

Fundamental values of administration of justice: An appraisal of the dispensation of justice in Bangladesh

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Abstract

Administering justice is a critical role of the state that recognizes individuals' rights, assures impartial reprisal for wrongdoing, and promotes communal harmony. The judicial institution serves as the central mechanism for the proper administration of justice. To reach the right judgment, a fair, independent, and unbiased judicial process is essential. The legal system has thrived as a result of certain essential values that uphold the highest level of fairness and impartiality. As a result, Bangladesh's administration of the justice system cannot fall far behind. Since the judicial institution is at the center of the administration of justice, the research initially focuses on a thorough examination of the widely acknowledged essential core values in the judicial system. Second, the article seeks to assess Bangladesh's justice system's conformity to the justice system's inclusive essential values. Finally, the research concludes that Bangladesh's justice system has secured practically all essential principles through constitutional and legislative endorsement. Nonetheless, due to several shortcomings, the efficient legal process and accessibility of the justice system have been questioned.

Keywords Administration of Justice, Judicial Values, Efficient Process, Accessibility.

Paper type Research paper

1. Introduction

Men are social beings who live in communities and build societies. Living in a society with a large number of people creates countless disputes that must be resolved justly, calmly, and fairly. The administration of justice is a systematic institutional process for settlement of conflicts between citizens, and between citizens and the government. One of the primary tasks of the State, among others, is administration of justice through an independent and impartial court system. Bangladesh's legal system was not formed under the influence of any one epoch. Bangladesh achieved complete independence in 1971.ⁱ Nonetheless, the administration of justice system of Bangladesh has evolved through several hundred years, including the 190-year British reign on the Indian subcontinent. As a result, the administration of justice has been prominently



influenced by early “Hindu, Buddhist and Muslim periods” along with the English legal system (Panday & Hossain Mollah, 2011: 6; Hoque, 2014: 447).

In Bangladesh, the administration of justice system is separated into two parts: civil justice and criminal justice. Bangladesh, as a country with a common law legal system, has embraced various common law legal rules and principles. The practical glitches of the administration of justice have enormously increased due to urbanization, increase in population, and overcrowding that generate crimes (Shetreet, 1979: 54). At the same time, the administration of justice system in Bangladesh is met with people's dissatisfaction with a variety of issues, including a lack of eminence of judicial services, the presence of massive corruption, excessive backlogs, lengthy delays in trial proceedings, and exorbitant legal service costs. The aim of this research is to scrutinize the globally accepted fundamental core principles of the administration of justice and evaluate the level of the justice system in Bangladesh in light of those principles.

2. Method

The study has been carried out using qualitative methodologies with analytical approach. The study incorporates fundamental values of administration of the justice developed by notable scholars, specifically Shimon Shetreet and Neil Andrews, in their academic works to investigate the scenario of the Bangladesh justice system. The research employed both primary and secondary materials in this regard. The Constitution, statutory laws, judicial rulings, cases, and other legislation are among the primary resources. Secondary sources enriching this study also include notable books, credible journal articles, newspaper articles and comments, online publications, and websites.

3. Functions of administration of justice

A civilized nation seeks to govern its people peacefully and be compliant with the rule of law. Any problem that cannot be addressed harmoniously should be taken before the courts to ensure justice. The administration of justice refers to how the country's laws are carried out. According to George Washington, “the administration of justice is the firmest pillar of good government.”ⁱⁱ “Justice is the first virtue of social institutions.” Administration of justice is “the basic structure of society, the way in which the major social institutions distribute fundamental rights and duties”(Rawls, 2017). The administration of justice is categorized into civil justice and criminal justice. The courts determine citizens' rights and duties in civil justice. In contrast, the criminal justice system imposes penalties on lawbreakers. The important point is that the court has sole

authority to decide whether the accused has broken the law (Shetreet, 1979: 56). Hence, the task of the administration of justice is to resolve the dispute and ensure justice (Shetreet, 1979: 56; Shapiro, 2013: 254). A well-operated justice system contributes to social and economic advancement. The administration of justice encompasses multiple organizations that are used in various contexts based on their legislative responsibilities and purposes, the most important of which is the judicial institution. Nevertheless, the justice system also contains the Public Prosecutor office, the Government pleader, the legal aid office, and the office and administration of courts, along with the police, advocacy, and prison system.

4. Fundamental values of the justice system

Most of the judiciary, justice system, or administration of justice is founded on definite fundamental values. The appropriate judicial system relies on the observance of such essential values to fulfill the foremost function of the courts, specifically the determination of disputes. Several scholars have formulated a series of values and principles for the administration of justice.ⁱⁱⁱ The research prefers judicial system core values that can be divided into two parts, namely institutional values and constitutional values. The institutional values contain: (i) fair judicial procedure, (ii) efficiency of the judicial process, (iii) accessibility of the adjudication system, (iv) public confidence in courts, and (v) independent and unbiased judiciary (Shetreet, 2011: 4; Andrews, 2012: 45-46; Shetreet, 1979: 55). The constitutional values indicate the safeguard of the judiciary under the provisions of the constitution (Shetreet, 2011: 4).

4.1 Institutional values

4.1.1 Fair judicial process

A fair trial is also known as “fair justice or fair administration of justice,” and it is one of the most important aspects of a decent state (Islam, 2019: 42). The fair trial is measured as a general principle essentially required in all judicial systems, with a variant of understanding (Badó, 2014: x). The court’s target is to establish justice by determining disputes among parties through fair trial procedures. To guarantee justice, each administration of justice has adopted definite procedural laws to govern the resolution of disputes via the courts (Shetreet, 2011: 5). The fair judicial process encompasses an elaborate and decorative set of rules governing judicial or court processes that regulate and control the method of filing suit, investigating and evaluating facts, and assessing the evidence presented to the courts (Shetreet, 1979: 57).

The attainment of a fair judicial process requires “presence at an adversarial hearing,” equal opportunity, presentation of proper evidence, the chance of cross-examination of opponent witnesses, and rational judgment (Andrews, 2012: 27; Andrews, 2003). A fair trial necessitates a public trial before an impartial and independent tribunal or court (Islam, 2010: 217). A fair trial also requires judicial independence and impartiality, open court sessions, equal chance for all parties, fair play among parties, and equitable access to information (Andrews, 2012: 46). Typically, each procedural rule is slightly complex and time consuming. As a result, it is worth noting that a rigid implementation of the fairness of the procedural values may have an impact on the efficiency of judicial procedures and the finding of the truth, which may, ultimately, undermine public confidence in the courts (Shetreet, 2011: 5). The goal of procedural law is to attain justice by ensuring a fair trial after conducting a thorough inquiry to verify the veracity of accusations (Shetreet, 1979: 57).

In Bangladesh, there are no specific provisions in the Constitution for a fair trial, but it does contain several Articles emphasizing that obtaining a fair judicial procedure is one of the citizen's fundamental rights.^{iv} The essence or internal ingredients of Art. 27 (equality before the law), Art. 31 (enjoying legal protection), and Art. 33 (assistance from a legal expert) combine to form the necessary elements of a fair judicial process. Principally, Article 35 of the Constitution enunciates that a citizen has “the right to a speedy and public trial by an impartial and independent court.” The criminal procedure code also allows for a public trial.^v A public trial's principal purpose is to ensure a fair trial (Islam, 2010: 217-218). The judiciary must remain separate from the executive unit of the state in order to ensure a fair trial by an independent court. The Bangladesh Constitution requires the state to ensure such separation.^{vi} Thus, the state authority is responsible for ensuring that the administration of justice is fair, which can only be determined by an independent court (Islam, 2019: 42).

The constitutional provisions of Bangladesh proclaim that the judiciary retains the independence to carry out its duties and powers.^{vii} Bangladesh has enacted a number of procedural regulations to govern the judicial system in order to ensure a fair judicial practice and the seamless operation of the court.^{viii} The higher court adopts procedural rules based on statutory procedural laws to manage its own procedure and process.^{ix} Moreover, the criminal procedure law allows for the case transfer when there is a reasonable prospect of bias in the trial court.^x Moreover, the benchmark for a fair trial may also include free legal services for the poor accused at the expense of the state.^{xi} The concepts of the rule of law and fundamental fairness cherished in the Constitution would be meaningless

unless the legal aid is accomplished (Islam, 2010: 197). As a consequence, Bangladesh enacts distinct special legislation to provide legal aid to indigent accused. ^{xiii}

Furthermore, the right to a fair trial has been acknowledged as a fundamental human right in various international treaties.^{xiii} From the standpoint of economic analysis of law, the goal of justice process is to minimize the social costs that are comprised of the “direct costs and error costs” of operating in the litigation activity (Posner, 1973: 400; Robert & Ulen, 2016: 385). Hence, in the justice system, a fair judicial procedure can reduce the social costs of litigation services. In summary, through passing an extensive amount of substantive and procedural legislation, Bangladesh theoretically supports and ensures all necessary standards for conducting a fair judicial procedure. However, maintaining and ensuring a fair trial is practically contentious since it is dependent on the diverse functions of several agencies, such as police, public prosecution, defense counsel, litigation parties, judges, and court personnel.

4.1.2 Efficiency of the judicial process

Each legal system enacts reasonable and practicable rules to protect substantive citizens' rights and maintain societal peace. The court system, often known as the judiciary, is the mechanism for enforcing such laws and regulations in order to sustain the rule of law in society. Judicial process refers to the formal stages that judges and other participants in the court process must follow so as to reach a just decision. In the USA, it is known as ‘due process’ (Hayo & Voigt, 2014: 491). The sound laws, however, have less importance if the justice method does not assemble accessibility, an efficient and convenient way for implementing law and attaining reparation for damage or injury (Shetreet, 2011: 5; Shetreet, 1979: 62). Therefore, efficiency is the one significant feature of a quality judiciary. The litigation parties expect the judiciary to maintain procedural fairness and efficient judicial proceedings. In civil justice, a petitioner seeking to protect his rights against an individual or the government expects the court to operate “fairly, expeditiously, and efficiently.” Similarly, in the criminal realm, a person accused of a law breach wishes that the investigation, preparation of charges, and trial be completed as soon as possible (Shetreet, 1979: 63).

One vital facet of efficiency in the judicial process is disposition of case timely (Dam, 2007: 101). The need for court process efficiency in the judicial system is to avoid delay without reasonable cause, and judicial facilities would be attained at a realistic cost (Shetreet, 1979: 62-63). The economic goals of the judicial system are to maximize efficiency through the procedural system and judicial administration (Posner, 1973: 399;

Landes, 1971: 61). To achieve efficiency in the judicial system, good court management, wise use of judge's time, and productive administration of the investigation and prosecution are required. It necessitates rigorous adherence to the court calendar, the allocation of enough resources, and the use of a modern case management system. Furthermore, an efficient justice system is dependent on laws and processes that can prevent litigants from abusing the system. In a wider sense, efficient and effective administration of justice signifies the protection of society against lawbreakers (Shetreet, 1979: 63-64).

An efficient judicial process is critical from the standpoint of Bangladesh. However, the situation in Bangladesh in terms of an efficient judicial process appears to be lagging. The judicial process in Bangladesh has been blamed for procedural flaws, inaccessibility, political influence, corruption, unreliability, case backlogs, and illogical delay (Islam, 2019: 45; Odhikar, 2022: 2). Based on a thorough relevant study, the research identified 10 indications essential for an efficient judicial process. Table 1 lists these metrics, as well as the actual proposition of Bangladesh's judicial procedure.

Table I

Efficient judicial process factors

SL.	Factors of efficient judicial process	Bangladesh's situation
1	No delay in case process	Unreasonable delay exist
2	Reasonable cost	High litigation costs
3	Effective court management	Fewer in the lower court
4	Proper utilization of judge's time	Not properly maintained, particularly the subordinate court judges lose abundant time due to a lack of court setting arrangements.
5	Productive investigation and prosecution	Consume a long time in investigation, fabricated investigation
6	Accessibility	Not fully charming
7	Sufficient resources (human resources, supporting infrastructure)	The scarcity of resources, both human and infrastructural, exists.
8	Modern case management system	Less progress, mainly in the trial court.
9	Absence of backlogs of cases	There are abundant backlogs of cases in both the higher court and the subordinate courts.
10	NO corruption	Corruption happens when providing court services.

Due to research constraints, a full argument on all ten indicators is difficult to present in this work. Nonetheless, the study attempted to investigate a portion of certain critical aspects, such as a lack of resources, a backlog of cases, and delays in case disposition.

It has been overburdened by a vast backlog of cases and delays in case disposition in Bangladesh, from the higher court to the trial courts. Since the higher court to the lower court, one of the most prominent criticisms of the country's judicial system has been a lack of resources. As of December 2018, the ratio of judges to cases in the AD was 1: 3313 and 1:5356 in the HCD. The lower court judge to case ratio was 1:1996 (Khan, 2019). According to the Supreme Court report, there are 8.75 judges for every million people.^{xiv} The backlog of cases in Bangladesh is expanding by the day. According to the report, it surpassed 3.1 million in June 2015 (Khan, 2015) and 3.3 million in January 2018 (UNB, 2018). In June 2019, the number exceeded 3.6 million,^{xv} and in December 2019, the backlog of cases reached 3.7 million. In April 2023, the figure was 4.2 million (Sarkar, 2023).

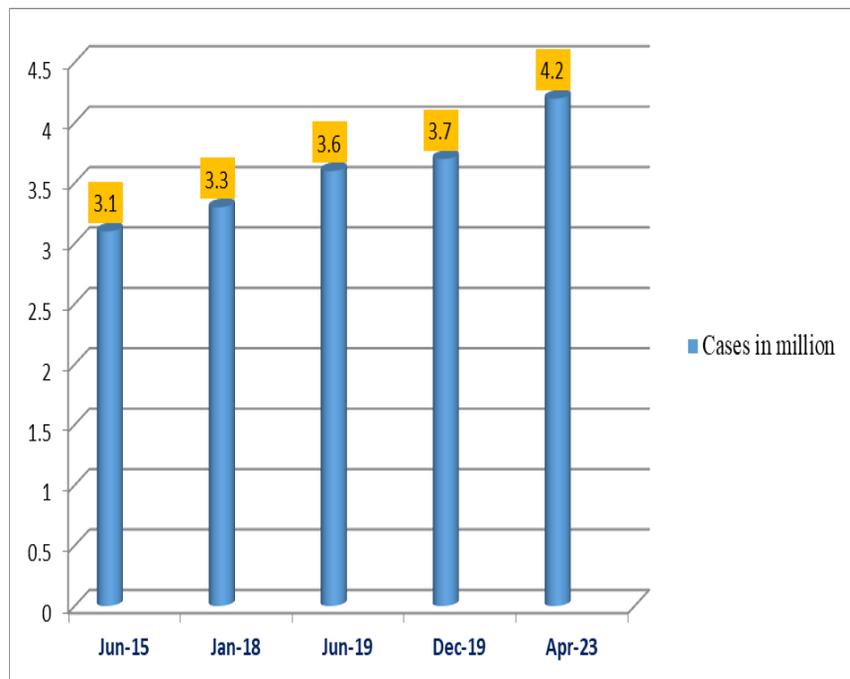


Figure 1.

Backlog of cases in Bangladesh shows that the backlog of cases is expanding at random rather than reducing. It is a huge challenge to a functioning legal system.

The popular adage utters “justice delayed, justice denied.” The judiciary in Bangladesh is experiencing substantial delays. One or two years required to dispose of a case may go up to 12-15 years or even more^{xvi} (Islam, 2011: 99). In many cases, the time it took from the filing of the case to its

resolution by the High Court Division was more than ten years (Odhikar, 2022: 4). The consequences of case delay and case backlog in the formal judicial system are upsetting. In other words, “lengthiness of cases creates corruption” and “corruption creates lengthiness of cases” (Mina, Sharmin, & Islam, 2017: 11). The backlog of cases bases the trial process to be prolonged, resulting in severe suffering for litigant parties, including psychological agony (Odhikar, 2022: 3). Case delays in the justice system have become the leading cause of prejudices and violations of human rights (Islam, 2011: 99).

The environment of efficiency in the judicial process generates economic growth and attracts the business, chiefly foreign investors (Dam, 2007: 93,102). Several World Bank surveys clarify that a well-performing and efficient judicial process promotes the country’s economic growth and eradicates poverty (Bank, 2012: 2). By completing court requirements on time and without delay, the efficient judicial process may relieve poverty by minimizing the need for litigants to pay more money to get judicial services. Efficient judicial systems enrich public trust in the court and reduce the direct cost of litigation and the cost of the judicial facilities (Shetreet, 1979: 56). Complex judicial procedures, expensive litigation process costs, lengthy processes, postponing cases, and a backlog of cases, on the other hand, create problems with court efficiency. Long processes and case delays make it difficult for harmed people to seek remedy through the formal judicial system, endangering judicial efficiency and the rule of law. Moreover, delaying or backlogging a case generates a burden of litigation costs on the litigants, increases uncertainty about the outcome of the case, and evidence can be declined (Posner, 1973: 420-421).

4.1.3 Accessibility to the judicial system

The notion of access to justice encompasses the entire set of laws, processes, and institutional engagements that enable people to get justice promptly and effectively (Faruque, 2006). Access to justice implies that justice ought to be accessible for rich and poor alike and that everyone has the right to pursue justice in a simple, rapid, and operative manner (Islam, 2011: 96). Access to the legal system is required to obtain judicial facilities or services immediately in response to a violation of rights in order to receive suitable remedy or justice (Shetreet, 2011: 6; Shetreet, 1979: 55). Almost every democratic government in the world recognizes access to justice as a essential right (Islam, 2011: 97). This right is also guaranteed in several international and regional human rights documents.^{xvii} The accessibility includes offering judicial services to litigants at a reasonable cost and making legal aid^{xviii} available to those

who are unable to pay the litigation costs. It entails raising people's awareness in society so that they can overcome their aversion to going to court to safeguard their legal rights and obtain restitution for wrongs (Shetreet, 2011: 6). Access to justice entail being able to go to court when necessary, having the option to choose legal representation, receiving confidential legal advice, and being represented in legal procedures (Andrews, 2012: 46).

The Bangladesh constitution affirms that every citizen is equal before the law, as well as the right to be protected by the law, to receive treatment in compliance with the law, and protection of life and liberty.^{xix} The supreme law of the country guarantees access to justice as a fundamental right of the people based on all of these constitutional provisions. The right to access to justice is the implied direction of articles 31 and 32. A man cannot be regarded to have been treated in compliance with the law until he had an adequate opportunity to seek redress in court (Islam, 2010: 189). However, the Constitution theoretically assures access to justice for all citizens, but in actual fact, the access to justice is not charming for underprivileged members of society (Naser, 2006). The legal system of Bangladesh has failed to guarantee equal justice for all for a variety of reasons. The reasons embrace excessive delay, repetition, case backlog, high litigation expense, complex procedural regulations, little chance or incentives for consensual settlements, and so on (Alam, 2001: 54). Victims have limited access to justice as a result of a long-standing and prevalent culture of impunity, corruption, and a lack of law enforcement (Odhikar, 2022: 3).

Legal assistance is critical in developing nations such as Bangladesh to uphold justice and confirm individuals' rights by ensuring equal access to the judicial system. Indeed, legal aid to the disadvantaged section of society must be encouraged in order to ensure that the courts are accessible to those seeking judicial redress. An accused who is unable to afford legal representation owing to economic hardship, indigence, or an inaccessible position is allowed to receive free legal aid at the expense of the state as a component of a reasonable and just procedure^{xx} (Islam, 2010: 96). As a result, Bangladesh provides legal aid services at both the government and non-government levels. The Legal aid Act of 2000 governs the government's legal assistance programs.^{xxi} In the lack of legal help for the indigent, many criminals or wrongdoers avoid trial and punishment, increasing the likelihood of committing more crimes in society. According to economic analysis of law, legal rules establish incentives for individuals to behave good or avoid wrongdoing. Imposing punishment places a cost on criminal activity, preventing it from occurring again.

4.1.4 *Public confidence in the courts*

The public confidence in the courts is regarded as a significant strength and value of the judicial system. People go to court to obtain their full set of rights and seek remedy for wrongdoing under the guidance of confidence in the judicial system. The public's expectation of the judicial system is that courts would resolve disputes based on the study of facts and laws, without fear and favor or undue influence from any source. Similarly, the public expects the administration of the justice system to be fair, efficient, timely, and free of corruption and improper involvement or influence (Akkas, 2002: 37). For preserving safeguarding these popular desires, the administration of justice must ensure that court functions are carried out in accordance with established processes and standards (Goldring, 1987: 152). As a result, the judiciary or court system serves to settle disputes that help to develop a peaceful and just society, as well as to maintain public trust in the judicial institution. Frankfurter states, "The confidence of the people is the ultimate reliance of the Court as an institution" (Frankfurter, 1957: 796).

The court system can gain public trust by acting as an independent, impartial, unbiased, fair, efficient, accessible, and convenient judicial dispute resolution method (Shetreet, 2011: 6; Shetreet, 1979: 64). Public confidence in the justice system is a powerful motivator for judicial activities to run smoothly. The public's favorable attitude and confidence in the judicial institution motivates courts to carry out their judicial tasks in compliance with the law and accepted processes. Building public confidence in the courts is dependent on other key values of the judicial system. Only when the judiciary can perform its duties and functions freely and impartially public trust in the courts will rise (Bari, 1993: 9; Campbell, Lee, & Campbell, 2013). Thus, "if the judiciary is unsuccessful in preserving public confidence, its legitimacy and acceptability would be endangered" (Esterling, 1998: 112). Furthermore, certain concepts and practices that object to verifying that "justice must not only be done but must be seen to be done" enhance people trust in the courts (Shetreet, 2011: 7; Shetreet, 1979: 64). These concepts and practices are explored in detail below.

i. The public trial or open court hearing

In the legal system, an "open court hearing" is sometimes known as an "open court trial," a "public hearing," a "public trial," or an "open court justice." It ensures that the court proceedings are open to the common people. It is one of the essential concepts of all legal systems, and it is also enshrined in statutory law. It is regarded as one of the pillars of civil and criminal procedures, and it is the most significant manner of confirming a

fair and unbiased trial (Shetreet, 2011: 7). It is a well-known tenet in the common law system that judicial procedures should take place in an open courtroom where the public is not prohibited. (Campbell et al., 2013; Butler & Rodrick, 2015: 128). The prevailing presumption is that the conflict will be resolved impartially through an accurate evaluation of law and fact; this assumption will be supported if the case is heard in open court. So, the overarching goal of an open court trial is to give a fair trial in order to confirm justice and avert injustice. (Islam, 2010: 217).

It is a necessary aspect of the administration of justice that controls the arbitrary application of justice power and encourages judges to uphold judicial expectations of performance (Butler & Rodrick, 2015: 128). People confidence in the courts is dependent on their comprehension of courts' functions. The open court hearing is an important means of allowing the public to view and perceive the judiciary's functions and operations. The open court hearings are an important means of scrutinizing the efficient and impartial administration of justice, as well as an effective method of attaining public trust and admiration for the adjudication system.^{xxii} As a result, promoting open court hearings increases public trust in the administration of justice overall and enhances the acceptability of court decisions (Akkas, 2002: 32). The open court hearing or public hearing of cases in the courts is one of the essential human rights or civil rights requirements enshrined in international human rights treaties.^{xxiii}

Open court hearings and public trials exist in Bangladesh's legal system and are recognized as fundamental rights under the constitutional guarantee.^{xxiv} The procedural codes provide for an open court hearing. According to the criminal procedure code, the criminal court will be designated an open court to investigate or try any offense, to which the general public may have entry, so far as its premises may conveniently accommodate them.^{xxv} In every criminal trial, the verdict must be proclaimed or the substance of the judgment must be explained in open Court.^{xxvi} Furthermore, at the time of announcing the verdict, the judge or magistrate shall date and sign it in open Court.^{xxvii} Similarly, the civil procedure code states that the court must render its decision in open court.^{xxviii} Besides, the judge must date and sign the judgment in open court at the time it is delivered.^{xxix} In addition, several statutory laws mandate the provision of open court hearings, public trials, and open court judgments.^{xxx}

However, the statutory law allows for restrictions on open court hearings, such as mentioning grounds.^{xxxi} These reservations permit case hearings in camera, the expulsion of a person from the court (Shetreet, 2011: 7), the restriction of access into the court of persons unrelated to

the trial where such necessity arises^{xxxiii} (Islam, 2010: 217). The grounds for limitation on public trial involve the protection of state safety and foreign relationships, the security of witnesses, the safety of morality, the safeguard of the parties engaged in a sexual offense, the protection of minors, the confidentiality of the parties in a personal position case (Shetreet, 2011: 7), the public interest, and the avoidance of prejudice to the accused (Islam, 2010: 218).

ii. Provide reasons for court decision

There is no general desire under common law to provide reasons for judicial decision (Akehurst, 1970: 154; Shetreet, 2011: 7). The standards of natural justice do not demand a declaration of reasons,^{xxxiii} hence there is no obligation to disclose reasons for court and tribunal decisions (Akehurst, 1970: 154). It can, nonetheless, be significant to develop the legal process of thought. It is readily the path of a contrary court ruling in the appeal or review with dependable precedent for the future (Shetreet, 2011: 7-8). Thus, another important criterion for upholding public confidence in the justice system is revealing the grounds for the court's rulings. Reasoning for court judgment is a requisite of decent decision-making. It increases public trust and acceptance of court rulings (Gleson, 1995).

The requirement to utter causes encourages and controls judges to offer accurate decisions because he has a responsibility to investigate the factual and logical explanations for obtaining such a judgment. So, explaining the grounds for specific court decisions, verdicts, or orders ensures a fair and just decision. Giving causes for case decision creates satisfaction from the parties on their complaints, which allows the parties to examine the court's findings and determine whether there is grounds for review or appeal (Campbell et al., 2013: 226; Shetreet, 2011: 7). It may primarily alleviate the frustrations of a case's loser party (Campbell et al., 2013: 226). In summary trials, for example, a judge determines cases without providing adequate reasons for their decisions to be made (Akkas, 2002: 34). In actuality, revealing reasons for court rulings can significantly boost public trust in the administration of the justice system (Shetreet, 1986: 39).

The legal system of Bangladesh has accepted the provision of stating reasons for any decision, judgment, or order issued by the court. Many statutory and procedural laws contain this evidence.^{xxxiv} According to the criminal procedure code, if the court believes the charge is without merit or that there are insufficient grounds to proceed against the suspect, it must discharge him and record his reasons for doing so.^{xxxv} The reasons for the accused's discharge must be recorded by the court; otherwise, such

a decision will be annulled.^{xxxvi} Likewise, the civil procedure code provides that the judge or court must state its judgment and order, as well as the reasons for such order and judgment.^{xxxvii} The criminal procedure code delivers every judgment must be dated and signed in open Court, and it must include the points for determination, the decision, the reasons for the verdict, the offense of conviction, the provision of law, and the amount or degree of punishment. The civil procedure code states, the court's judgment must have four elements: a brief statement of the case, the grounds for determination, the judgment on such issues, and the reason for the judgment.^{xxxviii}

iii. Preserving accurate judicial conduct

Maintaining truthful judicial conduct also increases public trust in the court. Imposing judicial conduct or discipline on judges has also increased the importance of confidence in the justice system or courts. In the ruling justice system, judges are committed to upholding normal judicial discipline or conduct in order to confirm justice and reduce abuse of court procedure power. Public confidence in the courts is sustained by appropriate judicial behavior or discipline and is undermined by judicial transgression on and off the bench (Shetreet, 2011: 8). Without an unwavering judicial manner, the judicial procedure may be transparent, but the legal verdict will be called into doubt; as a result, public trust in the courts will dwindle swiftly. Outside the courtroom, judicial discipline is enacted to boost public trust in the legal system. Transgression by any judge in the justice system taints the purity of justice, destroys public trust, and mutilates public admiration for the rule of law (Bari, 2011: 23).

Bangalore principles stipulate “a judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.”^{xxxix} *Bangalore principles* further remark, “A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue”.^{xl} Consequently, assessing judges' conduct or behavioral discipline in the legal system is critical for preserving public trust in the courts.

In fact, there is no comprehensive manual of judicial discipline in Bangladesh. Nonetheless, the discipline of trial court judges is managed by the “Bangladesh Judicial Service (Disciplinary) Rule 2017.” The Supreme Court, on the other hand, is governed by the Supreme Court regulations.

Furthermore, the Supreme Court justices' disciplinary proceedings are governed by the constitutional rules.^{xlii}

iv. Applying self-disqualification of the judge

The issue of public confidence in the courts also imitates the sound practice of regulations governing the self-disqualification of adjudicators for bias. The absence of a judge from legal proceedings due to a conflict of interest in the governing court proceedings is referred to as "recusal."^{xlii} The general grounds for recusal include judges have a special concern in the result of the case, the judge appears to be biased due to a potential conflict of interest or lack of impartiality, and personal bias or prejudice^{xliii} towards a party. If the subject before him is associated in any way with his concerns of interest or alleged conflicts, the judge may disqualify him from court proceedings. Potential conflicts of interest include, any party to a case who is directly or indirectly individually known to the judge, the judge or his family member is connected to the subject of the case fact, the case is filed by the judge's relatives or a client of the judge when he was a lawyer before being selected as a judge, or he is threatened openly or over the phone by anyone (Sarkar, 2009). It is also grounds for a judge's recusal when he has business and financial dealings with a lawyer who appears before the judge.^{xliv} If the motion is legally adequate to disqualify a judge from hearing a case, the judge must consider it as established judicial cannon.^{xlv}

It is not necessary for applying judges' self-disqualification that the matter at hand has essentially influenced the judge, but there is a real possibility that it might affect the judge (Shetreet, 2011: 8; Shetreet, 1979: 64). When circumstances indicate that the judge has a chance to be impartial or biased, the judge must exclude himself from the legal proceedings *sua sponte* (on their own motion), citing the facts that lead to his ineligibility. The Supreme Court of Louisiana said, "Where the circumstantial evidence of bias or prejudice is so overwhelming that no reasonable judge would hear the case, failure of a judge to recuse herself is a violation of the Code of Judicial Conduct".^{xlvi} There are no defined legal justifications or standards in Bangladesh for judges recusing themselves from court proceedings. It is practiced as a custom in the administration of justice. The practice of recusal is not available in the subordinate court. In contrast, Supreme Court justices adhere to this ethical norm during court proceedings. There are numerous examples in court practice.^{xlvii}

v. Rational criticism by media and legal expert

Public confidence in the justice system improves when they have a comprehensive understanding of the court's functions and actions. The public trial of cases provides an excellent opportunity to see judicial

proceedings. However, the general public rarely visits the courts to see and understand the court events. In most situations, the viewers of court hearings are the litigants, their family, and those who are more or less interested. The general people depend on media broadcasting to receive information regarding the activities of courts (Butler & Rodrick, 2015: 129). As a result, the media plays a noteworthy role in shaping public knowledge of court proceedings by reporting or commenting on court operations, current issues, and judges' behavior that foster public trust in courts.

It is well acknowledged in modern civilizations that the media helps to promote public acknowledgment of judicial judgments and popular support for judicial independence (Akkas, 2002: 33). It should be noted that the media not only broadcasts court activities through reporting on court issues but also criticizes various concerns through editorial opinions or the publication of investigative reports. Another aspect of fair criticism of court functions is examination by legal professionals, who include academics, practicing lawyers, jurists, and legal analysts. Legal specialists with professional skills can assess and critique the court's operations and functions. This type of examination is critical in making judges wary of upholding judicial standards in their performance and behavior (Handsley, 2001: 192). However, before doing such an analysis, they ought to prove that they have a sufficient comprehension and expertise of the legal system's practical procedure (Goldring, 1987: 153-154).

Courts and judges ought to accept constructive criticism when "it is done in good faith and in good taste," and courts should use the harsh attitude against contempt of court exceptionally sparingly since the court action does not contemplate suppressing the courts' fair critiques (Shetreet, 2011: 9). Although exercising the power to contempt of court should be done with extreme prudence, a person or the media should be aware of the dangers of unfair or purposely detrimental criticism of courts, which places undue popular pressure on courts or judges. Excessive undue pressure and irresponsible journalists may place judges in an untenable position, jeopardizing their independence when courts must rule against popular wishes (Shetreet, 2011: 9; Shetreet, 1979: 66-67).

In Bangladesh, exercising power over contempt of court is not uncommon. In the last couple of years, the Supreme Court has frequently used its contempt of court power against the media, journalists, analysts, newspaper editors, and sitting government ministers, with courts punishing in some cases and issuing rebuking warnings of emancipation from complaint in others.^{xlviii} However, academic publications have examined the power exercised against contempt of court and how far it was used sparingly.^{xlix}

4.1.5 *Judicial independence*

The notion of judicial independence or independent judiciaryⁱ is one of the core values and necessary cornerstones of every country's administration of justice (Shetreet, 2012: 18). The independence of the judicial system, or an impartial and independent judiciary, is the foremost value and core premise of justice administration. Hence, judicial independence is necessary for impartial judgment and to prevent the risk of impairment and oppression (Shetreet, 2012).ⁱⁱ

4.2 Constitutional values (protection of the judicial system)

The Constitutional values indicate the protection of the justice system under the provisions of the constitution. The disclosure of constitutional provisions relating to judicial independence makes the assurance of judicial independence more believable (Melton & Ginsburg, 2014). Certain aspects of judicial matters should be governed by the Constitution. Because when the matter is governed by ordinary regulations, the legislature can alter it with a simple majority. In contrast, constitutional protection is only adjustable through constitutional amendment. As a result, matters such as judges' tenure and removal process must be covered under constitutional rules to better safeguard judicial independence (Shetreet, 2011: 19).

The judicial system of Bangladesh is framed and protected by constitutional provisions. Part VI of the Constitution comprises the judiciary, which consists of three adjudicating bodies: the Supreme Court, subordinate courts, and tribunals (Hoque, 2014: 448; Islam, 2017: 35; Islam, 2019: 38). Art. 94-113 of the Constitution detail provisions for the Supreme Court, Art.114-116A arrangements the subordinate courts, and Art.117 for the tribunals. The separation and judicial independence is assured under the Constitution. The Constitution requires the state's responsibility to ensure the judicial independence from the administrative branch of the state.ⁱⁱⁱ The Constitution guaranteed Supreme Court judges' independence in the performance of their judicial duties. The Constitution declares "subject to the provisions of this Constitution, the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions."ⁱⁱⁱⁱ Similarly, the constitution also secures independence of judicial officers affirming that "Subject to provisions of the Constitution, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions."^{lv}

5. Conclusion

The administration of justice is the final institution through which persons can obtain a just remedy. Following a thorough evaluation of the

fundamental values of the administration of justice, the study summarizes its findings that the majority of the values and standards of the justice system are protected in Bangladesh by provisions of the Constitution and statutory rules. Nonetheless, the justice system of Bangladesh lags behind in terms of efficiency in judicial procedure and accessibility in the legal process. Inadequate court personnel, a lack of infrastructure, police failure to present witnesses, lengthy investigations, massive corruption, and frequent hearing adjournments all impede an efficient justice system. Access to justice in Bangladesh is extremely scarce, particularly for the poor and underprivileged, due to unbearable suffering at each stage of a case, unreasonable delay, high litigation costs, non-professional behavior of lawyers, fear of political interference, and physical and financial insecurity from an opposing party. As a result, those seeking justice are dissatisfied with the formal legal system. Other compelling reason to avoid the formal justice system includes an enormous case backlog. It should be mentioned that uncertainty in case disposition time creates a massive case backlog in the justice system. Delays in case disposition, which have become the norm in recent years, are discouraging people from seeking justice through the formal justice system. It demonstrates that, on the one hand, people are losing faith in the justice system, while on the other; they are seeking other means of resolving conflicts in order to avoid hassles, exorbitant legal expenses, and endless court trips.

One of the United Nations Sustainable Development Goals (SDGs) is to achieve justice. To achieve this goal, the administration of justice must adhere to international standards of fundamental values.

In this regard, the study recommended the following:

- i. Ensure that the court is adequately staffed and equipped with modern technological facilities.
- ii. Increase the judicial budget, and eliminate corruption and abuse of power among police and court personnel.
- iii. Ensure that judges are appointed and promoted based on merit, academic excellence, and professionalism rather than politicization.
- iv. Making rules can help reduce the 'waste of judicial process.'
- v. Ensure that judges are accountable to the appropriate authority.
- vi. Establish a separate prosecution department for the lower courts.
- vii. To confirm the court's efficient administrative and judicial processes, ensure complete digitalization of the judiciary, implement e-judiciary, and consider Artificial Intelligence (AI) in the administration of justice as a longer-term plan.

Notes:

ⁱ In 1947, Bangladesh achieved its first independence from British rule by creating two separate independent nations, Pakistan and India. Until 1971, Bangladesh was known as East Pakistan. Finally, in 1971, Bangladesh achieved its ultimate independence and became a sovereign country through a historic liberation war.

ⁱⁱ The Papers of George Washington, *Presidential Series, vol. 4*, September 8, 1789–January 15, 1790, ed. Dorothy Twohig, Charlottesville: University Press of Virginia, 1993, pp. 106–109.

ⁱⁱⁱ For details discussion, see among others, Shimon Shetreet (1979) “The Administration of Justice: Practical Problems, Value Conflicts and Changing Concepts” *University of British Columbia Law Review, Vol 13, p.* 52; Neil Andrews (2009) “Identifying Fundamental Principles of Civil Justice,” paper presented at an international conference on judicial independence, Cambridge; Neil Andrews (1994) “*Principles of Civil Procedure*,” (London: Sweet & Maxwell); Shimon Shetreet (2011) “Judicial independence and accountability: core values in liberal democracies,” in H. P. Lee (eds.), *Judiciaries in Comparative Perspective* (New York: Cambridge University Press); Neil Andrews (2008) “*The Modern Civil Process: Judicial and Alternative Forms of Dispute Resolution in England*,” (Tubingen: Mohr Siebeck); Neil Andrews (2011) “The Four Principles of Civil Justice,” in Shimon Shetreet and Christopher Forsyth (eds.), *The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges* (Dordrecht: Martinus Nijhoff Publishers); Neil Andrews (2012) “Principles of Civil Justice,” In: *The Three Paths of Justice. Ius Gentium: Comparative Perspectives on Law and Justice*, vol 10, (Springer, Dordrecht).

^{iv} Art.27 (equality before the law), Art.31 (enjoying legal protection), and Art.33 (assistance from a legal expert) of The Constitution of Bangladesh.

^v Sec. 352 of the Code of Criminal Procedure 1898.

^{vi} Art. 22 of the Constitution of Bangladesh 1972. See *Secretary of Ministry of Finance vs. Masder Hossain*, BLD (AD) 2000, 104.

^{vii} Art. 94(4), 116A of the Constitution of Bangladesh 1972.

^{viii} The core procedural laws are: The Code of Civil Procedure 1908, The Code of Criminal Procedure 1898, and The Evidence Act 1872.

^{ix} The Supreme Court of Bangladesh has approved rules for governing its own procedure, namely The Supreme Court of Bangladesh (Appellate Division) Rules 1988 and The Supreme Court of Bangladesh (High Court Division) Rules 1973.

^x Sec. 526 The Code of Criminal Procedure 1898.

^{xi} *Hossainara vs. Bihar*, 1979 AIR (SC) 1369.

^{xii} See The Legal Aid Services Act 2000.

^{xiii} The Universal Declaration of Human Rights (UDHR) 1948, Art.10; International Covenant on Civil and Political Rights (ICCPR) 1966, Art.14; The European Convention on Human Rights 1950, Art. 6(1); The American Convention on Human Rights 1969, Art. 8; Convention on the Rights of the Child 1989, Art. 40(2) b.

^{xiv} Bangladesh, Supreme Court, “*Strategic Plan 2017-2022*” (The Supreme Court of Bangladesh) <http://www.supremecourt.gov.bd/resources/contents/Strategic_Plan.pdf> accessed 10 July 2023.

^{xv} Parliament reporter, “Cases under Trial in the Country (Translated from Bangla)” *The Daily Jugantor* (Dhaka, 19 June 2019) <<https://www.jugantor.com/todays-paper/second-edition/189598/>> accessed 10 June 2022.

^{xvi} See Staff Correspondent, “Prof Taher Murder: Two Convicts Executed 17 Yrs after Killing” *The Daily Star* (Dhaka, 28 July 2023) CRIME.

^{xvii} The Universal Declaration of Human Rights 1948, art. 2; The African Charter on Human and People Rights 1981, art. 3.

^{xviii} *Encyclopaedia Britannica* defines “The professional legal assistance given, either at no charge or for a nominal sum, to indigent persons in need of such help” (Britannica, 2018). Basically, legal aid is provided to a person incapable of bearing litigation costs or unable to cover legal counsel and accessibility to the justice system. The Bangladesh Legal Aid Act stipulates “legal aid means providing legal advice, paying lawyers’ fee and cost of litigation including providing any other assistance to those who suffer financial insolvency, destitution, helplessness or are unable to access justice due to various socio-economic conditions,” The Legal Aid Act 2000, Sec. 2a.

^{xix} Art. 27, 28, 31,32 of The Constitution of Bangladesh 1972.

^{xx} *Sheela Barse vs. Maharashtra*, 1983 AIR (SC) 378.

^{xxi} The Legal Aid Act 2000 establishes a national organization and various committees such as the Supreme Court committee, District Committee, Thana and Union Committee. The national organization is known as the “National Legal Aid Services Organization.” In 2015, the Supreme Court ran an office for legal aid, The Supreme Court Legal Aid Office’ available for Writ, civil and criminal appeals, and others. Besides the government initiative, many Non-Governmental Organizations (NGOs) are functioning with legal aid for access to the judicial system for incapable people, particularly offenses of a criminal nature like women and child torture and acid throwing. The renowned organizations are, among others i.e., *Manusher Jonno Foundation (MJF)*, *Ain O Salish Kendra (ASK)*, *Bangladesh Legal Aid Services Trust (BLAST)*, *Madaripur Legal Aid Association*, etc. For details on legal aid in Bangladesh, see among others, Nusrat Ameen (2004) “The Legal Aid Act, 2000: Implementation of Government Legal Aid Versus NGO Legal Aid,” *The Dhaka University Studies*, Part-F Vol. XV (2): 59-82.

^{xxii} This statement utters in *Scott V Scott* (1913) AC 417, 463.

^{xxiii} See, Universal Declaration of Human Rights (*UDHR*) 1948, Article 10; International Covenant on Civil and Political Rights (*ICCPR*) 1966, Article 14; The European Convention on Human Rights (*ECHR*) 1950, Article 6(1); The American Convention on Human Rights (*ACHR*) 1969, Article 8; Convention on the Rights of the Child (*CRC*) 1989, Article 40(2) b.

^{xxiv} The Constitution requires a public trial by a court or tribunal that is impartial and independent. “Every person accused of a criminal offense shall have the right to a speedy and public trial by an independent and impartial Court or tribunal established by law,” The Constitution of Bangladesh” 1972, Art. 35(3).

^{xxv} The Code of Criminal Procedure 1898, sec. 352.

^{xxvi} *Ibid.* sec. 366.

^{xxvii} *Ibid.* sec. 367

^{xxviii} The Code of Civil Procedure 1908, Order 20, Rule 1.

^{xxix} *Ibid.* Order 20, Rule 3; The Muslim Family Court Act 2023, sec. 16(1).

^{xxx} The International Crimes (Tribunals) Act 1973, sec. 10.

^{xxxi} The Code of Criminal Procedure 1898, sec. 352.

^{xxxii} See The International Crimes (Tribunals) Act 1973, Sec. 10(4); The Family Courts Ordinance 1985, Sec. 11; The women and children oppression prevention Act 2000, sec. 20(6).

^{xxxiii} *Fountain vs. Chesterton*, The Times, Aug 20, 1968.

^{xxxiv} The International Crimes (Tribunals) Act 1973, sec. 20; The Bangladesh Environment Conservation Rules 1997, Rule 7; Woman and Child Repression Prevention Act- 2000, sec. 19(4), 21(2); The Muslim Family Court Act 2023, sec. 6(2), 16(2); The Patent Act 2023, sec. 20(5).

^{xxxv} The Code of Criminal Procedure 1898, Sec. 241A, 265C. See 45 DLR 533; 37 DLR 107.

xxxvi See 37 DLR 293; 6 MLR 83-90 (HCD).

xxxvii The Code of Civil Procedure 1908, Rule 12 of Order 7; Rule 5 of Order 20.

xxxviii Ibid. Rule 4 of Order 20.

xxxix The Bangalore Principles of Judicial Conduct 2002, Article 1.6.

xl Ibid. Art. 2.4.

xli Art. 96 of the Constitution of Bangladesh 1972.

xlii Cambridge Dictionary Defines "the Fact of a Judge or a Member of a Jury Not Being Involved in a Trial Because They Have a Special Interest in Its Final Result." According to Collins English Dictionary "the Withdrawal of a Judge from a Legal Case." In the United States, two sections of the Judicial Code, 28 United States Code (28 U.S.C.), deal with recusal: Sec. 455 regarding the federal judge and Sec. 144 about the District Court.

xliiii The "personal bias or prejudice is more difficult to determine than other forms of partiality, such as established personal relationships, professional associations, or business interests" (Abramson, 1992).

xliv *In re Means*, 452 SE2d 696 (WVa 1994).

xliv See *In re Cohen*, 99 So 3d 926 (Fla 2012); *Taylor v State*, 557 So 2d 138 (Fla 1st DCA 1990).

xlvi *In re Judge Sylvia R Cooks*, 694 So 2d 892 (La 1997).

xlvii *Nizam Uddin Hazari case*, "HC Judge Embarrassed to Hear Plea on Nizam Hazari's Parliamentary Seat," *The Daily Star* (Dhaka, 30 January 2018) <<https://www.thedailystar.net/politics/bangladesh-high-court-hc-judge-embarrassed-hear-plea-awami-league-nizam-hazari-parliamentary-post-1527340>>; Photographer Shahidul Alam case, "Shahidul's Bail Hearing: HC Bench Feels Embarrassed," *The Daily Star* (Dhaka, 5 September 2018) <<https://www.thedailystar.net/news/city/high-court-bench-justice-embarrassed-hear-shahidul-alam-bail-petition-1629010>> accessed 5 December 2022.

xlviii The most referable cases, among others, include *Md. Riaz Uddin Khan, Advocate and another v Mahmudur Rahman and others* 63 DLR (AD) (2011) 29; *The State v Advocate Qamrul Islam and Another* (2016) (AD) Contempt Petition (A) 9/2016; *Advocate Riazuddin Khan v Mahmudur Rahman* (2010) 9 AD Cases 140; *The State v Snadesh Roy* (2015) 12 App. Div. Cases. 932; *Dr. Mohiuddin Khan Alamgir Vs. Sobul Hossain* (2010) 1 SCOB [2015] HCD 28, and *Advocate Abul Kalam Azad vs David Bergman* (2014) ICT-BD [ICT-2] Miscellaneous Case No. 01 of 2014 etc.

xliv See among others, Siddiq, Ehsan A. (2016) "The State v. Advocate Md. Qamrul Islam and Another," *University of Asia Pacific Journal of Law & Policy*, vol 2, p. 59; Siddiq, Ehsan A. (2018) "Scandalizing the Court and the Law of Contempt," *The Rule of Law in Developing Countries: The Case of Bangladesh* (C I Ahmed Siddiky, Routledge).

¹ See Islam, Mohammad Saiful (2018) "Independent Judiciary: Nature and Facets from the International Context," *International Journal of Ethics in Social Sciences*, vol 6(2), p.15-32.

ⁱⁱ The debate over judicial independence is so broad that it is impossible to condense here. Furthermore, the topic of judicial independence and its appraisal from a Bangladeshi viewpoint has been discussed in a variety of national and international literatures. As a result, the study bypasses a detailed discussion of this topic in this paper. See among others, Ahmed, Justice Naimuddin (1998), "The Problem of Independence of the Judiciary in Bangladesh," *Bangladesh Journal of Law*, vol 2; Mollah, Md Awal Hossain (2012), "Independence of Judiciary in Bangladesh: An Overview," *International Journal of Law and Management*, vol.54; Mollah, Md. Awal Hossain, Separation of Judiciary and Judicial Independence in Bangladesh," *International Journal of Law and Management*.

ⁱⁱⁱ Art. 22 of The Constitution of Bangladesh 1972.

ⁱⁱⁱⁱ Ibid. Art. 94(4).

^{lv} Ibid. Art. 116A.

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