



## Separation of Judiciary: 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 in the constitution for separation of judiciary from the executive and the duty was vested upon the state to ensure the separation but many years the state has not taken any steps. 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 Syed Ishtiaq Ahmed expressed his views to the media that final steps will be taken for separation of judiciary before leaving the power of the caretaker government. In the meantime, parliament 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, she successfully passed five years with a good mechanism designed by the then law minister. Unfortunately, the execution of the judgment of the Appellate Division for separation of the judiciary was delayed.

It may be mentioned here that the Lawyers community came forward for the execution of the judgment for separation of judiciary and launched 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 Masdar Hossain case. Last few years we saw that the executive authority interfered upon the activities of the judiciary, specially in the functions of the magistracy. It was possible because the magistrate who functioning the judicial activities were under the control of executives. So, sometimes they were bound to accept the interference of the executive, otherwise they could 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 caretaker

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. 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 and a historic decision was taken for separation of judiciary from 1st November, 2007.

That the day 1st November 2007 is a great 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 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 has 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 Court Procedure. 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 discussing in the premises that the Hon'ble Judges sometimes misbehave with the lawyers and litigant people. The reason is not clear to people including the lawyers. As a human being both the 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 them. 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 lose 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 secret that the corrupt practices exit in somewhere in the judiciary. Neither we should react, nor 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 to establish 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/valueless. Normally the law- enforcing agency does not take any steps against the persons who are engaged in the corruption in the judiciary, so day-by-day the corruption is spreading. It is the present demand of lawyers that immediate steps should be taken to protect the corruption in the judiciary. It can be effectively done by way of forming a “Judicial Intelligence Service” by the direct supervision of the Supreme Court. Judicial Intelligence Service can be formed by selecting some of the members of the judicial service. In every district member of the “judicial intelligence service” can be appointed, who will collect the information about the corruption. If any allegation about corruption received by the members of the judicial intelligence service, there must be an inquiry conducted by him and will submit a report to the Supreme Court. The Supreme Court may constitute a committee of five members consisted of senior judges, who will examine the report and will take necessary action for the corrupt persons. Necessary law/rules may be made for this purpose.

