

**Contribution of the Judiciary of Bangladesh  
in Strengthening Rule of Law and Democracy.**

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**Venue :** Gujarat National Law University  
Gandhinagar, Gujarat, India.

**Distinguished Public Lecture**

**By**

**Mr. Justice Surendra Kumar Sinha**

**Chief Justice of Bangladesh.**

**Respected President Mr. Bimal N. Patel, Director, Gujarat National Law University, Honorable Judges, Distinguished faculties, Legal Experts, Dignitaries, My beloved students, Ladies and Gentlemen, Greetings....**

**It is a great pleasure and privilege for me to be here with you on this memorable occasion. This reminds me the days of my law school and makes me nostalgic. Before embarking upon my discussion, I express my profound gratitude to the Gujarat National Law University authorities for affording the privilege to visit this prestigious University to exchange my views with the bright and brilliant young legal minds who are the future leaders not only of India but also of this region.**

The people of undivided India, after a very long arduous and tortuous political movement, got their independence from the British yoke in 1947 by the Indian Independence Act, 1947 and the dominions of India and Pakistan emerged. India got its Constitution in 1949 and became a Republic in 1950. The political history of Pakistan was not that happy. It got its first Constitution in 1956, only to be ditched unceremoniously in 1958. Another Constitution was made in 1962 but again Field Marshal Ayub Khan, in violation of the Constitution, handed over the office of President to General Yahia Khan in 1969. A general election was held in 1970, the first as well as the last in the erstwhile Pakistan, but when the army President refused to convene the Constituent Assembly, and let loose a genocide in the-then East Pakistan, independence of Bangladesh was proclaimed on the night following 25th March, 1971, and the people of Bangladesh were emancipated through a historic War of Liberation against the Pakistan army and its murderous local vassals. Finally the independence was achieved at a cost of three million martyrs on the 16th day of December, 1971.

### **Bonding between India and Bangladesh:**

The people of Bangladesh and India have a subterranean bond of inseparable cultural ties. To snatch the crimson red sun of Independence in 1971 like many heroic freedom fighters, many Indian soldiers also laid down their lives. The friendship and bond between the two nations are preserved by that sacrifice. After the Independence,

the Father of the Nation Bangabandhu Sheikh MujiburRahman and the then prime minister of India Srimati Indira Gandhi took a number of important steps to further strengthen the friendship and cooperation between the two nations.

India is the world's second most populous country, and Bangladesh is the world's eighth most populous nation. They are common members of SAARC, BIMSTECCommonwealth, and many other international organizations. The relationship between two nations are strengthening day by day. For the greater interest especially to combat terrorism and sustainable development Bangladesh and India have to work together.

### **Judiciary under the Constitution of Bangladesh:**

Bangladesh is a unitary democratic Republic having a population of around 160 million, of which 60% depend on agriculture for their livelihood. Under the Constitution, being an organ of the State the judiciary has to perform its responsibility of administering justice without any fear or favor. The judiciary comprises of the Supreme Court at the higher level followed by a hierarchy of civil and criminal courts at the district level. In the Supreme Court there are two divisions namely- the High Court Division and the Appellate Division, of which the Appellate Division is functionally the highest Court of the Republic which consists of 11 Judges including the Chief Justice of Bangladesh. The Constitution of the Republic has guaranteed the functional independence and freedom of the judges in deciding any civil or criminal disputes or the matters relating to the constitutionality.

The Constitution of Bangladesh, which is founded on the spirit of its great struggle for independence, guarantees the independence of the judiciary as well as the judges and magistrates<sup>i</sup>. The Prime Minister is the Chief Executive of the government, while the President is the ceremonial head of the state. The President acts mainly on the advice of the Prime Minister<sup>ii</sup>. The Constitution provides that the judges of the Supreme Court will be appointed by the President in consultation with the Chief Justice<sup>iii</sup>. Similarly the power of promotion, posting, leave and discipline of the judges of the subordinate judiciary and judicial magistrates are vested with the President and

exercised by him in consultation with the Supreme Court<sup>iv</sup>. Annual budget for the Supreme Court and the sanction for human resources, equipment and transports are processed from the executive organ of the state. Sometimes special budgetary allocation becomes necessary for the judiciary. Interaction or occasional dialogue between the Chief Justice and the Chief Executive has been proved to be helpful to settle above issues smoothly and justly.

In Bangladesh we have more than one thousand laws. Laws are enough to protect the people from the onslaught of the perpetrators. Apart from applying legal and constitutional provisions, the Supreme Court of the Bangladesh in appropriate cases, resort to judicial activism to protect the rights of the people by its landmark decisions. Judicial activism in Bangladesh, generally speaking, encompasses an area of legislative vacuum in any field. Judicial activism reinforces the strength of democracy and reaffirms the faith of the common man in the rule of law. The Judiciary, however, can act only as an alarm clock but not as a timekeeper. After giving the alarm call, it must ensure to see that the Executive performs its duties in a manner envisaged by the Constitution keeping in mind that judicial activism is not an unguided missile.

### **Scenario of Administration of Justice:**

In the existing justice delivery system, the process of Case Management is so slow, costly and time consuming that sometimes a person takes it as a tool of harassment and burdensome adventure in filing or defending a case going to any court of the country. In Bangladesh, against around 100 Judges of the Supreme Court about 0.38 million pending cases and against 1400 District Court Judges 2.7 million cases are to be heard and disposed of. In essence the present number of Judges in Bangladesh is quite disproportionate to such huge number of cases. Besides, the nature of civil disputes particularly the cases relating to claims of title over or partition of the immovable property are so complicated that the existing system does not even allow a Judge to take any shortcut approach on those matters.

### **Impediments in the Judiciary of Bangladesh:**

Backlog of cases is the biggest impediment in the judiciary of Bangladesh. Currently there are more than 3 million cases pending in the Supreme Court and lower courts of the country. The huge backlog of cases is slowly overwhelming the justice delivery system, causing further delay in the disposal of cases and undermining people's access to justice.

The formal judicial system centers round courts and is based largely on the laws, rules, procedures, traditions and trappings of the former colonial power (save for family law, which is governed by the religious laws of the disputing parties). Sometimes people also seek remedies from a less formal system based on traditional justice mechanisms and role players (including village-based mechanisms and religious and cultural leaders) that have traditionally helped to resolve various civil and criminal disputes and conflicts.

As with many countries in the developing world, Bangladesh's formal justice system is often perceived and reported to be inaccessible to some extent to the public with vulnerable groups (such as women, children, ethnic and religious minorities, the poor, and people with disabilities) facing particular difficulty in accessing timely and affordable justice. Lack of coordination and cooperation between justice sector agencies (such as the police, prisons and courts) slows down proceedings and leads to prison overcrowding and large case backlogs that are slowly overwhelming the court administration and undermining access to justice.

### **Judicial Reform Programs:**

According to the Constitution of Bangladesh the Supreme Court is the guardian of the entire judiciary. To solve the problems faced by the judiciary Supreme Court has taken some steps. Recent strategic plans and steps taken by the Supreme Court for Judicial Reforms are as follows-

- i) Different Standing Committees including General Administration Committee have been reconstituted and reinforced to deal with the matters of posting, promotion, discipline etc. of the judicial officers.

- ii) Case Management Reforms Committee and Monitoring Committees have been reconstituted and reinforced to identify and address the reasons for delay in disposal of cases in the Courts of all tiers.
- iii) Initiatives have been taken to classify around 3 million pending cases on the basis of their age and nature. After such classification the Courts will hear and dispose of the same class of cases analogously and if possible dispose of them by developing template judgment.
- iv) Supreme Court through its Registry monitors the Judges' attendance in and departure from the Court and their judicial performance and behavior with colleague judges and lawyers of their respective stations.
- v) The Registrar General of the Supreme Court has been given the responsibility of reporting to the Chief Justice as to whether the judicial officers of the Districts Courts enjoy leave or holidays on fancy grounds and whether they leave their stations with prior permissions or not.
- vi) All Courts including the District Courts of the remote areas are going to be brought under ICT networks and steps have been taken for making laws to record the testimony of witnesses by audio recording system. It will minimize time and energy of the trial Court Judges and the statement of witnesses will not suffer from any mistake or error.
- vii) Recommendations of some existing procedural and substantive laws like the Evidence Act, 1872; the Criminal Procedure Code, 1898; the Civil Procedure Code, 1908; the Limitation Act, 1908; the Transfer of Property Act, 1887; the Court Fees Act, 1870; the Specific Relief Act, 1877 for updating bringing amendments or substitution.
- viii) Matters relating to the practice and procedure of the Civil and Criminal Courts are regulated by 2 separate sets of the Rules. A high power committee comprising of 5 High Court Division Judges are working on those Rules, and the Rules relating to the Appellate Division are also being reviewed by another committee comprising with three senior Judges
- ix) The Civil Rules and Orders which are the main guidance for the District Courts Judges is required to be modified. It is now under process of modification.

- x) The District & Sessions Judges; District Judges; Metropolitan Sessions Judges; Chief Metropolitan Magistrates; Chief Judicial Magistrates have been directed to hold trial of cases, hear appeals in the morning sessions and interlocutory matters like bail petition, injunction petitions, complaint petitions in the late afternoon sessions.

### **Developing Court Administration and Case Management System:**

By developing good court administration and case management, Bangladesh judiciary is attempting to expedite its proceedings and rate of disposal in order to reduce backlog of cases.

Good court administration has been defined and described in many different ways. In simple terms it may be described to imply:

- (a) good record-keeping and systematic filing of the cases;
- (b) subject wise classification of the cases;
- (c) good monitoring so as to classify the cases on the basis of the stages they have reached;
- (d) to identify and to rid the docket of `dead' or moot matters in order to prevent them from clogging the schedules;
- (e) monitoring and caseload tracking in such a way as to know the status of each case, to know its procedural position, to locate documents and records more easily and to reflect everything in transparency plate.

Good court administration is necessary for ready references and control over exodus of cases that are in the docket, and is to be ensured by judicial administrators to help the court instantly with any information it needs for effective case management. Efficient court staff equipped with modern technological facilities like computerization would be necessary for good court administration.

Case management on the other hand, means detailed scheduling of the life and history of a case, after written statement has been submitted, drawn by an early judicial intervention i.e. sitting judge's order, enforcing active participation of the parties and strict observance of the schedule under courts supervision. In other words, it is procedural calendar of a particular civil suit (sort of and academic calendar in a university) where the parties have to follow procedural streamlining worked out by

the court, and which also includes initiation and coordination of consensual processes aimed at the resolution of the case other than through a court trial.

If this process is efficiently administered and implemented, it is hoped that about 60-70% of the total caseload will be reduced by 5 years. This will require co-operative efforts of all levels of the judiciary. The courts particularly the civil Courts should ensure that old cases of 5 years or more, particularly partition suits and other complicated suits are to be disposed on priority basis (a)the judicial officers should avoid writing of lengthy judgments;(b) the interlocutory matters are to be disposed of passing orders in open courts; (c)priority should be given setting time tables for every litigation and monitoring its progress by a Computerized Signaling System. In this regard the Supreme Court is working with UNDP to develop a suitable software. The next step to be taken by the Judges is the modernization of the service of process. The adjournments should not be given more than three times.

It is true that the nature of the civil disputes and the offences coming to the Courts are not same in all the developing countries. But I think there are some similarities of those disputes and offences in the countries of this sub-continent. Therefore, the following should be ensured to bring visible reform in court administration and case management system:

- i) to prioritize the cases according to their stages and ages;
- ii) to become attentive to proper utilization of the court hours and minimize their leaves and holidays;
- iii) to arrange regular judicial training for the judges and the support-staff to build their capacity augmenting judicial knowledge and skill;
- iv) to raise the number of judges appointing competent persons through a fair process; and
- v) to ensure the use of ICT in day to day works in the court rooms making them familiar with the technology.

### **Digitalizing the judiciary of Bangladesh: transforming towards e-judiciary**

A well-functioning judiciary as a pre-requisite for a country's economic performance is increasingly attracting public and policy-makers attention as it

promotes efficient production and distribution of goods and services by securing, among other things, the enforcement of contracts and promoting social harmony. Indeed, an effective judiciary acquires particular significance today when democratization, urbanization, and adoption of market reforms have made social interactions complex and improvement of judicial conflict-resolution capabilities and service delivery more important than ever before. A judiciary that enforces rule of law would hasten trade, financing and investment and promote social peace.

While we dwell on the potentialities of ICT in the Judiciary, we must note that nowhere is this more apparent than in case management itself. Case flow management techniques are now widely adopted as a way to reduce case backlog, render timely justice and increase predictability in the judicial system. We must note here though that only when case management is fronted by an efficient delivery of judicial outputs to citizens that the ends of justice are fully realised. Information and communication technologies (ICTs) are today considered to be an indispensable tool for both case management and efficient service delivery. While ICTs make it possible to address the information-intensive requirements of case management through its search and discovery capabilities, latest advances in technology also ensure that information is provided to the citizens on a device of their choice and at a place of their choosing.

In the Supreme Court we have long understood how ICTs can be force multiplier in our operations and in dispensing justice to even the last man standing, and several solutions have been developed towards digitalization of Bangladesh Judiciary. However, owing their presence and usage more on account of individual zeal in the ICT wing the synergistic effects that come about with developing a comprehensive solution has always been missing. Nevertheless, our early efforts have highlighted the potential that exists for ICT to help us achieve our objectives. The current ICT strategy developed for us by UNDP bridges this gap and I hope we are one day able to put into operation a unified solution covering all law enforcement agencies of the nation, including predominantly the police and prisons.

Glad to share with you that the recent ICT development in Supreme Court and subordinate court has been effective in enhancing service delivery. The public can

now access information on their cases through the internet, mobile app as well as SMS; the oversight function of the higher courts has been enhanced through the tracking system on the status and progress of cases in the lower courts by the upper judiciary and monitoring for supervising the reduction of case backlogs. This provides scope for strengthened leadership of the apex court and the potential to impact positively on service delivery of the judicial system.

The ICT interventions that we have successfully introduced in our judiciary are:

- Introduced Case Management Software in both Supreme Court and 3 pilot district courts.
- Established Online and SMS based Cause list and case information access for litigants, which widens the platform for accessing the justice system with little effort and cost.
- Mobile Apps for case searching for both Supreme Court and subordinate court.
- Developed web based [Judicial Officers' Database](#) Management Application to enhance transparency in the court administration process.

Now Supreme Court of Bangladesh is all set to implement e-judiciary and government is going to undertake 5 years e-judiciary Project with the estimated cost of USD 65 million and which will be used to implement:

- Modern witness deposition mechanism in courts under 7 divisions
- Internet connectivity and Wi-fi Access in 64 district courts
- Scale-up online cause list in 64 districts.
- Establishing e-Court for both higher and subordinate courts
- Record room automation: Record digitization and archiving
- Establishing video conferencing facility in all districts and Central Jails.
- Introduce a Management Information System of the judiciary of Bangladesh
- Capacity development of judicial officers.

### **The Role played by the Judiciary in strengthening Democracy and upholding Rule of Law:**

The rule of law is a basic feature of the constitution of Bangladesh. It has been pledged in the preamble to the constitution of Bangladesh that -

*"It shall be 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, will be secured for all citizens."*

An independent, capable and proactive judiciary is indispensable for the protection and advancement of democracy and rule of law. In Bangladesh, the Judiciary, one of the three organs of the state, plays an important role for advancement of democracy and Human Rights.

In MasderHossain case<sup>v</sup> Supreme Court issued 12 (twelve) directions *inter alia* declaring that the judicial service is a service of the Republic within the meaning of Article 152(1) of the Constitution, but it is a functionally and structurally distinct and separate service from the civil executive and administrative services of the Republic with which the judicial service cannot be placed on par on any account and that it cannot be amalgamated, abolished, replaced, mixed up and tied together with the civil executive and administrative services. As per the direction, government separated judiciary from executive by making necessary rules and also set-up Judicial Service Commission for appointment of judges of the subordinate courts in the judicial service.

The Supreme Court of Bangladesh which is the apex court of the country comprises of two Divisions, the High Court Division and the Appellate Division. The High Court Division is the exclusive constitutional court of first instance. In addition, it has exclusive original jurisdiction in admiralty and company cases and appellate and revisional jurisdictions in respect of civil and criminal cases. The Appellate Division hears and determines appeals from judgments and orders of the High Court Division and Administrative Appellate Tribunals. In addition, under Article 104 of the Constitution, the Appellate Division has jurisdiction to make any order or direction for doing complete justice in any case or matter before it.

The Preamble of the Constitution of Bangladesh declares that the fundamental aim of the state is to realize through the democratic process a socialist society in which “the Rule of law, fundamental human rights and freedom, equality and justice, political, economic and social” will be secured for all citizens. The Constitution

in Chapter III under the heading 'Fundamental Rights' incorporates therein nearly all the basic rights enunciated by the Universal Declaration of Human Rights. Above fundamental rights are judicially enforceable. The High Court Division is empowered to enforce fundamental rights under Article 102 (1) of the Constitution against "any person or authority including any person performing any function with the affairs of the Republic".

Article 26 of the Constitution makes all laws inconsistent with fundamental rights void to the extent of such inconsistency and further enjoins upon the state not to make any law inconsistent with fundamental rights.

Article 102 of the Constitution vested the High Court Division with the competence of judicial review of administrative or legislative actions. The principle that only the 'persons aggrieved' can initiate a legal action in all matters including the matters of great public concern virtually keeps the public functionaries beyond judicial scrutiny. This inaction of the judiciary may erode people's trust and confidence in the competence of the judiciary. In the above backdrop, the concept of Public Interest litigation (PIL) was formally recognized by the Supreme Court of Bangladesh in the case of Dr. Mohiuddin Farooque<sup>vi</sup>. In the case of Dr. Mohiuddin Farooque, the meaning of 'person aggrieved' has been expanded by holding that 'person aggrieved' cannot be interpreted only a person who has suffered a legal grievance or injury but also when a public injury or public wrong or infraction affecting an indeterminate number of people is involved, the multitude of individuals who has been collectively wronged and any member of public espousing that particular cause is a person aggrieved.

In Bangladesh the magistracy of the subordinate judiciary remained with the executive branch of the government and executive officers were appointed as magistrates. Article 22 of the Constitution enjoins upon the State a sacred duty to separate the judiciary from the executive organ of the State. But successive governments showed an inexcusable inaction in the performance of above sacred constitutional duty. In the above backdrop, the Supreme Court was approached and in the Masdar Hossain case, the Appellate Division issued 12 directives upon the

government for establishment of a separate and independent judicial service. Pursuant to above directives Code of Criminal Procedure (Amendment Act) 2009 was passed in the Parliament providing for separation of magistracy from the executive branch and incorporating the same in one independent judicial service.

On an average every year about 10,000 Writ cases are instituted under Article 102 of the Constitution for protection or enforcement of fundamental rights or judicial review of administrative or legislative actions. The success rate of judicial review cases in the Supreme Court of Bangladesh is encouragingly high. The success rate and the media publication of case proceedings have significantly enhanced people's awareness about rights and brought spectacular advancement in the areas of women empowerment, gender equality and rights of the child, human rights and rule of law.

Other key aspects of our Rule of Law reform initiatives are introduction of Alternative Dispute Resolution (ADR) mechanism, legal aid services and training program for the Judges and Court's support staff. In Bangladesh, in 2012 the legislature has enacted two new Sections i.e. Sections 89A and 89B in the Code of Civil Procedure to make the judges enable to apply methods of Mediation and Arbitration as supplements to the existing formal litigation system. The said new provisions of CPC are applicable to all suits to be filed and pending in Civil Courts. Chapter-V of Money Loan Court Act, 2003 provides the procedure of facilitating the parties to settle their commercial disputes through mediation. Taking the above legislative steps we have clearly made the ADR mechanism a part and parcel of our formal legal system. However, we believe, it is not possible to achieve sustainable success of ADR merely by bringing some changes in our procedural laws and taking some administrative steps.

The Family Courts Ordinance, 1985 provides for avenues for reconciliation or alternative dispute resolution. The success of ADR in matrimonial cases is tremendous. It may be mentioned here that 1805 matrimonial cases were disposed of by mediation in 2014.

Nevertheless, there is a common perception that any lawyer who suggests the ADR mechanism is considered to have a weak case. So, we should get all the members of the legal community involved and create a win-win atmosphere where the people would be satisfied for the resolution of the disputes and that would help the judiciary in giving sufficient time and energy to pay attention to the matters of public

interest and complex nature. In the last few years, we have arranged a good number of workshops and orientation courses for the Judges and lawyers under the auspices of Judicial Administration and Training Institute and other organizations. Judicial Administration and Training Institute is primarily responsible for providing continuing legal education and training to the Judges of all strata and court's support staff.

Democracy is a way of life. It cannot be begotten over-night. It cannot be handed down in a silver platter. It has to be earned. It has to be owned. The world history is replete with stories of people, ordinary people who fought for their rights in different names in different countries, but the cry for liberty, the cry for equality, the cry for fraternity were reverberated in the same manner from horizon to horizon. This sense of liberty made us independent from the yoke of the British rule in 1947 and the same sense of liberty pushed us through the war of liberation in 1971 and brought Bangladesh into existence. But the proclamation of Martial Law is altogether the negation of the said spirit of liberty and independence.

In the case of KhondkerDelwarHossain<sup>vii</sup> the apex court of Bangladesh recorded its total disapproval of Martial Law and suspension of the Constitution or any part thereof in any form. The Court also opines that the perpetrators of such illegalities should also be suitably punished and condemned so that in future no adventurist, no usurper, would dare to defy the people, their Constitution, their Government, established by them with their consent. However, it is the Parliament which can make law in this regard. Let us bid farewell to all kinds of extra constitutional adventure forever. Accordingly the Parliament in Fifteenth Amendment of the Constitution incorporated Article 7A in the Constitution providing for highest punishment for the offence of abrogation, suspension, etc. of the Constitution.

### **Building Trust and Confidence of the People in Judiciary:**

An independent and competent judiciary is indispensable for establishment of democracy, advancement of rule of law and protection of human rights. Judiciary is an organ of the state which derives its judicial authority from the Constitution and laws

of the country but exercises the same predominantly with ethical values and moral force. The core strength of the judiciary lies in public confidence in its competence, integrity and impartiality. Deficiency in public confidence in the judiciary has a disastrous effect on the rule of law and over all development of the country. It encourages people to accept mighty men or criminals as arbiters for dispute resolution through extra-judicial means. It also discourages people to bring their genuine disputes to courts. This seriously affects the advancement of rule of law as well as genuine interests of the poor, women, children and other vulnerable groups of people and further aggravates their position in the society.

The level of people's confidence in a national judiciary determines the barometer of its acceptance and trust of the international community. Now we live in a global society and as such not only international trade and commerce but also now-a-days, the state of human rights, good governance and rule of law are issues of concern for the international community. International confidence in the legal system plays an important role in overall relations with the international community and development of a country. Anarchy and backwardness of any country impacts negatively on others especially on the neighboring countries. It creates stalemate in trade, economic growth and over all development of the region. The judiciary must be capable to dispense justice in the protection of rights, liberties and freedoms of the people.

According to Gallup<sup>viii</sup>2014 Survey, regionally, confidence in the rule of law is the highest in Asia, where nearly two in three adults (65%) express faith in their judicial systems and courts. In no other region do more than half of residents express such confidence, with overall figures from Latin America (35%) and the countries of the former Soviet Union (28%) among the lowest in the world.

## *Regional Confidence in Judicial Systems and Courts*

	<b>Yes</b>	<b>No</b>	<b>Don't know/Refused</b>
Asia	65%	25%	10%
Europe	49%	45%	6%
Sub-Saharan Africa	48%	45%	7%
Middle East and North Africa	47%	38%	15%
Northern America	47%	52%	0%
Latin America and the Caribbean	35%	59%	6%
Former Soviet Union	28%	55%	17%

All results are based on 2013 survey data.

Survey results for Asia do not include China. Middle East and North Africa results do not include Jordan, Syria, Egypt, Libya, Algeria, or Gulf Cooperation Council countries.

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However, results also vary widely within Asia, from as high as 95% in Bhutan to as low as 23% in Taiwan. Residents of many countries in South Asia -- including Bhutan, Bangladesh, India, Sri Lanka and Nepal -- were among the most likely in the region to express confidence.

The strong confidence in judicial systems of Bangladesh and India most likely reflects visible efforts to strengthen rule of law such as high-profile cases in which the judiciary ruled against corrupt politicians, businessmen and celebrities and held them accountable. This, in addition to improvements in the Right to Information Act and fast-track courts, may have bolstered confidence in the judicial system and courts.

*Confidence in Asia in Judicial Systems and Courts*

	<b>Yes</b>	<b>No</b>	<b>Don't know/Refused</b>
Australia and New Zealand	59%	37%	3%
Australia	60%	37%	3%
New Zealand	56%	41%	3%
Southeast Asia	60%	29%	11%
Malaysia	70%	27%	3%
Thailand	66%	20%	14%
Vietnam	66%	11%	23%
Philippines	61%	35%	4%
Indonesia	53%	38%	9%
South Asia	70%	21%	9%
Bhutan	95%	4%	1%
Bangladesh	75%	22%	3%
India	71%	18%	11%
Sri Lanka	69%	15%	16%
Nepal	66%	26%	8%
Pakistan	65%	32%	3%
Afghanistan	25%	69%	6%
East Asia	51%	35%	14%
Japan	65%	18%	17%
South Korea	27%	63%	10%
Mongolia	26%	58%	16%
Taiwan	23%	70%	7%

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Capacity of the judiciary to administer quality justice can significantly enhance people's confidence in the justice delivery system. Quality justice means and includes people's unhindered access to courts where justice is delivered without delay and much expense, judgments and orders are in accordance with law and made impartially and openly through a transparent process, and those judgments are implemented promptly.

The Dutch Council of Judiciary operated a Judicial Quality Improvement System which comprises the judicial court performance measurement framework. This framework uses indicators of five core measures. These are:

- a) Impartiality and integrity of judges, including measure of successful challenges of judges' impartiality. Case allocation procedures and complaint procedure;
- b) Expertise of judges including preparation, appeal rates, disposal rates;
- c) Treatment and attitude of judges, including judicial functioning, participation of litigants, explanation of proceedings and clarity decisions;
- d) Unity and equality of law; and
- e) Speed and timeliness, including average disposal times, percentage of adjournments. Productivity and starting cases on time.

Another formative example includes the United Nations' Rule of Law Index, which seeks to monitor the justice sector with an emphasis on criminal justice and penal law, and for measuring progress when assistance is provided.

Moreover, strengthened strategic planning for the judiciary and efficient administration mechanism including ICT establishment in the court system can bring an image of quality justice for all.

We can say that we have tried to maintain all the above qualities while doing judicial work in Bangladesh.

### **Challenges to Access to Justice and overcoming them:**

Like other countries throughout South Asia and beyond, the people of Bangladesh face significant hurdles in accessing their judicial system. Vulnerable groups, including the poor, women, children, ethnic minorities, and people with disabilities face particular exclusion. Throughout the formal justice system, there is a significant lack of capacity-within the judiciary, relevant ministries and statutory bodies. There are some specific constraints to access to justice including prohibitive costs, corruption and undue influence and lack of awareness of legal rights. Long delay in court processes is caused by a variety of factors including a lack of management capacity both at the district and national level, lack of coordination

between justice sector actors, lack of trained staff and shortages of judges, lack of trained and competent lawyers etc.

**To overcome these challenges some of the following measures can be adopted and implemented without delay such as:** effective implementation of ADR mechanism, introducing Plea Bargaining in Criminal Cases, simplification of procedure from filing to disposal of cases, fixing reasonable court fees, wide spread awareness regarding Legal Aid Scheme of Government & Non-Government organizations, speedy disposal of cases etc.

Liberalization of *locusstandi* by the decision of the Apex Court also encourages socially spirited person to vindicate the grievance of the poor, vulnerable and women by way of public interest litigation. If all stakeholders work in a coordinated way we will be able to surmount the challenges and that will obviously give confidence to the down trodden people to seek remedy through court.

### **Supreme Court's stand on protecting Environment:**

Access to Food, water and energy is the source of prosperity of every human being; climate change threatens all of them. Bangladesh is one of the worst affected countries in the world by climate change, although as an agro-based developing country Bangladesh has no or very little role in the emission of green house gas causing global warming. In recognition of its urgency and importance 'the protection and improvement of environment and preservation of natural resources and biodiversity' have been incorporated in Article 18A of Part II of the Constitution of Bangladesh as one of the Fundamental Principles of State Policy by the Constitution (Fifteenth Amendment) Act, 2011.

As far the laws are concerned, there is little dearth of laws, legislations or rules in the areas of environment and sustainable development. The real problem lies in the prompt, effective and even handed enforcement of those laws. There are about 182 laws (excluding rules and by-laws) concerning conservation of environment and fighting climate changes. The major laws on the area are the Environment

Conservation Act, 1995 and the rules made thereunder and the Environment Courts Act, 2010.

Using tools of innovating and creative interpretation of constitutional provisions, the Supreme Court of Bangladesh has consistently endeavored to render meaningful justice to cases involving conservation of environment.

The Bangladesh judiciary is highly sensitized about the importance and necessity of conservation of environment and accordingly playing an important and pro-active role in combating activities detrimental to ecological balance and conservation of environment. The exclusive Environmental Courts and the utilization of constitutional remedy through the initiation of Public Interest Environmental Litigation in the apex court are playing very important roles in combating offences against conservation of environment in Bangladesh.

In cases against encroachment on river banks or wetland or discharging of chemical waste in the river, or of indiscriminate, unlawful and unauthorized cutting or razing of hills or illegal logging of forest woods, the courts take very prompt action and issue orders on the Department of Environment to take necessary measures with appropriate support from other concerned agencies and submit a status report. Such prompt and stringent measures by the Supreme Court of Bangladesh through Public Interest Litigation has contributed greatly in effectively checking the detrimental acts.

It is true that the 1972 original Constitution of Bangladesh did not explicitly provide for the right to healthy environment as a fundamental right. Article 31 states that every citizen has the right to protection from any “action detrimental to the life, liberty, body, reputation or property”, unless these are taken in accordance with law. Article 32 states that “No person shall be deprived of life or personal liberty saves in accordance with law”.

Above two Articles together constitute the fundamental” right to life”. The next question that peeps into the mind is whether the “right to life” includes the right to an environment capable of supporting the growth of meaningful “existence of life” and includes the right to a healthy environment?

In two recent cases the Appellate Division (AD) and the High Court Division (HCD) of the Supreme Court of Bangladesh have dealt with the question in a positive fashion. The Appellate Division of the Supreme Court of Bangladesh, in the case of Dr. Mohiuddin Farooque vs Bangladesh and others<sup>ix</sup> has expounded that “articles 31 and 32 of our Constitution protect right to life as fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.” Earlier the High Court Division, in the case of Dr. Mohiuddin Farooque<sup>x</sup> stated that **right to life includes right to fresh air and water and a situation beyond animal existence in which one can expect normal longevity of life.**

As such the right to healthy environment has now become a fundamental right for the people of Bangladesh pursuant to above case laws. This position puts additional responsibility upon the judiciary to ensure that rule of law is guaranteed in cases where the sustainability of a proposed or undertaken development project is in dispute and the victims of breach of environmental law and the judicial precedent is appropriately dealt with by the judiciary.

### **Violence against women and the stand of the Judiciary:**

Violence against Women (VAW) is a serious type of violation of women’s rights, their security and integrity. Violence against women, in its different forms such as physical torture, assault, sexual exploitation and so on are factors that make women vulnerable and keep them entrapped in exploitative situations, including those arising from unsafe and irregular migration and trafficking. Domestic violence in Bangladesh is a major concern and a serious issue of human rights violation. Parliament enacted some special laws and tribunal to try the perpetrators speedily. Moreover, the Supreme Court issued directives upon the government to take necessary steps for combatting sexual harassment in different educational and other institutions.

Despite international and national attempts, there is a failure to protect and promote sacred rights and freedoms of women in the case of violence against women.

In Bangladesh, violence against women has become a menace and a persistent problem, causing not only impediments to the advancement of the womenfolk but also multi-layered problems of economic and social nature for the justice delivery system. In our present society, women are oppressed even by their own family members or close relatives. They are also subject to violence at public places and violence by agencies of the state.

The first and foremost important instrument creating obligations for the government of Bangladesh to combat VAW is the Constitution of the country. It has mandated a society free from exploitation and based on the rule of law and respect for human rights and dignity (preamble). Among others, the Constitution has guaranteed everyone the right to life and liberty<sup>xi</sup>, and the rights to freedom of movement and expression, and privacy. Specially, the Constitution has prohibited torture and any kind of inhuman or degrading punishments<sup>xii</sup>, and has guaranteed all the legal equality and legal protection<sup>xiii</sup>. Thus, the Constitution taken as a whole can be said to have banned all sorts of crimes and discriminatory practices against women.

Apart from the Constitution, a series of international human rights instruments which Bangladesh signed/ratified/acceded to also create obligations for it to fight violence against women. Moreover, in November 2010, Bangladesh was elected to the Board of the UN agency on women, which has cast further obligation upon Bangladesh to take necessary step to prevent, eradicate and punish the perpetrators of violence against women. We have abundance of law to combat violence against women such as the Penal Code 1860; the Dowry Prohibition Act 1980; the Prevention of Oppression against Women and Children act 2000, the Suppression of Acid Crimes Act, 2002, the Domestic Violence (Prevention and Protection) Act, 2010; the Legal Aid Act 2000, the Human Trafficking Prevention and Suppression Act, 2012 etc.

The PIL of BNWLA<sup>xiv</sup> was filed to activate the government ministries against rampant incidents of sexual harassment of women at work place and educational institutions. The Court in this case found that, despite constitutional mandates for gender equality and the protection of fundamental rights of all including women there was virtually no law to effectively prevent and punish acts and behaviour known as

sexual harassment of women. Drawing on comparable foreign highest Court decisions and certain international human rights instruments, prominently CEDAW (the Convention on the Elimination of All Forms of Discrimination against Women, 1979) which Bangladesh acceded to, it issued detailed guidelines “in the nature of law”, binding the employers and educational institutions to follow them in preventing and suppressing sexual harassment of women at work places and educational institutions until an ‘effective legislation’ is enacted.

The highest Court of the country consistently held that in a case of rape, accused can be convicted on the basis on uncorroborated evidence of the prosecution if it is unimpeachable and self-contained. Because the very nature of the offence makes it difficult to get direct corroborating evidence.

### **Terrorism, Law and our response:**

Most formal definitions of terrorism have the following characteristics:

- i) a fundamental motive to bring social or political change by violence;
- ii) generate a sense of fear by attacking the civilian targets; and
- iii) use of illegal force, explosives or weapons maneuvering the cheaper sentiments of the people on various feudal and religious issues.

It is a very complex and challenging task to address the terrorism phenomenon. While condemnation of terrorist activities by the international community has been unanimous and unequivocal, the efforts so far taken to regulate or combat this phenomenon have been marred by differences of approach and poor competency of the affected countries. Terrorism is one of the threats against which the international community, above all the States must stand together to protect their citizens. It is very difficult to grasp the reasons as to why the people prepare themselves for such crimes and terrorist activities, which certainly go against the entire humanity. So, the terrorism is considered as a daunting problem in today's world. Over the past months, the ISIS theater of savagery has featured the burning alive of a Jordanian pilot, the mass slaughter of Egyptian (Christian) workers, as well as the destruction of antiquities, in addition to its established repertoire of beheading, stoning, limb

amputation, and crucifixion. The need to put an end to the depravity that is ISIS is yet to be met with a concerted, deliberate effort capable of securing the result.

In Bangladesh, the risks and vulnerabilities created by terrorism have become a serious threat to our national life and the security. Terrorism has become a threat to the life, economy and political and religious pluralism in Bangladesh. Incidents of religious assassinations, political violence and bombing in public places sometimes stun the entire nation.

On 17 August 2005, around 500 bomb explosions occurred at 300 locations in 63 out of the 64 districts in Bangladesh. The bombs exploded within half an hour period starting from 11:30 a.m. A terrorist organization named Jama'atulMujahideen Bangladesh (JMB), claimed responsibility for the bombings. The group, led by ShaykhAbdurRahman and SiddiqurRahman (also known as Bangla Bhai), is alleged to be affiliated with Al Qaeda, although this has not been proved. Another terrorist group, named Harkat-ul-Jihad al-Islami, was found associated with JMB in executing the co-ordinated attack. Following those acts of bombings and gruesome acts both the groups have been banned by the government of Bangladesh. The main perpetrators of the terrorist attacks and bombing namely- Bangla Bhai and ShaykhAbdurRahman, were apprehended by the law enforcing agencies in early March 2006. On conclusion of the trial the Court found them guilty and sentenced them for the charge of murder and terrorist acts along with four other militants, and were executed by hanging in 2007. At all cost, the Bangladesh government is fully committed to stop terrorism and decided to show zero tolerance to the perpetrators for the interest of the peace and tranquility of our public life.

Terrorist acts are usually carried out by the extremist groups and even by lone individuals having cross border networks and support. So to move forward, we must address all forms and manifestations of terrorism in every corner of the world by operating globally acceptable Security Mechanisms avoiding hegemonic interests. Today the entire humanity is standing at the crossroads- one leads to peace and the other leads to violence and uncertainty. Being a peace loving country, Bangladesh has

always been fighting against terrorism in many fields including economic and financial areas to check money laundering, illicit drug trafficking etc.

In the National Parliament of Bangladesh SantrasBirodhAin (Anti-Terrorism Act)<sup>xv</sup>, was passed to deal with and punish the perpetrators, abettors and other accomplices including the fundsuppliers involved in the terrorist activities in the country. The said law was amended in 2013, wherein a list of International Conventions, Instruments and Protocols have been incorporated under the 1<sup>st</sup> schedule of the law and violation of any provision of these conventions or instruments has been made punishable under the said Act. Under this law, the government has already banned 5 extremist groups or parties. The government has taken a good number of significant initiatives to expedite the trial of the cases pending in the Santras Daman Tribunals functioning in the District Courts. Some other stringent laws are also to be enacted to punish the individuals and financial institutions responsible for supplying funds to the terrorist groups by money laundering or otherwise.

Bangladesh always supports the global war against the terrorism, but its ability to combat the terrorism is undermined by weak institutions, porous borders, and limited law enforcement capacity. Presently the government is trying hard by keeping no stone unturned for reviving a sense of security amongst its own people, so that they can freely contribute to the national economy and political progress of the country.

Without regional and international co-operation of the States and awareness of the international community it will not be possible to combat the menace of terrorist activities. Let us try to create an international consensus against the morbid and monster terrorist forces of all forms.

### **Complete Justice done by the Supreme Court:**

Under Article 104 of the Constitution, the Appellate Division of the Supreme Court of Bangladesh is empowered to do complete justice in any case or matter pending before it. The words “complete justice” do not yield to a precise definition. Cases vary, situations vary and the scale and parameter of complete justice also vary. Sometimes it may be justice according to law, sometimes it may be justice according

to fairness, equity and good conscience, sometimes it may be in the nature of arbitration, sometimes it may be justice tempered with mercy, sometimes it may be pure common sense, sometimes it may be the inference of an ordinary reasonable man and so on. This Court has done this exercise in varying circumstances applying varying principles in various cases.

In this respect I am tempted to quote at least one case<sup>xvi</sup> for your appreciation. In that case, husband constructed a house on wife's land by taking loan from Shilpa Bank, where he was an officer. Subsequently, the marriage tie was dissolved. The trial court held that the husband had constructed the house and decreed the suit. The appellate court, namely, the High Court Division held that the building was constructed by the husband, but he did not acquire any title in the building or in the land. In such circumstances, the question of doing complete justice under Article 104 of the Constitution came up for consideration in that case. The Supreme Court ordered that appellant (husband) will retain his possession of that floor of the suit building where he is now residing, with no right to transfer his possession. The respondent may recover possession there any time within one year from date on payment of taka Six lacs in default of which the appellant will have only the right to live in that floor of the suit building where he is now residing during his life time.

### **Trial of war criminals:**

You are well aware that during our liberation war Pakistan occupation army along with local collaborators committed atrocities, war crimes, crimes against humanity, genocide in our country and they murdered 3 million innocent people and committed violence against 2 lac women and enjoyed impunity for almost four decades. Pakistani armed collaborators and members of Al-badar, Al-shams brutally killed the intellectuals in December, 1971 at the dawn of freedom aiming to deprive the new nation of its best brains. But eventually the perpetrators and criminals who helped Pakistani Army to commit genocide and crimes against humanity were brought to justice. Some of them were tried under the International Crimes (Tribunals) Act, 1973 and handed down exemplary punishment. Trial is continuing.

### **Concluding Remarks:**

India and Bangladesh share the same history, culture and tradition. The social and moral values of the people of these two countries are almost identical. People of these two countries are peace loving and law abiding. That is why experience sharing in relation to delivering justice to the people is highly beneficial for these two countries. I believe, the discussions today are very fruitful and hopefully have further strengthened the tie between the two countries.

I remind you that the intellectuals and men of knowledge were given the highest honor in society in ages past. Unfortunately, the society had downgraded the intellectual to the point where an intellectual meant a person who is intelligent enough to know on which side his bread is buttered.

I would call upon you to think – think hard – about the problems not only facing you but the country as well. If this habit of thinking for yourself has not yet been inculcated in you, you would be well advised to acquire it after you leave University. A formal education at a University cannot do you much harm provided you start learning thereafter. You need continuous, concentrated and laborious study to build up your career to face the challenges of this century. I wish you success in every endeavor of life.

I am taking privilege to express my gratitude of the Government of India led by Hon'ble Prime Minister Narendra Modi for his outstanding and dynamic leadership, the longstanding Land Boundary Agreement was signed and implemented and the same has put Bangladesh-India relations on a higher trajectory. Apart from the same, greater trade and connectivity, specially people to people relations had been the focus of Hon'ble Prime Minister Narendra Modi's June 6-7, 2015 Dhaka visit. During their one to one talk both the Prime Ministers of India and Bangladesh agreed to enhance connectivity for the development in South Asia. Finalization of motor vehicle agreement between Bangladesh, Bhutan, Nepal and India is a major step in this direction. During the visit of Hon'ble Prime Minister of India to Bangladesh as many as 22 agreements were signed by two sides. During the visit India extended a US\$2 billion line of credit to Bangladesh & pledged US\$5 billion worth of investments. As

per the agreements, India's Reliance Power agreed to invest US\$3 billion to set up a 3,000 MW LNG-based power plant (which is the single largest foreign investment ever made in Bangladesh) & Adani Power will be setting up a 1600 MW coal-fired power plant at a cost of US\$1.5 billion. The two countries signed a total of 22 agreements including the ones on maritime safety co-operation and curbing human trafficking and fake Indian currency. His Excellency Indian Prime Minister also announced a line of credit of \$2 billion to Bangladesh and thereby the relation between the two friendly countries stood in the highest peak.

I have already mentioned that the two nations were strong allies during Bangladesh Liberation War in 1971. Both the nations are committed to fight together against terrorism, work together for securing rule of law, consolidating democracy, economic emancipation of mass people and cultural development of the region. In this respect, I am tempted to quote the view of the Brazilian novelist and columnist Paulo Coelho:

"Culture makes people understand each other better. And if they understand each other better in their soul, it is easier to overcome the economic and political barriers. But first they have to understand that their neighbor is, in the end, just like them, with the same problems, the same questions."

Before parting with, I must express my special thanks and gratitude to Dr. Bimal N. Patel, distinguished Faculties and students of Gujarat National Law University for extending me their warm and cordial reception and hospitality.

May God bless you all.

May Bangladesh-India friendship live long.

Thank you all for your patience hearing.

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**Reference**

<sup>i</sup> Art. 94 (4) and Art. 116A of the Constitution of Peoples Republic of Bangladesh

<sup>ii</sup> *Ibid* Art. 48 (3).

<sup>iii</sup> *Ibid* Art. 95 (1).

<sup>iv</sup> *Ibid* Art. 116.

<sup>v</sup> *Secretary, Ministry of Finance v. Mr. Md. Masdar Hossain, 2000 BLD (AD) 104*

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<sup>vi</sup> *Dr. MohiuddinFarooque v. Bangladesh, represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and others, 49 DLR (AD)(1997) 1*

<sup>vii</sup> *KhondkerDelwarHossain, Secretary, BNP & another v. Bangladesh Italian Marble Works and others 62 DLR (AD)(2010) 298*

<sup>viii</sup> *American Institute of Public Opinion after the name of George Horace Gallup, US Statistician*

<sup>ix</sup> *Dr. MohiuddinFarooque v. Bangladesh and others, 1997BLD (AD) 1*

<sup>x</sup> *Dr. MohiuddinFarooque v. Bangladesh, represented by the Secretary, Ministry of Commerce, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, and others, 48 DLR (1996) 438*

<sup>xi</sup> *Art. 32 of the Constitution of Peoples Republic of Bangladesh.*

<sup>xii</sup> *Ibid Art. 35*

<sup>xiii</sup> *Ibid Arts. 27, 28*

<sup>xiv</sup> *Bangladesh National Women's Lawyers' Association (BNWLA) v Bangladesh 14 BLC (HCD)(2009) 694*

<sup>xv</sup> *Act No. XVI of 2009*

<sup>xvi</sup> *A.F.M. Naziruddin v. HameedaBanu, 45 DLR(AD) (1993) 38*