

# SEPARATION OF JUDICIARY IN BANGLADESH: A BIG LEAP LEADING TO INDEPENDENCE AND ITS POTENTIAL IMPACTS

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## 1. Introduction

The terms separation and independence are not synonymous. This becomes more visible and audible when we would like to talk about the role of a judiciary for ensuring justice and good governance in a democratic country. It has been our long cherished dream to separate our judiciary from the influence and control of the executive organ of the state. It has become a matter of great pride and honour for us that the separation of judiciary is no longer a dream for us but has become a thing of reality and we all hope that this historic evolution would usher in a new era of greater judicial independence. Let us again aspire that this greater independence would enable our lower judiciary to satisfy the justice-seekers.<sup>1</sup>

It is almost trite to mention that no other criminal court of the lower judiciary in Bangladesh enjoys direct connection with the larger portion of our litigants so extensively like the magistrate courts. Nor have magistrates of other countries the many special jurisdictions and extra-judicial functions conferred on the magistrates of Bangladesh by statutory enactment.<sup>2</sup>

As regards criminal cases in Bangladesh, magistrates' courts are the courts of first instance. It would be evident from the number of criminal cases filed in a year in these courts, which is far greater than the number of cases in civil courts. So, these criminal courts should have played a vital

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<sup>1</sup> Rahman, Shah Md. Mushfiqur, "Separation of Judiciary and its Potential Impact", *The Daily Star*, 03-11-2007, p 23.

<sup>2</sup> Bhuian, Mohammad Nazmuzzaman, "Separation of Magistracy: A Need for the Independent Judicial System in Bangladesh", *The Dhaka University Studies, Part F, Vol. XVI (1)*, June 2005, p 81.

role in shaping the thoroughgoing nature of our legal system. But unfortunately, due to some legal shortcomings, these courts are playing controversial role frustrating the very purpose of the independent judicial system. Public perception of the magistracy is very low and the reasons are plain to see. In order for law enforcement to be fair, the judicial system must be concerned only with the application of law. There is only one way in order to make this happen: assurance of independence from any sort of influence from the administrative branch of the government. Achieving judicial independence is the crucial phase in regaining public confidence in the legal system of Bangladesh. The future independence of the judiciary of Bangladesh depends upon the minimization of the executive interference in the lower judiciary, and more importantly, upon the removal of the executive control over the magistracy.<sup>3</sup>

The separation of the lower judiciary or Magistrate Court has been a matter of great urgency for securing justice to the justice-seekers in our country. We really would like to appreciate this big leap of the separation of judiciary in Bangladesh. The aim of this study is to focus on the possible implications that may result from this separation as the real independence of the judiciary and the proper functioning of an independent and separate magistracy in Bangladesh are likely to be very much influenced by these implications and for this reason, these potential impacts should be dealt with a measure of great caution and concern.

## **2. Conceptualization of the terms ‘Separation of Judiciary’ and ‘Independence of Judiciary’**

### **2.1. Separation of the Judiciary**

Separation of the judiciary has been argued both as a cause and a guardian of formal judicial independence. The concept of separation of the judiciary from the executive refers to a situation in which the judicial branch of government acts as its own body free from intervention and influences from the other branches of government particularly the executive. Influence may originate in the structure of the government system where parts or all of the judiciary are integrated into another body (in the case of Bangladesh: the executive). For example, in Bangladesh as per the Constitution the President appoints judicial officers in consultation with the Supreme Court. Besides, other functional aspect of

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<sup>3</sup> Ibid.

the judicial system including the administration of justice is in some way, affected by executive orders or actions.<sup>4</sup>

Executive abuse of this constitutional order result in biased appointment of judges, and other officers of the judicial cadre, favoring individuals who support the governing political party. Dr. Kamal Hossain, a respected advocate of the Supreme Court, explains the concept of separation of the judiciary through the idea of double standards. An executive officer follows plans, which are of a vertical nature, with the higher offices guiding the decisions of the lower officers, who look for the best possible ways to further the plans established by those higher in the pecking order. Executive decisions are made in lines of policy; law is not a policy. Judges or magistrates performing judicial functions must examine what evidence is given and find a way to best apply it to the law; there is less room for an individual's perceptions in judicial decisions.<sup>5</sup>

Complete separation is relatively unheard of outside of theory, meaning no judiciary is completely severed from the administrative and legislative bodies because this reduces the potency of checks and balances and creates inefficient communication between organs of the state.<sup>6</sup>

## 2.2. Independence of Judiciary

Generally judicial independence means the freedom of judges to exercise judicial powers without any interference or influence. The most central and traditional meaning of judicial independence is the collective and individual independence of judges from the political branches of the government, particularly from the executive government.<sup>7</sup> It requires that judges should not be subject to control by the political branches of government and that they should enjoy protection from 'any threats, interference, or manipulation which may either force them to unjustly'

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<sup>4</sup> Mollah, Md. Awal Hossain, "Separation of Judiciary and Judicial Independence in Bangladesh" available at- <http://www.unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN020065.pdf>.< accessed on 26/11/2007>.

<sup>5</sup> Dr. Kamal Hossain, the Senior most lawyer of the Supreme Court of Bangladesh and the Chairman of the Drafting Committee of the Constitution of Bangladesh gave this opinion on 5th March 2004 in an interview by Sierd Hadley.

<sup>6</sup> Ibid.

<sup>7</sup> Cappelletti, Mauro (1989), "The Judicial Process in Comparative Perspective", *Clarendon Press, Oxford*, 1991, p 69.

favour the government or 'subject themselves to [punishment] for not doing so'.<sup>8</sup> However, the international instruments require that judges should be free to decide cases impartially, 'without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.'<sup>9</sup>

The concept of judicial independence has two opposite connotations; negative and positive. In the negative sense, the concept of judicial independence seeks to avoid any kind of dependence, interference or influence in administering justice. In other words, judicial independence refers to the existence of a judiciary that enjoys freedom from dependence, interference or influence from any sources whether from the executive, the legislature or private individuals. In the positive sense, judicial independence means the freedom of the judges to exercise judicial functions impartially, in accordance with their own understanding of law and fact.<sup>10</sup>

The concept of judicial independence, as recent international efforts demonstrated by different international declarations, principles like Montreal Declaration (1983), UN Basic Principles (1985) and Beijing Statement (1995) to this field suggests, comprises following four meaning of judicial independence:

- (i) **Substantive Independence of the Judges:** It is referred to as functional or decisional independence meaning the independence of judges to arrive at their decisions without submitting to any inside or outside pressure;
- (ii) **Personal independence:** That means the judges are not dependent on government in any way in which might influence them in reaching at decisions in particular cases;
- (iii) **Collective Independence:** That means institutional administrative and financial independence of the judiciary as a

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<sup>8</sup> Larkins, M Christopher, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis", (1996) *44 American Journal of Comparative Law* 605, p 608.

<sup>9</sup> Montreal Declaration (1983, Article 2.02), UN Basic Principles (1985, Article 2) and Beijing Statement (1995, Article 3a).

<sup>10</sup> Karlan, S Pamela (1999), "Two Concepts of Judicial Independence" (1999), *72 Southern California Law Review* 535, pp 536, 558.

whole vis-à-vis other branches of the government namely the executive and the legislative; and

- (iv) **Internal Independence:** That means independence of judges from their judicial superiors and colleagues. It refers to, in other words, independence of a judge or a judicial officer from any kind of order, indication or pressure from his judicial superiors and colleagues in deciding cases.<sup>11</sup>

Independence of judiciary depends on some certain conditions like mode of appointment of the judges, security of their tenure in the office and adequate remuneration and privileges. Satisfactory implementation of these conditions enables the judiciary to perform its due role in the society and thus inviting public confidence in it.<sup>12</sup> Independence of the judiciary, if it is properly maintained, it will lend prestige to the office of a judge and will consequently inspire confidence in the general public.

### 3. Historical Background of the Separation of Judiciary in Bangladesh and the relevant provisions of the Constitution of Bangladesh

The separation of magistracy has been debated almost since the arrival of the British, it is since the emergence of Bangladesh and the formation of its own Constitution that the need for the separation and the independence of the Judiciary as well as magistracy has become crucial. Specially after the 4<sup>th</sup> Amendment of the Constitution on 25<sup>th</sup> January of 1975, which introduced the one party political system, the country went through the most significant and radical changes in the Constitution.<sup>13</sup> It is told that the Amendment completely curtailed the independence of the judiciary.<sup>14</sup>

<sup>11</sup> Bari, Dr. M. Ershadul, "Importance of an Independent Judiciary in a Democratic State", *The Dhaka University Studies, Part F, Vol. IV (1)*, June 1993, pp 2, 3.

<sup>12</sup> Rahman, Dr. Mizanur, "Governance and Judiciary", *Governance: South Asian Perspective*; Hye, Hasnat Abdul (Editor); The University Press Ltd. 2000, p 147.

<sup>13</sup> Ahmed, Moudud, *Bangladesh: Era of Sheikh Mujibur Rahman*, Dhaka, 1984, p 233.

<sup>14</sup> Halim, Md. Abdul, *Constitution, Constitutional Law and Politics, Bangladesh Perspective*, Dhaka, 2003, p 118.

Regarding the appointment of the judges in the subordinate courts, it was provided in the original Constitution that the District Judges shall be appointed by the President on the recommendation of the Supreme Court and; in the case of other judicial officers including magistrates shall also be appointed by the President after consulting the Public Service Commission and the Supreme Court.<sup>15</sup> As to the security of tenure, it was provided that the control and discipline of the judges and magistrates would vest in the Supreme Court.<sup>16</sup>

These were healthy provisions regarding the lower judiciary as well as magistracy.<sup>17</sup> But the 4th Amendment amended the appointment provision to the effect that appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with the rules made by him in that behalf.<sup>18</sup> The provision regarding control and discipline were amended to the effect that the control (including the power of posting, promotion and grant to leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President. Thus the whole judiciary became subservient to the executive.<sup>19</sup> And after making such provisions, it was inserted in the Constitution that subject to the other provisions, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions.<sup>20</sup> This provision was really illusory. However, the undemocratic provisions regarding the control and discipline introduced by the 4<sup>th</sup> Amendment were repealed and the healthy provision ‘in consultation with the Supreme Court’ as was provided by the original Constitution was revived in 1978 by the Second Proclamation.<sup>21</sup>

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<sup>15</sup> Article 115(1) of the original Constitution of Bangladesh of 1972 but this Article was amended by the Fourth Amendment Act, 1975(Act II of 1975), s 19.

<sup>16</sup> Article 116 of the *Constitution of the People's Republic of Bangladesh*. In this Article the word “President” was substituted for the words “Supreme Court” by the Fourth Amendment Act, 1975(Act II of 1975), s 20.

<sup>17</sup> Supra note 2, p 94.

<sup>18</sup> Article 115 of *The Constitution of the People's Republic of Bangladesh*.

<sup>19</sup> Supra note 2, p 94.

<sup>20</sup> Article 116A of *The Constitution of the People's Republic of Bangladesh*.

<sup>21</sup> Supra note 2, p 95.

In the years following the 1975 Amendment, a few attempts were taken to improve the independence of Judiciary, which revolved around mainly the higher judiciary only ( e.g. the creation of Supreme Judicial Council regarding the removal of Supreme Court Judges in 1977 and the increase in the tenure of the office of the Supreme Court Judges several times) but the issue of the separation of lower judiciary remained unheeded until 1997 when the High Court Division demanded the judiciary to be separated from the executive.<sup>22</sup>

### **3.1. Masdar Hossain Case, a brief look into the Judgement**

The issue of separation of judiciary from the executive came to the fore with the judgement of Masdar Hossain Case (Secretary, Ministry of Finance vs. Masdar Hossain)<sup>23</sup> that started as a mere grievance regarding financial benefits evolved to an issue that touched the core of separation of judiciary. The higher judiciary seized the opportunity to its fullest to come up with two of the most acclaimed milestone judgments in the country's legal history at both tiers of the apex court. Interestingly enough, and much to the satisfaction of the lawyers' community, the highest court did not loosen its leash on the implementation of the judgement. Rather, it still holds the full control of the implementation procedure to make sure that everything is on track.<sup>24</sup>

Popularly it is said that Masdar Hossain judgment contains 12-point directives that are vital to separation of judiciary. Indeed, the judgment contains 12 points in its directive part but all of those are not essentially framed in the form of directions that may require the government to undertake some actions of affirmative nature. Rather, most of the points deal with declarations made by the court clarifying its position on different constitutional provisions and these declarations do have the force of law. Directive points of the operative part require the government to frame Rules that are to deal with establishment of a Judicial Service of Bangladesh; to enact law regarding posting, promotion, grant of leave, discipline, pay, allowances, pension and other terms and conditions of service; to establish a separate Judicial Pay Commission by Rules; to make law ensuring security of tenure of judges,

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<sup>22</sup> Ibid.

<sup>23</sup> 52 DLR (AD) p 82.

<sup>24</sup> Supra note 1.

security of their salary and other benefits and pension and institutional independence from the Parliament.<sup>25</sup>

These directions of the highest court are complied with the enactment of the much-talked-about four Rules.<sup>26</sup> Other points of the judgement are also of vital importance. For example, the very first point declares that the judicial service, though a service of the Republic, is a functionally and structurally distinct and separate service from the civil executive and administrative services of the Republic and any amalgamation or mixing up between these two different genera of services cannot be done on any account nor can they be placed on a par.<sup>27</sup>

It was also clarified that the control of the Judicial Service should be guided by Rules framed according to Article 115 and not Rules under Article 133 or 136 of the Constitution. It was also clarified that the Services Act, 1975 and the Civil Service Recruitment Rules, 1981 would not apply with regard to the judges.<sup>28</sup>

After the pronouncement of this landmark decision, it has taken nearly ten years but this has finally been achieved. On 1 November 2007, a non-political government was able to complete what political governments of the past had promised but failed to deliver. It was a question of political will and the past political masters were unfortunately found wanting.<sup>29</sup> Reluctance of successive governments and bureaucratic tangles had been the main hindrances till now to the implementation of such separation. Political governments, due to partisan interests had also procrastinated in the implementation of the required steps. This course of action on their part had been so despite the provisions of Article 112 of the Constitution

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<sup>25</sup> Ibid.

<sup>26</sup> The Bangladesh Judicial Service Commission Rules, 2007; The Bangladesh Judicial Service (Pay Commission) Rules, 2007; The Bangladesh Judicial Service (formation of the service, appointment in the service and temporary dismissal, dismissal and removal) Rules, 2007; The Bangladesh Judicial Service (determination of posting, promotion, grant of leave, regulation, discipline and other conditions of service) Rules, 2007.

<sup>27</sup> Ibid.

<sup>28</sup> Zamir, Muhammad, 'Make the Separation of Judiciary work', *The Daily Star*, 17-11-2007.

<sup>29</sup> Ibid.



whereby the government is supposed to act in aid of the Supreme Court.<sup>30</sup>

The civil society, media and the political parties of Bangladesh welcomed the development. Haroon Habib, a Dhaka based freedom fighter turned journalist said, “The separation of judiciary was an epoch-making step, and should be considered a major milestone in Bangladesh’s judicial history despite the fact that it was done when there is no political government.” Appreciations came from its development partners, with countries like the United States, Britain and Germany saying that it was an important step towards strengthening democracy in Bangladesh.<sup>31</sup> Barrister Mainul Hossain, the adviser for Law, Justice and Parliamentary affairs to the caretaker government described, “We (the government) have separated the judiciary from the interference of the executive not as a favour to the judges, but to assign them with the heavy responsibility of upholding justice and contributing to good governance as contemplated by the Constitution.”<sup>32</sup>

The government has also brought amendments to the Code of Criminal Procedure, 1898<sup>33</sup> reflecting the basis of the separation of judiciary as contained in Article 22 of our Constitution, which states that the State shall ensure separation of the judiciary from the executive.

#### **4. Possible Implications likely to follow from the Separation**

Till recently our judges in the lower courts were appointed by the Public Service Commission under a special category named Bangladesh Civil Service (Judicial). This method of appointment has been declared unconstitutional by the apex court. Additionally it was directed to the government that a separate Judicial Service Commission be formed to carry out the same function. This direction is met by the enactment of

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<sup>30</sup> Ibid.

<sup>31</sup> Merinews; “Bangladesh’s Big Leap Towards a Stronger Democracy,” available at <http://www.merineews.com/catFull.jsp?articleID=127957&catID=1&category=World> < accessed on 29-11-2007>.

<sup>32</sup> Ibid.

<sup>33</sup> *The Code of Criminal Procedure(Amendment) Act* , 2007 Ordinance no 2, 2007, Bangladesh Gazette, Extraordinary Issue.

the Bangladesh Judicial Service (formation of the service, appointment in the service and temporary dismissal, dismissal and removal) Rules, 2007.<sup>34</sup>

Another enactment titled the Bangladesh Judicial Service Commission Rules, 2007 provides for the formation of Bangladesh Judicial Service Commission which is responsible for the selection of competent candidates for judicial service to be appointed by the President. In accordance with the judgment most of the members of this Commission are to be drawn from persons holding high judicial offices. Naturally these persons are much less likely to succumb to allurements or threats that might be posed by the government. This, consequently, would help them to dispose of their business relatively independently so as to keep government loyalists away from judicial service to preserve the job's sanctity.<sup>35</sup>

The use of an independent commission in appointing judges is the most acceptable mechanism among the commentators in the contemporary world.<sup>36</sup> The *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region [Beijing Statement] 1995* states:

In some societies, the appointment of judges, by, with the consent of, or after consultation with a Judicial Service Commission has been seen as a means of ensuring that those chosen as judges are appropriate for the purpose. Where a Judicial Service Commission is adopted, it should include representatives of the higher judiciary and the independent legal profession as a means of ensuring that judicial competence, integrity and independence are maintained.<sup>37</sup>

The Commission system is operating well in different countries of the world like Canada, South Africa etc. Such type of commission has been established in Bangladesh and has already started its function in selecting the competent judges for the lower judiciary. This is undoubtedly a landmark step in the history of judiciary in Bangladesh.

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<sup>34</sup> Supra note 1.

<sup>35</sup> Ibid.

<sup>36</sup> Baar, Carl, "Comparative Perspectives on Judicial Selection Processes in Appointing Judges: Philosophy, Politics and Practice", *Ontario Law Commission, Ontario, 1991*, p 153.

<sup>37</sup> *Beijing Statement 1995*, Article 15. The Conference of Chief Justices of Asia and the Pacific unanimously adopted the *Beijing Statement* on 19 August 1995.

Another enactment entitled the Bangladesh Judicial Service (Pay Commission) Rules, 2007 has been introduced to ensure that financial aspects of judicial officers are no more intermingled with officers of other categories. By means of this law a separate Pay Commission for the judicial service would be established which will be responsible to maintain that financial independence of judicial officers is well secured. It can be safely predicted that pay scale meant for the judges would be quite different from other government services and the trend would be upwards. Proper implementation of this law will draw the attention of many young but highly talented lawyers who otherwise would have engaged in other professions requiring legal expertise. This eventually would add to the dignity and credibility of the judiciary.<sup>38</sup>

Yet another enactment entitled the Bangladesh Judicial Service (determination of posting, promotion, grant of leave, regulation, discipline and other conditions of service) Rules, 2007 is made to deal with the affairs, named in the law itself, of judicial officers.<sup>39</sup>

#### **4.1. Changes made into The Code of Criminal Procedure (1898)**

The implications likely to follow from the separation of lower judiciary are very much related and dependent on the amendments made into the Code of Criminal Procedure, 1898 (CrPC). The Code of Criminal Procedure (1898) as amended in 2007 provides in the amended section 6 that there shall be two classes of Magistrates, namely:-

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

The Judicial Magistrates would form an inseparable part of the Bangladesh Judicial Service and shall be appointed from the persons employed in the Bangladesh Judicial Service in accordance with the rules framed by the President under Article 115 or under the proviso to Article 133 of the Constitution.<sup>40</sup> On the other hand, Executive Magistrates might be appointed by the Government from any persons employed in the Bangladesh Civil Service (Administration) and be conferred the

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<sup>38</sup> Supra note 1.

<sup>39</sup> Ibid.

<sup>40</sup> Section 11(1) of The Code of Criminal Procedure, 1898 (as amended in 2007).

power of executive magistracy.<sup>41</sup> All persons appointed as Assistant Commissioners, Additional Deputy Commissioners or Upazila Nirbahi Officer in any district or Upazila shall be Executive Magistrates and may exercise the power of Executive Magistrate within their existing respective local areas.<sup>42</sup> This means that these persons are automatically empowered with the authority of Executive Magistrates.

Thus a clear segregation is made between these two categories of magistrates both in terms of their place in government functionaries and their functions. The Code of Criminal Procedure, as amended in 2007 in its Schedules III and IV categorically list and provide the ordinary and additional powers respectively of these two distinct categories of magistrates.

Executive magistrates are vested with some serious powers by the amended Code of Criminal Procedure, carefully calculated to encounter unwarranted situations. These include power to arrest, or to direct the arrest of and to commit to custody, a person committing an offence in presence of the magistrate; power to arrest, or direct the arrest in his presence of a person for whose arrest he can issue warrant; power to direct search of any place for the search of which he can issue search-warrant; power to require security to keep peace and good behaviour; power to command unlawful assembly to disperse and use civil force or require military force to that end; power to issue injunction as immediate measure in case of public nuisance etc.<sup>43</sup> Not only these powers, they are also empowered to try cases under the Mobile Court Ordinance (2007)<sup>44</sup> though this will create a dual justice- system in our country because for the same offence punishment may vary in the hands of Judicial Magistrates and Executive Magistrates. Executive Magistrates are also given authority under 36 sections of the Penal Code (1860), covering from sections 143 to 356.<sup>45</sup>

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<sup>41</sup> Section 10(5) of The Code of Criminal Procedure, 1898 (as amended in 2007).

<sup>42</sup> Section 10(6) of The Code of Criminal Procedure, 1898 (as amended in 2007).

<sup>43</sup> As mentioned in part V of the Third Schedule of the Code of Criminal Procedure, 1898 (as amended in 2007).

<sup>44</sup> Ordinance no 31, 2007.

<sup>45</sup> Khan, Mizanur Rahman, "Brahmmoman Adalot Odhyadesher Boidhota Nie Proshno" (Questions relating to the Validity of the Mobile Court Ordinance), *The Daily Prothom Alo*, 30-10-2007, p 11.

## 5. Conclusion

There is no doubt that the separation of the lower judiciary is a momentous step for the whole justice system that has been achieved to advance and ensure greater judicial independence and thereby establish rule of law in the country. The historic beginning of this arduous task has to be accomplished to perfection so that the judiciary must live up to its newly acquired status. However, utmost diligence and caution must be exercised to ensure that the new system delivers in accordance with the hopes of the people. The judiciary must feel independent and separate from the executive branch in all respects and act accordingly. Only then the hope for a truly independent judiciary will be fulfilled.<sup>46</sup> A public authority is duty bound to perform public duty with fairness and also in compliance with practiced standards: any inconsistent decision made unfairly or unjustly will become void and without lawful authority. Such an authority cannot act as it please in its absolute and unfettered discretion and therefore, when an administrative action is found to be unreasonable or lacking in the quality of public interest, it becomes invalid. However, the validity or legality of administrative decisions or actions can be determined only by an independent judiciary which plays a central and significant role in preventing and remedying abuse and misuse of powers as well as in eliminating injustice.<sup>47</sup> We are entering a new era. What we will have is a tentative arrangement that will need the support and cooperation of every branch of government. It is up to us to ensure that this separation does not become a token gesture. This measure contains real promise. It has to be supported not because it has been decided and sanctioned by the highest court but because it contains the possibility of people being able to realize their legal and human rights according to the due process of law.<sup>48</sup>

We must maintain caution about not being too complacent about the latest developments. The concept of separation of judiciary is not synonymous of independence of judiciary, though the former ease the path of the latter. So separation is the means and not the end in itself. Our goal is to attain the removal of every obstacle in the way to have a

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<sup>46</sup> Law Chronicles Online, "Separation of the Judiciary-What it means for the people" available at- [http://www. H:/separation-of-judiciary-What it means.html](http://www.H:/separation-of-judiciary-What it means.html) <accessed on 29-11-2007>.

<sup>47</sup> *Mahmudul Islam vs. Bangladesh*, (2003) 55 DLR pp 172, 188, 189.

<sup>48</sup> *Supra* note 27.

justice-system which is really capable of delivering justice. In this regard we must not forget the control that executive still has over the Supreme Court in the form of appointment and elevation to the Appellate Division from the High Court Division. This is high time to address the issue and thus cure the vices that are creeping into the supreme judiciary. In absence of any option to amend the Constitution in any time soon, this may well be done by a concrete legislation outlining the rules regulating the appointment of justices in the Supreme Court. In essence, there are still rooms for further development as the Appellate Division declared, "... it (Parliament) can amend the Constitution to make the separation more meaningful, pronounced, effective and complete."<sup>49</sup> The establishment of a separate secretariat for the judiciary of our country is very much necessary which will certainly facilitate the many tasks needed to be addressed for making the separation successful.

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<sup>49</sup> Supra notel.