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# The State of Lower Court Performance in Bangladesh

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## Abstract

The principal aim of this paper is to study the performance of the lower courts of Bangladesh, especially from the standpoint of its' operational efficiency. The idea is to generate evidence-based insights on the operational efficiency of the district courts of Bangladesh. The analysis focuses on various objective indicators of district court performance in order to help understand why district court performance vary across the geographic space of the country. In particular, it empirically explores the regional variation in case-disposal rate and number of cases disposed per judge across the sixty-four district courts of the country. The overall examination offers some key insights, which are: i) Bangladesh's performance across different rule of law indexes across countries (and even within South Asia) has been less than impressive; ii) The problem of case backlog has been acute; iii) Some district courts act as a "pipeline" through which cases cumulatively accumulate; iv) Low case disposal rate has contributed towards the backlog; v) There is a large variation in "case disposal rate" and "case disposed per judge" across district courts; vi) District courts with similar case load per judge experience wide variation in "disposed cases per judge" – indicating that there is room for improving efficiency using existing resources; vii) There is a negative association between case load and civil case disposal - indicating that increasing the number of judges can mitigate the problem of low disposal rate; viii) Resource allocation must take account of regional variation in judge level productivity and case pressure across district courts. Overall, while this paper remains modest in its scope, it nonetheless offers a focused assessment of objective indicators that helps us understand why and how performance of the lower courts changes over time and space.

## 1 Introduction

The role of rule of law in shaping the socio-economic transformation of nations has been extensively scrutinized by scholars of social science and history. Its definitive role in facilitating economic contracts and exchange has long-run implications for the economic performance of countries (Olson, 1993; Fukuyama, 2012; Acemoglu and Robinson, 2012).<sup>1</sup> There is little ambiguity that countries that have modernized politically and economically on average have better rule of law. This is well illustrated in Figure-1 and Figure 2, which shows that the Rule of Law index produced by World Governance Indicator (WGI) maintains a strong positive relationship with both the level of economic and political development measured by cross country per capita income and Polity index. Furthermore, the quality of rule of law that prevails within any polity is ultimately a product of its own institutional equilibrium, and the noted cross-country variation in institutional performance has received growing attention as an explanation for the large differences in national income across countries.

In an ideal scenario, rule of law also plays a critical role in ensuring that political elites are held accountable

for their decisions and that the polity does not suffer from the adverse consequences of extreme concentration of political power.<sup>2</sup> It is, nonetheless, critical to note the quality of rule of law in any society is not only shaped by substantive content of laws and the just nature of formal institutions, but also by the operational efficiency of the judicial system - which determines if legal concerns are addressed in a timely and affordable fashion. The degree of efficiency within the judicial process also shapes people's access and reliance on the judicial system. Yet, in spite of its essential role in shaping the actual judicial service that is experienced by people, operational efficiency of judiciary has received far less attention than it merits.

To elaborate further, the dominant discourse on judicial reforms is primarily concerned with the articulation and characterization of just institutions and their respective autonomy from political influence. In his magnum opus *A Theory of Justice*, John Rawls, the late eminent philosopher, laid an important foundation of this approach by articulating the concept of '*original position*' where everyone formulates the various principles of justice from behind a veil of ignorance (Rawls, 1971). Rawls pinpoints that the ignorance of ones' position within the social, political or economic

hierarchy will compel all selfish agents to advocate principles that are fair to all. That is, if an intelligent rational agent is unsure about how she will end up after justice is carried out, it is likely that he or she will not privilege any one class of people, but rather formulate a notion of justice that is fair to all. Thus, institutional

endeavors (or at least prescriptions guided towards formulating a just socio-political order) were mostly concerned with the characterization and formulation of just institutions, and very little attention was given to the actual societies or outcomes that emerged out of them (Sen, 2009).

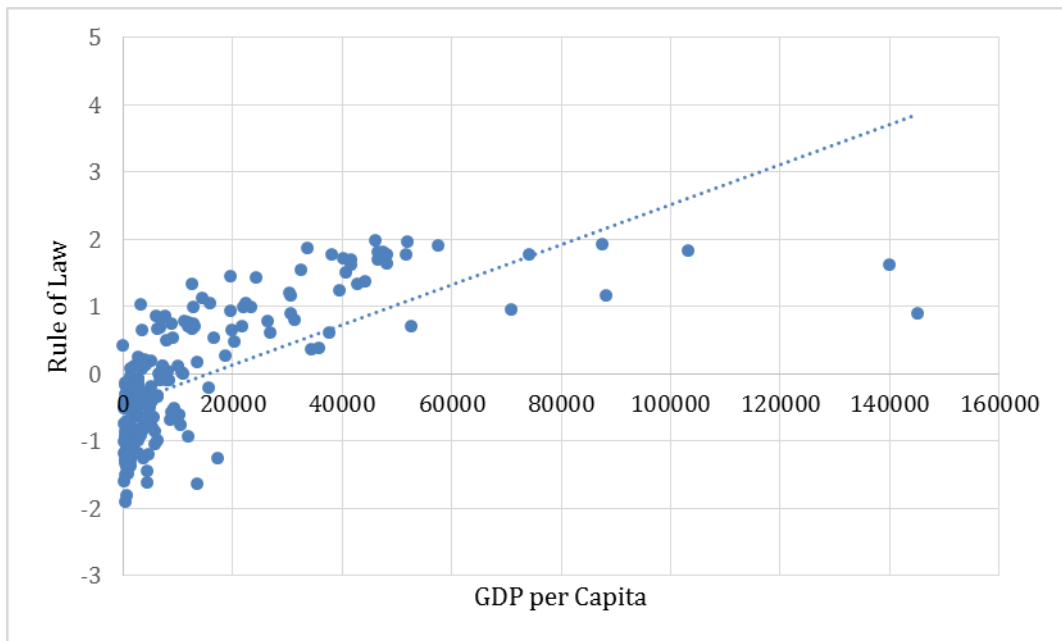


Figure 1: Rule of Law vs. GDP per Capita \$ (2010)

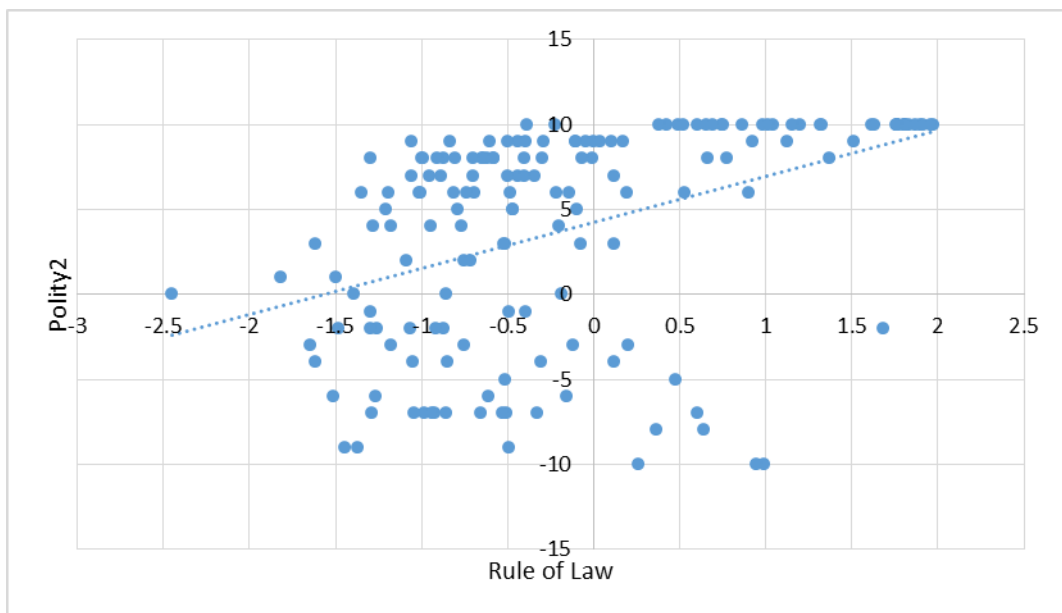


Figure 2: Rule of Law vs. Polity2 (2010)

In effect, three issues that undermined the useful formulation of formal institutions are mostly ignored, especially for the justice sector. First, institutional prescription often ignore the necessary “supporting conditions” that are required for the formal institutions of justice to operate in an effective and just manner. For instance, the judiciary cannot function efficiently if laws are well-articulated, but there are insufficient professional judges and lawyers to interpret and apply the law. It will also be futile to design good laws if key organizations such as the law enforcement agencies suffer from weak capacity and poor work ethics, which undermines the adequate implementation of such laws.

Second, formal institutional prescriptions aiming to improve the state of rule of law in any country have often ignored informal institutions that governs incentives within the society. Informal institutions constitute constraints on the behavior of individuals in the form sanctions, taboos, customs, traditions, and codes of conduct or even alternative justice systems (North, 1991; Helmke and Levitsky, 2006). In fact, the focus on informal institutions is essential since their role at times can be larger than the role of formal institutions in explaining the variation in development outcomes as they often operate as a substitute to formal institutions (Carothers and Gramont, 2011). North himself argued that same formal rules imposed on different societies produce different outcomes, since informal constraints and their role do not change drastically in the short-run especially if they are culturally derived.<sup>3</sup>

Third, the sole focus on formulating the ideal set of just laws to improve the state of rule of law in a polity is also often viewed to be futile given it ignores the political economy constraints within which the formal justice sector operates. Given legal institutions often have a close relationship with political and economic actors with whom power is concentrated, the ‘inadequacies’ in formal laws (that are viewed by experts as a driver of suboptimal outcomes) only exists in reality as they benefit those within whom power resides. Hence, it is difficult to bring change to inefficient formal legal institutions that are preferred and sustained by powerful actors. In such circumstances, the second best strategy is to identify avenues where meaningful improvements are possible, which are likely to merit the support of critical political and organizational actors.

Therefore, in recent times, some have highlighted the importance of addressing ‘remediable injustices’, and minimized the excessive focus on articulating the ‘perfectly just institutions’ which might be unfeasible due to political constraints. Amartya Sen, in his work *Idea of Justice*, categorizes this view as ‘realization-based approach’ – which is concerned with solving remediable injustices within any polity and highlights

that an elusive quest for forming just transcendental institutions is often counterproductive (Sen, 2009).<sup>4</sup> Most importantly, the ‘realization-based approach’ is more concerned with the questions such as - how can justice be advanced? – and is less associated with questions such as – what would be the nature of perfectly just institutions?

Thus, this article summarizes the basic findings of a recent study for the *Centre for Peace and Justice* – Rahman (2017), “*The State of Lower Courts Performance in Bangladesh – Insights from an Empirical Examination*” – that has taken the mentioned ‘realization-based approach’ seriously. It analyses variation in indicators that are associated with the operational efficiency of the courts at the district level. The primary data that has been examined in the paper is taken from the Office of the Registrar of the Supreme Court of Bangladesh.

In particular, the paper documents and examines variation in: i) number of cases filed per year; ii) number of cases disposed per year; iii) number of cases disposed per judge; iv) number of cases pending at year end; v) number of cases pending per judge; and vi) number of judge per 100000 inhabitants. This endeavor is likely to offer practical policies that policymakers can implement, which in turn can be expected to tentatively improve the operational efficiency of lower courts in Bangladesh.

The focus on efficiency aspects of lower court performance, such as case-disposal, has some important rationale. First, in legal philosophy, there is a concern that “justice delayed is justice denied”. This concept has transformed into a legal maxim meaning that if legal redress is available for an entity that has suffered some injury, but is not operational in a timely fashion, it is effectively the same as having no redress at all. This standard is the foundation for the right to a speedy trial and comparable rights which are meant to quicken the legal arrangement, because it is discriminatory for an injured individual to have to sustain the injury with little hope for resolution (Burger, 1970). Furthermore, low case disposal rates can reduce the confidence of people in the formal justice sector.<sup>5</sup> Second, in an economic environment where market led exchange mechanism shapes how resources are allocated and how goods and services are produced, legal institutions that are capable of settling disputes in a timely fashion enhances the operational efficiency of markets and improves the scope for better economic performance by securing property rights and enforcing contracts (Montesquieu 1748; Smith 1776).<sup>6</sup>

Third, the focus on case-disposal rate and other efficiency indicators is also important because they are relatively apolitical in nature as efficiency is a neutral area where political will for improvement is easier to

generate. Even in the 7<sup>th</sup> Five Year Plan of Bangladesh, efficiency indicators, especially case disposal rates, are identified as an important avenue where notable improvements are targeted by policymakers (GoB, 2016). As a result, there is a pragmatic expectation that policies (derived from empirical evidence) that has some scope in improving the pace of case-disposal rate will find greater traction within the policy space. Lastly, the focus on efficiency allows assessment indicators to be quantitative in nature, which facilitates an empirical examination of objective data on key indicators of judicial performance.

On the whole, this study contributes to the growing body of work that has studied issues associated with justice sector of Bangladesh. Interestingly, given the most prominent evaluation of judicial performance in Bangladesh have undertaken qualitative institutional diagnosis of the judiciary, this quantitative exercise complements the existing pool of qualitative analysis of the justice sector (Afroz, et al. 2011, IGS, 2008; UNDP 2015). The present analysis also contributes to the broader body of work that explores various issues associated with the underperformance of judicial performance (La Porta et al 1998; Chavez, 2003; Djankov, et al 2003; Fukuyama, 2011). In the next section, we discuss the basic insights that are derived from descriptive data. Section 3 summarizes the key findings and offers the concluding remarks.

## 2 Insights from Data

The legal system of Bangladesh maintains a dual nature. The formal system, at one hand, inherit laws, rules, and procedures from the common law tradition of its former colonial ruler (except for family law, which is governed by the religious laws). On the other hand, the informal system is based on traditional justice mechanisms, which includes village-based institutions that have historically shaped how civil and criminal disputes are resolved. In last two decades, non-governmental organisations (NGOs) have also stepped in and help provide and formalize various mechanisms and services for resolving disputes. There is little doubt, nonetheless, that both formal and informal justice systems have barriers to justice, especially for victims who are poor, women, and children or from other vulnerable groups. Also, not only is the effectiveness of the formal justice sector is weakened by poor awareness of laws and legal rights, costs and delays within the formal justice sector makes formal judicial redress time consuming, especially for civil litigations.

These issues are further complicated by poor capacity, elite bias, frequent political interference and corruption that compels the poor and vulnerable to have

little or no access to the formal justice system. The problem of poor 'access to justice' is also worsened by language barriers, low literacy, and poor infrastructure, which undermines the possibility to cope with the issue of distance from the courts and lack of childcare. The costs associated with legal redress are also often beyond the income constraints of poor and women, while rules of evidence may discriminate directly or indirectly against them. Under some circumstances, legal proceedings re-victimize citizens, often due to its insufficient capacity to protect victims or witnesses. Even when the judicial process is successful in achieving convictions, the sentencing is often disproportionately lenient and court-ordered fines may remain unpaid. In some cases, wealthy perpetrator may be even released by exploiting existing legal loopholes.

In terms of the ethical standards that are maintained and honored during judicial appointments, some research have suggested that political influence plays an increasingly important role in the selection process (IGS, 2008). Furthermore, perception surveys undertaken by Transparency International Bangladesh have also indicated that both the judiciary and the police have high rates of corruption (TIB, 2012). Consequently, the overall justice sector in Bangladesh has notable vulnerability in addressing the aspirations and expectations of ordinary citizens.

Even when we assess the state of rule of law using the rule of law index from the World Governance Indicators (WGI), the estimates cast Bangladesh in less than encouraging terms. For instance, according to the rule of law index for 2015, Bangladesh only fares better than Afghanistan and Pakistan within South Asia, while substantially lagging behind countries like Bhutan, India and Sri Lanka (Table-1). This grim regional picture is also supported by other indicators too. World Justice Project, which publishes the rule of law index for 113 countries ranks Bangladesh 103 out of 113. Moreover, within South Asia, Bangladesh comes out 4<sup>th</sup> out of 6 countries. In particular, for civil justice, it ranks fourth out of the six countries within South Asian and 103 out of 113 countries. On criminal justice, it ranks fifth out of the six countries of the region and 97 out of 113 countries.

The operational efficiency of the justice sector in addressing the case-backlog has also come under increasing attention in recent times. Between 2008 and 2015, case backlog have increased from approximately 1.7 million to well over 3 million, even though the annual growth rate of case-backlog have gone down in last three years (Figure-3). The average annual growth rate of case-back-log has been 8% between 2009 and 2015. Interestingly, if we see Figure-4 and Figure-5, it is evident that there is a positive growth in the filing of new cases and a fall in growth of disposed cases, even

though the absolute number of cases disposed in 2015 is nearly twice of what was disposed in 2008. The average annual growth in newly filed cases has been 5.2% and the average annual growth in disposed cases has been 11.8% between 2009 and 2015. Even so, the growth in overall case-disposal rate has been falling between 2011 and 2015, which reflects the poor operational efficiency of the justice sector in disposing cases (Figure-6).

A possible factor underlying this less than impressive performance of the judiciary in disposing cases in a timely manner is the severe scarcity of judicial officials (more specially, number of judges) within the justice sector of Bangladesh. As illustrated in Figure-7, Bangladesh has one of the lowest professional judge to population ratio, even when we compare the current Bangladesh data with a decade old regional data. To be specific, Bangladesh has less than 1 judge for every 100000 population whereas European countries on average has more than 10 judges for every 100000 population. The comparison is also stark if we compare our performance with India, where professional judge to people ratio is almost twice that of Bangladesh (Figure-9). This problem is perhaps even more aggravated by the fact that at present approximately 200 hundred positions (or more) are lying vacant.

Even when we evaluate the brief trend in resource allocation to the justice sector, it is evident that allocation to the justice and law division has lagged considerable behind other sectors like healthcare and education. It has also remained less than 0.5% of the overall budget between 2001 and 2015, in spite of the notable scarcity of professional judges (Table-2 & Figure-10).

To delve deeper into the issue of resource scarcity and judiciary underperformance, the study looks at the basic correlation between case load of judges and case disposal rate across districts. This is because excessive case overload can essential mean that district courts suffer from case management crisis and judges are overburdened. As a result, higher levels of pending cases per judge can result in lower case disposal rate. Moreover, if we see Figure-10, it is evident that the overall lower court in Bangladesh already entertains a very high level case burden per judge, which is more than 1800 cases per judge at the end of 2015. In addition, if we reconcile this with Figure-11 where we see that an average judge in a district court disposed only 555 cases in 2015, one can prudently infer that under the current level of case overload and court productivity, case backlog is unlikely to reduce.

Interestingly, there is also wide degree of variation in the case load of judges if we explore the variation in pending cases per judges across the 64 district courts of Bangladesh. For example, for the district courts of Feni

or Kishoreganj, there are more than 3500 pending cases per judge on the 31<sup>st</sup> December 2015. This, in practical sense, pinpoints a tremendous work load for judges that are difficult to mitigate without fundamentally increasing the availability of judges in such districts. In other district courts of Sunamganj, Sylhet, Panchagar or Nilphamari, the work load for judges is as low as less than 1000 cases per judge at the end of 2015. These differences in the caseload for judges also highlights the need to not only acknowledge the sheer scarcity of judges at the national level, but also a regional mismatch in how judges are allocated across district courts (Figure-12).

Furthermore, if the variation and relationship between the case burden of judges across district courts with case disposal rate for civil and criminal litigation is explored, then one can see few interesting insights. First, as noted in Figure-13, the average case disposal for civil and criminal litigations in district courts is noticeably different. While for criminal cases, the average criminal case disposal rate (2008-2015) is above 35%, the average civil case disposal rate for the districts is less than 20%. In other words, an average civil litigation takes approximately 5.5 years to complete while an average criminal litigation takes approximately more than 2.5 years to finish.

From Figure-14, we can also see that there is a large variation in average case disposal rate for civil litigations between 2008 and 2015 across the district courts. More specifically, districts courts of Chittagong and Cox's Bazar have an average civil case disposal rate of less than 10, while district courts of Munshiganj or Sherpur have an average civil case disposal rate of more than 30% and 50% respectively. This variation also holds for criminal cases (Figure-15). For example, the district court of Noakhali and Comilla have an average criminal case disposal rate (2008-2015) of more than 60% and 50%. On the other hand, the district courts of Bogra, Shariatpur and Sunamganj have an average criminal case disposal rate of less than 25%. It is also noticeable from Figure-16 and Figure-17 that districts with low average case disposal rate also witnessed the net increase in case backlog, indicating that low case disposal rate has contributed towards the backlog in the judiciary.

Lastly, if the relationship between the case burden of judges across district courts with case disposal rate for civil and criminal litigation is explored, then we can see from Figure-18 and Figure-19 that there is a noticeable negative relationship between case load per judge and the case disposal rate of civil litigations across districts. That is, district courts with a higher case load per judge on average have a lower case disposal rates for civil litigations for the first three quarter of 2016. For case disposal rate of criminal litigations, the relationship is less stark. Additionally, an econometric examination of

these variables of interest also noted a significant negative association between case load of judges and civil case disposal across all the district courts (Rahman, 2017).<sup>7</sup> This highlights the possibility that increasing the number of judges can help the problem of low civil case disposal rate within the district courts of Bangladesh.

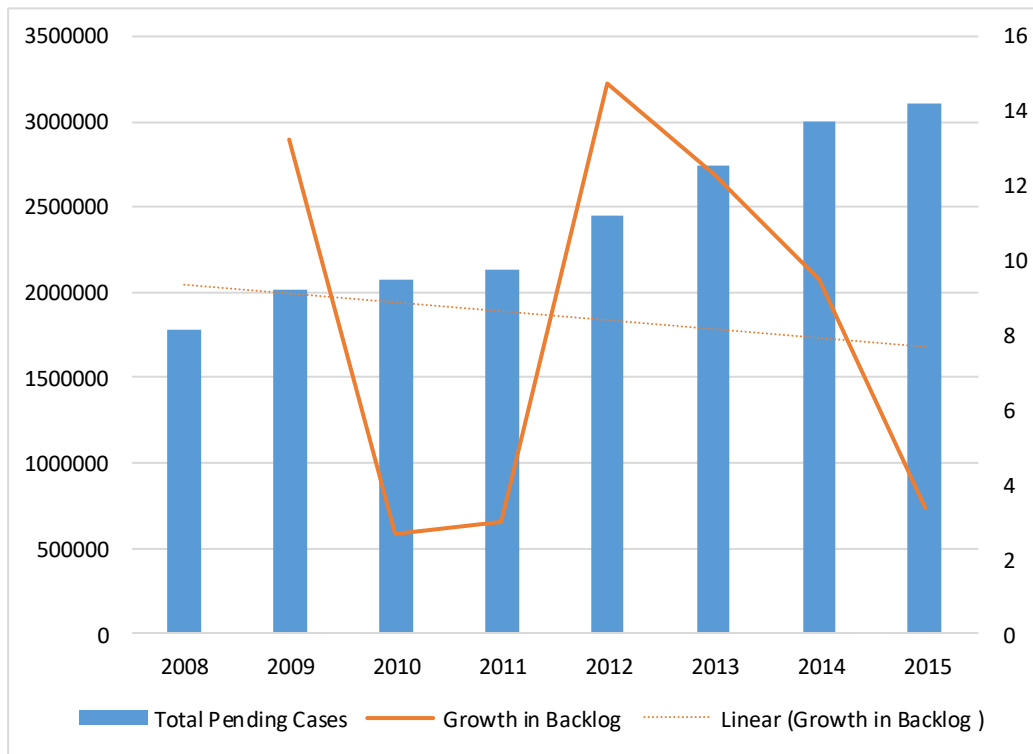
On the other hand, an issue that appears interesting is that for some district courts, a contrasting heterogeneity in performance exists. To be specific, on 31<sup>st</sup> December 2015, an average judge in the district court of Pirojpur

had over 2600 cases and an average judge in the district court of Patuakhali had approximately 1300 cases. Yet, Pirojpur, in spite of experiencing nearly twice case burden, produced better case disposal rates than Patuakhali for the first three quarter of 2016 for both civil and criminal litigations. These cases illustrate that even under the existing case burden, there is a genuine scope for some district courts to improve its operational efficiency as measured by case disposal rate. In the next section, we offer the concluding remarks and summarize the overall findings.

**Table 1:** Rule of Law - Bangladesh in Regional Context

Country	Rule of Law (2015) - Score
Afghanistan	-1.59
Bangladesh	-0.7
Bhutan	0.5
India	-0.6
Nepal	-0.7
Pakistan	-0.79
Sri Lanka	0.07

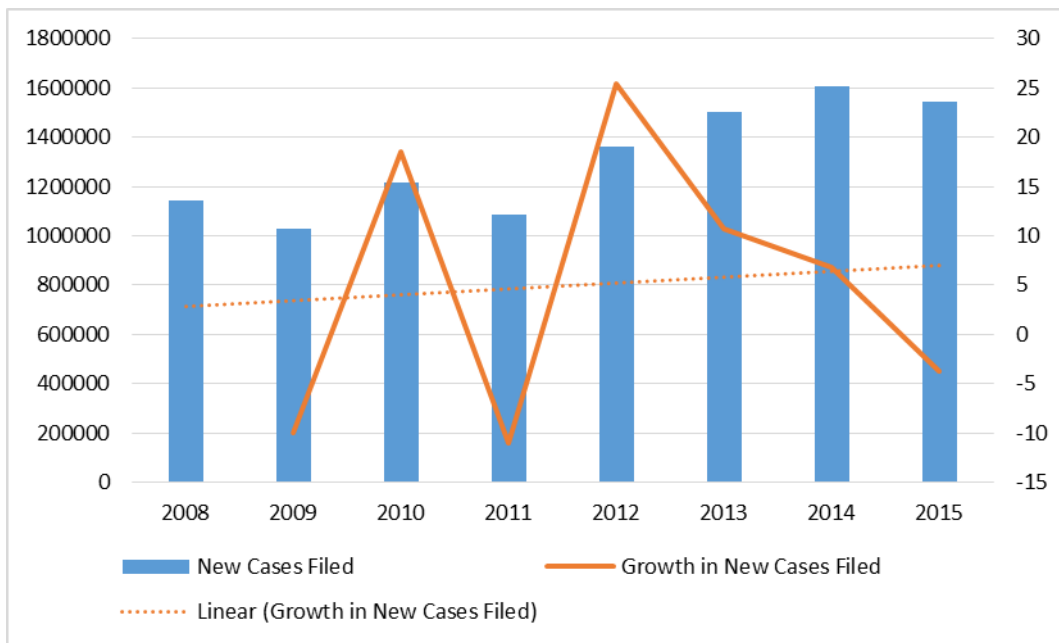
Source: WGI



Source: Supreme Court of Bangladesh

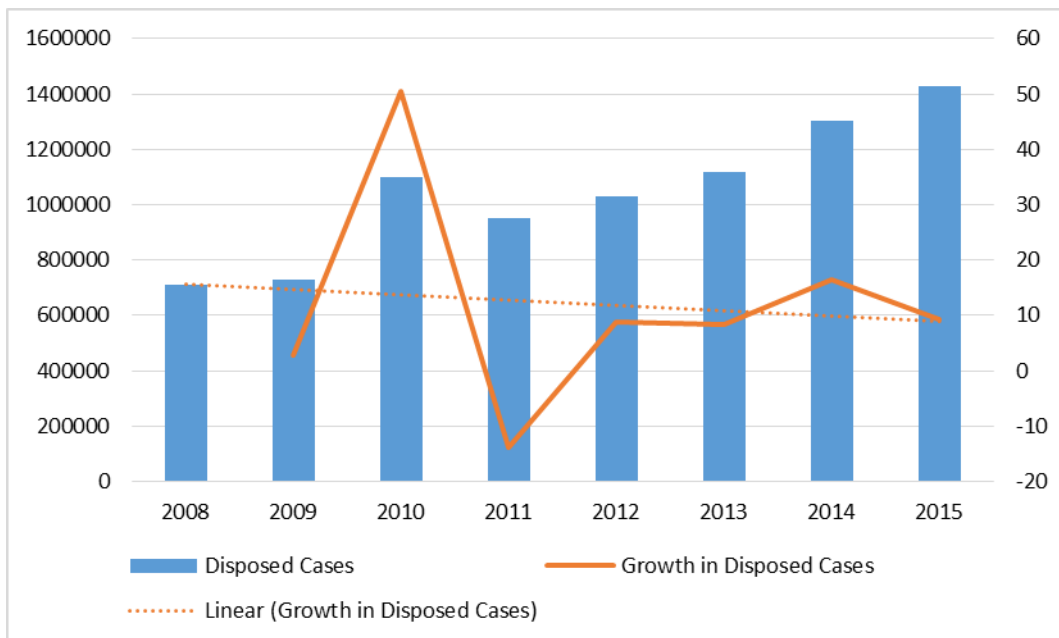
**Figure 3:** Case-Backlog vs. Growth in Backlog





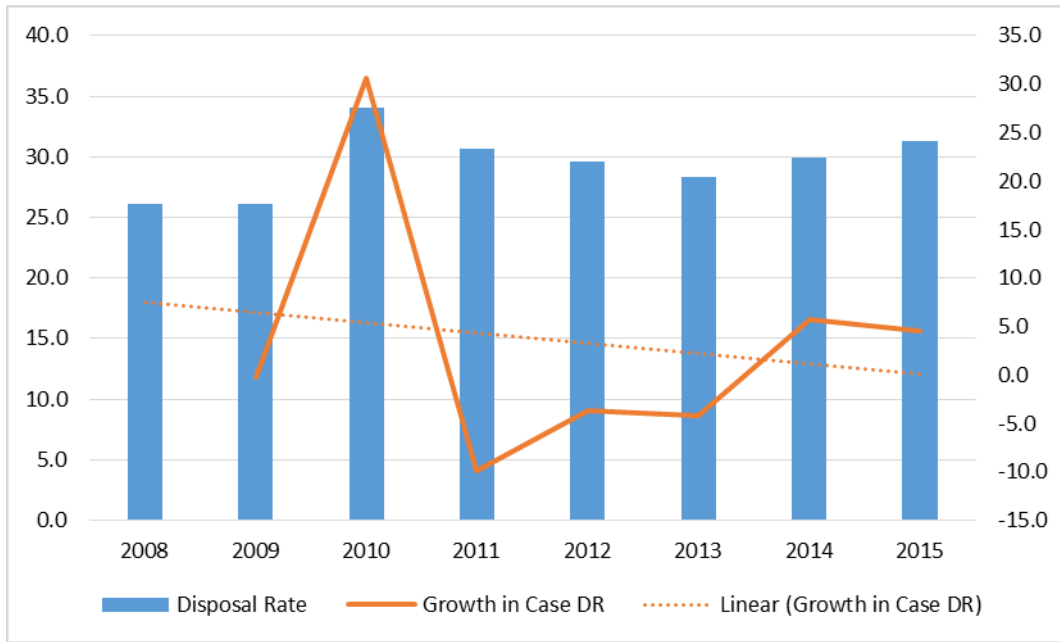
Source: Supreme Court of Bangladesh

Figure 4: New Cases-Filed vs Growth in New Cases-Filed



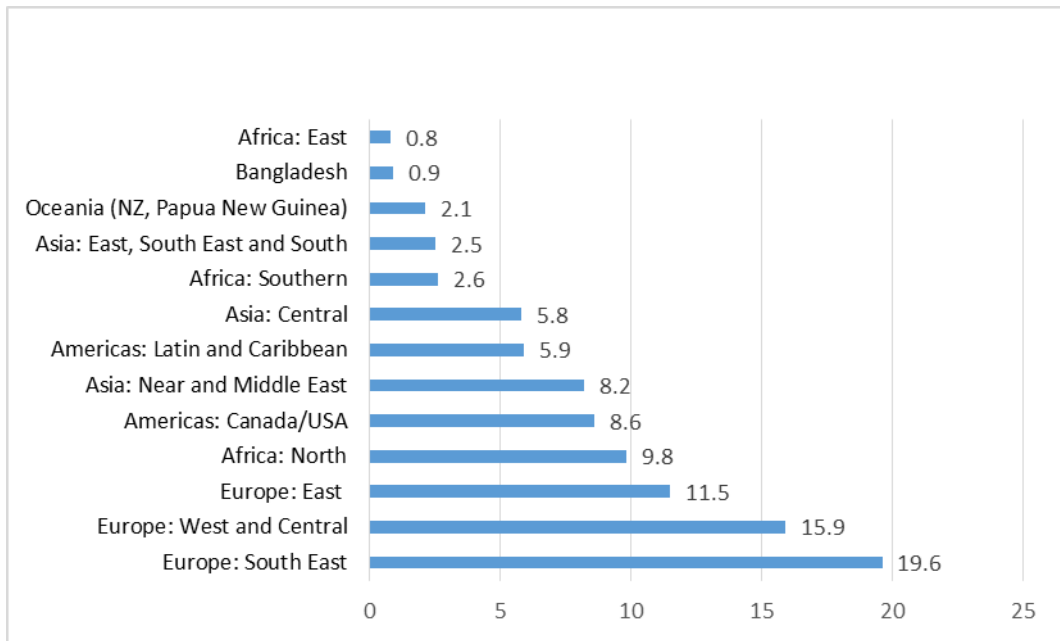
Source: Supreme Court of Bangladesh

Figure 5: Disposed Cases vs. Growth in Disposed Cases



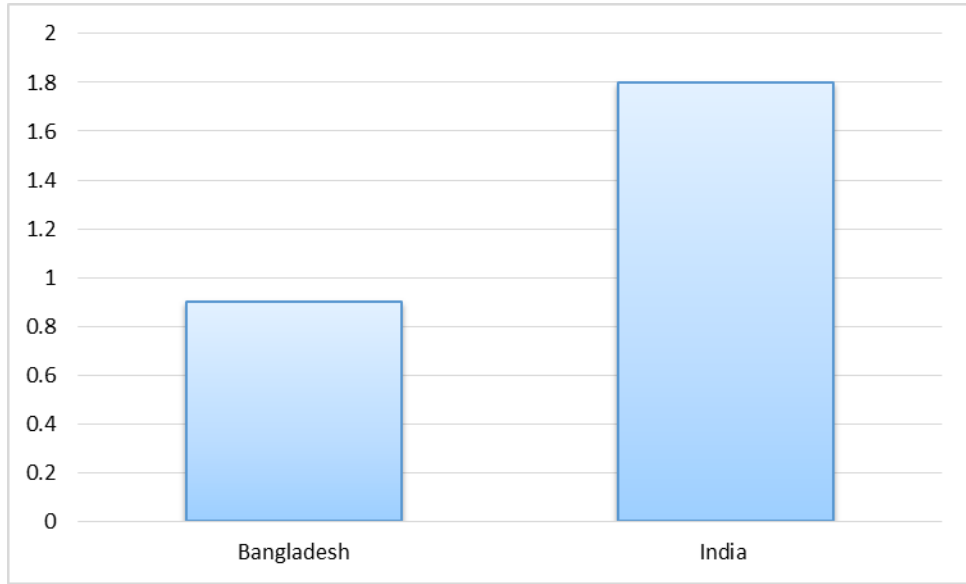
Source: Supreme Court of Bangladesh

Figure 6: Case-Disposal Rate vs. Growth Case-Disposal Rate



Source: Harrendorf, et al (2010); Supreme Court of Bangladesh

Figure 7: Professional Judges per 100000 population



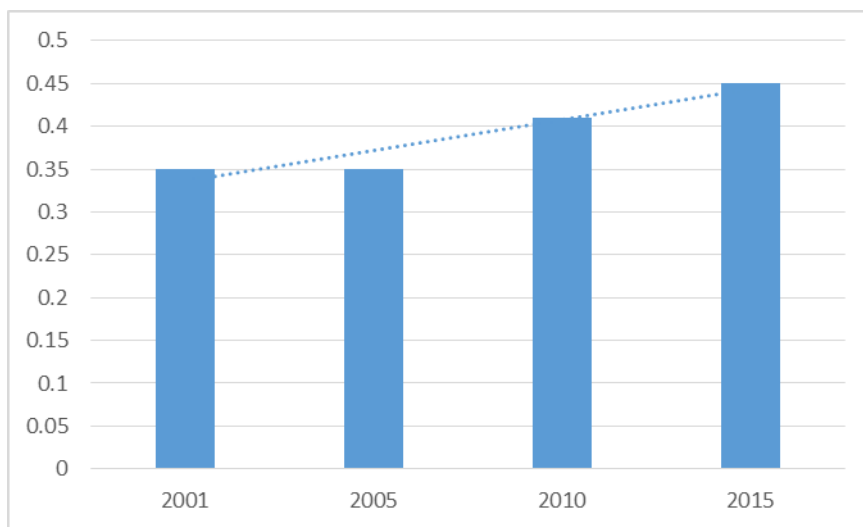
Source: Supreme Court of Bangladesh; Indian Express

Figure 8: Professional Judges per 100,000 - Bangladesh vs. India (2016)

Table 2: Ministry/Division wise Budget Allocation (Budget in crore Taka)

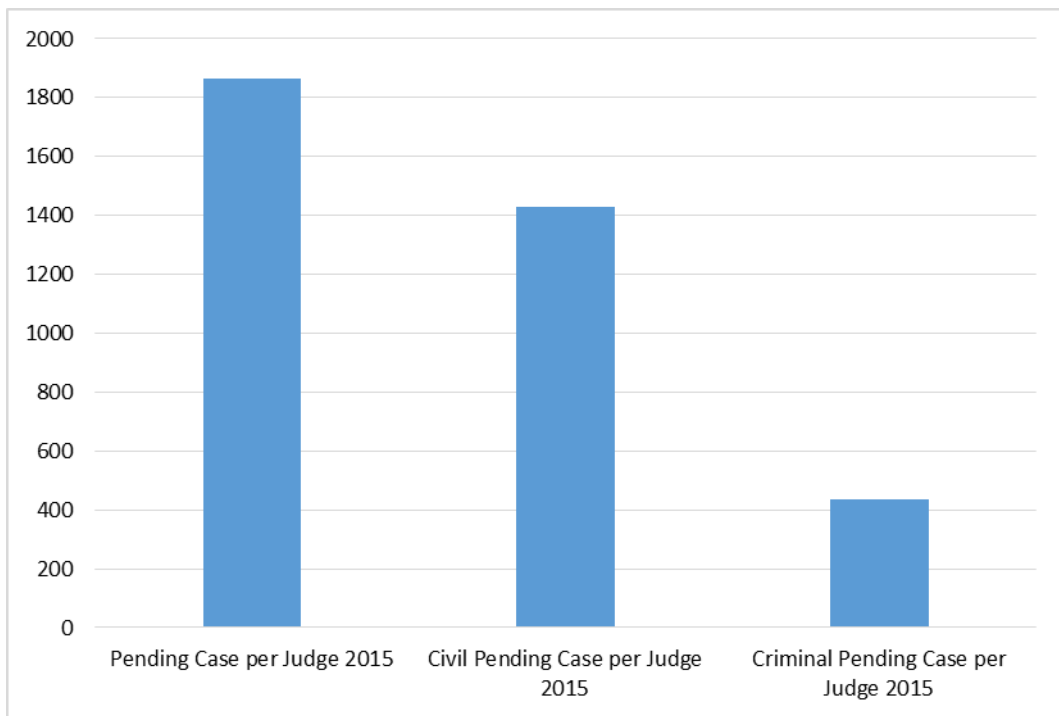
Ministry/Division	Budget 2016-17	Percentage of total budget	Revised 2015-16	Percentage of total budget	Revised 2014-15	Percentage of total budget
Law and Justice Division	1520	0.45%	1222	0.46%	948	0.40%
Ministry of Education	26855	7.88%	20266	7.66%	16206	6.76%
Ministry of Health and Family Welfare	17516	5.14%	14840	5.61%	11568	4.83%

Source: Ministry of Finance



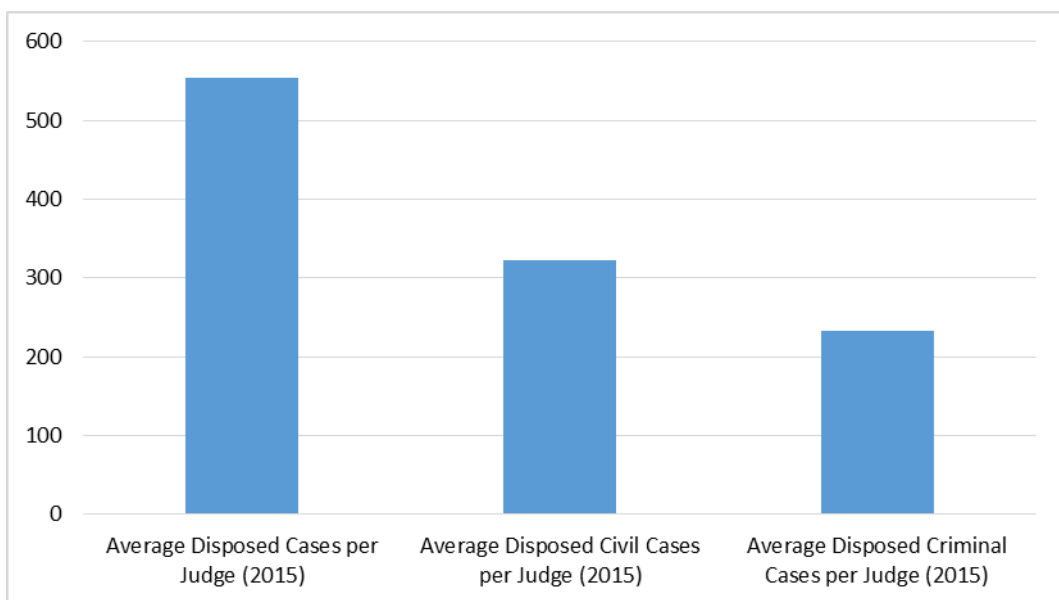
Source: Ministry of Finance

Figure 9: Percentage of Total Budget for Law Justice and Parliamentary Affairs



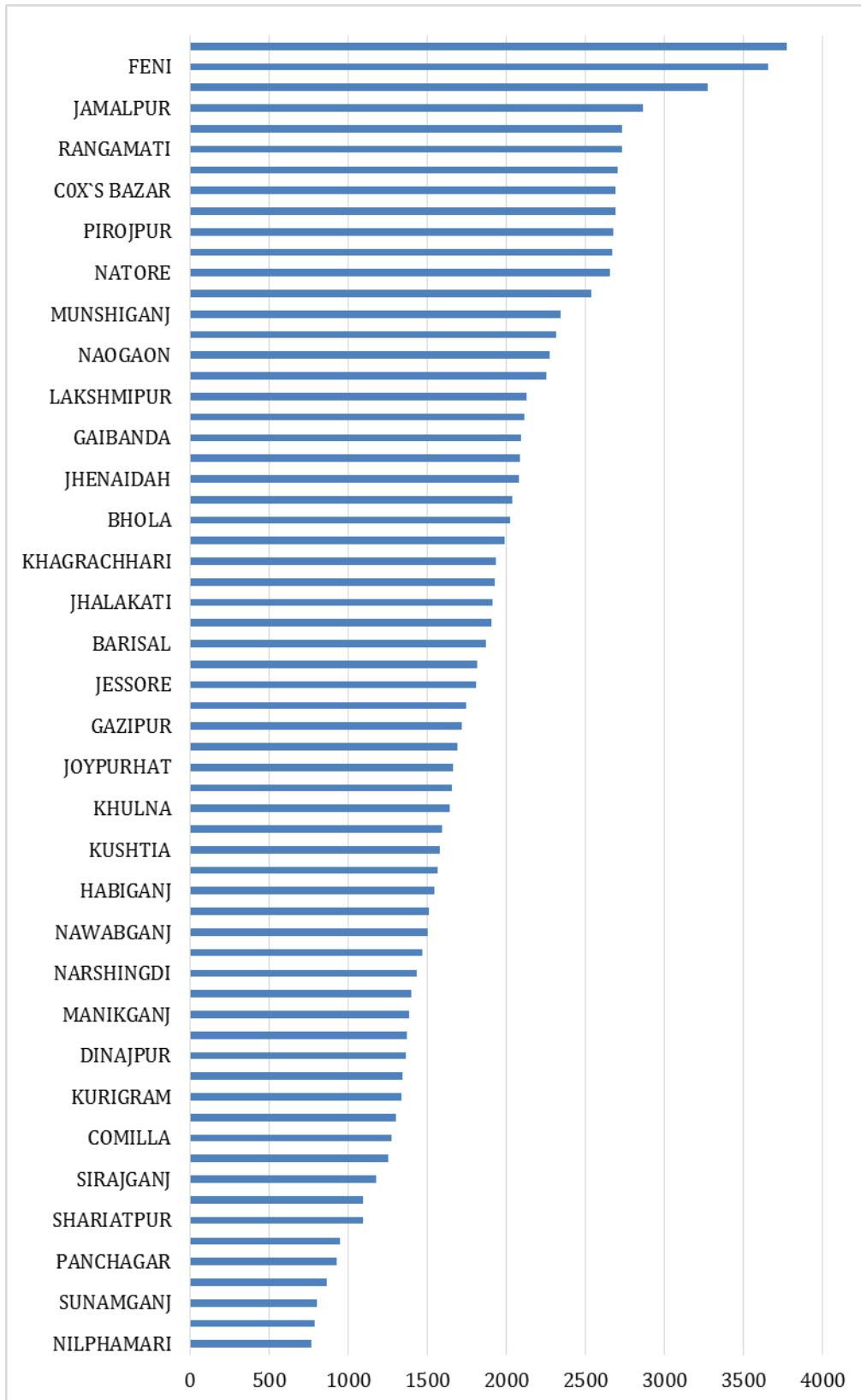
Source: Supreme Court of Bangladesh

Figure 10: Pending Cases per Judge



Source: Supreme Court of Bangladesh

Figure 11: Disposed Cases per Judge 2015



Source: Supreme Court of Bangladesh

**Figure 12:** Total Pending Case per Judge 2015



Figure 13: Avg. Case Disposal Rate in District Courts [2008-2015]

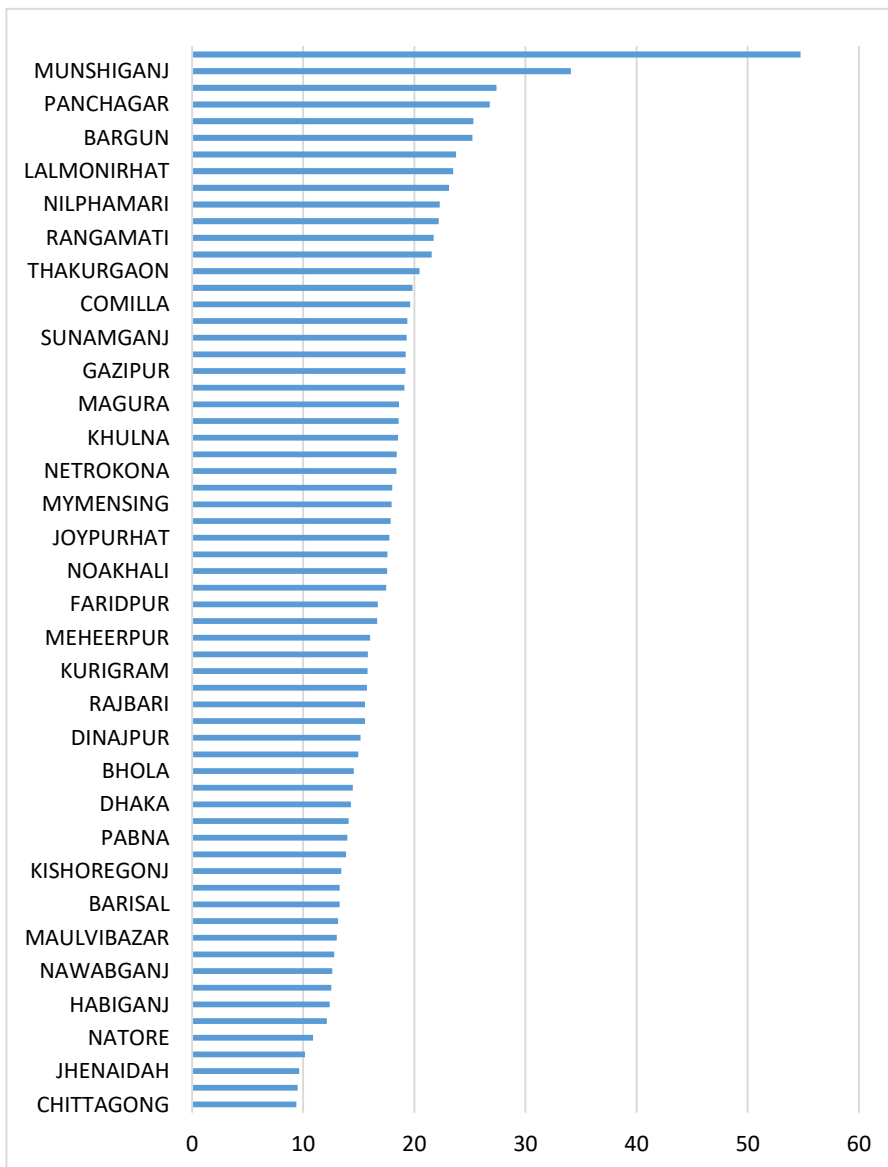
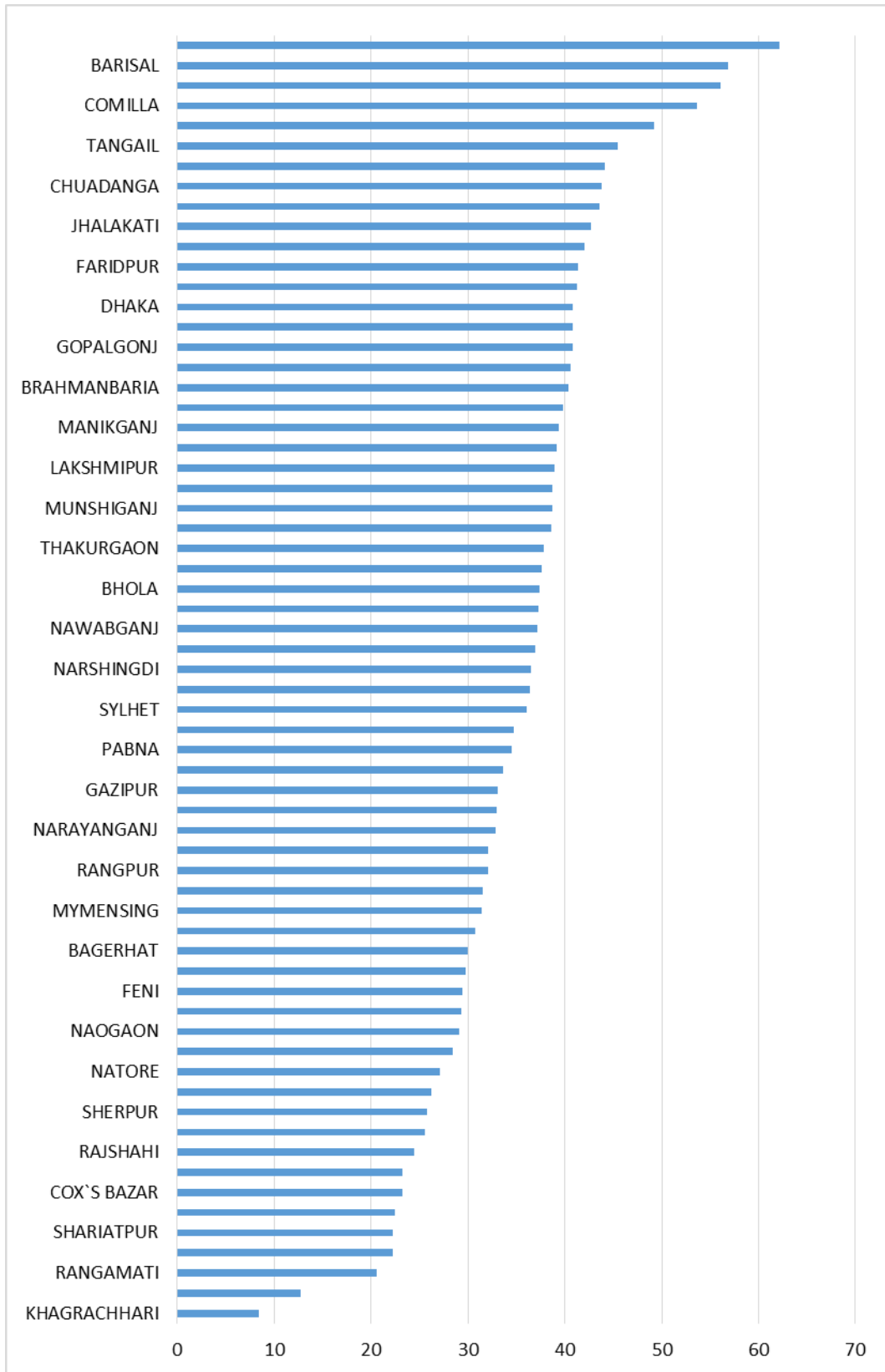


Figure 14: Average Civil Case Disposal Rate [2008-2015]



**Figure 15:** Average Criminal Case Disposal Rate [2008-2015]

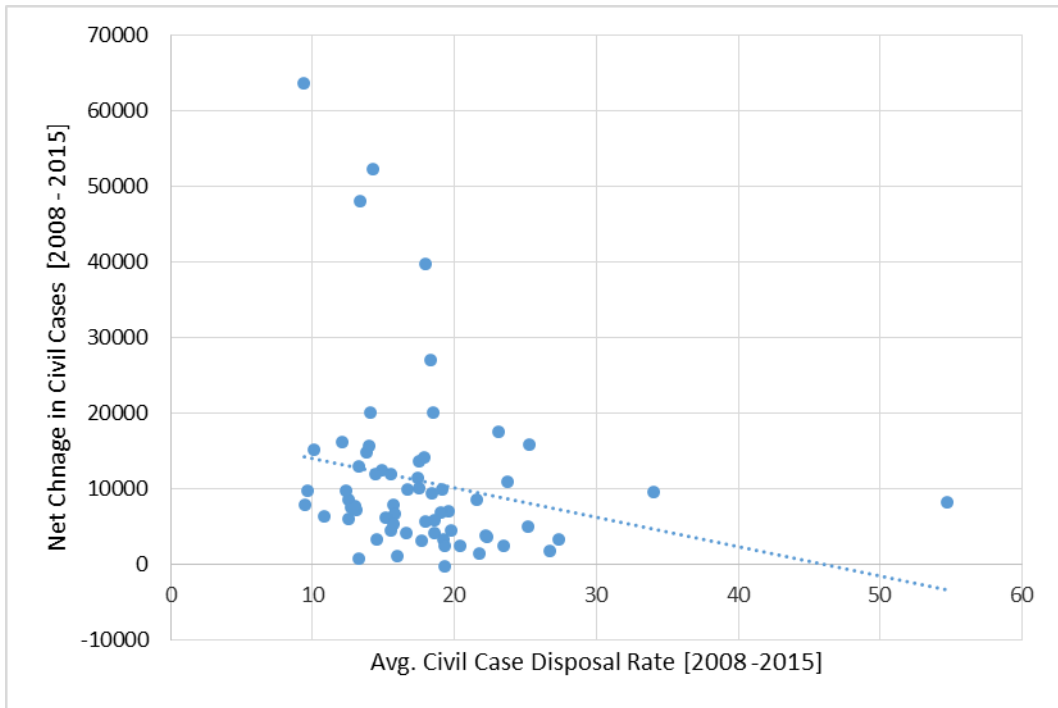


Figure 16: Avg. Civil Case Disposal Rate Vs. Net Change in Civil Pending Cases [2008 - 2015]

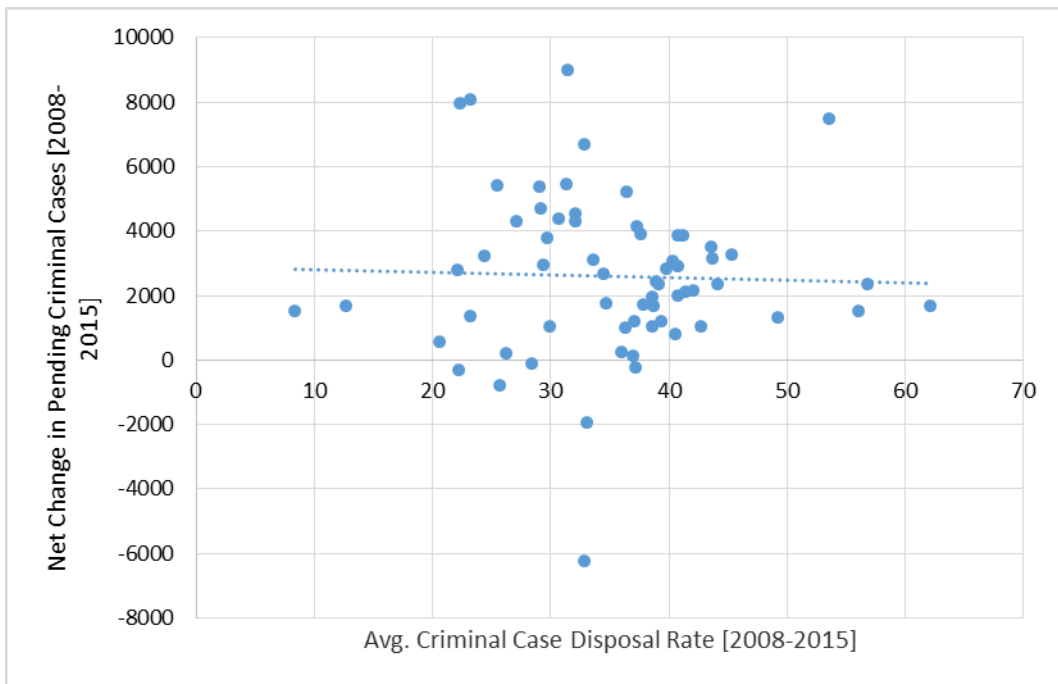
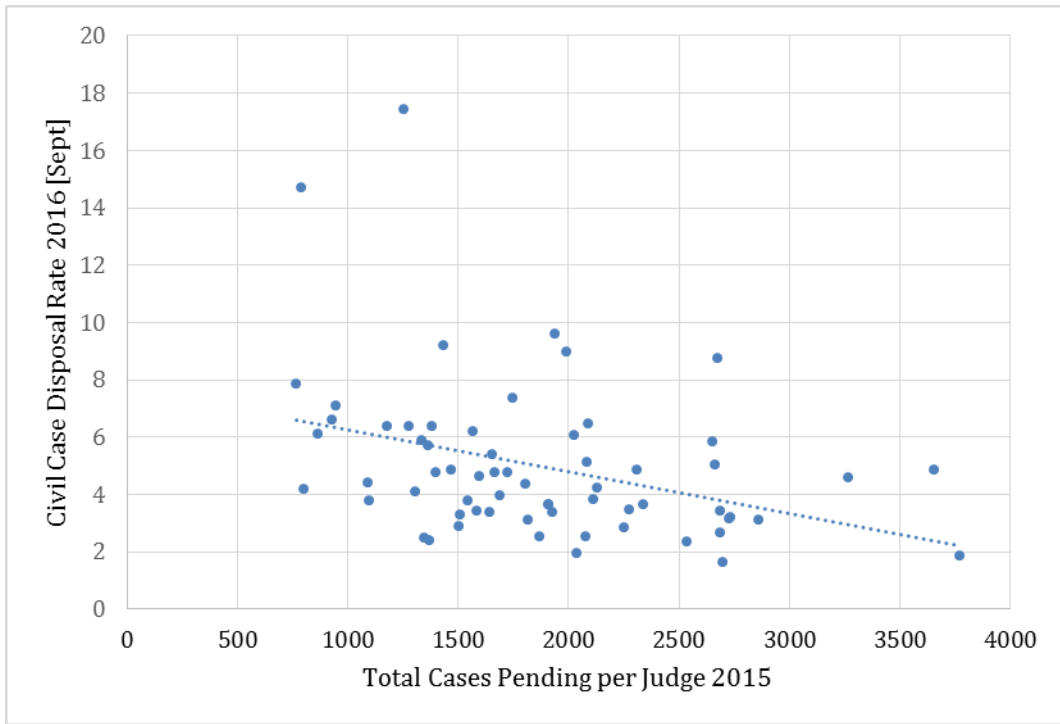


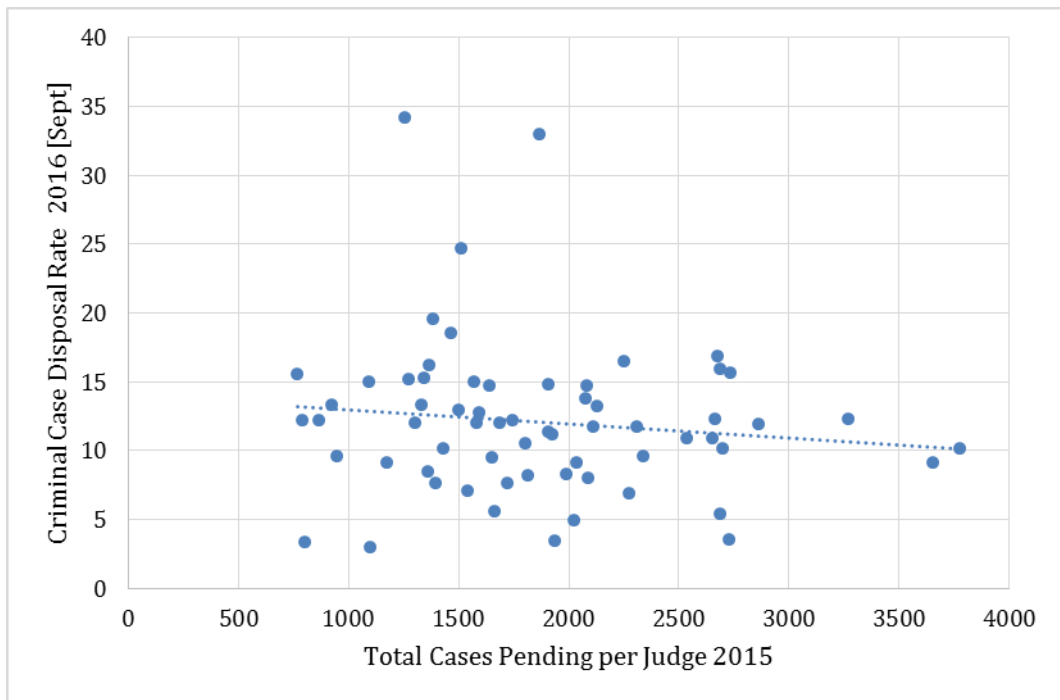
Figure 17: Avg. Criminal Case Disposal Rate Vs. Net Change in Pending Criminal Cases [2008 - 2015]





Source: Supreme Court of Bangladesh

**Figure 18:** Total Cases Pending per Judge vs. Civil Case Disposal Rate 2016 [Sept]



Source: Supreme Court of Bangladesh

**Figure 19:** Total Cases Pending per Judge vs. Criminal Case Disposal Rate 2016 [Sept]

### 3 Concluding Remarks

The availability of sound legal institutions that support the general ideals of rule of law has been viewed by prominent thinkers as a primary condition for shaping long-run economic and political development of nations. In that context, the journey of Bangladesh in developing sound legal institutions, which is both just and effective, has been less than impressive. This phenomenon has enhanced the importance of developing evidence-based policies that can improve the state of the justice sector in the country. Hence, to contribute toward this broader agenda, the principal aim of this paper is to study the performance of the lower courts of Bangladesh, especially from the standpoint of its operational efficiency. The idea is to generate evidence-based insights on the operational efficiency of the district courts of Bangladesh, so that effective and pragmatic policies are formulated to address noticeable weakness in its performance.

It focuses on various objective indicators of district court performance in order to help understand why district court performance vary across the geographic space of the country. The paper, in particular, empirically explores the regional variation in case-disposal rate and number of cases disposed per judge across the sixty-four districts of the country, and it studies how and why these indicators varies across districts. In doing so, the analysis documents and examines the variation in: i) number of cases filed per year; ii) number of cases disposed per year; iii) number of cases disposed per judge; iv) number of cases pending at year end; v) number of cases pending per judge; and vi) number of judge per 100000 inhabitant; and vii) case disposal rate.

Additionally, the overall examination offers some key insights that need more recognition from both researchers and policymakers concerned with the performance of the justice sector. Important among these insights are:

- i. Bangladesh's performance across different rule of law index across countries (and even within South Asia) has been less than impressive. Even subnational assessments of the justice sector have identified various key problems undermining overall performance. Prominent amongst these are: increasing case backlog, barriers to justice for victims who are poor, women, and children or from other vulnerable group, poor awareness of laws and legal rights, costs and delays within the formal justice sector, elite bias within the judicial bureaucracy, corruption and political interference in judicial appointments.

- ii. The problem of case backlog has been acute as the total backlog of cases have increased from 1.7 million to more than 3 million between 2008 and 2015. Nonetheless, after 2012, the growth in overall case backlog has fallen and there has been a noteworthy growth in the absolute number of case disposed by the judiciary between 2008 and 2014. More specifically, in 2015 the total number of case disposed was more than 1.5 million, which is nearly double of what was disposed in 2008.
- iii. Descriptive evaluation of the growth in case backlog across district courts shows that some district court works as a "pipeline" through which pending cases accumulate over time. For example, if we compare the top five district courts, which witnessed the largest net increase in pending civil cases (Netrokona, Mymensing, Kishoreganj, Dhaka and Chittagong) with the bottom five district courts with lowest net increase in pending civil cases (Panchagar, Rangamati, Meherpur, Bandarban and Khagrachari), it is observed that the top five added more than 46 times new civil cases than the bottom five district courts between 2008 and 2015. They also account for more than 30% of all the civil litigations that were added between 2008 and 2015 though the district courts.
- iv. A factor that explains the growth in case backlog is the low case disposal rate, especially for civil litigations. As mentioned above, between 2008 and 2015 – case disposal rate for all cases was below 30%. However, the case disposal rate for civil litigations has been generally low (less than 18%) and criminal litigation moderately high (more than 35%).
- v. Descriptive evaluation of civil and criminal case disposal rate has also shown that there is considerable variation in their respective case disposal rate across district courts. For example, the average civil case disposal rate between 2008 and 2015 for the district court of Sherpur is above 50% and for Jhenaidah is less than 10%. For average criminal case disposal rate, a similar variation prevails.
- vi. A similar variation also exists when we examine the performance indicators that assess average productivity of judges within district courts by monitoring the number of cases disposed per judge in each district court. As noted, the average number of case disposed per judge within district courts is approxi-

mately 555 for 2015. Yet, some district courts (like one that of Habiganj) enjoys low judge productivity where an average judge only disposed approximately 300 cases in 2015. On the other hand, the district court of Jhalokati in 2015 disposed more than 1000 cases, which is nearly twice that of the national average.

- vii. It is also noted that districts courts with similar level of case load for judges experience a wide variation in disposed cases per judge. For instance, Shirajganj and Rangpur, where judges' experienced similar case load on the beginning of 2016, produced greatly carrying outcomes for the first three quarters of 2016. More specifically, in Shirajganj the judges disposed on average 292 cases between 1<sup>st</sup> of Januray and 30<sup>th</sup> September of 2016. In contrast, an average judge in the district court of Rangpur disposed more than 680 cases in that same time interval. This underscores the necessity to explore mechanisms that can significantly enhance judge level productivity even under the existing level of resources.
- viii. The background empirical examination also explored the institutional and district level correlates of civil and criminal case disposal rate across district courts. The analysis shows that there is a significant negative association between case load and civil case disposal across all the district courts (Rahman, 2017). Moreover, while the noted paper does not use this findings to support a causal relationship, the estimations do highlight that increasing the number of judges can modestly help the problem of low civil case disposal rate within the district courts of Bangladesh. Also, it is important to keep in sight that Bangladesh has one of the lowest judge to people ratio in the world – with less than one judge per 100000. This underscores the necessity of implementing the recommendation of the Law Commission in 2015, which supported the recruitment of at least 200 additional judges per year and 4000 judges in total.<sup>9</sup>

On the whole, theories of justice make a compelling case that delays in disposal of cases can render justice meaningless. Hence, to attain a reasonable degree of disposal efficiency, it is essential that policymakers are equipped with an evidence-based understanding of its overall state and its performance. Thus, the discussed study contributes towards this broader agenda and offers an empirical examination of the operational efficiency of the lower courts. This, by no means, must be viewed as a comprehensive assessment of the state of lower courts, as such an endeavor necessitates a systematic

examination of both the just nature of substantive laws and the operational efficiency of the justice sector. Yet, the discussed analysis is humble in its scope and it offers a focused assessment of objective indicators that help us understand why and how performance of the lower courts changed over time and space. The discussed paper also contributes to the growing body of work that have helped assess issues associated with justice sector of Bangladesh, and offers insights for the broader intellectual discourse concerning how justice can be advanced in developing countries.

#### 4 The Endnote

1. In effect, market economy cannot produce the optimal outcome in the presence of transaction costs and externalities without effective legal institutions.
2. It is viewed by many that political elites with concentrated political power can undermine the long-run economic potential of an economy by blocking the process of creative destruction that allows technological change to improve the productivity of physical and human capital (Acemoglu and Robinson, 2012)
3. Most importantly, he argued, "...equally important is the fact that the informal constraints that are culturally derived will not change immediately in reaction to changes in the formal rules. As a result, the tension between altered formal rules and persisting informal constraints produces outcome that have important implications for the way the economic change" (North, 1991, p.45).
4. From the pure notion of serving or facilitating justice, the case for addressing 'remediable injustices' is strong given its existence and endurance is facilitated by the inaction of relevant authorities, which amplifies the need of correcting these forms of injustices than others.
5. In India, Murthy and Rabiya (2008) offers an empirical assessment of trends in civil suits, caseload, disposal and pendency for two states: Kerela and Andhra Pradesh. In addition, their findings indicate that falling disposal rates reduce the rate of filing. In other words, there is some evidence that increasing pendency in courts can reduce the confidence of citizens in formal judiciary.
6. It is, nonetheless, important to mention that existing theories within the discipline of economics offers very limited insight on the exact nature of the legal institutions that are necessary for improving economic outcomes. Some believe reputations and informal arrangements can work as an effective

means for solving disputes (Macaulay 1963; Galanter 1981; Ellickson 1991). Adam Smith, however, believed that a government must deliver “a tolerable administration of justice” for ordinary citizen to seek justice against more powerful offenders who can manipulate private enforcement (Smith, 1776).

7. This evidence is in line with Mitsopoulos and Pelagidis (2007), which examines if staffing with respect to caseload contributes to the slow disposition of cases in Greek courts. Their analysis shows that the ratio of staff to total number of cases affects the time needed to dispose of cases in appeals courts and higher civil trial courts.
8. For more information on the Law Commission Report, please see: <http://www.thefinancialexpress-bd.com/2016/04/30/28468/Law-Commission-for-recruitment-of-more-judges>.

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