Corruption is perceived as pervasive and continues to be a source of concern in Bangladesh's lower courts. A 2005 household survey by TI Bangladesh (TI-B) found that two thirds of the 18.8 per cent of respondents who used the courts in the preceding year had paid an average bribe of TK7,370 (around US $108) per case, equivalent to 25 per cent of their annual income. The Supreme Court has enjoyed public confidence, which is reflected in efforts that are being made to bring the lower judiciary under its control and supervision.

**Changing constitutional framework**

Under the 1972 constitution the president appointed judges to the Supreme Court after consultation with the Chief Justice. The Supreme Court supervised and controlled appointments to the lower courts. A constitutional amendment in 1975 deleted the requirement that the Chief Justice be consulted on appointments, although consultation for Supreme Court appointments continued on the basis of convention until 1993 when six judges were appointed without consultation. This was a major public issue at the time but the matter was resolved by the cancellation of the appointments, and fresh appointments were made in line with practice. Recent departures from this convention have led to appointments that have circumvented the process of consultation, or not given due weight to the Chief Justice’s views. Members of the legal profession and civil society have expressed serious concern about political considerations creeping into the process of judicial appointments.

In a landmark ruling in 1999 in what is known as the Masdar Hossain case, the Supreme Court ordered the government to form an independent

---

1 For one or more interactions in the same year in the same litigation.
2 In Ministry of Finance v. Masdar Hossain, Hossain, a judge representing 400 other judges from the subordinate courts, argued that since judges and magistrates were part of the judiciary, they should not be controlled as if they were part of the civil service under the 1981 Bangladesh civil service rules. The high court agreed, striking out the 1981 rules as unconstitutional. When the government appealed, the appeals court confirmed the decision.
judicial services commission to oversee the appointment, promotion and transfer of members of the judiciary in consultation with the Supreme Court. A further 12-point directive called for a separate pay commission for the judiciary; radical overhaul of the lower courts; amendment of the criminal procedure; and new rules for the selection and discipline of members of the judiciary. Significantly, the Supreme Court did not insist on a constitutional amendment to rectify discrepancies in the judiciary’s status, although the government had a sufficient majority to enact one.³

As a result the underlying legislation remains intact, and reforms have been piecemeal and long-drawn-out. Successive governments have obtained more than 20 separate time extensions to implement the Supreme Court’s directives in full. The government did not announce the formation of the new judicial service commission until November 2004 (see below) and it was not expected to function until the new set of rules were in place.⁴ High officials have been charged with contempt for distortion of the interpretation of the Supreme Court’s order.⁵ The delay has left the judiciary in a state of limbo for over half a decade (see below).

**Magistrates as state functionaries**

The Supreme Court has two divisions, appellate and high court. The latter hears original cases and reviews lower court decisions. The lower court is divided into criminal and civil courts extending over 64 districts. The criminal court is also a two-tier system: session courts hear trials for offences punishable with more than 10 years imprisonment, while magistrates’ courts have sentencing authority for up to seven years.

Until the judicial services commission becomes fully functioning, all judges, except those in the Supreme Court and the high court, are answerable to one or more ministries: the metropolitan magistracy, for example, falls under the Ministry of Home Affairs (also responsible for the police),⁶ while the Ministry of Establishment supervises district magistrates. Magistrates are responsible for a variety of non-legal duties, such as collecting taxes and overseeing government property, which vary according to which ministry employs them. In the absence of the separation of the judiciary from the executive, magistrates remain subject to the latter’s administrative control and are thus susceptible to influence in the exercise of their duties. They are thus ‘government functionaries who perform a role with the external appearance of a judge while undertaking a range of day-to-day activities on behalf of the state’.⁷ As a consequence, the victims of corruption and other crimes committed by officials and their families, including members of the police, could find it difficult to obtain judicial redress in a lower court.

**Backlog strangles justice delivery**

Magistrates and judges exercise extensive discretionary power since there are limited accountability mechanisms in place. A district judge’s salary is equal to that of a joint secretary,⁸ although they do not enjoy comparable status.

---

⁴ www.bangladeshlaw.org/news.php?id=6&PHPSESSID=7cad182811486795a311793eb4ba4178
⁵ Bangladesh Observer (Bangladesh), 23 October 2005.
⁷ Ibid.
⁸ A joint secretary is a senior civil service official two ranks below the secretary (the highest ranking civil servant in government). Below the joint secretary there are three ranks: deputy secretary, senior assistant secretary and assistant secretary. VIP (very important person) status starts from joint secretary. As the district judge does not enjoy the status of that rank, he is deprived of many facilities and perks, and his real income is less than that of a joint secretary. His official salary is TK16,800 (US $242) per month. Judges below district judges receive less.
The salary scale is inadequate to support a lifestyle worthy of a judge and is a disincentive to the professionals whose appointments might otherwise contribute toward raising the integrity and reputation of the courts.

Heavy workloads and poor disciplinary procedures are incentives to bribe taking and other corruption. There are 77 Supreme Court members and 750 other judges to dispense justice to a population of nearly 150 million people. Because of the Masdar Hossain ruling, no new appointments have been made to the lower courts since 1999 due to the lack of a judicial service commission; there are 210 outstanding vacancies. The paucity of courts and judges is a major obstacle to justice delivery, along with organisational weakness, lack of qualified support staff and lacunae in procedure that permits lawyers to prolong hearings. A 2003 report noted that there were 968,305 pending cases, 344,518 in judicial courts, 395,905 in magistrates’ courts, 127,244 in the high court and 4,946 with the Supreme Court. This backlog strangles the rule of law and due process. Corruption enters through the case-rescheduling process; by bribing the right person, a docket can be moved forward for hearing.

**Corruption in the broader justice system**

Judges and magistrates stay in regular contact with other elements of the justice system that suffer from corruption. Clerks responsible for registering, filing and processing prosecutions extort money to provide information to the accused or to extract favours from magistrates in criminal courts. The TI B Household Survey 2005 revealed that lawyers elicit bribes from defendants, plaintiffs, or both. With a sample size of 3,000 households, the survey yielded 392 respondents who had paid bribes in exchange for judiciary services during the previous year. Just over 39 per cent said they had paid bribes through lawyers, who transmitted a portion to magistrates or judges. Public prosecutors reportedly extracted bribes from 4 per cent of respondents.

Another significant problem relates to the agencies responsible for enforcing judicial decisions. Courts often issue directives or recommendations directed at the government, which are flouted by administrative processes and law enforcement agencies.

**Politicisation of judiciary**

After 15 years in the Supreme Court, retired justice Naimuddin Ahmed confessed to never having previously heard members of the bar describe judges by their political party leanings, as ‘Awami judges or BNP judges or Jamaati judges, which we hear today’. In principle, the Supreme Court has powers to punish anyone who unlawfully tries to interfere with or influence a judge’s functions. Ahmed recalled a district judge at the Druta Bichar Tribunal II of Dhaka who sought the Court’s protection after two public prosecutors threatened him with transfer if he did not grant bail to the accused in a criminal case. Instead of leaping to his defence, the Supreme Court assented to the judge’s transfer. Political clout is demonstrated in the appointment of junior judges to senior posts in defiance of a tradition of appointing judges on the basis of seniority and experience.

---

9 *Daily Star* (Bangladesh), 15 October 2005 and 11 May 2003; Bangladesh Institute of Law and International Affairs.

10 Transparency International, National Integrity Survey Bangladesh (Berlin: TI, 2003). The Court Watch Study (2004) on Speedy Trial Act noted that the slow pace of justice allows over 30,000 cases to remain under trial for years in the Dhaka metropolitan sessions court.

11 *New Age* (Bangladesh), 28 July 2006.

12 Ibid.

13 Ibid.
character,’ he wrote, ‘have ceased to be the criteria for appointment, promotion and transfer.’

A supreme judicial council, comprising the Chief Justice and the two most senior judges, is vested with the power to enquire into allegations of misconduct by a judge of the Supreme Court. In April 2004 the council passed its first order removing a high court judge. It was alleged that newly appointed Judge Shahidur Rahman had been approached by a former client who was seeking assistance for a relative. The judge had indicated that he could help, kept with him the relevant file and some payment was made. The matter was brought to the attention of the Chief Justice by the president of the bar association. The accused judge asked the high court for judicial review of the order for his removal and obtained a stay. The appellate division then stayed the order of the high court division. The council’s action reflected its concern with maintaining a high standard of integrity and served as a warning that similar cases would be taken seriously.

Reform efforts

The objectives of the US $60 million Bangladesh Legal and Judicial Capacity-building Project, funded by the World Bank and others, are to improve the efficiency, effectiveness and accountability of the justice-delivery system and increase access to justice, particularly among women and the poor. The six-year project (2001–07) consists of strengthened case management and improved court administration; phased installation of automated court-management information systems; training of district judges and court staff; and upgrading or renovation of court buildings. Implementation began in pilot district courts and the Supreme Court with a view to replicating the project, if successful. The new system includes computerisation and is expected to improve transparency, along with consistent and speedy handling of cases.

Other initiatives include the Canadian-funded Bangladesh Legal Reform Project, which works at the national level with the ministries and institutions responsible for juvenile justice, legal aid and Alternative Dispute Resolution in two pilot districts, Jessore and Gazipur.

The Anti-Corruption Commission (ACC) came into being in November 2004 with the appointment of three commissioners, including the chairman, Justice Sultan Hossain Khan. The commission’s mandate is limited to investigation and framing charges. Although the ACC has framed charges against hundreds of individuals, it has procured few convictions. Many cases have been withdrawn by executive order, while others have been quashed in the high court apparently due to lack of merit.\(^{14}\)

Recommendations

- The government must implement the judgement in the Masdar Hossain case without further delay. The judicial services commission, formed in 2004, contains only two members of the judiciary on its seven-person board.
- The appointments procedure for judges and other judicial staff must be made fair and impartial, and tenure protected. Salaries for judges, magistrates, prosecutors and police should be raised.
- Police, magistrates and judges must declare their assets and those of their families on entering office, intermittently during their tenure and after their departure. An independent body should verify and monitor such disclosures on a regular basis. The ACC should be mandated to monitor judicial corruption and take steps towards prosecution.
- The court record system should be computerised to allow litigants and their attorneys to access public files and track cases through to their resolution. A website should list

\(^{14}\) Daily Star (Bangladesh), 13 August 2005.
such information as the date of filing, location of file and the length of time a file has remained at each stage of the justice system.

• NGOs and media do their best to publicise miscarriages of justice. For them to work more effectively, the 1923 Official Secrets Act must be repealed and access to information liberalised.

S. I. Laskar (TI Bangladesh, Dhaka)