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“Judicial Reforms in Developing Countries”

Mr. Chairman

Hon. Chief Justices, Judges, Lawyers

Distinguished Guests, Excellencies, Ladies and Gentlemen

A pleasant good-afternoon to you all. It is a unique pleasure for me to chair this working session and speak a few words on an important topic like the *Judicial Reforms*, without which it would be difficult for any changing society to have a judiciary compatible with the aspiration and needs of its people. In a developing country like Bangladesh- the age old legal system has some critical problems causing hindrance on the access to justice and making delay in disposal of the cases mainly for 2 reasons-

firstly increased complications and too much sophistications of the system perpetuates the very process for an indefinite period involving excessive litigation costs and

secondly continuing social inequality mixed-up with the economic disparity has created a yawning gap between the haves and the have-nots and being a marginalized poor class the have-nots are to face many limitations in going to the courts.

In order to safeguard the rights of all citizens and deliver to them proper and speedy justice irrespective of their cast, creed, class or status, any democratic society cannot ignore its responsibility of developing and strengthening the justice delivery system, where every citizen can protect and enforce his rights against any entity including the government. The judiciary is always considered as a preordained organ of the State, which derives its sovereign judicial power from the Constitution and laws of the land but exercises its powers predominantly with its high level of knowledge, morality and ethical commands. The core strength of the judiciary lies in the public confidence and in case of the deficiency of the confidence make a havoc with the rule of law and the stability of a country.

Bangladesh is a unitary democratic Republic having its population of around 160 million, of which 60% of the people depend on agriculture for their livelihood. Under the

Constitution being an organ of the State the judiciary has to perform its responsibility of administering justice without any fear or favor. The judiciary comprises of the Supreme Court at the higher level followed by a hierarchy of civil and criminal courts at the district level. In the Supreme Court there are two divisions namely- the High Court Division and the Appellate Division, of which the Appellate Division is functionally the highest court of the Republic consists of 7 Judges including the Chief Justice of Bangladesh. The Constitution of the Republic has guaranteed the functional independence and freedom of the Judges in deciding any civil or criminal disputes or the matters relating to the constitutionality.

In the existing justice delivery system, the process of Case Management is so slow, costly and time consuming that a person takes it as a tool of harassment and burdensome adventure in filing or defending a case going to any court of the country. In Bangladesh, against around 100 Judges of the Supreme Court about **0.38** million pending Cases and against 1400 District Court Judges **2.7** million cases are to be heard and disposed of. In essence the present number of Judges in Bangladesh is quite disproportionate to such huge number of cases. Besides, the nature of civil disputes particularly the cases relating to claims of title over or partition of the immovable property are so complicated that the existing system does not even allow a Judge to take any shortcut approach on those matters.

Judicial Reform Programs:-

According to the Constitution of Bangladesh the Supreme Court is the guardian of the entire judiciary and that is why immediately after my stepping into the office of the Chief Justice I have discussed with my colleague Judges as to how the Case Management and Court Administration could be developed and bring excellence in the Judiciary. With that objective we have prepared a 5 years' Master Plan on the judicial reforms so that the rule of law is ensured and touched every citizen in getting simple, speedy, cheap, effective and substantial justice. Recent strategic plans and steps taken by the Supreme Court are as follows-

- 1) Different Standing Committees including General Administration Committee have been reconstituted and reinforced to deal with the matters of posting, promotion, discipline etc. of the judicial officers.

- 2) Case Management Reforms Committee and Monitoring Committees have been reconstituted and reinforced to identify and address the reasons for delay in disposal of cases in the Courts of all tiers
- 3) Initiatives have been taken to classify around 3 million pending cases on the basis of their age and nature. After such classification the Courts will hear and dispose of the same class of cases analogously and if possible dispose of them by developing template judgment.
- 4) Supreme Court through its Registry monitors the Judges attendance in and departure from the Court and their judicial performance and behavior with colleague Judges and lawyers of their respective stations.
- 5) The Registrar of the Supreme Court has been given the responsibility of reporting the Chief Justice as to whether the judicial officers of the Districts Courts enjoy leave or holidays on fancy grounds and whether they leave their stations with prior permissions or not.
- 6) All Courts including the District Courts of the remote areas are going to be brought under ICT networks and steps have been taken for making laws to record the testimony of witnesses by audio recording system. It will minimise time and energy of the trial Court Judges and the statement of witnesses will not suffer from any mistake or error.
- 7) We feel that some existing procedural and substantive laws like the Evidence Act, 1872, The Criminal Procedure Code, 1898, the Civil Procedure Code, 1908, the Limitation Act, 1908, the Transfer of Property Act, 1887, The Court Fees Act, 1870, the Specific Relief Act, 1877 are to be updated bringing amendments or substitution.
- 8) Matters relating to the practice and procedure of the Civil and Criminal Courts are regulated by 2 separate sets of the Rules. A high power committee comprising of 5 High Court Judges are working on those Rules and the Rules relating to the Appellate Division are also being reviewed by another committee comprising with three senior Judges
- 9) The Civil Rules and Orders which is the main guidance for the District Courts Judges is required to be modified. It is now under process of modification.

10) The number of cases filed and pending, and the number of Judges have recently been increased in the Supreme Court. Besides, the administration of the Supreme Court along with the function of exercising supervision and control over the subordinate Courts are to be managed and done by the Registry, where there is no such man power adequate for handling all those matters. Taking the volume of works and other affairs of the Supreme Court it has been decided to restructure the office of the Registry by creating a Registrar General post, two posts of the Registrar- one for the Appellate Division and one for the High Court Division, four posts of Additional Registrar, five Deputy Registrars and eight Assistant Registrars. The government have actively looking into the proposal of the Supreme Court and it is expected that very soon the creation of those posts would be completed and filled up by the members of the Judicial Service.

Developing Case Management System:

Case management pertains to the objective of adaptation of the litigation. Under this scheme the officer will no longer be confined to merely disposal of cases. He will also require playing an active part in the matter of case resolution. The concept of managerial principles to improve the efficiency of the judicial process. The priority should be given to set targets for disposal rates and their evaluation be considered on the basis of such disposal. If this process is implemented, it is hoped that about 60-70% of the total caseload will be reduced in 5 years. This will require co-operative efforts of all levels of the judiciary. The courts particularly the civil Courts should ensure that old cases of 5 years or more, particularly partition suits and other complicated suits are to be disposed on priority basis. The judicial officers should avoid writing of lengthy judgments and the interlocutory matters are to be disposed of passing orders in open courts. Priority should be given setting time tables for every litigation and monitoring its progress by a Computerized Signaling System. In this regard the Supreme Court is working with UNDP to develop a suitable software. The next step to be taken by the Judges is the modernization of the service of process. The adjournments should not be given more than three times.

It is true that the nature of the civil disputes and the offences come to the Courts are not same in all the developing countries. But I think there are some similarities of those

disputes and offences in the countries of this sub continent. On an occasion in my country taking those features of institutional and functional short-comings of the judiciary into the consideration, I have spoken my mind suggesting the Judges and lawyers:-

- i) to prioritize the cases according to their ages;
- ii) to become attentive for proper utilization of the courts hours and minimize their leaves and holidays;
- iii) to arrange regular Judicial Training for the Judges and the support-staffs to build their capacity augmenting judicial knowledge and skill;
- iv) to raise the number of Judges appointing competent persons through a fair process; and
- v) to ensure the use of ICT in our day to day works in the Court rooms making them familiar with the technology.

You will be happy to note that in Bangladesh we have already taken a good number of initiatives to reform the existing justice delivery mechanism both in the Supreme Court and District Courts. The government of Bangladesh have also come forward to support our initiatives in this regard. Pursuant to Article 35(3) of the Constitution of Bangladesh open, speedy and public court hearing by an independent and impartial Court or Tribunal is considered as a fundamental right for every citizen of the country. That is why, all the courts including the apex court of the country are accessible to the litigants and the public including the media people.

On many national issues on the matter of constitutionality as an apex court of the country the Supreme Court rises to the occasions and thereby introduced a new dimension for protection and enforcement of rights and status of the citizens and other bodies. The milestone decision given by the Supreme Court of Bangladesh in Masdar Hossain's Case (52 DLR AD 82) has become a legal instrument for the institutional and functional reforms of the judiciary in Bangladesh.

Article 24 of the Constitution has enshrined a mandate of separating the judiciary from the executive. Unfortunately we had to wait around 36 years for getting this mandate translated in our legal system. On various pleas and reasons the then government was making delay to make the laws and frame the relevant rules necessary to give a structural design and functional arrangement for handling the criminal justice system by the members of the judicial service in the district level. In 1998 a member of the Association of

Bangladesh Judicial Service namely Masdar Hossain filed a Writ Petition in the High Court Division against the government for increase of their judicial remuneration and constitutional status in the services of the Republic. In December, 1999 the Appellate Division handed down its decision pronouncing the judgment giving 5 declarations and 7 directives to the government to reform the judiciary and bring changes in the existing laws and rules. The Court directed to take steps for legislation of new laws, if necessary, for creating a separate service of the District Court Judges in the name of **Bangladesh Judicial Service**, which was earlier a service like other executive services of the Republic. At the same time the Appellate Division has asked the government to provide the human resources and develop the infrastructure for the Courts' accommodation, so that in all districts the criminal justice delivery system can be operated by the Judicial officers in place of administrative officers.

In line with the guidelines given in the judgment of the Masder Hossain's case, the government established the Bangladesh Judicial Service Commission comprising of 10 members headed by a senior most sitting Judge of the Appellate Division and it has been assigned to recommend the names of the qualified persons to the President conducting a fair selection process assessing their suitability. It is heartening to note that since 2007 the Commission (BJSC) has been functioning quiet independently without any interference from any quarter. Up to this year, the President has appointed 1242 qualified persons, against the judicial vacancies in the district Courts. According to the law the President has no scope to disregard the Commission's recommendation or appoint any person from outside. Similarly the Judicial Service Pay Commission comprising of 8 members headed by a sitting Judge of the Appellate Division was established in 2007 and since then it (JSPC) has been functioning, preparing its reports with recommendations for increase of pay, allowances and other benefits for the members of the Judicial service.

We firmly believe that without an institutional reform through establishment of separate judicial bodies, it would hardly be possible to deal with the matters like- judicial appointment, remuneration, discipline and punishment of the Judges in proper manner. So, at the instance of the Supreme Court's directives the government had to establish the said 2 organisations namely the Bangladesh Judicial Service Commission and the Judicial Service Pay Commission, who have been contributing to the efforts of making the judiciary more effective and competent.

It is easier to make some spell-bound comments and promise on the judicial reforms and to ensure its independence, but the thing is not so easy particularly when it demands a huge fund and financial autonomy necessary for setting new establishments and developing the infrastructure. Because in true sense those steps narrow down the authoritative domain of the executives. In Bangladesh we are very much proud for the pro-active role of the Supreme Court so far reflected through its pronouncement in Masder Hossain's case, which is still pending in the Court awaiting for implementation of the remaining directions of the Court. On some occasions, the Supreme Court has to hammer the concerned Ministries in the government striking its gavel to expedite and ensure a meaningful implementation of its directives.

A few weeks back, it has come to the notice of the Court that on the basis of a set of rules of 1985 applicable for the executives, the Ministry of Law has been regulating the matters relating to conducts and discipline of the District Courts Judges and immediately after getting that information, the Appellate Division took-up the matter in Masder Hossain's case directing the government to make separate rules for the judicial officers on the above matters. I think, by this time the Ministry of Law has taken necessary steps for making those rules.

In the Supreme Court there is a Code of Conduct for the Judges, but still there is a lot of scope for further improvement of the conduct rules. Now-a-days like other public institutions the judiciary has to come out from its traditional concept of non-engagement with the members of the society for which it works. So, in order to understand the public opinion and their pulse a piloting may be done in some selected areas to develop a system of the Community Feedback Mechanism on public confidence and their satisfaction in justice delivery system.

It is said that no tyranny is worse than judicial arbitrariness and no misfortune is worse than judicial subservience. There is a need for fine-tuning of the concept of accountability for the Judges. It is difficult to measure correctly the progress of the institutions like the Courts and level of performance of the Judges. A developing country like Bangladesh may share its experience and undertake joint initiative with the developed countries for making a suitable framework for judicial accountability and judicial quality improvement indicators necessary for proper evaluation of the progress done in the justice sector.

An ideal framework of the indicators used for such evaluation in many developed countries, is as follows:-

- a) Impartiality and integrity of Judges, including measure of successful challenges of Judges' impartiality, case allocation procedures and complaint procedure;
- b) Expertise of Judges including preparation, appeal rates, disposal rates;
- c) Treatment and attitude of Judges, including judicial functioning, participation of litigants, explanation of proceedings and clarity of the decisions;
- d) Unity and equality of law; and
- e) Speed and timeliness, including average disposal times, percentage of adjournments. Productivity and starting the cases on time.

Key elements in legal and judicial reform programs now include promoting judicial independence through improved appointment, financing, and disciplinary procedures; modernizing judicial administration and case management; and training of the Judges and court personnel. In Bangladesh being the Chairman of the Management Board of the Judicial Training Institute, recently I have taken some initiatives to prepare a Modern Training Curriculum not only including the law subjects but also other topics having diversifications on various fields like philosophy, anthropology, history, sociology, human psychology, forensic medicine etc.. If we could bring those changes in the Training Programs using pedagogical skill of the judicial mentors and apply modern teaching techniques, I believe that would make the trainee Judges more interested to participate in the programs with enthusiasm and interests.

Another aspect of judicial reforms is introduction of ICT. Despite the progress of the technologies and research in this field, innovation in the judicial system of developing countries is still regarded as at its early stage. Activities in this field are still limited, at a local level, whereas demands of the 21st century Court System are growing. New solutions are needed to enhance the process of justice, make it faster, and to be shared among the judicial institutions. We also feel that there is a strong need to launch an electronic court system across the country and that would improve the justice process administration and the knowledge process management, increase the efficiency and effectiveness of judiciary. In short the courts are to be made accessible from any part of the world incorporating ICT in

its day to day affairs and that would certainly augment the confidence level of the litigants and the people living in this world dominated by IT technology.

Judicial reforms itself is a painstaking and time-consuming process, which requires continuous over-viewing and fine-tuning for change of mind and attitude of the persons involved with the process. In the past, the purpose and usefulness of the reforms in the judiciary was not very clearly perceived or appreciated by the Judges and lawyers of the country like Bangladesh. But recently the scenario has been changed and there is a clear willingness of all concerned to accept the changes and reforms. It is the high time for both national governments and international communities to work together for making the judiciary of their respective jurisdictions more efficient and effective.

I hope the scholarly disposition and deliberation of the participants of this session and cross fertilizations of their views and ideas will immensely help us to have an attitudinal change on the matters of legal and judicial reforms. I am confident that this conference will inspire us all to play the role for improving the quality and bring excellence in the judiciary of our respective countries.

Before I conclude, I like to express sincere appreciation to the organisers of this conference for their noble efforts to arrange this gathering of the Judges, Lawyers and distinguished persons of the judiciary across the world.

I wish every success of this session and thank you all for your presence and participation.

Justice Surendra Kumar Sinha
Chief Justice of Bangladesh.