

University of Wollongong - Research Online

Thesis Collection

Title: Judicial independence and accountability: a comparative study of contemporary Bangladesh experience

Author: Sarkar Ali Akkas

Year: 2002

Repository DOI:

Copyright Warning

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site.

You are reminded of the following: This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part of this work may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the author. Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

Unless otherwise indicated, the views expressed in this thesis are those of the author and do not necessarily represent the views of the University of Wollongong.

Research Online is the open access repository for the University of Wollongong. For further information contact the UOW Library: research-pubs@uow.edu.au

2002

Judicial independence and accountability: a comparative study of contemporary Bangladesh experience

Sarkar Ali Akkas
University of Wollongong

Follow this and additional works at: <https://ro.uow.edu.au/theses>

University of Wollongong

Copyright Warning

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site.

You are reminded of the following: This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part of this work may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the author. Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

Unless otherwise indicated, the views expressed in this thesis are those of the author and do not necessarily represent the views of the University of Wollongong.

Recommended Citation

Akkas, Sarkar Ali, Judicial independence and accountability: a comparative study of contemporary Bangladesh experience, Doctor of Philosophy thesis, Faculty of Law, University of Wollongong, 2002.
<https://ro.uow.edu.au/theses/1856>

NOTE

This online version of the thesis may have different page formatting and pagination from the paper copy held in the University of Wollongong Library.

UNIVERSITY OF WOLLONGONG

COPYRIGHT WARNING

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site. You are reminded of the following:

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material. Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

**JUDICIAL INDEPENDENCE AND ACCOUNTABILITY:
A COMPARATIVE STUDY OF CONTEMPORARY
BANGLADESH EXPERIENCE**

**A thesis submitted in fulfilment of the requirements for the award of
the degree**

DOCTOR OF PHILOSOPHY

from

UNIVERSITY OF WOLLONGONG

by

SARKAR ALI AKKAS, LLB (HONS), LLM

FACULTY OF LAW

2002

THESIS DECLARATION

This is to certify that I, Sarkar Ali Akkas, being a candidate for the degree of Doctor of Philosophy (PhD), am fully aware of the University of Wollongong's rules and procedures relating to the preparation, submission, retention and use of higher degree theses, and its policy on intellectual property. I acknowledge that the University requires the thesis to be retained in the Library for record purposes and that within copyright privileges of the author, it should be accessible for consultation and copying at the discretion of the Library officer in charge and in accordance with the Copyright Act (1968). I authorise the University of Wollongong to publish an abstract of this thesis.

Signature

Date 11-12-2002

CERTIFICATION

I, Sarkar Ali Akkas, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

(Signature)

Sarkar Ali Akkas

Date 11-12-2002

TABLE OF CONTENTS

| | |
|---|-------|
| CONTENTS | i |
| ABSTRACT..... | vi |
| ACKNOWLEDGEMENTS | vii |
| INTRODUCTION | 1 |
| CHAPTER 1: GENERAL CONCEPTS | 4 |
| 1.1 INTRODUCTION | 4 |
| 1.2 SEPARATION OF POWERS AND INDEPENDENCE OF THE JUDICIARY | 5 |
| 1.3 JUDICIAL INDEPENDENCE: MEANING AND ELEMENTS | 12 |
| 1.3.1 Individual Independence of Judges | 14 |
| 1.3.2 Collective Independence of the Judiciary | 18 |
| 1.4 IMPORTANCE OF JUDICIAL INDEPENDENCE | 22 |
| 1.5 ACCOUNTABILITY OF JUDGES | 27 |
| 1.5.1 Public Exposure of Judicial Functions | 31 |
| 1.5.2 Reasons for Judicial Decisions | 34 |
| 1.5.3 Appellate Process | 34 |
| 1.5.4 Discipline | 35 |
| 1.5.5 Scrutiny by Lawyers | 36 |
| 1.6 PUBLIC CONFIDENCE IN THE JUDICIARY | 37 |
| 1.6.1 Judicial Appointment | 38 |
| 1.6.2 Tenure and Terms of Judicial Service | 39 |
| 1.6.3 Judicial Impartiality | 40 |

| | |
|--|------------|
| 1.7 CONCLUSION | 41 |
| CHAPTER 2: AIMS AND METHODS OF STUDY | 43 |
| 2.1 INTRODUCTION | 43 |
| 2.2 AIMS OF STUDY | 43 |
| 2.3 RESEARCH METHODOLOGY | 44 |
| 2.4 TREATMENT OF THE DATA | 48 |
| 2.5 SCOPE AND LIMITATIONS OF STUDY | 50 |
| 2.6 CONCLUSION | 51 |
| CHAPTER 3: JUDICIARY IN BANGLADESH | 52 |
| 3.1 INTRODUCTION | 52 |
| 3.2 HISTORY OF JUDICIARY IN BANGLADESH | 57 |
| 3.2.1 Hindu Period | 58 |
| 3.2.2 Muslim Period | 60 |
| 3.2.3 British Period | 68 |
| 3.2.4 Pakistan Period | 87 |
| 3.3 OUTLINES OF CURRENT JUDICIAL SYSTEM | 91 |
| 3.3.1 Supreme Court | 93 |
| 3.3.2 Subordinate Courts | 94 |
| 3.4 ROLE AND VULNERABILITIES OF THE JUDICIARY | 105 |
| 3.5 CONCLUSION | 113 |
| CHAPTER 4: APPOINTMENT OF JUDGES | 115 |
| 4.1 INTRODUCTION | 115 |
| 4.2 GENERAL PERSPECTIVES ON JUDICIAL APPOINTMENT | 116 |
| 4.2.1 Criteria for Judicial Appointment | 116 |
| 4.2.2 Mechanisms for Judicial Appointment | 125 |

| | |
|---|------------|
| 4.3 BANGLADESH PERSPECTIVES | 136 |
| 4.3.1 Criteria for Appointment | 137 |
| 4.3.2 Mechanisms for Appointment | 152 |
| 4.4 CONCLUSION | 176 |
| CHAPTER 5: TENURE OF JUDGES | 178 |
| 5.1 INTRODUCTION | 178 |
| 5.2 GENERAL PERSPECTIVES ON JUDICIAL TENURE | 178 |
| 5.2.1 Security of Tenure | 179 |
| 5.2.2 Changes of Tenure and Terms and Conditions of Service | 182 |
| 5.2.3 Part-time and Temporary or Acting Judges | 184 |
| 5.3 BANGLADESH PERSPECTIVES | 187 |
| 5.3.1 Tenure of Supreme Court Judges | 187 |
| 5.3.2 Tenure of Subordinate Court Judges | 193 |
| 5.4 CONCLUSION | 196 |
| CHAPTER 6: DISCIPLINE OF JUDGES | 198 |
| 6.1 INTRODUCTION | 198 |
| 6.2 GENERAL PERSPECTIVES ON JUDICIAL DISCIPLINE | 199 |
| 6.2.1 Causes for Discipline | 199 |
| 6.2.2 Mechanisms for Discipline | 212 |
| 6.3 BANGLADESH PERSPECTIVES | 231 |
| 6.3.1 Causes for Discipline | 231 |
| 6.3.2 Mechanisms for Discipline | 241 |
| 6.4 CONCLUSION | 255 |
| CHAPTER 7: JUDICIARY AND MEDIA | 257 |
| 7.1 INTRODUCTION | 257 |

| | |
|---|------------|
| 7.2 GENERAL PERSPECTIVES ON MEDIA SCRUTINY | 258 |
| 7.2.1 Types of Media and its Reporting | 258 |
| 7.2.2 Role of the Media | 260 |
| 7.2.3 Media and Contempt of Court | 265 |
| 7.3 BANGLADESH PERSPECTIVES | 269 |
| 7.3.1 Press | 269 |
| 7.3.2 Television | 275 |
| 7.3.3 Radio | 280 |
| 7.4 CONCLUSION | 283 |
| CHAPTER 8: JUDICIARY AND BAR | 284 |
| 8.1 INTRODUCTION | 284 |
| 8.2 GENERAL PERSPECTIVES ON THE ROLE OF THE BAR | 284 |
| 8.2.1 Relationship between Judges and the Bar | 285 |
| 8.2.2 Rationale of the Role of the Bar in Scrutinising Judges | 287 |
| 8.2.3 Ways of Scrutinising Judges | 287 |
| 8.3 BANGLADESH PERSPECTIVES | 290 |
| 8.3.1 Criticism of Judges | 292 |
| 8.3.2 Boycott of a Judge | 297 |
| 8.4 CONCLUSION | 301 |
| CHAPTER 9: GENERAL CONCLUSION | 302 |
| 9.1 INTRODUCTION | 302 |
| 9.2 STRENGTHS | 303 |
| 9.3 WEAKNESSES | 304 |
| 9.4 SOLUTIONS | 307 |
| LIST OF ABBREVIATIONS | 310 |

BIBLIOGRAPHY311

 LEGISLATION311

 INTERNATIONAL INSTRUMENTS314

 CASES314

 SECONDARY SOURCES316

 GOVERNMENT REPORTS332

ABSTRACT

This thesis examines issues of judicial independence and judicial accountability with special reference to public confidence in the judiciary. The central issues of this thesis are the tension between judicial independence and accountability and the ways the two conflicting values may be balanced in the administration of justice to deliver an effective judicial service and win public confidence. The thesis emphasises that proper measures should be taken to maintain judicial independence and at the same time, an adequate system of judicial accountability should be established without undermining the independence of judges.

The thesis examines the conditions of judicial independence and accountability in Bangladesh in comparison with general principles, international standards and practices of some countries in the common law tradition. It evaluates the law and practice which have been followed in Bangladesh to deal with various aspects of the judiciary involving the independence and accountability of judges. It reviews the history and current state of the judiciary by analysing a wide range of sources, including constitutional and statutory law, public records, available statistical data and media reports and secondary literature.

The thesis identifies the strengths and weaknesses of the current system of constitutional and judicial administration in Bangladesh and their impacts on judicial independence and judicial accountability which include appointment, tenure and discipline of judges, and scrutiny of judges by the media and the bar. It proposes ways of preserving the strengths or remedying the weaknesses to improve the conditions of judicial independence and judicial accountability in Bangladesh.

ACKNOWLEDGEMENTS

First of all, I am indebted to the University of Wollongong for its scholarship which made my PhD studies in Australia possible.

I would like to express my deepest appreciation to my supervisors, Dr Richard Mohr and Professor Helen Gamble, for their advice, guidance and very useful comments on the earlier drafts and for their continuing support during the writing of this thesis.

Special thanks are due to all academic and non-academic staff of the Faculty of Law, University of Wollongong, for their assistance, support and understanding.

Many thanks to the staff of the Office of Research and Library of the University of Wollongong for their kind assistance during my study.

Special thanks to many judicial officers and Ministry officials of Bangladesh, including Senior Assistant Judge Mr M Akhtaruzzaman, Assistant Judge Mr Mohsinul Haque and Assistant Secretary Mr Jakerul Abedin, for their active co-operation in collecting valuable materials of this thesis.

I offer my grateful thanks to my colleagues of Rajshahi University, particularly Mr SM Daud Hassan, who helped me in many ways. I would like to acknowledge the assistance I received from my friend Mr SM Solaiman and his wife Mrs Afroza Begum in one way or another.

Finally, special thanks and deepest appreciation is due to my wife Mamtaz Sultana (Parul) for her patience and encouragement, and to my daughter Assafiat Zabeen (Setoo) and son Muneem Mahdee (Sakib) who missed me during the period of studies.