



### Institutions of Accountability Series

## THE JUDICIARY: POLICY NOTE

The courts are one of the most fundamental institutions where power is contested in a constitutional democracy. A functioning and an independent judiciary can restrain and hold the executive accountable together with other state institutions, as well as political and economic elites. A robust judiciary is imperative in establishing rule-based governance. In November 2007, the subordinate judiciary in Bangladesh was formally separated from the executive by bringing in force the main findings of the case of Masdar Hossain. In this context, the Institute of Governance Studies (IGS), by way of this Policy Note, aims to provide a number of policy recommendations, which could further strengthen the independence of the judiciary.<sup>1</sup> This Policy Note focuses on four issues:

**Issue 1: Independence** - the extent to which the judiciary is autonomous from the executive's control

**Issue 2: Accountability** - the extent to which the judiciary can be held responsible for its decisions and actions

**Issue 3: Efficiency** - the internal capacity of the judiciary to carry out its objectives

**Issue 4: Effectiveness** - the extent to which the judiciary has achieved its objectives/mandates

We believe that if the policy recommendations are fully implemented, they would assist both the higher and subordinate judiciary to perform collectively as an institution of accountability by resolving disputes.

### 1. INDEPENDENCE

#### 1.1 Appointment of Judges

Article 95(1) of the Constitution provides that the judges of the Supreme Court will be appointed by the President of the Republic. While the constitutional provision was amended in 1975 to remove the explicit requirement that the Chief Justice of the Supreme Court of Bangladesh be consulted as part of the process of appointing judges, successive Governments have continued to comply with the convention of consultation with the Chief Justice. This convention was finally discarded. However, a recent landmark decision of the Supreme Court has re-asserted the role of the Chief Justice.<sup>2</sup> Such a decision has to be seen in the context of recent political history of Bangladesh, where political affiliation has played a significant role in appointments of high officials, including judges. Appointment of a compliant Chief Justice may not, therefore, act as a significant safeguard in appointing judges.

**Policy Recommendation:** Form a Supreme Judicial Commission which will identify appropriate persons for appointment as judges and recommend their names to the President.

**First**, the judges could be appointed by the Supreme Judicial Commission as it was done during the tenure of the last Caretaker Government (2007-2009). In 2008 the Supreme Judicial Commission Ordinance, 2008 was promulgated and a nine-member Supreme Judicial Commission

1 IGS organised an international workshop on April 15 and 16 and an informal colloquium of judges of the Supreme Court on June 14 of 2009 to facilitate a deliberative process to formulate policy recommendations. This policy note is based on the workshop and colloquium discussions, literature review and an empirical study conducted for the purpose.

2 Idrisur Rahman v. Bangladesh 60 DLR 714. On July 17, 2008, the High Court (HC) ordered the government to make permanent the appointment of the ten judges, who served as Additional Judges but were not confirmed during the BNP-led government, despite the recommendations of the then Chief Justice. In that judgment the HC made it clear that the recommendation of the Chief Justice will be binding on the President.

headed by the Chief Justice was formed. It was given the task to recommend, after selection, two competent persons against each vacant post to the President with a view to appointing one of them as the judge of the Supreme Court. However, the Ordinance became ineffective as it was not placed before the present Parliament within the stipulated time.

If in the future a commission is formed again with similar terms of reference as the previous one such a commission could be chaired by the Chief Justice, and also include as its members the senior-most Justice of the Appellate Division, the senior-most Justice of the High Court Division, the Minister of Law, Justice and Parliamentary Affairs, two or more practicing advocates from the Appellate and High Court Divisions, and the Heads of different constitutional bodies, such as, the Public Service Commission, the Office of the Comptroller and Auditor General.<sup>3</sup>

The Office of the Registrar of the Supreme Court could be given the responsibility of preparing the initial list of potential candidates. The Registrar will prepare the list of names by reviewing the Annual Confidential Reports (ACR) of the judges of the subordinate courts. The Registrar will also have to identify eligible practicing lawyers from the Supreme Court by way of consultation with the Chief Justice and the judges of the Supreme Court.

On receiving the list of names from the Registrar of the Supreme Court the future commission will scrutinise and put together a shortlist of candidates (say three names for each vacant position) which it will then submit to the President for appointment as judges of the High Court Division and Appellate Division of the Supreme Court. If any of the nominees on the shortlist is unacceptable to the President, the Commission will be notified. The Commission will provide more names and the President will then decide from the additional names.

**Second**, judges could be appointed by a collegium of judges, as it is done in India. The collegium would include the Chief Justice and four senior-most judges of the Appellate Division. The collegium will

select and submit a list of candidates to the President. If any of the candidates is unacceptable, the President will notify the collegium and the latter will provide a supplementary list from which appointments will be made.

However, whether it is a commission or a collegium it will be important to seek the opinion of Supreme Court Justices about the competency of the candidates being considered for appointment as judges. A candidate may be appointed only if two-third of judges consulted is satisfied with the person's competency. It needs to be emphasised that the evaluation should be based on pre-determined criteria rather than personal and political attributes. This is to avoid lobbying and partisan appointment. The process of appointment should be made as transparent as possible, for example, by putting the candidates' educational and legal records in public.

A **third** option could be a hybrid of the first two. The Registrar of the Supreme Court, upon request from the Chief Justice or the commission or the collegium could advertise for suitable candidates who would meet the requirements of Article 95(2) (c) of the Constitution. The aspirant candidates will submit information, as stipulated in the advertisement. The Registrar will circulate the information received to the members of the commission or collegium. A sub-committee of the commission or collegium may sift through the applications received and draw up a shortlist. Once the Commission or collegium has approved the shortlist, the names will be made public at the time of submission of those names to the President for appointment as judges.

### *1.2 Selection Criteria for Judges*

Article 95 (2) of the Constitution provides the eligibility criteria for Supreme Court judges: a person has to be a citizen of Bangladesh and either a Supreme Court advocate having at least ten years' standing or a judicial officer who has held judicial office for a period of not less than ten years. The eligibility provision is very broad; experience refers to years of being admitted to practice at the

3 In South Africa, The Judicial Service Commission consists of - (a) the Chief Justice, who presides at meetings of the Commission; (b) the President of the Constitutional Court; (c) one Judge President designated by the Judges President; (d) the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member; (e) two practicing advocates nominated from within the advocates' profession to represent the profession as a whole, and appointed by the President; (f) two practicing attorneys nominated from within the attorneys' profession to represent the profession as a whole, and appointed by the President; (g) one teacher of law designated by the law teachers at South African universities; (h) six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly; (i) four permanent delegates to the National Council of Provinces designated together by the Council with a supporting vote of at least six provinces; (j) four persons designated by the President as head of the national executive, after consulting the leaders of all the parties in the National Assembly; and (k) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier, or an alternate designated by the Premier of the province concerned.

Bar or on the bench, and not necessarily referring to handling of complex legal matters and thus allowing individuals with shallow legal experience to take on the onerous task of judgeship.

**Policy Recommendation:** *Determine specific eligibility criteria for judges.*

Although Article 95 (2) (c) states that the Parliament can determine other qualifications for judges, so far no law has prescribed such criteria. The following criteria are suggested for consideration:

Advocates practicing law before the Appellate Division may be given priority in case of appointment as judges.<sup>4</sup>

The appointing authority should consider distinguished jurists who have worked for at least fifteen years in the judicial or legal field for appointment as judges of the Supreme Court.

In appointing members of the Bar to the Bench the appointing authority can request the Supreme Court judges to review the performance of the selected lawyers. Upon receiving information related to matters such as the number and nature of cases conducted, overall performance on the court cases, and level of professional standard the final decision can be taken.<sup>5</sup>

### 1.3 Financial and Administrative Independence

According to Article 88 of the Constitution, the salary of the Supreme Court judges and associated administrative expenses are charged on the Consolidated Fund and not subject to parliamentary sanction. But as 'administrative expenses' are not defined, the Ministry of Finance (MoF) can regulate such allocation in the name of financial discipline owing to its inherent authority to ensure financial discipline of the government. This practice has severely undermined the effective functioning of the judiciary. Moreover, a somewhat hostile attitude of the government administration towards the judiciary has resulted in delayed or lack of response to requests from the judiciary for assistance in terms of human and other basic resources. For example, while many new magistrates joined the subordinate courts in 2008,

there were no new court rooms for them to work in and had to share court rooms and couldn't hold sessions regularly. The judges had to share stenographers and were often not provided with the most rudimentary equipment (such as pens). The Supreme Court judges also reported similar administrative problems in their work.

**Policy Recommendation:** *Establish a separate secretariat under the supervision of the Supreme Court.*

Administrative secretariat can be established in two phases. In the short-term, the Office of the Registrar of the Supreme Court can be given some new responsibilities. The Registrar's Office should identify, analyse and submit the requirements of the whole of the judiciary to the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA). The MoLJPA should act as a 'post office' and convey the requirements to the relevant ministries. Subsequently, those ministries will provide assistance to the judiciary through the MoLJPA. In case of financial matters, the judiciary will prepare and submit its budget to the MoF through the MoLJPA and the MoF through the same channel will allocate a budget for the judiciary as a whole.

In the medium to long term, a separate law may be enacted to facilitate the formation of a separate secretariat under the control of the Supreme Court. On the enactment of that Act, the judiciary will be in control of its financial and administrative activities through its own secretariat.

## 2. ACCOUNTABILITY

### 2.1 Contempt of Court

The law of contempt of court that has developed in Bangladesh and other parts of the sub-continent is more suppressive than that found in the United Kingdom and other common law countries. The current legislation, the Contempt of Court Act 1926, fails to strike a balance between protection of judiciary and freedom of expression. It is generally felt that the 1926 Act has been used more to protect judges from justified criticism and public scrutiny.<sup>6</sup> According to this Act, reports and comments on

4 According to the Rules of the Bar, a lawyer is allowed to practice law at the High Court only after completion of two years of legal practice at the subordinate courts, during which period the lawyer had to contest at least 100 legal suits. Moreover, the lawyer has to satisfy the judges that s/he has the capacity to do so. After practicing law at the High Court for two years, a lawyer can then apply to the Chief Justice to be allowed to practice at the Appellate Division. Again the lawyer had to contest at least 100 legal suits. The judges of the Supreme Court go through his/her record and decide whether that lawyer has the ability to practice at the Appellate Division.

5 This opinion can be sought in a prescribed form. In the first part of the form, the High Court judges will decide whether the candidate is good enough to be appointed as a judge. This form may have three options- 'yes', 'no' and 'I do not know this person'. If the answer is 'yes' or 'no', then the High Court judges will move to the second part where s/he will comment about legal performance of the candidate.

6 For instance, in 2005, when two national newspapers reported that an additional judge of the High Court, who was serving his probationary term had tampered his law degree the High Court instead of inquiring the veracity of these claims first, convicted editors, publishers and three reporters for contempt of court. Moreover, journalists were barred from contacting judges directly.

court proceedings, judge's personal conduct and criticism of verdicts are treated as contempt. Potential penalties include fine or imprisonment for a term which might extend to six months.

**Policy Recommendation:** Replace the existing Contempt of Court Act with a new, dynamic one.

The new contempt of court act should provide a proper definition of 'contempt of court'<sup>7</sup>. It should allow the press to report and comment on 'normal' court proceedings and functions. At the same time, a judge's personal conduct should be brought under public scrutiny. In order to define the proper code of conduct for the judges, the principles of Bangalore Code of Conduct<sup>8</sup> may be applied. Constructive criticism of judgment should be allowed, i.e. the media will be able to discuss the legal issues contained in the judgment and its possible consequences.

## 2.2 Performance Evaluation

Presently, the performance of subordinate court judges is evaluated by way of Annual Confidential Reports (ACRs). It is commonly held that the process has failed to encourage accountability and is not considered to be an effective supervision mechanism. ACRs encourage *tadbir* (lobbying) with subordinate judges being over-cautious and meek in the hope of receiving glowing reviews from senior judges. ACRs are also susceptible to political interference as subordinate court judges feel that their ACRs would contain negative remarks if they fail to tow a particular political line.

**Policy Recommendation:** Modernise the ACR.

The ACR process is in need of modernisation. The ACR could be divided in two parts: the first part to assess the subordinate court judge's personality traits, i.e. honesty and integrity, sense of responsibility, self-confidence, discipline, conduct, obedience to superior judges, level of cooperation, ability of decision making, etc. The second part is to

include an analysis of judges' legal performance, that is, information about the number of cases decided upon, the quality of judgments (whether the judgments have followed the law and relevant precedent), timeliness, court management, time taken to deliver judgments, interaction with litigants and lawyers in court, among other issues.

In order to make ACR process transparent reasons and evidence need to be provided. Evaluating judge has to cite references of at least five judgments of a particular judge to justify his/her decision in the ACR and explain why those judgments are considered to be particularly extraordinary or unsatisfactory.

## 2.3 Issues of Personnel Management

The judges of the Supreme Court are guided by the Code of Conduct,<sup>9</sup> which provides a very detailed guidance in terms of how judges of the Supreme Court should conduct themselves. Also, according to Article 116 of the Constitution, the personnel matters of the subordinate courts are controlled by the President (the executive), in consultation with the Supreme Court. At present, different rules and regulations formulated for the civil service personnel are also applicable to subordinate court judges.<sup>10</sup> However, these rules were specifically designed for the officials of the Administrative Services and define misconduct from the perspective of the civil service. A complete revision of the conduct rules and a re-definition of 'misconduct' are required for the judiciary. So far no steps have been taken to readjust these rules for the judicial officers. At the same time, the existing transfer and promotion policies allow the MoLJPA to play a significant role in the posting, promotion and transfer of the subordinate court judges.

**Policy Recommendation:** Formulate new rules to conduct the personnel matters of subordinate courts.

7 According to the Contempt of Court Ordinance, 2008 (promulgated during the tenure of the last Caretaker Government and then declared as invalid by the High Court) "violation of any verdict, decree, order, writ or warrant of a court, campaigning ill propaganda against any judge concerned on the subject during discharging responsibilities as judge, affecting the normal course of trial process willingly or by writing or verbally or in sign or indication or through any visible medium will be treated as contempt of court".

8 The Bangalore Code of Judicial Conduct is a set of principles which was designed to provide the judiciary a framework for regulating judicial conduct in the areas of independence, impartiality, integrity, propriety, competence and diligence. It was adopted by the Judicial Group on Strengthening Judicial Integrity at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002. Its main features have been described in the 'Efficiency' section.

9 Code of Conduct For The Judges of the Supreme Court of Bangladesh is effective from the 7th day of May, 2000. The 14 point Code stipulates that any act of a judge of the Supreme Court of Bangladesh whether in official or personal capacity, which erodes the credibility and independence has to be avoided.

10 Bangladesh Judicial Service (Posting, Promotion, Grant of Leave, Control, Discipline and other Condition of Service) Rules, 2007, promulgated during the tenure of the last Caretaker Government suggested that, "With necessary adjustments (Mutatis Mutandis) Government Servants (Discipline and Appeal) Rules, 1985 would be applicable in disciplinary matters against Judges of Subordinate Courts. In the whole process, consultation with the Supreme Court is compulsory". Personnel matters of the judicial officers are still conducted by The Government Servants Conduct Rules, 1979. So far, no adjustment has been made in the existing Government Servants Conduct Rules, 1979 and Government Servants (Discipline and Appeal) Rules, 1985 to make them applicable for the judicial service.

The Bangalore Principles of Judicial Conduct, 2002 provides some guidance on the formulation of new rules. Thereby, the proposed rules should provide, among others, specific regulations related to the professional conduct of judicial officials.<sup>11</sup> Moreover, separate transfer and promotion policies should be developed for the subordinate court judges which will bring them under the control of the Supreme Court.

#### 2.4 Other Measures

It is important to ensure that the judges of the Supreme Court adhere to the Code of Conduct. A cell could be established at the Supreme Court for this purpose.

**Policy Recommendation:** Establish a 'Grievance Cell' at the Supreme Court under the supervision of the Chief Justice.

Any aggrieved person can complain to the 'Grievance Cell'. On receiving complaints, the Cell should initiate inquiry and submit a report to the President. The President, on considering the content of the report, may direct the Supreme Judicial Council, a disciplinary body established by the Constitution, to inquire into the matter, and to take necessary action.

In order to ensure effective performance evaluation of judges and to increase accountability the Chief Justice could fix deadline for judgments to be delivered by judges of higher and subordinate judiciary. He should activate the provision of the *Right to Information Act 2009* by making judgments and orders public by putting them on the website. Finally, the Chief Justice should ensure widespread circulation of the annual report published by the Supreme Court.

### 3. EFFICIENCY

#### 3.1 Training

The Government of Bangladesh has established the Judicial Administration Training Institute (JATI) in accordance with the Judicial Administration Training Institute Act 1995. Under the current training policy, JATI runs a 60-day basic course for newly appointed Assistant Judges, 21-day courses (and at times, 3-day short courses) for Senior Assistant Judges, Joint District Judges and District Judges. However, the quality of training is not satisfactory as it lacks dynamism and fails to

provide the judges with a broader outlook including knowledge of contemporary international legal issues and necessary social skills.

Furthermore, once judges are appointed to the Supreme Court, they normally sit with senior judges and the training they get is through 'on-the-job' experience. The quality of this informal training varies massively depending on the ability and willingness of the presiding judges. A systematic and appropriate 'sharing of learning' programmes need to be constituted for higher judiciary to meet the demands of the globalised world.

**Policy Recommendation:** Ensure effective and dynamic training facilities for the judges.

The quality of training provided by JATI should be improved. A training need- assessment of the subordinate court judges could be undertaken immediately, which will identify the areas of laws (such as, cyber space, money laundering, ethics, arbitration and conciliation) for curriculum development and training. JATI should also plan and implement a continuous point-based training programme for the subordinate court judges.

Another interesting and innovative mode of orientation for the judges of the subordinate courts could be a form of 'apprenticeship' for the newly-recruited by placing them with the judges of the Supreme Court for a designated period of time. Similar to the system of 'pupillage' for newly qualified lawyers when they spend a period of time with senior lawyers the newly recruited subordinate judges could be assigned to different High Court judges. They could work as 'Research Assistants' of the judges and help them with academic research, drafting of legal instruments, and writing of judgments. After this initial phase of 'apprenticeship', they can then receive further training at JATI.

If this particular form of training is allowed, the new recruits will get to learn about the different legal issues and how judgments are written and generally increase their confidence and competence in matters related to law. On the other hand, the judges of the High Court Division, who are severely in need of skilled human resource, could benefit tremendously from the service of the newly recruited judges. This would also develop a working relationship between the judges of the Supreme and the subordinate courts.

11 The provisions may include, they will not be able to serve in a fiduciary role, except for the estate of a family member; financial and business dealings which may interfere with judicial independence will be prohibited; "prohibition of judicial bribery, whether the beneficiary of the gift or advantage is the judge or a member of his/her family"; authorised gifts and benefits, received by them will remain subject to law and they will be legally bound to make public disclosure of the gifts and benefits received; "A judge shall make such financial disclosures and pay all such taxes as are required by law" (Autheman 2004).

For the judges of the Supreme Court the JATI could organise annual colloquiums/conferences following the Sri Lankan experience where it will invite judges from home and abroad. These colloquiums would be an appropriate venue for judges to share experiences and exchange views about issues relating to substantive areas of law as well as judicial administration and ethics. This informal mode of interaction can deal with the reluctance of senior judges in receiving training in formal settings.

### 3.2 Deputation

In Bangladesh, because of the absence of a strong ingrained culture of judicial independence, deputation of judicial officers in various ministries has become a critical concern. In principle, the practice of deputation mars the independence of the judiciary as it brings a number of judicial officers directly under the control of executive offices. It is felt that judicial officers should not be placed in a position which would compromise their prospect of future promotion or prestige *vis a vis* the executive.

**Policy Recommendation:** Phase out deputation of judges in other ministries.

Phasing out deputation should concentrate on two intertwined issues. First, the ministries should build their own legal capacity so that they do not have to borrow officials from the subordinate courts. Second, the existing incentive structures need to be modified to discourage deputation of subordinate court judges. One of the reasons for deputation is the need of the executive to have legal expertise in different ministries. The ministries can adopt two possible policies to satisfy their legal requirements: first, they can directly recruit legal professionals who will provide necessary advice. This may require changes in existing recruitment rules. Second, the government can introduce a separate cadre for the judicial officers who will be directly appointed as law officers in ministries by the Public Service Commission through a competitive process. Specific and specialised training could be given to those persons according to the specific needs of that particular Ministry/Department. These officials will have no relationship with the judiciary.

**Policy Recommendation:** Formulate new rules to provide adequate promotion opportunities for judicial officers

The subordinate court judges are often interested in being deputed to different ministries because of their limited promotion opportunities within the judiciary and their less attractive incentive package and administrative facilities. In order to solve this problem, new promotion rules should be formulated, which will define certain eligibility criteria for promotion (e.g. marks obtained in ACR, length of experience, cases handled, years of active service etc.). If a judge fulfils these criteria, s/he will be promoted even if there is lack of adequate vacant posts. In such circumstances, the promotion policy of public universities could be followed; qualified judges may continue with their existing duties but will receive pay and benefit according to the promoted position.<sup>12</sup>

### 3.3 Low Salary

Comparatively speaking, the judges in Bangladesh are not receiving an attractive incentive package. The present level of salary and other benefits fail to attract competent lawyers in joining the judiciary. As in any other country a successful advocate can earn a handsome income from his or her practice, and, if one has to take a massive cut in income by becoming a judge then there is little incentive. Consequently, only a certain category of advocates remain potential candidates for judicial appointments. A raise in the level of salary (as part of the whole incentive package) of judges, which would be commensurate to the existing living standards of other professionals, may attract a different, and hopefully a better, category of lawyers into the judiciary.

In the subordinate courts, the situation is even worse. Entry level judges were paid a salary scale of Tk. 6800 (now Tk. 11000 as per Bangladesh Judicial Service Pay Scale, 2009), which was abysmally too low to attract meritorious law graduates into the service. While recently the process of recruiting judicial magistrates appears to have attracted a number of meritorious students, but due to low level pay scale as many as 49 entry level judges have already left the service and many more are thinking of doing the same (IGS 2009).

**Policy Recommendation:** Implement the recommendation of the Judicial Pay Commission with immediate effect.

Over the last 100 years, the relative salary levels of the Supreme Court/East Bengal High Court judges have fallen drastically. The present salary structure

<sup>12</sup> In public universities, in case of promotion, a number of eligibility criteria have been determined. Accordingly, a teacher of a department can apply for promotion if s/he fulfils these certain criteria. His/her promotion is allowed even when there is no vacant position at that level.

of judges is significantly low compared to other South Asian countries.<sup>13</sup> Therefore, a massive increase in salary of Supreme Court Judges is necessary.

## 4. Effectiveness

### 4.1 Excessive Case Backlog

In Bangladesh, one of the major problems of the justice sector is delayed dispensation of justice due to huge backlog of cases. Sometimes it takes 20 to 25 years for a case to be resolved. According to average rate of disposal of civil cases in the last five years, it would take two years and nine months to dispose of all pending cases if there are no new cases during this period. On the other hand, according to average rate of disposal of criminal cases in the last five years, it would take one year and ten months to dispose of all pending cases if there are no new cases.

Three factors are responsible for the existing backlog: (i) structural deficiency, for example, shortage of judges, inadequate number of court houses; (ii) legal and procedural complexity and ineffective case management system, for example, 80 per cent of court cases have their genesis in land disputes, and the reason behind this huge number of cases is the outdated land laws and an ineffective land management system; and (iii) weak judicial administration, for example, frequent transfer of Investigation Officers (IOs) of the Police Department, no financial allowances given to witnesses summoned to give evidence.

**Policy Recommendation:** Adopt a holistic approach.

In order to resolve these issues three measures could be taken simultaneously. First, steps should be taken to resolve the structural deficiencies of the judiciary. This includes appointment of sufficient number of judges at both subordinate and higher courts and court modernisation through simplification of such procedures as payment of fees and stamp duties, and application procedures. Other means of modernisation could be application of information and communication technology (ICT) in the area of listing cases and submission of documents at least in the higher courts.

Second, number of filing cases should be decreased. For instance, the land related laws could be revised and land management be simplified. Introduction of ICT in land management will have a positive impact in reducing the number of filing cases. Providing decided cases electronically at the judges' fingertips would reduce the number of cases admitted by the High Court where principles have been established by earlier decisions.

Third, administrative hindrances should be reduced. For example, every police station could have an investigation unit which will keep and update records of all the cases pending in the court within its jurisdiction and will submit witnesses when necessary. When an investigation officer of a police station is transferred, s/he will leave a full departing report for his/her succeeding officer.

## CONCLUSION

Until the formal separation of the judiciary from the executive the judiciary remained in a vulnerable position, where the lower courts were controlled by the executive and the appointment procedure of judges to the Supreme Court depended to a large extent on political allegiance. However, the separation of the judiciary has not met people's expectations in terms of its independent functioning. The subordinate courts, despite being under the control of the Supreme Court, continue its dependence on the executive which has undermined its effective functioning. Measures designed to insulate the judiciary from political interference have not thus ensured the impartiality of the institution due to its administrative dependence. At the same time no significant change has been brought about in the higher judiciary. In this policy note, we have proposed certain measures which may help the judiciary to become an independent entity.

## FOR FURTHER READING:

Autheman, V. (2004). *Global Best Practices, Judicial Integrity Standards and Consensus Principles*, The Rule of Law white paper series. IFES.

Institute of Governance Studies (2009). *Institutions of Accountability: The Judiciary*. Background Paper, Dhaka: BRAC University.

13 A comparison of the salary of Supreme Court judges of Bangladesh with that of India and Pakistan is given in the following table:

Position	Pay in Pakistan (Rs)*	Pay in India (Rs)*	Pay in Bangladesh (Tk.)*
Chief Justice	259,838	100,000	56,000
Justice (Appellate Division)	245,457	90,000	53,100
Justice (High Court Division)	231,563	80,000	49,000

\*per month as at April 2010

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The mission of the University - to promote national development process through the creation of a centre of excellence in higher education that is responsive to society's needs - is consistent with the long-term development objectives of its sponsoring institution, BRAC.



## **Institute of Governance Studies**

House No. 40/6, North Avenue, Gulshan 2, Dhaka-1212, Bangladesh

Tel: +88 01199 810380, +88 02 8810306, 8810320, 8810326

Fax: +88 02 8832542; Email: [igs-info@bracuniversity.ac.bd](mailto:igs-info@bracuniversity.ac.bd)

[www.igs-bracu.ac.bd](http://www.igs-bracu.ac.bd)