THE SUPREME COURT OF BANGLADESH: AN ANALYSIS OF ITS ROLE IN PROTECTING HUMAN RIGHTS

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ABSTRACT

This thesis is an assessment of the Bangladesh Supreme Court's role in the protection of Human Rights. It examines where the Supreme Court has successfully protected rights, and also where it fails to apply international human rights standards. The Supreme Court of Bangladesh is at the apex of the Bangladeshi judicial structure. Modeled on a British system from its colonial background, the Supreme Court is influenced by harsh executive intervention and political dominance from the Bangladesh government. This has resulted in problems in the organizational and functional structure of the Supreme Court. The interventions by the power-holders of the society can interfere with judicial appointment and with the procedural functions, resulting negatively on human rights protection by the Supreme Court. It is difficult to get the Supreme Court to act effectively on issues when personal law violates human rights, or when applying international standards of human rights. There is evidence of active support by the Supreme Court on some current human rights situations, such as the protection of juveniles, political detainees, foreign prisoners, and protecting certain social groups like sex workers or slum dwellers. The Supreme Court has strong potential for monitoring activities of lower courts, and directing the executive or other organs of the state, for ensuring democratic values supporting human rights protection. The research reveals that the growing activism of the Supreme Court to extend the notion of *aggrieved person* and its *locus standi* is helping promote human rights standards. The Supreme Court needs to take an active role to ensure access for the poor and marginalized section of the society. However, it is clear from the research that the political context of the Supreme Court is complex in nature. Access for the poor and marginalized demands an innovative judicial approach and substantive initiatives from the civil society, NGOs, media, and Supreme Court itself to protect human rights.

KEY WORDS: BANGLADESH SUPREME COURT/ JUDICIAL ACTIVISM/ HUMAN RIGHTS PROTECTION/ LOCUS STANDI/ AGGRIEVED PERSON.

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ABBREVIATION

BELA	Bangladesh Environmental Lawyers Association
BLAST	Bangladesh Legal Aid and Service Trust
BSTI	Bangladesh Standard Testing Institute
C. P. C.	Code of Civil Procedure
CJS	Criminal Justice System
CMLA	Chief Martial Law Administrator
Cr. P. C.	Criminal Procedure Code
CW	Custody Warrant
HC	High Court
HDI	Human Development Index
IGP	Inspector General of Prisons
ILO	International Labor Organization
JSC	Judicial Service Commission
NHRI	National Human Rights Instituion
PIL	Public Interest Litigation
PRB	Peoples' Republic of Bangladesh
PSC	Public Service Commission
SAL	Social Action Litigation
SC	Supreme Court
SPA	Special Power Act
TIB	Transparency International Bangladesh
TNO	Thana Nirbahi Officer
UNDP	United Nations Development Program

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The State vs. Md. Zillur Rahman and Others

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CHAPTER 1
INTRODUCTION

1.1 Context of the research

Background:

Bangladesh lies between the eastern margin of the South Asia and the western fringe of sprawling Southeast Asia and emerged as a sovereign independent state on 16th December 1971 after nine months brutal war with formal West Pakistan. Many of legal and institutional organs have tremendous influences of the formal British colonial ruler as well as of its historical background. The Constitution of Bangladesh came into force at 16th December 1972 with a strong priministership, an independent judiciary, and a unicameral legislature on a modified British model. More importantly, it, enunciated the Awami League's four basic principles as its state policy. The policy was based on nationalism, secularism, socialism, and democracy. This determines the basic structure of the Constitution. Nevertheless, the Constitution of Bangladesh has declared in the preamble that, “it shall be a fundamental aim of the state to realise through the democratic process a socialist society, free from exploitation. A society in which, the rule of law, fundamental human rights and freedom, equality and justice, political, economic, and social rights will be secured for all citizens.”

The human rights protection of Bangladesh has its root in the commitment of its independence movement, which directly relates with the deliverance of Bangladeshi people as they had faced enormous exploitation by the then West Pakistan regime. More or less, it is the center point of creation of the State is to realise the rights of the citizens. So, the Constitution itself has declared human rights provisions very expressly. Among twelve parts of Bangladesh Constitution the Second and Third Part incorporated with human rights provisions those are taken from international human rights documents. The human rights that declared in the Part two of Bangladesh Constitution, is rather fundamental principal of state policy, which means that these and not enforceable by the judicial means. Rather the state is duty bound to realise those rights progressively, which are basically economic, social, and

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cultural rights. Hence, there is no time barrier for the state to realise those rights. This is creating a scope for the state to act as violator of those rights rather protector. As these are not judicially enforceable, so the victims can not get the remedies in this case.

On the other hand, the human rights those declared in Part Three of Bangladesh Constitution is civil, political in nature, and immediately enforceable. These rights prevail over any laws that are inconsistent. So, the civil and political rights get Constitutional protection. The Constitution of Bangladesh declares this notion clearly in Article 26 and states that:

1. All existing law inconsistent with the provisions of this Part (Part three: Fundamental Rights) shall, to the extent of such inconsistency, become void on the commencement of this Constitution.
2. The state shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void (Article: 26, Bangladesh Constitution, 1972).

So, it is clear that Bangladesh Constitution is very expressive to make the human rights that declared in Part three of it as inviolable. Those are the fundamental rights under the Bangladesh Constitution, means those rights are inviolable. These rights are to be enforced by the Supreme Court of Bangladesh. The thesis will explain the nature of implementation of these rights by the Supreme Court to assess its role to protect human rights.

The research will explain the influence of Supreme Court on good governance since human rights protection is only effective in an environment where good governance is ensured. It is undeniable that an efficacious judiciary plays a vital role in good governance. To be efficacious the judiciary must be fully independent to discharge its duties with complete impartiality or without fear or favor. This thesis will argue that the Supreme Court of Bangladesh with its Constitutional authority and broad jurisdiction can play the vital role to address the human rights issues more than any other State organ in terms of effectiveness and innovativeness. However, there are limitations towards its effectiveness, including political influences, conservative interpretation of legal provisions, and lack of judicial independence. So the aim of this thesis is to identify the potentials and the barriers towards reaching these potentials.

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The potential of the Supreme Court suggested that it could apply innovative ways, which can help it to be placed itself in the position of single authority to make direction or order towards all concern party. It could be done through the active role of the Supreme Court expanding its legal authority by making the broad interpretation of the Constitutional provisions.

The Constitutional history and the development of the jurisprudence suggest that the Supreme Court has played quite an impressive role at the time of a popular Government or in a democratic environment. It has also developed its jurisdiction so as to play a proactive role. Firstly this thesis will focus on the role of the Supreme Court of Bangladesh and secondly to try to assess its effectiveness to protect human rights. This will include the development of the Supreme Court's proactive nature. The catalysts that influence the activities and the obstacles that hinder the development of an active Supreme Court will be investigated.

In doing so, certain structural concepts will be investigated, such as problems in organizational structure of the judiciary, the lack of separation of judiciary, appointment of judges, judicial independence, and delay in settlement. On the other hand, this thesis will explain the problems that the Supreme Court is facing in certain areas of human rights protection. In this regards apart from the above structural problems, this thesis will bring up issues such as response to different gender, limited access for the poor, the position on international human rights standards, and also address human rights norms in national laws. Moreover, this thesis will explain the efficiency of the Supreme Court in protecting the rights of political prisoners, juveniles, the marginalized section of society, the right to safe environment, and public health. Further more, the reasons of such protection find support in explaining the grounds of flexible interpretation of constitutional provisions. To this end, in order to explaining the comprehensive glance at the Supreme Court's role in human rights protection, this research will also cover the historical development of the Bangladeshi judiciary, judge's motivation in the application of laws, and initiatives from civil society and media.

1.2 Objectives of the Research

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This research has the specific objective to analyze the role of the Supreme Court of Bangladesh to protect human rights. In order to analyze the role there is a need to focus on a broader area.

1. To analyze the role of the Supreme Court of Bangladesh to protect human rights.
2. To determine the limitations of the Supreme Court of Bangladesh to protect human rights, from the perspective of legal and socio-political realities.
3. To find the possible ways through which the Supreme Court of Bangladesh could ensure the human rights of under-privileged individuals or groups.
4. To specify the influencing factors that affect the role of the Supreme Court in protecting human rights.

1.3 Research Questions

Sub questions are derived from the central question in this thesis, in order to reach a clearer understanding. These questions are related to the objectives of the thesis. The objectives of the research have been satisfied from the conclusion. The central question of the research is:

What is the role of the Supreme Court of Bangladesh in protecting Human Rights?

This central question raises five other sub-questions in order to meet a satisfactory answer. From those answers the position of the Supreme Court could be understood considering its institutional weakness and the socio-political influences. These questions have lead to an assessment of the role of the Supreme Court. These questions are as follows:

1. Does the Supreme Court of Bangladesh meet its Constitutional obligations to protect human rights, considering the evolution of its activism?
2. How can Article 102 of the Constitution (which is explained later in this chapter) help the Supreme Court to address human rights?
3. What are the procedural, substantive, and remedial problems that are hindering the protection of human rights?
4. What is the level of Supreme Court of Bangladesh in acting as victim sensitive or its role in keeping check and balance?

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5. How does the role of the Supreme Court of Bangladesh ensure human rights considering its dependency?

1.4 The Current State of the Supreme Court of Bangladesh

The human rights situation in Bangladesh is not satisfactory. There are multiple factors that are continuously providing scope for the human rights violation. From a human rights perspective, this crisis is seen as an outcome of policies that are insensitive to the demands of economic and social justices and inefficient institutional structures, which are inaccessible to the people. These do not encourage democratic debate and dissent, but generate intolerance and violence (ASK, 1999: 4). The United Nations Development Program's *Report on Human Security in Bangladesh: In Search of Justice and Dignity* speaks of "enormous challenges that lie ahead to improve the human security situation for the poor in Bangladesh . . . the dominating perception that remains today is one of widespread human security violations, especially against the poor and the disadvantaged."

The Government mechanism is acting as a default organ to prevent these violations, rather than behaving as one of the major actors that are liable for human rights violations. So, the less advantaged individuals or groups have virtually no access to Governmental authority to get redress for violations of their rights. The political practices and institutions are yet to be supportive of the real needs of the vulnerable sections. Politicians' power-oriented practice does not leave any room for people-oriented program. This leaves the people no alternative but for the judiciary to act against human rights violation.

The Higher Judiciary in developing countries generally appears to be conscious of its greater social role and tends to become judicially active. In Bangladesh the Supreme Court is widely recognized and respected as the ultimate guarantor of citizens' rights under the Constitution. The Supreme Court of Bangladesh is playing quite an important role, but only in the democratic environment. It is evident that peoples' hopes rely on the brilliant performance of the Supreme Court, in many circumstances, where they have no alternative. But the harsh reality of the socioeconomic conditions and procedural difficulties often act as a barrier against access to the judiciary.

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There are certain limitations of the Supreme Court of Bangladesh. These are not similar to India and America. The structural problem remains a basic concern for the public. The judiciary is yet to be fully separate from the executive, a favoritism free appointment of judges in the Higher Judiciary is yet to be achieved, and the political influence on judicial procedures are still creating a bar to the independent judiciary. The absence of a National Human Rights Commission is another phenomenon that is causing the people to depend on the Supreme Court as a single authoritative institution to address Human Rights. The role of individual orientation of the judges, pressure from social groups and media, and positive internal management, with progressive interpretation of laws and constitutional provisions, are needed to explain the potentials of the Supreme Court.

The urgency of an innovative approach stresses the necessity to have an inquiry into the cause of the non-effectiveness of the current orthodox mechanism. It needs to be determined whether the role of the Supreme Court is the ultimate choice for protecting human rights. On the other hand, decisions of the Supreme Court are not taking into consideration the international standard of human rights law. That is causing major concern for the protection of human rights in Bangladesh. The Constitution has incorporated most, but not all, of the human rights provisions declared by the international standard of human rights law. The Supreme Court is applying only those rights that are declared by the Constitution. This is clearly contradicting the claim as an organ protecting human rights.

In some instances, the court does bring references from local custom and practices into its reasoning. The law of the land permits this. But the influence of these local customs on human rights issue is not adequate. Moreover, the application of the personal law in many human rights cases does not support the basic norms of human rights law. The decisions of the Supreme Court are not always for the fair interest of women. This can be interpreted as the Supreme Court having a gender insensitive approach. From this perspective, the *victim sensitive* practice of the Supreme Court is in a grey area. This indicates the urgency of a proactive judiciary over the current orthodox judiciary. The existing situation suggests that the Supreme Court should come forward and take an active role in creating a balance between executive practices and the rights of the people. It shows that the human rights protection role of the

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Supreme Court is complex issues, where both the negative and positive aspects, remain uncertain. The aim of this thesis is to closely analyze these two aspects.

1.5 Limitations of the Supreme Court

The Supreme Court of Bangladesh is in the process of developing a practice to address the human rights issues and, sometime, shows its active role to provide remedies to victims. However, this does not occur in every instance, but rather often varies. There are certain types of judicial procedure that involve pro-activeness. The *Social Action Litigation (SAL)* means litigation where the concern in issue is for the greater benefit of a particular society and the litigant party may be one or more individuals of that society. This equally applies to *Public Interest Litigation (PIL). PIL* means litigation in interest or rights of the public in general. In this case the litigant may be a person who has direct or indirect interest in the particular issue of concern. Also, the party can be a person who has no specific interest in the issue, but who can claim as a concerned party of to the action. To this end, the court needs to take a flexible interpretation of existing laws by declaring the *locus standi* in favor of the litigant party. *Locus standi* means the right to sue. In this thesis this type of judicial activism, from the angle of its involvement in creating a flexible ground for addressing social issues, specifically those with a human rights concern, will be explained. However, this research will give emphasis on *PIL* to explain the judicial activism, as it is nearly similar with *SAL* and *Class Action* (litigation for a particular section of society or on behalf of a group or class of society). Legal analysis, mainly by legal case study, will be the approach of this research to explain these complexities.

However, the Supreme Court of Bangladesh is acting for issues related to human rights. There are certain instances where it contributes with positive results and outcomes. According to a study conducted by Transparency International (Bangladesh) in 1997, the Lower Judiciary does not enjoy the general public's confidence or respect. The Higher Court of Bangladesh shows apparent displays of its social responsibility, such as the instance where it ordered the withdrawal of all two-stroke engine-driven vehicles from Dhaka City by December 2002 to make the capital free from pollution. In *PIL*, the High Court Bench has directed the concerned

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authorities to convert all petrol and diesel-fuelled Government vehicles into gas-fuelled vehicles.

There are also examples where the Supreme Court does not display its role as a human rights protector. This research will explore those issues with certain case references, and explain the cause from a human rights protection perspective. The assessment of human rights protection is done in the light of the Supreme Court's application of international human rights standards, the gender sensitiveness of the Supreme Court, its preference of custom over human rights law, the lack of cohesion between personal law and national law, and limited access to the Supreme Court for poor people.

In order to explain the role of the Supreme Court it is important to analyze the socio-political situation along with court management. In this thesis the position of the Supreme Court from a procedural, substantive, and remedial angle, with the reference of its accessibility and affordability, will be recounted. This will include the scope of accessibility to the Supreme Court for the vulnerable section of the society. It is undeniable that the court is a place that we can term as having easy access for all. It is in a process of development depending on associated social elements. So, the socio-political factors as well as the internal judicial administrative issues are equally important to assess the accessibility and affordability of the Supreme Court for the people. However, the human rights protection of the Supreme Court depends on the level of accessibility to the Supreme Court for the ordinary people. In conclusion, this may be the principal findings of this thesis.

The research has brought a situational portrait of *PIL* in Bangladesh, which shows the availability of the Supreme Court's remedies for the people who cannot afford the access to the Higher Judiciary. It gives a clear picture about available remedial avenues from the Higher Judiciary. This might be an inspiration for the groups and NGOs, working towards the protection of human rights in Bangladesh, through judicial means. In addition, this research shows some avenues, which need to be formed through executive decisions, that enable a potential body to implement the decisions of the Supreme Court regarding the human rights. So, it suggests a possible legislative measure with potential for having an effective Higher Judiciary, to protect

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the rights, which are not only declared in the Constitution, but also indicated by the Constitution.

The Supreme Court is an organ of the state that acts as the guardian of the Constitution and guarantees the implementation of the provisions of the Constitution. The human rights that are declared in the Constitution need to be implemented by the active participation of the Supreme Court. But, it is not an isolated issue, rather it depends on many socio-political factors that demand a wide consideration from the angle of human rights protection and its relation with factors of dependency.

This research will explain the role of the Supreme Court as a social reformer that acts against the established trend of society by promoting human rights over that society. So, the prime area of this research is to explore the potentials of the Supreme Court to address the human rights issues. One problem in this regard can be illustrated by conservative interpretation of Article 102 of Bangladesh Constitution that is yet to be interpreted in flexible way. Article 102 (Appendix C) of the Constitution is meant to give a person who has been aggrieved the right to claim rights through the Supreme Court. However, the literal meaning of *aggrieved person* encompasses only those people whose rights are directly violated. This limits scope of the Supreme Court to consider issues that are representative in nature, or issues of *PIL* and *SAL*, as these types of litigation are usually needed to be brought by the person whose rights are not directly violated. So, the concept of *aggrieved person* needs to be broadened in order to facilitate that which can help the increase in the number of *Social Action Litigation (SAL)* and the suit that are *representative* in nature by the flexible interpretation of Article 102.

At the same time, the number of *suo muto* action of the Supreme Court in Bangladesh is very low. The meaning of *suo muto* is that if any rights are violated then usually the party comes to the court and claims their rights. But in *suo muto* cases court can proceed itself and declare the rights on behalf of the person whose rights have been are violated even if that party does not come to the court. *Suo muto* is not an ordinary process; rather it needs an active and progressive Supreme Court, which can help to protect human rights. Moreover, the increase in human rights violations stresses the effective involvement of the Supreme Court to protect the vulnerable. It is

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the area which this research will analyze, namely the role of the Supreme Court in protecting human rights.

On the other hand, the court is a combination of both the Bar and the Bench. It is important to determine their contribution and commitment to implement the provisions of human rights for ordinary people. The effectiveness of the remedies is another area where other state organs need to work together. So, the research has to draw the line between these bodies in assessing the role of the Supreme Court.

1.6 Hypothesis

The Supreme Court of Bangladesh is a potential and trusted body of the state to address the human rights issues. However, it is facing hindrances from the executive and suffering from insufficient procedural precedent to play a unique role in protecting human rights. Despite these limitations, the social pressure for a progressive judiciary is increasingly accelerated. The flexible interpretation of Constitutional provisions, and related regulations, is a sign of an active Supreme Court in Bangladesh, but, that highly depends upon the personal orientation of the Court. If the internal judicial management and sociopolitical factors ensure accessibility and affordability of the Supreme Court to individuals, as well as groups, then it could protect the human rights of the underprivileged.

1.7 Significance of the Research

This research will mainly contribute to the understanding of the Supreme Court's role in protecting human rights. It finds a wider discussion in the judicial activism in Bangladesh. The research will give the sociopolitical background as well as its impact on the development of the judiciary in Bangladesh. The broader discussion of the research will give a clear understanding about the current level of human rights violations that could be addressed by the judiciary. It will be useful to have knowledge about the unique role of the Supreme Court of Bangladesh regarding human rights protection since it is working in a distorted political environment. Socio-legal analysis will show the continuous unorthodox practice of the judiciary, the Bar and the Bench.

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This research will also discuss the available tools that are used by the Supreme Court for protecting human rights. The authority and area of the writ jurisdiction could be useful for this purpose and made understandable from this research. A writ is a type of suit or a tool of the Supreme Court through which people can claim their rights that could be declared by the authority of the Supreme Court. However, the evolution of the proactive role of the Supreme Court will be made explicable by this research in that it will show the obstacles towards pro-activeness. It will also provide information about the range of "*suo muto*" practice by the Supreme Court of Bangladesh.

This research can give an academic understanding about the elaborate concept of *locus stand,* which means the right or eligibility to sue. The person's rights have been violated or affected both directly and indirectly. But human rights protection needs a wide range of *locus standi* through which more individuals and groups can have access to writ jurisdiction. This study will analyze the application of the international human rights standards by the Supreme Court's decisions. In doing so, it will explain the influence of local custom and practices in the judgments of the Higher Judiciary. It will help to have knowledge about the legislative barriers imposed on the Supreme Court in its role to successfully practice against human rights violations, and equally so about the importance of flexible interpretation of the laws. The increase in of *Public Interest Litigation (PIL)* in Bangladesh and its importance will be interpreted in this research. The importance of the protection of individual as well as group rights by the Supreme Court of Bangladesh will also be interpreted in this research. By in large, this is a contribution to the community.

1.8 Research Methodology

Qualitative Research

The central concern of this thesis is to analyze the Supreme Court's role in protecting human rights. To analyze its role is a highly qualitative factor. The qualitative method emphasizes the importance of understanding the meaning of human behavior and the socio-cultural context of social interaction, their values, rituals, perceptions, symbols, and beliefs (Patton, 1987 & Nachmias, 1987). The role of the Supreme Court depends on the law and its application. This is not an independent

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factor; rather it is influenced by the social phenomenon. The social orientation of people is one important factor in seeking protection from the Supreme Court. Judges need to be more flexible in their interpretation of the law in order to provide remedies to the vulnerable people. The acceptability of the judicial decision is also a matter that emanate from social values. Moreover, it is long standing political and cultural trends that cause influence on the Supreme Court. These are the qualitative issues that have directed the qualitative nature of this research. As the research is qualitative it is mainly based on qualitative analysis of the information that was obtained from secondary sources and interviews.

Sources of Secondary Data

The sources of secondary data are various documents that are used to support different perspectives. The nature of the research is legal. So, the documentary analysis includes an intensive overview of existing laws, literature related with the Supreme Court, and legal precedents. The research tends to focus on the scope of the judicial involvement in addressing the human rights issues. To this end, books and articles, both domestic and international, journals and speeches on Supreme Court and its activism, are included as the source of documents. Policy documents, existing national laws, jurisprudence, reports of the United Nations treaty bodies, and the concluding observations, are other documents used for the research. This writer started the research with the selection of proper sources of the important documents. To this end, the availability of the document was the prime concern. Part of the research methodology required fieldwork in Bangladesh. Sufficient time was spent in the field to find appropriate books and references. The potential sources of books, journals, case laws and judicial decisions are from the library of the Supreme Court of Bangladesh, libraries of the Law Faculty of leading Universities of Bangladesh, and libraries of legal NGOs of Bangladesh. This researcher had the good fortune of having access to these places as he is a lawyer and former student of the Law Faculty of Chittagong Universities. Moreover, as an employed development activist in Bangladesh, this writer also had access to information held by NGO. The Internet and proper equipment is also a part of the data collection process. Most of the United Nations (UN) documents are available on Internet and therefore easily accessible.

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Key Informants Interviews

The interview acts as the source of the primary data. It is nearly impossible to get sufficient information on the role of the Supreme Court as a human rights protector due to the nature of the data. Therefore interviews are used as the primary source of data. Twenty interviews were conducted with people from four different groups namely, judges and lawyers, academics and media personals, members of civil society and NGOs', and victims. In all four groups there were both male and female interviewees. The judges and lawyers who have been interviewed are working in the Supreme Court. The academics are involved with, and experts, in law. The media representatives deal with the court issues and do cover court reporting. Civil society representatives and NGO members are involved with *PIL* and *SAL*. In other words, they are well aware of the activities of the Supreme Court, especially about the protection of human rights that acts as the source of primary data.

The interviews were semi-structured. Questions were asked on specific topics rather than preparing a particular set of questions. Questions were adjusted accrding to the need in research, and also to match it with the nature of the research. Lewis and Dilon observed that qualitative research aims to provide an in-depth understanding of people's experiences, perspectives and histories in the context of their personal circumstances or settings. Among many distinctive features, it is characterized by a concern with exploring phenomena from the perspective of those being studied; with the use of unstructured methods which are sensitive to the social context of the study; the capture of data which are detailed, rich and complex; a mainly inductive rather than deductive analytic process (Lewis, J. & Dilon, L.,2003: 5). The above observation provides logical basis for my unstructured interviews as the issue is of a sensitive context with the need for complex data pattern. The interviewees were mainly asked questions on the following five topics together with supplementary questions.

1. The role of the Supreme Court of Bangladesh in protecting human rights.
2. The situations of representative suit and class action of the Supreme Court.

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3. The problems that are faced by the Supreme Court to protect human rights.
4. The influencing factors that could make the Supreme Court an active court.
5. The accessibility and affordability of the Supreme Court to people who are vulnerable.

Before interviewing, the researcher explained the total issue of the research and its background. Interviews were conducted with the full consent on the interviewees. It was quite difficult to find an equal number of male and female in every group. Especially, in the case of the first group since most practicing lawyers are male. Therefore particular care was given to the information provided by the female section considering it was representative.

1.8.1 Tools of the Research

a) Document Research:

The first tool of the research is mainly documentary analysis. In the first phase, important and related literatures were reviewed to understand the existing knowledge and theories. The textual analysis part of the research focused on:

1. Analysis of the existing text of the Supreme Court,
2. A study of legal cases,
3. Analysis of the court's decisions, and
4. Analysis of the related provisions of existing laws.

The research was conducted through a range of legal case studies that explain the trends of human rights protection by the Supreme Court. This was considered in the light of judicial activities such as the development of jurisprudence by a progressive interpretation of the constitutional provisions. The legal cases that were selected depended on the human rights issues on which they are based. Most cases were found in the Dhaka Law Reports (DLR), which hold the series of cases of the Bangladesh Supreme Court. This study reveals the effectiveness of the Supreme Court's role in human rights protection, namely women's rights, the rights contrary to custom or personal law, and the rights of underprivileged people. The study explains the causes of non-implementation of the judgments and indicates future potentialities.

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The document analysis covers the whole judicial position to explain the importance of the Supreme Court. The influencing factors are brought up as related issues. The Supreme Court is a state organ that is persuasive in its function with the support of other state organs. Therefore it is important to analyze the functional influences of other organs on the Supreme Court. Documents related with the cultural practice and application of international standards in the court has been brought. The literature regarding the socio-economic conditions and peoples' attitude towards the Supreme Court is highly important to assess the accessibility of the Supreme Court. Documents in this area have also been analyzed.

b) Interview:

The second tool that has been used by the researcher is interviews. This tool helps to access a kind of information that is unlikely to be found in available documents. Moreover, there is a greater possibility to get a picture of the current situation and existing problems and issues by way of interview. Interviews also serve as a tool for crosschecking the findings from the document research. In this regard, the researcher has conducted twenty interviews, dividing the interviewees into four groups, namely the lawyers and judges, the victims, the academicians and the persons from the NGOs. In every group individuals from different age groups and different backgrounds were selected. This was done in order to ensure diversity of the representative data. The researcher also made sure that each interview group were represented by both male and female respondents. Therefore the interview has provided information from the perspective of gender.

c) Basic Questionnaire:

A basic evaluation questionnaire was formed to check the findings from the above work of document research and interviews. The basic questionnaire was effective in detecting the central issue of peoples' thinking on a particular topic. There has been an attempt to assess the role of the Supreme Court, from the viewpoint of lawyers as well as non-lawyers. It also provided a scope to compare the views of people who are directly related with the Supreme Court and those who are not. The thirty people who gave their opinions were divided into two groups, namely lawyers

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and non-lawyers. It provided a chance to test the hypothesis of the research. At the center of the evaluation is a basic questionnaire. The question was, would you please comment on the human rights protection role of the Supreme Court of Bangladesh?

1.8.2 Data Collection Method

After the thesis proposal was approved, the researcher started reviewing literature related to the research topic. A list of literature was prepared and the source of their availability, and then the process to collect or access those proceeded. In this regard, the researcher visited Bangladesh, from 24th March to 23rd April 2004 for the purpose of data collection. The first part of research was in Dhaka, the capital of Bangladesh, and the city where the Supreme Court of Bangladesh is situated. Lists of the interviewees and opinion givers for the basic questionnaire are provided in Appendix D. Honorable colleagues of the researcher, chamber practitioners, were helpful in producing a list of victims whom have brought cases alleging human rights violations. Among those, a few are working with legal NGOs and provide these victims with legal representation. So, their knowledge about the position of victims is very credible. These legal practitioners also helped the researcher to conduct interviews with the victims.

A list of academic persons, members of the civil society and NGO persons has been prepared with the help of one former Member of the Bangladesh Law Commission (See Appendix A). Since he was a former Member of the Bangladesh Law Commission he is very knowledgeable and well-informed in this area. From 27th March the researcher has started work of data collection. The researcher went to the libraries of different Universities were visited, and also, different public libraries, NGOs, and the Bangladesh Bar Council Library. Interviews were conducted around the same time. On occasion the appointments to meet the interviewees were scheduled at their place of work or a telephone appointment was arranged. The researcher introduced himself and thesis issue before the interview. The researcher then proceeded with a semi-structured interview on the interview topics that were mentioned in Appendix B. Notes were taken during the interview and kept for further analysis.

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1.8.3 Data Analysis Procedure

After having obtained all the data, it was analyzed in the light of the conceptual framework of the thesis. The model used is quality assessment model. The framework has been built on certain premises surrounding the nature of qualitative inquiry. This framework is based on the view that the concerns which lie behind customary conceptions of quality have relevance for qualitative inquiry but need to be *reformulated and assessed quite differently,* within the domain of qualitative research. In other words, this qualitative research is assessed on its '*own terms*' within premises that are central to its purpose, nature, and conduct.

1.8.4 Provisions for Trustworthiness

The question of trustworthiness is a relevant question that can be asked, can we (the readers) place confidence in the outcome of the study? Or, can we believe what the researcher has reported? (Maykut and Morehouse, 1994). In this regard, it can be mentioned that multiple sources of data have been used to give a solid ground for trustworthiness. At the same time, the two research processes that have been followed contribute to the trustworthiness in this research. These were:

a. Use of multiple method of research*:* Multiple methods were used in this research, which can be described as the 'triangulation' process. The triangulations were used in selecting methodologies. The research was conducted by doing document research, interviews, and a basic questionnaire. These also act as cross-checking information.

b. Addressing both the sides*:* The researcher has focused on both the sides of the role of Supreme Court of Bangladesh. Data was collected about the effective and non-effective role of the Supreme Court in protecting human rights. Views from these two sides is reflected in the two research methodologies, namely in the interviews and the basic questionnaire. It gives a clear basis for the trustworthiness of the thesis. At the same time interviews were conducted that were independent agents of the Supreme Court. So these interviews provided information that covers both sides of the Supreme Court's role in protecting human rights.

1.8.5 Ethical Considerations

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The research is mainly a textual analysis. Here the ethical concern of the researcher is depending on the confidentiality of the documents used. Most of the documents are public and found in public libraries in the documentation cell of NGOs, and on the Internet. The researcher has used a proper recommendation from the Mahidol University for using the library and the other sources of information. The Court uses the Government policy documents and the case laws as references. So, using these in the research is not ethically wrong, but rather necessary for the purpose of this research. The researcher was explained in detail before taking the interview and their statement were recorded properly. These statements have been used, for analysis, without change or alteration to eliminate the risk of misinterpretation. For the interviews, only those statements that are of relevance with the purpose of the thesis have been quoted. The interviews are confidential and therefore the name of the interviewee has not been mentioned upon his/her request.

1.8.6 Limitations

a. It is nearly impossible to evaluate the quality of the judgments of the Supreme Court. Most of the documents on the judgment of the Supreme Court on human rights issues are merely descriptive and have little scope of evaluation. Actually, there are no documents that hold independent evaluation except for a few documents of some NGOs.

b. Problems of the Supreme Court in dealing with the human rights protection are delicate in nature. Therefore it limits the researcher's liberty. It is also very difficult to get access to the information in this regard. There are nearly no documents from the Supreme Court on this particular issue. So, the researcher has had to depend on the results of the interview to a great extent.

c. The research is about the human rights protection role of the Supreme Court of Bangladesh. Eventually, it limits the independence of the researcher. It is difficult to obtain other information from Judges and the rest of the interviewees considering the delicate nature of the issue of concern. At the same time the issues needed to be explained on each occasion to the interviewees. Judicial persons are very cautious in give information. Helpful NGO personnel provided information, even though they were influenced by their own agenda.

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d. The research is relating to an issue that is of interest to the Government. So, any broad criticism could not possible under these circumstances. Therefore the researcher has had to avoid unnecessary criticism of the authority in order to avoid be future problem.

e. Another limitation of the research is that, some concerned persons are not cooperative and do not want to be supportive by providing sufficient information. The Supreme Court Bar Council had many restrictions in the use of their library.

1.9 Organization of the Research Paper

This thesis is divided into six chapters. Chapter II describes the state of judiciary and its potential for human rights protection. This starts with the discussion of the position of the Bangladesh judiciary in relation with the socio-political development of the country. It explains the areas where the Supreme Court can contribute. That shows us the different approaches of the Supreme Court towards human rights protection that is potential for the Supreme Court. Then the conceptual framework of the thesis explains the conditional picture of human rights protection. Chapter III explains the structural effects of Bangladesh Supreme Court in protecting human rights. This chapter covers the organizational and non-organizational influences on human rights protection role of the Supreme Court.

Chapter IV explains the problems of the Supreme Court that are functional and issue based. This shows the difficulties of human rights protection on different issues. Chapter V is basically the assessment of Supreme Court's human rights protection role. That provides the analysis the human rights protection and its depending nature. The finding of the research exhibits the accessibility as the determining factor of judging the role of human rights protection of Supreme Court with the references of urgency for using the unorthodox methods to create the avenue for the under-privileged section of the society. Chapter VI is the conclusion of the research. This is mainly the re-examination of the results from analysis. The recommendations of the research are included in this chapter.

Following the introduction the research will describe the potential of the Supreme Court. It covers the areas where the Supreme Court can lay an effective role for human rights protection. Doing so, it goes beyond the judicial arena and brings the

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conceptual framework to understand the conditional picture of human rights protection. This helps to understand the position of the Supreme Court in Bangladesh with its historical background.

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CHAPTER 2

POTENTIALS OF HUMAN RIGHTS PROTECTION

Introduction

The Bangladesh Supreme Court is an organ with high potential for human rights protection. It has its foundation in the rich history of the Bangladesh judiciary. The judicial development of Bangladesh receives its strength from the constitutional provisions that have been recognized by the socio-political and constitutional development of the country. This chapter discusses these issues to explain the position of the Supreme Court. It explains the conditional picture of human rights protection and describes the conceptual framework of the thesis. This chapter also describes the situational aspect of human rights, such as the protection of child worker's rights, torture, and trafficking, as well as its effect on potentialities of the Supreme Court. It explains the *suo muto*, direction, or vigilance as tools of the Supreme Court. These tools have enormous potential in terms of a wide application over human rights protection. Moreover, it analyzes the multiple scope of the Supreme Court to protect human rights on various issues, namely the rights of political detainees, juveniles, foreign prisoners, marginalized groups, public health, and environment.

2.1 Sociopolitical Background of Bangladesh

The Ancient Background

Bangladesh has a long evolutionary history regarding its geographical boundary and area. *Aryannak Brahmin* and the religious books of Buddhism bear evidence that Bangladesh is one of the most ancient inhabited areas of this subcontinent. It was split into different regions under separate rules during the ancient Hindu reign. During the Muslim rule in India all these regions were brought to a unique realm and ruled over under the name Bangla or Bangala. During the British period it was reformed again with Bengali spoken areas of this region as a province of India, which was called Bengal. At the end of the British rule in 1947, the religious

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majority divided the population and Bengal into two parts. The Eastern part was called East Pakistan (Bangladesh) and the Western part was called West Bengal.

Journey of Bangladesh

Bangladesh emerged as a sovereign country after the fall of the Pakistani Army on December 16, 1971, after a nine month liberation war. Since then 26th March is celebrated as the National Independence Day and 16th December as the Victory Day. Bangladesh has a centralized administrative structure and the Constitution is based on the rule of law. The Constitution provides provisions for separation of powers between three key organs of the state, namely the executive, legislative, and judiciary. In practice, the executive and legislative exert considerable influence on the lower levels of the judiciary. With its 12th Constitutional amendment, which took effect on 6th August 1991, Bangladesh reverted from a system based on a presidential format back to a parliamentary system and is now pursuing the difficult path of a young democracy. It is a hope that the Supreme Court of Bangladesh will be able to play a meaningful role in developing a system of administrative law in accordance with its common law tradition. This would call for an activist approach towards the shaping of both substantive law of judicial control and the procedural remedies by which those principles of law are given effect. That role however, may be conditioned by political fortune (Fazal, M. A., 1990: 22).

Social Context of Bangladesh

Bangladesh is predominantly an agricultural country and densely populated with 146.7 million people on 147570 sq. km. (UNFPA report on the State of World Population 2003). Seventy percent of the work force is involved in agriculture, which accounts for 1/4 of the gross domestic product. According to the Government the literacy rate of Bangladesh is 63 percent (Statistical Notebook, 2003). With $ 360 per capital income it stands at 139th position in the Human Development Index (HDI) of the world (UNDP, Human Development Report, 2003). This indicates the immense poverty of people in general, which bars them from having access to costly judicial remedies. In addition, the Government plays a significant role in every sphere of life and frequently uses the police for political purposes to commit numerous human rights

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abuses (ASK, Human Rights Report, 1998: 8). The chronology of the violations of human rights suggests that the nature of systemic, institutional and cultural weaknesses is remaining as a primary concern.

Effects of Development

There is a strong relationship between development of the state and the functions of the Supreme Court. The structure that is determined by the development of the country has a reciprocal effect on activities of the Supreme Court and the state's response to the activities of the Supreme Court. The development trends in Bangladesh are emphasized in systematic judicial involvement. At the same time, the Supreme Court is being influenced by the development trends. Mr. Shawkat Mahmood, General Secretary of the National Press Club of Bangladesh, said in an interview that;

> In Bangladesh, the Supreme Court has a supportive role to create an environment that guarantees the rights of people for ensuring the development. The sense of people's safety can accelerate the productivity. That can lead to development. Higher Judiciary is an institution that can sustain in the context where it gets support for a smooth development. The sociopolitical development of the country is positively affecting the Supreme Court's activities (4th April 2004).

Further discussion in relation to the trends of socio-political development in Bangladesh is required. In the following table, renowned economist Prof Dr. Abul Barkat, (Farid, A. 2002: 55) shows the trends of socio-economic development of Bangladesh during the last 30 years.

Table 1: Trends of sociopolitical development in Bangladesh.

No	Indicators showing negative trend	Indicators showing positive trend
1	Black economy and associated plundering, crime, terrorism, illegal arms, muscle power, corruption, bribe, money laundering, bad governance,	Strengthening economic foundation; development of national capital; industrialization; economic capacity to run normal family economy;

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	repression, oppression, torture, prosecution, physical assault.	employment generation; institutional efficacy to deal with black money.
2	Rural to urban forced migration; number of people living in slum; informal sector; nuclear families; distress and deprivation of oppressed.	Poor and marginal farmers control over land; rural employment; real income/ wage; extended families.
3	Foreign grant-loan projects.	Local initiatives; incentives to potentials and resources; peoples participation in development.
4	Legal and illegal import and export; unnamed income; imbalanced economic growth and development.	Efficient use of human potentials and sources; use of capital for industrialization.
5	Real expenditure on unproductive sectors: military, administration, and protective security related area.	Good governance; justice; feeling of individual security; sector expenditure for human welfare.
6	Erosion of political values; criminalization of politics; sycophancy; politics as business investment; autocracy.	Politicians love for people; politician's patriotism knowledge-base and humanitarian ideology-based politics, democratic values.
7	Violence against women and children; women and child trafficking; acid throwing.	Real wage of female worker; protective security of women and child; Institutional responsibility.
8	Investment in election; competition of black money holders in election; distance between people and elected representatives.	Efficacy/utility of elected persons and institutions; peoples trust on the elected institutions.

From the above table it is clear that in Bangladesh both negative and positive trends of development are strong. It has shown that the black economy is growing with legal and illegal imports that increase labor migration and result in slumazition. These trends lead to a growing violation of women's rights and a larger gap between rich and

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poor. Ultimately, social unrest is causing human rights violations. On the other hand, the positive signs are that the local economy is getting stronger. This is a key factor in increasing wages for both men and women. Economic strength is shuffling the political structure and increasing democratization. This gives authority to the judiciary. The Supreme Court is a good agent in a democratic environment. Moreover, development trends are supporting democracy. These notions support strong judicial involvement. This trend is helping the Supreme Court to have more authority than the rest of the state organs. At the same time, it is also undeniable that corruption is plundering all institutional development. However, it is significant to mention some of the positive results that have evolved from judicial intervention, such as the financial sector reform, ensuring responsibility of elected people, contribution toward human welfare. These trends reveal the margin within which future hope on the Supreme Court can be placed.

2.1.1 Judicial Development Indicates Judicial Potentials

Different stages of judicial development are helpful in understanding the causes and nature of the structural problems of the Supreme Court that has a direct effect on its role in protecting human rights. The background of judicial development in Bangladesh stem from ancient times of the Indian sub-continent. The development process can be conveniently divided into four important periods, namely the Hindu period, the Muslim period, the British period and the Modern period. The Hindu period extended for nearly 1600 years before and after the beginning of the Christian era. The Muslim period began with the first major invasion by Muslims in the Indian sub-continent in 1100 A.D. The British period began with the consolidation of their power in 1757 A.D. in Indian sub-continent, and lasted for nearly two hundred years.

The Modern period begun with withdrawal of the British colonial rule from the Indian sub-continent in 1947 (Kulshreshth, V.D., 1981: 1). So, Bangladesh's legal system has evolved from an undated ancient Hindu period and up until the Modern period. It emanates from a mixed system of Indo-Mughal and English law. Common law and equity predominantly influence English law (Patwari, M., 1991: 9). But the colonial nature of the legal institutions has deep effect on general people. It took a long time to remove the masterly mask from the face of the judiciary. On the other

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hand, the bureaucratic influence on the judiciary was characteristic of the British period. That acts against human rights protection is gradually being eliminated.

The judicial development of Bangladesh shows its effects on the Supreme Court to protect human rights. The institutional development of the judiciary started in the Muslim period. Muslims conquered Bangla and continued to rule for about 500 years. Initially, it was Arab traders and missionaries, in the 11th Century, which spread the faith of Islam in the region. They initiated the judicial system, called *Haque,* which was headed by *Kaji*. By the end of the 16th Century Europeans started arriving. By promoting treason and very little fighting, Robert Clive of East India Company won the battle of *Plassey,* which marked the beginning of British rule in 1757 and continued till 1947 when the sub-continent was partitioned into India and Pakistan. The territory, now comprising Bangladesh, was the Eastern wing of Pakistan. The provisional Government of the new nation of Bangladesh was formed in Dhaka with Justice Abu Sayeed Choudhury as President, and Sheikh Mujibur Rahman, who was released from Pakistani prison in early 1972, as Prime Minister.

Initiation of the Constitution

The Proclamation of Independence was issued on 10th April, 1971 and proclaimed The Laws Continuance Enforcement Order, 1972. But there was no provision for the Supreme Court in those orders. The High Court was not established until 1972 under the High Court Order, 1972, which was published on 17th January 1972. Under this Order, the jurisdiction of the High Court of Bangladesh continued, as a Court of Record, with such original and other powers, as were exercisable in respect of the territories comprising Bangladesh, by the High Court of East Pakistan, at Dhaka before 26th March, 1972. The Court did not have any power to issue writs or directions upon the Government. Thereafter, when the Constitution came into force on the 16th December 1972, the Supreme Court of Bangladesh was established with the High Court Division and the Appellate Division (Rahman, R., 1986: 27). Bangladesh is a multiparty society where pluralism has been adopted as an integral part of political life of the people. After the independence of Bangladesh the Awami League, the political party that led the liberation war, was the leading party.

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2.1.2 Impact of Political Interference

The political context directly contributes to the constitutional development of Bangladesh that also shapes the Supreme Court. In Bangladesh the first parliamentary election, was held in March 1973, under the 1972 Constitution, with the Awami League winning a massive majority. This gave enormous authority to the Government. Applying that authority, in 1974, Sheikh Mujibur Rahman, the Prime Minister at the time, proclaimed a state of emergency and amended the Constitution so as to limit the powers of the legislative and judicial branches, establish an executive presidency, and institute a one-party system. On the 14th August 1975, mid-level army officers assassinated him, and successive military coups occurred on November 3rd and 7th, resulting in the emergence of Army Chief of Staff Gen. Ziaur Rahman (Zia), as strongman. Zia was elected as president in 1978. Then he revived the Constitution with an amendment that basically waived the judicial right to sue activities enumerated by the Martial Law. This also negatively contributes to the Supreme Court. At the same time it brought back the trend of democracy. In 1981, Zia was assassinated by dissident elements of the military (U.S. Department of States, Background Notes: Bangladesh, 2004).

Army Chief of Staff, Lt. Gen. H.M. Ershad assumed power in a bloodless coup in March 1982. Ershad dissolved the parliament, declared Martial Law, assumed the position of Chief Martial Law Administrator (CMLA) suspended the Constitution, and banned political activity. Ershad resigned as Chief of Army Staff, retired from military service, and was elected president in October 1986. By this time there was virtually no scope for the Supreme Court to act in restoring human rights under intense pressure from an undemocratic Government. Ershad resigned in December 1990 when he was faced by democratic uprising. In September 1991, the electorate approved changes to the Constitution, formally creating a parliamentary system and returning governing power to the office of the Prime Minister, in accordance with Bangladesh's original Constitution. This was the beginning and an opening to move foreword in ensuring an effective judiciary and hence a strong Supreme Court.

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Effects of Martial Law

Martial Law had negative effects on Supreme Court human rights protection. During Martial Law the Supreme Court could not act freely and it was subject to tremendous pressure from the Martial Law authority. Since 1972 Martial Law has been declared twice, once in 1975, which continued up to 1979 and another time in 1982, which continued up to 1986. The direct consequence of that was that the jurisdiction of the Supreme Court was curtailed so that it could not call into question the proclamations, regulations and orders of Martial Law, (Patwari, M., 1991: 19). Martial Law Regulation 1, 1982, issued on 24th March, specially stated, "All proceedings arising out of and in connection with writ petitions under Article 102 of the suspended Constitution shall abate." (ASK, Public Interest Litigation, 2003: 149). Due to this the Supreme Court lost its jurisdiction to examine the legality of Governmental actions. In ***Bangladesh v M. Salimullah***, (35 *DLR (Dhaka Law Report),* (AD) (1983) 1) the Supreme Court held that the suspension of the Constitution, by the above proclamation, had the effect of completely taking away the writ jurisdiction of the High Court Division, and, that in the absence of the writ jurisdiction neither the High Court Division nor the Appellate Division was competent to issue any order or writ application.

In 1986, the Constitution was revived. Accordingly the jurisdiction of the Supreme Court under Article 102 to issue *writs* and orders in relation to unlawful administrative actions of the Government and public bodies has been restored (The Constitutional Second Order, 1985). So, it has been found that the condition for the effective functioning of the Supreme Court very much depends on the political situation. The Martial Law provides an environment that is contrary with the basic norms of judicial independence. In Bangladesh there was a significant period of military rule.

It has become known, that during the time of Martial Law the Supreme Court suffered from its lack of legal strength and could not play a vital role in its protection of human rights. Revival of democracy has given the Supreme Court an authoritative position. This is reflected in a number of successful human rights cases. During the 1990s the number of human rights cases increased compared to previous years. This

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trend is getting stronger day by day and is evidence of the strength of the Supreme Court in a democratic environment.

2.1.3 Background of Supreme Court

After the independence of the Indian sub-continent in 1947 A.D. Bangladesh became a province of Pakistan, which was run in accordance with the provisions of the Government of India Act, 1935, in conjunction with the Indian Independence Act, 1947. Under the new constitutional arrangement, a new Federal Court of Pakistan was set up in Karachi (Constitutional Development (Pakistan) Vol. IV-B: 919). It was to exercise powers and jurisdictions over the territory comprising the former province of East Bengal. A new High Court for East Bengal was set up in Dhaka in 1947 (Constitutional Development (Pakistan) Vol. IV-B: 915). After the emergence of Bangladesh the High Court of East Pakistan was replaced by the High Court of Bangladesh (High Court of Bangladesh Order, 1972) and later by the Supreme Court of Bangladesh under the Constitution of Bangladesh, 1972. The Supreme Court of Bangladesh administers justice according to those laws which were in force in Bangladesh on the 25th March 1971, (Proclamation of Independence, 1972, Bangladesh Statutes: 3), subject to the provisions of the Constitution of Bangladesh and the consequential changes made by the competent authority.

The Bangladesh Supreme Court is mono-centric in nature. The permanent seat of the Supreme Court shall be in the capital, but sessions of the High Court Division may be held at such other place, or places, as the Chief Justice may, with the approval of the president, from time to time appoint (Article 100 of Bangladesh Constitution). So, it is clear that the nature of the Supreme Court of the Bangladesh is unitary and the structure of the judiciary has been formed by the Constitution of Bangladesh. The Constitution empowers the Supreme Court to issue writs of *Habeas Corpus, Mandamus, Qua-warrants, Certiorari and Prohibition,* (Patwari, M., 1991: 16). This is the potential source of authority for the Supreme Court to play a proactive role to address human rights.

Human rights protection by the judiciary gets strength from the evolution and constitutional provisions of Bangladesh. The development of the judiciary is not independent; rather it has overcome the tragic path of political history of Bangladesh.

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The Constitution of Bangladesh has provisions that support the full and free function of the judiciary. The silent feature of the Constitution inspires democratic values and a strong judiciary that can protect the rights of the people. In spite of the constitutional guarantee for justice and fair play to all people, the presence of institutions and availability of a capillary of laws, the justice system has failed to reach out to the common man as still most of the human rights issues do not reach the judiciary.

This is all the more unfortunate because: (a) Bangladesh was achieved through a Liberation War that aimed at justice for all, political, economic and social; and (b) Bangladesh has had a democracy reincarnated for over a decade. But the poor are deprived from access to the justice system of Bangladesh. While Bangladesh has shown a tendency towards legislating more, law enforcement has been flawed and weak and requires reform. However, there is a tireless urging of the need for law reform. Little wonder, there is a culture of impunity feeding largely on poor law enforcement.

The urgency of an efficient judiciary is an undisputed issue. This is clear to both the Government and the international community. It is true that many procedural weaknesses are causing delay in cases. There are certain types of court officers and associates, who are corrupt. This leads to an inefficient judiciary. The reform initiatives are aiming for a higher judiciary that is playing quite a significant role and setting many precedents to other state organs. Among the modification program the most recent is “The Judicial and Legal Capacity Building Project of Bangladesh” under the auspices of the World Bank 1999 – 2004. The program aimed at:

(i) a more efficient and transparent judicial system acting as a catalyst for ensuring rule of law and cost effective dispensation of justice for all segments of the society including the low-income group, many of whom are women; (ii) having a reformed court system with modern commercial laws and dispute resolution mechanism being in place thus improving the enabling environment for private sector led growth strategy; (iii) ensuring the integrity of the financial sector which is seriously undermined by a deficient legal framework, faulty recovery processes, and absence of enforcement; (iv) improve gender sensitivity through the improved court process (World Bank, 1999). These aims show the future direction of development of Bangladesh’s judiciary that is vital for the protection of human rights.

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2.1.4 Position of the Supreme Court

The Supreme Court of Bangladesh has a unique position that is confirmed by the Constitution as well as by other laws of the land. The Supreme Court needs to be effective in order to protect human rights. In the following paragraph the position of the Supreme Court is described from the perspective of the Constitution and other laws of the land. It can be ascertained from the basic questionnaires and that the Supreme Court is in a position to act effectively on human rights issues, but that it needs a strong judiciary with motivated judges.

a. Constitutional Position

The Constitution gives the Supreme Court a unique position. The Supreme Court holds the power to describe the constitutionality and therefore, the validity of acts of the executive Government, which is derived from two Articles of the Constitution. Article 7(2) solemnly declares that the Constitution is the solemn expression of the will of the people, the Supreme Law of the Republic and, if any other law is inconsistent with this Constitution, that other law shall to the extent of the inconsistency be void. The constitutional provision of Article 102 has paved the way for *judicial review*. Today it is well settled that when a higher court performs the role of expounding the Constitution and exercises power of declaring any law or administrative action, which may be inconsistent with the Constitution and hence void, the function of the court is known as "*judicial review*". Thus *judicial review* is the ultimate power of any court to declare unconstitutional and hence unenforceable, any law, any official action in proposed exercise of law, and any other action by a public official, which it deems to be in conflict with the Constitution.

Apart of its position as an active judiciary, the Supreme Court has institutional supremacy as confirmed by the Constitution. The Supreme Court also has the authority to give opinion. This is called the Supreme Court's '*advisory jurisdiction'* and it is informed so in Article 106 of the Constitution. It says that if at any time, it appears to the President that a question of law has arisen, or is likely to arise, which is of such nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, the court must exercise its advisory jurisdiction. The

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President may refer the question to the Appellate Division for consideration and the division may, after such hearing as it thinks fit, report its opinion thereon to the President. This article provides a prestigious position of the Appellate Division to deal with important national issues.

b. Position under Other Laws

The Supreme Court is recognized as an ultimate authority, not only by the Constitution, but it is also reflected in other laws of the land. Section 3 of the Code of Civil Procedure clearly subordinates the District Court to the High Court Division. Pursuant to Section 3, every civil court and court of small causes are subordinate to the High Court Division and the District Court. Ordinarily, the people do not consider the Supreme Court as a civil court. It also does not find a place in the Civil Courts Act 1887. But, as the Supreme Court is the terminal for all civil litigation and now dealing with the civil rights of the people, it is a civil court for all purposes. It is the place to reach a final determination in cases of both civil and criminal nature as it is the highest constitutional court of the state. It reveals that the Supreme Court of Bangladesh is in a position to address human rights issues under any authority. However, those rights need to declare by the Constitution. In this regard, a public assessment is to be done to assess the performance of the Supreme Court.

c. Public Assessment about the Supreme Court

The basic questionnaire shows that the Supreme Court of Bangladesh holds quite a significant position in relation to human rights protection. But, a functioning Supreme Court needs motivated judges. An evaluation was made, with the help of a basic questionnaire, to examine people's opinion on the position and performance of the Supreme Court. The result of the basic observations supports this researcher's arguments. 30 persons were interviewed and divided into two groups of lawyers and non-lawyers. One group was constituted of lawyers and judges; and the other groups was formed by persons from civil society, academics, NGOs, and victims etc. (A list of the interviewees is provided in appendix D). This is a non-representative survey. Each group was asked whether the performance of the Supreme Court is satisfying human rights protection or not? This is helpful in understanding people's opinion of

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the Supreme Court. Figure 1 shows the results of lawyer's opinion on the performance of the Supreme Court.

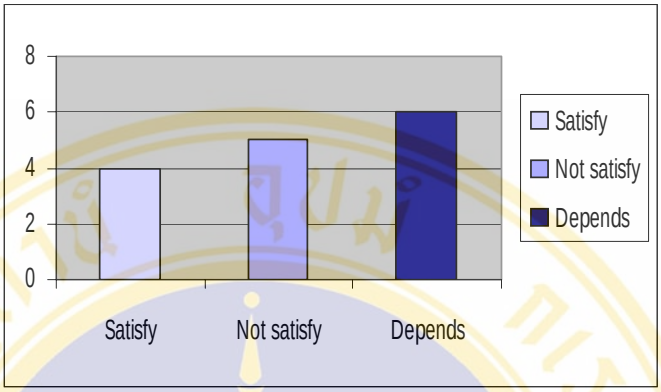

Figure 1: Results of the basic observations of the lawyers.

The result shows that 4 out of 15 lawyers said that they are satisfied with the Supreme Court's human rights protection role. Five said that they are not satisfied. But the interesting thing is that six agreed on the fact that it is not a matter of whether they are satisfied, but rather the process of human rights protection depends on the circumstances of each case. They explained that it depends on the facts of the case. Even though the Supreme Court holds a high position in the state mechanism politics may curtail its independence. This is similar with the opinion of non-lawyers, as shown in Figure 2.

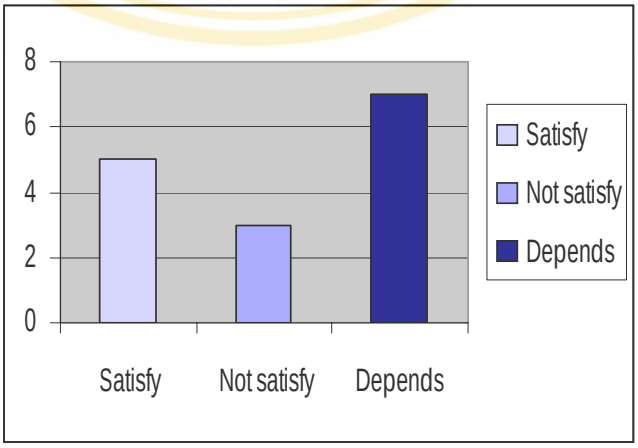

Figure 2: Results of the basic observation of the non-lawyers.

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The non-lawyers explained that political involvement in a case is a dimension that can keep the Supreme Court inactive. The issues of great public importance could be considered seriously and progressively. On the other hand, 5 out of 15 non-lawyers were satisfied with the human rights protection role of the Supreme Court. Three said that they were not satisfied. Most interviewee's answers were directed by the fact that the human rights protection role of the Supreme Court of Bangladesh depends very much on personal orientation of judges, flexible interpretation of laws, a strong independent judiciary, and on easy accessibility. They also believe that it depends on the circumstances and factual importance of each case as this determines its access to the Supreme Court (refer to Chapter III for a discussion on causes of limited access). They agreed little on the fact that the Supreme Court refrains from acting on sensitive issues. Rather they explained that human rights protection is a complex issue, and that socio-political factors are as the deciding factors for the Supreme Court to act upon. This picture becomes clearer when the results are compared. A comparison between the opinion of lawyers and non-lawyers is shown in Figure 3.

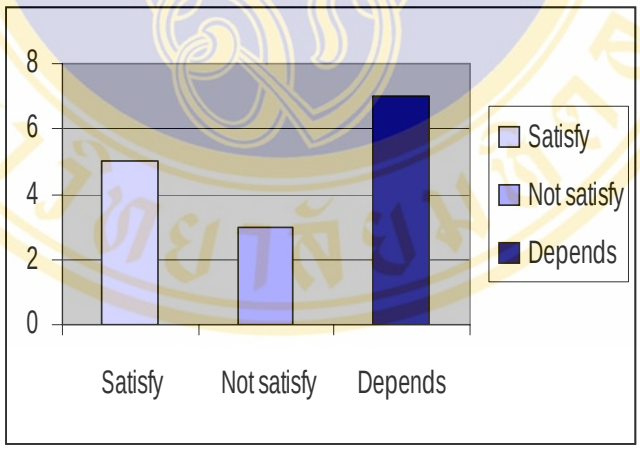

Figure 3: Comparison of opinions of lawyers and non-lawyers.

When the results of two sets of opinion are compared it is clear that the lawyers are more dissatisfied with the performance of the Supreme Court than the non-lawyers. It may be concluded from the above discussion that it is because lawyers are a section of people who are used to the issue of human rights within the Supreme Court and know more about the real technical situation than non-lawyers. Another

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reason may be that at the time of the study the Supreme Court lawyers were dominated by the political views of the opposition to the ruling Government and many judges are currently appointed by the existing Government. This has created a gap between the Bar and the Bench and has resulted in a lack of trust of the lawyers. On the other hand, the non-lawyers were more satisfied with the performance of the Supreme Court since they are, even if it is limited, still getting remedies for human rights violation. At the same time they identified causes of this limitation as the procedure is expensive and access is not for the general public.

The interesting part of the opinions is that there is tremendous similarity amongst the opinions of the two different groups. That is, the majority of the two groups believe the human rights protection performance of the Supreme Court depends on different factors rather than a single independent issue. For a discussion on those criterions or influencing factors refer to section 5.7 and 5.8. The study has identified that the Supreme Court has its acceptance amongst ordinary people, which places the Supreme Court in a vital position to protect human rights despite all its limitations. The conditions for effective human rights protection include a strong judiciary, flexible interpretation of laws, easy access to the Supreme Court, and on the personal orientation of judges.

2.2 Conditional Picture of Human Rights Protection

The human rights protection role of the Supreme Court of Bangladesh is set within a conditional context. Those conditions are the limitations of the Supreme Court's human rights protection role. Four main structural concepts will be argued, which need to be ensured for effective human rights protection, namely a strong Supreme Court, active and motivated judges, flexible interpretation of existing legal provisions, and easy access to the Supreme Court with affordable conditions for the ordinary people. All these four factors can ensure an effective Supreme Court in its role to protect human rights. This is the conceptual framework for this research. Figure 4 shows this conditional picture of human rights protection of the Supreme Court.

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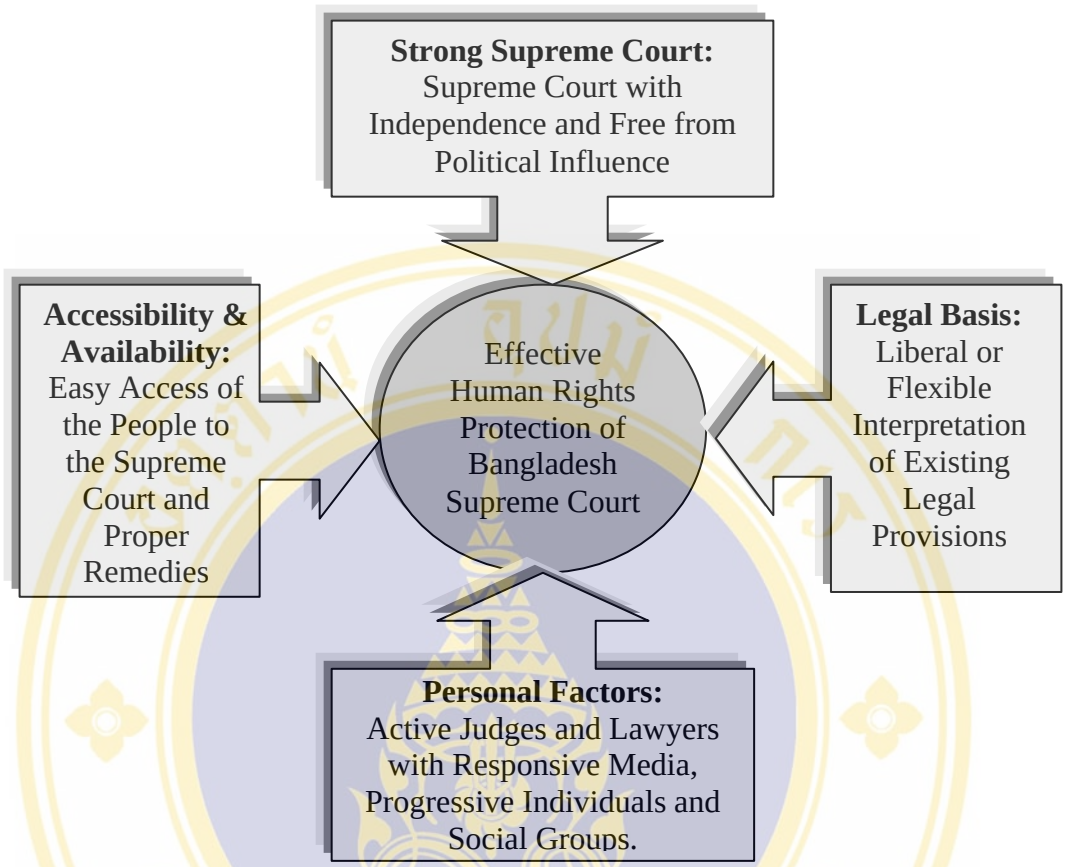

Figure 4: Conceptual framework of the thesis.

It shows that the performance of human rights protection by the Supreme Court very much depends on four different types of conditions. Firstly, it demands a strong Supreme Court, which is independent and free from political influences. Secondly, it requires a proactive Supreme Court that can interpret the law provisions flexibly. Thirdly, the personal orientation of the court, judges and lawyers, need to be supportive of human rights protection. The personal factor also includes a motivated media and civil society. Moreover, in the case of Bangladesh, the most obvious limitation is that of the court's lack of strength because they are not close to the people which should have great moral authority in a democracy. This shows that there is a lack of accessibility. The accessibility to the Supreme Court needs to be extended. These notions are vital for human rights protection by the Supreme Court.

These issues will be discussed in light of the following examples. Firstly, the strength of the Supreme Court relies upon it independence. The United Nations Basic

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Principles on the Independence of the Judiciary, which will be discussed in depth in this chapter, are designed to secure and promote the independence of the judiciary. The primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country. It will be explored whether Bangladesh's Supreme Court is performing that duty. It is true that the Supreme Court has acquired public confidence but this is often threatened by the poor performance of the Supreme Court in issues of political importance, women's interests, the marginalized section of society and issues that are important from the perspective of human rights but find contradiction is existing social practices. So, the research is focused around these issues and is used to explain the role of human rights protection by within a conceptual framework. Secondly, human rights protection depends on personal factors of judges and on their motivations. This is supported by the Bangalore Principles of Judicial Conduct 2001. The principles inform that public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the outmost importance in a modern democratic society. It is essential that judges, individually and collectively, respect and honor judicial office as a public trust and strives to enhance and maintain confidence in the judicial system. This shows that the personal capacity of the judges needs to be stronger so that they can apply an innovative approach and make things different.

This innovative approach commands the third condition of the conceptual framework. That is the necessity of flexible interpretation. The legal limitations can be overcome a flexible interpretation of the existing legal provisions in order to protect human rights. Flexible interpretation can provide the authority with the ability to address any particular issue within the jurisdiction of the Supreme Court. The expansion of *locus standi* is one example, where extended legal interpretation can give the right to sue to a wide number of people. This was illustrated in the Chapter I.

The condition of accessibility is another concept that works as a criterion to identify the extent of human rights protection of the Supreme Court. The vulnerable section always needs the support from the Supreme Court. If they cannot get access to the Supreme Court there would be no possibility to get protection. So, the factors that affect access to the Supreme Court need to be analyzed to assess the role of the Supreme Court in human rights protection. Section 4.6 of Chapter IV shows the causes

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of non-accessibility to the Supreme Court. After considering all these conditional factors the research describes the situational dimension of human rights protection.

2.3 Situational Dimension of Human Rights

The human rights situation of Bangladesh shows that there is sufficient scope for the Supreme Court to get involved and address those human rights issues due to its constitutional position. Bangladesh is a place where human rights violations have a multiphase dimension. The gravity of this is added by the existing socio-political system. Political immaturity is also causing intolerable results. It is difficult to find a single space in the public domain where some kind of human rights violation is not taking place. It is happening from individual to group level. Large-scale human rights violations also happen often. Ms. Jobaida Aktar, a victim of human rights violation, said that:

> It is not only the politically powerful, but also small groups, big masses or even an individual that are causing human rights violations. Some of the violations are caused due to the Government's negligence or from the careless attitude of the people. (Interviewed on 8th April 2004)

The variety of human rights violations results in different interest groups becoming involved. This complex nature is causing difficulties for the Supreme Court in addressing human rights concerns. For example, the rights of the slum dweller have an interest in the rights to housing, safety, and development. On the other hand, the urban authority has a duty to make the city a better place for living and needs to provide a planned place for slum dwellers to live These two opposite claims are made more complex with the question of political interest. The Supreme Court finds itself in a difficult position to make deliver judgments due to political interests. But, there are examples of human rights violations, where the Supreme Court can act effectively by applying its jurisdiction. These areas are the rights of domestic child workers, torture, and trafficking.

a. Specific Direction can Protect Rights of Domestic Child Workers

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The Supreme Court has potential to protect the rights of domestic child workers by providing strong directions to the appropriate governing authority. It is unfortunate that domestic child worker's rights are increasingly violated and there is no involvement of the Supreme Court to protect their rights. A survey by International Labor Organization (ILO) 2002 shows that 300,000 children work as domestic helpers in Dhaka city. Popular myths often confuse such work with notions of 'child fostering'. The reality is that, separated from their families, these children are prone to situations of violence and abuse. For instance, violence against female child domestic workers in Bangladesh (age group of 7-18) has increased by almost 2/3 since 2001. Figure 5 shows that, among the domestic workers, children between 13 to 18 years suffer more violations than children in other age groups.

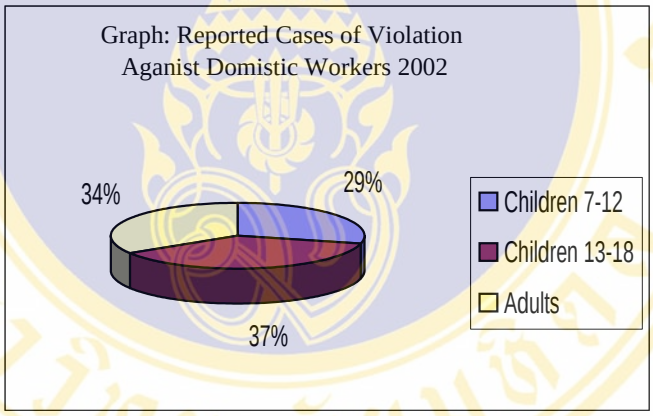

Figure 5: Reported cases of violence against domestic workers 2002.

The gravity and increase of this crime suggests that the cause is lack of directive involvement of any supreme authority. This is really a potential area for the Supreme Court to get involved to restore rights of domestic workers. It is undeniable that the rights of children need to be protected. So, it can be argued that there is scope for the Supreme Court to give direction to authorities to deal with this issue more seriously. This sort of specific direction is one potential for the future role of the Supreme Court to protect human rights. This may be done from the viewpoint of social responsibility.

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b. Supreme Court's Pro-activeness can Stop Torture

Torture can be stopped by the pro-active involvement of the Supreme Court, which is a potential for restoring rights against torture. Without sufficient involvement of the Supreme Court the human rights situation in relation to torture is degrading. It is the characteristic of every governing authority in Bangladesh to inflict torture on members of the opposition in order to ensure solid control over politics. Moreover, the government is not successful in stopping torture from occurring. This statement is supported a report, concerning Bangladesh, by Amnesty International in 2004. It has been said that the Government of Bangladesh has failed to implement safeguards against torture. Victims include suspected criminals, children and individuals detained on politically motivated grounds. Last year at least 13 people died, allegedly by torture, in police custody (Amnesty International Report on Bangladesh, 2004). The police denied allegations that the detainee's deaths were the result of torture. Mr. Enamul Haque Chowdhury claims to be a victim of torture. He is a senior journalist. He was arrested on 13 December 2002, and was accused of misquoting the Home Minister in a news agency report. Following his release from police custody on 5 January 2004, he said that he was beaten, tortured with electric shocks, and threatened with death at gunpoint. No official investigation was initiated into his allegations of torture. There is virtually no example that shows that the Supreme Court is concerned in stopping any torture. But, the Supreme Court is the only authoritative body that declares the Government to be responsible for such events. The Supreme Court needs to be more proactive in order to protect victims' rights against torture.

c. Supreme Court's Direction can Reduce Trafficking

The Supreme Court can contribute to reduce trafficking by providing directions to authorities This is another potential area for the Supreme Court to act in order to protect human rights. Degrading human rights violations in relation to trafficking shows that the Supreme Court is doing very little to stop it. Trafficking, both internal and cross border, is continuing. The issue of child trafficking issue is very critical. The fact is, most children are lured by false promises of marriage and job offers but turned to prostitution or other heinous activities. Boys, in the age group 0-6, are mainly

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trafficked to the Middle East as camel jockeys. In 2002, Bangladesh Shishu Adhikar Forum (BSAF), an organization on child rights, recorded 358 cases of trafficking in children which could be discerned from media reports. This was twice the amount of recorded cases from the previous year. Figure 6 is helpful in understanding the child trafficking situation. It shows the number of trafficked children in the year 2002, dividing them into male and female and age groups.

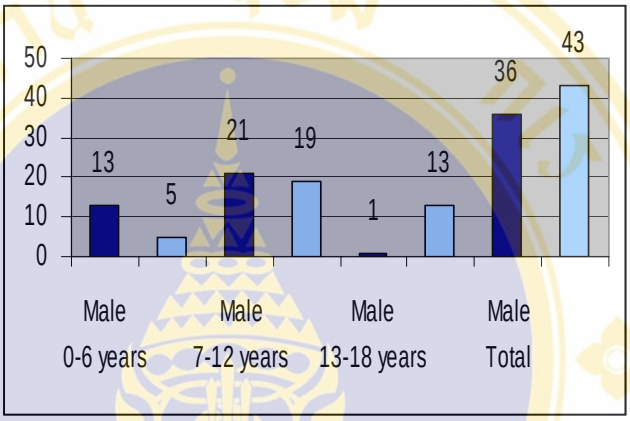

Figure 6: Number of recorded cases of child trafficking in 2002.

The gravity of the problem can be understood from Figure 6 and shows the urgency of the involvement of the Supreme Court. Ms. Jobaida Aktar, a victim of human rights violation, said that there are anti-trafficking laws in Bangladesh and that victims have tried their cases in the special court, but there is no example of direct involvement of the Supreme Court in this issue. So, the trafficking issue remains to be perceived as less important due to the lack of direct involvement of the Supreme Court (interviewed on 8th April 2004). This is causing the trafficking issue to be something of less concern. It can be argued that the Supreme Court can provide specific directions to the courts that deal with trafficking issues. This type of special care on trafficking, by the Supreme Court, can make this respected court active on trafficking issues and make it more serious and this in turn can bring about positive results in stopping trafficking. On the other hand, good monitoring of the special courts can support these courts in dealing with trafficking issues. This is obviously a potential area where the Supreme Court can play an effective role, due to its meaningful

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position given by the Constitution and other laws of the land. This research shows the potentials of Supreme Court from different legal perspectives.

2.4 Scopes in Constitutional Provisions

The Bangladesh Constitution has provided the Supreme Court with sufficient authority to protect human rights. The Constitution is the ultimate guarantee for its involvement in human rights issues. This authority can be meaningful if the Supreme Court can apply it in different human rights situations. Some of those situations have been described above. It is true that the Constitution of Bangladesh is modern with adequate guidelines for human rights protection. It incorporates all the important rights from the Universal Declaration of Human Rights (UDHR) in Part II and Part III under the heading of Fundamental Principle of State Policy (Part II) and Fundamental Rights (Part III). Those have been described in Chapter I of this thesis. Moreover, the rights that are declared under Fundamental Rights are judicially enforceable. Article 44 (1) of the Constitution provides that, "the right to move the (High Court Division) in accordance with [clause (1)] of Article 102, for the enforcement of the rights conferred by this Part [Fundamental Rights] is guaranteed."

The *writ* jurisdiction of the Supreme Court provides the ultimate scope for it to guarantee the human rights provisions for all citizens. Article 102 of the Constitution provides the *writ* jurisdiction to the '*person aggrieved*'. Pursuant to Article 102 it is possible to enforce the fundamental rights of the aggrieved person. Article 105 of Constitution provides the Supreme Court with *review* jurisdiction. This is a provision that virtually enables the Supreme Court to act against the decisions of the lower courts that are not, in comparison with the Supreme Court, independent and are influenced by the executive. This may occur in relation to issues where the lower courts are not functioning proper and therefore it has created public dissatisfaction and mistrust. Mr. Fazlul Haque, executive director of Bangladesh Legal Aid and Service Trust (BLAST), told in his interview;

> This is the provision that shows how Supreme Court can protect those human rights that are not brought before it directly. (Interviewed on 6th April 2004)

The scope of this provision is elaborated further under the section about Judicial Activism in this chapter. This will be helpful in understanding the strength of the

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Supreme Court and nature of its application in human rights issues. At the same time, the notion of *fair trial* can support the Supreme Court in exercising the it's jurisdiction discussed above.

Constitutional Guarantee for Fair Trail

The notion of '*fair trail'* is guaranteed by the Constitution. This is supporting the Supreme Court's role to protect human rights. The urgency of '*fair trail'* is inseparable from the Supreme Court's authority in its protection of human rights. The components of *fair trial* are as follows:

(1) The trial system must be free, impartial and independent;
(2) It should be open and public;
(3) The parties must be subject to the same kind of law;
(4) The right to self-defence has to be ensured; and
(5) No enactment of laws after commission of the crime i.e. no *retrospective* legislation.

These components of fair trial are guaranteed by the Constitution as well as by other laws of the land. Article 35(3) of the Constitution stresses the provision of *'public trial'* by an independent and impartial court or tribunal. The essence of this is to provide a fair trial. Section 352 of the Criminal Procedure Code (CrPC) makes provision for public trial. In fact, section 352 of the CrPC confers discretion on the court to restrict admission or hold the trial in the jail premises if the necessity arises. These laws provide enough legal scope to act on human rights issues under the notion of *fair trial* (Malik, S., 2003: Human Security in Bangladesh).

Even though there are enough constitutional, as well as other legal provisions available, for the protection of human rights, the reality is not satisfactory. The UNDP Report 2002 paints a troublesome picture;

> The dominating public perception that remains today is one of widespread human security violations, especially against the poor and the disadvantaged, and an inefficient, complex and corrupt criminal justice system operating in an anti-poor environment. (UNDP Report 2002)

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On the other hand, Dr. Shah Alam, the former member of the Bangladesh Law Commission, believes that the Supreme Court has the capacity to improve the human rights situation of the country, since it is the only trusted body with sufficient authority to deal with human rights issues (interviewed on 29th March 2004). But, it needs to be fully independent, free from interference from the executive, a committed Bar and Bench that are free from partisan views, and an active judiciary to implement human rights provisions. It is undeniable that the Supreme Court is strengthened through practicing the notion of *'fair trial'*, which is getting shape in democratic environment.

2.5 Potentials through Democratic Standard

The Supreme Court of Bangladesh is acting better in protecting human rights in a democratic environment. In a democratic political environment it is easy for the court to recognize democratic values as a source of strength for a strong judiciary. The democratic notion of respecting rights of all individuals, irrespective of their differences, is a standard that helps to produce better judgment. In a democratic environment judicial management can be people oriented with people's best interests as a priority. One of the democratic standards for the judiciary is its independence. The independence of the judiciary is a fundamental feature of the Constitution. Yet, more than 30 years after the founding of the modern state of Bangladesh, the judiciary remains subservient to an all-powerful executive. This is the area where the Supreme Court needs to produce strong democratic values.

It is a good sign that the Supreme Court has given direction for the separation of the judiciary from the executive. This was only possible in a democratic environment. This has been appreciated by the UN Special Rapporteur that the separation was articulated in the judgment of the Supreme Court of Bangladesh on 2 December 1999 in the case of ***Government of Bangladesh and Others v Md. Masdan Hossain and Others*** (Supreme Court of Bangladesh, Appellate Division, Civil Appeal No. 79 of 1999). In its judgment the Supreme Court ordered, inter alia, the separation of the subordinate judiciary from the state executive so as to make the subordinate judiciary fully independent from the executive. Between1997-2001, the Supreme Court issued binding judicial directives requiring the Government to immediately separate the judiciary from the control of the executive.

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This judgment is as a landmark decision and should serve as a precedent for courts in other countries to follow in order to provide an independent judiciary. Particularly Commonwealth countries (Commission on Human Rights, *Thematic Report of the Special Rapporteur on the Independence of Judges and Lawyers* 2001, Report no E/CN. 4/2001/65, Para-33). However, the Government has adopted a strategy of procrastination and this has resulted in a public crisis of confidence in the judiciary (Islam, M. R. & Solaiman, S. M. 2002: in Australian Journal on Asian Law).

The political authority is now under real pressure and has undertaken continuing programs to ensure the separation. The current Minister of Judicial Affairs has said that it will take a few more years, as it needs to appoint judges to the vacant posts as a result of the magistrates leaving judicial function. The Government has already established the Judicial Service Commission. This means that there will only be gradual change if the Supreme Court can remain strong in its position. So, it is evident that the Supreme Court can take effective steps, which is shown to be supported by the democratic process of the country. Similarly, the Supreme Court has potential to contribute to democratic values. This contribution can be understood by explaining the Supreme Court's contribution to democracy, to good governance, and for building people's confidence.

a. Supreme Court Contributes to Democratic Process

The Supreme Court has potential to establish democratic process by delivering decisions on politically important cases, in light of current human rights issues and its sole authority to decide upon those issues. This potential is exemplified from matters that have dealt with by the Supreme Court on the functioning of the democratic process. This facilitates the development of democracy in the country and hence it helps to establish a mechanism that supports human rights. One example is ***Md. Idrisur Rahman v Shahiduddin Ahmed and Others*** (Writ Petition no 138/94; 19 BLD (HCD) 1999: 291). In this case the appointment of a Chief Metropolitan Magistrate, without prior consultation with the Supreme Court, was challenged in 1994. This case was decided in favor of the petitioner in 1999 which the Appellate Division later affirmed. So, this decision supports the proposition that such appointment needs prior consultation with the Supreme Court. This reflects a democratic value, and came into

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force with the support of the Supreme Court. In another case, ***Saiful Islam Dilder v Government of Bangladesh and others*** (50 DLR, 1998: 318), the extradition of Indian tribal leader Anup Chetia was challenged. As it is known that it is against human rights and democratic process to extradite someone against his will, and the person who is under threat, the Government abstained from extraditing him to India after a decision by the Supreme Court to not extradite. This kind of approach of the Supreme Court helps to enrich democratic values. This is a potential area where the Supreme Court can ultimately contribute for human rights protection.

b. Supreme Court Promotes Good Governance

The Supreme Court can help to build a political structure that supports people's rights and hence promotes good governance. It means that the Supreme Court is a potential organ that can contribute to the democratic process by improving good governance. Henry Sidgwick, a renowned academic, argues that the importance of the judiciary in political construction is profound rather than prominent. On the other hand, in popular discussion of forms and changes of the Government, the judicial organ often drops out of sight. This is defined by law and realized in its judicial administration, both as between one private citizen and another, and as between private citizens and members of the Government (Harold, J., 1992: 54).

So, the judicial administration can reduce the gap between the private citizens and their public life. This can contribute to promote governance. By contributing to the promotion of good governance, the Supreme Court can ultimately support human rights for ordinary people as in such situations people can obtain their rights from the state. The state can become the protector of rights for ordinary citizens. In Bangladesh the Supreme Court is trying to improve governance by giving political directions and advisory opinions in cases where it has been asked to do so. This is a positive sign that can be helpful in promoting good governance and support to build people's confidence the Supreme Court.

c. Supreme Court Builds People's Confidence

The Supreme Court can gain people's confidence through its progressive activities, by which it can come closer to people, and address human rights issues and

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result in building people's confidence in the Supreme Court. The Supreme Court is increasingly pushing for activism which means it is gradually gaining people's confidence. It is true that the judiciary can gain this kind of position by continuous actions only possible in convenient circumstances. It has been said that judiciary has a role to create these convenient circumstances through its strong presence in providing direction to the related bodies of the state. In other words, it is the duty of the judiciary to cope with changing situations. According to Chief Justice Buger:

> In the final third of the century we are still trying to operate courts with fundamentally the same basic methods, the same procedures and the same machinery, Roscoe Pound said were not good enough in 1906. (Chief Justice Warren Burger, 1970: American Bar Association)

In a democratic society the court system plays an essential role in questioning administrative decisions that are inconsistent with supreme law. In this regard, courts have to be progressive and gain a strong position to help the vulnerable and deny all odds against it. Chief justice Burger has noted the necessity and the difficulty of this task and has said that:

> A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people. (Chief Justice Warren Burger, 1970: American Bar Association)

So, it is the responsibility and choice of the Supreme Court to work to retain the confidence of ordinary people. This depends on timely response to people's need. The protection of people's rights, when they need, is the most important issue in ensuring a progressive role of the Supreme Court. It is important that people feel that they can place their trust with the Supreme Court and that they can obtain remedies from the Supreme Court. The Bangladesh Supreme Court has potential to act under these circumstances by consistently using different approaches, which can be interpreted within the existing scope available to the Supreme Court.

2.6 Scope of Supreme Court Approach

The Bangladesh Supreme Court applies different types of approaches in dealing with different types of human rights violations by using its potential to address

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different areas of human rights violations. This variation in approach is a great potential that can support the Supreme Court as a protector of human rights. It is true that all human rights violations cannot receive similar treatment by the Supreme Court. These different approaches are shown in Figure 7.

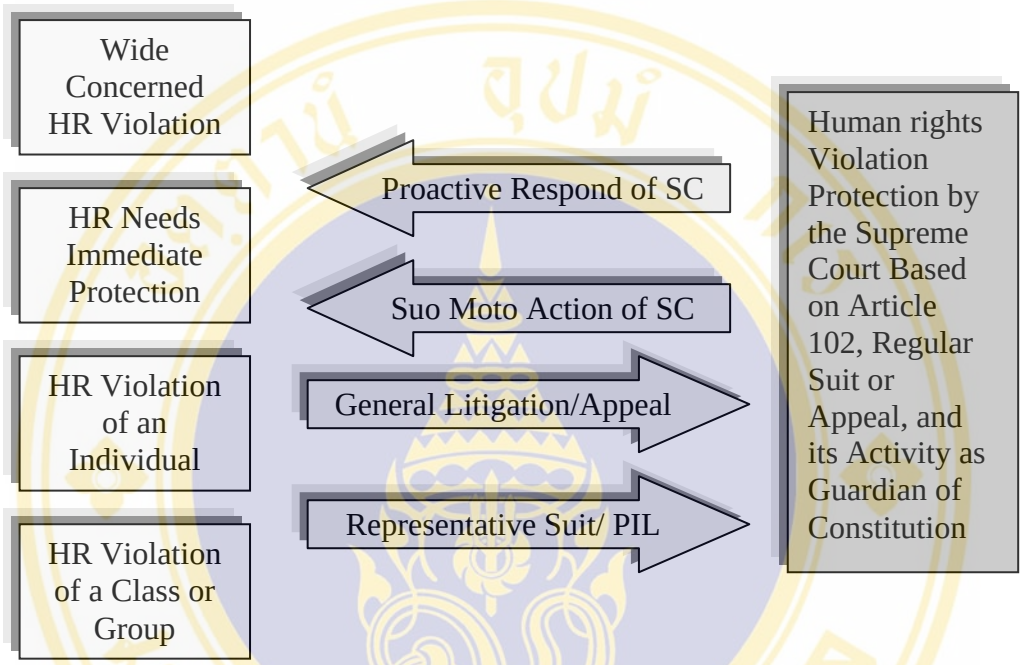

Figure 7: Human rights protection by the Supreme Court.

From Figure 7 it can be discerned that the Supreme Court has developed a tradition to protect human rights by using different approaches. Firstly, the practice of *PIL* is one approach that is encouraging the Supreme Court to become pro-active. It is one way that the court can provide remedies for victims. This *PIL* approach is basically applied where a human rights violation has been inflicted on a wide range of people. In this regard, remedies are claimed by a representative of the people. Secondly, the general approach of the Supreme Court to protect human rights is by deciding on regular suits. Dr. Faustina Perera, a renowned researcher, is of the view that the court protects human rights mostly in regular *suits, appeal or writ.* The individuals usually proceed with their issue, however, this is time consuming and the court shows little action in this regard (interviewed on 8th April 2004).

Thirdly, the notion of *suo muto* bears evidence of action by the Supreme Court. *Suo muto* is helpful in bringing remedies to the door of the victim. This is usually a

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situation that is immediate in nature. Fourthly, the Supreme Court is pro-active where human rights issues are of great serious nature and has wide concern. Often this type of case involves human rights issues that are more expressive than others. The court is selective in accepting this kind of case, but if it comes under consideration of the Supreme Court it takes less time and receives a more active involvement of the Supreme Court. This involvement includes flexible interpretation of laws, such as extension of the concept of *locus standi*. This approach is helpful in understanding the wide capacity of the Supreme Court to deal with human rights issues. This is obviously an area of potential where the Supreme Court can act in order to protect human rights.

Supreme Court Extents Locus Standi

The Bangladesh Supreme Court is entertaining human rights cases by extending *locus standi* by giving the right to sue to other parties who are not directly affected by the violation. This is a great advancement towards human rights protection. As the person who is victim cannot always access the Supreme Court, it demands the eligibility of another person to sue in favor of him/her. But, the Supreme Court's narrow interpretation acts against this process. The Supreme Court has overcome this traditional interpretational practice and is expanding its scope for a broader interpretation of existing laws. Especially it interprets the notion of *locus standi* flexibly which in turn enables a wide range of people to sue on human rights issues. One case is very noteworthy in this respect. In ***Kazi Mukhlesur Rahman v Bangladesh*** **(Berubari case),** (26, DLR, SC, 1974: 44) the Supreme Court's human rights protection, in a way, represents *PIL* In this case the applicant challenged an important treaty between India and Bangladesh regarding the exchange of territory. The judgment of the case clearly re-interpreted a citizen's rights vis-à-vis the power of the state. The case was dismissed on ground of prematurely of the matters, but it contributed to the broadening of the concept of *locus standi*. Sayem CJ said:

> It appears to us that the question of *locus standi* does not involve the court's jurisdiction to hear a person but of the competency of the person to claim a hearing. So, that the question is one of discretion, which the court exercises

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upon due consideration of the facts and circumstances of each case. (26 DLR (SC), 1974: 44)

In this decision the Supreme Court took a liberal view to interpret the notion of *locus standi*. The Supreme Court gave standing to seek remedies from the Supreme Court, even though the rights claimed were general in nature and he was not more eligible to claim than any other citizen in the country. The Supreme Court recognized the limited right to give *locus standi*. Basically, this sort of interpretation is a result of judicial activism. This indicates that the Bangladesh Supreme Court has started activism in certain areas with the support of constitutional provisions and social pressure for a progressive judiciary.

2.6.1 Supreme Court Practices Judicial Activism

The Bangladesh Supreme Court is practicing judicial activism in certain areas and is helping to protect human rights. It is giving broad and flexible meaning of Article 102 of the Bangladesh Constitution that enables the Supreme Court to get involved in protecting the rights declared in the Constitution. Judicial activism can be used as a weapon in giving directions to the Government. The Supreme Court is in a developing stage with regards to judicial activism, which is vital for protecting human rights. Judicial activism is a judicial power, which is illustrated in the case of ***A.T. Mridha v State*** (25 DLR, Supreme Court, Bangladesh). The exposition of the principles of law was welcomed in the Commonwealth Law Report in 1972 by terming the exposition as “bold judicial power”. In the Mridha case it was said that the High Court has power to take corrective measures in the interest of justice. Moreover, this power is exercisable over all the courts within the territory of Bangladesh. So, it is a potential for the Supreme Court to perform human rights protection by extending the meaning of Article 102 of Constitution.

Supreme Court Extends Article 102

The progressive application of Article 102 by the Supreme Court of Bangladesh is one way to expand its scope, and to get redress from the Supreme Court by ordinary people. For example, the Supreme Court of Bangladesh makes references

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to the decisions of the Supreme Courts of other countries in order to be pro-active in addressing various substantive and procedural obstacles. The Indian Supreme Court held that, when injustice occurs to a person and that person, by reason of poverty or disability or socially or economically disadvantaged position, cannot approach the courts for redress, then any member of the public, or any social action group acting *bona fide* in the interest of that person, can approach the court for redress (Kanniah, R., 1988: 57).

This opened a window of opportunity for a person to precede other than the *aggrieved person*. The doctrine of *locus standi* was extended in this way. The court proceeded further in that it started accepting letters and postcards from the public complaining of injustices and converted these into writ petitions. The Bangladesh Supreme Court adopted this development and extended the scope of Article 102. In the **FAP 20 case**, Mustofa Kamal J. begins his judgment by saying that, Article 102 of Bangladesh Constitution is not isolated, rather it is a part of the over-all constitutional scheme (Kamal, M. ,1994: 161). Justice Amir-ul Islam extended the notion of '*aggrieved person'* and said that:

> There is no hard and fast meaning that could be ascribed to the term '*aggrieved person*'. The meaning of the term '*aggrieved person*' is to be determined with reference to the facts and circumstances of each case. (***Zamindar Ahmed vGovernment of Bangladesh*** 34 DLR, 1977)

This effectively removed the strict meaning of *aggrieved person* under Article 102, which is now interpreted liberally in giving broad scope for *PIL* and representative suit. This is the basic normative development in the field of human rights protection by the Supreme Court. This extension is facilitated by the application of certain tools that are available to the Supreme Court.

2.6 .2 Supreme Court Uses its Tools for Protection

The Bangladesh Supreme Court is currently successfully using different tools for addressing human rights issues. Some of those are effective in certain issues. The *suo muto* is applied effectively against *hartal* (political protest), the Supreme Court's

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direction can be effective against corruption, and vigilance on the criminal justice system can help to bring about positive protection of human rights.

a. Using Suo Motu Against Hartal

The Bangladesh Supreme Court has used *sou motu* as a tool against *hartal*. *Hartal* is a type of political protest mainly exercised in Bangladesh causing enormous loss of life and assets. It creates horrors among ordinary people. But, the major political party uses it as a political tool. They virtually force the stopping of all vehicles and close all offices, schools, and shops. This causes tremendous human rights violations. The Supreme Court issued a *suo motu* rule in ***The State v Md. Zillur Rahman and Others,*** (19 DLR, 1999: 303) where the legality of *hartal* was assessed in the light of offences against public tranquility under Sections 141 to 160 of the Penal Code. It was decided that decision to observe *hartal* by five or more person's amount to unlawful assembly only when they decide to compel others to do the same. This is a major potential of the Supreme Court for protecting human rights of ordinary people.

b. Using Direction against Corruption

Corruption is an issue that is causing serious trouble to human rights in every sphere of national life. This can be curbed by the specific directions of the Supreme Court to specific organs of the state. The Supreme Court's authority to provide direction is a strong tool that can support its human rights protection activities. Corruption can be addressed by using this tool effectively. It is true that the Supreme Court is not doing enough to curb corruption. This is causing degrading situations, not only for the rights of ordinary people, but it is also destroying development potential. Former Chief Justice Mustafa Kamal said that the basic problem of maintaining an ethical regime, in any nation's life, is the existence of an entrenched belief of a powerful group of politicians, bureaucrats, business and industrial personalities, that although all human beings are equal, they are more equal than others. Law and judicial systems exist for those who are less equal than them while they float above the law and. The arms of the court are not long enough to reach them. This dichotomy in the day to day affairs of a nation is a breeding ground of corruption (Speech of Chief

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Justice Mustafa Kamal, October 13, 1999 in a plenary Session of the 9th International Anti-Corruption Conference held in Durban, South Africa). But, as a proactive judiciary the Bangladesh Supreme Court has potential to act against corruption with its existing capacity.

c. Vigilance Towards Criminal Justice System (CJS)

Despite enormous human rights violation, due to the lack of efficiency of CJS, it can be improved by the active direction and vigilance of the Supreme Court on the performance of the CJS. To remain vigilant is a way that can reduce corruption within the judicial system. It is true that there is corruption within the CJS, which ultimately affects the performance of the Supreme Court as it is the superintending organ of the CJS of the country. Pervasive corrupt influence of 'politics' is clearly at the root of the skepticism with regards to the CJS. The firm belief is that money can buy anything and if money fails, appropriate and proper 'connections' can take any criminal out of any charge, rightly or wrongly, is the foundation of much of the skepticism about the CJS (Malik, S., 2003: Human Security in Bangladesh). Mr. Zakir Husain, an academic, said that in this case the Supreme Court is totally empowered to scrutiny all the issues of CJS with its review jurisdiction. Moreover, the Supreme Court can monitor the activities of the lower judiciary. Through this potential the Supreme Court can take effective measures for ensuring human rights protection by the lower judiciary. Basically, the trend of judicial development can facilitate the enforcement of certain types of rights that are getting the proper protection from the Supreme Court. Those rights are described below.

2.7 Juvenile's Rights are Protected

Juvenile's rights are example of an area where the Supreme Court is acting promptly to protect their rights. Sometimes the governing executive through its direction violates juvenile's rights on different levels. One example is where the accused juvenile is kept with prisoners in jail even though there are express law provisions for keeping them in correction centers. So, the Supreme Court comes forward in protecting the juvenile from the unjustified decision of the executive officers. In one case it was revealed that 38 boys and 7 girls of tender ages that had

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been arrested on different charges of delinquency had been kept in 4 jails of the Sylhet Division. As a result, these juveniles, whom had the chance to improve in the confines of a correction center, lost all possibilities of such rectification. Rather, they were exposed to situations where they were to cope with serious criminals in jails. Juveniles are to be placed in Homes for Correction rather than being kept in jails with criminals. According to "Child Act, 1974" juveniles are to be tried in the Juvenile Court, and before and after sentencing they are to be placed in "Homes for Correction" (The Bangladesh Observer, April 24, 2004).

In April 2003 the High Court directed the Government to house accused juveniles, apart from other prisoners, and to transfer them to Correctional Homes expeditiously. The court also directed the Government to include child rights organization representatives on the list of non-official jail visitors. This shows that the Supreme Court is acting on juvenile issues despite being faced with implementation difficulties. This is an area where the Supreme Court contributes to curb the violations of juvenile's rights.

2.8 Protection of Foreign Prisoner's Rights

The Bangladesh Supreme Court acts proactively to protect the rights of foreign prisoner's. It acknowledges this in the form of simple application. The Supreme Court is active enough to guide the authorities to implement its decision even though it has suffered from little cooperation from the executive authority. In 2001, the High Court Division gave specific directions and made far-reaching observations in a case brought within its epistolary jurisdiction. This case (***Dr. Faustina Pereira v The State***) was based on a letter written to the Chief Justice which brought his attention to the plight of foreign prisoners in the Dhaka Central Jail whom languish therein despite having served out their sentences long ago.

The Court, having expressed its discontent with the concerned Government departments and directed a constructive duty upon the Government, the Court also made certain recommendations, such as the setting up of separate cells in the Ministry of Foreign Affairs and the Office of the Inspector General of Prisons (IGP) to facilitate the timely release and repatriation of the prisoners. The IGP was also directed to furnish full particulars of the remainder prisoners across the country and to take steps

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for their release and rehabilitation. This is a good example where the honest expression of the Supreme Court in protecting the rights of foreign prisoners can be found.

2.9 Protection of Public Health

The Supreme Court takes seriously and acts promptly with regards to the issue of public health to provide sufficient remedies to persons who suffer due to lack of sufficient care from the authority. In a recent case the Supreme Court contributed to protect public health. This is also an example of a case that was promoted and brought about by mostly NGOs or persons from civil society. In ***Dr. Mohiuddin Farooque v Bangladesh & Others case*** (WP No. 867/1997 Supreme Court, Bangladesh), the petitioner, Dr. Mohiuddin Farooque, Secretary General of Bangladesh Environmental Lawyers Association (BELA), bought a 1000 ml bottle of a soft drink brand named PEPSI, produced by the Bangladesh Beverage Industries Limited, for consumption. He found that the liquid in it contained various foreign materials and substances including dead insects, sediments etc. It was physically examined and the fact was admitted in Bangladesh Standard Testing Institute (BSTI) and by the Institute of Public Health. The petition was filed and moved, alleging that the presence of such materials and substances were the result of the utter failure and negligence in maintaining an acceptable quality.

It is a detrimental act to human and public health under various laws of the country and the Constitution of Bangladesh. It was also stated that the authority had failed to take satisfactory steps to protect the right of the petitioners to public health. After hearing the matter the High Court Division issued show cause notice on the Ministry, BSTI, and the Institute of Public Health for their failure to take appropriate action against the Pepsi Cola manufacturer. The Court also asked the Bangladesh Beverage Industries Ltd to show causes, that why its license to manufacture Pepsi Cola should not be cancelled. This shows the level of Supreme Court action in issues concerning public health. The court gives serious attention to public health issues and it cooperates with different social groups in order to support this issue.

2.10 Right to Safe Environment is Protected

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The Supreme Court of Bangladesh has started its activism with regards to environmental issues and it acts proactively in protecting the rights to safe environment by providing broad interpretation of legal provisions and rights. There is hardly any example of environmental claim where the Supreme Court does not provide a relatively flexible interpretation of laws to address the facts. So, it is obviously a good sign. This shows that the Supreme Court of Bangladesh is moving forward to expand its limitations for the application of wide human rights norms n order to protect the right to safe environment. There are certain examples, where the Supreme Court has extended the rights declared in the Constitution and has encompassed certain provisions of the international human rights laws. In ***Dr. Mohiuddin Farooque v Bangladesh and Others*** (WP no 300/1995), Dr. Farooque's submission was that, although the right to a safe and healthy environment has not been directly specified in the Constitution as a fundamental right, such a right is inherent and integrated in the 'right to life' as enshrined in Article 32 of the Constitution (no person shall be deprived of life). Hence, the right to safe environment is also a fundamental right under Article 32, being supported by Article 31 that ensures that no action detrimental to life, body or property could be taken. After hearing these submissions the court accepted the arguments and took action.

This is the way in which the Supreme Court accepted the notion of human rights standards. Dr. Faustina Pereira has expressed her concern by saying that, it is important to have judges who are creative and try to promote human rights with reference to the universal notion of human rights. So, it is found that the Supreme Court is very prompt in applying the notion of human rights to protect the environment (interviewed on 8th April 2004). Advocate Khosru said, in his interview, that the constitutional provisions provide wide discretion for the Supreme Court to act on the human rights provisions, which is related to the fundamental rights declared by the Constitution (interviewed on 19th April 2004). This is a good example showing that even though there is no express mention of right to safe environment in the Bangladesh Constitution, the Supreme Court is active enough to protect this right by using its authority and mechanism.

2.11 Protecting the Marginalized Group

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Protection of Marginalized People

There are examples where the Supreme Court has taken a strong position in favor of the marginalized or poor section of society by being flexible and giving them standing or eligibility to sue. This is a potential for the Supreme Court to act widely on human rights protection. On April 2004 the High Court issued a *suo motu* rule in relation to a criminal charge in the name of a four year old child. After this the name of the child was released. Advocate Nizam explained that -

> The Supreme Court is a trusted organ for the mass people of the country, but it is impossible for the Supreme Court to address all human rights violation issues in the country. It is in exceptional circumstances that the Supreme Court acts as a victim sensitive organ. In certain cases the Supreme Court bring the cases which the aggrieved party could not possibly bring, and issue *suo motu* rule for their protection. That is clearly a victim sensitive role, however it is not enough and it depends on many associated factors. (Interviewed on 3rd April 2004)

Moreover, the economical and the social position of victims require more support from social groups to bring their issues to court. From the above argument it can be identified that the Supreme Court of Bangladesh is performing a victim sensitive role. However this is still insufficient compared to the urgency and the range of human rights violations in the country.

Protection of Bihiri People

The Supreme Court has acted to protect one group of the marginalized section by giving them citizenship rights. This shows the Supreme Court performing of a victim sensitive role. The Supreme Court has helped the Bihari people who have been victims for a long time when the state was denying their citizenship rights. Biharis are non-Bengali Muslims who emigrated to, what formerly was East Pakistan, during the 1947 partition of British India. Most supported Pakistan during the country's 1971 War of Independence. They later declined to accept citizenship and asked to be repatriated to Pakistan. Historically the Government of Pakistan has been reluctant to accept the Biharis. Approximately 300,000 Bihari live in various camps throughout the country.

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In the **Bihari Citizenship case,** the High Court produced a wide solution. On May 5, 2002, ten Bangladesh-born Bihari residents of *Geneva Camp* were granted voting rights when the High Court declared them citizens (Country Reports on Human Rights Practices, 2003: Bureau of Democracy, Human Rights, and Labor). This is a bold step taken by the Supreme Court. It is also politically significant as it goes against the political position of the Government. At the same time, it contributes to the protection of their rights. This is the how the Supreme Court acts as the ultimate organ that can rule out the governing executive's decisions and stand by the constitutional rights of unprivileged people and other sections of society. The Supreme Court is applying its authority and using a wide constitutional scope in order to protect and support such vulnerable and victimized groups or individuals.

2.12 Protection of Political Detainee

The Bangladesh Supreme Court is very active in declaring rights of political detainees and to give order for their immediate release. This is a very good example of the Supreme Court's potential to release a person that has been detained under, the Special Power Act, from time to time. This is a potential of the Supreme Court's human rights protection. It shows that the High Court Division holds the only hope for the speedy release of detainees. From 1974 to March 1995, 10,372 petitions of *habeas corpus* were moved before the High Court Division. Ultimately, detention was found to be valid in only 8.57% of those cases (Human Rights Features, 1999). The $US300 fee for filing *habeas corpus* is barring access to the Supreme Court as it is well outside the financial reach of most people detained under the Act. This stresses the involvement of the Supreme Court to help those who are unable to reach the Supreme Court for a remedy and who are also vulnerable to violations of human rights. In the following chapter there are other examples of the Supreme Court's involvement in detention issues that has political significance. That shows the potential role of the Supreme Court to deny political supremacy.

The Supreme Court acts against decisions of the Government to restore the rights of the applicants suffering from political vindictiveness. Decisions against political vindictiveness are not only increasing the strength to restore human rights, but are also important for the prestige of the Supreme Court. In one case, Dr.

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Mohiuddin Khan Alamgir, the former State Minister of the Awami League Government was arrested under section 54 of Cr. P. C., from the Zia International Airport on 15 March. He was charged with 'instigating' government officials and employees to join the agitation led by the Janatar Mancha (people's dais) in the capital that dislodged the BNP Government in 1996. After the expiry of the second remand, each lasting for two days, Dr. Alamgir, instead of producing him in the court, was taken to the central jail on March 22, 2002.

The High Court, on Saturday 30th March 2002, issued a rule asking the Government to show cause within two weeks of why the detention of Alamgir, under the Special Power Act (SPA), should not be declared to have been made without lawful authority. Dr. Alamgir also got order to be produced before court, but not for '*security reasons'*. Jail authorities sent a *Custody Warrant (CW)* to the court to fix the next date of appearance. After that he got a one-month detention. The High Court gave him his current bail. This is one out of hundred examples where the Supreme Court has made an important contribution in terms of protecting human rights of political prisoners. A person detained under special laws is usually saved by the involvement of the Supreme Court. According to Mr. Fazlul Haque, executive director of BLAST, the Supreme Court is the only hope for a political prisoner or an unlawfully detained person. The Supreme Court helps the intimidated person by providing advance bail (interviewed on 6th April 2004). So, Supreme Court is acting as the protector of the rights of helpless detained individuals.

This suggests that the Supreme Court is effective role in protecting the rights of detainees. This shows that, even if it is complex, the Supreme Court acts positively for protecting the rights of political detainees and save the person suffering from political vindication. The Amnesty International Report on Bangladesh 2004, reveals that the conditions of detention has improved in 2004. The cause for the improvement is reflective of the activities of the High Court and pressure from the international community. These days the police cannot hold detainees due to the intervention of the Supreme Court. It has been seen that the Supreme Court is making a difference with its contribution in human rights protection even in the worst situations of human rights abuses.

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Conclusion

The Supreme Court of Bangladesh has enormous potential to protect human rights in certain areas. Those potentials stem from the rich historic background of the judiciary. The constitutional, and other developments, have positioned the Supreme Court in a unique position with a strong legal basis. This supports the hypothesis of this research. But, human rights protection needs more than the legal position and that has brought about the conditional framework within which human rights protection operate. At the same time, the Supreme Court is developing mechanisms to address human rights from various perspectives. It is expanding the notion of Article 102 and using different tools to address human rights abuses. This provides answers to the research question about the nature and support of Article 102 for human rights protection. The level of application of this development is the criterion to judge the efficiency of the Supreme Court in human rights protection. The Supreme Court has potentials in addressing some of the most complex issues of human rights violations such as domestic child workers' rights, trafficking, and torture. These potentials are found in authorities such as the Constitution and other laws which the Supreme Court can utilize. As a result is the Supreme Court can support the rights of political detainees, juveniles, the marginalized section, and environment. In doing so the Supreme Court is taking upon itself a victim sensitive role that is otherwise limited in other areas. At the same time, there are certain structural and functional limitations are is working against the potentials of the Supreme Court. The next chapter will focus on those.

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CHAPTER 3

EFFECTS OF JUDICIAL STRUCTURE ON HUMAN RIGHTS PROTECTION

Introduction

Despite enormous potentials of the Supreme Court, human rights protection suffers due to structural limitations. As the center point of the study is the Supreme Court and its role in protecting human rights, the study reveals that the core problems of the judiciary has direct effects on its performance. Among the core problems, the structural issues are causing wide spread effects. As the Supreme Court is at the apex of the judicial system, problems of the judiciary effect the overall human rights protection of Supreme Court. This Chapter describes the problems in the organizational and functional structure of the judiciary which are potential barriers towards human rights protection by the Supreme Court. Therefore, the different aspects of the independence of judiciary, the political influences on the judiciary, and the state of judicial accountability are examined to explain the causes of structural problems.

3.1 Negative Effects Judicial Structure

The overall judicial structure has tremendous negative effects towards the human rights protection role of Supreme Court as it suffers a lack of independence, political influence on the judiciary, bias appointments, and an unsound organizational structure. These negative consequences have roots in a typical British colonial hierarchical system. The colonial nature of the institute has deep effects among the general people also. It is taking a long time to remove the masterly mask from the face of the judiciary. The bureaucratic influence on the judiciary was also a characteristic of the British era.

It is necessary to bring the general picture of Bangladesh's judicial structure to understand its effects on human rights protection. The judiciary of Bangladesh follows

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the common law system. Part VI of the Constitution deals with “The Judiciary”. The court system is divided into two levels: the lower courts and the Supreme Court. The lower courts consist of magistrate courts, and session court, different judge courts, and district judge courts. The magistrates of the magistrate courts are part of the administrative branch of Government and discharge an administrative, as well as a judicial function. So, they are under direct control of the Government. This structural fault leads to governmental influence on the lower judiciary. This would be understandable from the organizational structure of Bangladesh judiciary. In following figure 8, the organizational structure of Bangladesh judiciary is given.

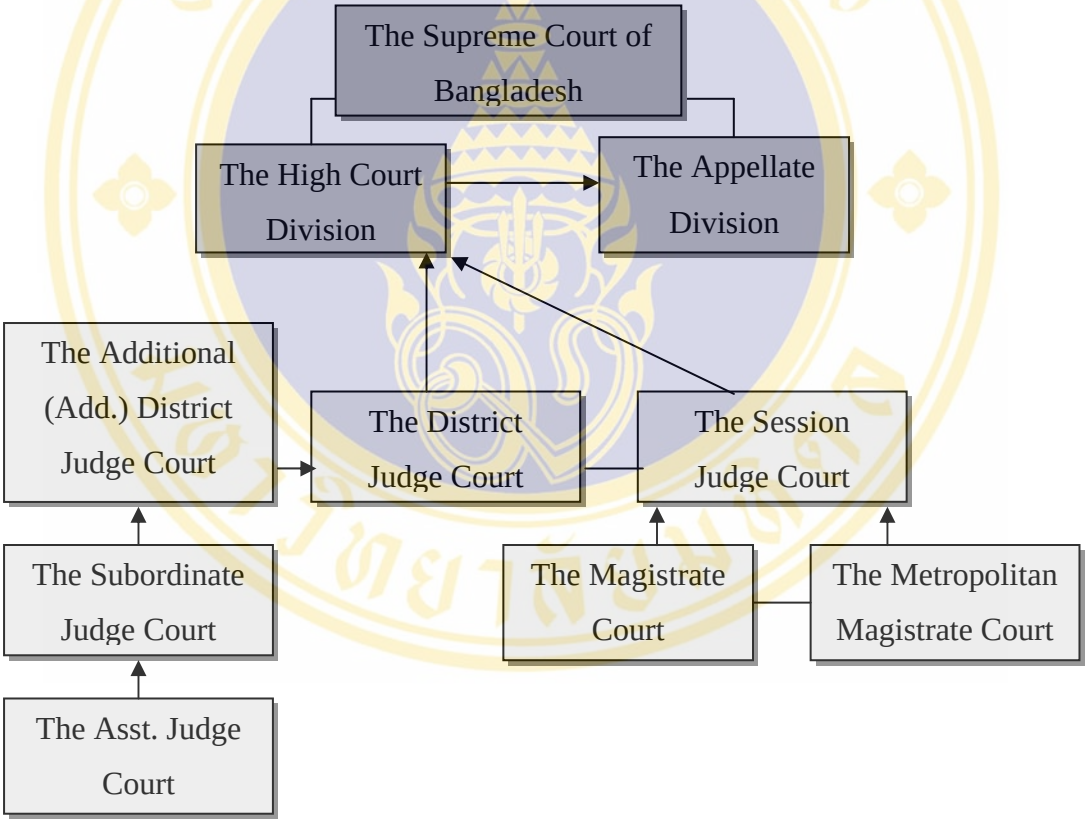

Figure 8: The Structure of Bangladesh Judiciary.

In this judicial structure judges of different civil courts or judge courts are subject to judicial control. They basically deal with civil issues. The unfortunate thing is that there is lack of monitoring and supervision from the office of Chief Justice to ensure the quality of those judge courts due to lack of cohesion between the office of Chief Justice and judge courts. This needs structural development to ensure cohesion

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for making lower courts as efficient to support the human rights protection activities of the Supreme Court. Supreme Court of Bangladesh comprises of two Divisions: the Appellate Division and the High Court Division. In Bangladesh there are some Special Courts that act ether under the District Judge or the Session Judge. The Government can create this type of court by its prerogative powers or by the regulation of the Bangladesh Parliament. Under the Family Court Ordinance, the Family Court has been created to deal with issues of marriage, divorce, custodial rights, and women and children's issues. But, there is minimum monitoring from the Supreme Court to ensure the function of the Family Court for human rights protection. This is the same picture that applies for all the subordinate courts. Chapter II of Part VI of Bangladesh Constitution deals with "Subordinate Courts". Among the subordinate courts there are criminal courts and civil courts.

a. Criminal Courts causes Problems due to Non-separation

The criminal courts are directly controlled by the governing authority and due to this non-separation from the executive organ of the states the criminal courts are not supporting human rights protection. This effects the human rights protection role of the Supreme Court because criminal courts are subordinate courts of the Supreme Court, and the activities of subordinate courts effects the activities of the courts positioned higher to those. In Bangladesh, the Magistrate Courts deal with the criminal issues. It is always suspected that this is the area of major executive control over the judiciary and causes enormous human rights violations. The executive either directly or indirectly controls the entire criminal courts. Article 116 of Bangladesh Constitution provides the law to control subordinate courts and it covers the function of magistrates. It states that "the control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court." So, the magistrate courts are directly under the executive control.

The persons who work in Magistrate Courts are from the executive bench. Thana Nirbahi Officers (TNO) are the administrative chief of the primary administrative unit of the state as well as acting as a magistrate trying the criminal

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cases. So in the latter part, he performs judicial function, even though he is not a judicial magistrate. Basically its service is controlled by the head of the executive authority as he is part of the Government. Nevertheless, Session Courts are at the apex of the criminal courts. District commissioners deal the criminal issues at district level, which is under the jurisdiction of Session Courts. In this stage they perform judicial functions. Even though, they are part of the executive organ of the state. So, it is not easy to expect any pro human rights decisions from them that are contrary to the Government decisions as there are subject to control by the Government executive. These aspects of non-separation are causing serious hindrance for human rights protection of Supreme Court since the Supreme Court's monitoring and supervision authority over these criminal courts are facing a major blow due to the structural problems of the criminal courts. But, hopes are remaining as appeals from the Session Courts go to the High Court Division. That can act as a balance factor for Supreme Court's involvement to protect human rights in the adjudication process of criminal courts.

b. Civil Courts Causes Problems due to Lack of Monitoring

The civil courts in Bangladesh are causing problems in human rights protection as there is lack of monitoring from the Supreme Court on the human rights protection activities of the civil courts. The human rights issues ultimately go to the Supreme Court as it is the highest court in the judicial structure of Bangladesh. There are four different civil courts existing in Bangladesh since 1887. Those are; 1) the Court of the District Judge, 2) the Court of the Additional District Judge, 3) the Court of the Subordinate Judge, and 4) the Court of the Munsif that is now named Assistant Judge Court. The district judge was given overall power over other judicial officers of the district. He is given the power to transfer proceedings from one court to another competent court to dispose of them or to his own court. But, the unfortunate thing is that the civil courts suffer problems of corruption, delay in proceeding, and serious inefficiency for settling cases. Additionally, the preparation of the case documents causes problem at the last stage in the Supreme Court, which is to decide cases at appeal because then the inefficient work of subordinate civil courts reflects the result. That causes problem to address human rights issues by the Supreme Court. So, it is

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necessary that the Supreme Court should be equipped with smooth monitoring and constant checking mechanisms on the activities of the subordinate civil courts. This will provide a supportive human rights judicial structure.

3.2 Negative Effects of Functional Structure

The functional structure of the judiciary effects negatively on the human rights protection of the Supreme Court through: political consideration in judicial appointment; lack of monitoring activities on the lower courts; and lack of independence of the activities of the judiciary. Firstly, this thesis brings the problems in the appointment of judges which effects the human rights protection of the Supreme Court. Until this current year, The Public Service Commission (PSC) was entrusted with the duty to appoint the assistant judges of Bangladesh. This is contradictory to the notion of independence of the judiciary. In India, although there is no Judicial Service Commission (JSC), the High Courts have complete control over the subordinate judiciary. The Supreme Court of India interpreted the expression "control" to include appointment, posting, transfer, discipline and all other conditions of service. The view taken by the Supreme Court in Bangladesh is more or less similar to the one existing in India. In recent times the Supreme Court was directed to form the JSC to ensure the independence of judiciary. The constitution of the much awaited JSC for recruitment of judges to the subordinate courts is expected to ensure fair and impartial selection of members of the subordinate judiciary (Ali, M. S., 2004: 13th anniversary of The Daily Star). Recently the Government has established the JSC for the appointment of assistant judges. That is a sign for a future trusted judiciary. This could ensure the condition for an independent and efficient judiciary, which is a must for a Supreme Court to protect human rights. But the unfortunate side is that the JSC is yet to function.

Secondly, the issue is unaddressed of lack of monitoring by the Supreme Court on the activities of the lower courts is causing human rights violations. It is known that the High Court Division of the Supreme Court has a monitoring system on the filing and disposal of cases. The Sessions Judges and the District Magistrates are required to inform the High Court Division on the status of disposal of criminal cases every month. A judge designated for this purpose reviews these aspects and appropriate

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guidance is provided to the subordinate courts. This is one of the statutory responsibilities of the Supreme Court as envisaged in the High Courts Rules and Orders. It is felt that is the post-separation period, this system of monitoring will need to be institutionalized and made transparent in order to enable the citizens to be better informed than they are at present. How this will be done will be a matter for the Supreme Court to decide. This can definitely ensure a responsible performance by the Supreme Court, which is important for overall human rights protection.

3.2.1 Effects of Lack of Independence

The Supreme Court suffers lack of independence that causes serious human rights violation to be unaddressed as when there are instances of appointment of judges by the president without consultation with Chief Justice, the Supreme Court is financially dependent on the executive. It is known that judicial independence is the very heart of a republic and it is a safeguard for a democratic institution. In these days, when the pernicious influence of politicians has polluted almost all spheres of activities, the reputation of democratic institutions has been tarnished and their credibility steadily eroded. The judiciary is one institution which has remained unsullied. Yet in a society in which overall standards and ethical values are sharply declining and the probity of public servants, as a class, is under increasing pressure, how can judges be expected to uphold high traditions of their august office? Mainly politicians have been polluted, but public servants at all levels have also fallen prey to all kinds of vices. The only institution, which has so far resisted the vices and kept its soul intact, has been the judiciary.

Unless society's morals rise, our judiciary cannot remain immune for long. To quote Jefferson, "our judges are as honest as other men and not more so." Even then, they must be above suspicion and strict standards of integrity, impartiality, freedom from influence and dubious behavior, have to be expected and exacted from the judges. There is no doubt that there is universal respect for the Bench, but unfortunately it cannot be denied that there has been a steady corrosion in the confidence and respect for the judiciary over the years. There has been systematic tampering and interference with judicial independence by the executive (Justice Chowdhury, A. R., 1993:9). Even though there are sufficient constitutional provisions

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and international principles for an independent judiciary it is yet to be achieved by the Supreme Court of Bangladesh.

Constitutional Provisions of Judicial Independence

The Constitution provides, under Article 116(A), provisions for judicial independence and states that all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions. But, there are many hindrances to the independence of the judiciary in Bangladesh. The terms of service, appointment of the judges, transfer, and rule of termination from the services, and financial benefits need to be determined by the Office of the Chief Justice. The unfortunate thing is that potential opportunities after the services for the judges are making a huge difference in terms of delivering their duties for human rights protection. There are encouraging signs that show the Supreme Court of Bangladesh in a strong position. It reflects through the Supreme Court's decisions in a number of cases to establish the rule of law, which is found within the structure of the Constitution. M. Patwari has termed the effects of this role of the Supreme Court in his words as "this sort of rulings was a great shock on the part of the executive authority of Bangladesh" (Patwari, M., 1987: 22). The Government of Bangladesh was determined to curtail the powers and jurisdictions of the Supreme Court, in particular, and the judiciary in general, by the Fourth Amendment of 1974. That has been changed by the restoration of democracy right after that. So, in a democratic environment the constitutional principle of an independent judiciary can be ensured.

UN Principles of Judicial Independence

There are international legal provisions that encourage the independent judiciary at a domestic level like the Supreme Court of Bangladesh. The Commission on human rights adopted by consensus a resolution on the independence of judges and lawyers (2002/43) which stated, *inter alia* that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice; recognized the importance of the role of NGOs, bar associations and

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professional associations of judges in the defence of the principles of the independence of lawyers and judges; noted with concern increasingly frequent attacks on the independence of judges, lawyers and court officers, also noting the close link between the weakening of safeguards for judges, lawyers and court officers and the frequency and gravity of violations of human rights (Commission on Human Rights, Report of the Special Rapporteur, Independence of Judges and Lawyers, 2002). The 7th U.N. Congress on Prevention of Crime and Treatment of Offenders held in Milan, Italy in September, 1985 adopted basic principles on the independence of the judiciary. The U.N. General Assembly unanimously endorsed those on 29th November, 1985. They are as follows:

1. The independence of the judiciary shall be guaranteed by the States and enshrined in the Constitution or the law of the country.
2. The judiciary shall decide matters before them impartially on the basis of facts and in accordance with the law, without any restriction, improper influences, inducements, pressures threats or interference.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established procedures.
6. The principle of independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its function.

The Supreme Court's compliance with the UN principles will be discussed. The principles are supported by the constitutional provision for an independent judiciary. This is apparent. But, in human rights cases, the court does not always have enough confidence to address the very nature of the case. Usually the executive and

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politicians are involved in human rights issues. Therefore this is an area that some Benches try to avoid. Human rights issues need a broader interpretation in justifying the eligibility of the claim. This is an area where the concept of broader jurisdiction is involved. The reality of the Supreme Court of Bangladesh is revealed by the statement of Advocate Mr. Iddres , a lawyer of Bangladesh Supreme Court:

> Often most of the Benches of Bangladesh Supreme Court don't want to take the human rights issues into consideration, even though those are within the jurisdiction of the court. They just want avoid their involvement to save themselves from any future problems. (Interviewed on 14th April, 2004)

An independent Supreme Court needs to address human rights issues without having any improper influences, inducements, pressures threats or interference. The Bangladesh Supreme Court needs to be active in order to achieve a position where it can address all human rights issues independently. Advocate Fiaz believes that, it demands time, openness of judges, and cooperation from the Bar (interviewed on 15th April 2004).

3.2.1.1 Non-separation of Judiciary

The functional structure of Bangladesh judiciary reveals that it is not separate from the political executive and its performance of human rights protection gets serious setback if it works against the interest of the executive. This is causing enormous human rights violations, which continues without being addressed. The judiciary is an organ that needs to work without any influence from state mechanisms. In order to guarantee the independence of the judiciary it is urgent to ensure the separation of the judiciary from the executive or from any other state organs. The separation is supposed to be complete. The Constitution is clear enough since it incorporates a provision relating to the separation of the judiciary. Article 22 of the Bangladesh Constitution declares that the state shall ensure the separation of the judiciary from the executive organ of the state. The complete separation will guarantee the control of the Supreme Court over the subordinate judiciary in terms of recruitment, training, transfer, posting and discipline of the members of the judicial profession at the district level.

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There are certain '*grey areas*' in relating to the separation of the judiciary. The mentality of the people who are involved with the judiciary may find it difficult to separate them from a personal attachment to it. This can cause bias and bizarre effects on judgments. According to legal philosophers this grey area cannot be eliminated fully, but the result could be reduced by fairness to those persons involved. On the other hand, the Supreme Court of Bangladesh has come foreword in using its own mechanism to ensure the separation. However, despite all the efforts the separation is still a cardinal condition of human rights protection.

Recently the Supreme Court has taken initiatives to direct the Government in order to ensure judicial separation. On June 21, 2001, the Supreme Court of Bangladesh reconfirmed an earlier 12-point ruling regarding the procedures for a 1997 High Court order in ***Masdar Hossain v Government of Bangladesh,*** to separate the judiciary from the executive. The 12-point ruling declared which elements of the 1997 order could be implemented without requiring a constitutional amendment. The Supreme Court ordered the Government to implement those elements within 8 weeks. On August 5, Ishtiaq Ahmed, law advisor to the caretaker Government, announced that the judiciary would be separated from the executive by promulgating an ordinance (US Department of State Report on Human Rights Practices, 2001). As of today, the Government has filed time-extension applications an astounding 16 times for implementing the judgement. The Government says that they are in the process of implementing some of the directions, but the process is very slow. This shows that the executive is not willing to ensure separation from the judiciary. Even though, it seems that the judiciary is getting stronger in dealing with the structural issues that it needs for its leading performance to protect human rights. All the directions from the Supreme Court result in it being in a position where it plays cats and mouse. So, the problem remains in the separation of the judiciary from the political executive.

3.2.1.2 Unfair Appointment

Impartial judicial appointments are not happening due to the political interest in the judiciary that is causing serious damage to the human rights protection performance of the Supreme Court. There is practice of appointment of the Chief Justice by considering political benefits and doing so, seniority has overlooked by the

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governing authority in certain cases. Obviously fair appointment is a prime condition for the active judiciary. Neutral appointment of judges is one aspect of impartiality. It requires political willingness and legal direction for no deviation. In the case of Bangladesh this impartiality is often transgressed by the Government because of their political interest. It is even true for the appointment of judges in the Supreme Court. In a recent case of 2003, Sheikh Hasina, the leader of the opposition in parliament, said that the Government has disregard and interfered in the functioning of the judiciary by not confirming 11 assistant justices of the High Court and ignoring the recommendations of the Chief Justice. She said if this injustice is accepted the judiciary will never be able to work independently. A crisis arises when co-ordination among the three organs of the Government suffers a jolt. It is also true that nothing good could be expected when the executive organ intervenes with the judiciary.

a. Appointment of Chief Justice Justices

The appointment of Chief Justice bears enormous political importance and often political consideration overlooks the value of judicial independency in appointing the office of Chief Justice. It is true that in hierarchy of Bangladesh judicial system, the office of the Chief Justice is at the top. The President, pursuant to Article 95 (1) of the Bangladesh Constitution, appoints the Chief Justice. The President does not have to consult with the Prime Minister with regard to appointment. This is also stated in the Constitution in Article 48(3). Despite this constitutional provision, the Government's influence in the appointment to this post has now become a common phenomenon. Although the President makes the appointment, political consideration and influence of the Government plays, in reality, an active role behind closed doors. The Constitution says nothing about who the President should appoint as the Chief Justice amongst the judges of the Supreme Court. This leaves the opportunity to be influenced by even minor political interests in the appointment of a Chief Justice.

b. Seniority Denied in Appointment

The government overlooks the notion of independent judiciary and denies the provision of seniority in appointing a Chief Justice because they consider the political importance of the post and personal political view of the person to be appointed. It has

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become a constitutional convention that the most senior judge of the Appellate Division is to be appointed as the Chief Justice, whenever the vacancy occurs in that office. There has not been any breach of this convention till 1996, when the caretaker Government system was introduced in the Constitution. The former President Ershad made an attempt to supersede Justice Sahabuddin Ahmed when the then Chief Justice BH Chowdhury retired, but because of the continuous boycotting of the court by lawyers, Ershad was compelled to appoint Sahabuddin Ahmed as the Chief Justice of Bangladesh.

Now the matter of maintaining seniority in the appointment of a Chief Justice has become vitally important as the last Chief Justice to be appointed as the Chief Advisor of the caretaker Government as per Article 58(c) of the Constitution. In light of this constitutional provision there has recently been a tendency within the Government to appoint a judge, of their choice, as the Chief Justice of the highest court without considering the question of seniority and bypassing the senior most judges. Nowadays, before appointing the Chief Justice, the Government considers who will be the last retired judge to become the Chief Advisor of the caretaker Government. Thus the political influence will definitely strike at the impartiality of our highest judiciary. This will in turn cause an inefficient and biased Supreme Court, and therefore it will have a negative impact over the administration of justice (Sarmin, S., 2004). This may resulted in a Supreme Court, which cannot be expected to protect human rights.

3.2.1.3 Financial Dependence

The judiciary is dependent on the government for their financial issues and this is causing functional problems, which is making the judiciary a dependent organ. It is known that judges are discharging their duties, not only for the financial benefits, but also as one of the most important functions of the state to perform. But, since they are providing a service, they are entitled to receive a sufficient salary to fulfill their needs. One of the important features for ensuring independence of any institute is by making it financially independent. This is the reasoning behind providing the Supreme Court with a budget from the consolidated fund of the state. This fund needs to be approved by the parliament. According to Seervai, since judges are paid salaries for discharging

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legal and judicial functions, their salaries therefore must, be appropriate or equivalent to the earning of a distinguished and leading practitioner at the Bar (Seervai, H.M., 1984: 2182).

The following two arguments have adverse implications in low judicial salaries: (a) it threatens the independence of judges due to financial anxiety by making it difficult for them to maintain a decent standard of living suited to their nature of the duties they have to discharge and (b) it also prevents the best legal intellects from getting attracted to the Bench. This implies that low salary seriously and adversely affects the quality and standard of judges. Good lawyers, with a fair practice at the Bar, do not care to come to the Bench. This is affecting the quality of the Bench in the Supreme Court.

Inadequate Financial Facility

The financial facilities available for the judges are not adequate. Rather the financial issue needs to be restructured by the Government for ensuring a self-sufficient life for the judges that can make them feel that they are free and strong enough to discharge their honest responsibility of human rights protection. Former Chief Justice of Bangladesh Mr. Choudhury said in his farewell address that the honorable Justices of the Supreme Court are getting their pension and gratuity as financial benefit. Due to receiving the gratuity the pension money becomes halved. It means that the Government does not pay for the gratuity. Rather it comes from the money from their salary. So, his argument to the Government is to provide the honorable Justice with the full fund. As this statement was made by a person from the top of the hierarchy of the Supreme Court it illustrates the urgency for financial independence.

The life style of the judges is somewhat restricted and there is no possibility for them to earn more by doing some additional work. So, financial hardship might lead to their involvement in corruption. Describing judicial salaries as miserable, the judgeship can be taken by a lawyer who has private source of income. There is no parity between the earnings of a lawyer and a judge’s salary. It is important to ensure a Supreme Court that will not favor money over justice. In this regard it is highly

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important to ensure an adequate salary for the judges and judicial officers as both form part of the court system.

3.2.2 Political Influences on Supreme Court

Political interest gives pressure to achieve a sympathetic judiciary which will give a verdict in favor of the government position without considering the human rights standard on that particular issue. These types of political motivations, stimulated by political influences on the judiciary, results negatively to the human rights protection role of the Supreme Court. The reasons for this are clearer when contextualized in the political structure of Bangladesh. Political influences are so obvious in Bangladesh due to its extended powers of political organizations such as the office of the Prime Minister, or the political parties themselves. The political structure of Bangladesh finds its influence from the colonial era and the power of the elite class still remains. Traditionally, the main base for political influence is in the rural areas, and has been based on land ownership. The leaders of local factions exercise their influence in village courts and as managers of village affairs within other administrative units (Political Dynamic of Bangladesh, 2004).

The political elite are more varied in urban environments. These include professional politicians of national parties, and the entire social group that make up the urban leadership such as the military, professionals, administrators, religious, and business personnel. They are interacting in issues concerning national politics. Economic and political elites shape political life with strong family ties whose influence has, in many cases, been felt for generations. Political debate between the two major rival parties, the Awami League and the BNP, is highly polarized.

Student organizations are acting as spearheads in the political debate and the trade unions have strong party affiliations. At local level, violent gangs frequently seek to associate themselves with the party in power. In order to meet political goals they always try to influence the judiciary to obtain decisions in their favor. This influence and purposive agenda is often directed towards the lower judiciary, including towards the magistrate acting in his/ her judicial capacity. So, the Supreme Court is far from maintaining a neutral role in deciding the politically motivated cases due to negative political practice.

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a. Problems in Political Practices

The present political practices cannot meet the common demand of the people with their deplorable quality and established malpractice. The political executive is trying to influence the Supreme Court and the parliamentary representative is in the grip of the political aristocracy. So, there is little initiative from politicians to restore individual rights. The fulfillment of the rights of individuals is a yardstick of the extent of democratization in a society. In Bangladesh however, governmental institutions have always been interfering in the lives of people, even though the Constitution guarantees the rights of people in unequivocal terms. Social institutions and political parties are also not sensitive enough to the rights of citizens. The result is predictable. The rights of people are violated or undermined at every step, leading to a kind of social order in which individuals have become subservient to an institutional supremacy. The resistance to infringement on the rights of individuals also appears to be negligible, if not non-existent. In this circumstance, the judiciary cannot act without political influences. This has resulted in a Supreme Court too afraid to engaging in cases that concern political issues.

b. Effects of a Politically Biased Judiciary

There are few instances in Bangladesh Supreme Court where the appointment of judges through political considerations and the dependence to the Supreme Court is causing a bias judiciary that causes a judiciary which is not accountable to the people. A bias judiciary is committed to serve the interest of the government; hence, this is a ‘committed judiciary’. Here this committed judiciary is a contradiction in terms. This committed judiciary is suitable from the Government’s point of view but wholly unfit from the point of oath. Moreover, it is disastrous to inject politics into justice. Once the judiciary becomes subservient to the executive and to the ruling party’s philosophy, no amount of enumeration of fundamental rights in the Constitution can be of any avail to the citizens because the court of justice would then be turned into courts of Government. It has been said that, “if the salt has lost savor wherewith it be salted?” The day when the highest judiciary ceases to be independent, democracy and

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the rule of law will collapse. Mr. Nizam, a renowned lawyer of the Supreme Court, says:

> It is evident that every Government tries to appoint their own people in those delicate posts. We are lucky enough that even though it is a fact but this does not become so expressive. So, the human rights protections actually get little trouble by this trend. (Interviewed on 3rd April 2004)

So, in Bangladesh, the influence of politics on the Supreme Court can be found in the appointment of the judges and the activities of government law officers. Due to this situation general people become afraid to seek remedies relating to human rights violations. At the same time, this reduces the chance of judicial accountability, which is essential for ensuring human rights protection.

3.2.3 Limited Accountability

The Supreme Court of Bangladesh shows limited accountability to the people and some time works as a distinctive organ which has limited responsibility towards the people and rather to the text of the law. This is causing frustration in human rights protection of the Supreme Court. Before going to the detail, lets discuss about the features of judicial accountability. For considering judicial accountability Lord Atkin observed that “Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men”. At the same time, it is true that adverse publicity, embarrassing accusations in public and populist pressure to deflect the judiciary from its appointed role, are the factors, which we must recognize and proclaim and which affect the impartiality and independence of judges (Dr. Rahman, M. H., 2001). One of the important correctives is freer criticism of judges and judgements founded and worded responsibly. Criticism of errors of public organs is fundamental and as such judicial errors and excesses must also suffer public censure and criticism. In England, when one of the greatest jurists, Lord Denning was criticized for his alleged racist observations, he did not use his power of contempt to silence and punish his critics but took the historic decision to gracefully retire from the Bench with dignity. Chief Justice Burger of the United States Supreme Court has said:

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> Criticism of the Court Administration even when expressed in ill-mannered terms with non-lawyer; like rudeness, cannot form the basis for action. (New York Times, June 25, 1985)

No institute can operate without being answerable to society. The judiciary must be accountable. Judicial independence cannot be maintained without judicial accountability for failure, errors or misconduct. There are many forms of judicial accountability. These can be classified into a number of categories:

1. Legal accountability: It includes disciplinary supervision over judges, appellate review of their decision, and their civil and criminal liability.
2. Public accountability: It includes the control over judges exercised by parliament or legislative body, the general press and pressure groups.
3. Informal and social controls: It includes the social and professional control exercised and often in private. Their judicial colleagues and professional superiors exercise such controls.

a. Lack of Accountability of Judges

The judges of the Supreme Court of Bangladesh are not accountable enough for their activities. Rather it seems from their priority of activities that they are happy if they can serve the interest of the politically powerful in special cases. Even the general picture is not this same. So, the accountability is limited as it is good in some cases but worst in other. The cases where the issues of judicial accountability get setbacks are those where the case has political interest. It is true, that the judges are certainly accountable but they are basically accountable to their conscience. Because, they are accountable to the constitution and they are the guardians of the constitution. So, in one sense, it has a dimension that is personal in nature. But, public accountability of the courts and judges is a necessary derivative of the value of public confidence in the court. The persons who were interviewed as NGO representatives observed that in the case of Supreme Court of Bangladesh all categories of accountability are not being fulfilled. There are substantive regulations and procedures in place to ensure the accountability. The parliamentary members committee on law and judicial affairs is an effective institution ensuring accountability. The office of the

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Chief Justice is always very active to take prompt decisions on any irregularities. In the interviews, all academics agreed on this.

b. Lack of Reciprocal Accountability of Bar and Bench

In the Bangladesh Supreme Court, the reciprocal relation between the Bar and the Bench is not healthy as political differences remain between these two, resulting lack of accountability between the Bar and Bench. The lack of accountability of Bar and Bench is causing lack of cooperation between Bar and Bench to protect human rights. The Bar and the Bench have to work together to develop a reasonable environment that ensures judicial accountability. But, the partisan tendency is causing as unhealthy relation. This unhealthy relationship is not expected from an institute that is accountable to the public. Some members of the Bar have expressed the dissatisfaction by terming the Bar Council as the political body, even though it is the characteristic of the body to remain non-political. But, all the major political parties are showing their deep interest for politicizing the Bar Council. “This is now an open secret”, said a young lawyer and who did not want to publish his name. The recent Supreme Court Bar Council election also drew many top leaders from the political parties to the election premise. The media reported openly about the lawyers with their party support. So, it is clear enough that this body is being shaped by politics. This is contrary to a warm relationship between Bar and Bench, hence it is not sound for judicial accountability. Human rights protection by the Supreme Court could get a major setback due to this political characteristic.

Conclusion

From the above discussion it has been found that the structural problems have influences on the performance of the Supreme Court to protect human rights. Both of the organizational and functional problems of the Bangladesh Supreme Court has remained unsolved for a long-time and is causing enormous human rights violations. Moreover, the gravity of the problem is getting stronger due to lack of political commitment. This situation shows that the internal structure of judiciary is not supporting the human rights protection, which is clearly mentioned in the hypothesis of this research. This basically justifies the conditional clue of ineffective performance

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of the Supreme Court in human rights protection. These conditions affect the procedure, substantive, and remedial context and explain existing problems in human rights protection on some practical issues. Many of those depend on personalized issues of judges. So, the next chapter discusses problems from procedural, substantive, and remedial side and shows the condition of human rights protection on some specific practical issues.

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CHAPTER 4

DILEMMAS OF HUMAN RIGHTS PROTECTION

Introduction

As we already know the structural effects of the judiciary on human rights protection role of the Supreme Court are undeniable, and therefore the Supreme Court acts differently on different issues. This Chapter shows that the existing problems emerge from the lack of procedural precedents, lack of substantial grounds, and non-implementation of remedies. In addition, the second part of the chapter details how human rights protection is limited by some associated practical problems caused by conflicts with dominant political interests, or ideas that are against traditional social beliefs. These problems are limiting the access and hindering the performance of the Supreme Court. This is the focus of this current chapter.

4.1 Procedural Problems

Some problems occurring in the judicial procedure in Bangladesh causes human rights violation to be unaddressed as the Supreme Court delays the process of settlement. The whole process is too expensive and is hardly affordable to most people. In addition to the procedural problems there is a lack of monitoring by Supreme Court of issues which are under administrative tribunals. Administrative tribunals are tribunals dealing with specific administrative issues such as corruption or transport. Although the word tribunal means court of justice, an administrative tribunal is not strictly a court. It has often been said that the very nature of the administrative tribunal causes human rights violation. Its decisions and procedures are kept unreported. The administrative tribunal does not enjoy the same amount of independence of the executive as the ordinary courts (Ray, A. D., 1995: 94). So there is always chance of human rights violations. It is the responsibilities of the Supreme Court as the protector of human rights to look at the issues that are under consideration of the tribunal. This can be done by regular monitoring or by providing proper

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direction to the tribunals. But the unfortunate thing is that the Supreme Court is not regular in doing this function and that is resulting human rights violation by the tribunal in several instances.

4.1.1 Delay in Settlement

Delay is the main area where the procedural problem impacts human rights protection. Due to delay people do not get the proper remedies on time; without having timely remedies many rights can never be addressed. The Supreme Court of Bangladesh is doing little to get rid of the delay. Delay causes mistrust among the people. The cause of delay happens because of firstly, late preparation of the *paper book*; secondly, lack of cooperation from different organs, and lastly, by the court itself.

First, I am bringing the results of the delay on the people. Delay is a major problem that results in mistrust of the Supreme Court amongst the people. The system of civil administration of justice as obtained in this country today was planned and planted by the British colonial regime. Though this model is working successfully in Great Britain, it is suffering in Bangladesh due to structural problems in the judiciary (explained in Chapter II). In Bangladesh the administration of justice has been facing serious criticisms lately. The most common criticism is that when bringing a dispute to the civil court it also means putting the matter in cold storage for years to come and by the time a final decision of the dispute is available, the *decree holder* and the *judgement debtor* both become equally indifferent. A civil suit, from the date of its institution till its final disposal, often takes twelve to fifteen years, or more (Rahman, R., 1986: 13). This is not tolerable or bearable for ordinary people in keeping their faith in the Supreme Court as the guarantor of their rights.

a. Delay in Paper Book

Delay happens in the Supreme Court because there is no specific time limit from the Supreme Court on the preparation of *paper books.* So usually it gets late due to the involvement of different interests. *Paper book* is a printed English translation of the relevant document and all things necessary for disposal of the matter under rule 10, Chapter IX, Rules of the Supreme Court of Bangladesh, High Court Division. The

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preparation of *paper books* is contributing to the problem accounting for the delay in the disposal of first appeals. It is true that there are some problems peculiar to the Supreme Court (Dr. Rahman, R., 1986: 146). The preparation of the *paper book* is one such peculiarity. The delay in preparation costs a good amount of money for the litigants. Many appeals are dismissed for want of the deposit of the money for the *paper book*. In Appellate Division, very often, provisional petitions for leave are filed and ad-interim stay or injunction goes slow for filing regular petitions. The process for filing a regular petition is very slow. The lower courts defer proceedings of cases with letters from the *advocate-on-record*. Mr. Jahangir Alam, a victim, has explained the cause of delay in the preparation of *paper book* is due to poor judicial administration and in some case political consideration playing a vital role (Interviewed on 11th April 2004). This shows that mainly the procedural factors and lack of a specific time limit are causing delay in the Supreme Court.

b. Delay by Associate State Organs

Delay happens in the activities of Bangladesh Supreme Court because there is lack of cooperation from the associate state organs that need to work together and support the Supreme Court's procedure for a meaningful settlement or effective implementation of Supreme Court's decision. The function of the Supreme Court does not depend on the performance of the Supreme Court only. It needs the active support from the other state organs for the implementation of its orders, calling witnesses, obtaining evidence and so on. This also causes delay as the cooperation from the different state organs is not satisfactory. Advocate Md. Iddres, a lawyer of the Supreme Court, is of the opinion that the causes of the functional faults of the performance of the judiciary depend not solely on the judiciary but also on other associated organs of the state (interviewed on 14th April 2004).

The police is a key actor in the process of a speedy trial. The quality of a trial depends not only on the quality of the judges but also on the quality of investigation by the police and the extent to which the police are able to secure the cooperation of material witnesses. The ability of the police to complete their investigation in time without any delays or hindrances, and their ability to produce the witnesses on the appointed date, will substantially contribute to a speedy trial (Ali, M. S., 2004: 13th

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anniversary of The Daily Star). In Bangladesh the police are not organized enough to conduct a quick investigation and support the Supreme Court in every corner due to insufficient manpower and equipment. The other fact is that police are directly controlled by the ministry, which leaves a wide scope for influencing them. This in turn might deter the police from cooperating sufficiently with the Supreme Court on human rights protection.

c. Delay by Supreme Court

Different components of the Supreme Court are causing delay in the judicial procedure as there are lack of cohesion and organizational management inside the Supreme Court. Bribery at every steps of the judiciary is explicit. This also effects the activities of the Supreme Court and makes the process for the interest of one party who provides bribe. According to the report of Transparency International Bangladesh (TIB) more than three-fifths of the households involved in court cases reported that they had to bribe the court officials. Cash for the bribe was paid to the court employees by 73.1 % of households, followed by 16.3 % of households paid to the opponent's lawyer. The situation of delay is also clearer from the result of the survey of TIB. It has shown that 53.9 % of the accused/plaintiffs reported that they were uncertain about the period when settlement would be reached. About 79.8 % of them reported that delays in reaching settlement were deliberate and due to (i) lawyer’s business interests (42.4 %), (ii) opponent's ill motive and manipulation (53.5 %) and (iii) the court's high handedness (43.1 %) (Transparency International Bangladesh, TIB, 2004). This shows that the court’s inefficient performance is causing a delay, which mostly involves monetary interest. This is also the situation in the lower court, but strong monitoring from the Supreme Court can stop this trend. So, the active performance of the Supreme Court, with effective supervision can reduce the delay, which is absent from the activities of the Supreme Court. This is causing an extra problem, as the total procedure is too expensive for the poor.

4.1.2 Expensive procedure

Huge expense in judicial process causes procedural problems for addressing human rights by the Supreme Court in Bangladesh. As most of the people are living in

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poverty they cannot afford the most expensive judicial procedure in Bangladesh to get the remedies from the Supreme Court on human rights issues. The minimum fee of the court for access to the Supreme Court is more than $U 200. In general, involving lawyers and maintaining other procedures requires at least $U 1000 at the beginning. As most of the people of Bangladesh are poor and many can not afford daily living it is unthinkable for them to move to the Supreme Court in order to get redress on human rights issues. Advocate Md. Iddres, a lawyer of the Supreme Court, said that:

> The Supreme Court is too expensive for the middle class so they are afraid to come to the Supreme Court with their valid case. There is no way the poor can reach the boundary of the Supreme Court. (Interviewed on 14th April 2004)

It is true that the Supreme Court needs to be delicate and that all issues should not come to the Supreme Court, as there is a regular court system working in the country. Only cases where there is the question of law involved needs to be answered by the Supreme Court. It is not denied that the human rights issues are under the preview of the Supreme Court (explained in Chapter I). So, the Supreme Court should ensure access to all the victims of human rights violation. If the victims are poor then it is the obligation of the Supreme Court to take the case as an extraordinary issue. That can give room for the poor and marginalized. This gives the raise to *PIL* and involvement of civil society and NGOs for the protection human rights of the poor, which will be also examined in Chapter V. At this stage the research starts with the substantive issues that are causing problems in human rights protection.

4.2 Substantive Problems

Human right protection of Bangladesh judiciary is suffering due to substantive problems occurring from a lack of flexible interpretation of constitutional as well as other legal provisions. Another substantive issue is the interpretation of the concept of *locus standi,* which is still getting the narrow definition from the Supreme Court. Even though this is partially a procedural problem, the narrow expression of the right to sue, or *locus standi*, comes from the literal explanation of the legal provision. This is acting substantive problem for addressing human rights through the Supreme Court.

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The second substantive problem is the jurisdiction of the court. In many cases the Supreme Court is far from addressing human rights issue saying that is not under the jurisdiction of the court. So the issue of a substantial barrier remains in the interpretation of the jurisdiction of the court. Advocate Md. Iddres, a lawyer of the Supreme Court, said that the Supreme Court basically applies a trick to avoid certain issues by saying that the issue is not within the jurisdiction of the court. Sometime the court rejects claims by saying that there are problems in the application of the claim (interviewed on 14th April 2004). So, problems in the filing of a case and its grounds need a reasonable explanation for applying human rights protection. There is also problem in the interpretation of laws are not flexible enough to address human rights issues.

4.2.1 Lack of Flexible Interpretation

Human right protection in Bangladesh suffers as the Supreme Court usually does not take the flexible interpretation of the existing legal provisions to fit the extent of constitutional rights for a particular case. As the court does not take the human rights issues by extending the law provisions, an active initiative from the judiciary is needed. Ultimately, the successful constitutional process depends primarily upon the judicial and finally upon the person who is deciding upon the issue. The Supreme Court can act to extend legal provisions only by its active performance. The doctrine of *judicial review* was pronounced in ***Marburey v Madison*** by Chief Justice John Mashall in 1803. It was declared that, “it is emphatically the province and duty of judicial department to say what law is.”

This was echoed in Article 7 of the Constitution of the People’s Republic of Bangladesh and states that “this Constitution is, as the solemn expression of the will of the people, the supreme law of the republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency be void”. Any inconsistency is declared void by the Supreme Court with the authority of *judicial review*. But, that practice is limited in relation to human rights issues and therefore needs the extension of the constitutional provisions in human rights cases. Chief Justice Marshall reminded in his countrymen that, “we must never forget that it is Constitution we are expanding”. Considering the situation of Bangladesh, it is not until

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the restoration of democracy that the Supreme Court of Bangladesh started taking a progressive position to expand legal provisions in its declaration of notions of laws. The unfortunate side is that in certain issues the Supreme Court is holding the orthodox position. This is causing problems in human rights protection.

4.2.2 Limitations in Suit for Other

The Supreme Court of Bangladesh is not working properly on the cases that are brought by the person other than the victim or who is not directly effected. These types of suits need wide provision of *locus standi* and the notion of aggrieved person must be interpreted flexibly. The other issue is that the court needs to come forward with active approach by widening the laws for providing remedies to the victim. So the substantive problem is that the court is not entertaining sufficient suits that are brought by the person who is not directly effected. Representative suits are example of this kind of suit. The existing provision for representative suits can be found in the Civil Procedure Code (C. P. C.). It states that, "when there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend, in such a suit, on behalf of or for the benefit for all persons so interested." (Civil Procedure Code, 1908, Order 1 Rule 8(1)). So the process needs the implementation of those legal provisions with the reference from human rights notions derived from the Constitution.

A representative suit may be filed where there are 'numerous persons'. This term carries a specific meaning. On the other hand, 'numerous persons' do not embrace the general public (***Gurushiddappa v Gurushiddappa*** AIR 1937 Bom., 238: 241). So, it excludes cases where the interest of the entire public is concerned. But, the technical problem is that there is still no rule fixing any limit to the numbers and the actual number needed to be capable in bringing a representative suit. It depends on the discretion of the court to determine what is, or is not, numerous in a particular case. That is a substantial area where the Supreme Court can put its contribution for accepting the issue with its active involvement. But this is not often happening in the Bangladesh Supreme Court. On the other hand, the scope of human rights protection is getting popularity in *PIL* by the extension of scope of this type of litigation. Even

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though the fullest cooperation is yet to achieve from the Supreme Court as it acts partially giving excuses on substantive limitations.

4.3 Remedial Problems

The human rights protection of the Supreme Court suffers as the remedies by restoration of rights or promotion of rights does not get sufficient importance through the Supreme Court decision. The enforcement of these remedies very much depends on the law enforcement body of the state and on the willingness of the governing executive. Here the Supreme Court does not take proper monitoring for ensuring the implementation of remedies. The success in remedies depends on the quality and its implementation. The Supreme Court usually gives remedies that do not restore the rights of the victim. Rather the remedies address sudden need or protection. But the overall restoration of rights suffers due to the complex nature of the restoration of rights.

The other thing is that without the cooperation from the associate state organ the Supreme Court is unable to perform its role effectively. As the judiciary is the product of the society in which it functions. However, the judiciary is still dependent upon the other organs and institutions to carry out its pronouncements. Here lies that fundamental requisite of the cohesion between organs, and the political will to ensure that cohesion. The adage, "justice must not only be done, but seen to be done" comes into play here. The operative word in all of this is ‘enforcement’. In most cases, whether we realise it or not, it is the police who are left with the task of carrying out this 'enforcement' or execution of orders. But, it emerges that they do not, and in many cases, cannot, carry out their duties. If law ‘enforcement’ is the middle instrument between law and society, then a crucial link is missing in our society. Why is this so?

In the answer Mr. Babul, a victim of human rights violation, said that the existing mistrust within the executive organ is causing a gap between law and society. The shared benefit is another dimension that encourages the slow implementation. But, the most important thing is the lack of respect for the decision of the Supreme Court by the executive organ that is causing the problem (interviewed on 10th April 2004). It is a fact that the implementation is really slow and not satisfactory due to lack of monitoring of the implementation of decisions by the Supreme Court.

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Moreover, political interest causes unhealthy conditions for the implementation of Supreme Court decision.

4.3.1 Lack of Implementation

As the implementation needs the cooperation from different organs of the state and the honest well of the state mechanism, often inefficient implementation causes delays and brings no positive results in human rights protection. It is easier to understand this situation through some examples. We have seen that the Supreme Court's decision of remedies suffers for lack of implementation when the issue is delicate for the society; one example is the protection of sex worker's rights.

The law enforcement authority is sometimes reluctant to implement the rights, declared by the Supreme Court, of marginalized group such as sex workers, which is declared by the Supreme Court. Despite a landmark judgement on the protection of their right to life, personal liberty and rehabilitation, sex workers continue to remain in a tenuous legal position in Bangladesh, and in constant fear of illegal evictions and police raids. In its judgment in the case filed by several human rights organizations on behalf of the evicted sex workers of Nimtoli and Tanbazar brothel, (***Bangladesh Society for the Enforcement of Human Rights and Others v Government of Bangladesh***) the High Court emphatically reiterated the fundamental right to equal protection of the law and equal protection of life and personal liberty as enshrined in Articles 31 and 32 of the Constitution. The Court also held that the sex workers are citizens of Bangladesh and enrolled as voters and as such their wholesale eviction had deprived them of their livelihood, amounting to deprivation of right to life, making the act of eviction unconstitutional and illegal. The observations of their Lordships in this case are quite compelling:

> We painfully observe that though the police is the protector of the oppressed, in the instant case they have failed to fulfil their obligation in protecting the rights of the dwellers of Tanbazar and Nimtoli. Even if a particle of the allegations against the police is found to be true or has any basis in the instant case, it is a shame for the nation. (DLR, SC, 1997)

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The nation remains in shame, as news of further evictions or threat of evictions, is revealed in daily papers, most recently in Magura and Patuakhali. According to newspaper reports, the Magura administration (District Commissioner) with the assistance of the joint forces, raided, bulldozed and demolished the one hundred year old Magura brothel and evicted over 300 sex workers. All of this in contemptuous violation of a Court order, which barred such eviction until the disposal of the case or until further notices (Sangbad, 6 January, 2003). This shows that human rights protection needs cooperation from the executive authority. That is the hypothesis of the research. At the same time, this shows that the court is facing limitations due to the lack of implementation of remedies. This demands cohesion between the state organs and the Supreme Court for meaningful human rights protection.

4.3.2 Lack of Feasibility

The problem of remedies in restoration of right suffers as Supreme Court's decision often does not match with requirements of proper implementation. Many of the Supreme Court such remedies are not implemented, due to lack of feasibilities. This is another problem where the Supreme Court needs to put in more effort to reach practical solutions. Some of the remedies suffer, as they are too vague to be implemented. Relevant to this is the restoration of right to a safe environment. Any order to protect the environment demands a joint effort from different ministries of the Government. So, the order can be effective only if it provides guidelines for such a joint effort. That can be done by the order of specific activities or duties on specific authority. Otherwise the implementation remains complex and fruitless. That is why the feasibility of the implementation has to be taken into consideration by the judiciary before giving an order. The example of citizenship illustrates this point.

Bangladesh Supreme Court repeatedly acknowledges the discriminatory situation facing Bangladeshi women under current Citizenship Law of 1951. But, the remedies have suffered due to lack of feasibility in the restoration of right to citizenship. The government also fails to amend the Citizenship Act of 1951. The Supreme Court's decision does not get implemented as it was against the condition norms of personal laws; specifically it involves the notion of gender equality. The

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Supreme Court can be enforced by the progressive application of human rights norms. Currently, Bangladeshi men are able to transmit their citizenship automatically to their children and foreign-born spouses. But Bangladeshi women cannot transmit their citizenship to their children or foreign-born spouses. It is a situation that is highly prejudicial to the rights of women and in blatant violation of constitutional provisions of equality on the basis of sex.

The Government, in its periodic reports to the United Nations CEDAW (Convention on the Elimination of Discrimination against Women) Committee, acknowledges its duty to amend the laws, but in reality this remains a distant dream. This acknowledgement is in line with the recommendations of the High Court Division (***Malkani v Government of Bangladesh***, Writ Petition no 3192/1992) which stated that, Parliament should repeal the laws relating to citizenship that are not in accordance with the Constitution and that the Government should take steps to amend Section 5 of the Bangladesh Citizenship Act of 1951 as well as the Bangladesh Citizenship (Temporary Provisions) Order of 1972 in order to remedy the inequities with regards to citizenship rights. The decision of the Supreme Court suffers from lack of feasibility; even when it gives a specific order, but not a specific direction to the particular authority to done. Thus it has suffered an unwillingness of implementation from the state executive. Here the Supreme Court could take a practical approach by directing the steps of implementation of its decision.

4.4 Absence of National Human Rights Institutions

Thee absence of National Human Rights Institution (NHRI) is working negatively on the human rights protection role of the Supreme Court. A NHRI works supportively with the Supreme Court in human rights protection by referring the human rights issues to the Supreme Court. Another aspect is that the NHRI can comment on the human rights situation freely and can check the problems in human rights protection of Supreme Court. The NHRI can complement a Supreme Court. The idea of a NHRI in Bangladesh has been around for several years. In April 1995, the Government of Bangladesh approved a project to assess the need for such a body and make recommendations on its establishment. The draft bill, Bangladesh National Human Rights Commission (NHRC) Act 1999, proposes that a NHRC will be set up

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"for Bangladesh for the protection, promotion and creation of the conditions for the enjoyment of human rights and for matters connected therewith or incidental thereto."

Five years after the Act an NHRC is yet to be a reality. Even if it would be formed the real authority to protect human rights would remain the Supreme Court. There is no doubt that an NHRC can be an effective consolation, but without power to adjudicate and issue binding decisions they may be turned to be "glorified ciphers and promise of unreality" as termed by Justice V.R. Krishna Iyer. Even though, the NHRI is a trusted and specialist body that can contribute to overall human rights protection. It is also true that only the real political will of the Government, the opposition groups, and the civil society as a whole can help reach the cherished destination. But, it is important to stress the need for the presence of an NHRI to support the Supreme Court's human rights protection activities. So, the absence of an NHRI in Bangladesh is causing problems to the Supreme Court to protect human rights, as it is not getting any inspiration from state organizations. Apart from this, there are some practical problems that hinder the Supreme Court to protect human rights.

4.5 Practical Problems

Bangladesh Supreme Court does not act properly to protect human rights where the question of application of international standard of human rights arise, where the cohesion between custom and national law remain, where the personal law get preference over human rights standards, where political considerations are emphasized, where the issue of gender become important, and where poor people wants to take shelter under Supreme Court's protection. The same court may take different decisions if the issue is different. The following figure 9 shows where the Supreme Court's protection of human rights enumerated from these practical grounds and does not get proper support due to motivational constrain of judges.

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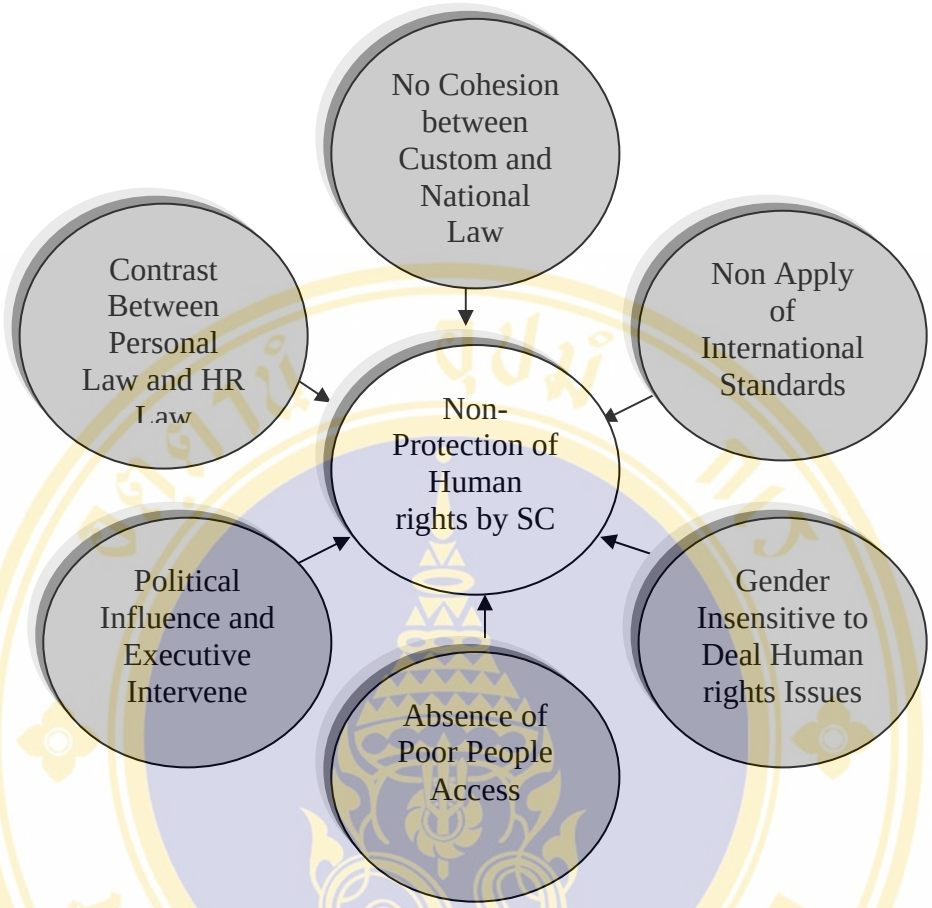

Figure 9: Issue base problems in human rights protection.

The non-protection of human rights by the Supreme Court is getting a rise from long-standing practices. It is the opinion of the interviewees that if the Supreme Court wants to improve its performance on human rights protection, then it has to emphasize those factors that are getting less attention in terms of human rights protection. It has been found from the interviews that the Supreme Court is facing difficulties when human rights violations occurred on the following issues:

- Specific rights of women,
- Political issue that contradict with human rights priority,
- Application of personal laws denying the human rights notion,
- Application of international standards of human rights on domestic level,
- Application of custom that is contradictory with the norms of national law.
- Poor people issues before the Supreme Court.

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The remedies for certain issues do not satisfying human rights norms. That indicates that there are certain problems for the Supreme Court to act upon on certain issues that based are on specific factors. The above mentioned issues are those where the Supreme Court face difficulties in providing remedies. Those human rights factors are not familiar to the Supreme Court. Rather the Supreme Court is facing those factors due to the activities of the NGOs and civil society. The Supreme Court is influenced by democratic values to act on human rights issues. It is evident that the number of human rights cases to the Supreme Court is getting bigger. So, human rights protection is not an isolated event, but it results from social and institutional development. Gender sensitivity is an issue that is yet to receive full acceptance as the society is not fully committed to support gender issues. On the other hand, the pro-people attitude of the Supreme Court is a fact that needs development by judicial activism. The application of international standards of human rights notions in personal law issues is in need for a wider understanding and judicial activism. This demands the involvement of some neutral bodies and the provisions of supportive activities for those bodies. A discussion of the above factors and problems will follow.

4.5.1 Non Application of International Standard

Bangladesh Supreme Court does not implement international human rights standards at the domestic level due to non-orientation of human rights standards, and also because the rigid dualistic structure of the law. This non-application of the international human rights laws occurs because these rights are not part of the constitutional rights in Bangladesh. But, it is true that within the existing situation the Bangladesh Supreme Court can get references from the international human rights instruments as the rights that are declared in Bangladesh Constitution are in essence similar to the international treaties. But in order for these standards to be recognized there needs to be an activist judiciary, which can be supported by democratic values from an active civil society. It is true that Bangladesh is like in most other developing countries where a civil society and democracy are still in embryonic stage. The Government is essentially exercising the state power through its integral organs to achieve the state's overall objective and equal application in the legal system (Hafiz, A. M., 2004: 13th Anniversary of the Daily Star). That is why universal arrangements

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did not quite work satisfactorily in our Supreme Court. We know that the Constitution of Bangladesh is the Supreme Law of the land (Article 7 of Bangladesh Constitution). The court is to determine cases on the basis of the Constitution and existing laws. As the Constitution holds certain provisions of the international human rights law, the Supreme Court is obliged to declare those. According to Dr. Faustina Pereira, a renowned researcher, the Supreme Court could extend the interpretation of the rights, to invoke the international standards of human rights (interview taken on 8th April 2004). Rather any dualistic approach in solving the problem to invoke the international standards could not make a favorable result.

We can understand the notion of the international human rights standards from a US Supreme Court's decision. The U.S. Supreme Court in **Paquete Habana case** has ruled that customary international law is "part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination". The courts in the countries of Europe enjoy wide power and jurisdiction to apply international law, whether it is treaty law or customary law. But, this monistic approach is not applied in the Bangladesh judicial system as we follow the dualistic approach. The issue of invoking international human rights law in domestic courts would invariably bring to focus to the relationship between international law and domestic law and the status of international law in the domestic legal system as well as the role of domestic courts in relation to the application of international law.

According to Dr. Shah Alam, a renowned academician, many international human rights instruments do not only provide for rights and obligations of the state parties towards one another, but also proclaim rights of individuals to be protected by the states of their nationality as well as by the international community (interviewed on 29th March 2004). Individuals are not more passive objects of the treaties where they can only derive benefit through their respective states. They have also become active subjects of international law, albeit, through their states to assert their rights by various means. At the same time this view, that human rights obligations are owed *erga omnes*, that is, to the whole international community, has gained a stronghold in international law. The norms of the international human rights law is accepted on the basis of international customary law. This has gained authoritative strength by

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international treaties or contact. Bangladesh is a party to such treaties but those are not automatically applicable on domestic level. In other words, the ratification of an international treaty does not mean that it is incorporated automatically into national laws in Bangladesh.

Bangladesh Supreme Court gets influences from the decision of Indian Supreme Court. The notion of non-application of international standards has its reflection on the Indian judicial system. Indian courts, especially the Supreme Court, has over the years played a dominant role of judicial activism, now a well-known concept on the sub-continent, to the extent that enforcement of international human rights norms has acquired a new dimension, markedly distinguishing India from other commonwealth countries. The Indian Supreme Court has rarely missed an opportunity to take advantage of progressive provisions of international human rights law to illuminate its own law, in order to provide justice to the victims of violations of human rights under its own mechanism. But, this is not the case in Bangladesh. Prof. Alam argues that if we look at domestic enforcement of international human rights law through the use of monism and dualism, it would appear that the countries of Europe are more monistic rather than dualistic in approach (Alam, M. S., 2004: 4). The Bangladeshi dualistic approach creates a basic bar to the implementation of international human rights standards on the domestic level.

4.5.2 Avoidance of Political Sensitive Issues

Bangladesh Supreme Court is not active enough to act as victim sensitive as it avoids the issue that might be politically sensitive, as the court has to depend on the political authority for much of its material and normative supports. This is an indication of a weak judiciary. The hypothesis of this research shows that to address the human rights successfully the Supreme Court has to be strong and proactive with the application of its constitutional provisions. But the unfortunate side is that the victims are not getting support when there is political interest involve. According to one victim Mr. Jahangir Alam, the reason behind this is the involvement of political interest in judicial affairs. He stated that,

> Victim sensitivity is an important side of the Supreme Court, which leads an active judiciary. Bangladesh Supreme Court is working in a difficult political

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environment, where the sensible performance of the Supreme Court needs quality and independence as core of the strength. (Interviewed on 11th April 2004)

Ms. Jobaida Aktar, another victim, argued that the Supreme Court is the place where we can place our hope for redress. It is the organ that gives strength to the poor and vulnerable section of the society (interviewed on 8th April 2004). The opinions of these two victims are contrary. It was found that Ms. Jobaida Aktar got sufficient remedies from the Supreme Court in her case and that there was no involvement of political issues. Rather it was concerning a human rights violation on the personal level. But, Mr. Jahangir Alam was facing trouble as his case involved a person who has direct political affiliations. He thus faced complexity in his proceedings. The nature of avoidance of political issue by the Supreme Court is also evident from activities where it tries to remain politically silent.

Supreme Court Acts Politically Silent

For avoiding the political issue the Supreme Court is keeping its position silent to reduce political controversy and this tactic is allowing many human rights violations not to be addressed because of the weaker position of the Supreme Court. It is an obvious that political parties are trying to get judicial approval in many instances. At the same time many human rights issues involves political affiliation. Often, in such situations the judiciary plays a silent role. On 28 December 1994, the opposition *en-masse* resigned from parliament and continued their movement against the then Government in power at the time. Thus, they could avoid the court's direction, to go back to parliament. This is illustrated in the case ***Anwar Hassian Khan v Speaker of Bangladesh Sangsad Bhavan and Others*** that is known as Parliament Boycott case (47 (DLR), 1995: 42). But, the Speaker, in the hope of a compromise, was delaying his acceptance of their resignation. Similarly, the result in the case ***Raufique (Md) Hossian v Speaker*** known as MPs Resignation case (15 BLD, 1995: 383), comprised two writs. Raufique Hossain claimed that the attempt to resign is anti-constitutional, while Alauddin Khalid asserted that the Speaker, by not accepting the resignation, was violating the Constitution.

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Thus the court was involved in a controversial political issue and was under tremendous pressure, as the future of democracy largely depended on its decision. The Chief Justice constituted a special bench of three judges. In the leading judgement, Mahmudur Rahman J. rejected the plea that the court had no jurisdiction. However, the petitioners, who came as 'conscious citizens', were denied standing because they did not have any constitutional or legal right that was violated. This shows that the Supreme Court tries to take a comparatively politically neutral position to avoid any controversy. It also shows that the Supreme Court is unable to deal with politically sensitive issues, as there is a lack of procedural precedent and the motivation of the judges is not enough to take a strong stand. The hypothesis of this research illustrates the causes of ineffectiveness of the Supreme Court's role and specifies those causes. So, this is an indication of a weak Supreme Court that needs to come out from the backlog of procedural inefficiency with strong motivated judges. Considering the role of political issue, this research highlights the role of the Supreme Court in addressing personal law issues when it is contradictory with human rights norms.

4.5.3 Application of Personal Law

Bangladesh Supreme Court gives preference on the personal law issues; even if there is a conflicting situation between personal law and human rights norms. Because there is a lack of human rights motivation in the Supreme Court, pressure from the society for implementing personal law exists. Personal law directs marriage, divorce, inheritance, and other related issues. Basically, this personal law derives from religious law. The unfortunate side is that there is that there is lack of appropriate interpretation, reform or adjustment in the personal laws. So, often some provisions of personal laws cause human rights violations. The narrow interpretation of personal laws is the main factor that causes human rights violation. In Bangladesh the Supreme Court is practicing to promote equality and to protect the vulnerable from exploitation. But, when the question of personal laws reach the Supreme Court it usually keeps silent or hold a position favoring personal law. An overview of personal laws is needed for a better understanding of the conflicting situation between some of those personal laws and human rights standards. These conflicting provisions of personal laws are given in the following table 2:

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Table 2: Inequality in existing personal laws of Bangladesh.

Types	Muslim Law	Hindu Law	Christian Law
Judicial Divorce	Women can seek judicial divorce. Men have unlimited rights.	Divorce is not recognized.	Women have unequal rights to divorce.
Marriage eligibility	Women are not allowed to marry a person of different religious affiliation.	Inter religious and inter caste marriage is not recognized.	Canon 1862 refuses to acknowledge the validity of marriage with a non-Catholic
Polygamy	Men have legal rights to polygamy but a second marriage without the permission of the first wife is punishable.	Polygamy is legal for men whereas women cannot have a second marriage.	Bigamy is illegal for both women and men.
Inheritance	Daughter gets half of the Son.	Daughter has no rights to property.	A testator can leave all his/her property to anyone.

Most of these provisions do not support human rights norms. So, if the existing context cannot escape the application of these then it is difficult to ensure human rights for all. The Supreme Court is not taking sufficient steps to eliminate this barrier from a human rights perspective. One of good example, where the best initiative from the Supreme Court is found is where it tried to restore human rights provisions but finally failed due to lack of specific precedent. The case is named **Hafizur Rahman's case**. In this case the High Court Division declared a maintenance issue in favor of the wife which apparently goes against personal laws. The High Court ruled without consulting the laws from the Muslim Family Law Ordinance, but rather it took the spirit of the laws and declared that the Muslim divorced wife is entitled to get maintenance from her former husband until she is remarried or until her death. It was,

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for a while a revolutionary ruling from the High Court Division. But, the Appellate Division did not accept it and rejected the ruling of the High Court Division. This shows that the court has a positive attitude to human rights norms but that it cannot successfully work towards it due to explicit provisions in national law. The *positive law* or *national law* recognizes the personal law, so, it is very difficult for the Supreme Court to act against it. At the same time, the results that follow after application of personal law can lead to huge public anger. So, the Supreme Court are concerned with public emotion before steps are taken against personal law that will not facilitate addressing human rights issues successfully. At this stage the research discusses the role of the Supreme Court in addressing custom.

4.5.4 Preference on Custom

Supreme Court of Bangladesh gives preference to the existing customs and practices even it contradicts with human rights norms because the Supreme Court favors the existing practices and some of those practice have a religious base. So, the Supreme Court takes a conservative approach, even denying the equality of gender and failing to ensure the standard of human rights. The judicial system of Bangladesh is based on the common law tradition. The brief characteristic of the judiciary has been elaborated in section 2.1.2 and 2.1.3. Advocate Adilur Rahman, Deputy Attorney General of Bangladesh, expressed in his interview that the Bangladesh judiciary allows the taking of reference from existing traditional custom. It also contributes to the development of Bangladesh judiciary (interview taken on 12th April 2004). He added, this is positively contributing to the human rights. But, certain customary practices posses a misapplication of religious law. This causes human rights violations. Often the Supreme Court fails to take an effective role in stopping this malpractice and restore the appropriate standard of human rights. Basically, those are the cases where the Supreme Court does not take a strong position against traditional custom.

Recently the Supreme Court has taken a relatively better position against one customary practice that is liable for enormous human rights violations, namely the *fatwa.* But this initiative was only taken after enormous pressure from the civil society

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in a particular case. At the same time, this type of initiative cannot bind one custom. This type of tendency might confuse people that the Supreme Court is acting against the custom even though the court is not taking on many human rights violation cases that have occurred from the practice of custom.

Fatwas commonly dealt with marriage and divorce, or meted out punishments for perceived moral transgressions. Victims were sometimes lashed or shunned by their communities. The case that provoked the High Court to strike down the *fatwas*, began in February 2001. Saifullah divorced his wife Shabida by shouting *talaq* (promise for divorce) three times over a quarrel. The local *Maulana* (claimed religious leader), Azizul Islam, certified the divorce. Shabida was against the *talaq*. The Maulana and his five associates advised Shabida to marry another man to get around the divorce. After she became a legal wife of the other man she could divorce him and later, after the four months of *iddat* (period specified not to marry), she could again marry Saifullah. But Shabida was unwilling. She challenged the dissolution of her marriage in a court of law. The case went up to the High Court where the judges decided in Shabida's favor and declared that the Maulanas have no right to meddle with anybody's life by willfully issuing absurd *fatwas*. Only the courts have the authority, in the field of law and constitution, of interpreting and giving an award. The court has ordered the arrest and prosecution of the Maulana and his five absconding associates (Hussain, M., 2001: 2).

The Supreme Court ruled this order due to countable pressure from civil society and other conscious sections of society. The pressure was able to create wide public support on this issue. This made it easier for the Supreme Court to act against the unjustified use of custom. It suggests that the hypothesis of the research, on the performance of the Supreme Court, depends on the pressure for a progressive judiciary. This has been proved to be increasing. It is also true, that even in this case, the Supreme Court failed to act against all forms of *fatwas.* Rather, it specified particular types of *fatwas*. This shows that the social factors and long acceptance of the people of *fatwas* are causing constrain on the human rights protection activities of the Supreme Court. There is a need for motivated judges that can take timely measures to stop the inhumane activities of custom through the application of human rights provisions of the Constitution. Training of judges and curriculum building can do this.

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4.5.5 Gender Insensitiveness

The Supreme Court is not an organ performing gender sensitive role because of the lack of motivation on gender issues and existing judicial and social structure is not favor gender equality. The gender insensitive activities mainly rise on the customary practice and religious matters. Though, there are some decisions that are leaving towards the promotion of women's rights. But, the overall outlook of the Supreme Court needs to be considered for judging its gender sensitiveness. It has been found that the number of cases related to women's rights that has been taken under consideration by the Supreme Court is not nearly proportionate to the number of remedies being sought in relation to women's rights. The problem is that the exact figure of the remedy being sought from the Supreme Court on womens issues is difficult to measure. But, it was revealed, from the interviews with NGOs and civil society persons, that when they proceed with women's issue the Supreme Court usually does not take that under consideration stating that there is lack of standing or that there are procedural problems in the claim. (Interviewees did not want to mention their name on this issue). Even the Constitution states in Article 27 that all citizens are equal before the law and are entitled to equal protection of from the law. So, the gender insensitivity of the Supreme Court is contrary to the constitutional obligations. This provides an answer to the research question about whether the Supreme Court is meeting its constitutional obligations to protect human rights. This suggests that the Supreme Court needs to be more sensible in its protection of women's rights.

Another dimension of the problem is that the usual process of litigation is not supporting women's position. According to a report, Dr. A. Badrudozza of the Bangladesh Human Rights Commission, the process of case shifting from judge court to the Supreme Court takes in excess of 2 to 3 years at the least. Ninety percent of the women, or their families, cannot bear the cost of the lengthy legal procedure (Ramanathon, U., Bulletin, ASK: 2002). It reveals that even the usual situation could be harder to tackle for certain sections of society compared to the rest. Now the question arises, would women get preference men? Considering the current situation in terms of equality, the answer might be negative, but if the protection of the human rights is the concern, women need extra care, as the society does not allow them

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equality in every sphere. The Supreme Court has the authority to act *suo motu* for the people who are vulnerable or on issues that require urgent application. There are very few examples where the Supreme Court has taken steps to protect women's rights. It is inconsistent with the needs of the society, as women remain the most vulnerable section. After considering the problems of the above issues the research will consider the problem regarding a specific right namely the right to information.

4.5.6 Failure in Protecting Right to Information

The Supreme Court of Bangladesh is not doing enough for protecting the right to information even though the Constitution provides for freedom of speech and of the press; however, the government has not respected these rights in practice, and the Supreme Court acts softly on this issue to save itself from government's pressure. In reality, individuals cannot criticize the government publicly without fear of reprisal. The government attempted to impede criticism by prohibiting or dispersing political gatherings. As in past years, journalists pressed for repeal of the Official Secrets Act of 1923. According to this Act, a citizen must prove why he or she needs information before the government will provide it. The Act protects corrupt government officials from public scrutiny and hinders transparency and accountability of the government at all levels (Bangladesh Country Reports on Human Rights Practices, 2003: Bureau of Democracy, Human Rights, and Labor). Unfortunately, there is no initiative from any corner of society or from the Supreme Court to ease the situation in enabling ordinary people to have the access to official information.

If we research the Supreme Court's role to protect freedom of expression then it is found that the situation is not satisfactory for free press or media. According to Marna Carroll, of the South Asia Human Rights Documentation Center, journalists in Bangladesh regularly endure vicious attacks, intimidation and repression. Alarmingly, eight have been murdered in the last seven years as a direct consequence of their writing and reporting. No one has been convicted of any of those killings. So, the action on behalf of the Supreme Court is absent. In 2003, the situation had deteriorated to such an extent that Bangladesh was considered one of the most violent countries in the world for journalists. Complete inaction by the authorities served to strengthen the widespread violence. The media in Bangladesh were controlled by more than 21

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restrictive laws, which by design curbed freedom of expression in every form. There is an urgent need for the Supreme Court involvement. But, there is no example of the involvement of the Supreme Court to protect the freedom of expression by giving order to abolish those laws or to protect the journalist. Even the Constitution provides that, “the right of every citizen to freedom of speech and expression; and freedom of press, are guaranteed” (Article 39 of Bangladesh Constitution). But, the Supreme Court is not able to protect those above-mentioned rights through its means. It needs comprehensive activity from civil society to make the Bar and the Bench active in protecting this right.

There is one good case example for restoring the provisions of law and give attention to people’s opinion on the rights to freedom of expression. That denies the notions of the human rights but keep the rigid literal meaning of expressive legal provisions. In the ETV case the Supreme Court followed the notion of law and stopped its function. It got popular support round the country and acted brilliantly to report on human rights issues. In the full name of the case is ***Chowdhury Mahmood Hasan v Bangladesh***. A private TV channel Ekushey Television (ETV), which was a reputed for the good quality broadcasting, was given a license for terrestrial transmission in 1999. After more than two years of its first transmission, a writ petition was filed jointly by Chwdhury Mahmood Hasan and Abdur Rob Chwdhury, Professors of the University of Dhaka and Ghias Kamal Chowdhury, a journalist, on 19 September, 2001. They alleged that the operation of ETV involved breaches in constitutional obligations; statutory duties of the Government, and was in clear violation of legal mandates and public policies. In 1998, 17 applicants submitted their bids in response to the Ministry of Information’s invitation to install and operate a television channel under private ownership.

The petitioners claimed that the technical committee was constituted for the purpose of examining the proposals that had qualified and submitting a report to the Ministry. However, the petitioners alleged that due to ‘serious pressure’, the committee revised its earlier report and submitted a new list of eight qualified participants, with Ekushey Television at the top. The High Court Division based its decision basically on the core issue of the selection procedure. It did not verify whether there was one final evaluation report by the technical committee, or two

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successive and superseding evaluation reports; it questioned the propriety of the said 'final' evaluation report. Finally, the High Court Division came to the conclusion that the changing of the evaluation report and the manner in which the selection was done lacked transparency, and hence were *mela fide*. Therefore, all subsequent actions that were taken on the basis of the report were also *mela fide*.

The Appellate Division affirmed the decision of the High Court Division. The ETV's Managing Director filed a review petition in the Appellate Division asking for total justice in the matter, but that petition was also summarily rejected. From the above case study it is clear that, even though the ETV won popularity among the people around the country, the court did not take this into consideration. This rigid legal approach is not incorrect but there was perhaps a hope that the Supreme Court could arrange some sort of arrangement that could bring a good result for society and support people's opinion. This is an example where the Supreme Court abstained from extending the provisions for the protection of people's right to know. This event demands the Supreme Court to come forward with flexible interpretation of legal provisions. All these problems of the Supreme Court were discussed in this current Chapter and Chapter II and means that access to the Supreme Court is limited.

4.6 Limited Access

The overall human rights protection role of the Supreme Court shows that the access to the Supreme Court for getting the remedies is not easy. It is rather a limited scope for certain section of the people and the victims cannot proceed to the Supreme Court due to the factors of orthodox position and traditional practice of the Supreme Court. This situation is made worst with the structural and functional problem. So, the delay, political involvement, poor monitoring, lack of access to documents, rigid interpretation of laws, financial limitations, and poor knowledge of the remedies bar to the easy access to the Supreme Court. These things are given in the following figure 10 to demonstrate the state of accessibility to the Supreme Court.

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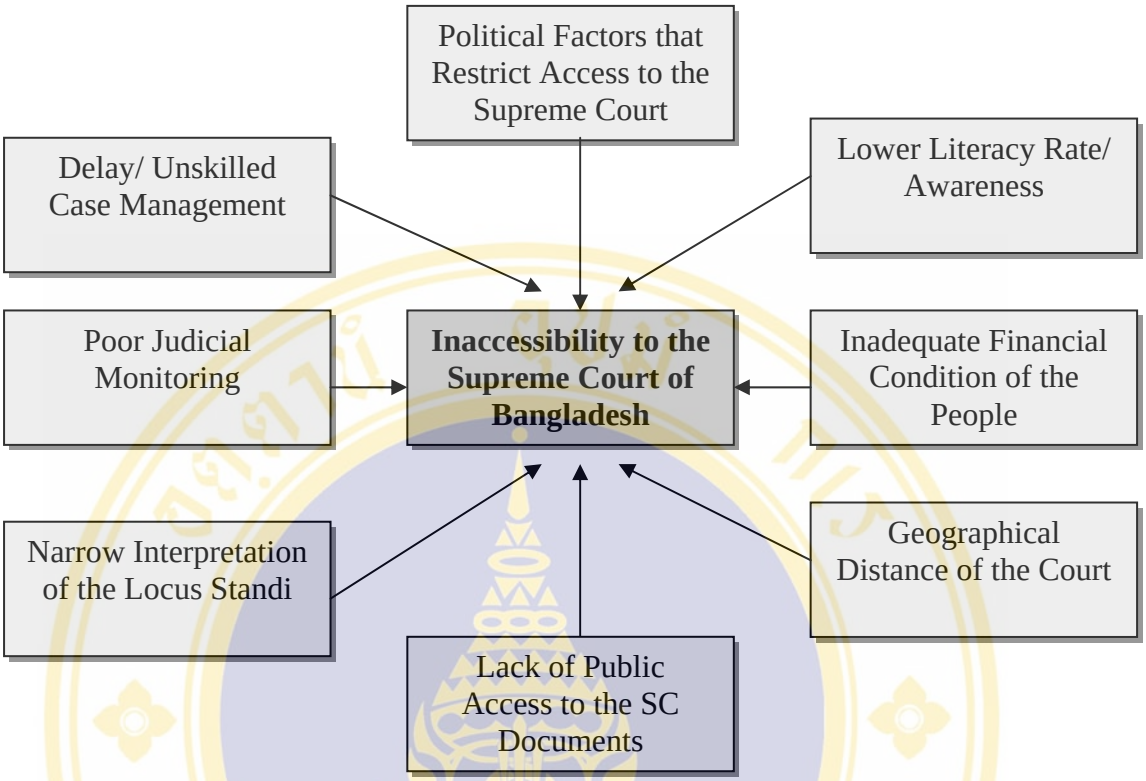

Figure 10: Contributing factors to the non-accessibility of the Supreme Court.

Access to the Supreme Court is the ultimate guarantee in the protection of human rights. The unfortunate event is that the Supreme Court does not ensure access to all people. Since people do not have enough access it is difficult to judge the activities of the Supreme Court. It is true that the *rule of law* is fulfilled when human rights are protected by a legal system that controls the exercise of power by the Government through court supervision on the executive and administrative powers. In addition, there must be equality of access to redress and equality of treatment, whatever one's social status (Stephen J. Toope, 1997: 14). But the existing situation is not supporting the human rights protection as it provides less access. Basically, access to the Supreme Court depends on relative factors. From the above discussion in Chapter II and III, it can be justified that, in light of the figure that shows the grounds of inaccessibility to the Supreme Court without considering the practical issues, it causes barriers to access.

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Mr. Jahingir Alam, a victim, said that the accessibility depends on the facts of the case. If human rights are violated by the governing political force then it is hard to get access to the Supreme Court (interviewed on 11th April 2004). He added that accessibility is a matter that also needs procedural and substantive changes. For example, delay must be eliminated from the judicial process as it discourages people to access to the Supreme Court. At the same time, as shown in figure 10, the educational level is an important factor in ensuring access since illiterate people are not aware of their rights and they therefore cannot claim them. This suggests that a massive human rights education program needs to be taken by the government. This also concerns NGOs and civil society groups. It is also true that as the Supreme Court is mono-centric. In other words, geographical distance keeps people away from having access to the Supreme Court. So, those concerned, on behalf of those who cannot reach the Supreme Court, can introduce *PIL* and *SIL*. On the other hand, advocate Iddres, a lawyer of the Bangladesh Supreme Court, said that the poor monitoring system and narrow interpretation of *locus standi* are causing less access to the Supreme Court (interviewed on 14th April 2004). This shows that access to the Supreme Court is not a satisfactory enough. Rather, it is limited and this is not supportive for human rights protection. So, initiatives have to be aimed at widening access in every aspect of the above figure 10.

Conclusion

Part of the structural problem is that there are several barriers that differ from issue to issue that have a direct effect on the human rights protection role of the Supreme Court. This chapter has described these existing problems, from procedural, substantive, remedial, and practical perspectives, that limit the activities of the Supreme Court and cause future problems in human rights protection. This chapter has shown that the Supreme Court has a less effective role where the issue is politically sensitive, or involves international human rights standards, personal law, and women's rights. It shows that the Supreme Court acts weakly on issues that has political importance and causes the non-protection of human rights violation. The hypothesis of this research also supports a strong Supreme Court with sufficient procedural precedent or examples to guarantee human rights protection. That needs the flexible

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interpretation of laws and effectiveness of the remedies. Those are currently not happening enough for ensuring a progressive judiciary. At the same time, this gives limited access to the ordinary people because still there is delay, poor monitoring, rigid interpretation of laws, illiteracy among the people, and political influence on the Supreme Court. These lead us to assess the role of the Supreme Court considering the positive performance of Chapter II and negative performance of Chapter III and IV. So the next Chapter will cover the assessment of human rights protection role of Supreme Court of Bangladesh.

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CHAPTER 5
ASSESSING OF HUMAN RIGHTS PROTECTION ROLE

Introduction

It has been shown that the scope of human rights protection of the Supreme Court varies depending on issues before it. It is clear that the Supreme Court is playing a worthy role in certain areas which helps to create its solid position in relation to human rights protection. At the same time, structural and functional problems are creating a bar against the strength and activities of the Supreme Court. So, the practical position writ regards to some specific grounds are identified where the Supreme Court cannot ensure its position in furthering human rights protection. This area will be assessed in this chapter. It it helpful in understanding the factors affecting the performance of the Supreme Court and access of people, those who rely upon it. The effectiveness of its actions will be analyzed and an assessment made of the influences of different social groups upon the Supreme Court's activities. By doing so it provides a framework to determine the role of the Supreme Court. This chapter begins with an assessment of Supreme Court's role in acting as a check and balance.

5.1 Role for Check and Balance

The Bangladesh Supreme Court partially acts to ensure the check and balance between the activities of the executive and people's rights. The characteristics for check and balance work in a complex process by providing direction, declaring supremacy of law, and by the progressive activities of the lawyers. Moreover, it depends on several social phenomena. In the case of Bangladesh, popular movements working towards freedom from military rule have pressed for pluralism, democratic participation and fundamental freedoms. The rule of law, a representative parliament, an independent judiciary and a free press were seen, not only as ends in themselves, but essential for establishing social and economic rights. But, even in this situation, citizens remain uninformed of national decisions that affect their lives. This leads to a sense of exclusion, as they are then even less able to feed into policy-making. Their

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protests are often silenced. The judiciary is the only institution that can protect their rights by declaring policy invalid because it contravenes citizen's rights. This is one way of illustrating a check and balance.

a. Check and Balance by Providing Direction

The Supreme Court has the potential to act as a check and balance by providing directions to the executive on its different activities. The existing situation has created a frustration with the process of formulation of laws and policies, which are seen as failing to contribute to the creation of an equitable and just society. Mr. Fazlul Haque, executive director of BLAST, is of the view that the Bangladesh Supreme Court is in a position that can support these institutions by providing directions to protect human rights (interview on 7th April, 2004). It is also true that persistent criticism of the failure of institutions and the absence of reform has been voiced by different sectors, both within and outside the country. An absence of checks and balances have provided a licence for violence for the powerful, for abuse of human dignity to those charged with protection of the Constitution and for disregard of basic needs by planners (Hossain, H., 2002: 4). In this regard, previous chapters have examples which show that the Supreme Court gives directions to the Government to solve political problems.

b. Supreme Court Declares the Supremacy of Law

The Supreme Court of Bangladesh is taking steps to ensure check and balance by establishing supremacy of laws through judicial declaration. This can show that the rights of people are something that is undeniable in every circumstance. It is true that the judiciary maintains the necessary balance and social equilibrium in the society (Justice Chowdhury, A.R., 1993: 14). The value of the law is so supreme that Napoleon said, "I will go down to posterity not by the battles I have fought and won but by the code I have given to France." The judiciary is the institution that can ensure the supremacy of this supreme law. In Bangladesh, the Supreme Court declares the constitutional supremacy and protects the rights of ordinary people. Sometimes, these declarations turn against the decisions of the executive and thereby provide a balance. Whenever the legality of any legislation is challenged the Supreme Court considers it on the basis of constitutional guidelines. The Public Safety Ordinance 1998, was

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challenged and the Supreme Court issued show cause notice, and consequently it was repealed. This has been done on the basis of constitutional supremacy and leads to a check and balance.

c. Lawyers Ensuring the Check and Balance

The progressive activities of the Supreme Court's lawyers is helping to maintain the balance between the activities of the executive and the response of the people. Lawyers can actively participate in society to provide a constructive approach to the negative effects of executive decisions. It is undeniable that lawyers are the carriers of freedom and democracy. People turn to lawyers for help and guidance in their hour of need. So, the ideal Bar must be based on freedom, justice, and respect for human rights. In this way lawyers can act in making the court an active organ of the state. In Bangladesh lawyers are contributing by bringing human rights issues to the Supreme Court, but still they need to come forward to change the existing situation and ensure the position of the institution. Advocate Nizam said that:

> The position of lawyers need to be determined to ensure the proper role of the Supreme Court that can act as an institution maintaining check and balance among the state organs. It is that institutions, which challenges the executive decisions and maintains the stability in the state activities. In most cases lawyers take position to help the honorable court to determine favorable decisions for the vulnerable. (Interviewed on 3rd April 2004)

By declaring the rights of ordinary people, the court supports the ideal relationship between state and its subject. It has an untold influence on society. But, it demands wholehearted attention and devotion. This wholeheartedness could be gained by the reasonable performance from judicial officers. It is undeniable that the presence of judicial decision or direction is a bar to conduct anything contrary to this by the state mechanism. The court's performance can provide this type of direction. The role of preventive direction is a powerful device to ensure check and balance. But, the success of check and balance depends on the effectiveness of Supreme Court actions.

5.2 Effectiveness of Actions

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The Bangladesh Supreme Court is a place that provides shelter for individuals and groups when there is little hope left for them with some instance of effective judgment. It is an institution with some brilliant judgments on its record. In many instances it contributes with effective actions. According to Advocate Iddres,

> The Supreme Court is the highest organ that can direct the executive authority to take steps in order to implement its decision. The Bangladesh Supreme Court is proving its competency by giving several quality judgments every year. The implementation of those is effective and that provide redress to the oppressed. In many cases it even goes against the activities of the executive. (Interview taken on 14th April 2004)

This effectiveness depends on many criterions. The main thing is that if something is grossly against the political interest of the Government then it is nearly impossible to get the wanted result from the judgment. This sentiment is reflected in Advocate Iddres's opinion above. It was revealed from the fieldwork that the decisions of the Supreme Court are usually politically neutral in nature. So, it is still highly respected and the implementation is quite significant. So, the question arises, if there is no politically critical case considered by the Supreme Court, then how can the Supreme Court give effective direction on those issues? It leads to the fact that there needs to be more cases of such nature, with enormous importance, that have to be put before the Supreme Court. In light of this another dimension of the problem was found. That is, the involvement of the people who usually violate human rights are somehow involved with political parties. In some instances, the judgments are implemented partially, but after a certain period of time reverse process starts. That indicates the lack of monitoring on the implementation process, and it is causing problems in the effectiveness of Supreme Court actions.

Lack of Cooperation between Judiciary and Police

Judicial decisions in Bangladesh are not implemented well due to poor cooperation between the Supreme Court and the implementing authority, namely the police department. The action of the executive is a condition for the smooth functioning of the court's decision. Justice Momtaz Uddin Ahmed, former assistant justice of Bangladesh Supreme Court, said this and also expressed that the

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implementation body is a part of the Government. The Home Affairs Ministry controls the police and paramilitary forces, which bear primary responsibility for maintaining internal security and implementation of the judicial decisions. The Government frequently uses the police for political purposes and has committed numerous serious human rights abuses. So, it is difficult for the same police to protect human rights. Mr. Babul, a victim of human rights violation believes that this is the area which needs a strong Supreme Court as strong judges can override the power of the police. Recently the Supreme Court has called top officials with the police force to explain their role in some specific issues that has involved over-exercising police power. The question arises, how can a strong Supreme Court be ensured? According to Mr. Babul, "the strong Supreme Court depends on the strong personality of the Judges." (Interviewed on 10th April 2004) It is most likely that the personality of judges of the Supreme Court can influence the executive. If the person does not care about future benefits from the executive then he can give order or direction to implement that order and it could bring about an effective outcome.

5.3 Influence of Different Sections of Society

The activities of the Supreme Court are influenced by the involvement of different sections of society and have resulted in different outcomes depending on which social group is involved. Due to involvement of social group people should feel the urgency and earnestness to ensure a *'rule of law'* in Bangladesh. These days people question: why should they pay taxes as the proceeds are likely to be embezzled by their corrupt leaders? Why they should hand over a criminal to the police who can be easily bribed and the rogue would be free to resume his/her crime with vengeance? It is the issue of restoring confidence that without people's support (Chief Justice Kamal, M., 13th Anniversary Special, 2004: The Daily Star). This is a circumstance where other social forces need to come forward to save the citizen from the continuing path of non-functionality. It is vital that society influences the judiciary. Mr. Zakir Husain, an academic, is of the view that,

> The Supreme Court couldn't deny the influence of the social groups or social organs. Rather the Bangladesh society is developing a mutual transaction of the existing social groups. The politician contributes, as well as civil society, to the

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performance of the judiciary. Our lawmakers are working to ensure a dynamic Supreme Court, but they are always keeping track on the active vigilance of social groups, such as civil society. (Interviewed on 19th April 2004)

So, the influence is undeniable. Now the types and ways of these influences need to be found. Besides the politician, the bureaucrats are the second most important persons that can influence on any state organ. Day by day the business community is also getting power in Bangladesh. They are trying to ensure the smooth function and in doing so they are creating a strong network amongst policymakers and thus towards the judiciary. Mr. Shawkat Mahmud, the General Secretary of National Press Club, Bangladesh, also agreed on the need for business community involvement in the judicial process (interviewed on 4th April 2004). So, it is undeniable that business groups have influence on the activities of the Supreme Court.

The Influence of Business Groups

In Bangladesh the multinational corporations are gaining greater influence on the human rights protection role of the Supreme Court for saving their interest. In one case, a gas explosion in Magursora occurred due to lack of safety measures from the Unicol Corporation. That caused an untold damage to the environment and assets of a 45 sq. m. area of Sylhet district of Bangladesh by petroleum mine explosion, which is nothing compared to the real damage. In this case, the **Magursora case,** the court decided that the well-known Unicol Petroleum Company shall compensate for all damage. But, the full money was not recovered. This is so because the effectiveness of the order against a giant multinational company was tempered with by forgery. This was the case even though the Supreme Court gave this judgment after huge pressure from a mass of people that in turn were pushed by popular media which had the active support of some political organizations. So, it is found that in Bangladesh social groups can influence the Supreme Court which has enormous value to protect human rights. The ‘grey side’ of the fact is that the active performance of the Supreme Court needs cooperation from established social groups.

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5.4 Effects of Civil Society Involvement

Civil Society Protects Human Rights

The Supreme Court of Bangladesh receives active support from civil society to protect human rights. It is the members of civil society who first brought human rights matters to the surface and explained the necessity of the Supreme Court's involvement in human rights issues. It has also been shown that the Supreme Court could be influenced by an active civil society. Civil society can build a bridge between people and the deciding body. In this case, civil society can, in an easier way, bring the issues of human rights violations to the Supreme Court. From a wider point of view it can be argued that an attachment to democratic processes of Government, based upon such principles as transparency, accountability and public participation, are viewed as central to the legitimacy of any governing regime (Toope, 1997: 14). The essential role played by organs of civil society is in working as a vigilant observer to protect human rights and democracy. According to Ms. Rukhsana, a victim of a human rights violation,

> Member from civil society have the capacity to bring their issues of human rights violations to the Supreme Court more than other people. Civil society can be influential on decisions that might affect their rights, because they have access to every place in society. No state organ wants to act against civil society as it is well recognized that the role of civil society is positive for society. (Interviewed on 27th March 2004)

Political Affiliation of Civil Society

The involvement of civil society in supporting the Supreme Court in human rights protection is a setback due to the affiliation of certain civil societies to politics. It is argued that the civil society in Bangladesh is not strong enough to play the expected role in order to protect human rights as they have political affiliations. This is partially true that civil society is not united, as there are many factions, due to political beliefs. But, it is also a fact that the existing civil society is not welcome by the Supreme Court in all human rights issues.

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However, in Bangladesh, many people who claim to be members of civil society are somehow related with the governing authority or with the opposition. That is contrary to the notion of civil society. It is true that faith in legal institutions and processes can be employed in an equitable relation between the judiciary and other sections of society. Mutual cooperation and contribution can develop this faith. If members of civil society constructively raise any issue of human rights concern and bring it before the Supreme Court then a brilliant settlement can be expected. Recently, NGOs are taking initiative to consolidate civil society. The results are obvious. They show that in relation to human rights, civil society is now in operation and is quite vocal. That is also bringing fruits for human rights protection by judicial means.

NGOs Protect Human Rights

The good sign is that almost all human rights NGOs and individuals from civil society are really contributing to Supreme Court human rights protection, through the involvement of NGOs in *PIL* and activities for human rights sensitization for the courts. The main contributors are Bangladesh Legal Aid and Service Trust (BLAST), Ain o Salish Kendra (ASK), Odhikar, and Bangladesh Environment Lawyers Association (BELA). BELA has created history in *PIL*. It helped the court to extend the notion of *locus standi*. It also influences judges to be more liberal in their interpretation. Justice Md. Mozammel Haque extended the meaning of 'person aggrieved' and said,

> Article 102 of the Constitution provides that a person who is aggrieved may file an application under Article 102(2) of the Constitution. But it does not provide that a person should be personally aggrieved. (Abu Bakar Siddique Vs. Justice Shahabuddin Ahmed and others 1 BLC, 1996: 483)

The thing is that this type of progress in interpretation is made mostly in cases brought by NGOs. In Bangladesh NGOs have progressed from the level of litigant to organs that support the Supreme Court to change its traditional approach. There is a

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possibility to implement suitable and progressive ideas through NGOs to promote the capacity of human rights protection of the Supreme Court. NGOS are also the proper organs that can take upon themselves the massive task to create awareness amongst people in general and to make them understand their rights so that they can claim those through the Supreme Court. These activities need support from the media too.

NGOs have Lack of Civil Society Characteristics

There are some NGOs that are not working for the betterment of the people. Rather they are active in business, which show that they are failing to create a bridge between the policy maker and the people, and hence the characteristic of civil society is lost. According to Mr. Tara, a victim of a human rights violation, NGO people try to generalize the concept of civil society and claim that NGOs are the civil society. But, all NGOs are not working for the people (interviewed on 5th April 2004). It is true that there are many problems among the NGO activities of Bangladesh. Most NGOs are working on micro credit programs, which is basically a financial agenda with a profit oriented policy. Recently the Government formed an inquiry committee on NGO activities and found that many NGOs have political links and some of them are actually draining money from political programs. If this is the situation, then how can we expect a supportive role from NGOs in terms of human rights protection by the Supreme Court. Mr. Tara, expressed his dissatisfaction with the performance of some NGOs (interviewed on 5th April 2004). But this view is one sided. There are genuine initiatives from NGOs, and the Supreme Court is taking on human rights issues brought by NGOs. This is encouraging for the future of human rights protection.

5.5 Effects of Media Involvement

Ordinary citizens have generally found decisions and proceedings of the higher judiciary to be beyond their grasp, and intelligible only to lawyers and jurists, but the media highlight these issues to them in an understandable way. Media works to ensure judicial activism and it builds people's trust in the judiciary. Credit is given to the media that is working to remove the curtain between the Supreme Court and citizens. The judiciary has, in recent years, begun to take note of citizens' concerns by

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responding to class actions in defense of human rights. Mr. Babul, a victim of human rights violation, believes that an efficient media can help the court by bringing the much-wanted issues to the public so that the court will produce proper settlements (interviewed on 14th April 2004).

a. Media Ensures Judicial Activism

The press media in Bangladesh reports on human rights issues and influences the Supreme Court to work on those in an active way. This supports the assurance of judicial activism for human rights protection. It is also undeniable that all media of Bangladesh is not particularly critical, in a constructive sense, to give the right picture of Supreme Court activities. It has been said that the press media is holding its position to ensure public accountability of the Supreme Court. It has also been said that the media is an important means to create public opinion. According to Justice Momtaz Uddin (interviewed on 12th April 2004), the Supreme Court works independently, but it does not mean it needs to work without considering the general sentiment of people. The opinion of people can only be brought forward by the brilliant performance of the media. The Supreme Court of India even takes human rights issues into consideration when it is reported by the media. That is one way that a tradition of judicial activism can be created. This tradition has tremendous influence on the performance of the Supreme Court of Bangladesh.

b. Media Fails to Acquire Public Trust

In Bangladesh the media brings issues that otherwise cannot come before the court by ordinary people, in order to create a trust in the Supreme Court by showing that their issue is not negligible. The constant reporting of particular issues makes the Supreme Court feel the urgency to give positive decisions on human rights issues. That acts as a basis for building people's trust in the Supreme Court. If the media fails to do so then it might lose people's trust. According to the survey of the Transparency International Bangladesh (TIB), readers of the media consider that the owners and the management of newspapers inflate or deflate news of events for their partisan interest. More than 95 % of the households, readers and non-readers, were of the opinion that newspapers should be factual and impartial in furnishing the news. So, it is seen that

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the media in Bangladesh is not fully trusted by the people. There are many reasons behind this as some of the press and visual media is serving the interest of political parties.

However, in Bangladesh some press media are reporting human rights violations. This is possible since the Government has not taken away the independence of media even if many reports and facts delivered by it turns against political interests. The Supreme Court is taking note of newspaper reports. This is a good sign, which is helping the court to reach a decision that reflect the people's opinion and that also bears the facts from the field. Actually the most important role of the media in supporting the Supreme Court to protect human rights is by creating public opinion or popular support for any particular issue. That may help the authority to implement the order or direction more expeditiously. Mr. Fazlul Haque, a member of civil society, stressed that the media can act to create public awareness that supports the notion of human rights education (interviewed on 6th April 2004). The application of human rights education has a long lasting effect on the promotion of overall human rights protection by the Supreme Court as it gets support from ground level.

5.6 Factors Needed for the Success of the Supreme Court

The activities of the Supreme Court depend on some factors that can improve its human rights protection role. The following are suggested as the key factors.

a. Proactive Supreme Court

Human rights protection is not always possible by applying the ordinary means of the Supreme Court. Rather this delicate issue is working in Bangladesh through some extra care from the Supreme Court by being pro-active. However, this process must be supported by different social organs. The Supreme Court can provide clear guidelines to the social organs. In doing so, the Supreme Court needs to come one step forward and act pro-actively to address human rights issues. This is not possible with the existing practice of the Supreme Court. It demands that the Supreme Court should accept the legal references of an active judicial process that would be brought by the lawyers. This is one sort of activism for the Supreme Court. This activism can provide

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easy access for the vulnerable section of the country, and it will support the role in protecting the rights of poor.

b. Personal Motivation of Judges

Human rights protection is an issue that needs support from judges and lawyers who are motivated by human rights norms. This personalized issue is the single most important thing that helps the Supreme Court to address many complex rights with a flexible application of legal provisions and the pro-active participation of judges. So, the point is that the personal factors of judges are vital to ensure an effective Supreme Court in order to protect human rights. They can accept the cases and apply a flexible interpretation of existing legal provisions. Personal factors of judges are the main issue that can result in a pro-active Supreme Court. The personal factors of judges are the major criterion that can ensure a wide range of access for ordinary people to the Supreme Court's remedies. However, other depending factors also rely on the activities of judges.

According to opinions given by persons interviewed for the purpose of this thesis, it has been identified that the performance of the Supreme Court highly depends on judges and their personality. However, one judge of the Supreme Court, Justice Momtaz Uddin, has agreed and said that judges have wide discretion that is helpful to entertain the human rights cases. So, the application of human rights depends on that discretionary authority (interviewed on 12th April 2004). In this regard, the judge's keen motivation for human rights protection is vital. Table 3 shows the different opinions of the interviewees on the importance of personal factors in relation to the Supreme Court's human rights protection role.

Table 3: Opinion shows that human rights protection depends on judges.

No	Name	Group	Opinion
1	Ms. Sultana Kamal	Activist	The performance of the Supreme Court depends on the honorable judges. They need to work for the interest of the ordinary masses.
2	Dr. Shah Alam	Academician	The motivation of the judges can improve the judgment and ensure effective actions against

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			human rights violations.
3	Mr. Fazlul Haque	Activist	Human rights orientation is a precondition for the protection of it. The honorable judges need to be oriented with the human rights norms.
4	Mr. Arifur Rahman Sheikh	Bureaucrat	The avenue of human rights implementation is the Supreme Court with an active judiciary. Mostly it possible with dynamic judges.
5	Ms. Jobaida Aktar	Victim	Only if judges want to address the cases of human rights violation, then they can accept the cases and provide remedies.
6	Adv. Iddres	Lawyer	Lawyers can try to motivate the court to act on human rights issues. But judges are the factor that can make the difference.

It is clear that the interviewees agree on the point that personal attitudes of the judges are the main depending factors for the Supreme Court's human rights protection role. But, this personal factor depends on other associated issues. The appointment of judges must be done without political consideration and appointment should not violate the concept of seniority. The financial security of Supreme Court judges need to be restored by providing satisfactory remuneration, pension, and housing facilities. There is a trend of appointing of retired judges to important positions in the state. This also depends on the satisfaction of Government. This results some judges to act in favor of he Government to gain Government courtesy at the service time that is causing favoritism. So, this type of appointment is contrary to the notion of human rights protection. This shows that, if the functional and organizational structure works properly then the personalized issue will contribute more. A motivated judge can ensure procedural, substantive, and remedial appropriateness for human rights protection.

5.7 Assessing the Success

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The assessment of the role involves a wholesome approach and is a complex matter, which includes social factors, the situation of judicial administration, conditions for having access to the judiciary, and the quality of judgment. As Brown observed, for any management approach, nothing can replace clear values, good judgment, and common sense. Without these, results of management risks become just another straightjacket to stifle creativity and work against good outcomes. These words of restraint and warning are particularly apt when addressing the monitoring of justice (Toope, 1997: 24). This is a broad area to address. This researcher has limited assessment to the access of ordinary people to the Supreme Court and effectiveness of human rights protection.

a. Access for Ordinary People

The performance of the Supreme Court depends on solid criterions of access for ordinary people to the Supreme Court. The discussion of this research shows that it is the personal factors, which leads to a pro-active Supreme Court with strong management and flexible interpretation of existing provisions that act as depending factors to determine the accessibility to the Supreme Court. If the poor or the vulnerable can access the Supreme Court by way of direct litigation, *suo motu*, or *representative suits* then the involvement of the Supreme Court can be ensured. In most cases it has been found that whenever the case is before the Supreme Court, remedies will be granted. So, the concern is to ensure people's accessibility to the Supreme Court to ensure the role of the Supreme Court to protect human rights.

From the above discussion it is clear that the Supreme Court of Bangladesh is playing quite a significant role in protecting human rights when the issue is supported by civil society and media, or when the facts covers an area of interest to the Supreme Court. This also shows that access is guaranteed when there is flexible interpretation of laws. This supports the concepts of the hypothesis of this research by saying that a flexible interpretation of constitutional provisions and related regulations is a sign of an active Supreme Court in Bangladesh. The Supreme Court is active in providing direction to the Government and different state organs for human rights protection. This is a sign of constructive development of the Supreme Court for human rights protection.

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b. Effectiveness of Human Rights Protection

The effectiveness of human rights protection depends on pro-activeness of the Supreme Court which needs judges with a personal orientation conducive to human rights protection, non-hindrance of the executive and a strong judicial administration. Pro-activeness of judges can cause wider access to the Supreme Court. This wide access guarantees the effectiveness of human rights protection because access is only guaranteed if people can claim their rights. Then the active involvement of the Supreme Court can be ensured. This relation is shown in the Figure 11.

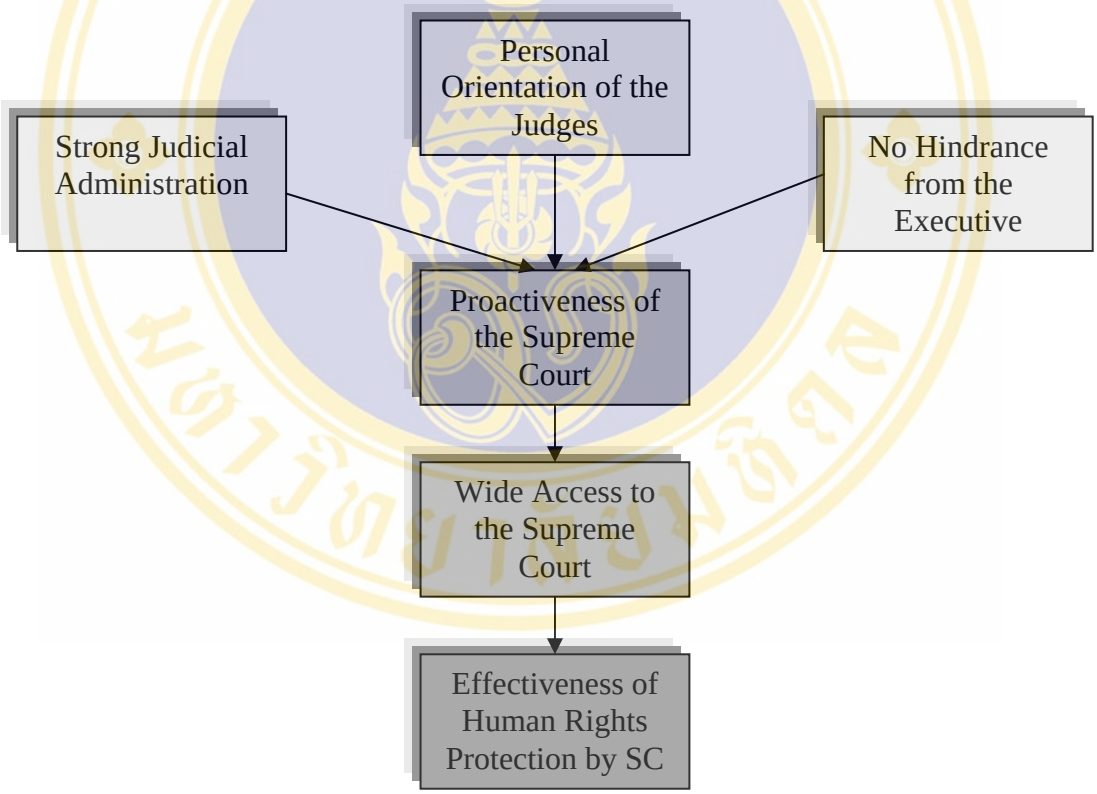

Figure 11: Conditions for the Supreme Court's human rights protection.

Public confidence in the Supreme Court in protecting human rights is that, according to the survey of Transparency International Bangladesh, almost 9 out of every 10 households (88.5 percent) agreed, or completely agreed, that it was almost impossible to get quick and fair judgment from the court without money or influence.

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Policy makers have to take heed of this and implement multi-faceted policies to improve the quality of court officials, lawyers and judges. In the past the legal profession and system was held in very high esteem. But, over the last couple of decades that reputation has been seriously tarnished due to the falling standards in education, relaxed admission rules governing the professional bodies and interference in the selection of judges to courts at different levels of the judiciary (TIB Report 2004). Initiatives need to be taken in relation to human rights education, motivational activities for ensuring an active judiciary, and judicial cohesion has to be ensured. This can help further the practice of human rights protection for all.

Conclusion

The Supreme Court is gradually ensuring its progress in the field of human rights protection. It is helping one particular section of victims, but abstains from reaching other victims. Ultimately, human rights protection is an activity that can give the Supreme Court a position of ensuring checks and balances. This needs a strong Supreme Court based on the personal motivation of judges with instilled human rights norms. On the other hand, human rights protection must be supported by different sections and organs of society, namely the civil society and the media. Thus, the analysis of this research shows that human rights protection is something that depends on many factors. Among those factors, structural problems need to be addressed more by the Supreme Court to ensure access for ordinary people. Ultimately this provides a wide scope to protect human rights meaningfully. So, in the end, the success of human rights protection can be easily assessed by the accessibility of the people to the Supreme Court on human rights issues

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CHAPTER 6

CONCLUSION

6.1 Conclusion

Enrichment of Democracy

In conclusion, it has been argued in this thesis that the Supreme Court of Bangladesh is an influential state organ that is working in a complex situation, helping to enrich democracy. Bangladesh is a country that has a tender democratic structure, evolving since its independence in 1971. The state organs are also in a developing stage. But, the Supreme Court of Bangladesh has a rich historical background. Its practice is respected since its modern period starting from the early 1970s. Recently, the position of the Supreme Court has gained more importance with the increase of parliamentary democracy and judicial activism around the Indian Subcontinent. The human rights situation in Bangladesh is not satisfactory even though there is a lot of a political commitment. Politics is shaping as an evil that is attesting every aspect of life. Experts are viewing it as the natural phenomenon of maturing democracy. Others are saying it is the result of the dominance of black money and undisciplined political practice. In other words, corruption is thriving. Also a type of anarchy is prevailing in the political executive. On the other hand, bureaucracy is trying to control the politics to maintain their dominance that has lasted since colonial period. Their authority is creating a bar towards establishing a strong judiciary.

Structural Influence

The role of the Supreme Court is quite numerous in the context of Bangladesh. It has influence over the executive and the development of a democratic structure in the country. The human rights protection role of the Supreme Court, in particular, is a narrow area to identify. The human rights situation in the country is not satisfactory. Rather it is the reflection of political evolution and institutional immaturity. The influence of politics, both from the Government and the opposition, is undeniable in

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every sphere of life in Bangladesh. Associated social groups are yet to become strong enough to deal with the human rights situation and thus support the Supreme Court. There are a few NGOs, and those basically use arbitration as an alternative way to dispute settlement. Their direct involvement in creating a link between the judicial process and human rights is in a developing stage. Moreover, some of them are not in a clear neutral position to deal with human rights. People cannot put their trust in the lower judiciary due to the gross corruption and undue influence from the executive over the lower judiciary. There is lack of monitoring activities of the judiciary in Bangladesh. Moreover, the poor, or the vulnerable, are unqualified to have access to the Supreme Court, as they cannot afford the high fees of the Supreme Court.

Judicial Activism

The Supreme Court is developing its authority by practicing more pro-people activities that is accepting more human rights issues as representative suits. Judicial activism is constructing the Bangladesh Supreme Court with progressive judicial approach and flexible interpretation of existing laws. Lawyers are getting oriented with human rights issues more than ever. However, the rights declared in the Constitution do not reflect all international human rights standards. The court is also in a position that allows it not to implement the rights, or laws, that are not permitted by constitutional provisions. So, the court is interpreting those in light of the references from different judgments from around the world. This is helping the Supreme Court to implement nearly all international human rights standards. It is demanding the active participation of judges and lawyers. Mostly, in order to deal with the issue from a human rights perspective, it is dependant on the personal orientation of judges and the political reality at the time.

The Supreme Court has extended the notion of *locus standi* and has paved the way for *Public Interest Litigation (PIL)* with its discretion to use flexible interpretation of the legal provisions. Moreover, there are a few examples where the Supreme Court has issued, from the point of responsibility, *suo motu* rule to help those who cannot come to the Supreme Court or on matters of immense public importance. That is why; the personal attitudes of the judges can ensure access to the Supreme Court when getting remedies in human rights issues.

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Fair Judiciary

The Supreme Court has both negative and positive influences on human rights protection. The negative influences are the results of both organizational and functional structural faults, which can be categorized as procedural, substantive, and remedial problems. These negative influences act against the possibility of a fair judiciary. To get rid of structural problems, the appointment of Supreme Court judges need to be fair and impartial, and need to be done with consultation with the Chief Justice. Seniority must be maintained in the appointment. The judiciary should be completely separate from the executive. The Supreme Court needs to be financially independent, so that judges can be well paid in service and after retirement. The Bar of the Supreme Court is often politically motivated. This does not support the smooth function of the Supreme Court.

Accessible Documents

One interesting thing to note is that much of the documents of the Supreme Court are not public in nature, which is causing mistrust and confusion among the greater community regarding the activities of the Supreme Court. It is true that the Supreme Court cannot ensure 100% human rights protection for the citizen. But, what it can do is to provide a trusted base for ordinary people to protect human rights. So, that even the poorest can come and seek their rights without hesitation or to depend on other factors in society. One important factor, in order to successfully seek their rights, is getting access to the documents of the Supreme Court. Therefore these documents need to be public in nature.

Strong Judicial Approach

The directive authority or advisory jurisdiction is a dimension that illustrates the strong position of the Supreme Court. It is fruitful for settling some of the complex situations between the governing executive and the other political forces. Most of the time, this relationship carries enormous human rights importance. So, the governing executive can seek more advisory opinions from the Supreme Court in order to avoid public confusion or to settle the problems between them and other political forces. At

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the same time as the internal monitoring system is weak, the Supreme Court is facing problems to maintain the activities of the lower court. The judicial administrative process is not working better along with the performance of government court officers, which is often purposive rather than neutral. The effectiveness of the remedies is a matter that covers the activities of other associated organs of the state. These can be guided by a strong Supreme Court, which is in a position to check the implementation. That also ensures a pro-people approach of the Supreme Court, through which the Supreme Court can accept a wide range of claims from individuals and groups.

A pro-people approach of the Supreme Court can be ensured by proactive involvement of the Supreme Court. It is matter of long practice to overcome the problems remaining in the existing structure of the judiciary. The pro-people approach covers the personal orientation along with social pressure. In order to achieve a pro-people approach there is a need for human rights education and tremendous activities from different social groups to create social vigilance. The media and civil society is promoting the existing position of Supreme Court, which can support people's rights. The broader acceptability of human rights notions by society is ultimately the basis of strength for the Supreme Court in order to have a strong approach in protecting human rights.

6.2 Recommendations

Documentation has to be Improved

The research has discussed different dimensions of improving the human rights protection role of the Supreme Court. First of all, the Bangladesh Supreme Court is poor in its office and documentation management. A smooth court service can facilitate human rights protection as it provides proper documents on time, ensures transparency, stop delays, and builds an efficient court system. The Italian Supreme Court has an electronic documentation center, which provides judges, magistrates, lawyers, and the general public with all the legal data and information necessary about law and its application.

Reports Need to be Published

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A non-classified document used to be published annually by the former High Court, and was titled 'Report on the Administration of Criminal Justice'. It used to contain useful information on administration of criminal justice in terms of the number of cases brought to trial, disposed of and the results of trial. It covered all classes of courts, including the High Court. The system appears to have broken down and needs to be revived.

Cooperation to be Ensured

The police, as a part of executive control, cause delay in investigations, bringing witnesses, and the accused. Sometimes they produce poor charges that limit the scope of the court to get involved. So, for the effective protection of human rights by the Supreme Court, the police need to cooperate with the judiciary in investigations, collection of evidence, and in producing witnesses.

Improvement of Procedural, Substantive, Remedial, and Personalized Area

The human rights protection of the Supreme Court can be improved through some initiatives to improve the conditions in procedural, substantive, remedial, and personalized areas. In doing so, the following activities can be pursued. Firstly, the delay in judicial procedure needs to removed and the expense of litigation has to be reduced. Hence the judicial machine, judges, lawyers, and other court officers need to be motivated. The Government has to come up with specific legal steps to address that problem.

Secondly, the substantive issue of liberal interpretation of existing legal provisions on *locus standi* , jurisdiction of the court, and explanation of rights have to be given by researchers, lawyers, and finally by the judge. This is the area where the personal motivation needs to be improved together with a substantial number of research work that needs to be done on this issue.

Thirdly, the remedial matters regarding restoration of rights need to be addressed by the Supreme Court comprehensively. That should be with specific direction by the respected state organ to implement the remedy. This needs strong monitoring from the Supreme Court and better cohesion amongst the different organs, which can be guided by the Government.

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At last, the personalized issue of human rights protection depends on the personal motivation of the judges. Judges can open a broader avenue for human rights victims and can support human rights with flexible interpretation. The court can use its inherent authority to address human rights issues. Strong motivation of judges can ensure this personalized factor.

Specific Steps

The organizational, functional and structural problem can be addressed by civil society who works for the ordinary people and the other representing sections of society. Even though, mostly it can be solved by the Government with its political commitment. So, this needs wide advocacy among the people, collective efforts from the certain sections of the society, and a strong judiciary. In ensuring this, and the above aim, the following practical steps can be taken;

i) In the case of gender sensitivity:

In order to improve in the area of gender sensitivity, the judges need to undergo motivation and gender sensitization programs. This includes a rapid program for human rights education. The media have to promote gender issues with more importance to create broader motivation for gender sensitizing.

ii) Implementation of Human Rights Norms in Personal Law Application:

The Supreme Court needs to be more human rights sensitive. There has to be a program for ‘Curriculum Building’ to this end. Through that, the Bar and the Bench, have to be brought under human rights training.

iii) Application of International Human Rights Standards:

The human rights training program must be framed on the understanding of there being a relationship between international human rights standards and national law. It shall explain the wide acceptability of international human rights standards on the domestic level by the flexible interpretation of constitutional provisions.

iv) The application of the norms of national law instead of custom:

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The customs that go against human rights notions need to be ascertained by intensive research work. Then the Supreme Court can apply the norms of the national law that is sound for human rights protection.

v) Ensuring people's responsiveness:

The Supreme Court needs to be responsive to the needs of people. This requires a 'support program' that should cover judges, lawyers and other judicial officers. The program should include *people's issues* that can be oriented by training or workshops that will act as a communicative tool.

vi) Capacity building measures have to be taken:

The Government has to be pursued by 'policy advocacy' to take capacity building measures. NGOs, civil society groups and the media have to take a role to make advances in policy advocacy. The primary task to be done is forming thematic groups of the NGOs on particular issues and they can then design a 'policy advocacy' plan.

vii) Activities for addressing the structural faults:

There should be a comprehensive advocacy program formed by media, NGOs, and civil society to pursue the Government and opposition to address the structural faults of the Supreme Court, such as the appointment of judges, ensuring the independence of the judiciary etc. There is a need for 'pressure groups', which can be created from the people by such advocacy.

viii) Creating a strong Supreme Court to protect human rights:

Having a total independent judiciary can ensure a strong Supreme Court. Besides the initiative from the Supreme Court for its separation, an integrated program of NGOs, media and civil society need to be taken. There has to be a program for linkage between the Bar and the Bench.

ix) Public access to the Supreme Court:

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Access to the Supreme Court has to be ensured by pursuing the Supreme Court to develop wider grounds of flexible interpretation of law provisions. The *PIL* in this regard can be a good solution. The *PIL* program needs to be introduced strongly among NGOs and lawyer groups in the country.

x) Support from the legislative body:

Human rights protection needs active support from the legislative body that can be pursued by creating 'parliamentary caucus'. NGOs can take this initiative to form that kind of group. This initiative could be a combined effort of human rights NGOs. Parliamentary caucus can pursue the Parliament to enact laws that can provide scope for the Supreme Court to protect human rights.

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APPENDIX A

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LIST OF INTERVIEWEES

The interview has conducted within four groups. Those are 1) the lawyers and the judges, 2) the victims, 3) the academicians and the media persons, and 4) the representative of civil society and NGO.

The Lawyers and the Judges:

Among the first group the lawyers and the judges are directly involved with the Supreme Court. The lawyers are the current practitioners under the Supreme Court Bar Council. Their name, age, gender, and working area are given below. All the interviews were taken in March and April, 2004.

Table- 4: List of the lawyers and the judges who have been interviewed.

Name	Date	Age	Gender	Working Area
1. Adv. Iddres	14th April	46	Male	Bangladesh Supreme court
2. Adv. Ira	15th April	31	Female	Bangladesh Supreme court
3. Adv. Nizam	3rd April	34	Male	Bangladesh Supreme court
4. Justice Ahmed	12th April	58	Male	High Court Division
5. Adv. A. Khosru	19th April	54	Male	Minister of Law, Bangladesh Government, 1996-2000.

The Victims:

The second group is comprised with the victims of the Human Rights violations. This group comprised with the persons whose cases are currently under the consideration of the court and whose were already settled.

Table- 5: List of the victims who have been interviewed.

Name	Date	District	Age	Gender	Cases Condition
1. Mr. Babul	10th April	Dhaka	35	Male	Under trial
2. Ms. Jobaida	8th April	Chittagong	63	Female	Settled
3. Mr. J. Alam	11th April	Chittagong	31	Male	Under trial
4. Ms. Rukhsana	27th March	Dhaka	29	Female	Settled
5. Mr. Tara	5th April	Dhaka	46	Male	Settled

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The Academicians and the Media Persons:

The Third group is of the academicians and persons from media. This group is comprised with university teachers, journalist and person having academic or working knowledge about the function of the Supreme Court of Bangladesh.

Table- 6: List of the academicians and the media persons who have been interviewed.

Name	Date	Age	Gender	Working Area
1. Dr. Shah Alam	29th March	54	Male	Member, Bangladesh Law Commission, 1998-2000
2. Mr. Zakir Husain	19th April	39	Male	Academician
3. Mr. Shawkat Mahmud	4th April	48	Male	General Secretary, National Press Club.
4. Adv. Adilur Rahman khan	12th April	42	Male	Deputy Attorney General
5. Mr. Arifur Rahman Sheikh	10th April	33	Male	Senior Ass. Chief, Bangladesh Planning Commission

The Representative of Civil Society and NGO:

The final group is of the persons from the civil society and NGO. Most of them are working with the NGOs round the country and dealing the issues of the Supreme Court relating with Human Rights. They are primarily the activists in this arena and most of them are working at the management level of their respective organizations.

Table- 7: List of the representatives of civil society and NGO who have been interviewed.

Name	Date	Age	NGO	Gender	Types of Work
1. Ms. S. Kamal	18th April	49	ASK	Female	Executive Director
2. Dr. Faustina Perera	8th April	40	ASK	Female	Research & Activist
3. Adv. S. Rizwana	7th April	37	BELA	Female	Director & Activist
4. Mr. Fazlul Haque	6th April	58	BLAST	Male	Executive Director
5. Mr. S. Saadi	4th April	32	AAB	Male	Asso. Coordinator

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APPENDIX B

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INTERVIEW TOPICS

Topics for Interviewing the Lawyers and the Judges:

The interviewed lawyers and Judges are currently working in the Supreme Court of Bangladesh. So they are the potential persons to give their opinion more specific and reliable. They are also well known about the research subject as it is directly related with their profession. The topics they have been putted are as follows:

1. The assessment of the role of the Supreme Court of Bangladesh in protecting Human Rights.
2. The way to perceive the Judgments of the Supreme Court in terms of International Human Rights standards.
3. The procedural and substantive problems that the Supreme Court is facing to protect Human Rights.
4. The depending factors that could make the Supreme Court an active one.
5. The influence of local custom on the judgement in Human Rights cases.
6. The victim sensitive role of the Supreme Court and its access to the ordinary people.
7. The level of class action by the Supreme Court or the condition of representative suit.
8. The effectiveness of remedies for redressing Human Rights violation.

Topics for Interviewing the Victims:

The victims that have interviewed are both from the groups who have cases on trial or whose cases have already been settled. They have been mainly interviewed on the role of the Supreme Court. The topics they have been putted are as follows:

1. The grounds for going to the Supreme Court.
2. The level of satisfaction with the performance of the Supreme Court on the particular case.
3. The problems that he or she faced when the case was on trial or the case is on trial.
4. The easy accessibility of the Supreme Court for the victims.

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5. The ways of implementation of judgement.

Topics for Interviewing the Academicians and the Media Persons:

The academicians are more known to the theoretical part of the subject. The media persons are one contributing section to help the Supreme Court to boost its role in protecting Human Rights. They have been putted under the following topics:

1. The assessment of the role of the Supreme Court of Bangladesh in protecting Human Rights.
2. The procedural and substantive problems that the Supreme Court is facing to protect Human Rights.
3. The depending factors that could make the Supreme Court an active one.
4. The way of the social group or media to contribute to the protection of Human Rights by the Supreme Court.
5. The potential process of the Supreme Court to be the leader to address the issues of Human Rights violation.

Topics for Interviewing the Members of Civil Society:

The persons from the civil society have been putted more or less same types of question as above. Moreover these are nearer with the victim types because they use to bring representative suit to the Supreme Court. Those topics are as follows:

1. The assessment of the role of the Supreme Court of Bangladesh in protecting Human Rights.
2. The procedural and substantive problems that the Supreme Court is facing to protect Human Rights.
3. The depending factors that could make the Supreme Court an active one.
4. The easy accessibility of the Supreme Court for the victims.
5. The assessment of acceptance of the representative suit by the Supreme Court.

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APPENDIX C

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HIGH COURT OF BANGLADESH ORDER, 1972

[Published in the Bangladesh Gazette Extra, dated the 17th January, 1972]
Presidents Order No.5 of 1972

Where it is expedient to provide for the functioning of the High Court of Bangladesh;

Now, therefore, in pursuance of the Proclamation of Independence of Bangladesh the Provisional Constitution of Bangladesh Order, 1972 and in exercise of all powers enabling him in that behalf, the President is pleased to make the following order:

1.

(1) This order may be called the High Court of Bangladesh Order, 1972.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

2. The High Court which on the 25th day March, 1971 was known as the High Court of Judicature at Dhaka in East Pakistan (hereinafter referred to as "the High Court at Dhaka") shall be deemed to have ceased to exist on the 26th day of March, 1971.

3. The High Court of Bangladesh shall consist of the Chief Justice and so many other Judges as may be appointed from time to time by the President who shall hold office on such terms and conditions as the President may determine.

4. The High Court of Bangladesh shall be a Court of Record, and shall have, in respect of the territories of Bangladesh, all such original, appellate, special, revisional, reviews, procedural and all other powers as were exercisable in respect of the said territories by the High Court at Dhaka under any law in force before the 26th day of March, 1971.

Provided that the High Court of Bangladesh shall have no power to issue any write, order or direction in the nature of *hadeas corpus, mandamus, prohibition, quo warranto or certiorari* or any order, direction or declaration, which the High Court at

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Dhaka had power to issue under any constitutional provision in force before the 26th March, 1971.

5. The high Court of Bangladesh shall have a seal bearing the monogram of the Government of Bangladesh with a pair of scales superimposed thereon and in the label appearing in the monogram for the words “Government of the Peoples Republic of Bangladesh”. There shall be substituted the words “ Bangladesh High Court”.

6. Notwithstanding anything contained in Article 2 of this Order:

(1) All Proceedings which immediately before the commencement of this Order, were pending in the High Court at Dhaka shall as from the commencement of this Order, be deemed to be proceedings pending before the High Court of Bangladesh and shall be continued in, heard and determined by, the High Court of Bangladesh as if they had been proceedings instituted in that High Court, and any order made by the High Court at Dhaka in any such proceedings shall, for all purposes, have effect as an order made by the High Court of Bangladesh.

(2) Any judgement, decree, order or decision passed, made or given by the High Court at Dhaka before the commencement of this Order shall be enforceable in Bangladesh as if it were a judgement, decree, order, or decision passed, made or given by the High Court of Bangladesh.

7. The High Court of Bangladesh shall have the jurisdiction of review any order made by any Judge of the High Court at Dhaka as if the order had been made by a Judge of the High Court of Bangladesh.

8.

(1) All rules made by the High court at Dhaka immediately before the commencement of this Order shall subject to this Order continue in force, with necessary modifications, as if they had been made by the High Court of Bangladesh.

(2) All officers and employees who immediately before the commencement of this Order, were serving in the High Court at Dhaka shall, as from such commencement be deemed to be persons serving under the High Court of Bangladesh and shall continue to serve the High Court of Bangladesh on such terms and conditions as may be determined by the President.

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9. Subject to the provisions of any law on the subject, any person who immediately before the commencement of this Order, was an Advocate entitled to be an Advocate of the High Court of Bangladesh and shall be entitled to plead and act in that High Court.

ARTICLE 102 OF BANGLADESH CONSTITUTION

(1) The High Court Division on the application of any *person aggrieved*, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution.

(2) The High Court Division may, if satisfied that on other equally efficacious remedy is provided by law:(a) on the application of any *person aggrieved*, make and order-

(i) Directing a person performing any function in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or

(ii) Declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect, or

(b) On the application of any person, make an order-

(i) Directing that person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) Requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.

(3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.

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(4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of-

(a) Prejudicing or interfering with any measure designed to implement any development Programme, or any development work; or

(b) Being otherwise harmful to public interest, the High Court Division shall not make an interim order unless the Attorney-general has been given reasonable notice of the application and he (or an advocate authorized by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the referred to in sub-clause (a) or sub-clause (b).

(5) In this article, unless the context otherwise requires, “person” includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.

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APPENDIX D

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PERSONS GAVE OPINION IN BASIC OBSERVATION

The lawyers those who have given their opinion on the performance of the Bangladesh Supreme Court are given bellow. The list covers the name, age, gender and working area. It is worthy to mention that some of them have interviewed also.

Table- 8: List of the lawyers whose opinions have been taken

No	Name	Age	Gender	Working area
1	Adv. Iddres	46	Male	Bangladesh Supreme court
2	Adv. Mostaquw	32	Male	Bangladesh Supreme court
3	Adv. Ziaur Rahman	33	Male	Bangladesh Supreme court
4	Adv. Rokaya	30	Female	Bangladesh Supreme court
5	Adv. Fiaz	31	Male	Bangladesh Supreme court
6	Adv. Rahman	51	Male	Bangladesh Supreme court
7	Adv. Mohammad Sakir	43	Male	Bangladesh Supreme court
8	Adv. Nizam	34	Male	Bangladesh Supreme court
9	Adv. Kamrul Hassan	31	Male	Bangladesh Supreme court
10	Adv. Mahfuzur Rahman	31	Male	Bangladesh Supreme court
11	Adv. Mohammad Ridwan	32	Male	Bangladesh Supreme court
12	Adv. Mozumdar	57	Male	Bangladesh Supreme court
13	Adv. Adilur Rahman	42	Male	Bangladesh Supreme court
14	Adv. Israt	38	Female	Bangladesh Supreme court
15	Adv. Luna	30	Female	Bangladesh Supreme court

The second group of the people who have given their opinion about the performance of Bangladesh Supreme Court are from the civil society. They are mostly from NGO, academic institution, and media. Some of them have interviewed also.

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Table- 9: List of the academicians, researchers, and members of the civil society whose opinion have been taken.

No	Name	Age	Gender	Organization	Working area
1	Dr. Shah Alam	54	Male	Chittagong University	Academician
2	Dr. Mahbubul Haque	56	Male	Chittagong University	Academician
3	Ms. Syeda Rizwana Hasan	37	Female	BELA	Director & Activist
4	Mr. Fazlul Haque	58	Male	BLAST	Executive Director
5	Mr. Zakir Hussain	39	Male	Chittagong University	Academician
6	Mr. Taufique	36	Male	Niti Gob	Researcher
7	Ms. Sultana Kamal	49	Female	ASK	Executive Director & Activist
8	Mr. Shashanka Saadi	36	Male	AAB	Asso. Coordinator
9	Mr. Shawkat Mahmud	48	Male	NPC	Journalist
10	Mr. Sumon	31	Male	Observer	Journalist
11	Mr. Shahabuddin	31	Male	BILIA	Researcher
12	Mr. Hanif	42	Male	BG	Academician
13	Mr. Mizan	34	Male	GRS	Researcher
14	Dr. Faustina Perera	36	Female	ASK	Research & Activist
15	Ms. Haque	49	Female	CIS	Academician

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