



JUDICIAL ACCOUNTABILITY IN BANGLADESH: A DISCOURSE

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ABSTRACT

The goal of this study is to undertake a discourse on the accountability of the public officials working within the judiciary of Bangladesh and the implications of accountability on the rule of law and the preservation of human rights. The judiciary of Bangladesh and its judges are now at the centre of public debates over their lack of transparency, impartiality and accountability, which has eroded the public's confidence in them. To ensure a high standard of decision-making and public acceptance of judicial decisions and to create public respect on judicial decisions, to enhance public confidence accountability is the first pre-condition.

Keywords: Justice, Democracy, Rule of Law, Public Accountability.

1. INTRODUCTION

The judiciary plays a dominant role to provide for rule of law which is most essential to strengthen the foundation of democracy. This is more important for a developing democracy like Bangladesh where the weakness of democracy, political influence and corruption in the absence of a strong judiciary could pose threat to individual liberty. The accountability, independence, impartiality of the judiciary is one of the hallmarks of the democratic system of the government.¹ In protecting the rights of citizens the judiciary is authorized to keep the state within the bounds of law by resolving the conflicts between the state and citizens.² Impartiality is the basic characteristic desirable in judges to deal equally with 'all parties to a dispute, and not to impartial but to apply the law equally and fairly to all'.³ In order to maintain judicial impartiality judges should conduct themselves in a manner that assures the disputing parties that their case will be disposed of on merit and not on the basis of any irrelevant considerations or personal predisposition of judges.⁴ A judge should decide cases in accordance with an impartial 'assessment of the facts' and 'understanding of the law' without any direct or indirect improper influence or interference from any source or for any reason⁵. Only an accountable, independent and impartial judiciary can establish the rule of law and protect the rights of the individual and can provide equal justice without fear and favour.

¹ Malleson, Kate, "Judicial Training and Performance Appraisal: The Problem of Judicial Independence", (1997) 60 *Modern Law Review* 655 at 659.

² Akkas, Sarkar Ali, "*Independence and Accountability of Judiciary: A Critical Review*", (Center for Rights and Governance, Dhaka, 2004), pp 30-31.

³ Walker, *The Oxford Companion to Law* (Clarendon Press, Oxford, 1980), p 601.

⁴ Gleeson, Murray, "*The Role of the judge and Becoming a Judge*", a speech given to the *National Judicial Orientation Programme*, Sydney, 16 August 1998,

<http://www.hcourt.gov.au/speeches/cj/njop.htm>, accessed on 6 October 1999 [15].

⁵ Montreal Declaration 1983, Art. 2.02; UN Basic Principle 1985 Art. 2; Beijing Statement 1995 Art. 3(a).

In a modern democratic welfare state, the power rests on three separate organs, namely the executive, the legislature and the judiciary. The constitution of the People's Republic of Bangladesh, vests executive power in the executive and the legislative power in parliament. Though there is no specific vesting of judicial power, it is vested in the judiciary. The judiciary comprises all courts and tribunals, which performs the delicate task of ensuring the rule of law in the society. Access to justice is the demand of any democracy. Judiciary redresses the grievances of the people and disputes. Judicial accountability is complementary to the concept of judicial independence if it is dealt with as a goal of enhancing public confidence in the judiciary, which is the foundation of judicial independence.⁶ In Bangladesh, the judicial norms and practice have been derogated for years. Recently a number of allegations have mounted surrounding judiciary.

1.1 THE CONCEPT OF JUDICIAL ACCOUNTABILITY

Accountability means liability to give an account, the state of being accountable, liable, or answerable. According to Oxford Dictionary 'accountable' means responsible for your own decisions or actions and expected to explain them when you are asked. Accountability is the *sine qua non* (essential condition) of democracy. Accountability means the obligation of public officials to explain, justify and legitimize the use of powers in discharging public duties.⁷ It means that a person or class of persons is answerable for his or her actions and decisions to some clearly identified individual or body.

In ethics and governance, accountability is answerability, blameworthiness, liability, and the expectation of account-giving.⁸ In a modern state, there is a public expectation that all institutions of government will 'operate with integrity and efficiency'.⁹ In order to enhance public confidence in their integrity and efficiency and to enforce the fundamental rights and basic human rights of the people all public institutions should be accountable for the exercise of legal powers and their performance of public duties. The judiciary being one of the basic organs of a modern democratic state must also be accountable. Like all government institutions in a democracy, the judiciary, must be transparent and accountable to the people for the proper performance of their duties. Transparency in judicial functioning and accountability for judicial actions and inactions inspire public faith and confidence in the institution.¹⁰

The objectives of judicial accountability are to ensure high standards of decision-making and public acceptance of judicial decisions¹¹ and to create public respect on judicial decisions and to enhance public confidence. Judges individually shall be free, and it shall be their duty to decide matters before them impartially, in accordance with their assessment of the facts and their understanding of the law without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.¹²

It is generally acknowledged that power and accountability go hand in hand and thus "there is no power without accountability and the stronger the former, the greater the latter."¹³ The standards of decision-making depend on the personal quality of judges and their independence and impartiality in the decision-making process. In the absence of public confidence in the judiciary, the public cannot respect the

⁶ Nicholson, R D, "Judicial Independence and Accountability: Can They Co-exist?" (1993) 67 *Australian Law Journal* 404 at 414.

⁷ Dhavan, R, "Judges and Accountability", in Dhavan R *et al* (eds) *Judges and the Judicial Power* (Sweet & Maxwell, London, 1985), p 167.

⁸ Dykstra, Clarence A., "The Quest for Responsibility", (February 1939) *American Political Science Review* (The American Political Science Review, Vol. 33, No. 1) 33 (1): 1-25.

⁹ Gleeson, Murray, "Judicial Accountability", in *Courts in a Representative Democracy: A collection of the Papers from a National Conference in Canberra*, The Australian Institute of Judicial Administration, Victoria, 1994), p 165.

¹⁰ Pande, Suchi et al, "Judiciary should go for transparency, not secrecy", *The Hindu*, India, Wednesday, 7 May 2008, <http://www.hindu.com/2008/05/07/stories/2008050755211100.htm>; accessed on 10 January 2013.

¹¹ Gleeson, Murray, "Judicial Accountability", in *Courts in a Representative Democracy: A collection of the Papers from a National Conference in Canberra*, The Australian Institute of Judicial Administration, Victoria, 1994), p 168.

¹² Article 2(2) of the Universal Declaration of the Independence of justice, adopted at 1st World Conference of the Independence of justice, held at Montreal on June 10, 1983.

¹³ Canivet, Gay et al, "The Responsibility of Judges in France, in *Independence, Accountability and the Judiciary*", (2006) at 30.

decisions of the judges.¹⁴ Consequently, judges are accountable to the public for maintaining public confidence in the judiciary.¹⁵

2. DISCUSSIONS

2.1 JUDICIAL ACCOUNTABILITY IN BANGLADESH

After the separation of judiciary in 1st November 2007 a revolutionary changes have been made in the judiciary of Bangladesh with a view to make it independent. Although the achievement of effective independent judiciary in Bangladesh could not possible by this change. Four and half years have passed but separate judicial secretariat is not established though the present government committed itself during the election.¹⁶ Judicial independence is an important value in any democratic system of government without which justice and the establishment of the rule of law are impossible.

In a modern democratic state independent of the judiciary is an indispensable component. To ensure the fair administration of justice and to establish the rule of law in a democratic society there is no alternative of effective independent of the judiciary. Effective judicial independence cannot be sustained without ensuring corresponding accountability 'for failure, errors or misconduct' of judges.¹⁷ A powerful judiciary without accountability is not only an anathema to the Constitution but also a recipe for disaster for any democratic system.¹⁸ In the recent years, the judiciary in Bangladesh is being criticized more freely than was the case a few years ago. The criticism and comment on the judiciary is now frequent and the judiciary cannot escape the scrutiny of the demand of the people. The criticism is directed not only to judicial decisions but also to the interference of the government to the judiciary, personal qualifications, competence, attitudes and background of judges. Professor Shah Alam says: Reaction of the people at large to the decisions of the courts and their right to criticise the judiciary is a great check on the judicial activities and decision-making. It is not the decision of an individual case which matters; it is the totality of several decisions taken by different courts over a period of time which molds the attitude of the community towards the judiciary.¹⁹ Day by day people of Bangladesh are being educated and they have become more conscious, vocal and active, demanding change to better satisfy their desires and wants. This attitude of the general people calls for greater accountability of judicial officers. The ways through which accountability of judicial officers is ensured in Bangladesh may be classified under two headings: (i) traditional ways of accountability and (ii) disciplinary mechanisms. The traditional ways of accountability are: (a) public exposure of judicial functions; (b) reasons for a judicial decision; (c) appeals process; and (d) scrutiny by lawyers.

(a) PUBLIC EXPOSURE OF JUDICIAL FUNCTIONS

In making decision judges have some obligations. They have to maintain certain established principles or procedures, which open the judiciary to public scrutiny. When there is an established principle or procedure, they cannot take any decision beyond this principle or procedure and if there is no established principle in making a decision they have to apply principles of justice, equity and good conscience. Therefore, a judge cannot take any arbitrary decision. In the administration of justice public hearings are

¹⁴ Campbell, Enid and Lee, HP, *"The Australian Judiciary"*, Cambridge University Press, Cambridge, 2001, p 272.

¹⁵ Akkas, Sarkar Ali, *"Independence and Accountability of Judiciary: A Critical Review"* (Center for Rights and Governance, Dhaka, 2004), p 34.

¹⁶ *The Daily Nayadiganta*, Dhaka, Bangladesh, Tuesday, 30 July 2013.

¹⁷ Shetreet, Shimon, "The Limits of Judicial Accountability: A Hard Look at the Judicial Officers Act 1986", (1987) 10 *University of New South Wales Law Journal* 4 at 6-7.

¹⁸ *Securing Judicial Accountability Freedom of Speech Vs Contempt Towards an Independent Judicial Commission* (background paper for the Seminar on Judicial Accountability being held on 13/10/07 at the Indian Society for International Law, Bhagwan Das Road, New Delhi), at <http://www.judicialreforms.org/home.htm>; accessed on 15 February 2013.

¹⁹ Professor Alam, Shah, *"Dialectics of Judicial Independence and Judicial Accountability"*, in the *Daily Star*, Dhaka, Tuesday, 18 November 1999.

essential feature which restricts the arbitrary use of judicial power and stimulates judges to maintain the standards of judicial performance.²⁰

The public hearing of cases is a significant scrutiny for impartial and efficient administration of justice and an effective way of gaining public confidence and respect for the justice system.²¹ Public hearing of cases is a great opportunity for the people to scrutinize the activities of the courts whether it is right or wrong, but very few people attend to observe judicial proceedings. For the effective administration of justice role of media is mentionable. The general people rely on the media for information about the activities of the courts.²² By reporting the activities of courts, the media play a crucial role in shaping public understanding of the courts, which in turn has a great impact on public confidence in the judiciary.²³ Thus the media acts as a substitute for the general people and contributes to give substance to the principle of public hearings.

(b) REASONS FOR JUDICIAL DECISION

It is the duty of the judges to explain the reasons of their judicial decisions and to state them publicly. The obligation to give reasons for judicial decisions is a requirement of good decision-making. It promotes public acceptance of judicial decisions²⁴ and increase public confidence in the judicial decision.

The explanation of reasons for judgment is necessary for the satisfaction of the litigant parties of their grievances. It helps the parties to appraise the decisions of judges and to assess whether there is any ground for an appeal. It may alleviate the grievances of the defeated party in a case.²⁵ The provision of reasons exposes the judges to review and criticism and it facilitates and encourages consistency in judicial decisions.²⁶

(c) APPELLATE PROCESS

Appeal means removal of a cause from an inferior court to a superior court for testing soundness of the decision of the inferior court. Judicial decisions of the subordinate courts are subject to appeal to the superior courts. The appellate courts may identify and correct judicial error made by judges in making judicial decisions.²⁷ It has the power to determine a case finally; to remand a case; to frame issue and refer them for trial; to take additional evidence or to require such evidence to be taken. Thus, appeals are effective in the rectification of certain types of judicial errors or injustice but cannot provide a complete system of making judges accountable for using judicial power.²⁸

(d) SCRUTINY BY LAWYERS

Activities of judges may be scrutinized by academic or practicing lawyers. This form of scrutiny is crucial to make judges care about their standards of judicial performance and conduct.²⁹ Academic lawyers can evaluate and criticise the performance and conduct of judges and scrutiny by practicing lawyers is more important because legal practitioners spend most of their time in the courtrooms and observe the conduct and performance of judges very closely. Scrutiny of judges by practising lawyers is very significant in checking judicial performance and behaviour and in promoting public understanding of the courts and judicial

²⁰ Butler, Des and Rodrick, Sharon, "Australian Media Law" (LBC Information Services, Pyrmont, 1999), p 128.

²¹ *Scott vs. Scott* (1913) AC 417, 463.

²² Butler, Des and Rodrick, Sharon, "Australian Media Law" (LBC Information Services, Pyrmont, 1999), p 129.

²³ Doyle, John, "The Well - Tuned Cymbal", in Helen Cunningham (ed) *Fragile Bastion: Judicial Independence in the Nineties and Beyond* (Judicial Commission of New South Wales, Sydney, 1997), p 42.

²⁴ Gleeson, Murray, "Judicial Accountability", in *Courts in a Representative Democracy: A collection of the Papers from a National Conference in Canberra*, The Australian Institute of Judicial Administration, Victoria, (1994), p 168.

²⁵ Campbell, Enid and Lee, HP, "The Australian Judiciary", (Cambridge University Press, Cambridge, 2001), p 226.

²⁶ *Beale vs. GIO* (1997) 48 NSWLR 430, 442.

²⁷ Gleeson, Murray, "Judging the Judges" (1979) 53 *Australian Law Journal* 338 at 343.

²⁸ Handsley, Elizabeth, "Issues Paper on Judicial Accountability", (2001) 10 *Journal of Judicial Administration* 181 at 192.

²⁹ *Ibid.*

functions. If they are not satisfied with the performance and conduct of judges they may report to the disciplinary authority or the Chief Justice. In some cases, they can boycott the court of judges who do not maintain the standards of judicial conduct.

2.2 DISCIPLINARY MECHANISMS

One of the most important from of judicial accountability in Bangladesh is the discipline of judges. It is an important instrument to make judges accountable for their conduct and exercise of the power and performance of the duties conferred and imposed by the Constitution of the People's Republic of Bangladesh and other statutory laws. Judicial discipline is essential to check illegality and corruption in the administration of justice and to maintain high standards of conduct and propriety in judicial officer. In the case of failure to maintain high standards of judicial performance and conduct, judges may be subject to disciplinary action, including suspension or removal from office through disciplinary mechanisms or held up of promotion. In Bangladesh, the mechanisms for discipline of judges of the Supreme Court and subordinate courts are significantly different i.e. discipline of subordinate court judges and discipline of Supreme Court judges.

“The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrate exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court.”³⁰

The President of Bangladesh is invested with the power of discipline of subordinate court judges and who is bound to act with the advice of the Prime Minister.³¹ Thus, ultimately the real power of disciplining judges is vested in the Prime Minister. According to the Rule 11 of the Bangladesh Judicial Service (Posting, Promotion, grant of leave, control, discipline and other conditions of Service) Rules 2007, the consultation with the Supreme Court should be effective consultation and, in the case of any difference of opinions, the opinions of the Supreme Court prevails over those of the executive government.

If there is an allegation against a judge, the Secretary of the Ministry of Law, Justice and Parliamentary Affairs after considering the allegation first determines whether the allegations, if established, would warrant a major or a minor penalty. In the case of allegations that may warrant a major penalty against a judge, the Secretary of the Ministry of Law, Justice and Parliamentary Affairs frames a charge stating the penalty likely to be imposed and communicates it to the judge asking him or her to submit a written statement and to show cause within ten working days.³²

In the case of allegations that may warrant a minor penalty, the Secretary does not frame the charge but makes the allegations known to the accused asking for an explanation of the conduct within seven working days.³³ If after considering the statements submitted by the accused the Secretary of the Ministry of Law, Justice and Parliamentary Affairs is of opinion that there is a reason to proceed further, he or she takes initiatives to inquire into the allegations. An Inquiry Officer who is not below the rank of the accused, or a Board consisting of three members, should be appointed to conduct the inquiry.³⁴ The Inquiry Officer or Board should hold an inquiry under Rule 10 of the Government Servants (Discipline and Appeal) Rules 1985. After making the inquiry, the Inquiry Officer or Board of Inquiry submits its report with the findings whether the accused is guilty or not and on receipt of the report the authority shall consider the report and decides on the charges against the judge. If the authority decides to impose any penalty, it gives a second show cause notice to the accused.³⁵ After receiving the reply to the notice, the authority shall forward the proceedings together with the statements of the accused to the Supreme Court.

³⁰ Article 116 of the *Constitution of People's Republic of Bangladesh*.

³¹ Article 48(3) of the *Constitution of People's Republic of Bangladesh*.

³² *Government Servants (Discipline and Appeal) Rules 1985*, r 7(1).

³³ *Government Servants (Discipline and Appeal) Rules 1985*, r 6(1)(a).

³⁴ *Government Servants (Discipline and Appeal) Rules 1985*, rr 6(1)(b), 7(2-3), 10(9)).

³⁵ *Government Servants (Discipline and Appeal) Rules 1985*, r 7(5-6).

On the basis of the opinion given by the Supreme Court, the authority shall take the final decision in the disciplinary proceedings. A judge aggrieved by the decision of the disciplinary proceeding may apply to the President for review of the decision.³⁶ An order of the President made on an application for review can be challenged in the Administrative Tribunal and the decision of the Administrative Tribunal is subject to appeal to the Administrative Appellate Tribunal.³⁷ Finally, a person may appeal to the Appellate Division of the Supreme Court against the decision of the Administrative Appellate Tribunal.³⁸

According to Article 96 of *the Constitution of the People's Republic of Bangladesh*, the President on a report of the Supreme Judicial Council may remove a Judge of the Supreme Court from his or her office. The Supreme Judicial Council shall consist of the Chief Justice of Bangladesh and the two next senior judges. If at any time the Council is inquiring into the capacity or conduct of a judge who a member of the Council or a member of the Council is absent or unable to act due to illness or other cause, the judge who is next in seniority to those who are members of the Council shall act as such member.³⁹

Under Article 96(4) of *the Constitution of the People's Republic of Bangladesh*, the function of the Council shall be to prescribe a code of conduct to be observed by all judges of the Supreme Court; and to inquire into the capacity or conduct of a judge or of any other functionary who is not removable from office except in like manner as a judge.⁴⁰

Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a 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, the President may direct the Council to inquire into the matter and report its finding.⁴¹ If after making the inquiry, the Council reports to the President that in its opinion that the judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order remove the judge from office.⁴²

2.3 THE CURRENT STATE OF JUDICIAL SYSTEM IN BANGLADESH

Currently the judiciary of Bangladesh is at the centre of public debates for some reasons. Firstly political influence: Political influence affected the entire judicial system of Bangladesh and the judicial officers are not free to exercise their judicial power. The political authority made judicial appointments to the higher court and allegedly influenced many judicial decisions on politically sensitive cases, including decisions regarding bail and detention of political opponents of the government.

On April 11, 2009, government appointed 17 additional judges on political consideration of whom two of the appointees had criminal records that included murder charges and ransacking of court premises.⁴³ The then outgoing Chief Justice Fazlul Karim refused to administer the oath on two judges, which drew criticism from government leaders. Secondly corruption: Bangladesh judiciary is the most corrupt institution.⁴⁴ Political appointment and influence is hampering the true justice in Bangladesh.⁴⁵ Sixty percent (60%) people of the country think that the highest corrupted sector in Bangladesh is police, judiciary and land management.⁴⁶ The third highest corrupted sector in Bangladesh is the judiciary.⁴⁷ Eighty-nine percent (89%) people of the country think that the judiciary of Bangladesh is corrupted.⁴⁸ Thirdly pardoning power

³⁶ *Government Servants (Discipline and Appeal) Rules 1985*, r 23.

³⁷ *Administrative Tribunals Act 1980*, ss 4, 6.

³⁸ *Administrative Tribunals Act 1980*, ss 4, 6; Article 116 of *the Constitution of People's Republic of Bangladesh*.

³⁹ Article 96(3) of *the Constitution of People's Republic of Bangladesh*.

⁴⁰ Under Articles 118(5), 129(2), 139(2) of *the Constitution of the People's Republic of Bangladesh* an election Commissioner, the Comptroller and Auditor-General, and the Chairman and other members of the Public Service Commission of Bangladesh are removable in 'like manner and on the like grounds' as a judge of the Supreme Court.

⁴¹ Article 96(5) of *the Constitution of People's Republic of Bangladesh*.

⁴² Article 96(6) of *the Constitution of People's Republic of Bangladesh*.

⁴³ The Daily Star, Dhaka, Bangladesh, Sunday, 12 April 2009.

⁴⁴ Transparency International Global Corruption Report 2007.

⁴⁵ <http://www.alapbangladesh.com>; accessed on 15 January 2013.

⁴⁶ Transparency International Global Corruption Report 2012.

⁴⁷ Transparency International Global Corruption Report 2013.

⁴⁸ *Ibid.*

of the President: The President shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.⁴⁹ But the use of the President's pardoning power of political purpose affects judicial accountability in Bangladesh. Jubo Dal leader Sabbir Ahamed Gama the nephew of the former Bangladesh National Party (BNP) deputy minister Ruhul Quddus Talukdar Dulu was gunned down and murdered on February 7, 2004 in Natore. The judge of the Speedy Trial Tribunal-3 of Natore delivered the verdict on August 24, 2006 awarding death penalty to 21 offenders. Most of the convicts are Awami League adherents. Late President Zillur Rahman granted a presidential pardon to 20 death row inmates in the Gama killing case.⁵⁰

The Chittagong Speedy Trial Tribunal sentenced Biplob son of the Awami League leader to death on December 9, 2003 on a charge of killing lawyer Nurul Islam, a local leader of the Bangladesh National Party (BNP) on September 18, 2000 in Lakshmipur.⁵¹ The President remitted the death sentence after receiving a petition filed by Biplob's father Abu Taher. Prime Minister Sheikh Hasina in reply to a question said that Biplob was a political victim of the then BNP Jamaat alliance government and that was why President had pardoned him.⁵²

Fourthly infringement of seniority: There is no specific law for promotion on the basis of seniority in the court of Bangladesh. On September 26, 2010 the government appointed A.B.M. Khairul Haque as the Chief Justice of Bangladesh superseding two senior members of the Appellate Division of Supreme Court of Bangladesh.⁵³ Present Chief Justice Mr. Justice Mozammel Hoque was also appointed by superseding other judges.

2.4 MAJOR BARRIERS TO ENSURE JUDICIAL ACCOUNTABILITY IN BANGLADESH

Though after a historical struggle the judiciary of Bangladesh is separated from the executive organs of the country that was done by a non-political caretaker government on November 1, 2007 in pursuance of Masder Hossain's case yet judicial accountability is not ensured in Bangladesh. Irregular appointments, promotions and transfers of judges have an adverse impact on the entire judiciary of Bangladesh and its integrity. There are some major flaws in the judicial accountability system in Bangladesh which is very essential for the sake of the disciplinary system. Disciplinary proceeding are based Firstly, in disciplining subordinate court judge there no participation of the legal profession or lay persons, on the internal administrative control of the judiciary and secondly there is no specific process for making a complaint against a judge. Moreover, the process of making a complaint against a judge is not open to the public. The Ministry of Law, Justice and Parliamentary Affairs and the Supreme Court jointly control the subordinate court judges, but it is not an easy task for the public to make a complaint against a judge to the Ministry or to the Supreme Court. In some few cases of the breach of judicial conduct, lawyers of the court concerned passes a resolution through their association and send it to the Ministry and the Supreme Court. If the Ministry thinks fit takes initiative to discipline the judge but in practice, there is no specific system to receive any complaints directly from the public. Thirdly, an Inquiry Officer conducts the investigation of a complaint made against a judge or a Board appointed by the Ministry, that is, the executive government. Therefore, there is a strong possibility of interference from the political executive.⁵⁴

Similarly, in disciplining the judges of the Supreme Court have also some flaws. Firstly, the President may initiate the disciplinary proceedings against a judge of the Supreme Court by directing the Supreme Judicial Council to inquire into the capacity or conduct of a judge.⁵⁵ But under Article 48 (3) of *the Constitution of People's Republic of Bangladesh*, the President is bound to act on the advice of the Prime Minister who is the Chief Executive of the State. Therefore, initiation of disciplinary proceedings against a

⁴⁹ Article 96(5) of *the Constitution of People's Republic of Bangladesh*.

⁵⁰ The Daily New Age, Dhaka, Bangladesh, Tuesday, 7 September 2010.

⁵¹ The Daily Star, Dhaka, Bangladesh, Wednesday, 10 December 2003.

⁵² The Daily Star, Dhaka, Bangladesh, Sunday, 17 July 2011.

⁵³ The Daily Star, Dhaka, Bangladesh, Monday, 27 September 2010.

⁵⁴ Akkas, Sarkar Ali, "Independence and Accountability of Judiciary: A Critical Review", (Center for Rights and Governance, Dhaka, 2004), p-240.

⁵⁵ Article 96(5) of *the Constitution of People's Republic of Bangladesh*.

Supreme Court Judge depends on the political will of the government. The second drawback of the system of disciplining Supreme Court Judges is that there is no specific system for making complaints against a judge. Under the current system the process of making complaints against a judge is not easily accessible and it might be called inappropriate. Again, the Supreme Judicial Council is composed of judges and therefore, it is likely that in some cases the Supreme Judicial Council would hesitate to make a complaint against a fellow judge. In this way, a transgressing judge might escape disciplinary proceedings.

3. CONCLUSION

Judicial accountability has to be ensured alongside the independence of judiciary for establishing true democracy in a country. In a democratic society it is an expectation of the public that their judges maintain standards of judicial conduct and exercise judicial functions in accordance with legal norms and principles. Therefore, a judge should be accountable for his or her incapacity in exercising judicial functions. The judicial accountability system in Bangladesh, particularly the system of disciplining judges of the subordinate courts and the Supreme Court is not sufficient to gain public confidence for several reasons. The most important drawback in the judicial system of Bangladesh is that the disciplinary system is under the control of executive government and the judiciary, and there is no participation of the community and the legal profession.

Judicial accountability requires a high degree of independence in order to fulfill its constitutional obligation to adjudicate impartially and to stand up to political pressure. Today, it is not proper on normative grounds that any public authority review itself, without supervision by some external body.⁵⁶ In order to enhance the confidence of the people, public participation should be ensured in the affairs of the judiciary. Discipline of judges is one of the important aspects in which such participation is necessary. Judicial accountability system in Bangladesh is still a debate. People expect good democracy and the rule of law, the legislature, the executive and the judiciary will balance their power. In order to ensure justice free from political interference, illegality and corruption and to maintain high standards of conduct and propriety of judges, there should be an accessible system to make complaints against judges. An independent office of the Ombudsman may play an effective role in establishing such an accessible system.

4. RECOMMENDATIONS

Though there is no alternative of effective judicial accountability to ensure justice, high standard of decision making and to enhance public confidence in the judiciary, yet some major flaws are the impediments to the effective judicial accountability system in Bangladesh. These impediments can be removed by the implementation of the following recommendations, which will enhance public confidence, and to ensure justice through effective judicial accountability.

- In disciplining judges causes for discipline should be specified and defined by law.
- In disciplining judges participation of the legal profession or laypersons should be ensured.
- The process of making a complaint against a judge is to be specified and open to the public.
- Disciplinary rules ensure that the judiciary carries out initial rigorous investigation of all allegations. An independent body must investigate complaints against judges and give reasons for its decisions.
- Public confidence in the judiciary should be enhanced by ensuring transparency and openness in the affairs of the judiciary, particularly in the system of judicial accountability.
- In order to ensure the accountability of judges, the disciplinary power should not be vested exclusively in the judiciary. Article 77 of the *Constitution of People's Republic of Bangladesh* lays down provisions for the establishment of the office of ombudsman with a view to investigate any action taken by a Ministry, a public officer or a statutory public authority. However, Article 77 of the Constitution does not contemplate any Ombudsman for the judiciary. Therefore, in order to establish the office of the Ombudsman for judiciary changes in the Constitution of Bangladesh will be needed.

⁵⁶ For a survey of criticism of this approach, see Cappelletti, M., "Who Watches the Watchmen?": *A Comparative Study on Judicial Responsibility*, (1989), *The Judicial Process in Comparative Perspective*, Clarendon Press, Oxford, 1991.

Political interference with the judiciary should be stopped and the appointments, promotions and should be controlled by the Supreme Court without interference from the government.

- The removal mechanisms for judges must be clear, transparent and fair and reasons needed to be given for decisions.
- A code of judicial conduct provides a guide and measures and should be developed and implemented by the judiciary. Breaches must be investigated and sanctioned by a judicial body.
- Civil society organizations can contribute to understanding the issues related to judicial corruption by monitoring the incidence of corruption, as well as potential indicators of corruption, such as delays and quality of decisions. There must be an enhanced training standard for the judicial officers and ensure as trainers not politically chosen person, but persons with high moral character and commitment to equity, justice and human rights. Encourage training and education abroad for judicial officers by relaxing restrictions.
- The media should not be influenced by the politics and the politicians or anti judicial activities.
- The salaries of the judicial officers must be commensurate with judges' position, experience, and performance and professional development for the entirety of their tenure; fair pensions should be provided on retirement.