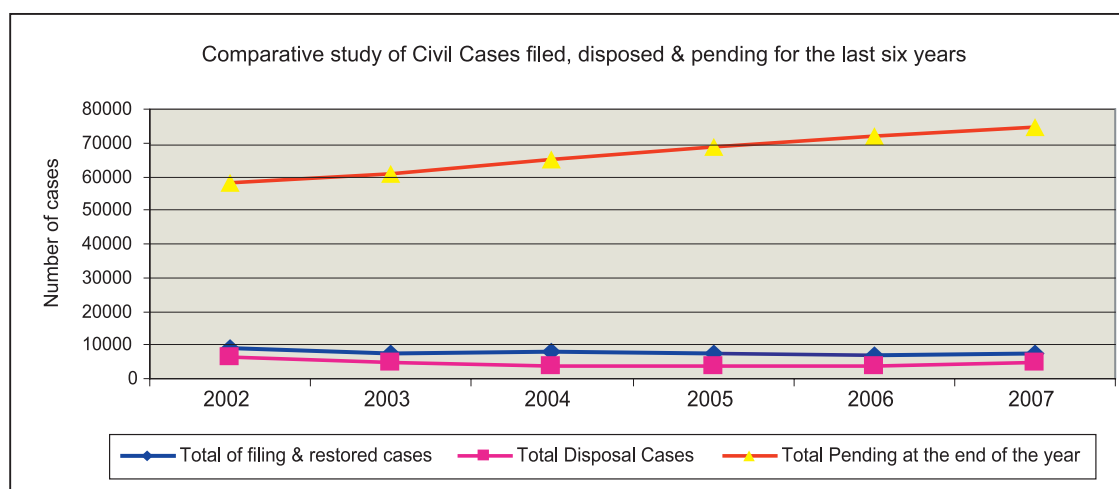


Figure 19: Comparative chart of civil cases filed, disposed & pending

Comment: Disposed of cases are lower than the filing and restored cases resulting in increase in pending cases

10.7. Ratio of Pending Cases for Disposal in 2007

The "Ratio of Pending Cases for Disposal" shows how long the Court will take, at the current rate of disposal, to dispose of the balance of cases pending at the end of the year.

The ratio can be calculated from the data provided in the table. The calculation is as follows:

$$\frac{\text{Pending balance for the year} \times 100}{\text{Cases disposed of during the year}}$$

A ratio result of 100 means one year, 50 means six months, and 25 means three months and so on.

10.7.1. Ratio table of Civil (Appeal & Revision) Cases

Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total Disposal of Cases	Total Pending at the end of the year	Pending Cases to Disposal (Ratio)
71816	7424	297	4881	74656	1529.52

Comment: The ratio result of civil cases is 1529.52, which indicate that the court will take approximately additional fifteen years three months two weeks and three days to dispose of all the pending cases at the current rate of disposal. This does not include the new cases to be filed during the period, therefore, the word "additional" is added.

10.7.2. Ratio table of Writ Cases

Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 1, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (4-5)]	Pending Cases to Disposal (Ratio)
40936	11019	147	52102	11122	40980	368.459

Pending Balance of Writ Cases: At the current rate of disposal, the court would take additional three years eight months and one week approximately to dispose of all the pending cases.

10.7.3. Ratio table of Original Side Cases

Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 1, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (4-5)]	Pending Cases to Disposal (Ratio)
3522	889	0	4411	651	3760	577.573

Pending Balance of Original Side Cases: At the current rate of disposal, the court would take additional five years nine months one week and three days approximately to dispose of all the pending cases.

10.7.4. Ratio table of Criminal Cases

Total Pending at the beginning of the year	Total Filing of the Cases	Total Restored Cases	Total of Column 1, 3 & 4	Total Disposal of Cases	Total Pending at the end of the year [Column (4-5)]	Pending Cases to Disposal (Ratio)
124206	27729	50	151985	9035	142950	1582.18

Pending Balance of Criminal Cases: At the current rate of disposal, the court will take additional fifteen years nine months three weeks and five days approximately to dispose of all the pending cases.



District Judge Court, Dhaka

11

Statistics on the Institution and Disposal of Civil Cases in the District Courts

11.1. Statement regarding institution and disposal of civil cases during the years 2002-2006

Year	Pending at the beginning of the year	No. of cases filed in the year	Total no. of pending cases	Disposed	Transferred	Pending at the end of the year
1	2	3	4=2+3	5	6	7=[4-(5+6)]
2002	440541	171750	612291	159570	32401	420320
2003	420320	167187	587507	150100	38354	399053
2004	399053	171231	570284	151247	4254	414783
2005	414783	183825	598608	158255	2257	438096
2006	438096	178963	617059	148563	1805	466691

The above statement has been graphically shown as follows

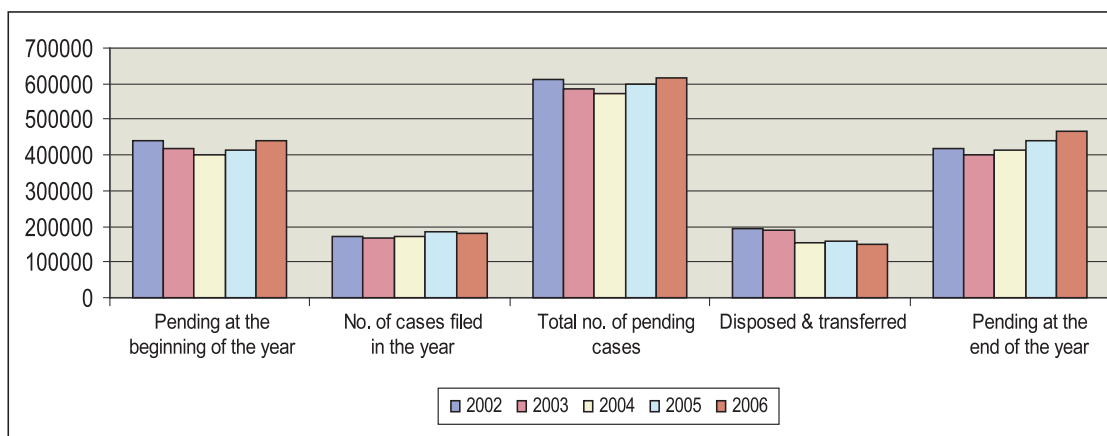


Figure 20: Bar Chart of Civil cases of the District Courts

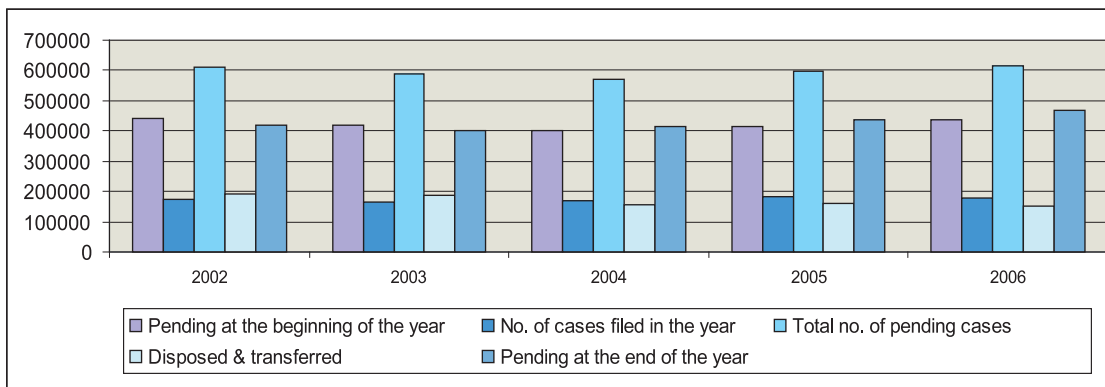


Figure 21: Year-wise Bar Chart of Civil cases of the District Courts

11.1.1. Visible Trends & Comparative Study of Civil Cases

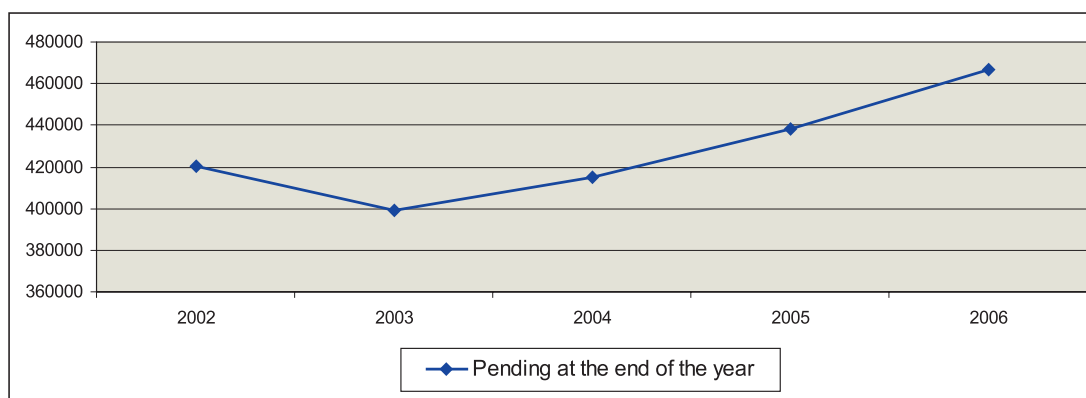


Figure 22: Line Chart of pending civil cases at the District Courts

From the Line Chart, it is visible that the rate of pending civil cases has increased highly from 2003 to 2006 and it only decreased in 2002 to 2003.

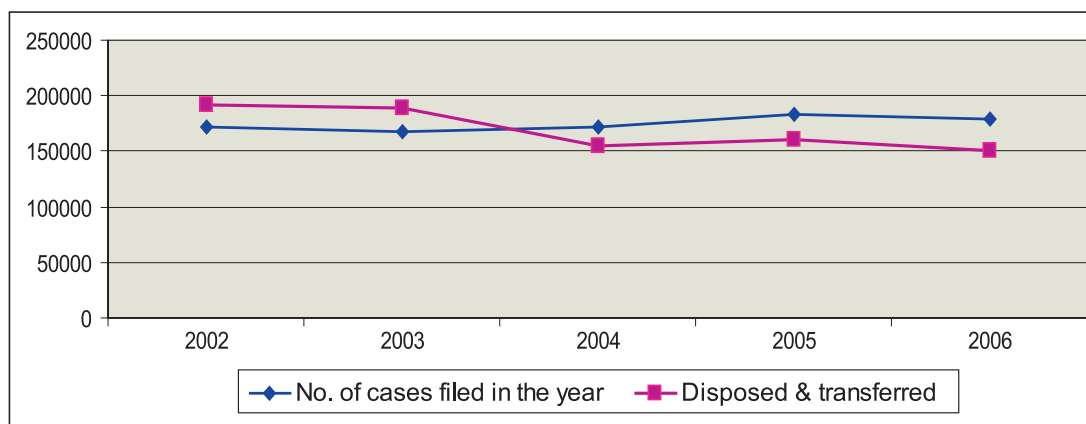


Figure 23: Comparative Line Chart of filed & disposed civil cases at the district courts

This comparative Line Chart shows that the rate of filed cases has increased slightly, whereas the rate of disposed & transferred cases has decreased from 2003 to 2006.

11.1.2. Comparative Study of Civil Cases

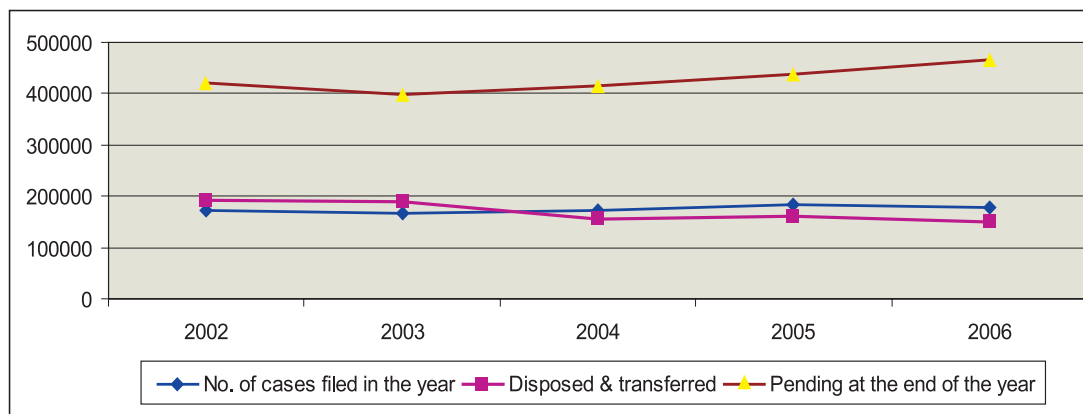


Figure 24: Comparative Line Chart of filed, disposed & pending civil cases at the District Courts.

From the comparative Line Chart of filed, disposed & pending civil cases of the district courts, it is evident that while the rate of disposed cases has increased, that of pending cases has decreased and while the rate of disposed cases has decreased, that of pending cases has increased.

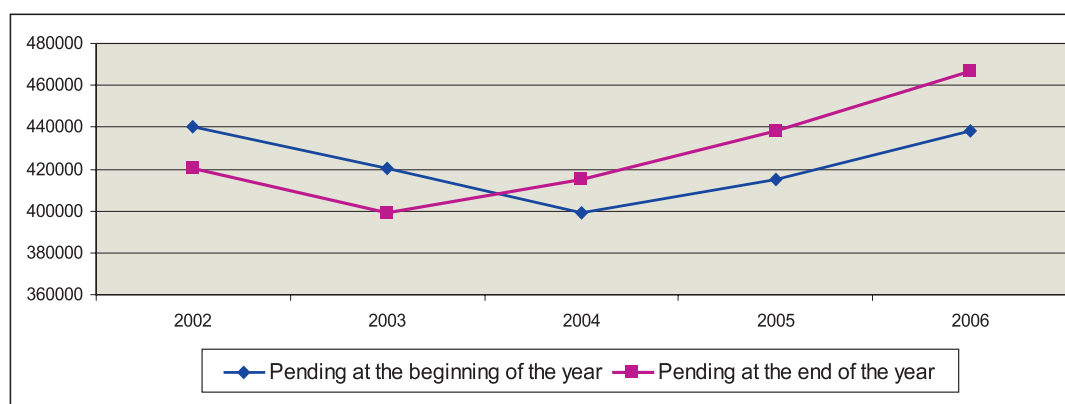


Figure 25: Comparative Line Chart of beginning & end of the year of pending civil cases at the District Courts

This comparative Line Chart shows that before the middle of the 2004 the rate of pending cases in the beginning is upper than those at the end of the year but after 2004 it has been reversed.

11.1.3. Ratio of Pending Cases to Disposal

The "Ratio of Pending Cases to Disposal" shows how long the Court would take, at the current rate of disposal, to dispose of the balance cases pending at the end of the year.

The ratio can be calculated from the data provided in the table. The calculation is as follows:

$$\frac{\text{Pending balance for the year} \times 100}{\text{Cases disposed of during the year}}$$

A ratio result of 100 means one year, 50 means six months, and 25 means three months and so on.

Thus, if the number of pending cases were 15000 at the end of the year, while those disposed of were 10000, the calculation will be as follows:

$$\frac{15000 \times 100}{10000} = 150$$

This means, it will take the court one year and six months to dispose of the balance.

Ratio table of civil cases: The ratio when applied to these cases for the end of the year 2006, give us the following results:

Pending at the beginning of the year	No. of cases filed in the year	Total no. of pending cases	Disposed & transferred	Pending at the end of the year	Pending cases to Disposal (Ratio)
438096	178963	617059	150368	466691	310.3659

Pending Balance of civil cases of the district courts: The ratio result of civil cases is 310.3659, which indicates that the court would take approximately additional three years, one month and one week to dispose of all the pending cases at the current rate of disposal. This does not include the new cases to be filed during the period; therefore, the word "additional" is added.

If the last five years average of disposed of cases is taken into account, the ratio result will be-

Pending at the beginning of the year	No. of cases filed in the year	Total no. of pending cases	Average of disposed & Transferred cases	Pending at the end of the year	Pending cases to Disposal (Ratio)
438096	178963	617059	169361.2	466691	275.5596

At the average rate of disposal, it would take the court additional two years nine months and two days to dispose of all the pending cases.

12

Statistics on the Institution and Disposal of Criminal Cases in the Sessions Courts

12.1. Brief statement on Criminal Cases of Sessions Courts

Year	Pending at the beginning of the year	No. of cases filed in the year	Total no. of pending cases	Disposed	Transferred	Pending at the end of the year
1	2	3	4=2+3	5	6	7=[4-(5+6)]
2002	108527	110451	218978	87860	10854	120264
2003	120264	126320	246584	90217	11369	144998
2004	144998	120658	265656	99453	7517	158686
2005	158686	123837	282523	100123	11284	171116
2006	171116	147731	318847	104575	9061	205211

The above statement has been graphically shown as follows

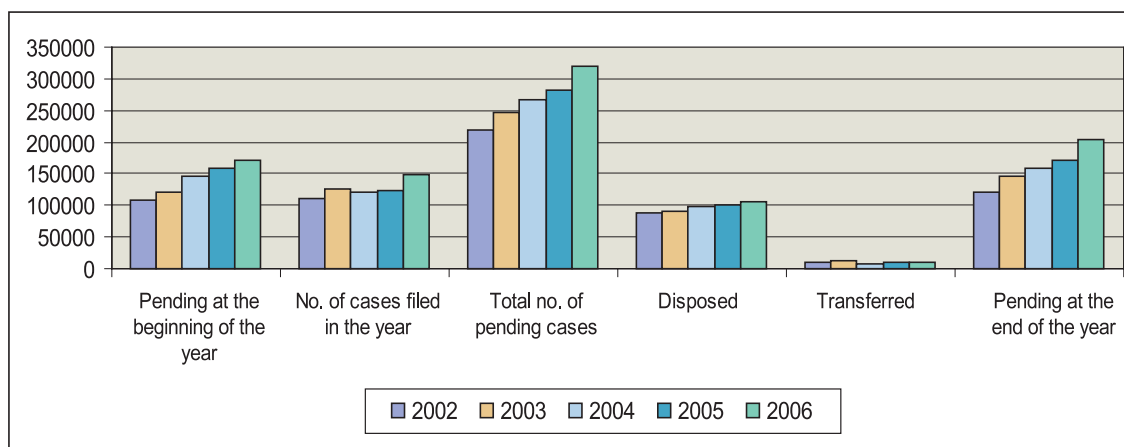


Figure 26: Bar Chart of Criminal cases at the sessions courts.

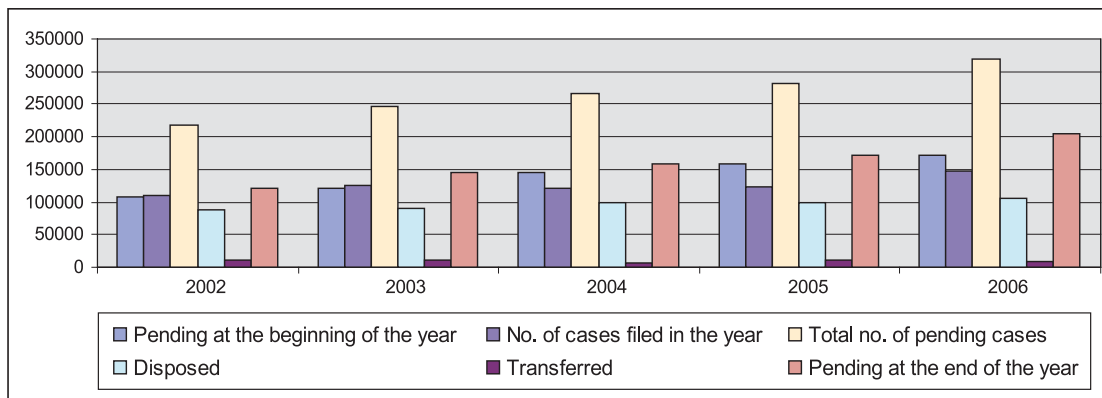


Figure 27: Year-wise Bar Chart of Criminal cases at the sessions courts.

12.1.1. Visible Trends & Comparative Study of Criminal Cases

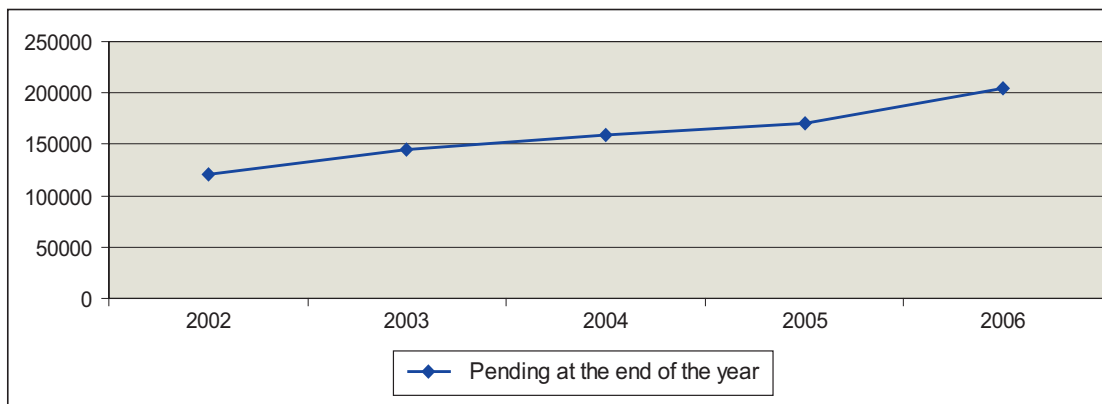


Figure 28: Line Chart of pending criminal cases of the sessions courts.

From this Line Chart, it is obvious that the number of pending criminal cases has steadily increased from 2002 to 2006

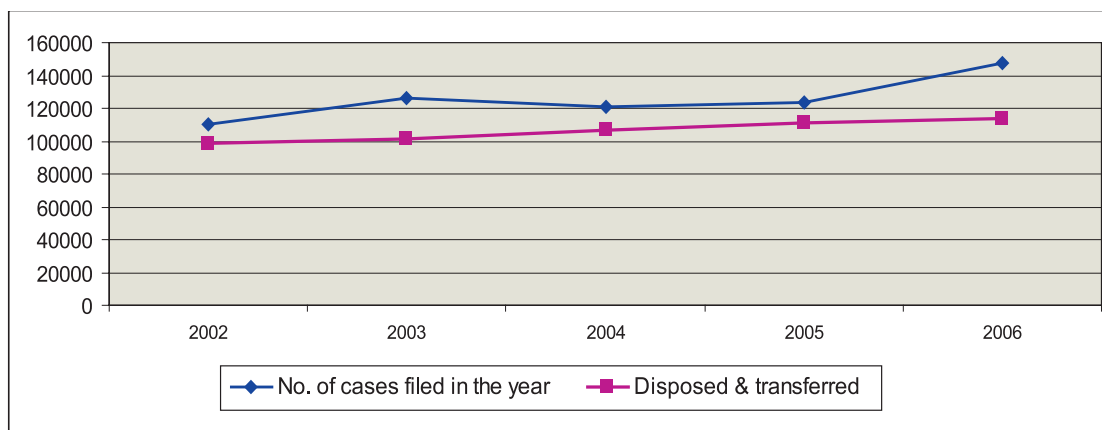


Figure 29: Comparative Line Chart of filed & disposed Criminal cases at the sessions courts.

From this chart, it is found that the rate of disposed cases has increased year by year but it is always below the rate of received cases.

12.1.2. Comparative Study of Criminal Cases

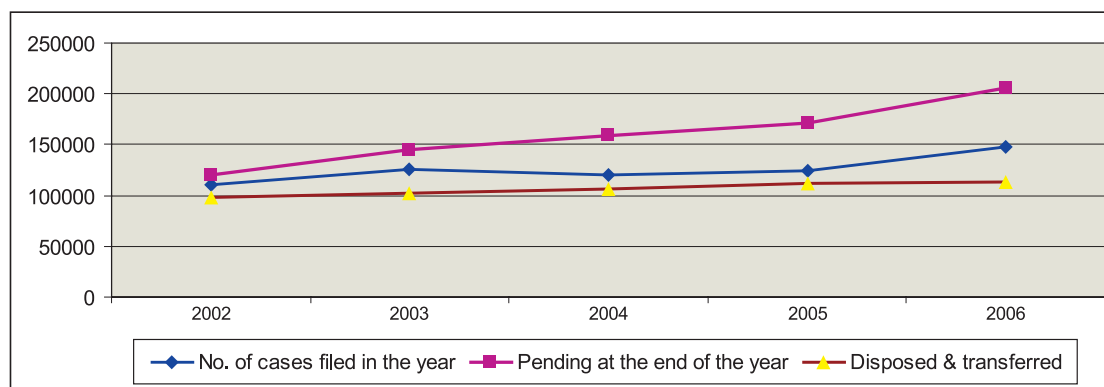


Figure 30: Comparative Line Chart of filed, disposed of & pending Criminal cases at the sessions courts.

This Line Chart shows that the rate of pending cases has highly increased because the rate of received cases is always going higher than that of disposed of cases.

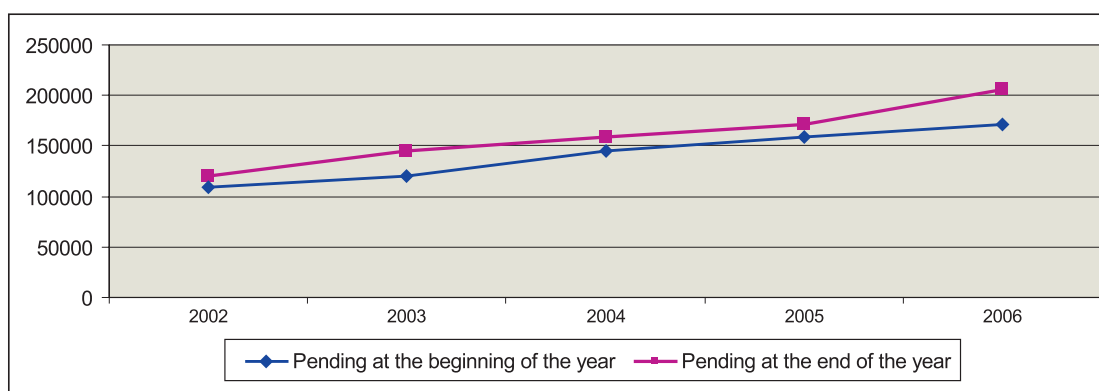


Figure 31: Comparative Line Chart of pending criminal cases in the beginning and end of the year at the sessions courts.

From this Line Chart, it is visible that both in the beginning & end of the year pending cases have increased gradually and such cases are always higher at the end of the year than in the beginning.

12.1.3. Ratio table of criminal cases

The ratio formula as explained in the previous section, when applied to these cases for the end of the year 2006, give us the following results:

Pending at the beginning of the year	No. of cases filed in the year	Total no. of pending cases	Disposed & transferred	Pending at the end of the year	Pending cases to Disposal (Ratio)
171116	147731	318847	113636	205211	180.5863

Pending Balance of criminal cases of the sessions courts: At the current rate of disposal, it will take the court additional one year nine months and three weeks approximately to dispose of all the pending cases. This does not include the new cases to be filed during the period; therefore, the word "additional" is added.

13

Statistics on the Institution and Disposal of Criminal Cases in the Judicial Magistracy

13.1 Statement regarding institution and disposal of criminal cases in the Judicial Magistracy

Month	Pending on 1st day of month	Filing & received	Total	Disposal	Pending for next month
November' 2007	563344	34131	597475	33104	564371
December' 2007	564371	87789	652160	49987	602173
Total		121920		83091	

The above statement has been graphically shown as follows:

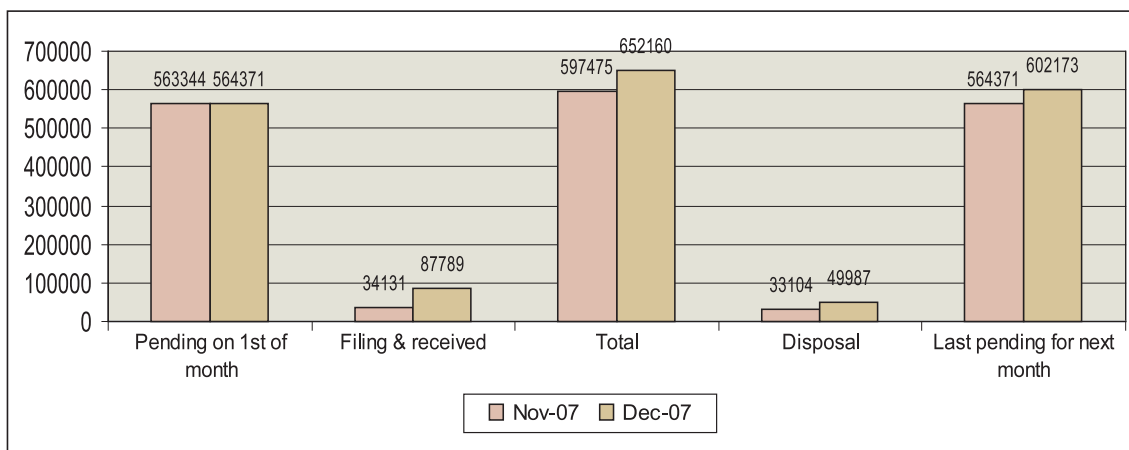


Figure 32: Bar diagram of Criminal cases of Judicial Magistracy

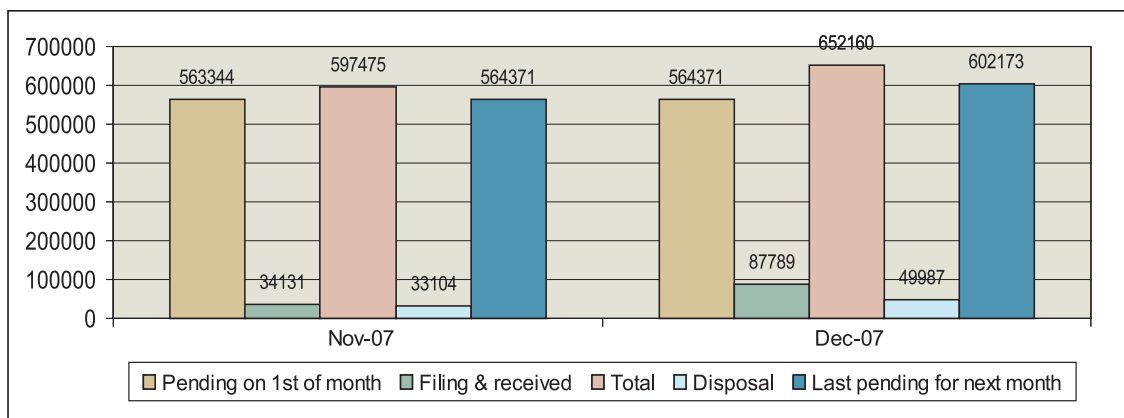


Figure 33: Month-wise Bar diagram of Criminal cases of Judicial Magistracy

13.1.1. Percentage of increases & disposal

Month	Filing & received	Disposal	Increase per month	% increase of filing & received cases	% disposal of filing & received
	(f)	(d)	$I=f-d$	$(I \times 100)/f$	$(d \times 100)/f$
November' 2007	34131	33104	1027	3%	96.99%
December' 2007	87789	49987	37802	43.06%	56.94%

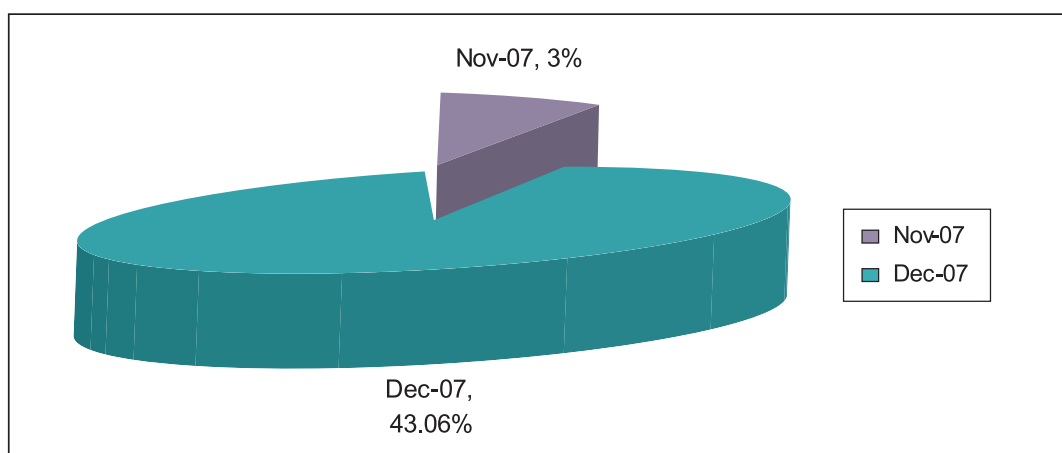


Figure 34: Pie Chart of % increase of filing & received cases

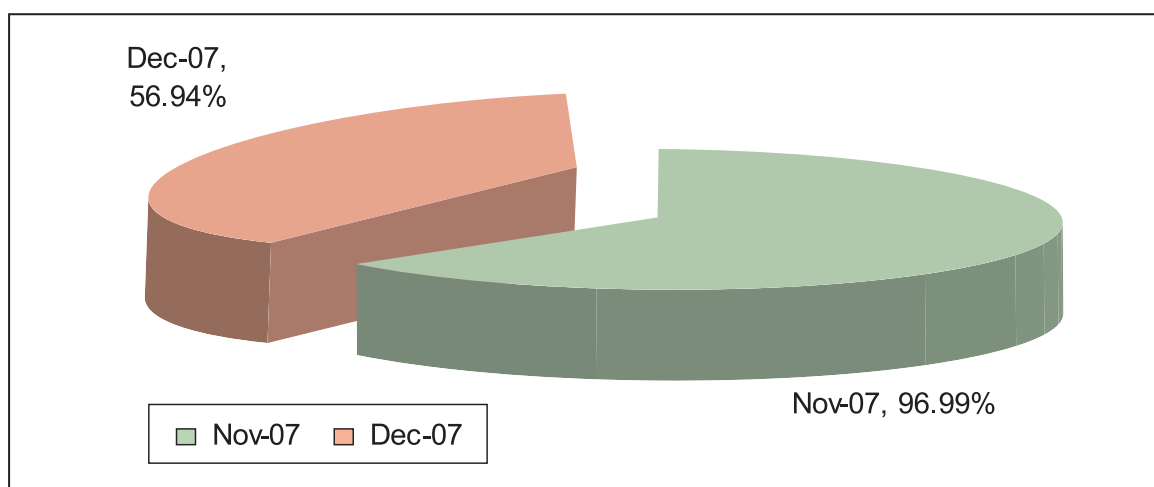


Figure 35: Pie Chart of % disposal of filing & received cases

13.1.2. Ratio of Pending Cases to Disposal

The "Ratio of Pending Cases to Disposal" shows how long the Court will take, at the current rate of disposal, to dispose the balance cases pending at the end of the month.

The ratio when applied to these cases for the end of the month December'2007, give us the following results:

Pending on 1st day of month	Filing & received	Total	Disposal	Pending for next month	Pending cases to Disposal (Ratio)
564371	87789	652160	49987	602173	1204.65921

Pending Balance of criminal cases of the Judicial Magistracy courts: At the current rate of disposal, it will take the court additional twelve months approximately to dispose of all the pending cases. This does not include the new cases to be filed during the period; therefore, the word "additional" is added

If we take the average of disposal cases, then the ratio result will be -

Pending on 1st day of month	Filing & received	Total	Average of Disposal cases	Pending for next month	Pending cases to Disposal (Ratio)
564371	87789	652160	41545.5	602173	1449.43014

At the average rate of disposal, it will take the court additional one year two months and fifteen days to dispose of all the pending cases.

14

Ongoing Reform and Development Activities in the Judiciary

A. Legal and Judicial Capacity Building Project (LJCBP)

The judicial and legal system of Bangladesh is rich in tradition. But with the passage of time, due to lack of appropriate reforms in the judicial system, it has become more difficult for the Court to ensure justice than ever before. Realizing the need of necessary judicial reforms, the Government of Bangladesh has undertaken the "Legal and Judicial Capacity Building Project" in 2001. It is a World Bank, DANIDA (Danish International Development Agency), CIDA (Canadian International Development Agency) financed multi-dimensional project of the Government of Bangladesh involving various stakeholders who are directly or indirectly connected with the judiciary.

The core objective and vision of the project is to support measures to enhance the efficiency, effectiveness and accountability of the civil justice system with a view particularly to reducing the case backlog, expediting the clearance rate and speed, and to improve access to justice for the commoners, particularly for women and the poor.

Components of the Project

The components of the project focused particularly upon Judicial Capacity Building which includes improvement of court administration, strengthening of case management, updating of the legal framework, enhancement of training facilities for the Judiciary, upgrading of the physical infrastructure of the court system, phased installation of an automated court management information system (CMIS), as well as providing legal literacy and legal aid to the poor and the disadvantaged people etc.

Court Administration and Case Management (CMCA) Reforms

Any reform is a painstaking job and judicial reform is specially complicated, scrupulous and sensitive. Realizing the difficulties and hassle of judicial reform the Government of Bangladesh, at the very outset of the project, entered into an agreement with the University Research Corporation International (URCI), Maryland on 9 October, 2001 to develop a model of judicial reform which is suitable, convenient and plausible for Bangladesh. In pursuant to this contract, Institutional Reform and the Informal Sector (IRIS) center of URCI conducted Base Line Study in five pilot District Courts as well as in the Supreme Court. Besides that, IRIS made numerous recommendations for the reduction of delay in disposal of civil cases and improvement of services rendered by some departments of the District Courts. Later, upon request of the Mid

Term Supervision Mission of the World Bank, IRIS consolidated their recommendations and presented those in a volume on August, 2004, which is called Court Administration and Case Management (CMCA) model. The recommendations of this model are being implemented on experimental basis in the Supreme Court of Bangladesh and five pilot District Courts.

The Supreme Court Project Implementation Committee (SCPIC), which now comprises two judges of the Appellate Division and two judges of the High Court Division of the Supreme Court, is the authority responsible in respect of CMCA reforms, while the project office provides necessary logistic support in this regard. At present, Chief Justice himself is the Chairman of SCPIC.

State of CMCA Reforms in the Supreme Court

i. **RITE for SCPIC & RCITE Appointed:** Resident Information Technology Expert (RITE) for SCPIC had been appointed on April 2006, who provided advice and support to SCPIC in supervising and monitoring the IT activities of the Supreme Court as well as pilot District Courts for two years. Besides, a Resident Court Information Technology Expert (RCITE) has been appointed for the Supreme Court to assist in implementing the IT related reform works of the Supreme Court.

ii. **Creation of IT Sections:** In the office of the Registrar of the Supreme Court, a new section namely, IT has been established.

Currently this section is engaged in creating a database of old and long pending cases and bringing them to a point where they can be considered ready for hearing and disposal. They are also providing necessary assistance to the Judges of the Supreme Court in 'purging' old and inactive cases.

iii. **Local Area Network (LAN) set up:** LAN has already been established connecting the case processing sections such as First Appeal, Civil Revision, Writ and Original sections with the computer set up in the chamber of Chief Justice and chairman of SCPIC from which he can monitor and supervise the Case Management System, status of data entry, daily cause list etc. Setting up of LAN connecting other courts and sections of the Supreme Court are under process and is expected to be installed very soon. This will ensure that the Chief Justice will have more convenient way to monitor and supervise the whole case management system with the assistance of modern technology.

iv. **Data entry and training of court staff:** An oracle based Case Management System (CMS) software has already been installed in the Supreme Court and the selected staffs of the Supreme Court are being trained up for operating it. The functions of data entry and reporting are now being carried out by the trained staffs of the Supreme Court.

State of CMCA Reforms in five Pilot District Courts

i. **Appointment of Judicial Administrative Officer (JAO):** In the present system of civil justice administration, the judges have to perform various administrative works and non-judicial functions which hampers their judicial duties. Sometimes, the judges being busy with the judicial function have to rely on their assistants for administrative works who are not suitable qualified for that. To get rid of these problems, five new posts of Judicial Administrative Officer (JAO) have been created recently for efficient Court Administration

and Case Management (CMCA) and one Joint District Judge has been deployed as JAO for each pilot District Court. They accept and process cases to make those ready for trial or hearing as well as perform all functions relating to the court administration.

- ii. **Introduction of Central Filing System:** Central Filing Section (CFS) has been established in each pilot District Court, where all original cases, appeals and revisions are being filed and on being ready for trial/hearing be transmitted to courts on rotation.
- iii. **Extension of Territorial Jurisdiction of Judges:** In Bangladesh, some courts are burdened with a large number of cases and others have fewer cases depending upon their territorial jurisdiction and size of populace in their respective jurisdiction. In order to maintain an equal workload for all the judges, recommendation for abolition of individual territorial jurisdiction of Joint District Judges, Senior Assistant Judges and Assistant Judges extending their jurisdiction over the whole district was proposed. For the implementation of this recommendations the Government has taken action vide publishing an official gazette notification on 3 May 2007. This measure is likely to increase the number of disposal of cases in each year and utilize the working hours of the Judges more efficiently.
- v. **Appointment of RCRE & RCITE:** Pursuant to the decision of stakeholders meeting of October 2004, one Resident Court Reform Expert (RCRE) and one Resident Court Information Technology Expert (RCITE) were appointed on 23 July 2005 in each of five pilot District Courts for implementation of the proposed reforms. The deployments of such experts have accelerated the pace of implementation of CMCA reforms which resulted in the attainment of expected clearance rate in pilot District Courts. Now, only the RCITEs are working in 21 pilot District Courts for implementing reforms relating to Information Technology.
- vi. **Introduction of Case Management System(CMS):** While testing the CMCA model, the IRIS developed an initial Case Management System (CMS) using Microsoft Access for the District Courts and installed it in each pilot District Court. The CMS is a case tracking system, which enables court staff to maintain information on civil cases in an automated form, from which regular reports are generated to help judges and staffs of the court to manage cases and meet case disposition goals. At present, CMS is being used in each pilot District Court.
- vii. **Computer Training of Judges & Court staff:** The ability of the pilot District Court staffs to use the computer to do the inventory, data entry and finally to make the required reports is now one of the very important issues in order to ensure the sustainability of the works so far done under this project. Therefore, with this view to the end planned training and appropriate monitoring have been put emphasized and top priority.

Now, RCITEs are imparting training regularly to the judges and court staff of the pilot District Courts to enhance their capability on information technology. Moreover, considerable number of judges and court staffs of other district courts are being given training on computer operating skills in the Judicial Administration Training Institute regularly.

- viii. **LAN set up:** LAN (Local Area Network) has already been set up in all stage-1 Pilot District Courts.

- ix. **Introduction of Working Implementation Committee (WIC):** For successful implementation of reform works in courts the need for the active involvement of the Bar members is absolutely necessary. On the other hand, proactive leadership of the judges and collaboration of court staffs are essential in improving administration of justice as a whole.

To coordinate the reform works, Working Implementation Committee (WIC) has been formed involving these groups in each pilot District Court under the leadership of the District Judge. The meeting of the WIC is being held in every month where the members discuss the ways to reduce backlog of cases purging old and inactive cases, expediting service of summons, streamlining the existing system and devising new methods to address these issues.

- x. **Rolling out of CMCA reforms in stage-II Districts:** The Mid-term Supervision Mission of the World Bank (September 11-25, 2005) in their report emphasized on rolling out the CMCA reforms in 19 Stage-II project districts and mentioned it as an 'Key Agreed Action'. The SCPIC took decision for rolling out of CMCA reforms in stage -II project districts and CMCA reform activities have been started in 16 project district courts. Rolling out of CMCA reforms in remaining three stage-II districts is about to start soon.

Introduction of automated Court Management Information System (CMIS)

The phased installation of an automated Court Management Information System (CMIS) in the Supreme Court as well as in 24 Project District Courts is an important segment of CMCA component.

The CMIS consists of 'Case Management Module' to facilitate case filing and monitoring, case scheduling and tracking as well as caveat matching; 'Court Administration Module' to facilitate planning and budgeting, financial management, staff related information and reporting, court inspection, statistics gathering and records management and 'Law and Case-Law Retrieval Module' to facilitate access to the legislative Code and the case law database. Installation of CMIS in all the project District Courts and the Supreme Court is under process.

B. Bangladesh Good Governance Program

The present Care Taker Government from the very beginning of its assumption in office in January 2007 has demonstrated strong commitment to undertake reforms to address corruption and transparency in the public sector. ADB is providing \$ 150 million to the government of Bangladesh under the Good Governance Program over the next four years to implement a comprehensive policy and institutional reforms in the Anti Corruption Commission, Judiciary and other institutions, to strengthen core and sector level anti corruption measures.

Objectives of the Program

- i. Strengthen the on-going consensus building on good governance, integrity and anticorruption reforms;
- ii. Support judicial reforms with a focus on the performance, transparency and accountability of the judiciary, particularly on its role in the anticorruption agenda;

- iii. Strengthen the role, scope and power of the Anticorruption Commission so that it can fight corruption with better efficiency; and
- iv. Bring good governance and anticorruption initiatives into the main stream within selected sectoral level agencies to enhance their effectiveness.

Program Output

Output 1: Vision, Strategy and Procedures

- i. Prepare and Implement National Integrity Strategy
- ii. Implement follow up activities in tune with The United Nations Convention Against Corruption (UNCAC)
- iii. Strengthening The Anticorruption Commission and process system

Output 2: Enforcement and Sanction Mechanisms

- i. Transparent and Independent Judiciary
- ii. Improved Prosecution Services

Output 3: Prevention Mechanisms

- i. Focused Anticorruption Interventions
- ii. Accountability Mechanisms within Line Ministries
- iii. Grievance Redress and Access to Information

Executing and Implementing Agencies

• Executing Agencies

- i. Cabinet Division (Part A)
- ii. Supreme Court (Part B)

• Implementing Agencies of Cabinet Division

- i. Anticorruption Commission
- ii. Public Service Commission
- iii. Ministry of Shipping
- iv. Ministry of Establishment
- v. Ministry of Law Justice and Parliamentary Affairs
- vi. Ministry of Foreign Affairs

• Implementing Agencies of Supreme Court

- i. Supreme Court of Bangladesh
- ii. Judicial Service Commission
- iii. Ministry of Law, Justice and Parliamentary Affairs

Project Duration

- Date of Commencement of the Program - November, 2007.
- Date of Completion of the Program - October, 2011.

Technical Assistant (TA) Financing

- **Total Technical Assistant (TA cost): US \$ 3.0 million**
 - Asian Development Bank's TA grant US \$ 1.5 million
 - Danish TA grant US \$ 1.0 million
 - GOB's contribution US \$ 0.5 million

Program Benefits and Impacts

The Program is expected to improve the capability and competence of the Government of Bangladesh to fight corruption with a more strong stand, and, in the medium term, institute a system of good governance upon which a strong basis for more rapid and inclusive growth can be established. This, in turn, is expected to create an environment in which foreign investments would increase substantially.

Specific benefits of the Program can be outlined in brief as follows:

- i. A broad and long-term vision of good governance and anticorruption that is aligned to the UNCAC, and is values-based.
- ii. Strengthening of the role of an independent judiciary in not only fighting corruption but also serving as an effective check on the excesses of the Executive.
- iii. Substantial strengthening of the Anticorruption Commission in enforcing relevant laws and curbing corruption, and over time beginning to exert its statutory independence on the basis of public trust and credibility that it will be able to generate as a result of effective performance.
- iv. Encouragement of sectoral agencies to be more involved in instituting anticorruption and good-governance initiatives and actions so as to minimize vulnerabilities to corruption in the public sector.
- v. The establishment of a strong legal framework and practical measures to provide greater opportunities of redress for citizens, which, in turn, will serve as a significant source of demand-driven pressures for good governance in the public sector.

As the Program seeks to contribute to the overall agenda on good governance in the country, the entire nation will benefit from it. This will be evident in areas such as lower levels of service costs and better services.

Major Output of Part-B

- i. Judicial Service Commission to complete entry examinations for Assistant Judges;
- ii. All judges of subordinate courts to submit a declaration of assets and wealth statement to office of the Registrar;

- iii. Ministry of Law, Justice and Parliamentary Affairs or Parliament Secretariat to gazette legislation prescribing specific qualification for the recruitment of Supreme Court judges;
- iv. Ministry of Finance to allocate sufficient budget to meet the increases in special allowances that may be recommended by the Judicial Service Pay Commission and approved by Government;
- v. Ministry of Finance to allocate sufficient budget to meet the approved development expenditures for district courts to implement the policy of separation of the judiciary from the executive;
- vi. And finally, the Supreme Court is to publish in the year 2007 the State of the Judiciary Report, including a brief description of the annual random inspection and monitoring activities of district courts.



Metropolitan Magistracy, Dhaka

15

Training of Judges and Judicial Magistrates

The Judicial Administration Training Institute (JATI) in Bangladesh was established by Act No. XV of 1995 for imparting training to the members of the judicial service, the law officers of the Government, the court support staff and the advocates enlisted with the Bangladesh Bar Council in order to increase their professional efficiency and potentials. The judicial education is a new discipline of professional education whose targets are the functionaries involved in the justice delivery system for improving their knowledge and skill, for better court administration and case management. The curriculum of training course has been designed to enable the persons involved in administration of justice to achieve those objectives and to equip them properly for discharging their responsibility in exercising judicial powers. Besides training on computer literacy and some cross cutting issues are being imparted through the training program. The functions of the Institute have been described in section 7 of the Act as follows:

- a. To impart training to the persons appointed in the judicial service, law officers entrusted with conducting of government cases, Advocates enlisted with the Bangladesh Bar Council officers and staff of all courts and tribunals subordinate to the High Court Division of the Supreme Court;
- b. To arrange and impart training in legislative drafting and drafting of other legal documents;
- c. To impart training in legislative drafting and drafting of other legal documents to trainees from abroad in cooperation with international donor agencies;
- d. To conduct research and investigation in respect of court management and to publish the same;
- e. To arrange and conduct national and international conferences, workshops and symposia for improvement of the judicial system and quantity of judicial work;
- f. To publish periodicals, reports etc. on the judicial system and court management;
- g. To advise the Government on any matter relating to the judicial system and court management;
- h. To determine the subjects of study and curriculum and all other matters relating to training programs under the act;
- i. To award certificates to those trained in the institute;
- j. To establish and manage the libraries and reading rooms;
- k. Any work, determined by rules, to activate the judicial administration system;
- l. Any actions necessary for fulfilling the above functions

Special Training for Judicial Officers at JATI

In order to help in effective implementation of the separation of judiciary, the Judicial Administration Training Institute (JATI) undertook a massive plan of action several months ahead

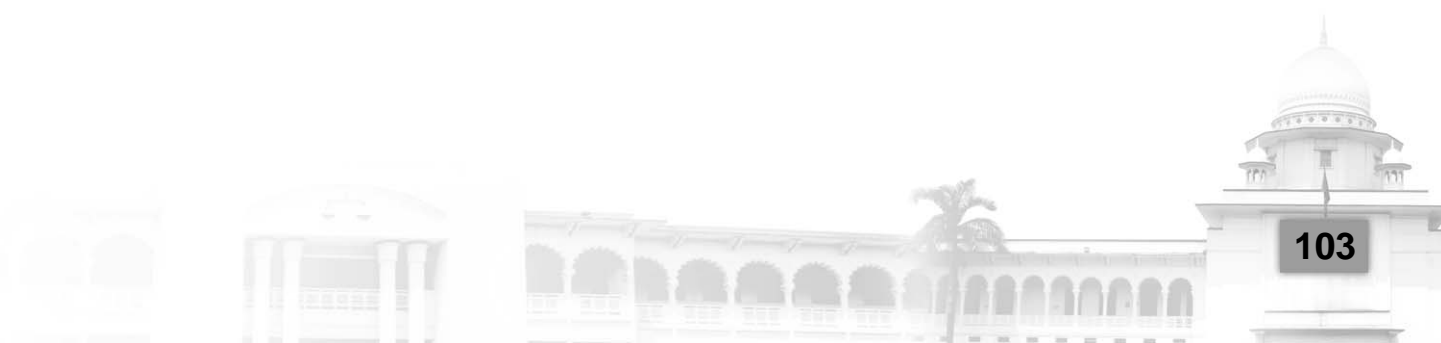
of 1st of November 2007 keeping in view that the judiciary will need trained judicial magistrates immediately with the creation of judicial magistracy.

Accordingly, curriculum on substantive criminal laws and procedures along with special focus on magistracy was incorporated first in the 59th and 60th Basic Training Courses for the newly appointed Assistant Judges held during January to March, 2007. It was followed by a series of training courses (of around 10 days) specially focused on judiciary magistracy covering almost all Assistant Judges and Senior Assistant Judges. These training were held from 7/4/2007 to 25/7/2007.

After the creation of judicial magistracy, there had been several other 2-days compact training courses for Judicial Magistrates of all tiers. This special training programme commenced on 23rd of November of 2007 and ended on 8th of February of 2008. All Judicial Magistrates, Senior Judicial Magistrates, Additional Chief Judicial Magistrates, Chief Judicial Magistrates and Chief Metropolitan Magistrates have by now completed this special training. This training programme covered the procedural criminal laws along with their practical aspects and functional issues relating to the administration of criminal justice. The training aimed at ensuring that the Judicial Magistrates were equipped with sufficient knowledge and skill to run the magistracy efficiently.



Judicial Administration Training Institute (JATI)



Training courses held at JATI in the year 2007

Sl No.	Course Title	Status of the Participants	No of the Participants			Duration
			Male	Female	Total	
1.	59 th Basic Training Course on Judicial Administration	Assistant Judges	18	10	28	27/1/2007-22/2/2007
2.	60 th Basic Training Course on Judicial Administration	Assistant Judges	19	6	25	4/3/2007-29/3/2007
3.	61 st Judicial Administration Training Course	Assistant Judges	17	3	20	7/4/2007-17/4/2007
4.	62 nd Judicial Administration Training Course	Senior Assistant Judges	17	2	19	7/4/2007-17/4/2007
5.	63 rd Judicial Administration Training Course	Assistant Judges	15	5	20	21/4/2007-30/4/2007
6.	64 th Judicial Administration Training Course	Senior Assistant Judges	17	1	18	21/4/2007-30/4/2007
7.	65 th Judicial Administration Training Course	Assistant Judges	14	5	19	6/5/2007-15/5/2007
8.	66 th Judicial Administration Training Course	Senior Assistant Judges	17	1	18	6/5/2007-15/5/2007
9.	67 th Judicial Administration Training Course	Assistant Judges	18	1	19	20/5/2007-29/5/2007
10.	68 th Judicial Administration Training Course	Senior Assistant Judges	18	0	18	20/5/2007-29/5/2007
11.	69 th Judicial Administration Training Course	Assistant Judges	14	7	21	3/6/2007-12/6/2007
12.	70 th Judicial Administration Training Course	Senior Assistant Judges	19	-	19	3/6/2007-12/6/2007
13.	71 st Judicial Administration Training Course	Assistant Judge/Senior Assistant Judges	27	4	31	14/7/2007-25/7/2007
14.	72 nd Judicial Administration Training Course	Joint District & Sessions Judges	29	3	32	4/8/2007-14/8/2007
15.	73 rd Judicial Administration Training Course	Additional District & Sessions Judges	33	4	37	18/8/2007-27/8/2007
16.	16 th In-service Training Course	Sheristadars	38	1	39	8/9/2007-12/9/2007
17.	74 th Judicial Administration Training Course	Joint District & Sessions Judges	21	3	24	3/11/2007-15/11/2007
18.	1 st Special Training Course	Additional Chief Metropolitan Magistrates /Additional Chief Judicial Magistrates	39	-	39	23/11/2007-24/11/2007
19.	2 nd Special Training Course	Additional Chief Judicial Magistrates/Metropolitan Magistrates	28	2	30	30/11/2007-1/12/2007
20.	3 rd Special Training Course	Senior Judicial Magistrates/ Judicial Magistrates	38	2	40	7/12/2007-8/12/2007

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ADR in the Judicial System of Bangladesh

ADR means and includes alternative processes of dispute resolution by going beyond the formal process of justice. It is an alternative route to reach a speedier and less expensive mode of settlement of disputes. It is not a compulsory method of settlement, rather it is voluntary. It is simpler and informal in its nature. ADR includes mediation, settlement conference, arbitration and others.

Inception of ADR in Bangladesh

The concept of alternative resolution of disputes is first embodied in the sections of 10(3) and 13(1) of the Family Courts Ordinance of 1985. However, there was no implementation of these provisions until a special pilot project was taken on 'mediation as a measure of ADR' in June, 2000 under the supervision of the then Chief Justice of Bangladesh. Under that project, three Assistant Judges' Courts of Dhaka were specified as exclusive Family Courts for the purpose of mediation. It was for the first time, that a circular was issued from the High Court Division of the Supreme Court providing credit of two trials for one successful mediation in a family dispute and the credit of one trial for two unsuccessful mediations. This circular inspired the Family Court judges to give more efforts in mediation in Family Court cases. A series of training 'mediation' was imparted to all the Family Court judges as well as a good number of lawyers. Consequently, there was a great success in dispute resolution through 'mediation' in the Family Courts. Subsequently 16 other Assistant Judges' Courts were brought under this pilot project.

Changes in other laws

The huge success in realization of dower money and amicable, peaceful and quick settlement of disputes through mediation in the Family Courts inspired the Government and policy makers to widen the scope of ADR through other legislation. Two new legislations were enacted accordingly. These were: (1) the Code of Civil Procedure (Amendment) Act, 2003 enacted on 27th February, 2003 and given effect to from 1st July, 2003, and (2) Artha Rin Adalat Ain, 2003 (Money Loan Court Act, 2003) effective from the 1st May, 2003.

The Code of Civil Procedure was amended and new sections 89A and 89B, were enacted, which has almost similar text as in India and Pakistan. These newly enacted provisions in the CPC have introduced ADR through mediation or arbitration in all kinds of non-family litigations. The mechanisms of ADR in the Artha Rin Adalat Ain, 2003 (Money Loan Court Act, 2003) are: a) Settlement Conference which is to be presided over by the trial judge and to be held in camera and b) Arbitration which is to be presided over by a neutral Arbitrator and to be held in camera.

The latest amendment in this regard is incorporation of ADR at appellate stage in non-family civil disputes. New Section 89C has been inserted in the Code of Civil Procedure by Act on VIII of 2006.

The rate of ADR in Artah Rin cases is a success story. Besides, ADR is gradually progressing and becoming a popular forum by the litigants of civil cases. However, more success in ADR especially in non-family civil disputes will take time due to the conformist mind set of a section of some stakeholders, who are reluctant to go through the process of ADR.

Prospects of ADR

In order to improve the prospects of ADR, it is imperative to launch and sustain a systematic and meaningful campaign aimed at educating and encouraging the general public to resort more to settling their disputes through reconciliation, conciliation/mediation, arbitration and other forms of ADR. The availability of many of these ADR is unknown to the majority of the general public and even to some lawyers at subordinate courts. Above all, ADR requires the broadened involvement and support not only of the legal and the legal education establishments, but also of the political social orders as well as of the public at large. If members of the public and also the social leaders at the grassroots level are made to appreciate that resort to alternative methods of dispute settlement is cheaper, informal, speedy and does not expose the disputants to the public gaze, many of them would resort to such methods. This is what should be achieved in the interests of social justice.

Conclusion

Alternative dispute resolution in today's world is widely accepted and appreciated method to reduce the number as well as cost of suits. Disposal of suits/litigation through ADR is bound to enhance the quality of social justice and thereby contribute to the promotion of harmony and peace in society both of which are pre-conditions for meaningful development in social, cultural, economic and other spheres. Indeed, the processes of reconciliation and conciliation/mediation, arbitration and other forms of ADR are important vehicles for fostering social harmony. The notion of disposing of disputes without the rupture of relationships is certainly much better achieved through these informal arrangements than through the confrontational court atmosphere which is endemic in the adversary system.

It is observed that the ADR mechanisms serve to:

1. relieve court congestion, as well as undue costs and delays;
2. enhance community involvement or participation in the dispute resolution process;
3. facilitate access to justice to a greater number of the populace; and
4. provide an effective and efficient dispute resolution

With a cautious and informed use of ADR mechanisms, the foregoing goals may be attained and the public's right to speedier and cheaper justice can be achieved.

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Access to Justice: Legal Aid

In line with Article 7 of the Universal Declaration of Human Rights, it has been pledged in the preamble of the Constitution of the People's Republic of Bangladesh that one of the fundamental aims of the state is to realize a society in which equality of justice would be secured of all citizens. Article 27 of the Constitution provides for a fundamental right that all citizens are equal before law and are entitled to equal protection of law.

However, the poor population of Bangladesh, most of whom pass more than half of the year through acute starving condition, cannot afford to reach the door of any law chamber and derive any benefit of their service in many cases. As a result, they silently bear the agonies of injustice done to them in various spheres of life without any legal relief. This is nothing but a negation to them of their fundamental right of equality before law and the equal protection of law as guaranteed in the Constitution. No constitutional protection of high ideal of rule of law or independence of judiciary for the administration of justice can help a poor citizen of a country like ours to protect his rights and liberties unless there is some system to enable them to access justice, for example, in the form of legal aid.

Legal Aid through NGOs

Legal aid in the USA, UK and India have developed largely due to the intensive efforts of private voluntary organizations, such as legal aid societies, the social service organizations, the law school clinics and the Bar Associations. In Bangladesh as well, some leading NGOs have pioneered the legal aid movement sometimes with the active assistance of different development partners. Among them, most prominent are Bangladesh Legal Aid and Service Trust (BLAST), Ain O Salish Kendro (ASK), Madaripur Legal Aid Association, Bangladesh Woman Lawyers Association, Bangladesh Shishu Adhikar Forum (BSAF) etc. Most of these NGOs render legal aid scheme to cover a particular area of the country, although some of them have the legal sanctions to work all over the country. They also offer training, mediation, legal awareness and counseling scheme to help indigent people solve their legal problems.

Legal Aid through Government Machinery

Legal aid movement in Bangladesh did not gain momentum at the governmental level until 2000 when the Government in assurance of financial cooperation by the Canadian International Development Agency (CIDA) made an initiative to provide legal aid to indigent litigants. With that view the Legal Aid Act 2000 was passed providing for legal mechanism and access to legal aid throughout the country.

The Ministry of Law, Justice and Parliamentary Affairs (MLJPA) launched the Legal and Judicial Capacity Building Project (LJCBP) in 2001 with overall objective of improving the efficiency, effectiveness and accountability of the civil justice delivery system and thereby increasing access to justice, particularly for woman, poor and other vulnerable groups. LJCBP's Legal Aid component has an IDA fund equivalent to Tk. five crore fifty lacs (5.5 millions).

Important Provisions of the Legal Aid Act, 2000 & Legal Aid Rules 2001

- 1. National Legal Aid Organisation:** Section 3 of the Legal Aid Act 2000 provides for an organisation named National Legal Aid Organisation which will organize and monitor proper functioning of this Act.
- 2. National Management Board:** Section 5 and 6 provide that the management and administration of the National Legal Aid Organization will be vested on a National Management Board and Minister of Law will be the Chairman of that Board.
- 3. Main Functions:** Section 7 provides that the main function of the Board would be as follows:
 - i. To provide legal aid to poor litigants;
 - ii. To supervise the activities and effectiveness of the District Committee;
- 4. District Committee:** Section 9 provides the formation of the District Committee with District and Sessions Judge as Chairman of the Committee;
- 5. Functions of the District Committee:** Section 10 provides the function of the District committee to be as follows:
 - i. To provide legal aid to poor litigants according to the rules and principles fixed by the National Legal Aid Organization.
 - ii. To fix and determine conditions of legal aid for those applicants whose applications for legal aid has been accepted.
 - iii. To adopt and implement projects and plans relating to legal aid in the district.
- 6. The Fund of the Board:** Section 13 provides that the fund of the Board will come from government, foreign donation, local bodies, organization or companies etc. However, at present it is the CIDA which is funding the legal aid program under the Legal Aid Act.
- 7. Panel of Lawyers:** Section 15 provides following provisions as to panel lawyers.
 - i. For the Supreme Court panel would include a group of lawyers who have practice experience not less than 7 years in the High Court Division.
 - ii. For District Court panel would include a group of lawyers who have practice experience not less than 5 years.
 - iii. Once an application for legal aid is granted, the Board or Committee shall appoint a lawyer from among those in the panel provided that in such appointment the choice of the applicant will be considered as far as possible.

8. Persons eligible for Legal Aid: As per Rule 2 of the Legal Aid Rules 2001 the following persons will be entitled to receive legal aid:

- i. Any freedom fighter incapable of earning or partly incapable of jobless of whose yearly income is not more than taka 6,000.00;
- ii. Any person who is receiving old age benefit;
- iii. Any helpless mother with V.G.D card;
- iv. Any women or children who are victims of illegal trafficking;
- v. Any women or children who are victim of acid throwing;
- vi. Any person who has been allotted a house or plot to nay ideal village;
- vii. Poor widow, any poor women deserted by her husband;
- viii. Any handicapped person with earning incapability;
- ix. Any person who is financially incapable to protect or defend his rights in the court;
- x. Any person who is arrested under preventive detention law and is financially incapable to defend his rights;
- xi. Any person who has been considered by the court financially incapable or poor;
- xii. Any person who has been considered or recommended by the Jail Authority financially incapable or poor;
- xiii. Any person considered by the Organisation from time to time financially incapable or poor for the purpose of the Legal Aid Act.

For the purposes of the Legal Aid Act by the term "financially incapable or poor" means any person whose yearly average income in not more than taka 3000.00.

9. Application for Legal Aid: Section 16 of the Legal Aid Act 2000 provides that:

- i. Application asking for legal aid is to be submitted to either the Board or the District Committee;
- ii. If the application is rejected by the Board or the District Committee, then the applicant may file an appeal to the Board within 60 days and the decision of the Board in this regard will be final.

In addition to the above provisions, the Legal Aid Rules 2001 provides for the procedure of making application for legal aid:

- i. The applicant has to write application on a plain paper detailing his name, address and reasons for asking for legal aid;
- ii. If the application is made for legal aid for any matter in the Supreme Court, it is to be made to the Chairman of the Organization. On the other hand, if it is for legal aid in any other court, it is to be made to the Chairman of the District Committee;
- iii. The application accepted by the committee is considered in its next meeting;
- iv. Once considered to have been accepted, it will be informed to the applicant litigant.

10. Areas of Legal Aid: As per the Legal Aid Rules 2001 for conducting legal aid cases legal aid lawyers will get paid out of the legal aid fund in the following manner:

- i. Maximum of taka 1000.00 for drafting a plaint or memo of appeal.
- ii. Maximum of taka 1000.00 for drafting of a written statement.
- iii. Maximum of taka 600.00 for preparing an application or written statement of any miscellaneous case.
- iv. Maximum of taka 500.00 for drafting any interlocutory applications or any reply of there of .
- v. Maximum of taka 100.00 for any time petition.
- vi. Maximum of taka 500.00 for final hearing of a family matter; taka 800.00 for hearing of a civil suit, taka 500.00 for argument of a criminal case: and taka 200.00 for any urgent application.
- vii. To conduct criminal cases in courts other than High Court Division the panel lawyers will get paid as per the rate the Assistant Public Prosecutors are paid.
- viii. Maximum of taka 2000.00 for conducting a case in the Supreme Court.

Performance of the National Legal Aid Organization and District Committee at a Glance:

A glimpse of the main activities of the National Legal Aid Committee and district committee during 2001-2007 are given below:

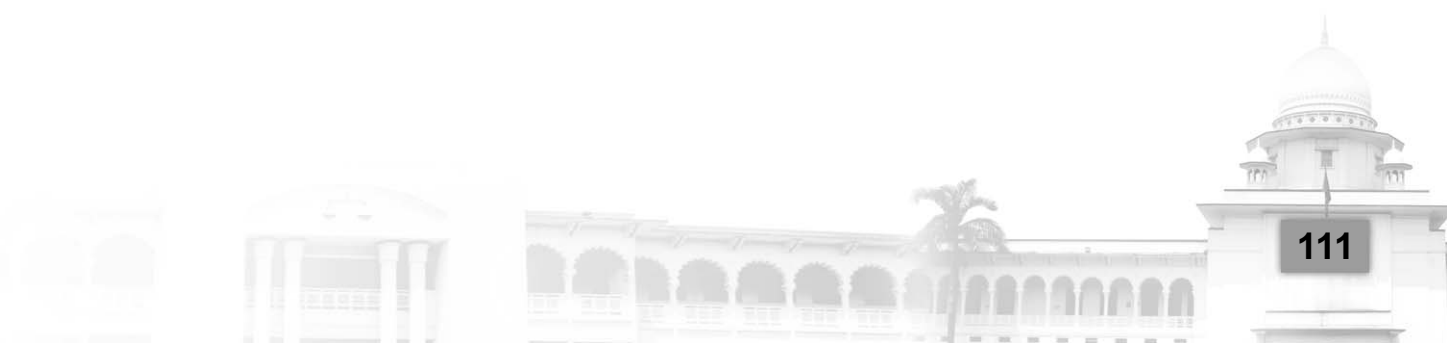
- a. During the period from 2001 to 2007 legal aid has been provided in 56211 cases (civil and criminal) in 55 Districts.
- b. Legal aid has been provided in 1020 Jail Appeal cases.
- c. Number of panel advocates engaged to conduct cases in Supreme Court are 44.
- d. Number of panel advocates engaged to conduct cases in District Courts are 3267.
- e. Up to 20 June, 2007, National Legal Aid Organization arranged 19 Board meetings, 17 review meetings and one round table conference.
- f. Year wise budget allocation by Government in favour National Legal Aid Organization and disbursement of fund by NLAO in favour of District Committees:

Item No.	Financial Year	Govt. Budget for NLAO	NALO Fund Disbursement for District Committees
1	2000-2001	25,00,000.00	39,59,000.00
	2001-2002	25,00,000.00	
2	2002-2003	30,00,000.00	47,75,000.00
3	2003-2004	50,00,000.00	42,00,000.00
4	2004-2005	1,00,00,000.00	75,00,000.00
5	2005-2006	60,00,000.00	56,00,000.00
6	2006-2007	80,00,000.00	56,45,000.00
7	2007-2008	80,00,000.00	

From the above information, it is evident that during 2000 to June 2007, Ministry of Finance has allocated budget for Legal Aid Fund amounting to taka 3,70,00,000.00 in favour of National Legal Aid Organization. Out of that fund, NLAO has disbursed Taka 3,16,79,000.00 in favour of District Committees. According to information collected from 55 districts, it is found that Taka 2,91,10,210.00 has been spent on account of lawyers bills and other incidental charges. During this period, in all the districts about 56,211 persons have been given legal aid in various civil and criminal cases. Moreover, 890 Jail Appeals have been disposed of where 1,020 persons have been given legal aid and taka 23,20,000.00 has been paid on account of Supreme Court lawyers bills for conducting jail appeals cases.



Metropolitan Sessions Court, Dhaka



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Financial Statement of the Supreme Court

Statement on Allocation of Budget for High Court Division in the Year 2007 - 2008

CODE NO	STATEMENT	REVISED BUDGET FOR THE YEAR 2007-2008
4501	PAY OF OFFICERS	3,22,00,000
4601	PAY OF ESTABLISHMENT	7,15,00,000
4705	HOUSE RENT ALLOWANCE	5,36,00,000
4709	RECREATION ALLOWANCE	15,00,000
4713	FESTIVAL ALLOWANCE	1,66,00,000
4717	MEDICAL ALLOWANCE	81,00,000
4755	TIFFIN ALLOWANCE	15,00,000
4765	CONVEYANCE ALLOWANCE	17,00,000
4795	OTHERS ALLOWANCE	14,00,000
4801	TRAVELING ALLOWANCE	8,00,000
4803	INCOME TAX	2,00,000
4805	OVER TIME ALLOWANCE	42,00,000
4815	POSTAGE	16,00,000
4816	TELEPHONE/TELEGRAM/TALE PRINTER	30,00,000
4821	ELECTRICITY	64,00,000
4823	PETROL/LUBRICANT	80,00,000
4831	BOOKS AND MAGAZINE	15,00,000
4840	TRAINING EXPENDITURE	1,00,000
4842	SEMINAR AND CONFERENCE	50,000
4851	LABOR WAGES	10,00,000
4869	MEDIAL EXPENDITURE	70,00,000
4899	OTHERS EXPENDITURE	40,00,000
4901	MAINTENANCE OF MOTOR VEHICLE	25,00,000
4906	MAINTENANCE OF FURNITURE	1,00,000
4911	MAINTENANCE OF COMPUTER AND OFFICE INSTRUMENT	12,00,000
4956	MAINTENANCE OF TELECOMMUNICATION EQUIPMENT	10,00,000
6821	PURCHASE OF FURNITURE	10,00,000
	TOTAL	23,18,17,000

**Statement on Allocation of Budget for Appellate Division
in the Year 2007 - 2008**

CODE NO	STATEMENT	REVISED BUDGET FOR THE YEAR 2007-2008
4501	PAY OF OFFICERS	52,00,000
4601	PAY OF ESTABLISHMENT	54,00,000
4705	HOUSE RENT ALLOWANCE	35,00,000
4709	RECREATION ALLOWANCE	3,00,000
4713	FESTIVAL ALLOWANCE	16,50,000
4717	MEDICAL ALLOWANCE	7,00,000
4755	TIFFIN ALLOWANCE	1,50,000
4765	CONVEYANCE ALLOWANCE	1,00,000
4795	OTHERS ALLOWANCE	1,00,000
4801	TRAVELING ALLOWANCE	10,00,000
4810	MUNICIPALITY TAX	55,000
4803	INCOME TAX	50,000
4815	POSTAGE	1,00,000
4816	TELEPHONE/TELEGRAM/TALE PRINTER	5,50,000
4819	WATER	11,00,000
4823	PETROL/LUBRICANT	9,00,000
4831	BOOKS AND MAGAZINE	3,00,000
4842	SEMINAR AND CONFERENCE	25,000
4869	MEDICAL EXPENDITURE	18,00,000
4899	OTHERS EXPENDITURE	6,50,000
4901	MAINTENANCE OF MOTOR VEHICLE	50,000
4911	MAINTENANCE OF COMPUTER AND OFFICE INSTRUMENT	5,50,000
6301	PENSION AND FAMILY PENSION	36,40,000
6302	FESTIVAL ALLOWANCE FOR PENSIONER	3,12,000
6311	GRATUITY	1,83,00,000
6341	MEDICAL FACILITIES FOR PENSIONER	4,00,000
6821	PURCHASE OR FURNITURE	2,00,000
7401	HOUSE LOAN ADVANCE	33,00,000
7403	COMPUTER LOAN	2,00,000
7411	MOTOR CUR LOAN ADVENCE	1,80,000
7421	MOTOR CYCLE LOAN ADVENCE	15,00,000
7431	BICYCLE LOAN ADVANCE	21,000
	TOTAL	5,21,93,000

Revenue Earning

In view of separation of Judiciary, the needs for enhanced salary of the judges of subordinate judiciary may be partly addressed by rationalizing the court fees which in comparison to other countries of the world is lowest in Bangladesh and also disproportionate compared with the money spent by litigants for the litigations.

Judiciary throughout the world is regarded as the last resort of the people. In view of this, it is desirable that the pay and allowances of the persons dispensing justice should be at such a level which would enable them to lead a moderate life with honour and dignity. If the pay and allowances of judges of subordinate judiciary are raised having due regard to the pay and allowances of Judges of the similar rank of India and Pakistan as well as socio-economic conditions of Bangladesh, then additional money would be required to meet the enhanced pay and allowances.

The additional money can be generated in the form of revenue income of the Judiciary by raising and rationalizing the Court fees. It would not only be sufficient to meet enhanced pay and allowances of subordinate judiciary, but would also help to meet enhanced pay and allowances of the Judges of the Higher Judiciary as well as members of support staff of both Subordinate and Higher Judiciary.

Total Revenue Income of the Judiciary

1	Total Income of the Supreme Court of Bangladesh	= 69,49,676/-
2	Total Income of the Subordinate Judiciary. (Court fees +Stamp Fees +Miscellaneous income)	=42,53,66,000/-
3	Total Income of the Judiciary	=43,23,15,676/-

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Former Chief Justices of Bangladesh and Their Tenure

1.	Mr. Justice Abu Sadat Mohammad Sayem	16.12.1972 - 5.11.1975
2.	Mr. Justice Syed A. B. Mahmud Hossain	18.11.1975 - 31.1.1978
3.	Mr. Justice Ruhul Islam	13.08.1976 - 22.1.1978 (C.J. of the High Court)
4.	Mr. Justice Kemaluddin Hossain	1.2.1978 - 11.4.1982
5.	Mr. Justice F. K. M. Munim	12.4.1982 - 30.11.1989
6.	Mr. Justice Badrul Haider Choudhury	1.12.1989 - 1.1.1990
7.	Mr. Justice Shahabuddin Ahmed	14.1.1990 - 31.1.1995
8.	Mr. Justice M.H. Rahman	1.2.1995 - 30.4.1995
9.	Mr. Justice A. T. M. Afzal	1.5.1995 - 31.5.1999
10.	Mr. Justice Mustafa Kamal	1.6.1999 - 31.12.1999
11.	Mr. Justice Latifur Rahman	1.1.2000 - 28.2.2001
12.	Mr. Justice Mahmudul Amin Choudhury	1.3.2001 - 17.6. 2002
13.	Mr. Justice Mainur Reza Choudhury	18.6. 2002 - 22.6.2003
14.	Mr. Justice K. M. Hasan	23.6.2003 - 26.1.2004
15.	Mr. Justice Syed J.R. Mudassir Husain	27.1.2004 - 28.2.2007

Secretary to the Honorable Chief Justice

1.	Mr. Mohammad Mehdi Hasan	Appellate Division
2.	Mr. Kabir Ahmed	High Court Division

Computer Personnel of the Supreme Court

1.	Mr. Kazi Parvez Anwar	System Analyst
2.	Mr. Mohammad Siddikur Rahman	Programmer
3.	Mst. Habiba Khatun	Programmer
4.	Mr. Md. Hasan Reza Hoshayeni	Assistant Maintenance Engineer
5.	Mr. Moni Sankar Datta	Assistant Programmer