

Speech of Dr. Justice Syed Refaat Ahmed, the Hon'ble Chief Justice of Bangladesh on 7th A K Khan Memorial Law Lecture 2025, jointly organised by Faculty of Law, Chittagong University and AK Khan Foundation

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Faculty

Students

Distinguished Guests

Ladies and Gentlemen

Good Morning

It is with a sense of reflection and introspection that I appear before you today to deliver the 7th A.K. Khan Memorial Lecture here at the Faculty of Law, University of Chittagong. As we contemplate the future of the justice

delivery system in these momentous time of transformation and rejuvenation we cannot but step back in time to the defining periods of our nation's history as have collectively brought us today to the gates of a national revival.

We bow our heads, therefore, in reverence to the martyrs of the 1971 Liberation War, the vanguards of our national existence; to the heroes of the Language Movement of 1952, whose struggle for dignity and identity gave voice to our collective soul; and to the fallen of the July-August 2024 Revolution whose sacrifice rekindled the nation's moral imagination and hardened our resolve to restore equity and justice. Their legacies guide our mission and give depth to our aspirations.

It is equally fitting that in this hour of remembrance and revivalism, we pay homage to Mr. Abul Kasem Khan, whose name this lecture series rightly bears. I do so not only as a Chief Justice of Bangladesh but as the grandson of Mr. Justice Mohammad Ibrahim, whose bond with Mr. Khan was one of principled friendship and firm commitment to the autonomy of East Pakistan. Their paths united at a momentous juncture in our history when the cry for equity and autonomy was growing louder, and when moral clarity was rare in the political corridors. In his diary entry dated *1 January 1960*, my maternal grandfather noted how Mr. Khan, freshly returned from Rawalpindi, came to Justice Ibrahim's house to speak passionately about the Second Five-Year Plan and the urgent development needs of East Pakistan. In the months that followed *19 May, 31 May, 30 June, and beyond*, they met repeatedly, united in their conviction that only autonomy and a separate economic identity could rescue East Pakistan from systemic neglect. They agreed that the disparities between East and West were not just unfortunate but were untenable. On *3 November 1960*, when my grandfather visited cyclone-devastated Patenga, it was Mr. Khan who received him in Chittagong, hosted him in his home, and joined him in witnessing the unimaginable suffering of our people. There were moments

that turned pain into resolve. Again, in early 1961, they spoke candidly about constitutional reform, economic justice, and the dream of two independent economic units, ideas they boldly voiced to President Ayub Khan on 11 April 1961.

“Mr. A.K. Khan Industries Minister had gone to Japan with the President during his recent visit to that country. Mr. A.K. Khan returned from Japan on the 30th of December 1960. He called on me on the 2nd of January 1961 in the afternoon and said that he had about an hour's talk with the President about the Constitution and told him about the position of East Pakistan. He said that he had told the President that East Pakistan and West Pakistan could not be governed on any theory of one economy-their economies were distinct and separate, and that trade, commerce and all other subjects should be given to the provinces, retaining only a few subjects at the centre such as defence, currency, foreign relations (excluding foreign trade). And that so far as the army was concerned, East Pakistan should be given parity or at least an East Pakistan army should be created composed of East Pakistanis. The President, thereafter, said "Then why don't you ask for confederation?" While saying this, Mr. Khan had incidentally observed that East Pakistan could be governed not by force but by willing consent. The President did not dispute this, nor did he show annoyance. The President, said Mr. A.K. Khan, had asked him during this conversation to give him our demands in writing, when A.K.Khan had told him that "We (East Pakistanis) would meet him alone to discuss about the demands of East Pakistan."

Mr. Khan was not only a visionary industrialist and statesman but he was a man of profound moral courage. My grandfather admired both him and Mrs. Khan deeply as did our entire family. Mr. A.K. Khan captures our imagination till today not merely for his intellect, but for the sincerity of his convictions and the dignity with which he served this nation. Today, I pay tribute to late Mr. A.K. Khan not as a figure of the past, but as a moral compass for the future.

Ladies and Gentlemen,

Reform initiative

Since assuming office as Chief Justice, I have pursued with strong conviction a transformative and coherent agenda for judicial reform, which is now entering a decisive phase of institutional entrenchment. On 21 September 2024, I declared a comprehensive Judicial Reform Roadmap, founded on the three pillars of judicial independence, administrative autonomy, and procedural efficiency. In furtherance of this vision, the Supreme Court has operationalized the Judicial Appointment Council and the Supreme Judicial Council, two autonomous constitutional bodies with exclusive authority to recruit and remove judges of the apex court fully insulated from executive and legislative interference. The process for establishing a separate Secretariat for the Judiciary is nearing completion, setting the cornerstone for full administrative autonomy. A comprehensive Posting and Transfer Guideline has been formulated and submitted to the government to ensure transparency, equity, and consistency in judicial postings across the country. To enhance access and integrity, I have issued 12-point directives aimed at eliminating corruption, introduced two dedicated helpline services in Supreme Court, a paper-free company bench, an electronic requisition system, a digital case-tracking dashboard, and initiated the long-overdue update of the Personal Data Sheet (PDS) for judges, which had been in abeyance since 2015. We have also advocated for more specialized courts including those for children, electricity, and other specific sectors with detailed proposals already under government review.

As part of my visionary judicial reform roadmap, the proposal to establish dedicated Commercial Courts at the district level was first conceived during the inaugural Reform Roadshow held in Chattogram last January. This initiative aims to create specialized forums for the swift and effective resolution of

commercial disputes, with clearly defined scope and jurisdiction to ensure procedural efficiency and legal certainty. While the courts are yet to be established, formal proposals have been submitted, and the European Union has expressed strong interest in supporting this reform. Their engagement highlights the initiative's potential to boost investor confidence and improve the overall business environment in Bangladesh.

These initiatives are not isolated measures but integral parts of a constitutional renaissance that seeks to restore the judiciary's institutional dignity and self-governing identity. The autonomy of the judiciary is a condition precedent and a sine qua non to the longevity and sustainability of other broad-based sectoral reforms. Reformation as sought by the judiciary itself therefore should be the baseline on which the superstructure of general reforms may feasibly be erected. That the judiciary in Bangladesh is now the lone fully functioning constitutional organ of the state under the present constitutional dispensation. To carry this message and agenda of reform to every corner of the nation, I have personally visited all divisions of Bangladesh, engaging with judges, magistrates, and members of the Bar. In these gatherings, I have called upon the District Judiciary and the local Bars to take charge of this reform journey and they have responded with sincerity and initiative. The Bangladesh Judicial Service Association is now emerging as an active stakeholder in the reform discourse, while local Bars are hosting seminars and dialogues on institutional autonomy, thereby, aligning their local initiatives with the 12-point directives laid out by myself. Notably further, development partners such as the UNDP have stood constantly with us since December last year, accompanying me to every division and reinforcing this endeavour at national transformation. Our foreign partners, most notably the United Kingdom, the European Union, and Sweden have formally endorsed our agenda and continue to provide consistent and principled support. What we are witnessing today is no less than a nationwide

awakening, a collective resolve to reimagine and reconstruct a judiciary that is not only competent and transparent but also meaningfully autonomous in the truest constitutional sense.

Dear participants,

Reimagining the Future of Justice

The idea of justice is at the core of ethics, as well as of legal and political philosophy. We apply this idea, in all its forms, to our individual actions, to laws, and to public policies. It has varied meanings in different legal and socio-political contexts, and we must come to terms with this variety in order to comprehend it fully. The most likely candidate for a core definition, as David Miller notes, is found in the *Institutes of Justinian*, a sixth-century codification of Roman law, where justice is defined as the constant and everlasting will to give everyone what is rightfully theirs¹.

Following the July Revolution, which sought to dismantle the previous despotic order, Bangladeshis were entrusted with the task of imagining a new order based on the concept of justice. All relevant stakeholders, from the executive to the judiciary, have been working to remedy the wrongs of the past that defined our collective failures. Unsurprisingly, therefore, there is consequentially a concerted effort at the reconfiguration of the concept of justice too, and to mitigate the tensions that may exist in its various components. Situating among themselves the liberal aspiration to establish a just and egalitarian social order, therefore, it seems, have resolved to adopt a Rawlsian construction of justice as fairness² based on the ideal that citizens are free and equal and that society should be fair, triumphing over the dominant tradition in modern political

thought of utilitarianism.

The past years have been marked by normative biases, discrimination and inequalities. The primary trigger of the July Revolution was in fact the overthrow of the unequal social, political and economic conditions that pervaded different institutions of the State. Against this backdrop, the post-revolutionary reforming forces, it appears, have posited themselves in the original positions, in Rawls's formulation. They have placed justice as fairness within the spectrum of social contract traditions of Locke, Rousseau and Kant by posing the questions "*What are fair terms of social cooperation for free and equal citizens?*"; "*What terms of cooperation would free and equal citizens agree to under fair conditions?*"

Ladies and Gentlemen,

Distributive Justice

The attainment of equality and liberty hinges on the efficacy of a society's economic, political, and social institutions and on the unbiased, consistent, and nuanced implementation of its laws and policies. A fair distribution of benefits and burdens among a society's members, depends on all these elements functioning effectively. Such distribution of benefits and burdens in fact what constitutes the core for distributive justice a just scheme of attainments that is morally justifiable, politically correct, and economically necessary.

Indeed, the principles of distributive justice are fundamental to guiding how societal advantages and responsibilities are shared. Consequently, a vital task in any post-revolution scenario is identifying the most suitable principles to achieve distributive justice. To implement such principles, the major political and social institutions such as the political constitution, the legal system, the

economic substructures must be justly arranged. Rawls defines this arrangement as a society's basic structure¹¹. Pertinently, the institutions forming part of the basic structure are the primary site of justice, since these institutions determine how essential social benefits and burdens are and will be allocated. Given the profound impact a society's basic structure has on citizens' life prospects, goals, attitudes, relationships, and even their character formation, recognizing and strategically improving these structures is paramount.

Idealistically speaking, the constitution of any state has the capacity to identify and establish socio-political structures, embed appropriate principles of distributive justice, guarantee equality and liberty, and provide a framework to bring in improvements to these systems and principles. Therefore, in contemporary state affairs, a constitution plays a critical role in securing justice by defining the essential structures responsible for implementing principles agreed upon by representatives. Bangladesh is currently engaged in constitutional reform too, with the aim of establishing the most suitable institutions and principles for its society, in order to ensure equality and liberty for all its citizens. However, it should be noted that enacting a constitution with just structures and principles is insufficient in itself; in other words, the constitution cannot shoulder all the burdens that justice requires; the true challenge lies in translating the constitutional texts into concrete actions. Beyond simply having a document or an instrument as a constitution, the culture of constitutionalism, the actual practice of adhering to constitutional principles is essential. This is not merely a concern for Bangladesh; it is a fundamental concern that resonates across borders and has implications for the global community at large.

Distinguished presence,

Sovereignty /Sovereign Will

Justice often appears elusive until we consider the concrete procedures designed to uphold its constitutional foundations. The culture of constitutionalism, with its defined rules and processes, provides a practical pathway or an overarching framework for achieving justice within a society.

The very idea of constitutionalism, rooted in the political theories of John Locke, posits that government can and should be legally limited in its powers, deriving its legitimacy *in fact* from adhering to these intrinsic constraints. This raises a pertinent question: how can a government, entrusted with running the State, be substantively limited, and by whom? This leads us to underscoring the critical distinction between sovereignty and government.

Sovereignty embodies the unlimited normative power to create, modify, and dismantle any legal order. In this sense, government is the creation of the sovereign, the instrument through which *albeit* unlimited power is exercised. Turning to Rousseau's conception of sovereignty, we understand it as residing with the collective people, manifesting and ruling through their general will. Thus, the people, governing through a body of law that reflects their collective will, become and act as sovereign. The government, therefore, is the mechanism through which the sovereignty gets exercised.

This cardinal principle for functional constitutional democracies asserts that the people's sovereign authority is ultimate and unlimited, while the governmental bodies that exercise that authority are constitutionally limited and subordinate to the people. The theory of constituent power, advanced by Emanuel Sieyès following the French Revolution, reinforces this, emphasizing the people's power to create and set a constitutional order in motion, while government, as the constituted power, is bound by the dictates of the people's will. Modern scholars further illuminate this distinction, highlighting the importance of

establishing limited governments bound by the principles of constitutionalism, given that constitutions embody the aspirations and reflections of the people's will. The ultimate aim of limiting government functions or actions, then, is to ensure that the people's will is safeguarded against any power that would seek to curtail or militate against it.

In this regard, constitutionalism is understood as the government's commitment to safeguarding human dignity, by protecting fundamental rights, such as the right to life, and basic liberties such as speech, religion, and assembly. Consequently, it entails upholding the rule of law, ensuring the separation of powers, and establishing proper checks and balances among various branches and organs of the government.

The future of justice is inextricably linked to the embeddedness and entrenchment of the principles of constitutionalism in political institutions. However, we ought to also be mindful that constitutionalism is not a one size fits all idea. In fact, diverse social, political, legal and cultural landscapes across different states, regions and historical trajectories have engendered varied conceptions of constitutionalism. The challenge, in terms of constitutionalism, for the present and future generations, lies in upholding the core principles of limiting governmental actions across these diverse iterations. The structural- liberal vision of constitutionalism, predicated on the belief that constitutions primarily serve to constrain state power for the benefit of the individual and collective good of the people, has come to dominate comparative and cosmopolitan discourse.

The present generation's approaches and plans for a just future should involve actively promoting the ideals of liberal constitutionalism, while also acknowledging the existing divergences and the complex ways in which the varied constitutional values and commitments interact within individual post-colonial states. The true strength of a constitutional order, then, lies not in

enforcing a singular definition of justice, rights, and values, but rather in its ability to negotiate the interplay of idealistic constitutional principles and diverse relativities. This dynamic interplay presupposes striking a balance between convergence and divergence that should gradually lead towards the establishment of organised power and limited governmental authority. In my opinion, the upholding of this equilibrium is a significant challenge facing both current and future generations in their pursuit of a just world.

Ladies and Gentlemen,

A critical challenge, for both the present and future generations, in the pursuit of justice lies also in maintaining a delicate balance between constitutionalism and democracy. The necessity of this relationship for achieving justice has been understood since at least Farid Zakaria highlighted the potential pitfalls of sole reliance on democracy. He argued that relying only on democracy possesses inherent weaknesses, and without the constraints of constitutionalism, it risks becoming a dangerous tool, prone to abuse of power and the erosion of individual liberties. The danger stems from the potential that general will holds while perceived as sovereign and unrestrained, to be manipulated and co-opted to dismantle vital checks and balances among institutions.

Across the globe, there are numerous instances of democratic processes being manipulated to centralise power, resulting in increased human rights violations. Populism is a key tool in designing, furthering, and sustaining this manipulation, and by definition, it clashes with constitutionalism. It undermines the very freedom and liberty that underpin the concept of justice. Populist

leaders often portray themselves as the sole representatives of a unified, pure people, f

ostering a deeply divisive vs. them narrative. Using this divisive ideology, they incrementally attack the counter- or non-majoritarian institutions such as courts, academia, and mass media. As David Prendergast notes, populists ultimately aim to replace constitutionalism altogether, seeing it as an impediment to their political agenda.

Populist rhetorics have been observed to target not only counter-majoritarian constraints but also to manipulate the electoral systems with a view to retaining

control even in the absence of a majority. This phenomenon, rightly termed as democratic backsliding, signifies a gradual erosion of democratic institutions and processes, thereby creating a conducive environment for substantial constitutional amendments aimed at circumventing the established mechanisms of checks and balances. This, in turn, paves the way for the emergence of authoritarian regimes. This gradual erosion of constitutionalism poses a direct and long-lasting threat to justice as fairness.

In response to these authoritarian endeavours to subvert constitutional mechanisms, judiciaries worldwide have devised counterstrategies. For instance, constitutional courts in various jurisdictions, including Bangladesh, India, Colombia, routinely employ the doctrine of unconstitutional constitutional amendment. This doctrine is designed to safeguard the ideals and principles of constitutionalism from amendments that are driven by ulterior motives. This approach has seen a notable rise in global adoption, with its growing acceptance being attributed to its role in preventing the abuse of constitutional changes to undermine democracy, good governance, and rule of law.

The future of justice, therefore, is contingent on the ability of the present generation to construct systems that adhere to the Aristotelian ideal of government by

laws and underlaws.

Dear Participants,

Our pursuit of justice cannot also be confined to peacetime; it must extend to times of wars and armed conflicts, a reality that mars our lives. Throughout history, we have seen and continue to experience numerous devastating conflicts across the globe. While the overriding aspiration must always be to maintain peace, when war becomes an unavoidable reality, strict adherence to international humanitarian and human rights law standards is an absolute necessity. We must be driven by the same compassion that inspired Henry Dunant, working tirelessly to safeguard the wounded, the sick, and all civilians caught in the armed conflicts. Nations must be held accountable for not observing the critical principles of proportionality and distinction, as clearly defined in the Geneva Conventions and their Additional Protocols. Ultimately, our commitment to justice in times of war is a vital test for us representing humanity. Our peacetime commitment is only a measure of our ability to uphold justice in the most violent and challenging of circumstances.

Ladies and Gentlemen,

Use of Technology

Technological advances have profoundly reshaped the fabric of contemporary life, and the justice system is not immune to its transformative influences. This rapid evolution requires a proactive and forward-thinking approaches, forcing us to re-evaluate established norms and paradigms. The nature of criminal activities is undergoing a fundamental shift, with crimes increasingly moving from physical spaces to the virtual realms of social media and the Internet. Nations

around the world are grappling with the challenges of formulating effective legal frameworks to deal with these emerging technological disputes and cybercrimes. On the contrary, the enactment of laws to regulate digital spaces raises complex concerns about the potential violation of fundamental rights, such as freedom of expression. A critical task for us now therefore is to develop sophisticated mechanisms that strike a reasonable and justifiable balance between the *protection of* individual freedoms and the *protection against* harassment, cybercrime and invasion of privacy.

The future of justice therefore depends on our ability to adapt legal frameworks and justice systems to the nuances of the digital domains. Additionally, the evolving field of artificial intelligence and its many applications present both opportunities and challenges that require careful consideration. While AI has the potential to revolutionise the administration of justice, its use raises critical ethical questions, particularly with regard to the potential for unintended violations of individual rights. These concerns require further deliberation and careful scrutiny to ensure that such violations are effectively addressed and that the integrity of the justice system is safeguarded against the technological excesses.

At the end of the day, emergence of these technological advancements should be seen not only as obstacles but also as catalysts for innovation. For instance, the strategic use of nanotechnology offers immense opportunities to enhance forensic capabilities. The unique properties of nanomaterials are predicted to revolutionize forensic investigations, enabling advances in areas as diverse as explosives detection, latent print visualisation and DNA detection. The integration or mainstreaming of technology has indeed enabled rapid and accurate results, streamlined analytical processes and increased sensitivity in the identification of critical evidence. In addition, the development of sophisticated sensor and imaging tools, as many experts and

scholars in the field notes, has profoundly changed the landscape of criminal investigation. The advent of these evolutive advances has resulted in significant progress within the domain of forensic science, manifesting in the enhancement of methodologies such as document analysis, bloodstain dating, and explosives detection. Notwithstanding the prevailing challenges concerning standardisation and financial constraints, the integration of nanotechnology holds immense promise in effectuating more efficacious investigative procedures and ushering in a transformative future for justice as we understand it.

Distinguished Guests,

Ultimately, the future of justice is inextricably linked to our ability to navigate the complex interplays between and among the public, private and digital spheres, while embracing the opportunities and mitigating the risks of the present times. The facets highlighted here require a holistic and balanced approach. It is only through a judicious and equitable consideration of these interrelated elements that we can hope to move towards a future where the true essence of justice prevails.

Thank you all.
