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## JUDICIAL REFORM AND INDEPENDENCE OF JUDICIARY

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Let us understand that separation of judiciary from the Executive does not per se mean that the quality of justice will improve. The quality of justice will improve only when the Hon'ble judges who distinguish themselves by occupying those high pulpits understand and or realize their status and mentally become independent. However, I am hopeful that with the separation from the executive there will be some qualitative changes in the subordinate judiciary.

Although the judiciary has officially been separated from the executive today, we from the bar initiated this process in the decade of the eighties. It began when we challenged the holding of dual offices by Justice Quddus Chowdhury, who was then a judge of the High Court Division as well as Secretary, Ministry of Law and Justice. It had been a rule that the High Court judges would hold the office of Secretary Ministry of Law. Although the rule was discharged on technical grounds, the Court did hold that a Judge of the High Court could not hold the office of a Secretary in the Government and since then no other high court judge has ever been appointed as Secretary to the Government. It was our contention that through the High Court judge sitting in the Secretariat the executive controlled or exerted influence over his brother judges. The said judgment has been authored by Justice Naimuddin Ahmed. I must admit that although I was the lawyer, (then in my mid thirties) in the said case, arguing on motion for more than three days, the drafting of the petition, thought, support and encouragement was that of Mr. M. I. Farooqui, now a Senior Advocate. I must also very frankly admit that the then President H. M. Ershad took the matter in extreme good grace and replaced him by Mr. Khalcque, who was then, perhaps a member of the Labour Appellate Court and later went on to become a minister in the interim cabinet of acting President Justice Shahabuddin, I regard that as the beginning of separation.

When a judge puts on his robes, he puts off his relation to any; and becomes without pedigree. The office, the judges hold demand the greater self-abnegation that gives them high moral strength to do justice without fear or favour, affection or ill-will. Charles Bman, an English jurist once said "judges, like Caesar's wife, should be above suspicion". Judges must be sober and men of firmness of character.

Let us analyze the happenings of the past year or so--- benches have been broken up, jurisdiction of judges changed within hours of judges granting bail or rule or stay. Even the highest Courts of the land have been erratic and unpredictable in dispensation of justice. Irrespective of whatever explanation is provided, people in general and members of the Bar have always regarded such abrupt changes as malafide. The same continues. The most ignominious of all has been the courtesy call of Anti Corruption Commission's Chairman and the Inspector General of Police on the Hon'ble Chief Justice and another judge of the highest court. This courtesy has, to the best of my knowledge never been shown before, because it cannot be shown. Such call of the two officials has sent wrong signals and desecrated the office of the Chief Justice because in innumerable matters ACC and the Police are parties to

causes before him. what the peoples' perception is about that courtesy call and the word of mouth that is making the words in circles that matter. I only pray that the public perception is garbage, though it does not look so. Unfortunately the judges and lawyers together have so harmed the judiciary in the recent past that none of us can be absolved of our responsibilities. Today the propriety and integrity of the institution is being questioned by the stake holders of the institution.

It is extremely essential that after this new complete separation of Judiciary from the executive, the people must experience a difference.

The Chief justice must now look to the operations of all Courts which are subordinated to the Supreme Court. The Supreme Court must take notice of the fact that Judges in the special courts trying corruption and other cases are: doing so IN CAMERA, the accused persons it is said are not provided with copies of FIR, charge sheets, 161 statements, cross examinations are not properly recorded etc., judgments are written in back rooms by others, certified copies or judgments are not being given in time Although, it is the duty of the Chief Justice as the head of the Judicial organ of the STATE to ensure that all trials are free, fair and open to the public and the media and that the laws are scrupulously followed. It is also essential to see the environment of the Special Courts, whether it is coercive or not. We should abhor the crime not the criminal. The criminal is a human being who deserves to be treated with human dignity (Article 11 of the Constitution, not affected by the Emergency Rules), though he needs to be condemned, convicted and sentenced but by a court in an environment which is congenial for a free and fair trial. After all the ownership of this Republic vests with the people and not with a certain brand or class of servants of the Republic who because of their branding are able to torture and coerce. **THE PEOPLE HAVE ALWAYS BEEN FOR FREE AND FAIR TRIALS BY IMPARTIAL AND INDEPENDENT JUDGES.**

The above neither helps the judiciary, nor the rule of law. The entire populace, including myself want a corruption free society governed by rules to be interpreted and adjudicated by an independent and impartial tribunal/court through a free, fair, and an open Public trial. That is the way of rule of law, that **IS THE WAY OF UPHOLDING THE** constitution and that is the way of justice. Therefore, let me not be misunderstood. I stand for principles and abhor those who talk of one set of principles and act on another set of principles for personal reasons, reasons of wrecking vengeance or reasons of vanity. State and State functionaries have to be welfare oriented. While I support the process of bringing to book the corrupt, I want free and fair trial for all. I cannot support hush hush affairs in matters of judicial propriety.

President William Howard Taft, 27<sup>th</sup>, President of the United States said- "I love judges, and I love courts. They are my ideals, that typify on earth what we shall meet hereafter in heaven under a just God." My feelings are the same, I only hope that separation will make our judges fiercely independent and will remember the words of Justice Michael Kirby, Judge High Court of Australia who said, "In a pluralist society judges are the essential equalizers. They serve no majority; nor any minority either. Their duty is to law and to justice. They do not bend the knee to Governments, to particular religions, to the military, to money, to tabloid media or the screaming mob. In upholding law and justice, judges have a vital function in a pluralist society to make sure that diversity is respected and the rights of all protected."

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