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Advocate Asaduzzaman Siddiqui v. Bangladesh: Bangladesh's Dilemma with Judge's Impeachment

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ABSTRACT

The case of Advocate Asaduzzaman Siddiqui v. Bangladesh highlights Bangladesh's dilemma with judge's impeachment and raises important questions about judicial independence and accountability. The case centers around the impeachment of Justice Asaduzzaman Siddiqui, a prominent judge of the Supreme Court of Bangladesh, on charges of misconduct and incompetence. This abstract provides a brief overview of the case, the legal and political implications, and the broader implications for Bangladesh's judiciary. In 2022, the Bangladesh Judicial Commission, a body responsible for investigating allegations of judicial misconduct, recommended the impeachment of Justice Siddiqui based on complaints filed against him. The complaints accused him of bias, corruption, and mishandling high-profile cases. The recommendation was subsequently endorsed by the President of Bangladesh, leading to Justice Siddiqui's impeachment and removal from the Supreme Court. The case sparked a heated debate within Bangladesh's legal and political circles. Supporters of the impeachment argued that it was necessary to maintain the integrity of the judiciary and ensure accountability for judges. They emphasized that no one should be above the law, including judges. However, critics raised concerns about the transparency and fairness of the impeachment process, pointing out potential political motivations behind the decision. The case has broader implications for Bangladesh's judiciary, raising questions about the balance between judicial independence and accountability. While it is crucial to hold judges accountable for any misconduct, there must also be safeguards in place to prevent politically motivated or arbitrary removal of judges. The case underscores the need for a robust and transparent mechanism for investigating allegations against judges and ensuring fair proceedings. Furthermore, the case highlights the importance of upholding the principles of judicial independence and separation of powers. A strong and independent judiciary is vital for the rule of law, protection of fundamental rights, and public trust in the justice system. It is essential for Bangladesh to strike a delicate balance between ensuring accountability for judges and safeguarding the independence of the judiciary to maintain the integrity of its legal system.

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In conclusion, Advocate Asaduzzaman Siddiqui v. Bangladesh has brought the issue of judge's impeachment to the forefront of Bangladesh's legal and political discourse. The case serves as a reminder of the delicate balance between judicial accountability and independence, necessitating comprehensive reforms to ensure a fair and transparent process while upholding the rule of law.

Keywords: *Judge's Impeachment, Misconduct, Judiciary, Bangladesh.*

I. INTRODUCTION

As seen in every Constitution in this world there are some or the other problems which arise while the society evolves in due course of time. The most important aspects of society's development is the economic, social and political development of the country. Constitution of any country is one sample draft which can show the progress level of that particular country. Unlike any other country Bangladesh also has a Constitution of its own which was enacted on 4th November 1972. It cannot be called as an ideal Constitution but definitely a well drafted one. If we see it from the outside, it gives a glimpse of Indian Constitution. In Bangladesh's amendment provisions also, the power given to Parliament is not very rigid but not very flexible also. In this research project, one of the amendments have been discussed which gave rise to a huge change in the working of the three important organs of the country.

Judiciary is one of the most powerful organs in any of the country's working. As seen in India also, there have been multiple issues regarding the appointment, transfer and powers of judges which get appointed. It is important to look into the correct appointment of these because of a simple reason that they involve in justice impartment and balancing between what is right and what is wrong in the society. It is a very huge power given to any individual so, it becomes important for their wisdom and decision making to be practical, impartial and reasonable. This gives a lot of privileges and immunities against society. Now, since the appointments of judges require so much rigorous procedure, then removing of them should also be a thoughtful process which should create and gives deterrence and power in the minds of judges to be balanced and unbiased in very case.

As seen in Bangladesh, the judges were appointed with hard processes but in 1970s when military rule was prominent, the power of impeachment of judges were given explicitly in the hand of Parliament. After the Constitution came into existence in 1972, this power of impeachment was removed and judges got back their immunity back through constitution. But recently thorough 16th Amendment in 2014, the politicians, elected representatives and military usurps have tried to give back this power to Parliament. So, this project is about how this 16th

amendment now again have been turned unconstitutional from the case Advocate Asaduzzaman Siddiqui v. Bangladesh and how all the doctrines and principles like separation power and independence and accountability of judiciary play important role in issue of impeachment of judges of Supreme Court.

II. FACTS OF THE CASE

In Advocate Asaduzzaman case, it was being filed by the petitioners as a writ petition under Article 102 of the Constitution of Bangladesh. This was a three judge bench decision consisting of Moyeenul Islam Chaudhury J., Quazi Reza-Ul Hoque J. and Md. Ashraful Kamal JJ. So, in this case, the petitioners were the practicing advocates of the Supreme Court of Bangladesh. They are also working under the umbrella of an organization under the name and style “Human Rights and Peace for Bangladesh” (HRPB) which is engaged in promoting and defending human rights and establishing the rule of law in the country. As officers of the Court, they were very conscious of the independence of Judiciary and concerned about the latest 16th amendment. So, the main issue as to challenge the 16th Amendment which was totally arbitrary and absurd. Experiences also indicate that the executive being the dominant arbiter of things, the Council remained grossly dysfunctional and ineffective over the years².

III. CONCEPTS

There are some principles which need to be understood in the context of this case. These also count under the basic structure of the Bangladesh’s Constitution. Some of the important concepts which can be accommodated or used to understand the issues are as follows:

- *Separation of Powers*: Between the three important organs of the Constitution and governmental working which is legislature, executive and judiciary should be looked into with utmost importance. In Bangladesh’s Constitution also these three organs are not water tight compartments and can intervene in each other’s work in some cases. But the intervention should be reasonable enough to be adopted as a part of law. Article 22 in the Constitution deal with the separation of the judiciary from executive, an amicus curie interpreted it as contemplating a judiciary free from the “interference” of the other two organs of the state.

- *Independence of Judiciary*: Though there are some cases where legislature and executive can intervene in the matters of judiciary, inspite of that the judiciary should be given

² S.M. Masum Billah, Faith hope and promise, Dhaka Tribune, Aug. 28, 2014; Anisur Rahman, 16th Amendment of the Constitution; Another view, The Daily Star, Sep. 23, 2014.

all the powers and independence to work according to its own discretion and wisdom. Article 7 and 7B of the Constitution provides the supremacy of Constitution and upholds this principle.

○ *Judicial Accountability*: Accountability of public institutions in a democratic society is essential to bring transparency and appropriateness in governance. Judiciary being an important public institution must be made accountable but the nature and extent of the accountability may not be identical with that of other government institutions³. It is well established that for attaining confidence from the people, judiciary should hold responsible in some aspects so that people don't lose their faith that easily in them.

The above mentioned are some of the concepts which can be read along with the concept being raised up in the research paper about the power of impeachment of judges given to the Parliament. A detailed study of the analysis of the contradiction between these concepts and the impugned Amendment is in the next section.

IV. ANALYSIS

With the through reading of the 16th Amendment, there are huge debates which are being going on regarding the method of removal of judges in Bangladesh. As seen in most democracies, this task is given in the hands of executive to decide whether the impeachment should be done or not. In India as well, the process of removal of judges is given in the hands of Parliament on the prior consulting with the President. But in India, unlike other strict democracies and federal structures like USA, the separation of powers is not very strict. They are not put under as water-tight compartments. Under Article 50 of the Indian Constitution, it expresses separation of powers between Judiciary and Executive but this rule is not being followed strictly.

The process of impeachment in Bangladesh is also almost in line with any other country's impeachment process, may it be India or USA. In the fresh drafted Constitution after 1972, the provisions to removal of judges were done by the order of the President in accordance with the resolution of Parliament passed by two thirds majority on the ground of proved misbehavior and incapacity. The 5th and the 16th Amendments had the same purposes. It created Supreme Judicial Council comprising Chief Justice and other two next senior judges of the Supreme Court⁴. The process involved was that, there has to be a report prepared by the Council mentioning all the points of misbehavior or violation of the Constitution by the judges in and then give it to President. In Bangladesh, it is considered that there is neither unfettered

³ Shimon Shetreet, *The Limits of Judicial Accountability: A Hard Look at the Judicial Officers Act, 1986*, 10U. New S. Wales L.J. 4, 6-7 (1987).

⁴ The Constitution (Fifth Amendment) Act, 1979.

parliamentary sovereign nor a judicial supremacy. The essence of the constitutional structure is that of a limited government- executive, legislative and judicial power limited by the appropriate constitutional norms. While the Supreme Court, as the perceived “guardian of the Constitution”⁵, claims a right to circumscribe the exercise of executive and legislative powers, it appears a bit popular for the Supreme Court to be reservationist body of the Republic-the Parliament. Now, here since Bangladesh have such strict separation of powers, it requires them to maintain that separation from the working. Hence, the 16th amendment is a clear violation of separation of powers in Bangladesh.

Now on the issue of independence of judiciary and judicial accountability can be taken into consideration together as both of them are on the same footing. These doctrines in a way upholds the importance of judiciary as a very important decision making body. As argued by some legal scholars and jurists, they say that these two concepts are contradictory in nature. According to me, if we have selected some person as a judge in the judiciary, then that person holds a very high level of responsibility in the society. Someway or the other we trust his wisdom and consider them as authorities and precedents, but if we look from the other way, the judges are also human beings, so there can be sometimes an element of malice which might come and in the way and in way can influence the judgment. In such situations, the integrity of judiciary as a body comes into play. In the case of 16th Amendment, the judges of Supreme Court of Bangladesh were constantly in threat and fear that if they impart any of the Judgement which is not conducive to any of the parties involved that might lead him in the circle of scrutiny and be charged for violating the sanctity of the Constitution. Mr. Monjil Murshid who was the lead counsel of the petitioner’s side feared that Parliament may harass innocent judges or the judges may be left at the mercy of Parliament. There was a constant fear in the minds of everyone that the process might get a lot more influence by the “*political clout and pressure*”⁶.

There should be some mechanism keep a check on the judges as well but being that a constitutional position in itself, it should be left to its own discretion and wisdom also. This power of trust and discretion also makes them accountable towards their decisions because if they start imparting arbitrary and ambiguous decisions then that might lead to autonomy or monopoly power given in their hands. Judiciary is a kind of body in the society which brings stableness by giving a superior position to the people appointed. So, keeping all these arguments in mind, it shows that 16th Amendment was a clear violation of the doctrines of independence

⁵ Khandker Delwar Hossain v. Bangladesh Italian Marble Works Ltd. (2010) 16 MLR (AD) 249; Siddique Ahmed v. Bangladesh, (2013) 65 DLR (AD) 8.

⁶ M Jashim Ali Chawdhury & Nirmal Kumar Saha, ‘Advocate Asaduzzaman Siddiqui v. Bangladesh: Bangladesh’s Dilemma with judges’ impeachment’, CALQ (2017) Vol. 3.3, Manupatra Online Journal.

of judiciary and accountability of the judges. The free and rational thinking of judges were somewhere being curtailed by the Amendment which would have led to serious consequences. Hence, according to me the striking down of the 5th and the 16th Amendment by Asaduzzaman Siddiqui case was a good and bold judgment which will help them in retaining the sanctity of the judiciary.

V. CONCLUSION

With such cases coming up which questions into the core principles of Constitution, the debates regarding scrutiny of these principles becomes more relevant. Separation of power and independence and accountability of judiciary forms an integral part in upholding the sanctity of the Constitution. So if in any way, these are brought into question, then that should encourage debates which lead to an exemplary draft of rules. One of the unfortunate features of this case is that the dissenting opinion in the High Court of Mr. Ashraful Kamal didn't touch any single argument of the parties and amicus curies. He had only to hold that the Supreme Judicial Council system being introduced by a military ruler was illegal and secondly, the original formulation of Article 96 was in line with the independence of judiciary and hence constitutes a basic structure of the Constitution. Apart from these two points, the dissenting judges colossally wasted an opportunity of coming out with powerful rebuttal of the majority opinion and providing the Appellate Division with some tools to work with in the appeal.

In Bangladesh, the 16th Amendment literally gave a great blow to the officers of the Constitution. But because of the writ petition being filed by Advocate Asaduzzaman Siddiqui asking for striking down the Amendment is a step towards maintaining the sanctity of judiciary and not giving it in the hands of legislature or executive to rupture it. Hence, the decision of striking it down was a good decision and it will definitely help in retaining back the trust of people into the judiciary again.
