

**Speech of Chief Justice of Bangladesh Dr. Justice Syed Refaat Ahmed on
"Judicial System of Bangladesh" for the participants of National
DefencCourse**

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**Commandant, National Defence College, Lieutenant General Mohammad
Shaheenul Haque,
Senior Directing Staffs,
Course members from home and abroad
Ladies and Gentlemen**

Good Afternoon

Allow me to begin by paying homage to the memory of the martyrs of 1971, whose sacrifices laid the foundation of our independent nation. Let us also remember the resolute spirit of the student-led revolution of July and August 2024, which catalyzed the movement to oust oppression and restore justice, equality, and humanity. These defining moments in our history remind us that the quest for justice is not a fleeting endeavor but a lifelong commitment, a commitment that forms the bedrock of our judicial mission.

**Distinguished Military Officials, Senior Civil Bureaucrats, Learned Scholars,
and Esteemed Guests,**

It is with profound reverence and an immense sense of responsibility that I stand before this august gathering of distinguished military and civil leaders to deliberate upon the judiciary of Bangladesh, an institution of paramount importance in

upholding constitutional governance, national security, and the rule of law. As individuals entrusted with the responsibility of national administration, governance, and defense, you play a critical role in ensuring that the judiciary remains a strong, independent, and impartial organ of the state, upholding justice and stability within our democratic framework.

The judiciary is not merely a forum for legal adjudication but a guardian of the social contract that binds our nation. Its role extends beyond mere dispute resolution; it safeguards the supremacy of the Constitution, acts as a bulwark against unconstitutional encroachments, and ensures the balance of power among the executive, legislative, and judicial branches. In a time of increasing global complexities, where national security, governance, and democratic resilience are constantly tested, it becomes imperative to comprehend the judiciary's role in maintaining stability and order.

Distinguished Course members,

The Evolution, Philosophy, Structure, and Function of Bangladesh's Judicial System

To fully comprehend the intricacies of Bangladesh's judicial system, a holistic approach is required, one that encompasses its historical evolution, philosophical underpinnings, formal structure, and the core responsibilities of the judges who operate within it. This comprehensive analysis reveals a system that is not simply a static entity but rather a dynamic institution shaped by its past, informed by contemporary legal theory, and continuously adapting to the demands of a modern society.

A Historical Odyssey:

The judicial landscape of Bangladesh is a product of a complex historical journey, marked by the convergence of diverse cultural and political influences. Its evolution can be broadly categorized into five distinct periods: Hindu, Muslim, British, Pakistani, and Bangladeshi.

The Hindu period, spanning approximately 1500 years before and after the commencement of the Christian era, was characterized by a fragmented geopolitical landscape. Ancient India was divided into numerous independent states, each with a monarch as the supreme authority in all matters, including the administration of justice. This led to a judicial system deeply entwined with the monarchical structure. Legal interpretation and application were guided by revered texts such as the Arthashastra and Manusmriti, along with Shrutis, Smritis, Puranas, and Dharmashastras. These texts served as normative frameworks that defined legal proceedings and the socio-legal context of the time.

The subsequent Muslim period, beginning around 1100 AD, introduced new legal paradigms under the Sultanate and Mughal rule. Islamic legal principles, derived from the Quran and Sunnah, became the cornerstone of judicial administration. A structured court system emerged, comprising Muftis (legal scholars specializing in Islamic law), Pandits (authorities on Hindu law and custom), and Qazis (judges

responsible for adjudicating legal disputes). This period witnessed significant advancements in the codification of legal practices, with compendiums like the Fatwa-I-Alamgiri and Fiqh-e-Firoz Shahi contributing to the systematization of judicial procedures. This era laid the foundation for a more formalized legal system that sought to integrate Islamic jurisprudence with local customary practices.

The British period, initiated after the Battle of Plassey in 1757, marked a fundamental shift in the region's legal framework. English common law gradually supplanted indigenous systems through the establishment of courts and the enactment of statutes. The Charter of 1726, issued by King George I, laid the groundwork for English law in India, establishing the Mayor's Court in key Presidencies such as Bengal, Bombay, and Madras. This charter also introduced the right of appeal to the Privy Council from Indian court decisions. The Regulation Act of 1773 heralded the creation of the Supreme Court in India, and the Charter of 1774 formally inaugurated the Supreme Court of Judicature in Calcutta, serving as a model for the establishment of similar courts in Madras (1801) and Bombay (1824). During this era, a dual court system operated: the Supreme Court exercised jurisdiction over Presidency towns, while East India Company Courts administered legal matters in other regions. The Indian High Courts Act of 1861 consolidated these systems, establishing High Courts in the Presidency towns. The reforms spurred by the 1853 British Law Commission

report resulted in the enactment of crucial legal codes, such as the Penal Code of 1860 and the Evidence Act of 1872, reflecting a transition from Islamic law to English common law. The Civil Courts Act of 1887, the Code of Criminal Procedure of 1898, and the Code of Civil Procedure of 1908 further established a structured hierarchy of courts. Later, the Government of India Act of 1935 introduced federal governance, culminating in the establishment of the Federal Court of India in 1937 as an appellate body superior to the High Courts. The Privy Council, previously a central component of the legal architecture, was progressively marginalized, ultimately losing its relevance post-independence in 1950 when both India and Pakistan abolished it. Through these transformative legislative and institutional reforms, the British period laid the foundation for the modern legal framework in the Indian subcontinent, effectively integrating English legal principles with pre-existing indigenous customs.

The Pakistani period, commencing with the partition of India in 1947, witnessed the transformation of the region into East Pakistan. The legal system underwent adjustments to reflect the new state's ethos. This period culminated in the establishment of a High Court in Dhaka in 1948 through the Governor General's High Court (Bengal) Order of 1947. The Privy Council (Abolition of Jurisdiction) Act of 1950 eliminated the Federal Court of Pakistan's appeals system, elevating the Federal Court to the status of the Supreme Court of Pakistan. The 1956 and

1962 Constitutions of Pakistan, while delayed in their enactment, were accompanied by several legislative measures. However, the judicial structure largely remained unaltered until the glorious independence of Bangladesh.

Bangladesh's independence in 1971 marked a critical turning point in its legal evolution. The promulgation of the Laws Continuance Enforcement Order of 1971 ensured the continuity of laws enacted during the British and Pakistani periods. This legal instrument served as a vital bridge, preserving legal continuity during the formative years of the nation and setting the stage for the development of a distinctly Bangladeshi legal system. This historical trajectory highlights the complex and multi-layered nature of legal evolution in Bangladesh.

Philosophical Underpinnings: A Revolution's Legacy

Dear Participants,

Beyond its historical evolution, it is crucial to examine the philosophical underpinnings of the legal system that forms the bedrock of Bangladesh's judicial structure. The philosophical basis of Bangladesh's legal system is particularly unique as the nation was born out of revolution. Unlike systems rooted in pre-existing authorities, the Bangladeshi system derives its legitimacy from the revolution and liberation war of 1971 and the ensuing Proclamation of Independence. This has been validated by the Supreme Court of Bangladesh itself.

This transition from the old to the new order raises critical questions about legal validity. The absence of a direct predecessor necessitates an exploration of how legitimacy is established post-revolution. This unique context demands a careful consideration of the philosophical underpinnings of law, as the system did not inherit its authority from colonial powers or the state of Pakistan, but rather emerged from a rupture in the existing order. This inherent self-originating nature, what we call "autochthonous", makes the legal system of Bangladesh unique and demands philosophical investigation.

Two prominent theories of legal validity become relevant in understanding this dynamic: Hans Kelsen's concept of the "grundnorm" and H.L.A. Hart's concept of the "rule of recognition."

Kelsen's "grundnorm" posits that every legal system is ultimately rooted in a "grundnorm"—a non-positive or basic law that is presupposed as the ultimate source of validity for all other laws within the system. In Kelsen's theory, this grundnorm is a hypothetical construct, not a social or political reality, and its presupposition is essential for understanding the legal system as a coherent entity. Kelsen suggests that the grundnorm in a written constitution authorizes the individuals who drafted the constitution to do so. According to Kelsen, a revolution occurs when the existing legal order is completely overthrown and replaced by a new one that is not prescribed by the former order. A change in the

grundnorm, therefore, signifies the birth of a new legal system. The enactment of the Bangladesh constitution can be understood through Kelsen's framework, where the change of the constitutional order can be interpreted as the replacement of the grundnorm. However, Kelsen's pure account of the replacement, divorced from social and political realities, necessitates a recourse to Hart's theory.

Hart's "rule of recognition," on the other hand, is firmly rooted in social practice and empirical observation. He argues that societies initially operate with "primary rules," which govern basic behavior. As societies grow more complex, however, they require "secondary rules" to address the limitations of primary rules. Among these secondary rules is the "rule of recognition," which provides an authoritative way to ascertain which rules are valid legal rules. Unlike Kelsen's hypothetical grundnorm, Hart's rule of recognition is a social fact, derived from the actual practices of judges, lawyers, and officials in their daily engagement with the law. It is based on the standards that these actors accept as being the criteria for valid law. Hart contends that a change in this rule of recognition signals the birth of a new legal system. When those who determine and follow the law begin to accept a new source of legal authority, a new legal system comes into existence.

The legal system of Bangladesh emerged precisely through such a shift. Before 1971, Bangladesh, then known as East Pakistan, was part of a larger and often unequal Pakistan. The people of East Pakistan consistently sought greater

autonomy, which the then government denied. The 1970 elections saw a landslide victory for the people of East Pakistan, but the government's refusal to transfer power triggered widespread outrage, culminating in a non-cooperation movement and calls for the independence of Bangladesh. The war of independence then ultimately secured Bangladesh's independence. After independence, Bangladesh continued with its provisional government, eventually enacting its constitution in 1972. The new rule of recognition in Bangladesh recognized the directives and declarations of these elected representatives as the basis of law. The Constitution itself derived its legitimacy from these elected members of the constituent assembly, who had been elected by the people. Even existing laws were then validated through this new rule of recognition. This transition was not merely a legal maneuver but a fundamental shift in the very source of authority, heralding the birth of an independent, autochthonous legal system.

The Formal Judicial Structure: A Dual-Tiered System

The formal organizational structure of Bangladesh's judiciary is explicitly outlined in Part VI of the Constitution. This framework establishes a hierarchical system with the Supreme Court at its apex.

At the highest level is the Supreme Court of Bangladesh, a dual-division or bicameral institution comprising of the Appellate Division and the High Court

Division. The Chief Justice, appointed by the President, presides over the Supreme Court and serves as the head of the entire judicial branch. The Appellate Division functions under Article 103 of the Constitution primarily as the highest court of appeal, reviewing judgments issued by the High Court Division. It also possesses an advisory jurisdiction under Article 106, offering opinions on significant legal questions when requested by the President. In contrast, the High Court Division exercises a broad range of jurisdictions, encompassing original, appellate, and revisional authority. It is also vested with the power of judicial review under Article 102, allowing it to enforce fundamental rights, invalidate laws deemed unconstitutional, and adjudicate cases pertaining to corporate law, admiralty, and intellectual property.

Subordinate to the Supreme Court is the District judiciary, which is structured into District Courts, comprising both civil and criminal divisions. The civil courts include District Judge Courts, Additional District Judge Courts, Joint District Judge Courts, Senior Assistant Judge Courts, and Assistant Judge Courts. These courts are responsible for applying civil and personal laws when adjudicating disputes of a civil nature, as well as family-related matters. The subordinate criminal courts encompass the Court of Sessions Judge, Courts of Judicial Magistrates, Court of Metropolitan Sessions Judge, and Courts of Metropolitan Magistrates. To streamline the judicial process, District Judges are authorized to

function as Sessions Judges, Additional District Judges as Additional Sessions Judges, and Joint District Judges as Joint Sessions Judges within their respective districts.

Furthermore, the judicial system includes a variety of specialized courts and tribunals, each addressing specific legal domains. These include Administrative Tribunals, Labour Courts, Election Tribunals, and Land Survey Tribunals etc. The Constitution empowers under Article 109, the High Court to exercise oversight and control over all subordinate courts and tribunals, emphasizing the hierarchical nature of the judicial structure. Furthermore, all executive and judicial authorities are constitutionally obligated to assist the Supreme Court in the performance of its duties.

The Role of Judges: Guardians of Law and Morality

The functioning of Bangladesh's judicial system is contingent on the judges who are at the centre of it. The administration of justice rests fundamentally on the principle that law and morality is inextricably intertwined, influencing how justice is ultimately dispensed. This perspective contrasts sharply with legal positivism, which advocates for a separation of law from moral considerations. In the context of Bangladesh, judges are not merely interpreters of the law, they are in fact tasked with discerning the substantive essence of the law itself, a role bolstered by the

power of judicial review vested in the Constitution. While this judicial prerogative may sometimes be viewed as inconsistent with majoritarian democratic ideals, it is argued that it is, in fact, indispensable for ensuring fairness within a functional democracy, moving beyond a simple adherence to the will of the majority. This requires judges to engage in a complex process of legal interpretation, informed by moral considerations.

Judges, in their contemporary constitutional roles, are thus duty-bound to ascertain the true proposition of law by drawing upon a rich tapestry of political and personal morality, encompassing concepts such as justice, liberty, and equality—all of which are intrinsically reflected in the rule of law. Judicial independence, fortified by integrity and a pragmatic approach, emerges as a crucial prerequisite for judges to render coherent and well-reasoned legal judgments. They are expected to uphold these principles not as abstract ideals, but as substantive components of the legal order.

Moreover, judges are called upon to uphold Lon Fuller’s “inner morality of law,” which requires legal instruments to be transparent, consistent, and conducive to compliance. Thus, judges have a significant role to play to ensure these requirements are met. They are engaged in both legal and moral decision-making, striving to secure a more substantive and comprehensive understanding of justice. This involves a commitment to fairness, equity, and the protection of fundamental

rights, ensuring that the law serves as an instrument of justice rather than a tool of oppression.

It is crucial to recognize that a robust and independent judiciary is indispensable for navigating the evolving contours of the rule of law and interpreting the law effectively, thereby upholding constitutional supremacy and the separation of powers inherent in the Bangladesh legal system. This analysis ultimately concludes that judicial independence, coupled with a strong commitment to moral reasoning and fairness, is essential for a vibrant legal system and the effective administration of justice. Judges, in this context, are not simply technicians of the law, but guardians of its underlying values.

The Role of the Judiciary in National Stability and Governance

Ladies and Gentlemen,

The Supreme Court, as the guardian of the Constitution, holds an inalienable duty to uphold fundamental rights as enshrined in Part III of our Constitution. The celebrated case of **Anwar Hossain Chowdhury v. Bangladesh (1989) 41 DLR (AD) 165**, also known as the Eighth Amendment Case, serves as a luminous testament to the judiciary's unwavering commitment to constitutional integrity. The verdict reaffirmed the doctrine of basic structure, ensuring that no constitutional amendment could erode the essential fabric of democracy, fundamental rights, and judicial independence. This ruling has significant

implications for state institutions, ensuring that national policies remain aligned with constitutional mandates and democratic values.

Moreover, the judiciary plays a vital role in protecting individual liberties, a principle that intersects with law enforcement and security policies. The case of **State v. Abdul Latif Mirza (1992) 44 DLR (AD) 313** upheld personal liberty against arbitrary detention, reinforcing constitutional safeguards under Article 33. This jurisprudence is of paramount importance to civil and military officials engaged in national security and public administration, as it provides the legal basis for upholding human rights while ensuring security imperatives are met within the confines of the law.

Judicial Independence and the Separation of Powers in the Context of Governance and Security

A judiciary that operates free from executive interference is fundamental to a stable democracy. The landmark case of **Secretary, Ministry of Finance v. Masdar Hossain (supra)** unequivocally declared that judicial officers must remain independent from executive control, leading to the establishment of a separate Judicial Service Commission. This decision not only strengthened the judiciary and its role as delivering the sovereign judicial functions of the State, but also ensured that it functions as a neutral arbiter in disputes involving the state, preventing executive overreach and securing long-term institutional credibility.

For high-ranking military and civil officials, the doctrine of separation of powers serves as a guiding principle in governance and operational decision-making.

While the executive executes policies, the judiciary ensures compliance with

constitutional mandates, fostering a culture of accountability. This synergy between institutions ultimately fortifies national stability and trust in government.

Judicial Activism and the Role of the Judiciary in Social Justice and National Security

Dear Participants,

Judicial activism has emerged as a potent tool for ensuring social justice and democratic accountability. Through cases such as **Dr. Mohiuddin Farooque v. Bangladesh (1997) 49 DLR (AD) 1**, the judiciary recognized public interest litigation (PIL), enabling citizens to seek judicial intervention on matters of public concern. This has been instrumental in addressing issues such as environmental degradation, custodial torture, and labor rights.

For civil and military officials, understanding judicial activism is vital in shaping governance strategies that align with constitutional directives. Decisions such as **Bangladesh National Women Lawyers' Association v. Bangladesh (2009) 61 DLR (AD) 1**, where the Supreme Court took a proactive stance against sexual harassment, underscore the judiciary's role in shaping national policies on human rights, gender justice, and law enforcement.

Ladies and gentlemen,

When I had the distinct honor of taking the oath as the 25th Chief Justice of Bangladesh, I was deeply aware of the immense responsibility placed upon my shoulders. This role is not merely a position of leadership but a solemn trust

bestowed by the people of this nation to uphold fairness, equity, and ensure access to justice for all, irrespective of their status or circumstances.

From the very moment of my appointment, I recognized the urgency of addressing the challenges that have long impeded the full realization of our judiciary's potential. To this end, on September 21, I unveiled a comprehensive **Roadmap for Judicial Reform**. This initiative is a cornerstone of my vision to strengthen our judiciary and its capacity to serve the people with integrity and efficiency.

I am pleased to inform that the Judiciary has had a head start from August 2024 onwards to devising its own internal reformist policy blueprint and has provided substantial input that has informed much of the legal framework has institutional independence that is now being placed before the Nation.

Over my many years on the Bench, I have come to appreciate the need for a holistic approach to addressing and resolving the judiciary's institutional weaknesses. Such a holistic approach, coupled with a strategic vision, should involve a needs-based evaluation of the judiciary's development goals. I believe that we have already embarked on that exercise in all earnest as of July-August 2024.

In this regard, it is essential to recognize that the judiciary's many needs:

- From budget allocation to the use of technology,
- From human resource deployment to skill generation

are all interconnected and are best addressed by reference to the institution as a whole. This demands that the vesting and concentration of authority and skill for devising judicial policies and mechanisms of positive intervention be in one single

authority—the judiciary itself. Such unitary authority, as opposed to the present diarchical system, would better ensure:

- The focused identification of intervention areas,
- Efficient short, mid, and long-term planning and formulation of programs,
- Cost-effective deployment of resources to implement such programs,
- Periodic assessment of structural and systemic weaknesses,
- Strategic initiatives to best resolve these issues.

In this regard, I have submitted a comprehensive and well-considered proposal to the government for the formation of such a Secretariat, which is presently under active review. Meanwhile, my dedicated team within the Supreme Court Registry, in collaboration with the Law and Justice Division, is diligently engaged in finalizing the proposed Secretariat's organizational structure and delineating its various functionalities.

Merit-Based Collegium System for Judicial Appointments

An independent judiciary must have a transparent and merit-based system for appointing judges to the apex court. With this vision in mind, I have proposed the establishment of a **Judicial Appointment Council** to institutionalize a collegium system that ensures only the most competent, ethical, and capable individuals ascend to the highest echelons of our judiciary. This proposal has been formalized through an **Ordinance passed on January 21, 2024**, which lays the groundwork for an appointment mechanism insulated from political influence, ensuring judicial excellence and public confidence in the judiciary.

Revival of the Supreme Judicial Council for Judicial Accountability

Judicial accountability is an essential element of an independent judiciary. To this end, I have advocated for the **revival of the Supreme Judicial Council** as the appropriate forum for the removal process of Supreme Court judges. This process has been further streamlined following the expeditious disposal of the review of the **16th Amendment case**. The Supreme Judicial Council will now act with renewed vigor in maintaining the ethical and professional standards of our judiciary, ensuring the credibility and integrity of judicial officers at the highest level.

These reforms collectively aim to enhance the autonomy, efficiency, and credibility of the judiciary, ensuring that it continues to serve as the cornerstone of our constitutional democracy.

Distinguished Participants,

In closing, I would say that the judiciary is the cornerstone of constitutional governance, ensuring democratic stability, human rights protection, and institutional accountability. As senior military and civil officials, your engagement with the judiciary must be grounded in a shared commitment to upholding the rule of law. By fostering an environment where judicial independence, national security, and governance work in concert, we collectively fortify the pillars of democracy and the nation's prosperity.

As we stand on the threshold of an evolving global order, let us reaffirm our dedication to a judiciary that remains resilient, fair, and solid in its duty to justice. As Lord Denning fittingly stated: **“Be you ever so high, the law is above you.”**

Thank you.

