

Policy Brief

National Integrity
System Assessment
Bangladesh

JUDICIARY



TRANSPARENCY
INTERNATIONAL
BANGLADESH

Social movement against corruption

Judiciary

The Constitution of Bangladesh provides for the establishment of both higher and lower judiciaries for the adjudication of cases and dispensation of justice. The Judiciary in Bangladesh has two levels, the Supreme Court comprising the High Court Division and the Appellate Division and the Subordinate Courts. The civil courts are classified as courts of Assistant Judge, Senior Assistant Judge, Joint District Judge, Additional District Judge and District Judge respectively. Criminal matters are heard by the courts of Sessions Judge, Additional Sessions Judge and Joint Sessions Judge. In metropolitan areas, sessions courts are termed as Metropolitan Court of Sessions, Additional Metropolitan Court of Sessions and the Joint Metropolitan Court of Sessions. The judiciary also includes several Special Courts and Tribunals; for example, the Family Court hears matrimonial matters, the Special Tribunal on Violence against Women and Children deals with certain offences involving violence against women and children, the Acid Tribunal tries acid crimes, the Labour Court hears cases relating to labour and employment matters, the Anti-Corruption Tribunal tries corruption cases, the Speedy Trial Tribunal deals matters that demand immediate disposal, and so on.

Traditionally seen as the bastion for upholding the rule of law, restricting executive arbitrariness and providing a non-partisan institutional capacity for practicing constitutional democracy, the Judiciary in Bangladesh has increasingly been subjected to steady exploitation by political forces under successive governments. The issue of complete independence of the judiciary has received only 'polite recognition in political rhetoric but its actual separation from executive control does not appear to be a major agenda of the main political forces'. Despite formal separation of the judiciary from the executive, it has not met people's expectations of a truly independent institution since the subordinate courts continue to be influenced by the executive. Judicial independence is believed to be also often compromised by controversial appointments, promotions, removals, and conduct of judges.

Strengths

- Infrastructure and capacity development (new court buildings in various districts, separate Judicial Service Commission for recruitment of lower court judges, recruitment of judges to address case backlog, establishment of Information Unit at the Appellate Division for providing information to the public, initiatives for better case management and preservation of case files in higher courts.
- Judiciary slowly advancing towards separation from executive influence.
- Judicial interventions in the public interest by way of PIL, writs.

Weaknesses

- Lack of financial autonomy (dependence on the Executive).
- Low pay structures, inadequate infrastructure and logistical support.
- Interference by Ministry of Law, Justice and Parliamentary Affairs despite separation from the Executive branch.
- Politicisation of judges (appointment, promotion) leading to erosion in judicial independence.
- Accountability of judges impeded by immunity from prosecution & censure.
- Practice of asset disclosure by Supreme Court Judges virtually non-existent.

Recommendations

- The judiciary must have complete financial and administrative independence from the executive branch of the government.
- Salary structures, benefits, etc., of judges must be reviewed and determined in consonance with their status, experience, competence and performance.
- Appointments of Supreme Court Judges must be made by an independent body (e.g., a Supreme Judicial Commission or a collegium of judges) in concurrence with the Chief Justice and in conformity with prescribed rules developed in this respect.
- Strict compliance with codes of conduct by all judicial officers must be ensured including mandatory disclosure of income and assets updatable on annual basis. Breach of the code of conduct must be dealt with effectively and decisions made public.

About Policy Brief Series

One of the key strategic areas of TIB's research has always been the institutions of democracy and specialized pillars of governance and accountability, which constitute the National Integrity System (NIS), a collective of institutions and practices that are crucial to maintaining integrity and accountability in government, non-government and private sector. The NIS in Bangladesh broadly consists of the following institutions: Parliament, Executive, Judiciary, Public Administration (bureaucracy), Local Government, Police (law enforcement agency), Comptroller and Auditor General (supreme audit institution), Election Commission, Anti-Corruption Commission, National Human Rights Commission, Information Commission, Political Parties, Civil Society, Media, and Business.

TIB has conducted a series of research, surveys and diagnostic studies on many such institutions, by which it has not only created demand, but also catalysed a number of significant legal, institutional and policy changes. Against this background, this policy brief series attempts to diagnose and analyse the strengths and weaknesses of the NIS in Bangladesh and recommend implementable measures to strengthen these institutions.

This policy brief draws on *National Integrity System Assessment Bangladesh 2014* available at: <http://ti-bangladesh.org/nicsa/2014/en/>

Policy Brief 25/September 2014

© Transparency International Bangladesh (TIB)



TRANSPARENCY
INTERNATIONAL
BANGLADESH

Social movement against corruption

House # 141, Road # 12, Block # E

Banani, Dhaka 1213, Bangladesh

Phone: +880-2-9862041, 8826036, 9887884, Fax: +880-2-9884811

E-mail: info@ti-bangladesh.org, Website : www.ti-bangladesh.org

Facebook: www.facebook.com/TIBangladesh