E-NEWSLETTER

Volume: 1, Issue: 9 | December 2025

NEXUS OF LAW & BUSINESS

TABLE OF CONTENTS

CONTRIBUTORS

Editor
Fouzia Fariha

Research Intern
Provat Bala

Research Associate
Md. Kowshik Shahriar

Research Intern
Achia Akter

Research Intern & Graphics Designer
Abdullah Al Motrood Yeasir

Historical Background for Our Long Journey to Establish the Independent Judiciary

Introduction:

The pursuit of an independent judiciary in Bangladesh has been a long and challenging journey, which is deeply rooted in the historical, political, and constitutional development of the country. Although judicial independence was constitutionally guaranteed at independence, implementing this principle in practice has taken decades of legal, institutional, and political reform.

Key Discussion:

The origins of the judicial traditions in the Bengal region can be found in pre-colonial and ancient times. During the Hindu era, justice was administered through a hierarchical system culminating in the king's court, supported by village and district councils[1]. In the Muslim period, Islamic judicial principles were introduced through Qazi courts, alongside administrative courts such as Adalat Nazim-e-Subah and Diwan-e-Subha. However, in both eras, judicial and executive powers were largely intertwined, which resulted in centralized authority rather than institutional[2]

British colonial rule (1757–1947) introduced significant modernization, including Supreme Courts in presidency towns and High Courts under the Indian High Courts Act, 1861[3]. Despite reforms and attempts by administrators like Cornwallis to separate judicial and executive functions, subordinate courts largely remained under executive supervision. In the Pakistan era (1947–1971), the judiciary of East Pakistan (now Bangladesh) operated under inherited structures, with a High Court in Dhaka in 1947[4]. However, during the martial law periods (1958 and 1969) severely restricted judicial independence, which entrenched executive control over the lower judiciary and magistrates[5].

After independence, the 1972 Constitution provided a strong framework for judicial independence. Article 22 mandated separation of the judiciary from the executive, while Article 94 establishes the Supreme Court with Appellate and High Court Divisions, and Articles 115–116 govern the appointment and control of judicial officers. Article 109 grants the Supreme Court superintendence over subordinate courts, while Article 116A ensures independence for all judicial officers. Despite this strong framework, implementation lagged, and magistrates and lower courts remained under executive control[6].

Judicial independence was strengthened jurisprudentially in Anwar Hossain Chowdhury v Bangladesh (1989) 41 D.L.R. (AD) 165, in which the Appellate Division recognized the separation of powers and judicial independence as basic structures of the Constitution. Nevertheless, political reluctance delayed reform. Although the Law Committee in 1976 recommended phased separation, but governments from 1991–1996 delayed action7.

A major turning point came with the landmark case Secretary, Ministry of Finance v Md Masdar Hossain (1999) 52 DLR (AD) 82. The Appellate Division declared the judicial service distinct from the executive and issued 12 binding directives, including establishment of a Judicial Service Commission (JSC), separate pay rules, and Supreme Court primacy in discipline and control of judges. Formal separation of the judiciary occurred on 1 November 2007 under a caretaker government[8]. In 2017, new Judicial Service (Discipline) Rules were issued for subordinate judges.

Renewed momentum emerged after 2018, when the Supreme Court Bar Council demanded a separate judicial secretariat[9]. In August 2024, senior lawyers challenged executive control under Article 116 and the 2017 Rules. In September 2025, the High Court struck down executive control over subordinate courts, declared the 2017 Rules unconstitutional, and ordered establishment of an autonomous judicial secretariat.

Finally, in 2025, institutional reforms were consolidated through two ordinances: the Supreme Court Judge Appointment Ordinance, 2025, which established a CJ-led appointment council, and the Supreme Court Secretariat Ordinance, 2025, which formally established an autonomous Supreme Court secretariat.

Concluding Remarks:

The journey toward an independent judiciary in Bangladesh has been lengthy, gradual, and often challenged. While recent reforms represent historic progress, maintaining genuine judicial independence remains an ongoing constitutional commitment rather than a completed task.

Source: Freepik

1. Krishna Gopal Saha, 'A Study on Historical Backgrounds of Courts in Bangladesh' (2023) 10(7) Journal of Emerging Technologies and Innovative Research (JETIR) <https://www.jetir.org/papers/JETIR2307775.pdf> (accessed 12 December 2025)
2. Pranab Kumar Panday and Awal Hossain Mollah, "The Judicial System of Bangladesh: An Overview from Historical Viewpoint" (2011) 53 International Journal of Law and Management 6 <https://doi.org/10.1108/17542431111111863> (accessed 14 December 2025).
3. Supra Note 1
4. Lawyers & Jurists, Judicial System of Bangladesh before 1971 (Lawyers & Jurists) <https://www.lawyersnjurists.com/article/judicial-system-of-bangladesh-before-1971/> (accessed 14 December 2025).
5. Supra Note 1
6. Advocacy Legal BD, Independence of Judiciary in Bangladesh (Advocacy Legal BD, November 1, 2024)<https://www.advocacylegalbd.com/independence-of-judiciary-in bangladesh /#Constitutional_Framework_in_Bangladesh> (accessed 13 December 2025).
7. Md Milan Hossain, 'Separation of Judiciary in Bangladesh–Constitutional Mandates and Masdar Hossain Case's Directions: A Post Separation Evaluation' (2020) 11(2) International Journal for Court Administration 4 <https://doi.org/10.36745/ijca.310 > (accessed 14 December 2025).
8. Ibid
9. The Business Standard, HC scraps parts of Article 116 of Constitution, returns control of subordinate courts to Supreme (The Business Standard, 2 September 2025) <https://www.tbsnews.net/bangladesh/court/hc-scraps-parts-article-116-constitution-returns-control-subordinate-courts-supreme> (accessed 14 December 2025).

What could be the way forward and challenges to keep the judiciary independent from other organs of the government

Introduction

Judicial independence is a fundamental pillar of constitutional democracy and the rule of law. It ensures that courts can adjudicate disputes impartially, without any restrictions, improper influences, inducements or threats, safeguard fundamental rights, and act as a check on the executive and legislative branches. In Bangladesh, although it is constitutionally protected, challenges such as executive influence and political pressure hinder its effectiveness. Strengthening judicial independence necessitates structural reforms and a strong commitment to constitutional principles.

Key Discussion:

The Constitution of Bangladesh specifically Articles 22, 94, 116, and 116A, aims for a judiciary independent of executive interference. The 1999 Appellate Division ruling in Secretary, Ministry of Finance v Masdar Hossain[1] marked a significant move by declaring executive dominance over judicial administration unconstitutional and establishing 12-point directives for this separation. Although the lower judiciary's formal separation took place in 2007, true independence is still hindered by ongoing executive influence in appointments, transfers, promotions, and budgetary matters.

Independence of judiciary dependence on some conditions which are as follows:

a) Mode of appointment;
b) Security of tenure; and
c) Adequate remuneration and privileges[2].

Judicial independence in Bangladesh is significantly compromised by executive influence, notably through the lack of a truly independent judicial appointment commission and financial reliance on the executive for budgetary needs. This situation undermines the autonomy of the judiciary and leads to issues such as delays in enforcing orders and selective law enforcement, which erode public trust. The politicization of legal processes, mishandling of laws, and public criticisms of judges further hinder judicial assertiveness. Additionally, efficiency problems, delays, and corruption allegations within the judiciary challenge its legitimacy and invite external interference.

Recent developments suggest progress in judicial independence through the Supreme Court Secretariat Ordinance of 2025, which creates an autonomous arm of the judiciary[3]. This reform aims to reduce executive control over judicial administration, but its success hinges on effective implementation, clear service rules, budget stability, and parliamentary approval.

Going forward, several measures are essential to consolidate judicial independence. First, establishing an independent Judicial Service Commission for transparency and merit-based appointments; Second, financial autonomy should be ensured through a separate judicial budget approved directly by Parliament[4], and preparation of a realistic annual budget and placing it before the government on time; Third, making judicial transfers or removals difficult, the judge can remain independent only when they enjoy security of service; Fourth, providing adequate salaries, housing facilities, allowances and other privilege benefits to prevent corruption; Fifth, making appointment criteria explicit and public[5]; Sixth, The Appropriate Authority must ensure that no judicial post is kept vacant for any length of time; Seventh, alter longstanding practice of appointing ruling party-affiliated lawyers as public prosecutors[6]; and Finally, fostering respect for judicial decisions from the executive and legislature, aided by civil society and media vigilance is critical to sustaining constitutional balance.

Concluding Remarks:

In conclusion, judicial independence in Bangladesh is both a constitutional mandate and a continuing struggle. While landmark judgments and recent institutional reforms provide a strong foundation, genuine independence can only be achieved through consistent implementation, political restraint, and judicial integrity.

Illustration: The Supreme Court

1. Secretary, Ministry of Finance v Masdar Hossain 52 DLR (AD) 82; 20 BLD (AD) 104
2. ibid
3. Asian Development Bank, Managing Non-performing Loans in Bangladesh (ADB, 2023) https://www.adb.org/publications/managing-nonperforming-loans-bangladesh accessed 15 November 2025.
4. Bangladesh Bank, Guidelines to Establish Digital Bank (Version 2) (2024) https://www.bb.org.bd/aboutus/regulationguideline/brpd/digitalbank_version-2_english.pdf accessed 15 November 2025.
5. Bangladesh Bank, Guidelines on Risk Based Capital Adequacy (Basel III) (21 December 2014) https://www.bb.org.bd/mediaroom/baselii/dec212014basel3_rbca.pdf accessed 15 November 2025.
6. Jural Acuity, Digital Banking Laws in Bangladesh https://juralacuity.com/digital-banking-laws-in-bd/ accessed 15 November 2025.

The Supreme Court Secretariat Ordinance, 2025

Introduction:
The Supreme Court Secretariat Ordinance, 2025 (Ordinance No. 72, 2025), issued by the Government of the People's Republic of Bangladesh, establishes a separate Secretariat to properly handle the supervision, control, and discipline of subordinate courts. The primary aim is the effective implementation of the independence of the judiciary, aligning with Article 22 of the Constitution, which mandates the separation of the judiciary from the executive branch. This step is also necessary to implement a verdict from the Appellate Division's Civil Appeal No. 79/1999. The President promulgated this Ordinance under Article 93(1) of the Constitution due to the existing circumstances while Parliament stood dissolved.

Key Discussion:
The Ordinance sets out the foundational framework for an autonomous judicial administration. Pursuant to Sections 4 and 7, a separate entity named the Supreme Court Secretariat is established to fulfill the constitutional objective (Articles 22, 109, and 116) of separating the judiciary from the executive. The overall control is vested in the Chief Justice, and the administrative head, the Secretary, holds the status of a Senior Secretary of the Government. The Secretariat is mandated to be the institution responsible for Service Administration (Section 7), performing all necessary administrative functions on behalf of the President regarding the control and discipline of Judicial Service members. This control extends to crucial matters like posting, promotion, transfer, and leave of Service members (Section 5). Perhaps the most significant provision is Section 11, which grants financial autonomy. The Secretariat's expenses are charged upon the Consolidated Fund, and critically, the allocation from the national budget will not require prior Government approval for expenditure, with the Chief Justice holding the authority for reappropriation. Finally, Section 10 mandates the formation of a Supreme Court Secretariat Commission, chaired by the Chief Justice, tasked with providing guidance for judicial administration development and capacity building. This collective framework legally secures the judiciary's control over its personnel, administration, and finances.

Pros:
The establishment of the Supreme Court Secretariat is a decisive step toward strengthening the operational and institutional autonomy of the judiciary in Bangladesh. The primary pro is the final realization of the constitutional mandate under Article 22, separating the judiciary's administration from the executive. This grants the Chief Justice overall control (Section 4) and empowers the Secretariat to handle all administrative, secretarial, and disciplinary functions related to the subordinate courts and Judicial Service members (Section 5, Section 7). Furthermore, the financial independence is a significant advantage: administrative expenses are charged upon the Consolidated Fund, and expenditure from the national budget allocated to the Supreme Court and Secretariat will not require prior government approval (Section 11). This autonomy ensures that the judicial branch can efficiently determine its organizational structure, manage personnel, and execute development projects without bureaucratic interference, thereby improving judicial administration and service quality.

Cons:
Despite the significant advantages, the Ordinance presents potential cons, primarily centered on accountability and transition. By concentrating extensive administrative, disciplinary, and financial power under the Chief Justice and the Secretariat, concerns may arise regarding internal checks and balances and the potential for a lack of transparency. While the Ordinance grants powers to formulate necessary rules and procedures (Section 18), the immediate success of this shift relies on the Secretariat promptly and transparently establishing robust internal mechanisms for accountability and audit, especially concerning the autonomous use of the budget (Section 11). Additionally, the dual administrative framework—where disciplinary action against Service members working in other Ministries still requires consultation with the Supreme Court (Section 16)—could lead to jurisdictional complexity and friction during the initial transitional phase of the new structure.

Conclusion
The Supreme Court Secretariat Ordinance, 2025, marks a decisive move to solidify the operational and financial independence of the judiciary in Bangladesh. By creating an autonomous administrative wing, it institutionalizes the constitutional principle of separation of powers and addresses long-standing calls for judicial self-governance. The provisions granting control over service administration, budgetary authority, and the establishment of a dedicated planning committee are all designed to enhance the judiciary's efficiency and capacity. The successful outcome will depend on the Secretariat's prompt operationalization, the diligent formulation of necessary rules (Section 18), and the sustained commitment to transparency and accountability in exercising its new and extensive powers.

Secretary, Ministry of Finance Vs. Md. Masdar Hossain and others

Citation: 52 DLR (AD) (1999) 82
Case Number: Civil Appeal No. 79 of 1999
Jurisdiction: Appellate Division, Supreme Court of Bangladesh
Subject Matter: Judicial Independence and Separation from Executive Control

Summary:
The case of Secretary, Ministry of Finance vs. Md. Masdar Hossain and others (1999) is a landmark judgment by the Appellate Division of the Supreme Court of Bangladesh, addressing the constitutional separation of the judiciary from the executive. It originated from a writ petition, Writ Petition No. 2424 of 1995, challenging the inclusion of judicial officers in the Bangladesh Civil Service (BCS) cadre system, which treated them on a par with the executive and administrative services.

Fact of the Case:
On September 1, 1980, the Cabinet Secretariat's Establishment Division issued the Bangladesh Civil Service (Re-organization) Order, 1980, established14 BCS cadres, including the BCS (Judicial) as cadre No. 2(X). This was supported by the Services (Re-organization and Conditions) Act, 1975, and subsequent orders under Section 5, such as the Services (Grade, Pay and Allowances) Order, 1977. On January 8, 1994, an order enhanced the pay scales of BCS (Judicial) officers, recognizing their distinct role, but this was postponed on February 28, 1994, due to pressure from other cadres, and revised on November 2, 1995.

Writ petitioners, Md. Masdar Hossain, along with 223 judicial officers, including District Judges, Additional District Judges, Subordinate Judges, and others from the subordinate judiciary, challenged the 1980 Order and the 1994/1995 orders as discriminatory and violative of fundamental rights under Articles 27 and 29 of the Constitution. They argued that treating judicial officers as part of executive cadres undermined judicial independence.

The High Court Division issued Rules of Nisi on November 19, 1995, and later another, questioning the constitutionality of incorporating the judicial service into BCS cadres and the pay orders. The respondents (government) did not contest, and on May 7, 1997, the High Court made the Rules absolute, declaring the orders of ultra vires and directing separate rules under Article 115.
The government appealed to the Appellate Division.

Issues
- Whether the inclusion of judicial officers in the BCS (Judicial) Cadre is unconstitutional
- Whether judicial officers fall under the jurisdiction of the Administrative Tribunal
- Whether the President or Parliament has the authority to create and regulate judicial service
- What constitutes judicial independence under the Constitution
- Whether constitutional amendments are required to ensure full separation

Relevant Provisions
- Articles 27, 29, 115, 116, 116A, 133, 146, 152(1) of the Constitution of Bangladesh
- Bangladesh Civil Service (Re-organisation) Order, 1980
- The Services (Re-organisation and Conditions) Act, 1975 (Act No. XXXII of 1975)
- The Services (Grade, Pay and Allowances) Order, 1977

Precedents
- *All India Judges Assoction and others Vs. Union of India and others, (1993) 4 SCC 288*
- *Kudrat-E-Elahi Panir Vs. Bangladesh, 44 DLR(AD)319.*
- *Sindh Vs. Sharaf Faridi, PLD 1994 (SC) 105.*

Judgment
The Appellate Division partly allowed the appeal, upholding the High Court's core declarations but modifying some aspects. It includes: the Judicial Service is part of the "service of the Republic" but is distinct and non-amalgamable with the executive services. Article 115 grants the President primary rule-making power over judicial appointments, recruitment, suspension, and dismissal; Articles 133 and 136 do not override this. The 1980 Order creating BCS (Judicial) cadre and related recruitment rules were declared ultra vires. "Consultation" under Article 116 requires primacy of the Supreme Court's views over the executives. Impugned pay orders (1994/1995) were ultra vires;
In the operative part, the Court issued 12 binding directives to ensure judicial independence. The directives in short:

1. Judicial Service must be separated from the administrative cadre
2. The President shall create the Judicial Service and Magistracy under Article 115
3. BCS (Judicial) Cadre is declared unconstitutional
4. Rules under Article 115 must be framed immediately
5. Separate rules for posting, promotion, leave, discipline, and pension
6. Executive orders contradicting judicial independence are void
7. Supreme Court's opinion shall prevail in disciplinary matters
8. Judicial independence must be ensured through tenure, salary, and autonomy
9. Supreme Court shall have financial autonomy over its budget
10. Judicial officers fall under Administrative Tribunal jurisdiction
11. Parliament may amend the Constitution if necessary
12. Judges' salaries to remain as per 1994 status until Judicial Pay Commission recommends otherwise

Concluding Remarks:
This is a landmark judgment in our jurisdiction. Complying with this judgment, Judiciary has been separated from the Executive in 2007. Bangladesh Judicial Service Commission was established and issued the Bangladesh Judicial Service (Discipline) Rules, 2017. However, as noted in the provided text, subsequent approvals have been criticized for retaining Law Ministry control over disciplinary proceedings, potentially compromising the 22-year struggle for true independence. The case remains a cornerstone for judicial reforms in Bangladesh, highlighting the tension between constitutional ideals and executive implementation.

Our Services

DISCLAIMER: *The information provided in this newsletter is intended solely for educational and informational use. It should not be interpreted as legal advice or opinion. Readers are encouraged to seek independent legal counsel before taking any action based on the content. Tuhin and Partners assumes no liability for errors, omissions, or decisions made in reliance on this publication.*

Corporate Office

Flat G2 (6th Floor), House # 94, Road # 10, Block # D, Niketan, Gulshan-1, Dhaka-1212

Registered Office

Office No. 305 (2nd floor), 3/B, Purana Paltan, Dhaka-1000

Email address:
hello@tnp.legal

Website:
www.tnp.legal

To read our e-newsletter please visit https://tnp.legal/enewsletter/ or Scan

Tuhin & Partners & Ain Sheba jointly conducted a workshop on Employment Laws of Bangladesh at the Independent University of Bangladesh

Tuhin & Partners joins the Investors Meetup 2.0 as a special sponsor

Exploring new pathways for cross-border collaboration with Mr. Noboru Yoshifuji, President of Amon Corporation, Tokyo.

Tuhin & Partners' e-Newsletter unveiling ceremony at Tuhin & Partners on 19th April 2025

Tuhin & Partners & Ain Sheba jointly conducted a workshop on Commercial Contract Drafting and Review at the North South University

The International Trade Council Featured Member on August 2024

Tuhin & Partners joined a high-level meeting at the Ministry of Textiles & Jute regarding the corporate restructuring of a key government project on 26th May 2025