

CORRUPTION AND JUDGES' PERSONAL INDEPENDENCE IN
THE JUDICIARY OF BANGLADESH: ONE BAD APPLE CAN
SPOIL THE BUNCH

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ABSTRACT

Corruption appears to have been an inexorable crime in Bangladesh for decades. More deplorably, the magnitude of judicial corruption has profoundly increased the miseries of litigants. The situation is so awful that the nation's two successive Attorney Generals have publicly raised the issue to two consecutive Chief Justices of Bangladesh at their felicitation gatherings organized by lawyers of the Supreme Court of Bangladesh soon after their appointments as the nation's top judges. Consistently, empirical findings of Transparency International, a German-based organization, and Transparency International Bangladesh have unequivocally revealed the practice of a large extent of judicial corruption. These allegations are further intensified when a sitting Chairman of the Anti-Corruption Commission of Bangladesh publicly commented that courts are hindering the disposal of corruption cases, and the judicial system is not helpful in eradicating corruption. Even more appallingly, the conviction of a former Chief Justice of graft cases in November 2021 has probably rung the final alarm for the government to wake up and take stern actions against corruption. Bangladesh has achieved appreciable economic development over the past decade and is now striving to attain the United Nations Sustainable Development Goals ("SDGs") by 2030, but corruption is eating away at that aspiration. More importantly, many justice-seekers are victims of injustice in violation of their fundamental human right to a fair trial, which is central to the rule of law and democracy. With due

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regard to the people's rights and aforesaid allegations, this Article examines the considerations in making judicial decisions with a particular emphasis on judges' personal independence and submits specific recommendations for effectively addressing the deeply entrenched judicial corruption in Bangladesh. The recommendations would benefit other nations encountering a similar problem with respect to judicial corruption.

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I. INTRODUCTION

Bangladesh, an emerging economy in South Asia, has been striving to achieve the United Nations Sustainable Development Goals (“SDGs”) by 2030. Transparency International Bangladesh (“TIB”)¹ observes referring to corruption that “weaknesses and deficits in laws and their applications” are impeding the realization of these goals, particularly SDG-16 (Peace, justice, and strong institutions).² The judiciary is found to be the second most corrupt public service sector in the country, after law enforcement agencies.³ A researcher of Transparency International, a German registered organization (“TIG”), asserts that corruption in “these sectors have severe detrimental consequences – it erodes the rule of law, denies citizens access to a fair trial, creates opportunities for unlawful detentions and other human rights viola-

¹ Transparency International Bangladesh (“TIB”) is a sister organization of German-based Transparency International (“TIG”), the global coalition against corruption.

² *Do You Know all 17 SDGs?*, U.N. DEP’T ECON. & SOC. AFFS., <https://sdgs.un.org/goals> [<https://perma.cc/SEM5-44T4>] (last visited Oct. 21, 2022); *Irregularities and Corruption Big Impediments to Achieve SDG Related to Curbing Corruption and Establishing Good Governance*, TRANSPARENCY INT’L BANGL. (Sept. 17, 2017), <https://www.ti-bangladesh.org/beta3/index.php/en/media-release/5325-irregularities-and-corruption-big-impediments-to-achieve-sdg-related-to-curbing-corruption-and-establishing-good-governance> [<https://perma.cc/GN5P-E7PK>].

³ Md. Rezwatul Kabir, Taskin Ara Taznin Bithi, Tanzima Aktar Jyoti & Tabasum Rahman, *A Unique Study of Corruption in Bangladesh*, 6 SAUDI J. HUMANS. SOC. SCIS. 18, 21 (2021); Farzana Nawaz, *Overview of Corruption within the Justice Sector and Law Enforcement Agencies in Bangladesh*, TRANSPARENCY INT’L U4 EXPERT ANSWER (Feb. 12, 2012), <https://www.u4.no/publications/overview-of-corruption-within-the-justice-sector-and-law-enforcement-agencies-in-bangladesh.pdf> [<https://perma.cc/6FPY-T8LZ>]. See also *Police, Then Judiciary Most Corrupt Public Institutions in South Asia, Reveals TI Survey*, TRANSPARENCY INT’L (Dec. 16, 2002), <https://www.transparency.org/en/press/police-then-judiciary-most-corrupt-public-institutions-in-south-asia-reveal> [<https://perma.cc/HWN2-L4S3>].

tions, undermines economic and social development and fosters an environment of impunity.”⁴ Likewise, United Nations Special Rapporteur Diego García-Sayán states that judicial corruption directly affects the validity of human rights.⁵ Bangladesh, in the world Corruption Perception Index 2021 prepared by TIG, has scored 26 points out of 100 securing the 147th position amongst 180 countries across the globe.⁶

A unique responsibility of the judiciary is to ensure that all organs of the government operate within their legal boundaries as set forth by the national constitution and other pieces of legislation that make the rule of law meaningful in order to manifest into the protection of people’s rights and liberties. Therefore, no judge can be immune from the demand for justice under any circumstances.⁷ Although corrupt judges are likely to be comprised of a small number, their immunity from legal consequences is revelatory of deficiencies in anti-corruption initiatives.⁸

The judiciary of any country symbolizes the guardianship of people’s rights, as it inherently bears the sacred duty of protecting its subjects from injustice perpetrated illegally by individual members of the society or arbitrarily imposed by the other two organs of a government, the executive and the legislature. As the sole arm of the government guarding against all forms of offensive and unlawful conduct of anyone, regardless of their social or official standing, judges as arbiters and adjudicators are expected to interpret and apply the law to protect people by holding up the sword of justice objectively and remaining untouched by extraneous factors.⁹ Some judges in Bangladesh are nonetheless reportedly involved in compromising the judicial integrity and their pious duty in the administration of justice for personal gains. Dr. Adebayo explains judicial corruption as being:

⁴ Nawaz, *supra* note 3.

⁵ Diego García-Sayán, *Corruption, Human Rights, and Judicial Independence*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/dohadeclaration/en/news/2018/04/corruption—human-rights—and-judicial-independence.html> [<https://perma.cc/QH7Q-KLHY>] (last visited Oct. 21, 2022).

⁶ *Our Work in: Bangladesh*, TRANSPARENCY INT’L, <https://www.transparency.org/en/countries/bangladesh> [<https://perma.cc/85Y6-E787>] (last visited Oct. 23, 2022).

⁷ CYRUS DAS & K. CHANDRA, *JUDGES AND JUDICIAL ACCOUNTABILITY* 90 (2005).

⁸ Stratos Pahiis, *Corruption in Our Courts: What It Looks Like and Where It is Hidden*, 118 *YALE L.J.* 1900, 1943 (2009).

⁹ Williams Adewumi Adebayo, *Realist Jurisprudence and the Therapy for Judicial Corruption in Nigeria*, 74 *J.L. POL’Y & GLOBALIZATION* 1, 1 (2018).

[A] monster and a terminal virus in the [bloodstream] of any society where it manifests. Corruption makes social order impossible and a herculean task for the government in its quest for peace, social solidarity and egalitarianism.¹⁰

Given the dire consequences of judicial corruption, it is argued that a corrupt judge is “the greatest vermin, the greatest ever to afflict a nation.”¹¹ Judicial corruption is also described as “the most devastating and reprehensible malady of the judiciary” and it “tarnishes, desecrates and disfigures the solemn, sacred and beautiful image of justice and the judiciary.”¹² Corruption increases litigation costs, causes delays, injures mental health, and inflicts social sufferings on litigants, which eventually eats away at public confidence in the judiciary.¹³

It is recognized universally that the judiciary is the guardian of people’s rights enunciated in and assured by law. Paradoxically, Justice Surendra Kumar Sinha, a former Chief Justice, who served as the twenty-first Chief Justice of Bangladesh from January 2015 to November 2017, was convicted of graft cases in November 2021 and sentenced to seven years in prison for money laundering and another four years for embezzlement (breach of trust).¹⁴ It evidences that the top judge of the nation turned predator of justice in defiance of the role of a protector. Agreeably, not all, but some judges face prosecution occasionally. For example, the Anti-Corruption Commission (“ACC”) filed a case in June 2022 against former Judge Md Motahar Hossain, who acquitted the son of a former Prime Minister and an influential political face during his mother’s premiership (2001-2006) from a

¹⁰ *Id.*

¹¹ *Id.* at 7.

¹² *Id.*

¹³ Bianca Clausen, Aart Kraay, & Zsolt Nyiri, *Corruption and Public Confidence in Public Institutions: Evidence from a Global Survey*, 25(2) THE WORLD BANK ECON. REV. 212, 219, 231 (2011).

¹⁴ Prakash Bhandari, *Ex-Bangladesh SC Chief Justice SK Sinha May be Deported from US after Being Sentenced to Jail Term in Absentia*, NAT’L HERALD (Nov. 15, 2021, 9:47 PM), <https://www.nationalheraldindia.com/international/ex-bangladesh-sc-chief-justice-sk-sinha-may-be-deported-from-us-after-being-sentenced-to-jail-term-in-absentia> [https://perma.cc/YCT7-MDPW] (India); Md. Sanaul Islam Tipu, *Former Chief Justice SK Sinha, 10 Others Indicted in Money Laundering, Embezzlement Case*, DHAKA TRIB. (Aug. 13, 2020, 7:08 AM), <https://archive.dhakatribune.com/bangladesh/court/2020/08/13/charges-framed-against-former-chief-justice-for-embezzling-and-laundering-4c> [https://perma.cc/9UYQ-NS7S] (Bangl.); Md. Sanaul Islam Tipu, *Three More Witnesses Testify Against SK Sinha*, DHAKA TRIB. (Sept. 1, 2020, 9:36 PM), <https://archive.dhakatribune.com/bangladesh/court/2020/08/25/three-witnesses-testify-against-sk-sinha-10-others> [https://perma.cc/2XEJ-PYL5] (Bangl.).

money laundering case on November 17, 2013.¹⁵ Whereas his co-ac-cused and close associate was convicted and sentenced to seven years in prison and fined BDT40 crore (\$4,149,440 approximately) in the same verdict.¹⁶ The ACC has sued him for acquiring assets outside of his known income.¹⁷ Notably, the judge was retried forty-three days after delivering the disputed judgment and then left the country for Malaysia on January 8, 2013 – ten days after his retirement, as graft allegations against him kept rising.¹⁸ Notably, corruption by judges and other court officers is a crime punishable by imprisonment of a maximum term of three years, a fine, or with both under §§ 21(3-4) and §165 of the *Penal Code 1860* (Bangladesh).¹⁹ Simultaneously it is also an offense that shall be punished with imprisonment for a term, which may extend to seven years, a fine, or both, and confiscation of certain property related to the corruption under §§ 2-5 of the *Prevention of Corruption Act 1947* (Bangladesh).²⁰

In terms of consequences, judicial corruption can be sharply distinguished from that in other public service sectors in that the former has the potential to kill the innocent and save the true offenders who are likely to kill or harm even more people. In the end, judicial corruption will emblematically slay the judiciary itself by extensively eroding public confidence; whereas corruption in other public service sectors can be confined to merely a bribery game. Therefore, judicial corruption, which has the potential to kill a nation, is deadlier than some infectious viruses which kill individuals.

Judicial independence is a cornerstone of the delivery of justice. The capacity of the judiciary to perform its functions is utterly affected by the lack of this independence.²¹ The independence of the judiciary is thus a prerequisite for administering justice in compliance with the principles of the rule of law, and judges are both legally and morally

¹⁵ *ACC Files Case Against Judge Who Acquitted Tarique Rahman*, BUS. STANDARD (June 12, 2022, 5:38 PM), <https://www.tbsnews.net/bangladesh/acc-files-case-against-judge-who-acquitted-tarique-rahman-438398> [<https://perma.cc/3R3J-TP69>].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Staff Reporter, *Former Judge Motahar Flees to Malaysia*, NEW NATION (Jan. 24, 2014), <https://thedailynewnation.com/news/1096/Former-judge-Motahar-flees-to-Malaysia> [<https://perma.cc/AZ4Q-YL7L>].

¹⁹ Penal Code, 1860, ACT NO. XLV OF 1860 (Bangl.).

²⁰ Prevention of Corruption Act, 1947, ACT NO. II OF 1947 (Bangl.).

²¹ Guy Green, *The Rationale and Some Aspects of Judicial Independence*, 59 AUSTL. L.J. 135, 136 (1985).

obligated to adjudicate complaints without any fear of, and favor for, anyone irrespective of the nature of undue forces, including political interference and financial temptation exerted on them that have the potential to camouflage the true judicial mind. Hence judges must remain independent of any extraneous misdemeanour, even if they fear any unfair treatment by anyone or receive an offer of undue enrichment.²² Long ago, Socrates stipulated four specific pivotal responsibilities of a fair judge that include “[to] hear courteously, answer wisely, consider soberly, and decide impartially.”²³ The rule of law essentially entails the judiciary’s independence, which enables judges to ignore undue influences and inspire upholding the law impartially.²⁴ However, judicial independence is generally broken down into two dimensions – institutional independence and individual or personal independence.²⁵

Article 94(4) of the *Constitution of Bangladesh 1972* (“Constitution of Bangladesh”) guarantees the functional independence of Supreme Court judges.²⁶ The High Court Division of the Supreme Court of Bangladesh (“HCD”),²⁷ in interpreting Article 94(4), reaffirmed this guarantee in *Asaduzzaman Siddiqui v. Cabinet Secretary*.²⁸ On appeal, the Appellate Division of the Supreme Court of Bangladesh (“AD”) went one step further holding that when Articles 7, 22, 94(4), 102, and 112 of the Constitution of Bangladesh are read together, it is evident

²² See Christopher M. Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMPAR. L. 605, 608 (1996).

²³ Steven H. David, *Four Things: Socrates and the Indiana Judiciary*, 46 IND. L. REV. 871, 871 (2013).

²⁴ Charles Gardner Geyh, *Judicial Independence at Twilight*, 71 CASE W. RES. L. REV. 1045, 1045 (2021).

²⁵ Apeksha Singh & Ekta, *Threat Undermining Independence of Judiciary*, 17 SUPREMO AMICUS 73, 74 (2020).

²⁶ The Constitution of the People’s Republic of Bangladesh Act No. of 1972, art. 94(4) (“[S]ubject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.”).

²⁷ *Id.* at art. 94(1) (The Supreme Court of Bangladesh is comprised of two distinct divisions namely, the High Court Division (lower division) and the Appellate Division (upper division, the highest seat of the country’s judiciary).). *Judges’ List*, SUP. CT. BANGL., <http://www.supremecourt.gov.bd/web/> [<https://perma.cc/44PA-WDZF>] (go to the tab “Judge’s List” and follow “Appellate Division” and “High Court Division” hyperlinks, then see the number of justices listed) (There are six justices in the Appellate Division and ninety-six justices in the High Court Division.) (last visited Nov. 9, 2022).

²⁸ *Asaduzzaman Siddiqui v. Cabinet Secretary*, [2014] (HCD) (Bangl.), Writ Petition No. 9989 of 2014, at 163.

that the Supreme Court of Bangladesh (“SCB”) is independent, separate, and the guardian of the national constitution.²⁹ Similarly, the judicial officers of the subordinate courts³⁰ are also independent of the executive, at least theoretically, which has been effected in 2007 following a prolonged politico-legal battle triggered by the spectacular judgment of the SCB in *Secretary, Ministry of Finance v. Masdar Hossain*.³¹ Despite this separation, the judiciary in practice is still reportedly influenced by the all-powerful executive.³² However, this Article avoids getting involved in the issue of institutional independence because it is focused exclusively on judges’ personal independence. Although the separation of the judiciary from the other two organs of the government can facilitate institutional judicial independence, it may not stimulate judges’ personal independence; whilst the latter is more critical than the former to ensuring fairness in the adjudication process.³³ The quest for judges’ personal independence nevertheless remains a far cry, mainly because of the prevalence of corruption in public services sectors including the judiciary, with no sign of visible

²⁹ Gov’t of Bangl. v. Asaduzzaman Siddiqui, [2017] (AD) (Bangl.), at 295.

³⁰ The judiciary of Bangladesh is made up of the SCB and subordinate courts (subordinate to the SCB) comprised of courts at different administrative levels including upazila (sub-unit of a district), district, metropolitan city, and divisional levels, see BANGL. CONST. arts. 94(1), 114.

³¹ Ministry of Fin. v. Masdar Hossain, [1999] 52 DLR (AD) 82 (Bangl.), at 4.

³² Md. Awal Hossain Mollah, *Independence of Judiciary in Bangladesh: An Overview*, 54 INT’L J.L. & MGMT. 61, 73 (2012); M. Ehteshamul Bari, *Supersession of the Senior-Most Judges in Bangladesh in Appointing the Chief Justice and the Other Judges of the Appellate Division of the Supreme Court: A Convenient Means to a Politicised Bench*, 18 SAN DIEGO INT’L L.J. 33 (2016); Mohammad Abdul Hannan & Md. Arifuzzaman, *Separation of Judiciary and Judicial Independence in Bangladesh: An Appraisal*, 8 OPEN ACCESS LIBR. J. 1, 13 (2021); Md. Milan Hossain, *Separation of Judiciary in Bangladesh Constitutional Mandates and Masdar Hossain Case’s Directions: A Post Separation Evaluation*, 11 INT’L J. CT. ADMIN. 1, 3 (2020); M. Rafiqul Islam, *Judicial Independence Amid a Powerful Executive in Bangladesh: A Constitutional Paradox?*, 18 J. JUD. ADMIN. 237, 237 (2009); M. Rafiqul Islam & S.M. Solaiman, *The Enforcement of Rulings of the Supreme Court on Judicial Independence in Bangladesh: When Enforcer Becomes Violator*, 4 AUSTL. J. ASIAN L. 107, 107 (2002); M. Rafiqul Islam & S.M. Solaiman, *Public Confidence Crisis in the Judiciary and Judicial Accountability in Bangladesh*, 13 J. JUD. ADMIN. 29, 29 (2003).

³³ See Ahmad Fauzi, Abdul Madjid, Nurini Aprilanda & Prija Djatmika, *Reconstruction of Norms on Ad Hoc Judges Regulation of Corruption Courts That Are Ideal in Realizing Independence of Judicial Power*, 122 RUSS. J. AGRIC. & SOCIO-ECON. SCIS. 40, 40 (2022).

improvement.³⁴ It is now rather widely believed that the judiciary of Bangladesh has been infested with the toxic virus of corruption to some extent at all its tiers, although there are still many judges whose honesty and integrity are truly unquestionable.³⁵ Alongside them, by contrast, many other judges, staff members of the courts, and lawyers in Bangladesh are reportedly receiving bribes and deliberately distorting the dynamics of cases during the trial procedure, and it has been commonplace that bribes are being taken from litigants by reference to judges' behest.³⁶ It diminishes the judges' integrity and neutrality and, as a result, public confidence in the judiciary has been significantly impaired by the prolonged corruption. The general perception about the operation of courts has been that if a person gets involved in litigation, that ill-fated person "falls into the mouth of a tiger."³⁷ Amid the pervasiveness of such an unacceptable environment, this Article intends to discuss corruption in the judiciary of Bangladesh aimed at suggesting a way out to deal with this contamination. However, it is realistic to believe that these recommendations could not be a magic bullet or panacea for such a culturally entrenched Pandora's Box.

This Article proceeds as follows. To stimulate the analysis, Part I introduced the problem of judicial corruption, whilst Part II unfolds a few high-profile allegations of corruption in the judiciary of Bangladesh along with its judicial recognition and highlights the resulting consequences of such corrupt practices. Part III examines judicial decision-making, showing its pertinence to the judge's hunch or intuition and personal independence. This is followed by Part IV, which explores potential ways of dealing with judicial corruption in Bangladesh. Part V concludes with a summary of findings and recommendations for combating corruption prevailing in the administration of justice in Bangladesh. Although the present Article has been honed to curb judicial corruption particular to Bangladesh, its recommendations can also be utilized by other nations facing a similar corruption problem.

The discussion that ensues demonstrates widespread allegations of judicial corruption in Bangladesh recognized by the judiciary itself and others.

³⁴ Abdul Alim, *Corruption in Civil Litigation System: An Approach to Judicial Reform in Bangladesh*, 12 NAT'L JUD. ACAD. L.J. 99, 100 (2018).

³⁵ *Id.*

³⁶ *Id.*

³⁷ DINA M. SIDDIQI, PAVING THE WAY TO JUSTICE: THE EXPERIENCE OF NAGORIK UDDYOG, BANGLADESH 7 (2003).

II. ALLEGATIONS OF JUDICIAL CORRUPTION IN BANGLADESH, ITS JUDICIAL RECOGNITION AND PERTINENT CONSEQUENCES

It is typically a difficult task to uncover all incidents of corruption because of its covert nature, implying that only a fraction of this crime is ever exposed.³⁸ Judicial corruption is perceived as being the selling and buying of judges' decisions.³⁹ In 2019, a bench of the HCD, comprised of Justice Md Ashrafal Kamal and Justice Razik-Al-Jalil, on appeal in *The Government of Bangladesh v. Chairman, First Court of Settlement and Others* famously held that “[t]he judiciary is the last resort of the people. When it sells a verdict through corruption, the people have nowhere else to go. They get angry and seek an alternative, and that is when they turn to goons, terrorists and mafias seeking justice.”⁴⁰ The HCD adds that “[t]he time has come to revamp the justice system . . . and to make it a reliable, credible and an ideal institution by rooting out corruption.”⁴¹ Pointing to corrupt judges, the Court further observed that “corrupt judges should be discharged from their duties immediately in order to keep the judiciary free from graft” otherwise they “will gradually influence others onto their paths.”⁴² Furthermore, the HCD stipulates that “the rule of law and judicial corruption cannot go side-by-side. If judicial officers and court employees remain corrupt, then the rule of law will be confined to the book, and will never be actualized.”⁴³ The Court also criticises the media for not reporting on judicial corruption, and it spells out that “there has been no specific report, write-up or research on how to throw out corrupt judges (from lower courts to higher courts), although they frequently

³⁸ Pahis, *supra* note 8, at 1906.

³⁹ *Id.*

⁴⁰ Gov't of Bangl. v. Chairman, First Court of Settlement, [2019] (HCD) (Bangl.), Writ Petitions No. 6634/2019 & No. 6635/2019 (unreported), at 135; *It is Time to Revamp the Judiciary: HC*, BUS. STANDARD (Oct. 5, 2020, 10:22 PM), <https://www.tbsnews.net/bangladesh/court/it-time-revamp-judiciary-hc-141688> [<https://perma.cc/6ZUT-GSYF>].

⁴¹ Gov't of Bangl. v. Chairman, First Court of Settlement, [2019] (HCD) (Bangl.), at 135; BUSINESS STANDARD, *supra* note 40.

⁴² Gov't of Bangl. v. Chairman, First Court of Settlement, [2019] (HCD) (Bangl.), at 136; Staff Correspondent, *Corrupt Judges Have to be Discharged Immediately*, DAILY STAR (Bangl.) (Oct. 5, 2020, 3:22 AM), <https://www.thedailystar.net/frontpage/news/corrupt-judges-must-be-discharged-immediately-1972461> [<https://perma.cc/33JX-Q6ED>].

⁴³ Gov't of Bangl. v. Chairman, First Court of Settlement, [2019] (HCD) (Bangl.), at 135.

call for judicial independence.”⁴⁴ The HCD conclusively iterates that the time is ripe to bring all judges and other public employees to justice.⁴⁵ Such remarks by the judges of the highest court of the country in a formal judgment is exceedingly alarming in itself for the whole nation. It implies that institutional independence cannot be fruitful without the judge’s personal fairness. It is fair to say that the HCD bench deserves absolute appreciation for their bravery, honesty, and prudence.

Admitting the prevalence of judicial corruption, Justice Sinha, (the convicted ex-chief justice of Bangladesh), in 2016, publicly commented that “corruption prevails all over the place across the country and judiciary is nothing different,” and he added that “when there is corruption at all layers across the country, judiciary is not a separate Island where there is no corruption and everyone here is an angel.”⁴⁶ Justice Sinha said this to a large audience as the chief guest and the sitting Chief Justice, in replying to an allegation of massive corruption in the judiciary with specific statistics of such malpractices raised by Professor Abul Barakat, a renowned economist of the country, and incidentally, the present author happened to be at that gathering. Instead of rejecting the allegation or vowing to eliminate corruption, Justice Sinha admitted and quantified the extent of corruption, and proclaimed that the corrupt elements would not be more than 5 to 10% in the entire judiciary of the country, and strangely, he insisted that “[w]e have to accept it and continue to work for the people in such circumstances.”⁴⁷ Justice Sinha probably ignored the fact that self-serving dishonest judges can only serve themselves because they are only interested in what they can get for themselves. Unlike Justice Sinha, the incumbent Chief Justice spoke optimistically and promised to address the corruption problem on a priority basis.⁴⁸ On his first day in office, the current Chief Justice Hasan Foez Siddique categorically enunciated in his felicitation speech for lawyers that he would not compromise on judicial

⁴⁴ *Id.* at 135-36.

⁴⁵ *Id.* at 140.

⁴⁶ *Everyone not Angels in Judiciary: CJ*, DAILY STAR (Bangl.) (Apr. 2, 2016, 2:40 PM), <https://www.thedailystar.net/city/everyone-not-angels-judiciary-cj-1203172> [<https://perma.cc/6HAS-AGYE>].

⁴⁷ *Id.*

⁴⁸ Staff Correspondent, *No Compromise on Corruption, Expect Fair Criticism: CJ*, NEW AGE BANGL. (Jan. 2, 2022, 11:34 PM), <https://www.newagebd.net/article/158899/no-compromise-on-corruption-expect-fair-criticism-cj> [<https://perma.cc/FD76-QCMR>].

corruption, and he warned judicial officers and employees that if any corruption is found, he would suspend the persons involved immediately regardless of their position.⁴⁹ Drawing an analogy, he mentions that “corruption is a cancer-like disease. If any finger is infected with cancer it is better to cut it off,” and he warns that “he would not give any shelter to evil quarters.”⁵⁰ Justice Siddique made these remarks when he was felicitated by Attorney General of Bangladesh, Mr. A M Amin Uddin, on behalf of the state law officers, and Supreme Court Bar Association, who called on the newly appointed Chief Justice to take action against corruption and irregularities in the administration of justice and pledged their all-out support to eradicate the prevalent corruption in the judiciary.⁵¹ Consistently, though shockingly enough, the immediate past Attorney General, late Mahbubey Alam,⁵² made almost an identical appeal to former Chief Justice Syed Mahmud Hossain, the successor of Justice Sinha and the predecessor of incumbent Justice Siddique, just a day after his (Justice Hossain) appointment while publicly greeting the newly appointed Chief Justice in February 2018.⁵³ Late Alam, the Attorney General of the time who was known as an honest lawyer, remarked that the majority of court officials and employees are involved in corruption, “if this situation continues, it will be difficult for those who are still honest to maintain their honesty.”⁵⁴ Sharing his long-term experience as a Supreme Court lawyer, Mr. Alam added that “I did not hear any negative remark even against any bench officer when I entered the court in 1975. But what

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Sun Online Desk, *Corruption is Like Cancer, Won't Compromise on it: Chief Justice*, DAILY SUN (Bangl.) (Jan. 2, 2022, 2:30 PM), <https://www.daily-sun.com/post/597204/Corruption-is-like-cancer-won%E2%80%99t-compromise-on-it:-Chief-Justice> [<https://perma.cc/FHU2-HQAN>].

⁵² M Moneruzzaman, *Attorney General Mahbubey Alam Dies of COVID-19*, NEW AGE: BANGL. (Sept. 27, 2020, 7:52 PM) <https://www.newagebd.net/article/117436/attorney-general-mahbubey-alam-dies-of-covid-19> [<https://perma.cc/AF3G-WQ8B>] (noting Attorney General Mahbubey Alam died of COVID-19 in September 2020, which follows the appointment of the incumbent Attorney General Amin Uddin).

⁵³ United News Agency (UNB), *Attorney General: Majority of Court Staff Involved in Corruption*, DHAKA TRIB. (Feb. 4, 2018), <https://archive.dhakatribune.com/bangladesh/court/2018/02/04/attorney-general-court-staff-corruption> [<https://perma.cc/K9QY-EC53>].

⁵⁴ *Attorney General: Majority of Court Staff Involved in Corruption*, DHAKA TRIB. (Bangl.) (Feb. 4, 2018, 5:08 PM), <https://archive.dhakatribune.com/bangladesh/court/2018/02/04/attorney-general-court-staff-corruption> [<https://perma.cc/HVR7-UM4L>].

is discussed now about different High Court benches cannot be expressed in words.”⁵⁵ Mr. Alam further included that “[t]he most dangerous matter is that some particular courts have turned into courts of particular lawyers. The justice-seekers know by which lawyers at which courts they can win their cases. This is completely contrary to the justice.”⁵⁶ However, he expressed his optimism that the new Chief Justice of the day (Justice Hossain) would bring a radical change during his tenure.⁵⁷ Unfortunately that did not happen, which forced Mr. Alam’s successor to make the same appeal to the present Chief Justice, as stated above.⁵⁸ All of these high-profile public assertions show that the judiciary of Bangladesh is fatally infected with corrupt practices. This claim is reinforced by investigations of international organizations, TIG and TIB, referred to in the preceding Part I.⁵⁹

Like corruption in other sectors, judicial corruption typically takes place behind the scenes. Mr. Golam Rahman, a former Chairman of the Anti-Corruption Commission of Bangladesh (“ACC”), contended while talking to journalists (as the ACC’s chairman at the time) that courts are hindering the disposal of corruption cases and the judicial system does not help eradicate corruption.⁶⁰ It can be logically inferred that the above comments of the ACC’s Chair impliedly affirmed the existence of judicial corruption.

Further, a survey carried out by TIG between November 2001 and May 2002 of over 3,030 households revealed that a total of 75% of users of judicial service experienced corruption (paid bribes) in the judiciary in the country.⁶¹ Woefully, the situation gradually went from bad to worse when the judiciary outperformed the law enforcement agencies (police) in terms of corruption, as disclosed by TIG based on

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Corruption is Like Cancer, Won’t Compromise on It: Chief Justice*, *supra* note 51.

⁵⁹ *See supra* Part I & II; *see* TRANSPARENCY INTERNATIONAL, *supra* note 3; *see* TRANSPARENCY INTERNATIONAL, *supra* note 6.

⁶⁰ Syful Islam, *Bangladesh, Where the Judiciary Can be an Obstacle to Justice*, GLOB. INTEGRITY (2019), https://www.globalintegrity.org/wp-content/uploads/2019/01/GIRNotebook2010_Bangladesh.pdf [<https://perma.cc/C4NE-5DNJ>].

⁶¹ TRANSPARENCY INTERNATIONAL, *supra* note 3.

its further survey conducted from June 2009 to May 2010.⁶² More recently, another study of TIB completed from January to October 2017 on the lower or subordinate judiciary of Bangladesh,⁶³ including district courts, judicial magistrate's courts, and metropolitan session judge's courts throughout the country, found that many litigants pay bribes at every step to different people in pursuing their legal proceedings.⁶⁴ The amounts of such bribes vary between BDT200 (approximately \$2.07) and BDT1million (approximately \$10,374).⁶⁵ In that study, TIB interviewed 66 judges and 371 people related to lower courts litigation, including lawyers, police officials, law ministry officials, and justice seekers.⁶⁶ To further substantiate their findings, the corruption watchdog TIB also organized several discussions amongst the people involved in litigation and observed their activities on court premises.⁶⁷ The TIB study further dug out the prevalent poor transparency, accountability, and governance that bite people in every step of their pursuit of getting justice.⁶⁸ The study unearthed that the problem is not only with judges, but it is also with other employees of courts, lawyers, and their assistants involved in the process of hearing a case.⁶⁹

The situation is so deplorable that some people publicly express their lack of trust in the judiciary, demonstrating the culture of denial of justice on many occasions. For example, following the assassination of a progressive publisher Faisal Arefin Dipan on October 31, 2015, in his Dhaka office, his father, Abul Kashem Fazlul Haque, a Professor at Dhaka University and one of the leading thinkers in the country, publicly declared, "I do not want justice" for the death of my son.⁷⁰ Similarly, Jamal Uddin, the father of Samia Afrin Preeti, who

⁶² Dhaka, *Bangladesh Judiciary Most Corrupt Institution in the Country: Report*, DECCAN HERALD (India) (May 3, 2018, 10:45 AM), <https://www.deccanherald.com/content/124646/bangladesh-judiciary-most-corrupt-institution.html> [<https://perma.cc/Q9CR-NQR5>].

⁶³ The judiciary of Bangladesh is constitutionally divided into two tiers, the Supreme Court of Bangladesh and the subordinate courts consisting of several courts at district and upazila (sub-district) levels. See BANGL. CONST. arts. 94, 114.

⁶⁴ Staff Correspondent, 'Bribery at Every Step', DAILY STAR (Bangl.) (Dec. 1, 2017, 3:27 AM), <https://www.thedailystar.net/frontpage/bribery-every-step-1498822> [<https://perma.cc/JH2Q-ZHKQ>].

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ M. Khalezuzzaman, *Don't Want Justice — Is It Just an Expression, Not Distrust?*, PROTHOM ALO (Bangl.) (June 5, 2022) (on file with author); Tribune Online

was shot dead in the capital city, also voiced that “I don’t want justice for the murder of my daughter. There is no situation to prosecute. We are innocent people. If you want justice, you want it from Allah (God). He will judge.”⁷¹ This means that people are unable to put their trust in the judiciary, which forces them to seek justice from God.⁷²

The notion of “no justice” in the country frightens the victims, and the fear and deprivation that there is no justice create anger and frustration in the minds of ordinary people resulting in the loss of public confidence in the judiciary.⁷³ It has been warned that this tendency will bring about terrible consequences.⁷⁴ It is perhaps universally accepted that parents love their children more than anything else in the world. Most of them are ready to sacrifice even their own lives in exchange for the lives of their offspring. So, it is to be borne in mind that when parents express unwillingness to seek justice even against such a heinous crime of deliberate killing of their children, it does manifest their distrust and disregard for the judicial system. In turn, it incentivises perpetrators to be reckless to commit any crime whatsoever, assuming that punishment is uncertain at its best.⁷⁵ About consequences, TIG stipulates that corruption is the abuse of the entrusted power for personal gain, and it “erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis.”⁷⁶ Impunity contributes to increasing corruption because an environment in which the probability

Report, *Heartbroken Father Says No Use Seeking Justice*, DHAKA TRIB. (Bangl.) (Oct. 31, 2015, 11:27 AM), <https://archive.dhakatribune.com/uncategorized/2015/10/31/heartbroken-father-says-no-use-seeking-justice> [<https://perma.cc/HX5G-N6P2>]; Nasim, *I Will Not Seek Justice Over Killing of My Son*, RISINGBD (Nov. 1, 2015, 10:23 AM), <https://www.risingbd.com/english/%E2%80%98i-will-not-seek-justice-over-killing-of-my-son%E2%80%99/29089> [<https://perma.cc/7NVJ-N9KV>].

⁷¹ *Id.* See also Jamal Uddin, *Father of Samia Afrin Prity*, DAILY OBSERVER (Bangl.) (Mar. 26, 2022, 12:00 AM), <https://www.observerbd.com/details.php?id=358894> [<https://perma.cc/QRF9-T9T8>].

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See *id.*

⁷⁶ *What Is Corruption?*, TRANSPARENCY INT’L, <https://www.transparency.org/en/what-is-corruption> [<https://perma.cc/4B57-543J>] (last visited Oct. 23, 2022).

of being caught and punished is low typically stimulates corrupt practices.⁷⁷ This applies to Bangladesh.

All this expressly or impliedly admits that corruption exists in the judiciary to a substantial extent in the country. Although the Constitution of Bangladesh empowered the HCD to investigate corruption allegations, the HCD has been reportedly slow for years and seen to be “unconcerned regarding the investigations into the corruption of the lower court judges.”⁷⁸ However, the current Chief Justice has exceptionally formed different committees made of judges of the HCD soon after he assumed office in January 2022, to investigate irregularities in the subordinate judiciary.⁷⁹ If judicial corruption is not contained effectively, public confidence is likely to continue to be eroded leading up to a state beyond repair. Adebayo depicts the consequence by stating that:

A single incident of culpability for corruption by the court is an embarrassment considering the fact the court is like the proverbial man occupying a glass house and who should not throw stone. The frequent allegation of corruption against judicial officers . . . may force observers to conclude that the courts have changed . . . its symbol [from] . . . an epithet of justice to the fountain of injustice simply because of the fact of corruption.⁸⁰

Starkly contrary to the practice of corruption, judges are always highly respected intrinsically because they are an emblem of justice to the people. Judges generally follow legal reasoning in reaching a judgment, which is though sometimes viewed as an overemphasis on the justification, consciousness, and syllogistic nature of reasoning.⁸¹ In this regard, the United States Supreme Court in *Booth v. Maryland* held that in administering justice, the judicial decision should be based

⁷⁷ Bin Dong, *The Causes and Consequences of Corruption 2* (Mar. 2011) (Ph.D. thesis, Queensland University of Technology, Australia) (ePrints).

⁷⁸ Editorial Desk, *High Court Verdict: Bold Statement against Corruption of Judges*, PROTHOM ALO ENG. (Bangl.), (Oct. 10, 2020, 5:02 AM), <https://en.prothomalo.com/opinion/editorial/high-court-verdict-bold-statement-against-corruption-of-judges> [<https://perma.cc/C9YB-F9GB>].

⁷⁹ Supreme Court of Bangladesh - HCD, Monitoring Committee for Subordinate Courts, Notification No. 05/2022, issued on Jan. 27, 2022 signed by the Registrar of the HCD (on file with author). A total of eight monitoring committees were formed assigning one HCD judge to the subordinate courts located in each administrative division of the country.

⁸⁰ Adebayo, *supra* note 9, at 1.

⁸¹ Diana Richards, *When Judges Have a Hunch: Intuition and Experience in Judicial Decision-Making*, 102 ARCHIVES FOR PHIL. L. & SOC. PHIL. 245, 245 (2016).

on reason and relevant evidence concerning the crime and the defendant.⁸² Thus the delivery of justice is inevitably distorted or prejudiced when the judicial decision is influenced by corruption. It is therefore extremely important for judges to be honest and to employ their hunch and intuition in making their judgments for the dispensation of justice.

III. JUDICIAL DECISION MAKING – JUDGE’S HUNCH OR INTUITION AFFECTING PERSONAL INDEPENDENCE

The dispensation of justice entails the employment of judicial intuition in making a decision; a true judge acknowledges the importance of judicial intuition and values its role in the administration of justice.⁸³ This intuition is also called the judicial or judge’s hunch, which denotes the actual basis for judicial decisions.⁸⁴ Emphasizing such hunch, it is argued that the psychology of judicial decision-making deviating from intuitive skill is flawed.⁸⁵ Intuitive skill allows judges to go beyond the evidence presented by contending parties only for the sake of ensuring justice. Judge Joseph C. Hutcheson, an American judge, famously described his decision-making process in 1929, stating that “after canvassing all the available material at my command, and duly cogitating upon it, [I] give my imagination play, and brooding over the cause, wait for the feeling, the hunch—that intuitive flash of understanding which makes the jump-spark connection between question and decision”⁸⁶ Judge Hutcheson further enunciated that while hearing and deciding a case, the feeling flooding the mind with light transmits the intuitional reflection required for fair decisions,⁸⁷ and he conjoined that a judge’s decisions should predominantly rest more upon a fair judgment or intuition than any other expressive of the major premise.⁸⁸ Judge Hutcheson once asked another

⁸² *Booth v. Maryland*, 482 U.S. 496, 508-09 (1987).

⁸³ Linda L. Berger, *A Revised View of the Judicial Hunch*, 10 *LEGAL COMMUN & RHETORIC: JALWD* 1, 1 (2013).

⁸⁴ Adebayo, *supra* note 9, at 7.

⁸⁵ Daniel Kahneman & Gary Klein, *Conditions for Intuitive Expertise: A Failure to Disagree*, 64 *AM. PSYCH.* 515, 525 (2009).

⁸⁶ Joseph C. Hutcheson, Jr., *Judgment Intuitive: The Function of the Hunch in Judicial Decision*, 14 *CORNELL L. REV.* 274, 278 (1929).

⁸⁷ *Id.* at 277.

⁸⁸ *Id.* at 278 (quoting *S. Pac. Co. v. Jensen*, 244 U.S. 205, 221 (1917) (Holmes, J., dissenting)).

American judge, who was famous both for his skill and for his impartiality, how the judge and his fellows drew their conclusions.⁸⁹ In response, the prominent judge said that after listening with full sentience to all the evidence presented before him and following all arguments with the utmost care, the judge waited until he “felt” one way or the other.⁹⁰ This spotlights the value of the judge’s hunch.

In response to an allegation of judge’s impartiality, in 2021, the High Court of Australia (“HCA”) in *Charistead v. Charistead* referring to an undisputed well-established principle pronounces about the apprehension of judges’ bias that “a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide.”⁹¹ The HCA adds that the “principle gives effect to the requirement that justice should both be done and be seen to be done” demonstrating judge’s independence and impartiality.⁹² The HCA further clarifies that if the fair-minded lay person does not have adequate knowledge of law, the character of the judge, or ability of the judge in question, then the reasonableness of any alleged bias has to be considered and determined in the context of ordinary judicial practice.⁹³ The ordinary judicial practice opposes any partiality of any judges on any grounds whatsoever.⁹⁴

It has to be recognized that judges are not infallible, hence they ought to be cautious in discharging their responsibilities.⁹⁵ Typically a judge, in making a judicial decision, is to apply their conscience to the whole record of the case, and then all the elements of depositions that would move human conscience are to be taken into consideration.⁹⁶ This requirement of considering the whole record aims to constrain judges’ willingness to single out only those arguments which support

⁸⁹ *Id.* at 282.

⁹⁰ *Id.*

⁹¹ *Charistead v. Charistead* (2021) HCA 29 ¶ 11 (Austl.) (first citing *Ebner v. Off Tr in Bankr* [2000] 205 CLR 337, 344 ¶ 6 (Austl.); and then citing *Concrete Proprietary Ltd v. Parramatta Design & Dev Proprietary Ltd* [2006] 229 CLR 577, 609 ¶ 110 (Austl.)).

⁹² *Id.* ¶ 11 (internal citations omitted).

⁹³ *Johnson v. Johnson* (2000) 201 CLR 488, 493 ¶ 13 (Austl.); *Charistead* (2021) HCA 29, ¶ 12.

⁹⁴ For further details about bias and impartiality of judges, see *Charistead* (2021) HCA 29 ¶¶ 13-29.

⁹⁵ *Hutcheson, Jr.*, *supra* note 86, at 285-86.

⁹⁶ Louis L. Jaffe, *Judicial Review: Question of Fact*, 69 HARV. L. REV. 1020, 1032-33 (1956).

their preconception by deliberately ignoring their actual juridical value against those which are left out.⁹⁷ This ultimately limits the judge's discretion in that they cannot make a decision arbitrarily where the evidence prodigiously points to the contrary.⁹⁸

It is widely recognized that when people have to make a decision in regard to various factors, a better decision can be made by relying on one's intuition.⁹⁹ However, reliance on a hunch or intuition warrants careful consideration of the evidence, as Justice Benjamin Cardozo cautioned against the hasty or overeager application of a hunch or intuition.¹⁰⁰ Judge's intuition entails an instinctive awareness of the correct outcome based on the facts rather than the judge's personal perspective.¹⁰¹ According to Justice Cardozo, judges' "flashes of insight" emanated "experience usually extensive and often profound."¹⁰²

To sum up, the role of intuition is important, but judicial decision-making based on enigmatic grounds is concealed by the convention which calls for reasons to be explained by the judge in an opinion.¹⁰³ Therefore a judge's hunch or intuition must be applied objectively in making a judicial decision. This is even more significant in Bangladesh, where judges are largely immune from specific effective accountability.¹⁰⁴

The above-stated allegations of corruption and discourse on judicial decision-making require judges to value their intuition or hunch, even sometimes going beyond the records of evidence; however, this should be done only to ensure justice to the best knowledge of the adjudicators of disputes. It does not permit judges, in any way, to de-

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Pawel Lewicki, Maria Czyzewska & Hunter Hoffman, *Unconscious Acquisition of Complex Procedural Knowledge*, 13 J. EXPERIMENTAL PSYCH. LEARNING MEMORY COGNITION 523, 529 (1987); Timothy D. Wilson & Jonathan W. Schooler, *Thinking Too Much: Introspection Can Reduce the Quality of Preferences and Decisions*, 60 J. PERS. SOC. PSYCH. 181, 191 (1991).

¹⁰⁰ Benjamin N. Cardozo, *Jurisprudence*, in SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO 7, 28 (Margaret E. Hall, ed., 1947).

¹⁰¹ Richard H. Weisberg, *Law, Literature and Cardozo's Judicial Poetics*, 1 CARDOZO L. REV. 283, 307 (1979).

¹⁰² *Id.* at 307-08.

¹⁰³ Richard A. Posner, *The Role of the Judge in the Twenty-First Century*, 86 B.U. L. REV. 1049, 1065 (2006).

¹⁰⁴ See Islam & Solaiman (2003), *supra* note 32.

viate from the evidence presented before them by being biased towards a party owing to bribery or exertion of any unfair extraneous means, such as political force or a sense of affinity.

Following on the allegations, consequences, and judicial decision-making considerations in the context of corruption, the burning question now is how judicial evil can be fruitfully addressed in Bangladesh, which the below discussion attempts to answer.

IV. HOW TO DEAL WITH JUDICIAL CORRUPTION IN BANGLADESH

Highlighting the grave consequence of judicial corruption somewhat pessimistically, Justice William Rehnquist, a former Chief Justice of the United States Supreme Court, said that when a judge seizes every opportunity to enrich their own pocket, no law or ethics concerning disqualification can save that judicial system.¹⁰⁵ Nonetheless, to keep the judiciary alive, corruption must be prevented and punished in every possible way.

There is no denying the fact that Bangladesh has achieved substantial economic development since it divorced Pakistan in 1971 through a bloody war.¹⁰⁶ However, the country has continued to crumble in its sense of honesty and integrity, particularly in the public services sectors. If the country fails to combat the corruption menace effectively, its avowed promise of attaining the SDGs by 2030 will

¹⁰⁵ William H. Rehnquist, Assoc. Just. U.S. Sup. Ct., *Sense and Nonsense about Judicial Ethics*, Address at House of the Association (November 1973) *reprinted in* 28(8) REC. OF THE ASS'N OF THE BAR OF N.Y.C 694, at 699-700.

¹⁰⁶ See generally SRINATH RAGHAVAN, 1971: A GLOBAL HISTORY OF THE CREATION OF BANGLADESH (Harvard University Press, 2013); DEBAPRIYA BHATTACHARYA, BANGLADESH'S GRADUATION FROM THE LEAST DEVELOPED COUNTRIES GROUP: PITFALLS AND PROMISES (Routledge Rsch. on Asian Dev. Ser., 2019). The first book, as the title suggests, is concerned with the socio-political and economic exploitation of the then East Pakistan (presently Bangladesh) by West Pakistan (now Pakistan) triggering the war of liberation by the former against the latter. Bangladesh was eventually liberated through a bloody war of nine months (March-December 1971). The second book demonstrates the extent of economic development achieved by Bangladesh over the past decades with a critical appreciation of its real attainments focusing on its graduation from a low-income country to a middle-income nation. For a brief and graphic description of the economic development taking place in Bangladesh since its independence in 1971, which also implicitly shows the exploitation by the then West Pakistan in the GDP difference between 1970 and 2020, is documented in the World Bank data, see *GDP Growth (annual %)* – *Bangladesh*, WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=BD> [<https://perma.cc/ZAU3-Z8B2>] (last visited Jan. 2, 2023).

likely fail. This is so because corruption eats away at substantial parts of development budgets and potential GDP growth.¹⁰⁷ Corruption affects all SDGs in one way or another; however, it directly imperils achieving SDG 16, which is to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”¹⁰⁸ Thus, it is critical to fight against corruption effectually to eliminate this vice gradually. The corruption in the judiciary, which has the responsibility to watch all other watchers in the public sector, is arguably the most toxic phenomenon for any nation. The obvious need to resolutely address judicial corruption is evident in the assertion of John Rawls¹⁰⁹ that “justice is the first virtue of social institutions in the same way as truth is the first virtue of thought. And like the truth, justice is uncompromising.”¹¹⁰ Bribery in the administration of justice is said to be the most pernicious type of corruption and compromise with the sense of justice, which has the ability to buy a judge’s undue favor without having any personal relationship between the judge and briber.¹¹¹

A person becomes corrupt, generally willfully, so long as bribery is concerned. Corruption is thus a voluntary gross misconduct driven by greed or maybe sometimes need, rather than a coercive or negligent misdemeanour. However, this human evil-practice in the context of Bangladesh is invisibly impelled by the ambitious goal of being rich at the expense of others’ sufferings ultimately resulting in a miscarriage of justice and damage to public confidence in the judicial system. While both preventive and punitive measures have to be undertaken simultaneously in a firmly committed fight against corruption,¹¹² the

¹⁰⁷ See Mohammad Habibullah Pulok & Moin Uddin Ahmed, *Does Corruption Matter for Economic Development? Long Run Evidence from Bangladesh*, 44 INT’L J. SOC. ECON. 350, 358-59 (2017). Staff Correspondent, *Corruption Eats Away 3pc GDP, says ACC*, NEW AGE BANGLADESH (Jan. 30, 2017, 1:17 AM), <https://www.newagebd.net/article/8097/corruption-eats-away-3pc-gdp-says-acc> [<https://perma.cc/6VMY-EVE5>].

¹⁰⁸ Fahmida Khatun & Syed Yusuf Saadat, Policy Brief submitted to Subregional Office for South and South-West Asia (SSWA), Development Paper No. 21-02, *Implementation of the SDGs in Bangladesh: Domestic Challenges and Regional Considerations*, at 27. U.N., Econ. & Soc. Council, Comm. For Asia and the Pacific (ESCAP).

¹⁰⁹ John Rawls was an American political philosopher famous for his theory of justice as fairness. See John Rawls, *Justice as Fairness*, 67 PHIL. REV. 164 (1958).

¹¹⁰ Adebayo, *supra* note 9, at 1.

¹¹¹ Pahis, *supra* note 8, at 1905.

¹¹² See *id.* at 1900.

former must be given priority over the latter aimed at enhancing self-control and self-policing, which is the foremost need to root out corruption. It would be unrealistic to expect that the government alone would be able to curb this deeply rooted social problem with great success. Hence, all stakeholders, such as all three organs of the government, legal professionals, litigants, and society as a whole, must come forward with a coordinated effort to overcome the immense blight of judicial corruption.¹¹³

Judicial corruption needs to be addressed from both institutional independence as well as personal independence perspectives. This Article is not concerned with institutional independence, which currently exists in Bangladesh, at least in theory. Also, corruption inspired by bribery is largely unrelated to the separation of the judiciary from the executive's influence. This is so because bribery is one way of corruption, and the separation of the judiciary makes the judicial organ of the government independent from the executive, but it does not necessarily guard against taking bribes by judges. However, the separation can inhibit exertion of political influence, which is another way of corruption or evil practice. Hence the main concern of this endeavor is judges' personal or decisional independence that is likely to be affected by unfair financial gains. Ensuring personal independence or impartiality calls for consideration of various aspects of the judges' roles, as explored below.

A. *Accountability of Judges*

It is well accepted that transparency deters corruption,¹¹⁴ and facilitates accountability. Accountability is the first and foremost need of good governance, a critical pillar of democracy and the rule of law. The concept of accountability at its heart simply refers to the obligation to give reasons or an explanation for one's decisions or conduct.¹¹⁵ Accountability generally refers to a state of being responsible or accountable for one's conduct by providing justification or facing legal

¹¹³ Adebayo, *supra* note 9, at 7.

¹¹⁴ See *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (“[D]isclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.”); Richard L. Hasen, *Chill Out: A Qualified Defense of Campaign Finance Disclosure Laws in the Internet Age*, 27 J.L. & POL. 557, 572 (2012).

¹¹⁵ GRAHAM GEE, ROBERT HAZELL, KATE MALLESON & PATRICK O'BRIEN, *THE POLITICS OF JUDICIAL INDEPENDENCE IN THE UK'S CHANGING CONSTITUTION* 17 (2015).

liability if the actor fails to substantiate the disputed conduct.¹¹⁶ Reinforcing its significance, the Supreme Court of India in *Manohar v. State of Maharashtra* held that provisions for holding a person accountable for their acts reduce the potential of committing errors.¹¹⁷ By contrast, a lack of accountability of judges contributes to the erosion of public confidence as evident in Bangladesh.¹¹⁸ This suggests that strict accountability provisions should be put in place and enforced by competent authorities. For effective accountability, both national and international standards and jurisprudence underscore the need for the independence and impartiality of the bodies themselves to whom judicial officers will be accountable.¹¹⁹

In order to defend the independence of individual judges and the judiciary as a whole, the International Commission of Jurists (“ICJ”) outlines several mechanisms and bodies having a role to play in promoting judicial accountability. These include, amongst others, review of decisions through appeal or judicial review, judicial councils, parliamentary procedures, *Ad hoc* tribunals, anti-corruption bodies, civil society monitoring and reporting, national human rights institutions, professional associations, and international accountability mechanisms.¹²⁰

Human frailty cannot be gainsaid, but the existence and operation of a strong mechanism to hold judicial actors accountable for their roles played in discharging their responsibilities while serving the public has the potential to prevent unfair exercises of their powers from happening. Hence accountability of judges and other court officials must be ensured through specific useful mechanisms. It is to be mentioned that judges are not generally expected to be accountable to any external body, so a proper internal system of judicial accountability is critical to enhance public confidence in the judiciary and improve its performance.¹²¹ In this regard, the HCA in *Commissioner of the*

¹¹⁶ U.N. Hum. Rts. Off. of the High Comm’r & Ctr. for Econ. and Soc. Rts., *Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda*, at ix (2013), <https://www.ohchr.org/sites/default/files/Documents/Publications/WhoWillBeAccountable.pdf> [<https://perma.cc/52JH-DCZM>].

¹¹⁷ *Manohar v. State of Maharashtra*, AIR 2013 SC 681 (2012) (India) (quoting *Kranti Associates v. Khan*, (2010) 9 SCC 496 (India)).

¹¹⁸ Islam & Solaiman (2003), *supra* note 32.

¹¹⁹ INT’L COMM’N JURISTS, *JUDICIAL ACCOUNTABILITY: A PRACTITIONER’S GUIDE* 33 (2016).

¹²⁰ *Id.* at 33-34.

¹²¹ R.D. Nicholson, *Judicial Independence and Accountability: Can They Co-exist?* 67 AUSTL. L.J. 404, 424 (1993). *See also* Francesco Contini & Richard Mohr,

Australian Federal Police v. Zhao states that the “open court” principle entails that “court proceedings should be subjected to public and professional scrutiny, and courts will not act contrary to the principle save in exceptional circumstances.”¹²² It is firmly posited that specific mechanisms with well-defined powers should be put in place to ensure judicial accountability. However, given the exigency and bigotry surrounding judicial accountability, this issue will be addressed in a separate endeavor to carry out a comprehensive study of various facets of judicial accountability by reference to different national and international standards and practices. However, some other mechanisms to promote judges’ personal independence from the viewpoint of corruption are discussed below.

B. *Compulsory Wealth Statements*

Having regard to the significance of public confidence in, and the high stature of the judiciary, judges and other court officials must ensure that they collectively demonstrate being the epitome of transparency and accountability. To this end, it is recommended that judges and other officials in the judiciary at both lower and higher levels must be required to submit reports of their wealth every three years, and these reports must be compared with their tax returns. This helps the judiciary restore public confidence and enhance its public image to some extent.¹²³ They must submit these reports directly to the Chief Justice of Bangladesh who is expected to submit their own report before others to the country’s President, leading the way for the other judges to furnish their wealth statements to the Chief Justice and avoid any unfair public criticism.

A good example of such a statement was set up on December 30, 2010, by Justice A.B.M. Khairul Haque, the then Chief Justice of the country, of his own volition by submitting his wealth statement to President Zillur Rahman, the president of Bangladesh at the time.¹²⁴ His voluntary submission of the statement was highly applauded by

Reconciling Independence and Accountability in Judicial Systems, 3 UTRICHT L. REV. 26, 27, 41 (2007); Murray Gleeson, *Public Confidence in the Judiciary*, 76 AUSTL. L.J. 558 (2002).

¹²² Comm’r of the Austl Fed Police v. Zhao (2015) 255 CLR 46, 59 (Austl.).

¹²³ Ashutosh Sarkar, *Wealth Information: SC Judges Need to Submit It for Accountability*, DAILY STAR (June 16, 2019, 12:00 AM), <https://www.thedailystar.net/backpage/submitting-wealth-info-sc-judges-need-do-it-accountability-1757608> [<https://perma.cc/PY8T-2CD6>].

¹²⁴ *Id.*

public media, and then a few other judges also followed suit.¹²⁵ Although the judges of the lower or subordinate courts are required to submit such reports every three years, there is no such obligation of the judges of the SCB, the higher judiciary, to disclose their wealth, including their bank balance.¹²⁶ The example of Justice Haque and a few of his fellow judges remains only an example, rather than a requirement or regular practice for the judges of the SCB.

Recently, the ACC served a notice to an additional secretary and his wife who is a district judge asking them to submit their wealth statements as the corruption watchdog suspected that the senior public official husband and his district judge wife, who served as the special officer of the SCB during the tenure of the convicted Justice Sinha, had amassed a large amount of money illegally.¹²⁷ This requirement of submitting wealth statements needs to be extended to other employees of the courts, particularly judges' assistants (*Peshker/clerks*), because they are also believed to be part of the corrupt practices at hand.¹²⁸ The submission of such statements should not be an end in itself, these should be made public at least via the official website of the SCB, and legal procedures must be initiated after conducting proper investigations through respective government agencies, such as the ACC, where necessary and appropriate. The proposed publication of wealth statements and legal procedures against wrongdoers will have both general and specific deterrent effects on all judges in getting involved in corruption.¹²⁹

A study conducted by the World Bank and a United Nations agency found that: (1) judicial financial disclosure requirements have already gained extensive appreciation and acceptance; and (2) "more than half of the 161 countries covered by the study, judges and prosecutors are required to disclose their income, assets and other relevant

¹²⁵ M. Abdul Latif Mondal, *What Follows Submission of Wealth Statement by Judges?*, DAILY STAR (Bangl.) (Jan. 15, 2011, 12:00 AM), <https://www.thedailystar.net/news-detail-170061> [<https://perma.cc/DSY3-TUNH>].

¹²⁶ Sarkar, *supra* note 123.

¹²⁷ Staff Correspondent, *ACC asks Addl Secy, Dist Judge to Submit Wealth Statements*, NEW AGE BANGL. (Mar. 7, 2018), <https://www.newagebd.net/article/36223/article/index.php> [<https://perma.cc/L5HJ-GK2Z>].

¹²⁸ See Abdul Alim, *supra* note 34.

¹²⁹ See Guangyou Liu & Siyu Liu, *Corruption Crime and Punishment: Evidence from China's State Corruption Audits*, 24 J. FIN. CRIME 601, 607-09 (2017); Ritwik Banerjee & Arnab Mitra, *On Monetary and Non-Monetary Interventions to Combat Corruption*, 149 J. ECON. BEHAV. ORG. 332, 333-35, 348 (2018).

interests and activities.”¹³⁰ In the case of Supreme Court justices, this applies already in almost 60% of countries.¹³¹ The *United Nations Convention against Corruption 2004* contains various provisions emphasizing the importance of measures and systems requiring public officials to make declarations. Article 52(5) states that:

Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offenses established in accordance with this Convention.¹³²

Bangladesh is a party to this UN Convention,¹³³ hence it has the obligation to introduce such a disclosure requirement. Examples of submission and disclosure of wealth statements are available in many countries including the United States, Argentina, Latvia, Mongolia, South Korea,¹³⁴ and in India to some extent.¹³⁵ The magnitude of allegations and the recent conviction of a former Chief Justice call for taking stringent measures against judicial corruption in Bangladesh without further ado.

¹³⁰ *Strengthening Judicial Integrity Through Financial Disclosure Systems for Judges*, U.N. OFF. ON DRUGS & CRIME (UNODC), <https://www.unodc.org/dohadecclaration/en/news/2017/02/strengthening-judicial-integrity-through-financial-disclosure-systems-for-judges.html> [<https://perma.cc/VY9L-4F76>] (last visited Oct. 23, 2022).

¹³¹ *Id.*

¹³² United Nations Convention Against Corruption art. 52(5), *adopted* Oct. 31, 2003, 2349 U.N.T.S. 41.

¹³³ *Signature and Ratification Status*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/corruption/ratification-status.html> [<https://perma.cc/MKB2-WYQM>] (last visited Nov. 9, 2022). The UN provides the meaning of accession in the following terms: “‘Accession’ is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.” *What is the Difference Between Signing, Ratification and Accession of UN Treaties?*, DAG HAMMARSKJÖLD LIBR., <https://ask.un.org/faq/14594> [<https://perma.cc/F5K8-3SNU>] (last visited Oct. 23, 2022).

¹³⁴ Himanshi Dhawan, *In US, Disclosure of Judges’ Wealth is Mandatory*, TIMES INDIA (Aug. 24, 2009, 2:57 AM), <https://timesofindia.indiatimes.com/india/In-US-disclosure-of-judges-wealth-is-mandatory/articleshow/4926253.cms> [<https://perma.cc/77UU-V3UV>].

¹³⁵ Mondal, *supra* note 125.

C. *Appointment of Judges Based on Merits*

Grapes cannot be expected from a lime tree. Generally, inputs represent outputs. Legal education and professional experience should not be sufficient considerations or sole selection criteria from the present perspective in recruiting judges at any level. This is particularly critical to a corruption-ridden society. The judiciary of Bangladesh constitutionally consists of the SCB and subordinate courts.¹³⁶ Judges of these two-tier courts are appointed through completely different processes, which are described below.

1. *Appointment of Judges of the Subordinate Courts*

Admittedly, there is a rigorous requirement process currently in place to recruit the judges of the lowest-tier courts presently called the Courts of Assistant Judges and Judicial Magistrates.¹³⁷ The judges of the subordinate courts begin their career as “Assistant Judges,” who used to be called “Munsif” introduced during the British colonial era.¹³⁸ Assistant Judges have only civil jurisdictions, whilst their equivalent position for criminal jurisdictions is called “Judicial Magistrate.”¹³⁹ This separation came into being as a result of the separation of the judiciary from the executive in November 2007.¹⁴⁰

Assistant Judges and Judicial Magistrates are gradually promoted to the positions of the top judges at both district and divisional levels.¹⁴¹ Currently, the process of appointing both Assistant Judges and Judicial Magistrates is at least theoretically acceptable in that they are

¹³⁶ BANGL. CONST. arts. 94(1), 114.

¹³⁷ Mohona Islam, *How to Become a Judge in Bangladesh*, BDLAW NEWS (Sept. 5, 2022), <https://www.bdlawnews.com/how-to-become-a-judge-in-bangladesh/> [<https://perma.cc/4T9U-SKWR>]. See also *infra* note 140.

¹³⁸ Pranab Kumar Panday & Md. Awal Hossain Mollah, *The Judicial System of Bangladesh: An Overview from Historical Viewpoint*, 53(1) INT’L J.L & MGMT. 6, 12-13 (2011).

¹³⁹ *Id.* at 20-23.

¹⁴⁰ For two separate sets of old courts in Bangladesh that show “Munsif”, see *id.* at 13. For the separation of the judiciary in 2007, see Islam (2009), *supra* note 32, at 237, 239-40.

¹⁴¹ For the hierarchical structure of current the ordinary courts in Bangladesh, see Panday & Hossain Mollah, *supra* note 138, at 16.

selected through a nationwide competitive test conducted by the Bangladesh Judicial Service Commission (“BJSC”),¹⁴² which was formed in 2007 following a prolonged struggle of the judges themselves for the separation of the judiciary from the executive.¹⁴³ The BJSC recommends a list of selected candidates for their appointments, and the President of Bangladesh makes their appointments.¹⁴⁴

To state briefly, the SCB precisely impelled the executive to make this separation and form a separate body, BJSC, for judicial appointments to subordinate courts by issuing binding directions in the judgment pronounced in 1999 in *Secretary, Ministry of Finance v Masdar Hossain*,¹⁴⁵ and the executive formed the BJSC under the *Bangladesh Judicial Service Commission Rules 2007*.¹⁴⁶ Although the highest court issued directions emphatically in 1999, the executive was unacceptably reluctant to make it happen as demonstrated in their procrastination of the implementation of the SCB directives.¹⁴⁷ Finally, it was done by an interim non-party caretaker government when the successive political governments impeded its execution by frequent prayers for an extension of time, as the executive sought and got the extension of deadlines to materialize the SCB verdict a total of twenty-four times between 1999 and 2007.¹⁴⁸ This was the case even

¹⁴² See generally *Bangladesh Judicial Service Commission*, BANGL. JUD. SERV. COMM’N, <http://www.bjsc.gov.bd> [<https://perma.cc/6M4W-H78Q>] (last visited Oct. 23, 2022).

¹⁴³ In May 1997 the Supreme Court of Bangladesh in *Secretary, Ministry of Finance v. Masdar Hossain* [2000] 52 DLR (AD) 82 (Bangl.) issued a binding directive to the government giving it eight-week time to implement the separation of the judiciary, as required by article 22 of the constitution. This landmark decision was upheld on appeal in November 2000. See *Secretary, Ministry of Finance v. Masdar Hossain* [2001] BLD (AD) 126, and reconfirmed upon revision in June 2001; see also *Secretary, Ministry of Finance v. Masdar Hossain* (2002) 52 DLR (AD) 104; Islam & Solaiman (2002), *supra* note 32, at 107.

¹⁴⁴ See BANGLADESH JUDICIAL SERVICE COMMISSION, *supra* note 142; read together with BANGL. CONST. art. 115 (“Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf.”).

¹⁴⁵ *Sec’y, Ministry of Fin. v. Masdar Hossain*, (1999) 52 DLR (AD) 82 (Bangl.).

¹⁴⁶ BANGLADESH JUDICIAL SERVICE COMMISSION, *supra* note 142.

¹⁴⁷ Islam (2009), *supra* note 32, at 237, 239-40.

¹⁴⁸ Muhammad Zamir, Editorial, *Independent Judiciary Finally Round the Corner*, DAILY STAR (Bangl.) (Jan. 27, 2007), <https://archive.thedailystar.net/2007/01/27/d70127020327.htm> [<https://perma.cc/3MUC-DWJ2>].

though the Constitution of Bangladesh, the supreme law of the land,¹⁴⁹ provides that the State shall ensure the separation of the judiciary from the executive organs of the State.¹⁵⁰ Such a deferment implies the vested interest of political governments in keeping the judiciary under control.

Now though, theoretical separation has taken place, practical independence of the judiciary may still be a long way off, allegedly because of political intervention and corruption.¹⁵¹ The extent of such interference is described to be either “the judicialisation of politics or the politicisation of the judiciary.”¹⁵² However, this Article keeps the trajectory of that political aspect of the judiciary outside of its scope in order to keep its length manageable.

Regarding the appointment of judges to the lower courts, the primary responsibilities of the BJSC include assessing the suitability of applicants for the appointment at the entry-level of the judicial service, Assistant Judges (civil jurisdiction) and Judicial Magistrates (criminal jurisdiction); and conducting periodical examinations for these lowest level judges when they are probationers.¹⁵³ The composition of the BJSC¹⁵⁴ appears to be fine. However, its consideration needs to be extended to assess the moral attributes of a candidate in both written and oral examination processes. The BJSC selects candidates “based on their intellectual abilities, analytical skills and general proficiency in the laws.”¹⁵⁵ Hence, arguably, it does not consider anything about the

¹⁴⁹ BANGL. CONST. art. 7(2) (“This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.”).

¹⁵⁰ BANGL. CONST. art. 22.

¹⁵¹ See generally sources cited *supra* note 32.

¹⁵² Kazuki Minato & Noriyuki Asano, *Politics and Independence of the Judiciary in Bangladesh*, IDE RSCH. BULL. (2019).

¹⁵³ BANGLADESH JUDICIAL SERVICE COMMISSION, *supra* note 142. For a diagram of the current court system in Bangladesh, see Hannan & Arifuzzaman, *supra* note 32, at 11-12.

¹⁵⁴ The BJSC is constituted of a judge of the Appellate Division as its Chairman, two judges of the High Court Division, an Attorney General, one member of the Law Commission, a Secretary–Ministry of Establishment, a Secretary–Ministry of Finance, a Secretary–Ministry of Law, Justice and Parliamentary Affairs, one of the Deans of the Faculty of Law, Dhaka, Rajshahi or Chittagong University, Registrar, Bangladesh Supreme Court and the district judge of Dhaka as members of the Commission.

¹⁵⁵ BANGLADESH JUDICIAL SERVICE COMMISSION, *supra* note 142.

moral and ethical perceptions of candidates. Notably, law degree programs in Bangladesh do not generally include any content of such perceptions either.¹⁵⁶ Judges have an obligation to be of high moral character under Article 21(1) of the *Convention for the Protection of Human Rights and Fundamental Freedoms* 1950 (also known as the European Convention on Human Rights).¹⁵⁷ The Resolution on Judicial Ethics of the European Court of Human Rights adopted on June 21, 2021, unequivocally states that “Judges’ conduct must be consistent with the high moral character that is a criterion for judicial office.”¹⁵⁸ Regarding the eligibility of a member of the International Court of Justice, “Judges must be elected from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.”¹⁵⁹ Thus, it is commonly accepted that a judge must possess a high moral character. This fundamental requirement is nonetheless seemingly absent in Bangladesh to a large extent, as evident from the corruption allegations and convictions alluded to earlier. It is to be presumed that a judge is always a judge, regardless of their tier or location of workplace, and the integrity of a judicial officer is a universal requirement simply because of the nature of their responsibility.

Traditionally, to ensure candidates’ good character, different appointing authorities in Bangladesh consider “Character Certificates” issued by designated public service or local government officials, which were introduced in 1772 by the British colonial regime.¹⁶⁰ These

¹⁵⁶ *Legal Education in Bangladesh-Law Commission Report-2/12/2007*, ADVOCATETANMOY L. LIBR. (Dec. 2, 2007), <https://advocatetanmoy.com/2020/12/17/legal-education-in-bangladesh-law-commission-report-2-12-2007/> [<https://perma.cc/J52K-PMRJ>].

¹⁵⁷ Euro. Convention on Hum. Rts., *Convention for the Protection of Human Rights and Fundamental Freedoms*, https://www.echr.coe.int/documents/convention_eng.pdf [<https://perma.cc/YQ24-E7EL>] (last visited Jan. 2, 2023).

¹⁵⁸ *Resolution on Judicial Ethics*, EUR. CT. H.R. (June 21, 2021), https://www.echr.coe.int/Documents/Resolution_Judicial_Ethics_ENG.pdf [<https://perma.cc/F8CE-ZTKE>].

¹⁵⁹ *Members of the Court*, INT’L CT. JUST., <https://www.icj-cij.org/en/members> [<https://perma.cc/CYA7-UVG8>] (last visited Oct. 23, 2022).

¹⁶⁰ See Staff Correspondent, *Man Held Over Making Fake NIDs*, DAILY STAR (Bangl.) (Sept. 22, 2021, 1:42 AM), <https://www.thedailystar.net/news/bangladesh/news/man-held-over-making-fake-nids-2181381> [<https://perma.cc/HMH7-N9ZT>]; Abu Sayem, *Rohingyas Grow Desperate for Bangladeshi Passports*, BUS.

solicited certificates represent mostly more rhetoric than reality, and even more reprehensibly, these are sometimes invented by the candidates themselves or their friends by using fake signatures and seals of an eligible person, transpiring them perfidiously.¹⁶¹ Many job-seekers have recently admitted to the press media that they have created fake character certificates themselves, using fake seals and signatures to avoid harassment and bribery sometimes demanded for providing such a certificate.¹⁶² Therefore, to assess candidates' moral attributes, the BJSC should test them on their moral and ethical perceptions, alongside the current specified areas of testing. This can be attained by incorporating some open-ended questions specific to the value and practice of ethics and morality of human beings. To test these aspects of candidates, the BJSC may embrace a psychologist from one of those academics whose expertise and personal integrity are irrefutable, and who are nationally held in high esteem based on their contemporary research experience and strong personality. It is to be noted that although the BJSC considers the activities of the recruits during their probation periods for confirmation of their positions, it is unlikely that probationers will engage in corruption simply because of the vulnerability of their tenures.

The process of appointment of justices of the higher judiciary is not satisfactory either, as the discussion proceeds.

2. *Appointment of Judges of the Supreme Court of Bangladesh*

The corruption allegations are reported to be even more severe against some judges of the HCD compared to their counterparts in subordinate courts – though paradoxically, the former has a constitutional responsibility to check the corruption of the latter. Empowering the HCD, Article 109 of the Constitution of Bangladesh undeniably spells out that the HCD “shall have superintendence and control over

STANDARD (Bangl.) (Sept. 20, 2019, 9:44 AM), <https://www.tbsnews.net/bangladesh/rohingyas-grow-desperate-bangladeshi-passports> [<https://perma.cc/B32T-QDQQ>].

¹⁶¹ See *Man Held Over Making Fake NIDs*, *supra* note 160; Sayem, *supra* note 160.

¹⁶² Mir Mohammad Jasim, *Character Certificate: The Colonial Burden Drags On*, BUS. STANDARD (Bangl.) (July 24, 2022, 3:42 PM), <https://www.tbsnews.net/bangladesh/character-certificate-colonial-burden-drags-464118> [<https://perma.cc/3MV5-D9W5>].

all courts and tribunals subordinate to it.”¹⁶³ In apprehension of malpractice in the subordinate judiciary, the incumbent Chief Justice has assigned eight HCD judges to monitor irregularities being practised in the lower judiciary of all of the eight administrative divisions of the country, where one HCD justice is responsible for one division.¹⁶⁴ These inquiries are currently underway. This is an appreciable measure.

Although there is a constitutional sanction to make law regarding the appointment of judges in the SCB,¹⁶⁵ no law has been enacted in the last fifty years. The executive remains inactive in initiating legislation for such appointments despite that there are coherent directions of the SCB and recommendations of the national Law Commission to make policy in this regard, it has not been implemented to date.¹⁶⁶ As a result, the long-standing question of transparency in the appointment of judges has not been resolved. According to experts, it is necessary to make law for the appointment of judges in the interest of selecting

¹⁶³ The Constitution of the People’s Republic of Bangladesh Act. No. of 1972, art. 109.

¹⁶⁴ Monitoring Committee for Subordinate Courts, constituted under *The Supreme Court of Bangladesh (High Court Division Rules) 1973*, via Notification No. 5/2022 issued on January 27, 2022 signed by Registrar, HCD (on file with author). FE Online Report, *Eight HC Judges to Monitor Lower Courts’ Proceedings*, THE FIN. EXPRESS (Jan. 31, 2022, 8:04 PM), <https://thefinancialexpress.com.bd/national/eight-hc-judges-to-monitor-lower-courts-proceedings-1643637897> [<https://perma.cc/7Y2C-ZTW8>]; Staff Correspondent, *Committees Formed to Monitor Lower Courts*, NEW AGE BANGLADESH (Jan. 28, 2022, 12:09 AM), <https://www.newagebd.net/article/161172/committees-formed-to-monitor-lower-courts> [<https://perma.cc/7HM7-GVNS>].

¹⁶⁵ BANGL. CONST. art. 95(2)(c).

¹⁶⁶ UNB, *Law Minister: New Law in the Offing to Appoint HC Judges*, DHAKA TRIB. (Bangl.) (Jan. 9, 2023), <https://www.dhakatribune.com/bangladesh/2023/01/09/law-minister-new-law-in-the-offing-to-appoint-hc-judges> [<https://perma.cc/QFP8-XCKU>]; Alamgir Hossain, *Appointment of Supreme Court Judges: No Law in 41 Years*, DAILY JUGANTOR (Bangl.), Oct. 23, 2019, at Metropolis (on file with author); *Time Ripe Enough for Law on Appointment of HC Judges*, NEW AGE (Aug. 4, 2022), <https://www.newagebd.net/article/177562/time-ripe-enough-for-law-on-appointment-of-hc-judges> [<https://perma.cc/R4SD-UE3S>] (“Successive governments have also violated High Court verdicts and resolutions of the Supreme Court Bar Association in the appointment of judges in an in transparent way. The High Court on August 7, 2008 in a verdict on a writ petition detailed a 12-point guideline on the appointment of Supreme Court judges.”).

the most qualified persons, but it has been ignored by all successive governments since the independence for political purposes.¹⁶⁷

The appointment of HCD judges is often disputed for giving priority to political allegiance, though it happens entirely off the record.¹⁶⁸ Regarding qualifications, Article 95 of the Constitution of Bangladesh spells out that:

(1) The Chief Justice shall be appointed by the President, and the other Judges shall be appointed by the President after consultation with the Chief Justice.

(2) A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and –

(a) has, for not less than ten years, been an advocate [practicing lawyer] of the Supreme Court; or

(b) has, for not less than ten years, held judicial office in the territory of Bangladesh; or

(c) has such qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court.¹⁶⁹

It disqualifies only those who lack experience working as a professional lawyer at the SCB for at least ten years or holding a judicial office in the country for the same minimum threshold period.¹⁷⁰ Taking advantage of any statutory qualification other than the very broad constitutional specifications, a fairly large number of judges (around ten to fifteen) are appointed at a time whenever the executive government deems it necessary.¹⁷¹ It is popularly believed that once a person overcomes the lack of the required experience, the political governments purportedly and albeit implicitly consider another “off the record qualification” which is an aspirant’s political affiliation.¹⁷² In the

¹⁶⁷ Hossain, *supra* note 166; M Moneruzzaman, *No Law to Appoint HC Judges*, NEW AGE BANGL. (July 31, 2022), <https://www.newagebd.net/article/177296/no-law-to-appoint-hc-judges> [<https://perma.cc/HGF5-8M8P>].

¹⁶⁸ See Minato & Asano, *supra* note 152, at 2-3.

¹⁶⁹ BANGL. CONST. art. 95.

¹⁷⁰ *Id.*

¹⁷¹ Moneruzzaman, *supra* note 167; Ashutosh Sarkar, *HC Gets 11 New Judges*, DAILY STAR (Bangl.) (Aug. 1, 2022, 12:00 AM), <https://www.thedailystar.net/news/bangladesh/news/hc-gets-11-new-judges-3084481> [<https://perma.cc/3GSA-9A2M>]; UNB, *Nine New High Court Judges Take Oath*, DHAKA TRIB. (Bangl.) (Oct. 19, 2021, 7:49 PM), <https://www.dhaka-tribune.com/bangladesh/2021/10/19/nine-new-high-court-judges-take-oath> [<https://perma.cc/YG4D-TXQZ>].

¹⁷² M Moneruzzaman, *Independent Judiciary Still a Far Cry*, NEW AGE (Bangl.) (Oct. 31, 2021, 11:40 PM), <https://www.newagebd.net/article/153331/independent-judiciary-still-a-far-cry> [<https://perma.cc/TJ66-VRYW>].

absence of dedicated legislation for such recruitments, the appointments are thus reportedly made based overtly on the minimum threshold qualifications stipulated in Article 95 of the Constitution and covertly on political allegiance.¹⁷³ Fairly speaking, one's political connection should not be a disqualification in any event because no educated person is expected to be completely apolitical, nor should it be an essential consideration for such an exalted position in the higher judiciary. Unlike in Bangladesh, the judges of the Supreme Court of the United States are appointed based on political allegiance making no pretense to be apolitical.¹⁷⁴ However, the appointments of the United States Supreme Court judges are not necessarily above criticism.¹⁷⁵

Although the above-stated Article 95 empowers the President of Bangladesh, themselves, as the Head of the State to appoint the Chief Justice,¹⁷⁶ there is little reason to believe that the President does so alone. Rather the Ministry of Law, Justice and Parliamentary Affairs (Ministry of Law), and the Office of the Prime Minister (Head of the Government) get involved from behind the scene in the appointment process of chief justices too.¹⁷⁷ This exclusive power of the President has been reinforced under Article 48(3) of the Constitution, which categorically provides that the President shall act in accordance with the advice of the Prime Minister in discharging their functions except for two cases, namely the appointment of the Prime Minister and the Chief Justice.¹⁷⁸ A safeguard proviso follows Article 48(3) that precludes anyone from making any query about the advice tendered by the Prime Minister to the President. The maintenance of confidentiality seems justified.¹⁷⁹

¹⁷³ M. EHTESHAMUL BARI, *THE INDEPENDENCE OF THE JUDICIARY IN BANGLADESH—EXPLORING THE GAP BETWEEN THEORY AND PRACTICE* 3, 8, 12, 16, 69, 74, 84, 91, 101, 105-06, 108, 117, 123 (2022).

¹⁷⁴ Jon C. Rogowski & Andrew R. Stone, *How Political Contestation Over Judicial Nominations Polarizes Americans' Attitudes Toward the Supreme Court*, 51 *BRITISH J. POL. SCI.* 1251, 1251 (2021).

¹⁷⁵ See Aziz Z. Huq, *Why Judicial Independence Fails*, 115 *NW. UNIV. L. REV.* 1055, 1066 (2021).

¹⁷⁶ *BANGL. CONST.* art. 48(2).

¹⁷⁷ *BANGL. CONST.* art. 55.

¹⁷⁸ *BANGL. CONST.* art. 48(3).

¹⁷⁹ See Sebastian Mazay, *The Veil of Judicial Appointment in Australia: Why Opaque Selection Promotes an Independent Judiciary*, 31 *J. JUDIC. ADM.* 207 (2022).

Unlike the appointment of the Chief Justice, the President has the constitutional obligation to appoint the other judges of the SCB after consultation with the Chief Justice and the advice received by the President is confidential, as mentioned earlier.¹⁸⁰ Hence, the appointment authority effectively lies with the Prime Minister under Article 48(3) and Article 95(1) of the Constitution. This is so because the advice of the Chief Justice is due to be channeled through the Offices of the Law Minister and the Prime Minister. Consequently, in practice, the Ministry of Law prepares a list of potential appointees supposedly in consultation with the Chief Justice, and the Prime Minister's Office vets the list and then forwards it to the President for approval, who appears to be constitutionally obligated to approve it.¹⁸¹ Such appointments are widely believed to be political and aligned with the party in power.

From the corruption point of view, since the process is opaque, an important point to make here is that it is blurred whether the quality of the required ten years of performance as lawyers or judicial officers who are elevated to the position of judges of the highest court are given due consideration. Also, when the eligibility comes to the professional experience of judicial officers – for the sake of argument – if such an officer remains in the position of Assistant Judge or Judicial Magistrate for ten years for any reason whatsoever, can still be constitutionally eligible to be appointed to the position of justice of the HCD. Although it sounds utterly absurd, and no one from below the position of District Judge is known to have been picked up for the HCD, the possibility of that happening may not be ruled out altogether, particularly because politics plays a critical role in such appointments. An example of a past incongruity – a prudent barrister and the Law Minister of the time (2001-2005) imprudently misinterpreted an article (i.e., a) used in the Constitution of Bangladesh (Article 98) as a number (i.e., one) and claimed that “the government could not appoint more than one judge on ad hoc basis” though legal experts opined that the government could appoint as many judges as it needed based on the President's satisfaction.¹⁸² The Law Minister (2001-2005) misinterpreted

¹⁸⁰ BANGL. CONST. art. 48(3).

¹⁸¹ Imran A. Siddiq, *The Judicial Appointments Process in Bangladesh: In Search of Transparency*, in THE RULE OF LAW IN DEVELOPING COUNTRIES 59-95, 62 (Chowdhury Ishrak Ahmed Siddiky ed., 2018).

¹⁸² Ashutosh Sarkar, *Too Embarrassed to Hear*, DAILY STAR (Bangl.) (Sept. 19, 2009, 3:28 PM), <https://www.thedailystar.net/august-15-special-coverage/too-embarrassed-hear-1269673> [<https://perma.cc/LB9Y-KM6X>].

the following constitutional provision and said the government is unable to appoint more than one:

If the President is satisfied that the number of the Judges of a division of the Supreme Court should be for the time being increased, the President may appoint *one or more* duly qualified persons to be Additional Judges of that division for such period not exceeding two years as he may specify, or, if he thinks fit, may require *a Judge* of the High Court Division to sit in the Appellate Division for any temporary period¹⁸³

Further, this happened notwithstanding the constitutional provision that “[t]he Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and *such number* of other Judges as the President may deem it necessary to appoint to each division.”¹⁸⁴ Furthermore, this nonsense interpretation was given in defiance of the request of the then Chief Justice of Bangladesh.¹⁸⁵

To clarify the politics here, there was a deadlock at the AD in 2002 in relation to hearing an appeal against the conviction decision of the HCD in the case of the brutal assassination of President Sheikh Mujibur Rahman,¹⁸⁶ the first President and Father of the Nation, who was killed in the dead of night along with twenty-two members of his extended family in a military coup on August 15, 1975, leaving only two of his daughters who were fortuitously overseas at the fateful time.¹⁸⁷ His older daughter is now the Prime Minister.¹⁸⁸ Successive governments indemnified the self-confessed murderers forever, under the *Indemnity Ordinance 1975* overtly on political grounds.¹⁸⁹ How-

¹⁸³ BANGL. CONST. art. 98 (emphasis added).

¹⁸⁴ BANGL. CONST. art. 94(2) (emphasis added).

¹⁸⁵ Sarkar, *supra* note 182.

¹⁸⁶ For a brief history of the trial, see Sayed-UI-Haque Dinar, *Understanding the Bangabandhu Murder Trial*, DHAKA TRIB. (Aug. 15, 2021, 7:33 PM), <https://archive.dhakatribune.com/opinion/op-ed/2021/08/15/op-ed-understanding-the-bangabandhu-murder-trial> [<https://perma.cc/5VPP-EPDK>].

¹⁸⁷ See Islam & Solaiman (2002), *supra* note 32, at 112-14.

¹⁸⁸ *World Leaders Forum—Sheikh Hasina*, COLUMBIA UNIV. WORLD LEADERS F., <https://worldleaders.columbia.edu/directory/sheikh-hasina> [<https://perma.cc/F7RB-DAQ2>] (last visited Jan. 2, 2023).

¹⁸⁹ M Nazrul Islam, *Indemnity Ordinance: Will History Forgive Us?*, DAILY SUN (Bangl.) (July 9, 2022, 12:00 AM), <https://www.daily-sun.com/printversion/details/631080/Indemnity-Ordinance:-Will-History-Forgive-Us> [<https://perma.cc/B8QT-A62C>]; Staff Correspondent, *Righting the Grievous Wrong*

ever, his older daughter came to power first in 1996 through an election held by a non-party caretaker government, which repealed the indemnity ordinance,¹⁹⁰ and commenced the trial, but her first term ended in 2000 after the trial court conviction verdict.¹⁹¹ Subsequently, the arch-rival opposition, which enacted the indemnity and formed the party (aforesaid opposition) whilst in power after the said assassination, was voted to power through much disputed national polls.¹⁹² Then the government started playing the dirty political game again to avoid the hearing of an appeal.

When the final appeal was lodged with the AD after the first appeal at the HCD, which largely upheld the convictions awarded by the trial court, three out of five judges of the AD at that time formally expressed embarrassment and refused to hear the appeal, leaving only two judges including the Chief Justice available to conduct the appeal hearing.¹⁹³ But, at least three judges are required to form a bench for any appeal at the AD.¹⁹⁴ The Chief Justice was sincere to hold the appeal hearing and requested the President (chosen by the party in power) to appoint a judge to the AD at least on *ad hoc* basis to form a three-member bench.¹⁹⁵ The request went unheeded. However, following more retirements of judges from the AD, the government elevated four judges to the AD from the HCD, purposefully and calculatedly choosing those who had already refused to hear the case when they were in the HCD.¹⁹⁶ The government said they could not appoint more than one judge to the AD to hear the appeal in question.¹⁹⁷

Dark Law to Shield Killers, DAILY STAR (Bangl.) (Nov. 19, 2009, 2:13 PM), <https://www.thedailystar.net/august-15-special-coverage/dark-law-shield-killers-1269619> [<https://perma.cc/VD4T-ESHW>].

¹⁹⁰ See 14 BANGL. L. TIMES (Special Issue) (Samarendra Nath Goswami, ed., 2006).

¹⁹¹ Dinar, *supra* note 186; *Bangladesh to Resume Mujib Murder Trial*, HINDUSTAN TIMES (India), <https://www.hindustantimes.com/world/bangladesh-to-resume-mujib-murder-trial/story-WKfFDSdeupaZQA8bzJZIoJ.html> [<https://perma.cc/J9YA-LXMQ>] (July 11, 2009).

¹⁹² M. Rashiduzzaman, *Bangladesh in 2001: The Election and a New Political Reality?*, 42 ASIAN SURVEY 183, 183 (2002).

¹⁹³ Islam & Solaiman (2002), *supra* note 32, at 113.

¹⁹⁴ Supreme Court Rules 1988, SI Rule 1, Order XI (Bangl.).

¹⁹⁵ Islam & Solaiman (2002), *supra* note 32, at 113.

¹⁹⁶ Sarkar, *supra* note 182. See also Dinar, *supra* note 186 (providing a brief description of the trial).

¹⁹⁷ Sarkar, *supra* note 182; Dinar, *supra* note 186.

The point raised here may intuitively seem to be absurd or unfounded, but the above-stated extreme political biases were an absurdity too, and an inhumane and abominable example of reality with the sole purpose of preventing the trial of the most heinous killings in the country's history. Therefore, the politics surrounding the judiciary is unpredictable, and legal certainty is needed to shut the door of choosing anyone by the all-powerful executive. Notably, India has closed the possibility of appointing anyone from the subordinate judiciary who had worked below the rank of the District Judge.¹⁹⁸ Bangladesh should follow suit, which can be easily done by legislating the long overdue law determining the eligibility of individuals aspiring to be judges of the SCB. The eligibility should also embrace the legal scholarship of academics who would be distinguished jurists in the opinion of the President.¹⁹⁹ The adoption of this new eligibility will require a constitutional amendment. It is worth mentioning that the aforesaid Chief Justice Sinha in *Bangladesh Bar Council v. AKM Fazlul Kamir* emphasized the need for a close tie between legal academia and profession to improve the latter.²⁰⁰

Another facet of the flawed appointment process is that there is no explicitly set out selection criteria, which is a serious weakness. Since the only eligibility or selection criteria is ten years of experience, the executive enjoys unfettered discretion to choose from several thousand lawyers of the SCB and around one thousand judges of subordinate courts. To find out honest and capable candidates for the positions of SCB judges, a set of well-articulated selection criteria should be established by legislation encompassing educational qualifications, performance as judicial officers and lawyers, a well-explained account of ownership of wealth, and original or creative thinking of proper administration of justice in the context of Bangladesh. This would help select quality and honest judges.

The appointment process is further weakened by the denial of the role of the Chief Justice. Although constitutionally the Chief Justice

¹⁹⁸ India Const. art. 124, cl. 3 (clarifying that for the purpose of appointment to the Supreme Court as a judge, a candidate's experience as a judicial officer will be counted only for the period worked as a district judge). *See also* Explanation II of Article 124, Clause 3.

¹⁹⁹ India Const. art. 124, cl. 3(c).

²⁰⁰ Saquib Rahman & Nafiz Ahmed, *Who Are and Are Not Lawyers?*, DAILY STAR (Bangl.) (Nov. 6, 2018, 10:48 AM), <https://www.thedailystar.net/law-our-rights/news/who-are-and-are-not-lawyers-1656538> [<https://perma.cc/JN2C-PHG9>].

has a significant role to play in appointing judges to the SCB, generally in practice the executive's dominance prevails.²⁰¹ This is so because the role of the Chief Justice is reportedly passive, or more ceremonial than real.²⁰² This was publicly disclosed in a meeting of supreme court lawyers by Justice Shahabuddin Ahmed when he was the sitting Chief Justice noting that "Chief Justice is Mr. nobody" when it comes to the appointment of new judges to the HCD.²⁰³ Justice Matin terms the requirement "in consultation with the Supreme Court" as "bogus," and claims that the executive government holds all the powers.²⁰⁴

By contrast, the Supreme Court of India in the *Supreme Court Advocate-on-Records Association v. Union of India (Second Judges Appointments Case)* in 1993, declared that "no appointment of any judge to the Supreme Court or any High Court can be made unless it is in conformity with the opinion of the Chief Justice of India."²⁰⁵ It is relevant to the case in Bangladesh in that, in 1993 the provisions of such appointment contained in Article 124 of the Indian Constitution were identical to Article 95 of the Constitution of Bangladesh.²⁰⁶ In interpreting Article 124, a three-member bench of the Supreme Court of India in *Subhash Sharma v. Union of India* observed about the word "consultation" incorporated into Article 124(2) that "[t]he Constitutional phraseology would require to be read and expounded in the context of constitutional philosophy of separation of powers to the extent recognized and adumbrated and the cherished values of judicial independence."²⁰⁷ Afterwards, a larger bench of nine judges of the Indian Supreme Court in *SC Advocates on Record Association v. Union of India* (a landmark case popularly known as the Second Judges Case) resolutely held that the "consultative" process required to be followed

²⁰¹ See Bari, *supra* note 32, at 33-76.

²⁰² *Id.*

²⁰³ Law Desk, *Judicial Independence to Guarantee Justice*, DAILY STAR (Bangl.) (Nov. 15, 2016, 12:17 PM), <https://www.thedailystar.net/law-our-rights/law-interview/judicial-independence-guarantee-justice-1314733> [<https://perma.cc/KVQ3-YM28>].

²⁰⁴ M. Moneruzzaman, *Fully Independent Judiciary Elusive*, NEW AGE BANGL. (Dec. 20, 2021, 11:33 PM), <https://www.newagebd.net/article/157845/fully-independent-judiciary-elusive> [<https://perma.cc/HX4Z-7D7S>].

²⁰⁵ Sup. Ct. Advocate on Records Ass'n v. Union of India, (1993) 4 SCC 441 (India).

²⁰⁶ India Const. art. 124; see also Khagesh Gautam, *Political Patronage and Judicial Appointments in India*, 4 INDON. J. INT'L & COMP. L. 653, 655 (2017).

²⁰⁷ Subhash Sharma v. Union of India, 1991 AIR 631, 640 (1990) (India).

under Article 124 does not offer primacy or absolute discretion to the executive with respect to the appointment of judges.²⁰⁸ In providing the meaning of the primacy of Chief Justice, the Supreme Court however, does not recognize an exclusive arbitrary power of the Chief Justice either, rather, the decision has to be made based on “the collective opinion developed after considering the views of several other judges who are traditionally connected with this duty.”²⁰⁹ The consultation requirement was further interpreted by a nine-judge panel of the Supreme Court of India in an advisory opinion provided to the country’s President in *Re: Presidential Reference* that the Chief Justice is essentially required to consult “a collegium of four senior most justices of the Supreme Court,” including the Chief Justice where the majority opinion will take precedence, otherwise the opinion of the Chief Justice will lose the value of primacy, and therefore the executive will have the discretion to accept or reject it.²¹⁰

To avoid judicial corruption in Bangladesh, specific selection criteria as recommended above should be articulated and strictly followed. However, until that happens, it is imperative to follow the constitutional due process emphasizing the past performance record of candidates for judges of the HCD regardless of whether they are chosen from the subordinate judiciary or the lawyers of the Supreme Court. Checking their records should not be an onerous task for the executive government or the Chief Justice as the true picture can be discovered from the lawyers or subordinate judges’ past workplaces through the government intelligence services, whilst the Chief Justice is expected to know through their judicial and administrative colleagues about the ethical practice of lawyers who work at the highest court. A further discussion of the appointment of Supreme Court judges falls beyond the scope of this endeavor, which is focused on corruption.

India is Bangladesh’s largest and most influential neighbor, and it is well known that the Constitution of Bangladesh borrowed heavily from its Indian equivalent when the former was drafted in 1972.²¹¹

²⁰⁸ Sup. Ct. Advocate on Records Ass’n, 4 SCC at 429.

²⁰⁹ *Id.* at 434.

²¹⁰ *In re Special Reference*, AIR 1999 SC 1, 16 (1998) (India).

²¹¹ See Muhammad Ekramul Haque, 50 Years Of Our Constitution: Original Ideals vs Reality *Constitutional Borrowing and Transplants*, DAILY STAR (Bangl.) (Nov. 4, 2022, 12:00 AM), <https://www.thedailystar.net/supplements/50-years-our-constitution-original-ideals-vs-reality/news/constitutional-borrowing-and-transplants-3160266> [<https://perma.cc/4MSL-TXVY>].

Given the public criticism of the appointment procedure and alleged corruption in the highest judiciary, Bangladesh needs to make law without further ado setting out specific eligibility and selection criteria for the appointment of Supreme Court judges as suggested above.

D. *Breaking the Unholy Nexus Between Judges and Lawyers in the Supreme Court of Bangladesh*

It is extremely concerning that the most recent former Attorney General, the late Mahbubey Alam, publicly brought to the notice of the Chief Justice when he asserted with a painful feeling that “the most dangerous matter is that some particular courts [different benches of the HCD] have turned into courts of particular lawyers. The justice-seekers know by which lawyers at which courts they can win their cases. This is completely contrary to the justice.”²¹² It implies that both a number of judges and lawyers are involved in an unholy nexus. Although Mahbubey Alam pointed to the HCD, the same nexus arguably also exists in the subordinate courts that can be presupposed from the allegations of corruption against them.²¹³ It must be addressed immediately. Subject to proper investigations and upholding the dignity of everyone involved, they both must be identified and brought to justice and punitive actions taken should be publicized. In addition, the Bangladesh Bar Council should take measures to cancel the professional license of corrupt lawyers or suspend it for at least five years. Such a complaint by a sitting Attorney General cannot be ignored in any circumstances, on any ground whatsoever. A judicial inquiry, headed by a judge of the AD, needs to be conducted to unearth the fact behind it. Other members of the inquiry committee could be an HCD judge, an Additional Attorney General, the president of the Supreme Court Bar Association, and the secretary of the Bangladesh Bar Council. The nexus of criminal practices of this kind can produce a deliberate miscarriage of justice, irreparably harming many justice-seekers and completely ruining the public confidence in the judiciary over the course of time. This is so even if the majority of judges have maintained unblemished records.²¹⁴ It can be taken for granted that this type of nexus

²¹² DHAKA TRIBUNE, *supra* note 53.

²¹³ DAILY STAR, *supra* note 64.

²¹⁴ JAMES R. CROCKETT, POWER, GREED, AND HUBRIS: JUDICIAL BRIBERY IN MISSISSIPPI 4 (2013).

typically exists for giving and taking unfair advantage of a party in a suit against the legitimate interest of the contesting party.²¹⁵

If all lawyers are committed to avoiding bribery in any form to any person in the court, be it the judges or their assistants, the judicial corruption problem becomes much easier to resolve. If no one pays bribes, courts will have to operate nevertheless. Judges at all levels must be given a minimum threshold of case adjudication every year, and the appeal outcomes of their judgments should be taken into consideration in evaluating whether a judge is corrupt. Some lawyers may pay a bribe to a judge or a court's administrative assistant voluntarily and they take that money from their clients, thus the ultimate losers are the litigants, many of whom are likely innocent and financially not well off. Judges will ultimately, in the absence of corrupt practices, deliver fair judgments to the extent of their best assessment of relevant considerations in a verdict. Everyone involved in an adjudication process must strongly recognize that all litigants have the right to justice from the courts. It is not only a serious question of honesty, dignity, and integrity – polluting a judicial process by bribery will typically produce a miscarriage of justice, the end result of which may be anything from a death sentence to an innocent or acquittal of a true criminal, making a person unduly rich, or unfairly turning a rich person into a pauper. No human being should expect any of these outcomes.

Punishing the culprit is not enough, people have the right to know about the persons who are convicted of corruption.

E. *Publicizing Corruption and Conviction*

Allegations of corruption are reported frequently and brought to the press, whereas the news of bringing the culprits to justice is a rare phenomenon in Bangladesh, at least in the public media.²¹⁶ The culture of impunity must end, and the law must be allowed to take its own course to combat corruption. Existing research shows that “the judicial

²¹⁵ *Id.* at 3; Pahis, *supra* note 8, at 1907. See also Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968); George L. Priest, *Regulating the Content and Volume of Litigation: An Economic Analysis*, 1 SUP. CT. ECON. REV. 163 (1982).

²¹⁶ *Corruption Risks In Bangladesh*, TRANSPARENCY INT'L BANGLADESH (2014), https://www.transparency.org/files/content/feature/2014_Corruption-SouthAsia_factsheet_Bangladesh.pdf [<https://perma.cc/9HT6-EFAR>]; Nawaz, *supra* note 3; Kabir, Bithi, Jyoti & Rahman, *supra* note 3.

corruption benefits from impunity and the entire system becomes subjected to corruption.”²¹⁷ The “Name and Shame” policies should work in curbing judicial corruption to a reasonable extent because a judge with a social stigma is likely to be remorseful when they can witness that corrupt practices are denounced by the people. However, this should be done only after conviction verdicts are pronounced following the due process of law because judges are expected to be generally highly respected persons in society, and their integrity must not be undermined without a proven cause.

Strongly supporting this view, Mr. Yemi Candide-Johnson, a former President of the Lagos Court of Arbitration, has pronounced that “until judges who bring the justice system to disrepute are named and shamed, effective judicial reforms may not be attainable.”²¹⁸ Echoing an identical tone, Justice Bart Katureebe, the immediate past Chief Justice of Uganda and one of the most recognizable of Africa’s Chief Justices, publicly insisted that it is imperative to name and shame corrupt judicial officials and get rid of them if corruption is to be eliminated.²¹⁹ It is conceivable that any publication of judicial corruption would verily be a thorn in the nation’s flesh and an unfortunate thing to do, which has the potential to damage the image of the judiciary further, but a country that tolerates such severe venality in its justice system has to swallow this bitter pill in the greater national interest. This is so because it is normally accepted that sometimes certain things get worse before getting better, and the naming and shaming measures should be taken in that spirit to demonstrate that the nation is resistant to such evil practices and committed to upholding the credibility of the judiciary.²²⁰

Unlike many other crimes, where one party commits wrong making the other party the victim, persons involved in corruption are both

²¹⁷ Aneta Arnaudovska, *Understanding and Combating Judicial Corruption*, 4 J. LIBERTY & INT’L AFFS. 115, 117 (2018).

²¹⁸ Adebisi Onanuga, *Name, Shame Bad Judges for Effective Judicial Reforms*, NATION (Nigeria) (Aug. 25, 2020), <https://www.pressreader.com/nigeria/the-nation-nigeria/20200825/282011854738441> [<https://perma.cc/UD94-28U6>].

²¹⁹ *Name and Shame Corrupt Officials, Hon. Justice Katureebe Tells JLOS Stakeholders*, JUD. REPUBLIC UGANDA (Dec. 3, 2017), <http://www.judiciary.go.ug/data/news/456/Name%20and%20Shame%20Corrupt%20Officials,%20Hon.%20Justice%20Katureebe%20Tells%20JLOS%20Stakeholders.html> [<https://perma.cc/966Z-59GT>].

²²⁰ Nasra Bishumba, *Ombudsman to Name and Shame All Corruption Convicts*, NEW TIMES (Rwanda) (Oct. 11, 2018), <https://www.newtimes.co.rw/news/ombudsman-name-and-shame-all-corruption-convicts> [<https://perma.cc/R9KL-RMJH>].

offenders with guilty minds, so they both (demand and supply sides) should be punished simultaneously.

F. *Punishing the Supply Side*

Allegations of corruption in the subordinate judiciary are equally alarming. Corruption through bribery invariably involves two parties, givers and takers. Judges not only take money but sell their verdicts.²²¹ Litigants who buy judicial decisions for money are culpable as well. Hence both the dishonest litigants and their lawyers or brokers, if there are any, should be prosecuted and brought to justice. No one can take a bribe unless someone offers it, typically with an ill motive. Lawyers who allegedly contract judges for bribery, take the money either explicitly telling the truth to their clients or hiding the fact by telling the litigants that there are expenses in running their suits, as some litigants have told the present author.²²² An inhumane facet of the supply side is that financially affluent parties are able to take advantage of the economic inability of their less privileged counterparts.²²³ Judicial corruption denies equal access to impartial justice and deprives protection of citizens' rights.²²⁴ Corruption in the judiciary makes many justice seekers vulnerable to bribery and judicial extortion, and they eventually become victims of deliberate injustice, either because of their honesty or financial inability to pay bribes.²²⁵ Whilst the judiciary stands to protect human rights and defend the vulnerable, "corruption is not only an anathema to the administration of justice, it is a violation of the human rights of the downtrodden, who are usually caught up in the web of politics and corruption of the courts."²²⁶ Therefore, it is the responsibility of the state to protect the defenseless by punishing corruption. To attain this, both sides of corruption schemes must be addressed concurrently,²²⁷ and the culture of impunity of either side must end immediately. A nexus between politics and judicial corruption of

²²¹ Julio Rios-Figueroa, *Justice System Institutions and Corruption Control: Evidence from Latin America*, 33 JUST. SYS. J. 195, 196 (2012).

²²² See also DAILY STAR, *supra* note 64.

²²³ See Waziri B. Adisa & Tunde A. Alabi, *An Empirical Investigation of Court Users' Encounters with Bribery, Judicial Extortion and Corruption Victimization in Lagos State*, 75 CRIME, L. & SOC. CHANGE 141 (2021).

²²⁴ *Id.* at 144.

²²⁵ *Id.* at 159.

²²⁶ *Id.* at 159-60.

²²⁷ See Becker, *supra* note 215; see also Priest, *supra* note 215.

any form is often blamed,²²⁸ which applies to Bangladesh in that successive governments commonly treat apostles of their own party and those of the oppositions unequally against irregularities, where the former gets undue favors and the latter experiences unfair torments. Hence a strong political will is warranted to effectively address corruption games.

Although I had not been involved in legal practice in Bangladesh for a considerable period of time, I do have the experience to recollect as an anecdotal story of my very brief legal practice. I appeared before the court just once for a client in Bangladesh. My senior lawyer, the head of the law firm I worked with, called the judge's clerk (peshker, who was responsible to table the file for the hearing) shortly before the hearing time. My senior lawyer told the clerk on the phone that "my junior will be attending the hearing today on behalf of the defendant, and please do not ask him for any money, because he is determined not to pay any bribe to anyone in any form." This hearing happened in late 1990. To my pleasant surprise, the clerk disclosed openly that I was so rigid in my resolve not to compromise my integrity, and the clerk then advised the other lawyers to follow suit. This story unveils that the problem lies with both the demand and supply sides. This story also implies that lawyers have generally made it a customary norm to bribe judges' clerks to influence the hearing and even secure final favorable outcomes for their clients, albeit exceptions are expected.

Alongside legal actions against the offenders, the future generation should be educated on ethics and morality to improve its approach to bribery and strengthen general deterrence as part of a national long-term plan.

G. *Embedding Moral and Ethical Values through Education*

The discharge of judicial duties ordained both morally and legally calls for actors' honesty. Without actors' honesty, it is unlikely that the judiciary, which is entrusted with wide discretion, can play its role properly.²²⁹ Judges in Bangladesh enjoy extensive discretions in making orders, interpreting statutes, weighing evidence, determining sentences, and assessing damages – all of which allow for corruption by

²²⁸ MD. SHARIFUL ISLAM, *POLITICS—CORRUPTION NEXUS IN BANGLADESH: AN EMPIRICAL STUDY OF THE IMPACTS ON JUDICIAL GOVERNANCE* 111 (2010).

²²⁹ Pahis, *supra* note 8, at 1903.

those who are dishonest.²³⁰ This is so because, apart from other flexibilities stated above, most of the penal laws provide for the maximum terms of imprisonment and an unspecified amount of fines, leaving the minimum amount of penalties at the judge's discretion.²³¹ This is more unacceptable where there are no provisions for a separate sentencing hearing, sentencing guidelines, or sentencing guideline judgments, as is the case with Bangladesh.²³² It goes without saying that "money is power," therefore money talks, and people who own a large amount of money, tend to hold commensurate powers.²³³

Moral education can subjugate the lust for money or monetary power, even when people are working in the same office with identical responsibilities. This subjugation is evident, for example, from the services provided by the judges who remain honest and forthright and lead a decent life – probably their number is still big, if not bigger than their dishonest fellows. Therefore, education concerning morals and ethics could deter future judicial officers, if the lessons are articulated properly and imparted effectively at the right time. Scholars from different disciplines uphold the view that corruption is ultimately a problem of character flaws, and policy prescriptions are formulated drawing on this perception around the world.²³⁴ A common foundational subject about "Morals and Ethics in Life—Rewards and Regrets" can be introduced to all students at the secondary level (Year Ten), well

²³⁰ *See id.*

²³¹ For example, section 304 of The Penal Code, 1860 prescribes punishment for culpable homicide (manslaughter) in the following terms: "Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine . . ." Central Government Act, No. 45 of 1860, PEN. CODE (Bangl.) (1860).

²³² On confining judicial discretion by sentencing policies, principles, and guideline judgments, see DAVID BROWN, DAVID FARRIER, LUKE MCNAMARA, ALEX STEEL, MELANIE SCHWARTZ, THALIA ANTHONY & ARLIE LOUGHNAN, *CRIMINAL LAWS 1296-1350* (7th ed., 2020).

²³³ *See* Soňa Lemrová, Eva Reiterová, Renáta Fatěnová, Karel Lemr & Thomas Li-Ping Tang, *Money is Power: Monetary Intelligence—Love of Money and Temptation of Materialism among Czech University Students*, 125 J. BUS. ETHICS 329 (2014).

²³⁴ *See* ROBERT I. ROTBERG, *THE CORRUPTION CURE: HOW CITIZENS AND LEADERS CAN COMBAT GRAFT* 290-94, 301-21 (2017); LAURA S. UNDERKUFFLER, *CAPTURED BY EVIL: THE IDEA OF CORRUPTION IN LAW* 242-43 (2013). Notably, organizational behavior literature explores the importance of rules in promoting desirable behavior and good character. *See* Daniel Katz, *The Motivational Basis of Organizational Behavior*, 9 BEHAV. SCI. 131 (1964).

before they begin thinking of amoral and unethical activities. Logically, the proposed subject cannot be expected to be a panacea for this chronic problem, however, it will certainly impact many of those who will study the lessons carefully if educators can make the teaching interesting and deliver the messages convincingly with real-life examples and references to religious aphorisms as well.

The proposed education can ignite protest against corruption on a larger scale in the future, however, a vast majority of people in the society who are opposed to corruption need to be united to demonstrate their denouncement.

H. *Civil Resistance and People Power Campaigns against Financial Corruption*

Social unity is another force to explore. The old proverb, “united we stand, divided we fall,” infers that people have power when they are united for or against something good or bad. Nonviolent civil resistance is an effective and proven way of curbing the global blight of financial corruption.²³⁵ It is not necessary that society wait for a massive demonstration against corruption at the beginning. It can be kicked off with a small group of people who are firmly committed to promoting and protecting justice and human dignity.²³⁶ It can be presupposed that increasingly more people will be coming forward to join the campaign.

Bribery has become a severe social problem, thus societies have a role to play. It is not difficult to identify the corrupt persons living around honest citizens. An explicit gauge should be the disparity between one’s lifestyle and their known sources of income. Society should collectively single out the corrupt and boycott their attendance in, and contribution to, any social programs. They should, however, be welcomed to attend religious rituals in general, though their contribution to promoting a religious objective should not be accepted in order to demonstrate socio-religious denouncement of their black money. This sort of silent and peaceful boycott is expected to create a burning reaction in the minds of the corrupt people with a feeling that

²³⁵ See Peter Ackerman & Shaazka Beyerle, *Lessons from Civil Resistance for the Battle Against Financial Corruption*, 61 *DIogenes* 82 (2017); S.M. Solaiman, *Fighting Against Black Money by Offering Amnesty for Economic Development in Bangladesh: A Stigma Can Never Be a Beauty Spot*, 29 *U. MIA. INT’L & COMPAR. L. REV.* 42, 121-23 (2021).

²³⁶ Ackerman & Beyerle, *supra* note 235, at 95.

society hates their ill-gotten wealth. This social denouncement has the power to rectify treacherous public servants by generating a sensibility that they are *persona non grata* in society, and they are censured for their misdeeds. This should equally apply to the lawyers who are engaged in buying judicial verdicts to the prejudice of their contending parties' right to get justice. Lawyers who buy judgments through bribery are utterly incompetent to be involved in such a noble profession, and a few of them can pollute the uprightness of others who will lose their cases unfairly or deceitfully. People have the right to demonstrate such denouncements as corruption is a violation of international human rights.²³⁷ The time is ripe for Bangladesh to translate a collective public outcry into consolidated force for a fundamental change and to "recognize the essential role of organized, collective, nonviolent action in the financial integrity and transparency equation."²³⁸

Fairly speaking, many honest people work alongside the dishonest. The former are plausibly supposed to have discontent about the bribery schemes of the latter. Tangible incentives and protection of honesty from potential repercussions can stimulate them to disclose the fact to appropriate authorities. Even a co-offender can do so.

I. *Protection of Whistle-Blowers*

As commonly defined, whistleblowing is an act of disclosing information of corruption by an employee against another fellow colleague publicly or confidentially to respective employers – when they do so without having any obligation but a personal choice at their own peril. The United Nations Coalition coins the term more broadly, as it construes that whistleblowing is constituted when a person unmasks illegal or immoral activities of an individual colleague or organization.²³⁹ Protection of whistle-blowers is now commonplace around the world. This is so widely accepted because corruption takes place se-

²³⁷ See Anne Peters, *Corruption as a Violation of International Human Rights*, 29 EUR. J. INT'L L. 1251 (2018); Manuel Mireanu, *The Civic Duty to Denounce: The Romanian Middle Class and Its Demands for Security*, 29 CRITICAL CRIMINOLOGY 801 (2021).

²³⁸ Ackerman & Beyerle, *supra* note 235, at 95.

²³⁹ *Whistleblowing*, U.N. CONVENTION AGAINST CORRUPTION COAL. (UNCAC), <https://uncaccoalition.org/learn-more/whistleblowing/> [https://perma.cc/4ZYW-GJ7L] (last visited June 24, 2022).

cretly, only unexpected third parties can disclose a corruption transaction unless an insider tips off to such an incident.²⁴⁰ Rewarding whistle-blowers is thus a useful policy to bolster institutional efforts to prevent corruption.²⁴¹ Putting an even greater emphasis on the efficacy of this method of crime detection, United Nations Coalition pronounces that whistleblowing is considered to be “one of the most effective ways of exposing, fighting and remedying corruption . . . they are essential for revealing wrongdoing and protecting the public interest.”²⁴² To unveil financial fraud, whistle-blowers are found to be the single most effective source of information.²⁴³ It is least disputed that offering incentives to insiders for blowing whistles is important to strengthen anti-corruption drive in a corruption-prone country.²⁴⁴ Likewise, Onuegbulam posits that encouraging whistleblowing is an indisputable positive means of fighting corruption.²⁴⁵

Although it does have positive implications for fighting corruption, whistleblowing is sometimes treated as a breach of loyalty and confidentiality, which may trigger retaliatory measures by employers.²⁴⁶ Therefore, the whistle-blowers need to be protected from such actions, in addition to offering other material rewards to them. This protection needs to be ensured by legislation. Notably, apart from statutory law, common law principles also protect whistle-blowers from retaliatory actions by employers based on the established theory of “public interest” as an exception to the duty of trust, loyalty, and confidence.²⁴⁷ In this regard, the United Kingdom Court of Appeal held in *Initial Services Ltd v. Putterill* that:

²⁴⁰ Pahis, *supra* note 8, at 1943.

²⁴¹ *Id.*

²⁴² U.N. CONVENTION AGAINST CORRUPTION COALITION, *supra* note 239.

²⁴³ *The Importance of Rewards*, NAT’L WHISTLEBLOWER CTR., <https://www.whistleblowers.org/the-importance-of-rewards/> [<https://perma.cc/PD9U-J7GV>] (last visited Oct. 24, 2022). See also Terry Morehead Dworkin & Cindy A. Schipani, *Using Rewards to Stop Wrongdoing: A Comparative Perspective*, 41 COMP. LAW. 71, 76 (2020).

²⁴⁴ Pahis, *supra* note 8, at 1943.

²⁴⁵ M. Chigozie Onuegbulam, *Whistle Blowing Policy and the Fight Against Corruption in Nigeria: Implications for Criminal Justice and the Due Process*, 8 NNAMDI AZIKIWE UNIV. J. INT’L L. & JURIS. 174, 174 (2017).

²⁴⁶ *Id.*

²⁴⁷ Kaaren Koomen, *Breach of Confidence and the Public Interest Defence: Is It in the Public Interest? A Review of the English Public Interest Defence and the Options for Australia*, 10 QUEENSL. UNIV. TECH. L.J. 56, 57 (1994).

Although an employee was under a duty not to disclose, before or after his employment ended, information received in confidence in the course of his employment, that obligation was subject to exceptions where the disclosure was justified in the public interest as, eg, in the cases of crime or fraud²⁴⁸

Widening the scope and defending the reason for such an exception, Lord Denning in *Initial Services Ltd v. Putterill* pronounced that “[t]he exception should extend to crimes, frauds and misdeeds, both those actually committed as well as those in contemplation, provided always—and this is essential—that the disclosure is justified in the public interest.”²⁴⁹

The above discussion resolutely justifies the protection of, and the offer of incentives to, whistle-blowers; and Bangladesh, a common law country,²⁵⁰ can conveniently proffer incentives and apply the public interest theory to justify the action under common law. Appreciably, Bangladesh has legislated the *Public Interest Information Disclosure (Provide Protection) Act 2011* (Bangladesh), generally known as the *Whistleblower Protection Act 2011* (WBPA2011).²⁵¹ However, the legislation remains in the book, and most people including public servants, rights activists, lawyers, and even journalists are largely ignorant of the enactment, let alone knowing of its contents.²⁵² The law needs to be implemented to combat corruption effectively and efficiently.

²⁴⁸ *Initial Servs. Ltd. v. Putterill* (1967) 3 All ER 145, 145 (UK).

²⁴⁹ *Id.* at 148.

²⁵⁰ For a discussion of different legal families, see Mariana Pargendler, *The Rise and Decline of Legal Families* 60 AM. J. COMPAR. L. 1043 (2012).

²⁵¹ Public Interest Information Disclosure (Provide Protection) Act 2011, Act No. VII of 2011 (Bangl.); Raisul Sourav, *Reviewing the Views: The Legal Protection of Whistleblowers*, DAILY STAR (Bangl.) (May 25, 2021, 12:00 AM), <https://www.thedailystar.net/law-our-rights/news/the-legal-protection-whistleblowers-2098373> [<https://perma.cc/X6AX-YH4W>].

²⁵² Habib Zafarullah & Ahmed Shafiqul Huque, *Corruption and its Control: The Pursuit of Probity in Bangladesh*, in CORRUPTION IN THE PUBLIC SECTOR: AN INTERNATIONAL PERSPECTIVE 59, 67 (Krishna K. Tummala ed., 2021); Raisul Sourav, *The Legal Protection of Whistleblowers*, DAILY STAR (Bangl.) (May 25, 2021, 12:43 AM), <https://www.thedailystar.net/law-our-rights/news/the-legal-protection-whistleblowers-2098373> [<https://perma.cc/H42F-B9PC>]. See also, BSS, *Whistleblowers' Act Ineffective Due to Lack of Publicity*, DHAKA TRIB. (Bangl.) (Apr. 23, 2018, 1:40 PM), <https://archive.dhakatribune.com/bangladesh/law-rights/2018/04/23/whistleblowers-act-ineffective-due-lack-publicity> [<https://perma.cc/6C26-4BX3>] (on lawyers' ignorance of whistleblowers' law).

V. CONCLUSION – THE WAY FORWARD

As coined by Professor Huq of Chicago Law School, “[j]udicial independence may be on everyone’s lips, but that does not mean that all are singing from the same hymnal.”²⁵³ Institutional independence may subsume personal independence, though the latter is more necessary than the former to ensure dispensation of justice. As evident in the forgoing discourse – corruption, the destroyer of a judge’s personal independence – exists and persists in the judiciary of Bangladesh. Consequently, a critical question begs to be answered as to who will guard the guardians of the people’s access to justice, which is a fundamental human right. The importance of judicial integrity cannot be refuted in any circumstances. The judiciary is normally “the least accountable” of the three organs of government,²⁵⁴ mainly because of the general expectation that judges are the epitome of justice. But when the judges shatter that legitimate expectation, it harms not only individual justice seekers but also the judiciary itself by ruining public confidence. Justice Dyson, a former justice of the Supreme Court of the United Kingdom, comments that it is profoundly disheartening when the public perception is that a judge will deliver the verdict in favor of the highest bidder of bribery.²⁵⁵ Putting in place vigilance of judicial decisions through effective mechanisms that reduce the temptation of being dishonest and incentivise honesty is necessary to curb corruption.²⁵⁶

The present Article has critically discussed the corruption allegations against judges along with their aids and lawyers in Bangladesh and formulated specific suggestions to address this complex severe menace, as summarized below.

A. *Accountability of Judges*

A lack of proper accountability for profane judges’ decisions accords them with unabated powers to maneuver their verdicts to cater

²⁵³ Huq, *supra* note 175, at 1076.

²⁵⁴ Aaron Patrick, *With Respect, the Federal Court is not Above Scrutiny*, FIN. REV. (Austl.) (Nov. 5, 2018, 4:45 PM), <https://www.afr.com/companies/professional-services/with-respect-the-federal-court-is-not-above-scrutiny-20181102-h17fxj> [<https://perma.cc/F5U4-TG4N>].

²⁵⁵ JUD. COMM’N N.S.W, HANDBOOK FOR JUDICIAL OFFICERS 182 (2021).

²⁵⁶ Pahis, *supra* note 8, at 1903.

to their vicious vice.²⁵⁷ Hence judges should be held accountable for their decisions and overall performance. Useful machines and mechanisms have to be created, as discussed earlier, to ensure this accountability. With respect to judicial accountability, Justice Thomas Frederick Bathurst, a former Chief Justice of New South Wales in Australia (“NSW”), propounds that courts should be subject to public scrutiny and fair criticism.²⁵⁸ This would require the courts to conduct their functions in a more transparent manner, leaving them accountable to not only the executive and the legislature, but to the general public as well.²⁵⁹ Judges’ accountability has to be considered in terms of whether they are discharging their responsibilities fairly and impartially in administering justice, which is imperative to uphold the rule of law and the value of a democratic society.²⁶⁰

B. *Compulsory Wealth Statements*

It may not be exceedingly difficult to single out, identify, or find the errant judges if the government is inclined to do so. There were a few examples mentioned above about submitting the wealth statements of the judges of the SCB, but those remain distant examples and have never become the norm. All judges and their office assistants must be required by positive law to submit their wealth statement either annually or at least every three years to the Chief Justice of Bangladesh who will submit theirs to the President of the country.

C. *Appointment of Judges Based on Merits*

The appointers of judges must keep in mind that their appointments do not turn to disappointment logically for the administration of justice. However, political disappointment may not be completely avoided in a political culture like that in Bangladesh where leaders more often than not lack a sense of responsibility in making any political comments. It is worth bearing in mind that inputs typically affect outputs. The current system of judges’ appointments to the lower judiciary (entry-level judges) through an independent body, BJSC, is appreciable, however, the selection criteria should embrace the moral

²⁵⁷ See Todd David Peterson, *Separation-of-Powers Suits in the Post-Trump Era*, 135 HARV. L. REV. F. 194, 199 (2022).

²⁵⁸ JUDICIAL COMMISSION OF NEW SOUTH WALES, *supra* note 251, at 28.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

and ethical values of candidates. Put simply, academic qualifications can never guarantee the honesty of any person. Their wealth statements and performance records have to be taken into consideration as well.

Appointments of judges to the SCB are more contentious these days mainly because of political biases. This Article argues that political allegiance to any party should not be considered either way, favorably or unfavorably. The current requirement of ten years of working experience either as a lawyer at the SCB or at the subordinate judiciary as a “judicial officer” needs to be revisited. It is recommended that these judicial officers should be taken from the courts not lower than District Judges. There is a legal flaw that theoretically allows the authorities to pick up any judicial officers having ten years of experience. More importantly, it is recommended that experience not be the sole criterion. The appointing authorities should consider their performance as judicial officers or lawyers as the case may be, moral and ethical values, and also their well-explained wealth statements in addition to their academic attainments and experience.

D. Breaking the Unholy Nexus between Judges and Lawyers in the Supreme Court of Bangladesh

Although late Attorney General Alam complained to the Chief Justice of the existence of unholy nexus between judges and lawyers of the HCD concerning buying and selling of judgments for money,²⁶¹ it can be presumed based on the allegations of corruption in the subordinate judiciary that such a tie works there too. This nexus is a terrible enemy of justice and is the “most dangerous matter” to taint the judiciary as a whole. This has to be dealt with promptly. All credible corruption allegations against judges and lawyers should be properly investigated by a body to be headed by a judge of the AD and other members could be an HCD judge, an Additional Attorney General, the president of the Supreme Court Bar Association, and the secretary of the Bangladesh Bar Council. Following the due process of law, the proven enemy of the judiciary should be punished and published and their professional license cancelled or suspended for a period not less than five years. Achieving any sustainable improvement would be a far cry from breaking this nexus and punishing them first.

²⁶¹ DHAKA TRIB., *supra* note 53.

E. *Publicizing Corruption and Conviction of Judges and Their Assistants*

Apart from the aforesaid established nexus-related corruption at the HCD, corrupt practices are allegedly taking place on a piecemeal basis across the judiciary, except the AD. For example, the HCD bench comprised of Justice Md Ashrafal Kamal and Justice Razik-Al-Jalil on appeal in the *Government of Bangladesh v Chairman, First Court of Settlement and Others* in 2019 strongly criticised the corruption of a subordinate trial judge and admitted its prevalence in the higher judiciary as well,²⁶² and the ACC in June 2022 has sued a former judge for acquiring assets outside of his known income.²⁶³ The “Name and Shame” policy, publication of names and identities of all convicts decided in fair trials, is recommended to be adopted here. Understatedly, this may damage the image of the judiciary for the time being, but it will eventually prove beneficial to restore public confidence and the reputation of the tainted judiciary when the people will see that corrupt judges and their supporting staff members are not immune from legal consequences.

F. *Punishing the Supply Side*

As argued earlier, corruption is a contravention of fundamental human rights, where financially weaker and morally stronger parties are victimized by their wealthy and dishonest contenders in exchange for money. It means, one party is deprived of justice either because of their strong morality or inability to pay a bribe. The state is obligated to protect them by punishing corrupt practices and eliminating the culture of impunity of the supply side of judicial corruption. If no one offers a bribe, judges will have no choice but to deliver a judgment that is expected to be impartial and intuitively fair to them. I have added an anecdotal story to show that a firm determination to avoid bribery from the supply side is sometimes truly appreciated by the demand side. Therefore, the supply side composed of both the opposition and their lawyers is to be tried and punished for their proven corrupt practices.

²⁶² The Supreme Court of Bangladesh (High Court Division) Writ Petitions No. 6634/2019 and No. 6635/2019 (unreported).

²⁶³ *ACC Files Case Against Judge Who Acquitted Tarique Rahman*, *supra* note 15.

G. *Embedding Moral and Ethical Values through Education*

As the proverb goes, “knowledge is power.” Knowledge or awareness of both the wrongness and consequences of certain actions by individuals, society, and the nation as a whole can make a difference if the lessons are imparted and learned properly. This knowledge should be ingrained before an individual becomes an adult and gets involved in the workforce. In the context of Bangladesh, a compulsory subject for all disciplines (Arts, Commerce, and Science) should be introduced at the Year Ten level, which can be named “Morals and Ethics in Life— Rewards and Regrets.” Its contents should include the moral and ethical values of human beings and their application in real life. Both rewards of being honest and legal as well as social consequences of being dishonest or immoral or unethical conduct should be included. It is recognized that such knowledge will not change everyone’s heart, but it will certainly change some of the future workforce and members of society. I can still remember my very precious childhood lessons given by my late father every morning at the beginning of the day; one of which is that “whenever you wake up in the morning, make a promise to yourself that you will walk on the right path all day.” I have held onto this teaching steadfastly all along my life.

H. *Civil Resistance and People Power Campaigns against Financial Corruption*

Corrupt people can be easily identified by the discrepancy between one’s known source of income and the lifestyle of that person and their extended family. It is proven, as discussed earlier, that social unity, nonviolent resistance, and the collective boycott against corrupt persons are critical to fighting corruption. A small group in each social unit can initiate this movement with a firm commitment and dedication against corruption. It can be taken for granted that more people will be joining them shortly after launching the protest. The corrupt should be boycotted at all social programs, and their donation for any cause should be rejected to let them know that their dishonesty is censured by society. It can be started at the village level of social units and gradually organized at the national level. Every citizen of the country has the right to rally against corrupt practices.²⁶⁴ Members of a society may be initially motivated and gathered by the young generation through different social media. The stigma that can be inflicted

²⁶⁴ See Peters, *supra* note 237; see also Mireanu, *supra* note 237.

on corrupt individuals must burn them silently and help them give up the dishonesty, which is proscribed by all legal, social, and religious norms. It is, however, worth bearing in mind that the protest must always be nonviolent.

I. *Protection of Whistle-Blowers*

Last but not least, taking explicit measures to protect whistle-blowers has been a useful and popular strategy across the globe.²⁶⁵ Whistle-blowers have to be protected from adverse action by their employers and concurrently offered appealing financial or nonfinancial incentives to come forward with materially credible information against corruption. This can fortify anti-corruption drives. Although the act of whistleblowing may be sometimes considered a breach of the fiduciary duty of confidentiality, the validity of such actions is well reinforced by common law,²⁶⁶ as well as legislation in many countries including Bangladesh.²⁶⁷ Although the required law is in place in theory, it is yet to be translated into practice. Therefore, the government has an essential duty to enforce the law fairly and effectively without any further delay.

In summation, the strict application of the rule of law is a crucial facet of any democratic regime where the law should be enforced through civil and criminal justice systems.²⁶⁸ It is important for judges and others involved in the dispensation of justice to note that people want to see the judiciary as not only a provider of justice but also “as an upholder of integrity and probity befitting their high office.”²⁶⁹ It is admitted that corruption is a deeply rooted chronic problem in Bangladesh, and the society counts on honest judges and their allies in the judiciary to navigate the ship of justice with courage, confidence, and firmness in a hostile environment to reach the destination of ensuring

²⁶⁵ See Pahis, *supra* note 8, at 1943; U.N. CONVENTION AGAINST CORRUPTION COALITION, *supra* note 239.

²⁶⁶ *Initial Servs. Ltd. v. Putterill* (1967) 3 All ER 145, 145 (UK).

²⁶⁷ Public Interest Information Disclosure (Provide Protection) Act, 2011 (Act No. 7/2011) (Bangl.).

²⁶⁸ Robert Gregory, *Political Independence, Operational Impartiality, and the Effectiveness of Anti-Corruption Agencies*, 4 ASIAN EDUC. & DEV. STUD. 125, 129 (2015).

²⁶⁹ Editorial, *Wealth Statement by Judges*, DAILY STAR (Bangl.) (Aug. 4, 2013, 12:00 AM), <https://www.thedailystar.net/news/wealth-statement-by-judges> [<https://perma.cc/3N4U-UWR2>].

delivery of justice to the society safely.²⁷⁰ For motivation to do so, a comment of the Constitutional Bench of the Supreme Court of India in *S.P. Gupta v. Union of India* can be remembered and reminded, stating that “judges should be of stern stuff and tough fiber, unbending before power, financial or political, and they may additionally moreover uphold the core precept of the rule of law which says: Be you ever so high, the law is above you.”²⁷¹ It is worth mentioning that all attempts to combat corruption and other relevant offenses are doomed to fail if the judiciary fails to deliver justice. Even assuming that the corrupt judges and their professional allies are not large in number, one bad apple can spoil the whole bunch, as warned with serious concern by the HCD in *Government of Bangladesh v. Chairman, First Court of Settlement and Others* in 2019.²⁷²

²⁷⁰ See Pahis, *supra* note 8, at 1903.

²⁷¹ *S.P. Gupta v. President of India*, AIR 1982 SC 149 (1981) (India).

²⁷² The Supreme Court of Bangladesh (High Court Division) Writ Petitions No. 6634/2019 and No. 6635/2019 (unreported), 136.