

Speech by the Hon'ble Chief Justice of Bangladesh

Dr. Justice Syed Refaat Ahmed

At the Memorial in Honour of A.J. Mohammad Ali,

Former Attorney General for Bangladesh

Date: 10/08/2025, Venue: SCBA Auditorium

**Today's Chair Mr. Justice Md. Sharifuddin Chaklader, former Justice,
Supreme Court of Bangladesh,**

Mrs. A. J. Mohammad Ali and her family members.

**Hon'ble Judges of the Appellate Division and High Court Division of the
Supreme Court of Bangladesh,**

Learned Attorney General for Bangladesh Mr. Md. Asaduzzaman,

**Chief Discussant Mr. Zainul Abedin, Vice Chairman, Bangladesh Bar
Council,**

**President and Learned Members of the Supreme Court Bar Association,
Senior Advocates and Eminent Members of the Bar,**

Members of Print and Electronic media,

Distinguished guests,

Ladies and Gentlemen,

Good afternoon.

Growing up in the mid to late-1960s in a leafy neighbourhood of Dhanmondi, my family found itself nestled in a particularly idyllic setting complemented by neighbours who collectively represented three generations of stalwarts of the legal profession and great judicial minds.

To begin with, there was retired District Judge, Mr. M.G. Mowla and his wife who owned a large lakefront house overlooking the Dhanmondi Lake exactly at

the point presently occupied by the Dhanmondi Masjid-Ut-Taqwa. Judge Mowla was a lifelong dear friend of my maternal grandfather Justice Muhammad Ibrahim and, therefore, befittingly he and Begum Mowla were saddled with the roles of being our "Nana" and "Nani".

Our own bungalow stood on old Road 17 (now Road 11/A) overlooking the Dhanmondi Women's Sports Complex. Sharing a boundary wall behind us was the house of Justice and Begum A.K.M. Baquer. Justice Baquer, who retired as one of the more famous judges of the Dhaka High Court had earlier been the Advocate-General from 1954 to 1955.

It is, however, to our immediate neighbour next door that we must now turn. This was a large joint family with which an indelible friendship was formed over a period of 20 years by us so much so that like Judge Mowla's and Justice Baquer's family, these friends had become family to us.

The undisputed Patriarch of this family was Mr. M.H. Khandaker, once Secretary of the High Court Bar (1952-1953) and former President of that Bar (from 1964-1965). Mr. Khandaker had, of course, the rare distinction of being the very first Attorney General for Bangladesh from 21 January, 1972 to 17 December, 1972. Mr. Khandaker also served out a stint as President of the Bar around this time.

Mr. and Begum Khandaker to this day remain our "Dada" and "Dadi". That relationship forged during the turbulent times of the late-1960s and throughout the 1970s has withstood the test of time and survived my family's physical relocation to Gulshan in the late-1980s.

The Khandaker household, large as it was, abounded in love and gracious hospitality. It is in that milieu that we grew up knowing one of the Khandaker

children, our "Katy Chachu" better known as Mr. A.J. Mohammad Ali to the world.

Katy Chachu stood out among all his siblings as the quiet one always by the side of his dear parents and who never relocated abroad as most or all of his brothers had done. Dada and Dadi's household in all its daily hustle and bustle were plagued by one episode of sadness quietly suffered by all and indeed ourselves as extended family members. It was the loss of a son who drowned in Dhanmondi Lake very early on. With the benefit of hindsight, I now see KatyChachu a.k.a. Mr. A.J. Mohammad Ali's single-minded and unwavering devotion to his dear parents stemming partially from that tragedy.

And, of course, Mr. A.J. Mohammad Ali followed in his distinguished father's footsteps by studying law. That decision undeniably sealed his destiny as the true legatee of Mr. M.H. Khanakar's outstanding legacy.

As we memorialise Mr. A.J. Mohammad Ali today there has to be the unavoidable references to his leadership role assumed at the Bar as President (2013-2014) and his earlier Attorney Generalcy from 30 April 2005 to 24 January 2007.

While all through the 2000s Mr. A.J. Mohammad Ali and I remained neighbours in Dhanmondi, our interaction was more in the courtroom as members of the Bar and Bench respectively during this period.

Our last engagement in those capacities was notably the 2018 case of Bangladesh Khaleda Zia Vs. Bangladesh Election Commission (stemming from Writ Petition No. 15740 of 2018 [Order of 11 December 2018 reported in [2019] 7 CLR [HCD] 8]).

Mr. A.J. Mohammad Ali was the lead counsel for the Petitioner, Begum Khaleda Zia in three related cases in this regard.

In a recent international publication¹, I have particularly highlighted my ruling as the presiding judge in the Khaleda Zia Election Case as a prime example of how a judgment may reflect the aspirational value of the law. Mr. A.J. Mohammad Ali's arguments in this case convinced me that over and above the factor of judicial independence enabling judges to arrive at coherent, intelligible, and reasoned conclusions as to the scope and nature of the law, judges must allow too for a theoretical or jurisprudential ascent to take place in discarding traditional, and strictly positivist, modest of defining and applying the law.

Such theoretical ascent, I strongly believe, has also a core moral element to it, and that element, in turn, is essentially constitutional. Bangladesh's Constitution, learned Members of the Bar, like others, places constraints on legislative and executive powers in terms construed to be moral.

Distinguished Guests,

I take this opportunity to touch upon the debates surrounding an independent Secretariat of the Supreme Court. This issue has to be seen in the context of the Judiciary's quest for the past 50 years to secure for itself greater parity with its other co-relative organs, the Executive and the Legislature. Never in that half-a-century of constant inter-organ friction has the Judiciary been the dominant organ of the State, though, all throughout that period, it has served as the fully

¹*Rule of Law within the Constitutional Scheme: A Judicial Perspective*(Chapter 5) in Hoque, R., & Chowdhury, R. (Eds.).(2023). *A History of the Constitution of Bangladesh: The Founding, Development, and Way Ahead* (1st ed.). Routledge.

functional organ and, periodically, and strictly, the only functioning organ of the State.

Indeed, it is misconceived to equate the entitlement to institutional independence with a desire to establish judicial hegemony. That is not what the Judiciary wishes or seeks. Such an apprehension, if there is one, is, therefore, a misplaced one. Indeed, that dystopian scenario can only play out in the realm of speculation and is not at all borne out by our institutional history.

In this regard, we must take care to distance ourselves from the constitutional misadventures of the recent past aided by certain rulings of the Supreme Court. These are in a category by themselves and reflect a particular chapter in our institutional history of an unholy alliance struck between an overbearing Executive and an enfeebled and pliant Judiciary. Those constitutional and judicial overreaches are, therefore, not to be confused with the scenario of the Judiciary going it alone and imposing its constitutional dictate on an unwilling State. That simply has never happened.

At the risk of laboring the point of institutional parity, I would like to cite the example of the **UK Constitutional Reform Act of 2005**, which I would commend to you as a fine example of bringing out the essence of separation of powers without insisting on a sharp and pronounced break in inter-institutional relationships.

The UK *Constitutional Reform Act 2005* remains a notable exercise in ushering in the substance of institutional separation and clothing the judiciary with powers at public engagement and exposure, without, however, sacrificing the spirit of commonality of purpose between the three organs of State. Furthermore, pragmatism dictates such institutional separation to be shorn of or not informed by a complete severance of institutional linkages. The separation

of powers does not necessarily translate into a silo-mentality of strictly compartmentalized spheres of operation devoid of all inter-organ linkages as necessary for the administration of justice. Institutional separation doubling for independence remains markedly highlighted by the replacement of the Lord Chancellor by the Lord Chief Justice (LCJ), the creation of the Supreme Court, and the setting up of the Judicial Appointments Commission. While the essential role of the Lord Chancellor as *the* conduit between the judiciary and the executive has been done away with, channels of formal linkages between the Judiciary and the other two organs have otherwise been opened up anew. The biannual meetings of the LCJ and the Prime Minister, monthly meetings of the LCJ with the Chancellor, the appearance of the LCJ and the President of the Supreme Court before the House of Lords Constitution Committee, and appearances of judges frequently as expert witnesses before parliamentary committees to determine future course of legislative action, are at once innovative and essential. These linkages ensure, that an independent Judiciary empowered and buoyed by the formation of Judicial Appointments Commission, Judicial Appointments and Conduct Ombudsman, and the Judicial Court Investigations Office remains confident in forging working relationships with its two other partners in government without any constraints of relinquishing its independence.

Ladies and gentlemen,

A.J. Mohammad Ali knew that independence without infrastructure is an illusion. And that no great nation can thrive unless its courts are both constitutionally shielded and administratively empowered. He also recognised, as must we, that institutional independence is not a declaration but a design, one that requires both legal foundation and political will.

As I reflect on the life and legacy of A.J. Mohammad Ali, I am drawn to the closing lines of an article I myself had penned in an earlier moment of institutional contemplation, lines that sought to articulate a shared conviction that he and I held deeply. In that piece, I described the Judiciary not as an island remote and insular but as a pillar which is strong, visible, accountable, and integrally connected to the constitutional architecture of the State. For Mr. Ali, as for me, the Judiciary was never ornamental, never absolute but essential. A force to be respected not because it demands obedience, but because it commands trust.

Let us therefore remember A.J. Mohammad Ali not only in elegy, but in effort. Let us honour him in the continuing reform of our institutions, in the vigilant defence of our independence, and in the daily integrity of our conduct, Bench and Bar alike. Let us remember him when we argue with civility, when we write with clarity, and when we decide with courage.

In his honour, and with our shared vision as a compass, let us recommit ourselves to the unfinished task of constitutional parity. Let us stand firm for a Judiciary that is not only independent in law, but also sovereign in its administration, accessible in its function, and trusted in its voice.

May we, the inheritors of Mr. Ali's ideals, therefore, rise to the measure of his conviction.

Thank you all.