

Separation of the Judiciary

What to do in the present context

A Report on the roundtable discussion on 19 July 2006 at Press Club



Bangladesh Legal Aid and Services Trust (BLAST)

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Roundtable on
**Separation of the Judiciary:
What to do in the present context**



The roundtable at a glance

Bangladesh Legal Aid and Services Trust (BLAST) held a roundtable discussion entitled "Separation of Judiciary: What to do in the present context" on 19 July 2006 in the Conference hall at the National Press Club, Dhaka. The roundtable discussion was moderated by Dr Shamsul Bari, while Dr Kamal Hossain, Justice Naimuddin Ahmed, Barrister Amir-Ul Islam, Dr M Zahir, former law minister Abdul Matin Khasru, Dr Shahdeen Malik, Advocate Nizamul Huq Nasim, Barrister Sara Hossain, Advocate Ruhul Quddus Babu, and Barrister Tanzibul Alam, amongst others, participated in the discussion.

Two papers were presented in the roundtable, one by Mr Taslimur Rahman, Executive Director of BLAST, and the other by Dr. Shahdeen Malik, Advocate, Supreme Court of Bangladesh. The paper by Mr. Taslimur Rahman emphasized upon the process of separating the judiciary from the executive organ of the Government after the pronouncement of the landmark Masdar Hossain judgment, while the paper by Dr Malik reviewed two recently passed Rules which have been

claimed to be made as per the directives of the said judgment.

Participants at the end of the roundtable decided to challenge four sets of rules framed by the government on judicial service apparently to implement the Supreme Court directives on separation of the judiciary from the executive.

Discussion in details

The discussion began with the introductory speech by Dr Shamsul Bari, who stressed on the purpose for initiating the roundtable discussion.

Dr Shamsul Bari stated that though independence of the judiciary is recognized by the Constitution, the grim reality is that the judiciary of Bangladesh could and can never work completely independently. He observed that an enabling environment for the judiciary to function independently without fear and interference ceases to exist under the present circumstances. In stark contrast to what was explicitly stated in the Constitution, the judiciary lacks adequate power and control to function independently from the legislative and the executive organ, he said. Taking this reality into

consideration, the Supreme Court of Bangladesh in December 1999 through the monumental Masdar Hossain case laid down 12 point directives, which, if implemented, would create enabling conditions for ensuring a substantially independent judiciary in Bangladesh.

He further noted that although seven years have elapsed since the directives were laid down, it appears that little progress has so far been achieved. Till date, only four Rules have been promulgated, and the bill for amendment of Criminal Procedure Code is pending in the Parliamentary Standing Committee, he said.

Dr Bari further said that there has been a lot of whisper and hue and cry against the bill. He concluded by stating that the purpose of the roundtable is to examine whether the directives of the Supreme Court have been followed in making those rules, and also to determine a future course of action for the separation of the judiciary.

Mr Taslimur Rahman

Executive Director, BLAST

At the outset of the discussion, Mr Taslimur Rahman, presented a paper entitled 'Separation of Judiciary: Present Situation' which outlined the events that unfolded from the time since the 12 point directives were pronounced by the Appellate Division on January 2, 1999 in the landmark Masdar Hossain case to date when the Government had prepared a bill - The Code of Criminal Procedure (Amendment) Bill, 2006 - which was later tabled before the Parliament and was subsequently placed with the Parliamentary Standing Committee of Law, Justice and Parliamentary Affairs for scrutiny.

The paper informed that the present government had already framed four sets of rules namely- the Bangladesh Judicial Service Commission Rules 2004, the Bangladesh Judicial Service (Pay-Commission) Rules 2006, the Bangladesh Judicial Service (Constitution, Recruitment, Suspension, Dismissal and Removal) Rules 2006 and the Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules 2006, and tabled the Code of Criminal Procedure (Amendment) Bill

2006 in the Jatiya Sangsad - for the implementation of the directives. The nation was, as the paper urged, confused over the probability of passage of the bill by the present parliament, as two sessions elapsed since the bill was tabled and no news of any progress of the Standing Committee in scrutinizing the bill has been gathered till date.

The paper briefly discussed all these rules and requested the participants to review the rules as allegations of violation of the directives in framing those rules were galore in the newspaper reports, quoting constitutional experts.

The paper is annexed herewith.

Dr Shahdeen Malik

Advocate, Supreme Court of Bangladesh

The paper by Dr Malik reviewed two recently promulgated Rules relating to judicial service, notably, the Bangladesh Judicial Service (Composition, Recruitment and Suspension, Dismissal & Removal) Rules, 2006; and Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline, and others Service Conditions) Rules, 2006. The paper not only showed how the government in making the Rules had deviated from the directives of the Masdar Hossain judgment, but also pointed towards how the Rules if implemented would retain substantial administrative control over various aspects of composition, recruitment; and suspension, dismissal & removal, posting, promotion, leave, control, discipline and other related matters of the judicial officers.

The paper, classifying these controls of the executive over the judiciary through these two Rules under three headings, i.e., (1) control of the 'upojukto kortripokkho'; (2) control by the appointing authority, i.e. the president; and (3) control of the respective administrative ministries to which judicial officials were posted on deputation, said that these Rules clearly paid only lip-service to the directives issued in the Masdar Hossain judgment.

The paper is annexed herewith.

Dr Kamal Hossain

Advocate, Supreme Court of Bangladesh & Chairman, BLAST.

The eminent constitutional expert noted that the Rules have not been made following the directives of the Masdar Hossain judgment. As per directives of the Judgment and Article 116 of the Constitution these rules should have been made in consultation with the Supreme Court, which has not been complied with, he observed. In the same vein he opined that these rules are ultra vires the directives and as such should be declared null and void.

Referring to Para 47 of the Masdar Hossain judgment in 20 (2000) BLD (AD) 104 he read as follows:

"Having dealt with 5 reasons for not holding that Article 116 contains rule making power, we pause here and reflect on the words 'in consultation with the Supreme Courts' contained in Article 116. We have no doubt in our mind that the President in Article 116, as Syed Ishtiaq Ahmed rightly points out, in effect means the Prime Minister or the Chief Political Executive of the country, in view of Articles 48(3) and 55(2). The President wields control over the Presiding Officers of subordinate courts in a wide variety of fields. The Prime Minister has therefore become in reality the real wielder of power in this regard. The Prime Minister being a political person on who is vested the executive power of the Republic needed a check on such a sweeping and absolute power. Dr. Kamal Hossain termed the words 'in consultation with the Supreme Court' as a pillar which held up the independence of the judiciary as a basic structure of the Constitution. In order that this pillar may not end up as a bamboo pillar, the word 'consultation' has to be given some teeth, or else, as Syed Ishtiaq Ahmed rightly pointed out. Articles 116 and 116A will be only mocking birds. What is that teeth? Are mere meaningful and substantive consultations and full disclosure of all connected facts during consultations enough? These are no doubt essential and necessary requirements in the process of consultation. But the end-result shall be the primacy of the views and opinion of the

Supreme Courts which the Executive shall not disregard, for it is the Supreme Court, not the political executive, which is the best judge of judicial matters and judicial officers. Mr. Amirul Islam has forcefully argued on the primacy of the views and opinion of the Supreme Court under Article 116 and we fully uphold his submission. We hold that under Article 116 the views and opinion of the Supreme Court on any matter covered by that Article shall get primacy over the views and opinion of the Executive."

After reading out from the relevant paragraph in the landmark Masdar Hossain judgment, he noted that given the rules have not been framed in consultation with the Supreme Court; such rules are violation of the judgment, hence null and void.

Justice Naimuddin Ahmed

Vice-Chairman, BLAST

Justice Naimuddin Ahmed began the discussion by explaining the literal meaning of the term independence. He noted that the dictionary meaning of 'independence' is 'not subject to the control of any person, country, etc.; free to act as one pleases; autonomous; not affected by others'. (as referred to in The Oxford Dictionary; see also Chamber's Twentieth Century Dictionary.)

In this regard, he iterated that to conceive that a judge must be allowed such absolute independence as is lexicographically defined above is simply absurd. He cited the following reasons: the judges are, first of all, constrained by, and follow, existing laws and procedures; secondly, by less tangible requirements, such as, those of courtesy, *audi alteram partem* which means fairness, cultural traditions, the etiquette of the law court and the profession; thirdly, a judge or magistrate is not free to act perversely, unfairly, or for ulterior ends or motives; fourthly, the judge must rightly be influenced by others in performance of his/her judicial duties, otherwise, there is no point in advocacy if it does not affect judicial decision; and, lastly, the judge must be sensitive to guidance and directions reasonably and lawfully given by the appellate court.

Subject to the above constraints, judicial independence means protection or immunity

from improper or unlawful influence, direct or indirect, in the way in which the judge carries out his/her judicial functions, he said. Thus, judicial independence cannot be absolute but is relative and is subject to the constraints mentioned above.

In the same vein, he observed that to secure the independence of the judiciary as defined above, complete separation of the judiciary from all the other organs of the state, more particularly; the executive organ is an indispensable precondition.

Bearing this in mind, the framers of the Constitution stressed for the independence of our judiciary and its separation from the other organs of the state, the executive organ in particular, by incorporating several important articles during its enactment in 1972, he said.

Referring to the appointment of the judges in the Supreme Court he read out Article 95 in the originally adopted Constitution: '95. (1) The Chief Justice shall be appointed by the President and the other Judges shall be appointed by the President in consultation with the Chief Justice.'

Clause (1) of Article 95 ensured separation of the judicial organ from any interference by the executive organ in matters of appointment of Judges of the Supreme Court as it is a settled principle that if, in matters of consultation, any difference of opinion occurs between the President and the Chief Justice and if the difference cannot be resolved by further consultation and discussion, then the opinion of the Chief Justice shall have primacy and shall prevail, he noted. He further informed the participants that the latest affirmation of this principle is in Masdar Hossain's case wherein Mustafa Kamal, C. J., authoritatively held, 'It is declared that in exercising control and discipline of persons employed in the judicial service and magistrates exercising judicial functions under Article 116 the views and opinion of the Supreme Court shall have primacy over those of the Executive.'

He also said that the principle laid down above would have been equally applicable to matters of

appointment of the Supreme Court Judges had the original article been still in the Constitution.

The veteran justice also informed further that the next articles that ensured the independence of the judiciary are Articles 94 and 116A of the Constitution. Clause (4) of Article 94 guarantees independence of the Supreme Court and Article 116A guarantees the independence of the courts subordinate to the Supreme Court in the following words: '94 (4) Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.'

'116A. Subject to the provisions of this Constitution, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions.'

He lamented that these constitutional guarantees have been negated by mutilating the Constitution through amending it during the tenure of democratically elected governments as well as military rule.

He opined that there is only one option, and that is to go back to the original Constitution that was adopted in 1972. If Articles 116 and 95 of the original Constitution cannot be restored, no effective separation of judiciary is possible, he said.

Abdul Matin Khasru

Advocate, Supreme Court of Bangladesh, former Law Minister

The former Law Minister objected to the statement made in the paper presented by BLAST where in it was stated that his Government spent considerable time dilly dallying without beginning implementation of the directives issued in the Masdar Hossain judgment. He noted that the judgment was delivered on December 2, 1999 and that almost one year elapsed just to get the full copy of the judgment. After getting the judgment, the then Attorney General Mahmudul Islam examined the twelve point directives and opined that in two points there was room for confusion and urged for reviewing the directives, he said. The

points that were debatable include whether the sovereign parliament can be dictated by the Supreme Court to make any law and whether the President can be dictated to make Rules. He further informed the audience that his government filed a review petition against it, and got decision on it after one year on 18 June 2001 when they had only twenty four days in their hands for implementing it.

He also contended that the Awami League government began to work as per the directives of the Masdar Hossain Judgment earnestly.. However, his government had made some draft Rules despite the fact that drafting a law needs considerable time. His government was followed by the Caretaker Government, where Mr. Ishtiaq Ahmed was in charge of the Ministry for Law and Parliamentary Affairs. The then Caretaker government with the aid of Mahmudul Islam modified those draft rules. Since then little progress has been achieved so far. Now it is being claimed that the Rules recently passed have not been complied with the directives of the judgment. He also went on to state 'we should not do anything in the name of deviation from the directives, so that it may stop the process of implementation. If we raise these questions, the government may seek further time in the name of amending those drafts in line with the directives, and again the process may be delayed. We may loose some of the achievements we have gained in the meantime'

This proposal of Mr. Abdul Matin Khasru was criticized by Mr. M. Amirul Islam and others. They asked Mr. Khasru to show a single instance of achievement regarding the implementation of the judgment. They also opined that such Rules which were not consistent with the directives of Masdar Hossain judgment could not be allowed to remain in force.

Mr. Khasru observed that procedural separation will not ensure independent and impartial judiciary, if we do not have judges with honesty and integrity. He viewed that the higher judiciary is fraught with dishonest and incompetent judges. He also suggested that

tough action is initiated with a view to saving the judiciary from corruption.

Dr M Zahir

Advocate, Supreme Court of Bangladesh

The renowned legal expert Dr. M Zahir opined that instead of being hardliners, it would be wise to take a reformative position for the purpose of effecting necessary changes in rules. To this end, it is imperative to identify the places in which the rules have been framed in deviation of the directives of the landmark judgment. He also pointed out that Dr. Shahdeen Malik has detected several defects in the two Rules; and so has Dr Kamal pointed towards another fact of violation of the judgment. He further iterated that it would be useful to compile the points and recommendations that have been raised in the discussion. Dr. Zahir observed that the participants in the discussion could constitute a committee with a view to finalizing a list of recommendations that could be presented before the Supreme Court. In the same vein, he noted that these Rules should be amended in the consultation with the lawyers. Though Justice Mostafa Kamal did not specifically mention in the judgment that these Rules should be made in consultation with the Supreme Court, but it is the spirit of Masdar Hossain judgment, he said.

Dr. Shamsul Bari

Reflecting on the conflicting views those have emerged from the discussion, Dr. Bari attempted to sum up the points raised during the discussion. Justice Naimuddin Ahmed opined that restoration of Article 116 of the Constitution is the only perfect way of separating power effectively. He thus stressed for returning Article 116 of the original Constitution of 1972. Then, what Abdul Matin Khashru proposed is that 'let us proceed'. Again, Dr. M Zahir is of the view that the deviations should be identified and should be presented along with other recommendations before the Appellate Division for its clear view. Dr. Bari thus observed that Amir-Ul Islam could place these recommendations along with other points before the Appellate Division of the Supreme Court in the next hearing.

Mr. Amir-Ul Islam

Advocate of the Supreme Court of Bangladesh.

The eminent lawyer noted that the crux of the matter is that these Rules are diametrically opposite to all the twelve directives of Masdar Hossain judgment. He criticized the rules relating to the the Judicial Service Commission. The Judicial Service Commission Rules is not consistent with the judgment, he said. He opined that the Masdar Hossain judgment has been butchered in the process of rule making. The Judicial Service Commission has not been conferred with the powers of holding of the examination, settings of question, question setting criteria, he noted.

Again, at the entry point, and during the two years of provisional period, the 'Niyogdankari Kortripoksho' meaning the Prime minister in effect, can choose and pick persons without consultation with the Judicial Service Commission, he said. Pointing to the dark side of such powers being vested with the Prime Minister, he iterated that there are chances of appointing the persons in their good books, persons linked with their politics. He cited example of cases where in people linked with the Awami League have been precluded from being recruited with the NSI during their training program. He went on to say that the Judicial Service Commission has been constituted just to show that they have done it, but it has no role to play. He observed that the Commission has been made violating the directions of the judgment of the Appellate Division of the Supreme Court.

He read out the meaning of 'Upojukto Kortripoksho' of Section 2 of the Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and Other Service Conditions) Rules 2006:

ক) “ উপযুক্ত কর্তৃপক্ষ” অর্থ রাষ্ট্রপতি বা রাষ্ট্রপতি কর্তৃক সংবিধানের ৫৫(৬) অনুচ্ছেদ অনুসারে প্রণীত Rules of Business এর আওতায় সার্ভিস প্রশাসনের দায়িত্বপ্রাপ্ত মন্ত্রণালয় বা বিভাগ;

This is nothing but to reinforce the control of the government, he said. In fact, it is to reinforce the domain and empire of three ministries, that is, the Ministry of Law, Justice and Parliamentary Affairs, the Ministry of Establishment, and the Ministry of Home. In fact, these Rules have reinforced the control and domain of the government over the judiciary effectively, he noted. He lamented that whatever independence of the judiciary was there in the British rule under 1935 Act as well as under the prevailing condition before the Masdar Hossain judgment has been eroded.

Decision of the roundtable

The discussion of the constitutional experts and jurists clarified one thing that instead of separating, the government has indeed made the judiciary more subservient to the executive by promulgating the Bangladesh Judicial Service Commission Rules 2004, the Bangladesh Judicial Service (Pay Commission) Rules 2006, the Bangladesh Judicial Service (Constitution, Recruitment, Suspension, Dismissal and Removal) Rules 2006, and the Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and Other Service Conditions) Rules 2006.

It was decided that no new case should be filed. Participants agreed that a study exploring the defects in the Rules and deviations from the directives of the Masdar Hossain judgment should be undertaken with a view to incorporating them in a supplementary application relating to a contempt of court proceeding pending before the Appellate Division of the Supreme Court against four top bureaucrats.

The roundtable urged the counsel of the petitioner of the contempt case, Barrister M Amir-Ul Islam, to file a supplementary application challenging the Rules before the Appellate Division in the next date of hearing of the contempt case scheduled for 27 July 2006.

Keynote Paper

Separation of the judiciary : Present Situation



Although the doctrine of separation of powers is the basic structure of the constitution of Bangladesh, the nation still has to depend on the implementation of the 12-point directive of the Supreme Court for the separation of the judiciary from the executive arm of the state. The highest court of the land, the Appellate Division of the Supreme Court, detailed the directives, which may eventually separate the judiciary from the executive, on January 2, 1999 in its judgement to the government's appeal against the High Court verdict to a writ petition filed by the judges of the subordinate courts of the land, popularly known as separation of judiciary case (Masdar Hossain Case). Even after seven years of the judgement, the directives are yet to be implemented, though separation of the judiciary is the major election pledge of all the political parties, including the ruling BNP.

Latest position

The present government has already framed four sets of rules- the Bangladesh Judicial Service Commission Rules 2004, framed on January 28, 2004, the Bangladesh Judicial Service (Pay-Commission) Rules 2006 on May 21, 2006, the Bangladesh Judicial Service (Constitution,

Recruitment, Suspension, Dismissal and Removal) Rules 2006 and the Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules 2006 on June 12- for the implementation of the directives.

The promulgation, which completed the framing of all sets of rules in line of the SC directives, will not readily separate the judiciary from the executive, as amendments to the Code of Criminal Procedure are also needed. The government, however, may claim that it has almost completed the process of the implementation of the directives, as the Code of Criminal Procedure (Amendment) Bill 2006 has already been tabled in the Jatiya Sangsad and the bill is now pending with the parliamentary standing committee.

The nation is, however, still confused over the probability of passage of the bill by the present parliament, as two sessions have gone after tabling of the bill and no news of any progress of the standing committee in scrutinising the bill has so far been gathered.

Moreover, allegations of violation of the directives in framing those rules are galore in the newspaper reports, published in the recent days quoting constitution experts.

Judicial Service Commission Rules

The Bangladesh Judicial Service Commission Rules 2004 was framed on January 28, 2004 and the commission was formed under the rules on February 25, 2004 to select people for entry-level appointments to the judicial service.

According to a number of constitution experts, including the counsels of the writ petitioners, the Rules has been framed in violation of the SC directives. The modifications made on January 26, 2003 by the Appellate Division to the draft of the Rules were also not allegedly complied with in making the Rules.

In Para 72(4) of the judgement, the Appellate Division said:

'.....a Judicial Service Commission be established forthwith with majority members from the senior judiciary of the Supreme Court and the subordinate courts for recruitment to the judicial service on merit with the objective of achieving equality between men and women in the recruitment.'

The AD on January 26, 2003 modified the draft Rules, earlier prepared by the Cabinet Committee working on separation of the judiciary, as the court found that the draft was not in compliance with the court's directive. According to the court's modification, the JSC should be an 11-member body with a judge of the Appellate Division as its chairman, nominated by the President in consultation with the Chief Justice. The other 10 members should be two judges of the High Court Division nominated by the President in consultation with the Chief Justice, the attorney general, a member of the PSC, establishment secretary, finance secretary, law secretary, the dean of the law faculty in Dhaka, Rajshahi or Chittagong University, registrar of the Supreme Court and the district judge of Dhaka.

But the government made the Rules and formed the commission as a seven-member body, turning a blind eye to the modifications proposed by the Supreme Court.

Rule 3 of the Rules stipulates that the commission will be a seven-member body. The chairman of the JSC is a judge of the Appellate Division of the Supreme Court, nominated by the Chief Justice. The other six members are: the establishment

secretary, finance secretary, law secretary, a member of the Public Service Commission, registrar of the Supreme Court and the district judge of Dhaka. This means that the JSC has four bureaucrats and only three members of the judiciary as members.

Judicial Service (Pay Commission) Rules

The Bangladesh Judicial Service (Pay-Commission) Rules 2006 was framed on May 21, 2006 to set up a permanent commission to recommend the salaries, allowances and other benefits of the officers of the judicial service. This set of rules was also framed allegedly in violation of the 12-point directive and the modification made by the AD to the draft of the Rules prepared by the cabinet committee.

Para 72(6) of the judgement said:

'The appellant and other respondents to the writ petition are directed to establish a separate Judicial Pay Commission forthwith as a part of the Rules to be framed under Article 115 to review the pay, allowances and other privileges of the judicial service which shall convene at stated intervals to keep the process of review a continued one.

According to the original draft, corrected by the AD on January 26, 2002, the pay commission was supposed to be a nine-member body with a judge of the Appellate Division, to be nominated in consultation with the chief justice, as its chairman. A judge of the High Court, to be nominated in consultation with the chief justice, a member of the Law Commission, the Comptroller and Auditor General, secretaries of the ministries of finance, establishment and law, registrar of the Supreme Court and a judicial officer of the rank of district judge working in Dhaka were supposed to be the members of the commission.

According to the rules framed, the commission will consist of five members. The Comptroller and Auditor General will be the chairman of the commission and secretaries of the ministries of finance, establishment and law, and the registrar of the Supreme Court will be the members.

The Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules 2006

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The Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules 2006

According to a number of constitutional experts, this set of Rules, framed on June 12, 2006, has also

violated the 12-point directives and the constitution. They also alleged that the modified draft of this set of rules was not complied with in making the Rules.

According to the rules, the control (including posting, promotion, leave, suspension, dismissal and removal) of the judicial officials will be exercised by the 'competent authority' (the president or the line ministry or division) in consultation with the Supreme Court. The Rules is, however, silent on any incident of conflict of opinion between the Supreme Court and the competent authority, allegedly, paving a way for the competent authority of ignoring any consultation of the Supreme Court in case of difference of opinion.

The original draft of the Rules, made by the cabinet committee and modified by the Appellate Division, proposed a rule (Rule 11) on any incident of different of opinion. It said:

১১। সুপ্রিম কোর্টের সহিত পরামর্শের কার্যকারিতা : (ক) উপযুক্ত কর্তৃপক্ষ এই বিধিমালা অনুযায়ী সার্ভিসের সদস্যগণের সম্পর্কে গৃহীত কার্যক্রমের বিষয়ে সুপ্রিম কোর্টের সহিত কার্যকর পরামর্শ করিবে।

(খ) উপ-বিধি (ক)-এ বর্ণিত বিষয়ে উপযুক্ত কর্তৃপক্ষের প্রস্তাব ও সুপ্রিম কোর্টের পরামর্শ অভিন্ন না হইলে, সেই ক্ষেত্রে সুপ্রিম কোর্টের পরামর্শ প্রাধান্য পাইবে।

Deletion of the provision of effective consultation of the Supreme Court and of priority of the opinion of the Supreme Court has created questions among the people concerned, as the absence of such provisions may eventually frustrate the whole concept of the separation of the judiciary.

Rule 4 of the modified rules proposed that the General Administration Committee of the High Court would act as the select committee for the promotion of the judicial officers. But, rule 4 of the framed rules relaxed the provision. According to the rule, the Supreme Court may empower the committee to make recommendation to the court on the promotion upon examination of service records of the officials concerned.

The Bangladesh Judicial Service (Constitution, Recruitment, Suspension, Dismissal and Removal) Rules 2006

This set of rules was framed on June 12 keeping the existing judicial magistracy outside the purview of the rules. The judicial magistracy has also been kept out of the purview of the

Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules 2006.

As the magistrates exercising judicial functions is excluded from the 'judicial service', the promulgation of these two sets of service rules has marked a little positive development toward the separation of the judiciary, which is aimed at bringing the judicial magistracy under the judicial service.

The Bangladesh Judicial Service (Constitution, Recruitment, Suspension, Dismissal and Removal) Rules dropped the special provisions on magistrates exercising judicial functions from the original draft that was corrected by the AD on January 26, 2003. The special provisions were for an interim arrangement of putting the services of the existing magistrates, who belong to the administrative cadre, under the Supreme Court on deputation in the judicial service until sufficient numbers of judicial officers are appointed. The government dropped the provisions from the rules, as these would need amendments to the CrPC, said the law minister. The Code of Criminal Procedure (Amendment) Bill is now pending with the parliamentary standing committee. A new set of rules may be framed to include the judicial magistracy in the judicial service and the special provisions for temporary arrangement of keeping the existing judicial magistrates in the judicial service for the time being may be made after the passage of the bill by the parliament.

Contempt of court proceedings

The government framed the two sets of service rules in the face of contempt of court proceedings against four top bureaucrats, including principal secretary to the Prime Minister, for procrastination in implementing the directive and lack of legal backup for the judicial service.

The AD on April 3, 2006 issued rule on principal secretary to the Prime Minister's Office Kamal Uddin Siddiqui, law secretary Alauddin Sardar, establishment secretary Mahbubur Rahman, and finance secretary M Siddiqur Rahman to explain within three weeks why they should not be proceeded for contempt of court for not complying with its 12-point directive. The court came up with the order upon a contempt petition from Chowdhury Munir Uddin Mahfuz, a judge on the tribunal for

prevention of women and children repression in Kishoreganj, who was one of the writ petitioners.

The contempt petition, filed on January 13, 2004 against the government's constant procrastination in implementing the court's directives, was kept pending for about two years. The court took up the petition for hearing on February 1, 2006 rejecting for the third time in six months the government's plea for further extension of time for implementing the directives and dismissing its effort to avoid the contempt proceedings by initiating a process for amending the CrPC. The petition was updated on February 22 after the Appellate Division had ordered the petitioner's counsel, M Amirul Islam, on February 1 to file a revised petition.

Transferring the onus for separating the judiciary from the executive to the Prime Minister, the secretaries on April 24, 2006 refused the allegation of contempt of court and tendered apology to the Appellate Division of the Supreme Court for their 'unintended mistake', if any. In their replies to the contempt rule submitted before the court on Monday, they told the court that they had already discharged their duties regarding implementation of the 12-point directives of the Supreme Court that would eventually separate the judiciary from the executive. They had nothing more to do in this regard, as two sets of draft rules on judicial service had already been sent to the Prime Minister, claimed the top bureaucrats denying the contempt rule and added that they had violated no order or directive of the court.

The next hearing of the contempt proceedings is likely to be held on July 27, as the AD on June 26 adjourned the hearing for one month for examining the service rules framed by the government on June 12.

Besides the contempt proceedings against four top bureaucrats, nine mid-order bureaucrats, including joint, deputy and assistant secretaries, are also facing contempt of court charge since November 29, 2004, when the AD issued a contempt rule against them for distorting the judgement of the court and the rules approved by the court regarding separation of the judiciary at an inter ministerial meeting held on November 1, 2004 on the matter. The meeting resolved that the inclusion of the magistrates exercising judicial functions in the judicial service would be violation of the constitution and the 12-point directive of the court. The meeting also decided that the establishment

ministry would take initiative in future for framing rules regarding the magistrates exercising judicial functions and would take necessary step for immediate issuance executive order for consulting the Supreme Court regarding those magistrates.

What the AL government did

The AD detailed the 12-point directive on December 2, 1999 and the then Awami League government took seven extensions of time from the court for the implementation of the directives in its remaining tenure of about 18 months making a little practical progress in this regard.

The Awami League government, however, implemented the ninth one of the directives regarding financial independence of the Supreme Court in 2001.

The Caretaker Government

During only three-month tenure of the caretaker government of 2001, three sets of rules on judicial service and a bill seeking amendment to the CrPC were prepared under the direct supervision of Istiaq Ahmed, who made a declaration that he and his colleagues in the caretaker government would not return home without separating the judiciary. Although a few of the constitution experts cried at that time that the caretaker government had no jurisdiction to do so claiming that it would be considered as a policy decision, the caretaker government go ahead in implementing the directives. All of those legal documents were scheduled to be placed before the meeting of the advisory council, held on October 3, 2001 for its approval. The rules were supposed to be framed and the amendments to the CrPC were supposed to be made through promulgation of an ordinance by the president on the following day. The caretaker government, however, had to keep the matter pending for the elected government, as the prime minister elect at the time, Khaleda Zia, requested the chief advisor Justice Latifur Rahman over telephone on October 2 to do so. According to newspaper reports at the time, Khaleda Zia assured Justice Latifur Rahman and Istiaq Ahmed of separating the judiciary with utmost urgency just after her assuming in the power. The things are yet to be done.

Prepared by PIL & Advocacy Cell of BLAST with the assistance of Md. Shahiduzzaman, special correspondent of the daily New Age.



TWO RECENT RULES ON JUDICIAL SERVICE PRELIMINARY CONCERNS



Dr Shahdeen Malik

The implementation of the Masdar Hossain Judgment necessitated enactment of a number of legislation. These legislations can be broadly divided into two categories: **the first** concerns legislative changes in the Criminal Procedure Code, 1898 to replace the general classification of Magistrates with Judicial and Executive Magistrates to ensure that trial of criminal cases are conducted only by the Judicial Magistrates. Currently, Magistrates are also authorized to conduct criminal trials under a few other special laws such as Speedy Trial Courts Act, the Children Act, 1974 etc. which will also need to be suitably amended.

The Second set of legislative change involves promulgation of Rules for the regulation of the services of the subordinate judiciary (appointment, transfer, promotion, leave and discipline, along with retirement and other issues, etc.)

In respect of the first set of legislations required, the Government has prepared a bill - The Code of Criminal Procedure (Amendment) Bill, 2006-which has now been placed in the Parliament and the bill is currently with the Parliamentary Standing Committee of Law, justice and Parliamentary Affairs for scrutiny.

As for the second set of legislation, four Rules have now been promulgated:

- i. Bangladesh Judicial Service Commission Rules, 2004
- ii. Bangladesh Judicial Service (pay Commission) Rules, 2004
- iii. Bangladesh Judicial Service (Composition, Recruitment and Suspension, Dismissal & Removal) Rules, 2006; and
- iv. Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules, 2006²

of these the Bangladesh Judicial Service Commission Rules, 2004 had come into force in 2004 and by now the new Judicial service Commission has appointed two hundred or so assistant judges in 2004 and 2005. However, this Commission has been formed with 7 members and the representatives of judiciary is not a clear majority in the Commission, though the Masdar Hossain judgment, in Directive 4, had clearly held that "... a Judicial Service Commission be established forthwith with majority of member from the Senior Judiciary of the Supreme Court and the subordinate courts for recruitment to the Judicial services on merit with the objective of achieving equality between men and women in the recruitment."³ There is, thus, a clear derogation from the directives of the Masdar Hossain judgment in the composition of the Judicial Service Commission.

As for the most recent Rules, i.e., the Bangladesh Judicial Service (Composition, Recruitment and Suspension, Dismissal & Removal) Rules, 2006; and Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules, 2006, my initial reading indicate⁴ that the Ministry would retain, under the amended Rules of Business, substantial administrative control over various aspects of composition, recruitment and suspension, dismissal & removal; and posting, promotion, leave, control, discipline and other related matters of the judicial officers.

These controls of the executive over the judiciary through these two Rules can be classified under three headings :

- (1) Control of the upjukto kortipokkho;
- (2) control by the appointing authority, i.e., the President; and
- (3) control of the respective administrative ministries to which judicial officials are posted on deputation.

2. These Rules are in Bangla.

3. Secretary, Ministry of Finance vs Masdar Hossain, 52 (2000) DLR (AD) 82, at p.109.

This directive no.4, it needs to be mentioned, was raised again in an appeal for review of the judgment and the Appellate Division in the judgment on review re-iterated its direction to establish a Judicial service Commission in Secretary, Ministry of Finance vs Masdar Hossain, 21 (2001) BLD (AD) 126

4. From the definition of upjukto kortipokkho, i.e., the Ministry or Division responsible under the Rules of Business, will regulate these service-matters.

These controls do not, under the Rules, require any consultation with the Supreme Court. Although consultations with the Supreme Court have been mandated in other aspects of the terms and conditions of service of the judicial officers, yet control over large parts of the service affairs under the above three headings clearly suggest that the over-all control of the Supreme Court would be a diluted one. The mechanism of the controls is outlined below:

A. Control of the upjukto kortipokkho

The upjukto kortipokkho can take the following actions on its own, without any consultation with the Supreme Court :
1. Under the Bangladesh Judicial Service (Composition, Recruitment and Suspension, Dismissal & Removal) Rules, 2006.

Rule 3 : (3) the upjukto kortipokkho, from time to time and in consultation with the Establishment and Finance Ministries, shall determine and re-determine (fix?) the number of posts in the service by increasing or decreasing such numbers.

Rule 6: (1) the upjukto kortipokkho can determine the period of probation of the entry-level judicial officers, provided that the total period of such probation shall not exceed two years.

(4) A probationary officer may not be made a permanent officer by the upjukto kortipokkho unless stated conditions are met.

2. Under Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules, 2006

Rule 9: gradation list fixing the comparative seniority amongst the members of the judicial service shall be published by the upjukto kortipokkho and such a list shall be the primary basis for determination of seniority.

It needs to be reiterated that actions can be performed by the upjukto kortipokkho without any reference to the Supreme Court.

B. control by the appointing authority

Under the Bangladesh Judicial Service (Composition, Recruitment and Suspension, Dismissal & Removal) Rules, 2006

Rule 6 : (2) The appointing authority shall make the service of a probationary officer permanent.

(3) The appointing authority shall terminate the service of the probation officer if it is determined by him that the probation officer is not suitable for permanent appointment.⁵

C. Control by administrative ministries

The Rules also provide for the deputation of judicial officials to non-judicial posts, i.e., to posts in the administrative ministries of the government. Under the Rules, judicial officers on deputation will be administrative officers during the period of their probation and then revert back to their judicial posts.

Thus, the primary principle of the Masdar Hossain judgment which held that the executive and judicial officers are distinct and different from each other has clearly been done away with by these provisions for deputation of judicial officials to executive ministries.⁶

Rule 7: of the Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Conditions) Rules, 2006 provides for

(a) deputation of judicial officers to the Ministry of Law, Justice and Parliamentary Affairs, and

(b) deputation to other government office, secretariat of the parliamentary affairs, election commission and other authorities

Rule 8 : (3) The annual confidential report (ACR) of judicial officials shall be prepared by the head of the office or officer senior to the deputed judicial officer and such ACR shall be submitted to the Supreme Court.

These Rules clearly paid only lip-service to the directives of the Masdar Hossain judgment. Consequently, these Rules need to be amended for proper, real and meaningful separation and independence of judiciary.

Discussion paper presented at the seminar organized by BLAST on Independence of Judiciary, on the 19th July, 2006.

5. This is the crux of these sub-rules and I have not tried to provide an exact translation from Bangla.

6. "To equal and to put on the same plane the judicial service with the civil administrative executive services is to treat two unequals as equals The basic realization that the members of the judicial service perform judicial functions of the Republic while the civil administrative services perform a different kind of work altogether has never dawned on them from the very beginning. This amalgamation or mixing up or tying together of the judicial service with other civil administrative services has been a monumental constitutional blunder committed during the early years of liberation, the harmful legacy of which is the dogged and headstrong denial of the proper and rightful institutional status of the members of the judicial service and of magistrates exercising judicial functions at the implementational stage."
Secretary, Ministry of Finance vs Masdar Hossain, 52 (2000) DLR (AD) 82, at PP. 97-98.

Implementation of the directives in Masdar Hossain judgment

Preliminary:

- The Honourable High Court Division delivered the judgment in Masdar Hossain case on 7 May 1997.
- Appellate Division of the Supreme Court delivered the verdict in the government's appeal against HC judgment in the case on 2nd December, 1999. The verdict of the Appellate Division detailed the 12 point directive.

Date of Orders	Reasons behind the order	Orders	Next date
09.08.2000	Prayer for staying operation of the judgment (in Civil Appeal No. 79/99) pending disposal of the review petition.	Let the application be posted for hearing on 18th October 2000.	18.10.2000
26.07.2001	Prayer for fixing an early date of hearing of the instant application filed on 24.5.2001 for extension of time for implementation of the order of this honourable court.	Let the application for extension of time be posted for hearing before the Full Court on 30th July	30.07.2001
30.07.2001	This day the Full Court heard the Learned Attorney General and perused the application for extension of time for compliance with the directions of this court.	The prayer is allowed for 8 weeks.	24.09.2001
24.09.2001	The (caretaker) government sought further extension of time saying that the implementation of the directives was under process and the drafts of the rules and the bill to amend the CrPC had already been prepared.	Let the application for time be posted for hearing before full court on 16th October, 2001	16.10.2001
16.10.2001			
15.01.2002	Government sought further extension of time.	Time fixed for next hearing before the full court on 29th January, 2002.	29.01.2002
20.01.2002	Government prayed for further time extension. The court heard the AG and perused the available materials.	The prayer is allowed and time is extended till 14th March 2002 as a last chance. On that date the petitioner should put in an affidavit reporting on the steps taken as to the compliance of the court's direction.	14.03.2002
17.03.2002	Government sought further extension of time for six months.	Time fixed for next hearing before the full court on 19th March, 2002.	19.03.2002

Date of Orders	Reasons behind the order	Orders	Next date
19.03.2002		The prayer for extension is allowed and the government is directed to implement the directives by 30.05.2002. The court said: 'By this time the directives must be implemented. In case of failure by the date fixed, the petitioner should let this Division know who are the persons responsible for not implementing the directives of this Division with their names, designations and addresses.'	30.05.2002
30.05.2002	Government sought further extension of time for six months.	Time granted earlier by this court be extended till 18th June 2002.	
19.06.2002	Government sought further time placing before the court various steps taken to implement the directives, while the respondent's counsel opposed the application stating that the appellants are not serious in implementing the court's order.	Court allowed the extension if time for implementation of the court's order by 26th October and directed the government to submit progress report on the implementation every month by an affidavit.	
13.08.2002	Govt. filed its report after two months.	The govt. is required to submit progress report on the implementation of the directives of the court every month by an affidavit. But this report of progress has been filed after almost two months. We must express our disappointment that no substantial progress has been made in implementation of directives since our last order. The report does not show any progress except the Information of that meeting of ministerial committee have been held to consider various draft rules prepared by the ministry of law, Justice and parliamentary affairs relating to Bangladesh Judicial Service Commission and Bangladesh Judicial Pay Commission. We note that the compositions of the judicial service commission and pay commission have not yet been finalized. The govt. is again directed to implement the directives by the end of October 2000. In the meantime the government is to submit the next report on or before 27th August 2002.	

Date of Orders	Reasons behind the order	Orders	Next date
19.11.2002	Application for extension of time for the implementation of the court's order dated 13. 08. 2002, stating that appellants have finalized the draft of Bangladesh Judicial Service Rules and Bangladesh Judicial Service (Pay Commission) Rules.	The appellants are directed to place the said drafts before the Court on 26th November 2002. The Appellants are also directed to submit the draft rules in respect of service condition of judicial service on the date and the proposed amendments to the CrPC. the prayer for extension of time will be considered on examination of those drafts on the 26th November 2002.	26. 11.2002
26.11.2002	Govt. submitted the draft before the Court as per order of 19.11.2002. And the court fixed December 10, 2002 for order.		10.12.2002
10.12.2002		The matter is adjourned to 26th January 2003 for orders and prayer for extension of time for the implementation of the directives will continue till then.	26.01.2003
26.01.2003	The court modified the draft rules submitted by the govt. making them consonant with the directives	The prayer for the time for implementation is extended for three months. Respondents will file affidavit of compliance within the time. Let the matter come up in the list of 27th April 2003 for further orders. The register is directed to transmit a copy of this order with the annexure to the Ministry of Law Justice and Parliamentary Affairs immediately. Let a copy of this order be supplied to the Attorney General of Bangladesh as prayed for.	27. 04.2003
27. 04.2003	Govt. sought court permission to modify the drafts earlier modified by the Appellate Division. Questioning the government for taking three months to realize that it had some difficulties, the Court told that it was nothing but time killing.	The matter is adjourned to 25th May 2003 for orders.	25.05.2003
17.05.2003	Govt. sought permission from the Court to appoint 152 assistant judges in the subordinate judiciary (who were selected through BCS).	The application for direction filed by the appellant is adjourned to 25th May 2003. The Court also directed the government to submit detail planning for appointing Assistant Judges for which it sought permission of the court.	25.05.2003

Date of Orders	Reasons behind the order	Orders	Next date
26.05.2003	Do	The court ordered to keep the application regarding the appointment of judges of the subordinate judiciary with records.	
25.05.2003	Application seeking permission to modify the drafts.	<p>The application was disposed of. The prayer for four months time from date for implementation was allowed with the following, among others, observations.</p> <p>"4.The order for implementation does not mean execution of the drafts and does not take away the scope of the petitioners to take necessary steps for formalizing and finalizing the draft Rules and the Bill in accordance with the relevant procedures and laws i.e., the Government is to take necessary steps to formalize and finalize them so that the president can make the Rules under Articles 115 and 133 of the Constitution, and The Bill as modified be presented before the Parliament , the Legislative authority empowered under the Constitution to make it an Act.</p> <p>6. The draft Service Rules and the draft Bill for amendment of Code of Criminal Procedure have been modified to make them in consonance with our directives The President may consider the draft Rules in his wisdom and the parliament may deliberate and decide the Bill to achieve the separation and independence of Judiciary. The president has exclusive authority to make the Rules under Articles 115 and 133 and the Parliament has the authority to enact laws under articles 65 (1) of the constitution, which have not in any way been interfered with this court's order dated 26.1.2003 to implement the directives of the judgment dated 2.12.1999.</p> <p>10. Our order is not meant to stand in the way of rule making power by the President under the Constitution or amendment of the Code of Criminal Procedure by the Parliament. The</p>	

Date of Orders	Reasons behind the order	Orders	Next date
		<p>anxiety that there is "inherent extreme difficulty for them to implement the order of this Hon'ble court which has attained finally as to the proposed draft rules and the bill for amendment of the Code Criminal Procedure and the citizen will have no forum in the country to challenge the rules and amendment has no legal basis, for the simple reason that the vires of any rule framed by the president or law passed by the Parliament, are subject to judicial review of the High Court Division of the Supreme Court of Bangladesh under Constitution.</p> <p>11. By the order dated 26th January 2003 this has not assumed the rule making power. The four draft rules have not also assumed any character of legislation which is apparent from the preambles of the draft Rules. We have directed the petitioners to implement the directives of this Court and it is the Constitutional obligation of the petitioners to place the draft Bill for amendment of CrPc before the parliament of the form of Bill and it is for the parliament to consider the same."</p>	
18.11.2003	Government sought another extension of time. It also sought clarification of the court's order dated 26.05.2003.	<p>We made it clear in our order dated 26.05.2003 that it is the President who has the exclusive authority to frame Rules under articles 115 and 133 of the constitution. We also made it clear that it is the Parliament that has the authority to enact laws under article 65(1) of the constitution. We also made it clear that the modified drafts were not assumed to interfere with the exclusive authorities of the President and the Parliament. Our object was clear by the following sentences contend in the order dated 26.5.2003. The modified draft forming part of this order for implementation 'does not mean execution of the drafts and does not take away the scope of the petitioners to take step for formalizing</p>	

Date of Orders	Reasons behind the order	Orders	Next date
		and finalizing the draft rules and the bill in accordance with the relevant procedure and laws. We also said, "The President may consider the draft rules in his wisdom." Further "The Parliament may deliberate and decide the bill to achieve the separation and independence of judiciary." With the above observation the application is disposed of. Four months time as prayed by the petitioner is allowed.	
13.01.2004	A petition for drawing up contempt proceedings against the government and Asaduzzaman was also filed with the section of the court.		
28.03.2004	Application seeking another time extension	Prayer for extension of time granted on 18.11.2003 to implement the directives is adjourned to 13th April 2004 to enable the government to inform the court as to why the rules could not be published by gazette notification and consequential amendment to law could not be passed for so long.	13.04.2004
19.04.2004		In view of the submissions made by the attorney General and consideration of materials on record, the court granted 3 months time to comply with the directions given in the judgment in question. Also, the application for contempt filed by one of the respondents - Writ Petitioners is ordered to be kept in the Record which would be considered at the appropriate time.	
17.08.2004	Application for extension of time to implement the direction as passed earlier by the Division on 18.11.2003.	Upon hearing the learned Attorney General and perusing the application and in view of the submissions made and in consideration of materials on record, the time was extended till 9th November, 2004. They warned that no further time would be allowed.	

Date of Orders	Reasons behind the order	Orders	Next date
09.11.2004	Govt. applied for another four months time extension with which the honourable court showed very annoyance.	The date for the hearing of the application was fixed 29 November 2004.	29.11.2004
29.11.2004	Hearing of the contempt petition heard.	9 govt. officials are directed to show cause as to why they should not be proceeded for contempt of the court for holding a mentioned meeting and for distorting and flouting the decisions of this court. They are further directed to appear in person before the court on 11.12.2004.	
14.12.2004	The contemptner government officials apologised before the court seeking their exemption from the contempt of court charge brought on November 29.	The case is adjourned to 17th January 2005. The contemptners are directed to remain present in Court as usual on that date.	17.01.2005
17.01.2005	The contempt petition against the govt. official heard.	The learned Court heard counsels for the parties. The case is adjourned to 26th February 2005. The contemptners are directed to remain present in Court as usual on that date.	26.02.2005
26.02.2005	The Supreme Court on Saturday set a fresh deadline of March 15 for the government to finalize the rules on the judicial service in line with the court's 12-point directive on the separation of the judiciary from the executive, and to send those rules to the president for promulgation.		
15. 03. 2005	The contempt petition against the govt. official heard.	The learned Court heard counsels for the parties. The case is adjourned to 16 April 2005. The contemptners are directed to remain present in Court as usual on that date. The Court allowed the government one more month to promulgate three sets of rules on the judicial service and to amend the Code of Criminal Procedure, 1898 in line with the court's 12-point directives on the separation of the judiciary from the executive and also directed the government to report the court the enactment and promulgation by April 15 and set April 16 for further hearing.	16.04.2005

Date of Orders	Reasons behind the order	Orders	Next date
16.04.2005	The govt. informed the court that the ministry of law, justice and parliamentary affairs sent three sets of rules, prepared in accordance with the 12-point directives, to the Prime Minister's Office on April 10 through establishment ministry for promulgation of the rules by the President. And it was yet to be known whether the President had approved the draft rules or not. Then govt. sought time.	The Court allowed the government six more months to implement its 12-point directives that would eventually separate the judiciary from the executive arm of the state. The court extended the time till October 17. The contemptner govt. officials are also directed to appear in the court on that day	17.10.2005
20.10.2005	The govt. appealed for further extension of time for implementation of the 12-point directives on separation of the judiciary from the executive.	The full Court heard the learned Attorney General and the Counsels for the parties. The application for extension of time to implement the direction was rejected. And the Contempt Petition No. 7 of 2004 and the Contempt application filed by respondents were fixed for hearing on 1st February 2006. The contemptner are directed to remain present in Court as usual on that date.	01.02.2006
01.02.2006	The government informed the Court of the move to amend the criminal code and moved a petition for more time to implement the court's directives for the separation of judiciary. The petition was turned down.	The court rejected the time petition.	
03.04.2006	Contempt petition heard	Rule was issued calling upon the 9 contemptner govt. officials to show cause as to why they should not be proceeded with for contempt of Court for not implementing the 12 directives. The rule is made returnable within 3 weeks from date, i.e. on or before 24th April 2006.	