Barrister Syed Ishtiaq Ahmed Memorial Lecture, 2025

Supreme Court Bar Auditorium, 17th July, 2025

Good evening, everyone!

It is with immense pleasure and a profound sense of honour that I extend a warm welcome to all of you gathered here today. To my esteemed colleagues, distinguished members of the legal fraternity, honoured guests, and indeed, every fellow citizen of Bangladesh present, both in this hall and joining us remotely - welcome to this pivotal gathering.

My sincere gratitude goes to the Ishtiaq Centre for arranging this memorial event.Your dedication to preserving and promoting the ideals of justice and judicial independence, particularly through the legacy of Barrister Syed Ishtiaq Ahmed, is truly commendable and vital for our nation's progress.

We are further honoured by the presence of an exceptional panel of distinguished legal minds who will share their invaluable insights with us today. A very special welcome, therefore, to:

- **Mr. Md. Asaduzzaman**, Attorney General for Bangladesh and Chairman, Bangladesh Bar Council
- **Mr. Zainul Abedin**, Senior Advocate and Vice-Chairman, Bangladesh Bar Council
- **Mr. A.M. Mahbub Uddin Khokon**, Senior Advocate and President, Bangladesh Supreme Court Bar Association
- **Mr. Probir Neogi**, Senior Advocate, Bangladesh Supreme Court
- **Ms. Nihad Kabir**, Senior Advocate, Bangladesh Supreme Court
- **Mr. Mustafizur Rahman Khan**, Senior Advocate, Bangladesh Supreme Court

Ladies & Gentleman,

As I addressed the Nation on 22 June, 2025 from the podium of the *'National Seminar on Judicial Independence and Efficiency'*, SIA's omnipresence was undeniable. Dubbed the chief architect of the underlying philosophy of the *MasdarHossain Case*, SIA's visionary outline for the separation of the Judiciary from the Executive provided the skeletal framework for my Address.

More than two decades of his passing, SIA remains the guiding force, therefore, not only for the establishment of a separate Secretariat for the Supreme Court but also the vital reference point for this Nation to revisit the broader and diverse issues of the structural and operational architecture of the Supreme Court within the present or a future constitutional dispensation, and the peaceful transition of power between two elected governments. SIA's critically central role played both in the outcome of the 8thAmendment Case *[the Anwar HossainChowdhury Case]* and in devising the Neutral Non-party Caretaker Government mechanism (as chronicled in his autobiography *"The Ishtiaq Papers"*) comes immediately to mind in this regard.

Accordingly, 22 June, 2025 serves as a turning point in the Supreme Court's institutional history. It marks a continuum and an essential link between the high points, indeed the apogee, of constitutionalism scaled by itself guided by the likes of SIA and the present transformative phase of institution and indeed state-building.

The significance too of the fact that I on 22 June shared the dais with my guest the Hon'ble Chief Adviser of the interim government, Professor Muhammad Yunus, SIA's fellow Adviser in the 1996 Caretaker Government, was not lost on me in my capacity as CJB tasked to bring the broader vision of the *MasdarHossain Case* to fruition. Destiny may yet have the final say on how constitutional history and constitutionalism shall complete a full circle

overall informed by SIA's legacy. As a friend of mine poignantly remarked on SIA's 22nd Death Anniversary on 12 July,-

> *"it is truly inspiring to see his foundational work on the separation of powers, judicial independence, and democratic transitions continue to guide national discourse and institutional reforms even decades after his passing."*

That said, today's memorial event aligns with a critical juncture, yet again in the Judiciary'sconstitutional history. My singular effort at securing institutional autonomy, chiefly through the establishment of an independent Secretariat for the Supreme Court, having far reaching consequences, thereby, on the tenor and purport of articles 109 and 116 of the Constitution, has yet again given cause for us as a nation to revisit the broader vision of the *Masdar Hossain Case*. That exercise invariably, and pertinently so given the agenda of today's discussion event, leads us to deconstruct in particular SIA's own vision of how the separation of the Judiciary from the Executive could be best achieved.

Ladies & Gentleman,

SIA sought in this regard to work with the tools already available within the present constitutional dispensation, chiefly within the mandates provided in articles 109 and 116 allowing, in his view, for a cohesive interplay of both articles which hebelieved could best achieve institutional autonomy for the Judiciary.

It is in that regard that SIA argued that the word *"control"* in article 116, read with article 115, includes the rule-making power of the President in consultation with the Supreme Court in respect not only of posting, promotion, grant of leave and discipline but also of the entire gamut of terms and conditions of service of persons employed in the judicial service and magistrates exercising judicial functions. He contended further that the word *"control"* used in both Articles 109 and 116 has to be reconciled primarily by

interpreting the word *"control"* to mean not only control over the courts and tribunals but also over their presiding officers. This was his vision of the independence guaranteedin article 116A, failing which, he warned, articles 116 and 116A would be reduced to being *mockingbirds*only**.**

That apprehension arises,as our experience attests to, within the present scheme of the Constitution in which articles 48(3) and 55(2) play pivotal roles in the conjoint exercise of power by the head of State and the head of Government when it comes to matters covering the Judiciary. SIA's metaphorized warning of articles 116 and 116A reduced to mere mockingbirds hascome truewhenever the element of greater institutional presence of the Judiciary as a co-equal organ of the State could not be secured in this essential triangular relationship. It is in that regard, the Chief Justice Mustafa Kamal sought recourse to Dr. Kamal Hossain's argument that the words *"in consultation with the Supreme Court" in article 116 serves as a pillar which held up the independence of the judiciary as a basic structure of the Constitution"*.

It is here the Chief Justice Mustafa Kamal remarks-

> *"In order that this pillar may not end up as a bamboo pillar, the word "consultation" has to be given some teeth, or else, as Syed Ishtiaq Ahmed rightly pointed out, Articles 116 and 116A will be only mocking birds. What is that teeth? Are mere meaningful and substantive consultations and full disclosure of all connected facts during consultations enough? These are no doubt essential and necessary requirements in the process of consultation, but the end-result shall be the primacy of the views and opinion of the Supreme Court which the Executive shall not disregard, for it is the Supreme Court, not the political executive, which is the best judge of judicial matters and judicial officers."*

History has sought us that the prospects of such *"meaningful and substantiate consultations"* run hollow without an institutional framework to bolster its significance. This is because there is yet a greater dichotomy deeply embedded within the Constitution that troubled the Court in the *Masdar*

Hossain Case so much so that it found itself constrained to travel beyond this painstakingly constructed organic relationship between articles 109, 115, 116 and 116A by the likesof SIA, Dr. Kamal Hossain and Barrister Amir-Ul Islam. The Court in the Masdar Hossain Case was hard-pressed to locate the core basis of this elusive judicial independence that these three titans of the Bar submitted to be built-in within the present constitutional dispensation.

That exercise led the Court in the *Masdar Hossain Case* to go off on a different tangent finding, thereby, that the absence of any positive language within the Constitution to that effect the Court could not locate any mandate given to the President to brame rules under article 116 covering an entire range of an ever-growing area of judicial institutional ecosystem and activity.

It is within the broader context that Chief Justice Mustafa Kamal arrived at a finding of a structural anomaly within the Constitution which he succinctly declared to be thus:

> *"In Article 109, of our Constitution the High Court Division has been given superintendence and control over all courts and tribunals subordinate to it. In Article 116 the control and discipline of persons employed in the judicial service and magistrates exercising judicial functions has been vested in the President who shall exercise the same in consultation, not with the High Court Division, but with the Supreme Court. Our Constitution, therefore, makes a difference in the subject matter and authority of control and vesting. The Courts and tribunals will be under the superintendence and control of the High Court Division, being subordinate to it; but the control and discipline of persons employed in the Judicial service and magistrates exercising judicial functions is vested in the President. This distinction stares in the face of our Constitution. There is a dyarchy in our constitutional scheme."*

That is where matters stand as the Judiciary since July-August, 2024 negotiates closely with the interim government twenty-six years onto settle the matter once and for all the issue of judicial independence. In this the interim government has over the past eleven months been ably and duly aided

by the judiciary at every step to undertake meaningful steps in the journey to the latter's institutional autonomy.

Distinguished Guests,

My **Judicial Reform Roadmap**, unveiled on September 21, 2024, is our comprehensive blueprint for Institutional transformation, placing independence, integrity, and accountability at its very heart.

Among the key initiatives we have vigorously pursued:

1. **The Supreme Judicial Appointment Ordinance (2025):** This landmark legislation, a direct response to the call for depoliticisation, establishes an independent council for appointing judges to the Supreme Court. For the first time, we are creating a transparent, merit-based mechanism, insulating these critical appointments from political interference.
2. **Establishment of a Separate Secretariat for the Judiciary:** This is a foundational step towards achieving true administrative and financial autonomy. As I have consistently emphasised, "Justice cannot be carried forward on borrowed infrastructure or delegated authority, it must stand on its own institutional legs." This Secretariat will empower the Judiciary to adopt a holistic approach at framing judicial policy.
3. **Restoration and Full Operationalisation of the Supreme Judicial Council:** With the disposal of the 16th Amendment Review case, the Council has been fully restored. This body is now actively fulfilling its constitutional mandate to ensure judicial accountability and discipline, a vital component of our independence.
4. **Development of Depoliticised Posting and Transfer Guidelines:** We are working to ensure that the careers of our judges are guided

by merit and fairness, not by external pressures. These guidelines are crucial for safeguarding the impartiality of the district judiciary.

5. **Enhancing Procedural Efficiency and Accessibility:** While seemingly administrative, initiatives such as streamlining family court processes, embracing digitalisation, and establishing a judiciary helpline are vital. An efficient judiciary builds public confidence and ensures that justice is not only fair but also timely and accessible to all, particularly the most vulnerable.
6. **Strategic Engagement with Partners:** We are actively collaborating with international development partners like UNDP, the European Union, the UK, Sweden, and others. Their technicalexpertise and support are invaluable as we align our reforms with global best practices.

These are not mere declarations of intent, they are concrete steps towards building a judiciary that is truly insulated from political interference and grounded in service to the people.

Yet, the path to full judicial independence is not without its formidable challenges. We must, therefore, be candid about the *"blockers"* that impede our progress of which two standout prominently-

I. **Resistance from Entrenched Interests:** Decades of intertwined political and judicial interests have created a deeply ingrained culture. There will inevitably be resistance from those who benefited from the status quo, and bureaucratic inertia can slow down even the most well-intentioned reforms.

II. **Sustained Political Will Across All Branches:** While the interim government has shown some interest, the long-term success of these reforms hinges on sustained political will from all branches of government, not just the judiciary. This requires a shared vision for a truly independent system.

Ladies & Gentleman,

In conclusion, I reiterate my plea to the interim government and indeed the nation to secure a meaningful and sustainable independent existence of the Judiciary in this times most momentous, failing which, we as a nation risk squandering a historic opportunity at ensuring the systemic entrenchment of the rule of law and democratic governance as well as endangering the sustainability of all other sectoral reforms proposed to be undertaken by the interim government in the near future.

Thank you all.