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**Separation of Judiciary:
Necessity and demand for
“Judicial Intelligence Service”.**

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In preamble of our constitution inserted that ‘Further pledging that it shall be a fundamental aim of the State to realize through the democratic process to 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.’ And in Article 22 of the constitution inserted that ‘ The State shall ensure the separation of the judiciary from the executive organs of the State. That at the time of framing the constitution the lawmakers rightly made the provision for separation of judiciary from the executive and the duty was vested upon the state to ensure the separation but many years no step was taken. Ultimately when the state is silent about the responsibility, one Judge of the lower judiciary Mr. Masdar Hossain came forward and engaged a senior lawyer Barrister M. Amirul Islam who filed a writ petition before the High Court Division to enforce the constitutional obligation. Finally the Supreme Court passed judgment and issued some directions upon the state for separation of judiciary.

There after began a new drama in order to frustrate the judgment passed by the Hon’ble Appellate Division. After passing the judgment by the Hon’ble Appellate Division of the Supreme Court of Bangladesh, on being instructed the learned Attorney General of the Peoples Republic of Bangladesh took times and passed several years. In the last era of the Awami League Government the authority did not take final steps for separation of judiciary. In 2001 the caretaker government took steps for separation of judiciary and the then Law Adviser Barrister Ishtiaq Ahmed expressed his views to the media that final steps will be taken for separation of judiciary before leaving power of the care taker government. In the mean time election was held and BNP won the election. Suddenly Begum Khaleda Zia Chairperson of the party requested the caretaker government to abstain from the steps for separation of judiciary and urged to do it by the elected government. The caretaker government honored the request but after taking oath as Prime Minister, she was silent and failed to execute her commitment. Moreover with a good mechanism designed by the then law minister she successfully passed five

years. Unfortunately delayed the execution of the judgment of the Appellate Division for separation of the judiciary and we have lost time.

It is noted here that the Lawyers community came forward for the execution of the judgment for separation of the judiciary and began movement by the leadership of Bangladesh Bar Council and Supreme Court Bar Association. Several years the Lawyers community organized movement for execution of the judgment of the Masdar Hossain case. Last few years we saw that the executive authority interfering upon the activities of the judiciary, especially in the functions of the magistracy. It was possible because the magistrate who were functioning the judicial activities they were under the control of executives. So sometimes they were bound to accept the interference of the executive, otherwise they could have face many difficulties.

After the oath of caretaker government led by Dr. Fakruddin Ahmed, upon the demand of the citizen of the country the Law Adviser Barrister Moinul Hossain declared that the care taker government will take steps for separation of judiciary. We know that the Higher Court was never under the control of the executive. The Hon'ble Judges of the Supreme Court are functioning independently and free from all pressure. So the question of separation of judiciary relates to only lower judiciary because of their executive links.

The another bold steps was taken in a meeting of the Hon'ble Judges of the Supreme court of Bangladesh presided over by the Hon'ble Chief Justice of Bangladesh in which decision was taken for separation of judiciary from 1st November, 2007.

That the day 1st November 2007 is a grate day for the nation because finally the judiciary was separated from executive. About ten years after filling the case for separation of judiciary we reached final stage when the Supreme Court came forward

to execute their decision. We hope that after separation of judiciary from the executive, the people will get the real taste of dispensation of justice. When the judges of the court will act as per law and decide the case according to law then real justice will be ensured and purpose of the separation will be meted. After separation of Judiciary if the judges or judicial magistrate who are working in the lower judiciary are not honest, sincere and dedicated in that case the citizen of the country can be deprived from getting real justice. If the real justice is not delivered, rule of law will never be established. In coming days if rule of law is not established, the people will be again frustrated which may create a big trouble for our society.

The steps taken by the Supreme Court and the Government for separation of judiciary is not enough to satisfy the mind of the people for getting real justice. It will be appropriate when the judges will act independently, neutrally and honestly. Moreover it is also important that when a Judge is working he/she should not forget that he/she is the representative of the god. The lawyers and the litigant people who are appearing before the court is to follow some rules regulation. For example the lawyer has to work as per the conduct

rules of Bangladesh Bar Council and the litigant people who come to the court for getting justice they have to follow some guidelines. In similar way, the Judges who are delivering justice they should not do anything which can be frustrate the real justice. It is to say here that the lawyers and litigants people have a right to get good behavior from the judges; otherwise there could be a misunderstood about the dispensation of justice. Nowadays it is reported that the Hon'ble Judges sometimes misbehave with the lawyers and litigant people. The reason behind this is intolerance and inefficiency of the judges. As a human being both and judges, lawyers and litigant people have right to get good behavior from each other.

We should not forget that the lawyers are working as court officer and they have some liabilities, responsibilities and must be followed the conduct rules for lawyers. Nowadays some learned lawyers have forgotten the ethics, normal conduct, and behavior. Not only that there are some lawyers who are misleading the court and filling the cases in which some forced and false documents are detecting. Due to such kinds of unusual work of few lawyers we are facing difficulties. We should very much careful about the conducts and ethics otherwise we may lost our dignity, status and respect in the society.

Earlier a report was published by Transparency International of Bangladesh (TIB) in which it was reported that corruption in the judiciary is increasing. Now it is open secrete that the corrupt practices exit in somewhere in the judiciary. Neither we should react nor do we ignore about the information. In other way we the lawyers cannot avoid the responsibility of the corruption of judiciary. So we should careful and try to find out the way to stop corruption in the judiciary, because it is highly related with our practices and status. We should remember that we the lawyers are the part of the judiciary and have a role to establish effective judiciary. If we can establish an effective and honest judiciary in which rule of law will be ensured in that case our dignity will be increased.

Only the separation of judiciary is not enough for establishing the rule of law. There must be taken some major and effective role in the judiciary. Though it is in the mind of the people that there is some corruption in judiciary, so for our future better we should find out the corruption and have to take some measures to stop it otherwise separation of judiciary will be meaningless. Normally the law-enforcing agency does not take any steps against the persons who is engaged in the corruption in the judiciary so that day-by-day the corruption is spreading. So, it is the present demand that immediate steps should be taken to protect the corruption in the judiciary. It can be effectively done by way of forming a "judicial intelligent service" by the direct supervision of the Supreme Court. In every district member of the "judicial intelligent service" should be appointed, who will collect the information about the corruption. There after it will be inquired and will send report to the Supreme Court. The Supreme Court will constitute a committee of five

members consisted of senior judges, who will examine the report and will take necessary action for the corrupt persons.

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