IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

Present:

Mr. Justice Syed Refaat Ahmed, Chief Justice.

Mr. Justice Md. Ashfaqul Islam

Mr. Justice Zubayer Rahman Chowdhury

Mr. Justice Syed Md. Ziaul Karim

Mr. Justice Md. Rezaul Haque

Mr. Justice S. M. Emdadul Hoque

CIVIL REVIEW PETITION NO.751 OF 2017

(From the judgment and order dated 03.07.2017 passed by this Division in Civil Appeal No.06 of 2017 arising out of judgment and order dated 05.05.2016 passed by the High Court Division in Writ Petition No.9989 of 2014).

Bangladesh represented by the Cabinet Secretary, Cabinet Division, Bangladesh Secretariat, Police Station-Shahbag, Dhaka and others **. . . Petitioners**

-Versus-

Advocate Asaduzzaman Siddiqui and others **. . . Respondents**

For the Petitioners **:** Mr. Md. Asaduzzaman, Attorney-General, with Mr. Md. Abdul Jabbar Bhuiyan, Additional Attorney-General, Mr. Mohammad Arshadur Rouf, Additional Attorney-General, Mr. Mohammad Aneek R. Haque, Additional Attorney-General, Mr. Md. Jahirul Islam Sumon, Deputy Attorney-General, Mr. Md. Asad Uddin, Deputy Attorney-General, Mr. Abdullah Al Mahmud (Masud), Deputy Attorney-General, Ms. Jamila Momtaz, Deputy Attorney-General, Mr. S. M. Iftekhar Uddin Mahamud, Deputy Attorney-General, Mr. A. F. M. Saiful Karim, Deputy Attorney-General, Mr. Mohammad Mehedi Hasan, Deputy Attorney-General, Mr. A.S.M. Mokter Kabir Khan, Deputy Attorney-General, Mr. Arif Khan, Assistant Attorney-General, Ms. Fatima Akter, Assistant Attorney-General, Mr. Md. Zasidul Islam Jony, Assistant Attorney-General, Mr. Ashadullah Al Galib, Assistant Attorney-General, Mr. Ekramul Kabir, Assistant Attorney-General, Mr. Ahammed A. Khan, Assistant Attorney-General and Mr. Golam Reza Sadekin, Assistant Attorney-General instructed by Mr. Haridas Paul, Advocate-on-Record.

For the Respondents	**:**	Mr. Manzill Murshid, Senior Advocate instructed by Mr. M. Ashraf-uz-Zaman Khan, Advocate-on-Record.
As Amicus Curiae	**:**	Mr. Md. Ruhul Quddus, Senior Advocate.
Date of hearing and judgment	**:**	The 20th October, 2024.

J U D G M E N T

Syed Refaat Ahmed, C.J. : Going to the core of the matter at hand at the very outset, it is noted that in the impugned judgment it has been observed that,

> *"Since this amendment is ultra vires the constitution, the provision prevailing before substitution is restored. The appeal is accordingly dismissed."*

However, in the operating part of the impugned judgment, this Court observed that-

> *"Since all but one wrote separate judgments expressing their separate opinions, we unanimously dismiss the appeal, expunge the remarks made by the High Court Division as quoted in the judgment of the learned Chief Justice and also restore clause (2), (3), (4), (5), (6) and (7) of the Article 96 and also approve the Code of Conduct formulated in the main judgment".*

Therefore, it appears from the operating part of the impugned judgment that this Court has restored clauses (2), (3), (4), (5), (6) and (7) of Article 96 and such restoration demonstrates the non-restoration of clause (8) which deals with the resignation of the Judges of the apex Court. Though it does not affect the right of resignation of a Judge of the Supreme Court, yet it may create an unnecessary ambiguity and debate in the legal arena and as such in the operating part of the impugned judgment it should be mentioned that clause (8) of Article 96 is also restored. As such the operating part of the impugned

judgment is required to be reviewed. Hence, it has been proposed to be considered by this Court that because it is apparent on the face of the record that this Court has contributed to an ambiguity by not restoring clause (8) of Article 96 of the Constitution inasmuch as this clause deals with the right of resignation of the Judges of the Supreme Court of Bangladesh which has been a core constituent of Article 96 uninterruptedly since 1972 through to the 16th Amendment of the Constitution, hence, the said clause is required to be expressly restored to remove any kind of ambiguity upon reviewing the impugned judgment.

Such ambiguity is tantamount to an error on the face of the record as it purports to take away the entrenched right of Judges of the Supreme Court of Bangladesh to resign and, thereby, runs counter to their legal right guaranteed under the Constitution as well as to the prevailing laws of the land including judicial pronouncements, and, as such, has led to this the instant Review Petition to be filed with a prayer for favourable consideration.

Evidently, prior to the enactment of the Constitution (Sixteenth Amendment) Act, 2014, Article 96 provided for (i) the age of retirement of Judges of the Supreme Court (Article 96(1)), (ii) removal of Judges by the Supreme Judicial Council (Articles 96(2)-96(7)), and (iii) resignation of Judges (Article 96(8)).

The Constitution (Sixteenth Amendment) Act, 2014 amended Article 96 to include the provision for impeachment by Parliament. By the 16th

Amendment, clauses (2)-(8) of Article 96 were replaced by clauses (2)-(4) as follows:

> *"(2) A Judge shall not be removed from his office except by an order of the President passed pursuant to a resolution of Parliament supported by a majority of not less than two-thirds of the total number of members of Parliament, on the ground of proved misbehaviour or incapacity/*
> *(3) Parliament may by law regulate the procedure in relation to a resolution under clause (2)and for investigation and proof of the misbehaviour or capacity of a Judge.*
> *(4) A Judge may resign his office by writing under his hand addressed to the President."*

Notably, the new clause (4) relating to resignation of judges has been enacted in exactly the same terms as clause (8) which existed prior to the amendment of Article 96.

Upon a challenge to the 16th Amendment in Writ Petition No. 9989 of 2014, the High Court Division, by its judgment dated 5.5.2016, declared the Constitution (16th Amendment) Act as *ultra vires* the Constitution in the following terms:

> '*Accordingly, the Rule is made absolute without any order as to costs. It is hereby declared that the Constitution (Sixteenth Amendment) Act, 2014 (Act No. 13 of 2014) (Annexure-'A' to the Writ Petition) is colourable, void and ultra vires the Constitution of the People's Republic of Bangladesh.*' (Asaduzzaman Siddiqui and Ors. vs. Bangladesh)

Thus, clauses (2)-(8) of Article 96 of the Constitution (as existed prior to the 16th Amendment) were revived.

On 3.7.2017, this Court dismissed the appeal preferred against the judgment of the High Court Division in the following terms:

> *'... we unanimously dismiss the appeal, expunge the remarks made by the High Court Division as quoted in the judgment of the learned Chief Justice, and* ***also restore clause (2), (3), (4), (5), (6) and (7) of Article 96*** *and also approve the Code of Conduct formulated in the main judgment'*. (Emphasis added by this Court)

The underlined portion of the above order of this Court has raised questions as to whether a Judge of the Supreme Court may resign from office. Indisputably, however, this apex Court having dismissed the appeal preferred against the judgment of the High Court Division, the 16th Amendment is no longer in force and clauses (2)-(8) of Article 96 have clearly been revived. It is deemed prudent nevertheless that this Court now pass an order clarifying that the provision for resignation of Judges has always been and remains an entrenched part of the constitutional architecture.

The fact that this Court specifically referred to restoration of clauses (2)-(7) of Article 96 in its order does not mean that clause (8) of Article 96 has not been concomitantly revived. This Court did not expressly refer to the restoration of clause (8) in specific terms given that the provision for resignation had continued to prevail in the Constitution even in the form of clause (4) of Article 96. Accordingly, there was no need felt possibly to specifically pass an order for restoration by reiteration of the resignation provision in the pre-existing clause (8) which in its own right is an entrenched provision of the Constitution with a provenance dating back to the very promulgation of the Constitution in 1972. As the learned Attorney-General for Bangladesh, Mr. Md. Asaduzzaman submits, this is indeed the core spirit of the additional ground taken in this Review Petition.

This Court appreciates, that which is not expressly stated may nevertheless be obvious. It is also the case, however, that which is otherwise obvious may at times nevertheless be expressly emphasised. This is doubly true of the entrenched right of resignation ubiquitously present throughout the constitutional framework as a right guaranteed to constitutional office-holders straddling all three organs of the State. Such right refers to the concerned

office-holder's freedom to voluntarily leave employment or office upon true will exercised without coercion, restriction, or constraints imposed. It is an essential part of personal autonomy that is constitutionally guaranteed, thereby, allowing for constitutional office-holders to make autonomous decisions about their professional lives conducted under the aegis of the Constitution. There is no overwhelming constitutional or jurisprudential necessity, expediency, or exigency served by singling out Judges of this apex Court for voluntary relinquishment of the unqualified right to resignation when that right remains fully exercisable by constitutional heads of the Executive and the Legislature. By necessary implication, therefore, the right of resignation that has always been available to Judges is now declared to be a constant feature of the Constitution at all material times ensuring the availability and exercise of the right to resignation by Judges. Indeed, the right of resignation has continued unimpaired since 1972.

There is a common thread too binding all the issues raised in this Review Petition touching also upon the Supreme Judicial Council's continued authority, for example, to evaluate and revise, if need be, the content of the Judges' Code of Conduct. The said Code as contemplated under the now-restored clause (4)(a) of Article 96 is foremost an essential component of gauging the sufficiency, and indeed the constitutionality of judicial conduct in a constitution which itself is a living document permitting of perpetual reinvention. In this, much reliance is placed on the competence, authority and power of an independent judiciary to undertake the progressive interpretation of the Constitution. Indeed, this is key to the survival of the Constitution itself. It is also the case that the spirit of the Constitution over and beyond merely the letter of the Constitution gains prominence within such a narrative. Otherwise,

constitutionalism itself is placed at risk. Considered in this context, the Code of Conduct is to be considered as permitting of growth and mutations by drawing on the inherent power of only the Supreme Judicial Council to revisit existing provisions as and when necessary.

Predicated on the above, Article 96 of the Constitution is, accordingly, restored in its entirety. This Review Petition is, accordingly, disposed of with the observations above. But to dispel any confusion and to obviate any necessary ambiguity and dispute in the operation of the operating part of the impugned judgment, clauses 2-8 of Article 96 are, hereby, declared to be restored in their entirety.

C.J.

Md. Ashfaqul Islam, J: I concur with the observations expressed by My Lord the Chief Justice. However, I wish to provide some additional comments on the matter under discussion.

In the judgment on the sixteenth amendment, this Division established a Code of Conduct for the Judges of the Supreme Court, grounded in Article 96 of the Constitution.

As many as 39 codes have been formulated of which Code No. 38 (a) and (b), to my mind should be discussed in juxtaposition with the Constitution itself.

Code No. (38)(a) Stipulates:

> "If a complaint is received by the Chief Justice from anybody or any other sources that the conduct of a Judge is unbecoming of a Judge, that is to say, the Judge is unable to perform his/her judicial works due to incapacity or misbehaviour, the Chief Justice shall hold an inquiry into

such activities with other next two senior most Judges of the Appellate Division and if the Chief Justice or anyone of the other Judges declines to hold a preliminary inquiry or if the allegation is against anyone of them, the Judge who is next in seniority to them shall act as such member and if upon such inquiry it found that there is prima-facie substance in the allegation the Chief Justice shall recommend to the president."

And Code No. 38(b) stipulates:

"A complaint against a Judge shall be processed expeditiously and fairly and the Judge shall have the opportunity to comment on the complaint by writing at the initial stage. The examination of the complaint at its initial stage shall be kept confidential, unless otherwise requested by the Judge."

On the other hand Article 96 (before sixteenth amendment) reads as follows:

"(1) Subject to the other provisions of this article, a Judge shall hold office until he attains the age of sixty-seven years.

(2) A Judge shall not be removed from his office except in accordance with the following provisions of this article.

(3) There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges:

Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.

(4) The function of the Council shall be –

(a) to prescribe a Code of Conduct to be observed by the Judges; and

(b) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge.

(5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge –

(a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or

(b) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding.

(6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office.

(7) For the purpose of an inquiry under this article, the Council shall regulate its procedure and shall have, in respect of issue and execution of processes, the same power as the Supreme Court.

(8) A Judge may resign his office by writing under his hand addressed to the President."

On a reading of the aforesaid 38(a) and (b) it can be seen that the provisions of Article 96 before sixteenth amendment of the Constitution in respect of Supreme Judicial Council have been incorporated therein almost *"Mutatis Mutandis"* of the said Article.

The provisions excerpted appear to discuss the confidentiality of complaints and procedures involving the Supreme Judicial Council. It notes that the examination of complaints at their initial stage should remain confidential unless the judge specifies otherwise. It then references Article 96 of the Constitution, highlighting that provisions related to the Supreme Judicial Council, as they existed before the sixteenth amendment, have been included in current practices “mutatis mutandis.” This phrase implies that the necessary changes have been applied to adapt the old provisions to the current context. Essentially, the procedures or standards of Article 96 were preserved but modified as needed to fit new legal frameworks following the amendment.

When Article 96 before sixteenth amendment of the Constitution has itself clearly suggested what should be the structural modes of Supreme Judicial Council, there is no justification of inducting almost in a similar language and meaning the said 38(a) and (b) as Codes in the Code of Conduct formulated in the sixteenth amendment Judgment.

The amendment’s attempt to replicate the framework, as seen in the said Codes 38(a) and (b), raises questions about the necessity and purpose of such overlapping provisions. This redundancy could lead to conflict in interpretation and implementation, ultimately impacting the independence of the judiciary. It brings to light a deeper question if whether such amendments align with the original Constitution intact or if they encroach upon the judicial safeguards envisioned in Article 96. To make it simpler, it can be said that before the Sixteenth Amendment, Article 96 of the Constitution already provided guidelines for the structure of the Supreme Judicial Council to ensure judicial

accountability. Adding similar Rules in the judgment, as in Codes 38(a) and (b) seems unnecessary and may create confusion, potentially leading to conflicts in how the rules are understood and applied, thus affecting the independence of the judiciary.

It certainly has a curtailing effect on Article 96 of the Constitution.

The implications of such overlapping provisions extend beyond mere procedural redundancies; they pose a substantive challenge to the judiciary's autonomy. Article 96 of the Constitution serves as a cornerstone in maintaining this balance, ensuring that the judiciary operates free from undue influence while remaining accountable. However, any additional judicial pronouncements that replicate or override its provisions might inadvertently dilute its authority, creating ambiguities in its interpretation and application. Therefore, it is imperative to critically examine the overlaps to safeguard the sanctity and independence of the judiciary.

The Review Petition is thus disposed of.

J.

Zubayer Rahman Chowdhury, J: While agreeing with the judgment proposed to be delivered by the learned Chief Justice, I wish to include certain observations of my own.

As the facts of the case have been detailed in the judgment proposed to be delivered by the learned Chief Justice, I refrain from repeating the same. Suffice to say that this judgment endeavours to settle a long standing dispute as to whether the power of removal of Judges of the Supreme Court should

vest in the hands of the Members of Parliament or the Supreme Judicial Council, as was the case before the Constitution (Sixteenth Amendment) Act, 2014 (hereinafter referred to as Sixteenth Amendment) was brought into force.

Civil Appeal No. 06 of 2017 was dismissed by the Appellate Division, upholding the judgment passed by the High Court Division in Writ Petition No. 9989 of 2014 making the Rule absolute, declaring the Sixteenth Amendment to the Constitution as unconstitutional, thereby restoring sub-Articles (2), (3), (4), (5), (6) and (7) of Article 96. However, no pronouncement was made with regard to sub-Article (8) relating to resignation of Judges. The omission by this Division to include sub-Article (8) of Article 96 of the Constitution in the operating part of the judgment dated 03.07.2017 has led to the filing of the instant Review Petition at the instance of the Government.

The issue that we are called upon to decide is short - whether sub-Article (8) of Article 96 of the Constitution, which relates to the resignation of the Judges of the Supreme Court of Bangladesh, is liable to be restored. The answer is in the affirmative.

Generally understood, resignation implies cessation or discontinuation of service. The act of resignation is a unilateral act on the part of the person concerned, thereby formally bringing to an end the relationship between the Authority and the person concerned. It forms an integral part of the terms and conditions of service and, in my view, is so fundamentally entrenched in the terms and conditions of service that it cannot be constricted or abrogated, even by the State.

Prior to the pronouncement of the judgment in the Sixteenth Amendment case, the power to remove Judges of the Supreme Court vested in the Supreme Judicial Council, comprising of the learned Chief Justice and the next two senior most Judges of the Appellate Division. However, the law was amended in 2014 and the Members of Parliament were given the power and authority to remove the Judges of the Supreme Court.

What was the essence of the Sixteenth Amendment case? In my view, it was an attempt by a despotic and fascist Government to wrest the power of removal of Judges from the Supreme Judicial Council and vest them in the hands of the Parliament, thereby putting the independence of Judges at stake. In other words, if a Judge, in the course of discharging his function, would incur the wrath or disfavour of the Government, he/she could be removed from office by the stroke of a pen by the Members of the Parliament. Can such a situation be allowed or accepted in a democratic society? The answer, in my considered view, as has also been stated by my learned brothers in their respective judgments, is an emphatic 'No'.

The independence of judiciary is the 'sine qua non' of the Rule of law, which forms the basis of any democratic society. The judiciary serves as an important organ of the state to ensure the Rule of law. The mechanism of vesting the authority of removal of Judges with the Parliament erodes the confidence of the general public in the judiciary. It is, therefore, imperative that in discharging their functions, the tenure of Judges has to be ensured for proper dispensation and administration of Justice. Unless the tenure is

secured, a Judge is likely to feel inhibited by the threat of 'the sword of Damocles' hanging over his/her head.

Under our constitutional scheme, it is the Supreme Judicial Council which has been vested with the authority to formulate the Code of Conduct for the Judges of the Supreme Court. However, while disposing of Civil Appeal No.06 of 2017, the learned Chief Justice, in his rather elaborate judgment, formulated the Code of Conduct to be followed by the Judges of the Supreme Court, stating as under :

> "With a view to avoiding any misgiving and confusion, we reformulate the Code of Conduct in exercise of powers under article 96 as under :" (emphasis added)

In my considered view, this was well beyond the scope of this Division for the simple reason that the authority to formulate the Code of Conduct has been vested exclusively with the Supreme Judicial Council, as evident from Clause (3) and Clause (4) of Article 96, which reads as under:

> (3) "There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges:
>
> Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or in unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.
>
> (4) The function of the Council shall be-
>
> (a) to prescribe a Code of Conduct to be observed by the Judge; and"
>
> (emphasis added)

Although the Appellate Division of the Supreme Court comprises of the Judges who also form the Supreme Judicial Council, yet the Supreme Judicial Council is distinct and separate from the Appellate Division. Therefore, the formulation of the Code of Conduct by the learned Chief Justice appears to be in excess of the authority vested in this Division. This is obviously an error apparent on the face of the record.

Accordingly, I am inclined to hold that the Code of Conduct, as formulated by the learned Chief Justice while delivering the judgment in C.A. No.06 of 2017, cannot be taken to have been formulated as per Article 96 (4) of the Constitution. Resultantly, in view of the restoration of the Supreme Judicial Council, it is now incumbent upon the Council to formulate the Code of Conduct afresh.

Accordingly, the Review Petition stands disposed of with the observations made hereinabove.

J.

Syed Md. Ziaul Karim, J: I respectfully agree with the observations made by My Lord the Chief Justice. However, I would like to add some few words of my own on the issue.

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The Judges removal mechanism.

The Rule of law is a basis feature of the constitution and the precondition of the rule of law is an in dependent judiciary

which will administer justice according to law. One of the essential conditions of the independence of judiciary is security of tenure.

With a view to avoiding any confusion we formulate the code of conduct in exercise of powers under article 96 which reads as hereunder:-

Code of Conduct

(1) A Judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved.

(2) A Judge should respect and comply with the constitution and law, and should act at all times in a manner that promotes public confidence in the judiciary.

(3) A Judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A Judge should not lend the prestige of the judicial office to advance the private interests of others: nor convey or permit others to convey the impression that they are in a special position to influence the Judge.

(4) A Judge should be faithful to and maintain professional competence in the law, and should not be swayed by partisan interests, public clamor, or fear of criticism.

(5) A Judge should be patient dignified, respectful, and courteous to litigants, lawyers, and others with whom the Judge deals in an official capacity, and should require similar conduct of those officers to the Judge's control. Including lawyers to the extent consistent with their role in adversarial system.

(6) A Judge should dispose of promptly the business of the court including avoiding inordinate delay in delivering Judgments/orders. In no case a Judgment shall be signed later than six months of the date of delivery of Judgment.

(7) A Judge should avoid public comment the merit of a pending or impending Court case.

(8) A Judge shall disqualify himself/ herself in a proceeding in which the Judge's impartiality might reasonably be questioned.

(9) A Judge shall disqualify himself/ herself to hear a matter/cause where he served as lawyer in the matter in controversy, or with whom the Judge previously practiced during such association as a lawyer concerning the matter, or the Judge or such lawyer has been a material witness

(10) A Judge shall not hear any matter if he/her knows or if he/she is aware or if it is brought into his/her notice that, individually or as a fiduciary, the Judge or the Judge's spouse or children have a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be affected substantially.

(11) A Judge requires a degree of detachment and objectivity in judicial dispensation and he is duty bound the oath of office.

(12) A Judge should practice a degree of aloofness consistent with the dignity his office.

(13) A Judge should not engage directly or indirectly in trade or business, the by himself or in association with any other person.

(14) A Judge must at all times be conscious that he is under the public gaze there should be no act or omission by him which is unbecoming of his office and the public esteem in which that office is held.

(15) A Judge should not engage in any political activities, whatsoever in the country and abroad.

(16) A Judge shall disclose his assets and liabilities, if asked for, by the Chief Justice.

(17) Justice must not only be done but must also be seen to be done. The behavior and conduct of a member the higher judiciary must reaffirm people's faith in the

impartiality of the judiciary. Accordingly, any act of Judge, whether in official or persona capacity, which erodes the credibility of this perception has to be avoided

(18) Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.

(19) A Judge should not permit any member of his immediate family, such a spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.

(20) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

(21) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

(22) A Judge is expected to let his judgments speak for themselves. He shall not give interview to the media.

(23) A Judge shall disqualify himself or herself from participating in any proceedings in which the Judge is unable to decide the matter impartially or in which it

may appear to a prudent man that the Judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where the Judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings.

(24) A Judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

(25) The behavior and conduct of a Judge must reaffirm the people's faith in the integrity of the judiciary.

(26) A Judge shall avoid impropriety and the appearance of impropriety in all of the Judge's activities.

(27) As a subject of constant public scrutiny. a Judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizens and should do so freely and willingly

(28) A Judge shall, in his/her personal relationship with individual members of the legal profession who practice regularly in the Judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.

(29) A Judge shall not participate in the determination of a case in which any member of the Judge's family represents a litigant or is associated in any manner with the case.

(30) A Judge shall not allow the use of the Judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

(31) A Judge shall not allow his/her family to maintain social or other relationship improperly to influence any judicial matter pending in his/her court.

(32) A Judge shall not use or lend the prestige of the judicial office to advance the private interests of the Judge, a member of the Judge's family or of anyone else, nor shall a Judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the Judge in the performance of judicial duties.

(33) A Judge shall not practice law or maintain law chamber while he is holding judicial office.

(34) A Judge and members of the Judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by the Judge in connection with the performance of judicial duties.

(35) A Judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the Judge deals in an official capacity. The Judge shall require similar conduct from legal representatives, court staff and

others subject to the Judge's influence, direction or control.

(36) A Judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

(37) A Judge shall sit in and rise from the court in time without fail and in case the Chief Justice notices that a Judge does not utilize the time allocated for judicial works, the Chief Justice shall intimate the Judge by writing to maintain the court's time and despite such notice if the Judge does not rectify, such conduct be treated as misconduct and he/she will be dealt with in accordance with law.

(38) (a) If a complaint is received by the Chief Justice from anybody or any other sources that the conduct of a Judge is unbecoming of a Judge, that is to say, the Judge is unable to perform his/her judicial works due to incapacity or misbehavior, the Chief Justice shall hold an inquiry into such activities with other next two senior most Judges of the Appellate Division and if the Chief Justice or any one of the other Judges declines to hold a preliminary inquiry or if the allegation is against any one of them, the Judge who is next in seniority to them shall act as such member and if upon such inquiry it found that there is prima- facie substance in the allegation the Chief Justice shall recommend to the president.

(b) A complaint against a Judge shall be processed expeditiously and fairly and the Judge shall have the opportunity to comment on the complaint by writing at the initial stage. The examination of the complaint at its initial stage shall be kept confidential, unless otherwise requested by the Judge.

(c) All disciplinary action shall be based on established standards of judicial conduct.

39. The above Code of Conduct and the ethical values to be followed by a Judge, failing which, it shall be considered as gross misconduct.

In all respect I am of the view that Sixteenth Amendment is a colourable legislation and is violative of separation of powers among the 3 (three) organs of the State, namely, the Executive, the Legislature and the Judiciary and independence of the Judiciary as guaranteed by Articles 94(4) and 147(2), two basic structures of the Constitution and the same are also hit by Article 7B of the Constitution.

Therefore both the Divisions rightly declared that the Constitution (Sixteenth Amendment) Act, 2014 (Act No.13 of 2014) is colourable, void and ultra-vires the Constitution of the People's Republic of Bangladesh.

Consequently, the instant Civil Review Petition is disposed of with the observations made above.

J.

Md. Rezaul Haque, J: I respectfully agree with the observations made by My Lord the Chief Justice. However, I would like to add a few lines of my own on the issue.

Without repeating the provisions before the Sixteenth Amendment to the Constitution (as quoted earlier in this judgment) and what this amendment has done to the Constitution, I would like to focus on the significance of reviewing this Amendment in order to protect the solemnity and decisiveness of separation of power which is essential for ensuring the independent, impartial and fair functions of the three organs of the State upholding and standing on the same confidence of dignity, power and authority they hold under the Constitution maintaining mutual respects, margins and fine line amongst themselves.

At this juncture, conceiving and agreeing with the deliberations of the Hon'ble Chief Justice of Bangladesh and respecting my brother Judges, I would like to take this opportunity to add some of my thoughts given the importance of this case in order to protect and uphold the dignity and integrity of the justice delivery system by the judges amongst others.

The following questions peep into our mind while discussing about the removal of Judges of the apex Court. If the Judges are not able to protect themselves, then how will they be able to protect the interests of the litigants who come to the court as of their last hope against the wrongs and unfairness they have suffered? If the Judges have to live with fear of losing their jobs at the will of other organ of the State, namely, the Parliament except their superior and independent authority consisting of senior Judges, then how can they act fairly and impartially? This sort of protection is an inherent entitlement of the Judges to make them feel free and independent, because without an

independent mind and authority, none can act and function independently, impartially and fairly for rendering justice to the litigants having no personal nexus with the Judges.

However, the independence of judiciary does not connote that a Judge will be immune from any responsibility for whatever he does. Judicial independence without accountability may be fruitless and therefore, judicial independence essentially involves the concept of judicial accountability of the Judges. In order to ensure accountability of the Supreme Court Judges, Code of Conduct was formulated at casual intervals. Removal of a Judge from his office for proved misconduct and misbehavior falls to a great extent within the purview of judicial accountability. Removal of a Judge from his office has proximate nexus with the independence of judiciary since in most of the cases Judges have to work in a critical situation and their righteous act may even incur criticism from vested quarters. In order to establish effective check and balance between independence of judiciary and judicial accountability provision for removal of the Judges from their office should be a unique one so that independence of judiciary is ensured while removing judges who are in violation of their oath or become physically or mentally unfit to perform as a Judge. Clause 2 of Article 96 of the Constitution as substituted by section 2 of the Constitution (Sixteenth Amendment) Act, 2024 articulates that a Judge shall not be removed from his office except by an order of the President passed pursuant to a resolution of Parliament supported by a majority of not less than two-thirds of the total number of members of Parliament, on the ground of proved misbehavior of incapacity. This provision may not address the situation where misbehavior or incapacity of a Judge has been proved but the Parliament failed to pass a resolution supported by a majority of not less than two-thirds of

the total members of the Parliament. It is because of political rivalry prevalent in our country it may happen that a resolution for removal of a Judge of the Supreme Court may not be passed simply because of political consideration. Independence of Judiciary may seriously be questioned if the Judge with proved misbehavior or incapacity continues his office for failure of Parliament to take resolution. The establishment of Supreme Judicial Council for enquiring into the incapacity or misconduct of a Judge of the Supreme Court for his removal by the President for proved misconduct or incapacity accords more with the constitutional scheme of Separation of Powers.

The relevant provisions of law before the Sixteenth Amendment provides for taking action against any Judge of the Supreme Court who is in violation of his oath or becomes physically or mentally unfit to perform as a Judge after enquiry report being submitted to the President by the Supreme Judicial Council which ordinarily comprises the Chief Justice of Bangladesh and two other Senior most Judges of the Appellate Division of the Supreme Court. But surprisingly the Sixteenth Amendment to the Constitution did make it dependent on some other organs of the State, which is equal to undermining the independent authority of the judiciary as an organ of the State.

Under the scheme of the Constitution of the People’s Republic of Bangladesh, all the three organs are of equal significance and importance. None is subordinate to the others. All the three organs must act harmoniously in order to serve and protect the people who are the supreme authority of the land. But through the Sixteenth Amendment, the judiciary was made subservient to the other organs, which is *ipso facto* unconstitutional and is also undesirable and unacceptable.

The Executive, the Judiciary and the Legislature are the three organs of the State, who are supposed to be independent and dependent at the same time upon each other maintaining and respecting each one's boundaries and functions. All the organs are constitutionally duty-bound to serve the people. Therefore, it is not about supremacy of each organ but about ensuring functions properly so that people are served in accordance with law. It should be the prime consideration of all organs of the State that people shall not suffer due to establishing each one's hegemony over others.

Establishing hegemony of one organ over other is a common phenomenon in our country and the common people are the direct victims of it. Therefore, subjugating one organ to another is an act against the will of the people and our Constitution as well. Unfortunately, the Sixteenth Amendment to the Constitution has done no justice to that will, rather it has done the opposite exactly. Thus, there is no plausible reason to uphold the same. Both the Divisions of the Supreme Court of Bangladesh have rightly declared the Sixteenth Amendment unconstitutional and *ultra vires* the Constitution.

It is worth mentioning here that the learned Judge of the High Court Division being the third Judge of the Bench delivered dissenting opinion about the Sixteenth Amendment. He, while delivering dissenting opinion, made some remarks which in my view do not have reasonable nexus with the facts in issue of the writ petition. Those remarks fall within the purview of obiter dicta. Obiter dicta have significance and it can be persuasive and provide guidance for future cases.

Obiter dictum is a latin phrase that means "something said in passing". Obiter dictum is a judicial comment made while delivering a judicial opinion,

but one that is unnecessary to the decision in the case and therefore not precedential [Black's Law Dictionary, 11th Edition, page 569]. Obiter dictum is something said by the way, a cursory remark; a comment made by a judge which, though carrying weight, does not bear directly on the case in hand and therefore need not influence the decision (law) [The Chambers Dictionary, 10th Edition, page 1039].

Though those remarks are *obiter dicta*, deserves to be examined for their tendency to undermine the authority of the Appellate division and invite debate involving controversial political matters.

The learned Judge stated, "মেজর জেনারেল জিয়াউর রহমান বাক বাকুম করে ক্ষমতা নিয়ে নিলেন তথা রাষ্ট্রপতির পদ দখল করলেন।------। বিচারপতি আবু সাইদ চৌধুরী , প্রধান বিচারপতি আবু সাদাত মোহাম্মদ সায়েম, মেজর জেনারেল জিয়াউর রহমান গংরা দেশে নির্বাচিত প্রতিনিধি থাকা সত্ত্বেও অস্ত্র এবং অবৈধ কলমের খোচায় নির্বাচিত জাতীয় সংসদকে ভেঙ্গে ডাকাতদের মত অবৈধভাবে জোরপূর্বক জনগণের ক্ষমতা ডাকাতি করে দখল করেন। ----------। একজন মুক্তিযোদ্ধা হয়ে মেজর জেনারেল জিয়াউর রহমান মুক্তিযুদ্ধের বিরোধী তথা স্বাধীনতাবিরোধী রাজাকার, আলবদর, আল-শামস এবং জামায়াতে ইসলামীকে এদেশে পুনর্বাসন করেন। তাদেরকে রাজনীতি করার অধিকার দেন। তাদেরকে নাগরিকত্ব দেন। (যে নাগরিকত্বকে আমাদের তথাকথিত জামায়াতী এবং স্বাধীনতা বিরোধী মানসিকতার বিচারকরা বৈধ বলেন)"।

Mr. Ziaur Rahman was a sector commander and the chief of 'Z' Force during our historic war of liberation. He fought at the frontline with outmost courage for the cause of the nation despite incarceration of his wife and sons during war of liberation. The words "ডাকাতদের মত" and "ডাকাতি করে" are extremely uncalled for in relation to him since the sentences quoted above do not have any bearing upon the merit of the case in hand. Moreover, those remarks were passed without objective consideration of the circumstances prevailing at that time for which the same appear to be political in nature and derogatory to judicial norms. We find support from two decisions of the

Supreme Court of India on the point that a Judge's liberty to pass any comment is not unbridled and derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to criticize on their conduct.

In the case of The Chief Election Commissioner of India Vs. M.R. Vijayabhaskar and Others, reported in AIR 2021 SC 2238, it was observed-

> "The duty to preserve the independence of the judiciary and to allow freedom of expression of the judges in court is one end of the spectrum. The other end of the spectrum, which is equally important, is that the power of judges must not be unbridled and judicial restraint must be exercised, before using strong and scathing language to criticize any individual or institution. In balancing these two ends, the role of superior courts is especially relevant. This Court must strike a balance between reproaching the High Courts or lower Courts unnecessarily, so as to not hamper their independent functioning. This Court must also intervene where judges have overstepped the mark and breached the norms of judicial propriety."

In the case of A.M. Mathur Vs. Pramod Kumar Gupta, reported in AIR 1990 SC 1737, it was observed-

> "We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct."

The remarks that Ziaur Rahman gave citizenship to Jamat undermines the authority of the Appellate Division since citizenship of Golam Azam was ultimately determined by the judgement of the Appellate Division in the case

of Bangladesh Vs. Golam Azam and Others, reported in 3 BLT (AD) 3. The Judgement of the Appellate Division is binding upon the High Court Division as per Article 111 of the Constitution and a remark, by a Judge of the High Court Division, of such a kind that Ziaur Rahman gave citizenship to Jamat i.e. Golam Azam is derogatory to judicial norms which undermines the authority of highest Court of this Land.

In any service, everyone has an inherent right to resign. None can be compelled to carry on in the service against his/her free will. Therefore, the restoration of the provision regarding the resignation from the service by a Judge of the Supreme Court under Article 96(8) of the Constitution, as has been observed by the Hon'ble Chief Justice is a needed one.

Resultantly, endorsing the final observations of the Lord Chief Justice, this Review Petition is disposed of restoring Article 96 of the Constitution in its entirety with the observations made above. The derogatory remarks described hereinbefore passed by the learned Judge of the High Court Division being the third Judge of the Bench are, hereby, expunged.

J.

S.M. Emdadul Hoque, J: I have gone through the proposed judgment of my Lord, the learned Chief Justice, and those of the other learned brothers. I fully concur with the decision arrived at unanimously in disposing of the Review Petition with observation. But I want to take an opportunity to express my own view on the matter.

The instant Review Petition has been filed for reviewing the judgment and order dated 03.7.2017 passed by this Division in Civil Appeal No. 06 of 2017 dismissing the Appeal thereby affirming the judgment and order dated

05.5.2016 passed by a Larger Bench of the High Court Division in Writ Petition No. 9989 of 2014 making the Rule absolute. Advocate Asaduzzaman Siddiqui along with others filed the said Writ Petition challenging the Sixteenth Amendment Act, 2014 for declaring the same colourable, void and ultra vires the Constitution.

It appears from the record that the petitioner, Government filed the instant Review Petition relying on 94 grounds but at the time of hearing of the Review Petition, the learned Attorney-General appearing for the petitioner made his submission only on the following additional ground:

> "Because it is apparent on the face of the record that this Division has committed illegality causing an ambiguity in not restoring sub-Article (1) and (8) of Article 96 of the Constitution inasmuch as those sub-Articles deal with the retirement age and the right of resignation of the Judges of the Hon'ble Supreme Court of Bangladesh which are core issues of Article 96 of the Constitution since 1972 and hence the said sub-Articles are required to be restored to remove any kind of ambiguity upon reviewing the impugned judgment."

The principles of Separation of Powers, Rule of Law, and Judicial Independence form the foundation of the Constitution. Judicial Independence is crucial for upholding the Rule of Law as mandated by the Constitution. Judicial independence should not be interpreted as an absence of responsibility for a judge's conduct. Without accountability, judicial independence fails to uphold the true meaning of justice. Consequently, judicial independence fundamentally encompasses the principle of judicial accountability.

The judges of the constitutional court have sworn to uphold the Constitution. As a consequence, the accountability of judges holds significant

importance. The Supreme Judicial Council bears the significant responsibility of ensuring that judges of the superior courts remain dedicated to the Code of Conduct, thereby maintaining their accountability to the Constitution.

The Supreme Judicial Council will deal with the allegations against the Supreme Court judges over incapacity or misconduct. The council comprising the Chief Justice and two other senior judges of the Appellate Division to inquire into such allegations and make necessary recommendations to the president for action. This function is not only vested to looking into the matter of the judges of the Supreme Court but also for any other surrounding functionary who is removable from office except in like manner as judges.

The original 1972 Constitution did not include any provision for Supreme Judicial Council. In the original Constitution, it was provided that a judge could be removed on the grounds of misbehavior or incapacity by an order of the President only when the order was supported by a majority of not less than two-thirds of the total number of the members of the Parliament. However, the Fourth Amendment in 1975 revoked Parliament’s power and transferred the authority to remove judges to the President.

In 1978, following a martial law proclamation, the President’s power to remove judges was limited, and the Supreme Judicial Council was established which includes the Chief Justice and the two most senior judges of the Supreme Court of Bangladesh. Subsequently, it was confirmed by the Fifth Amendment to the Constitution in 1979. As the Constitution grants this power to the judges themselves, it is their responsibility to develop a Code of Conduct and to make rules for pioneering the transparent inquiry accordingly.

Primarily, the Code of Conduct was formulated in 1977. However, on May 7, 2000, further a new Code of Conduct was formulated by the Supreme Judicial Council. This revised Code emphasized the importance of adherence to it for the effective functioning of the judiciary. The aim was to ensure accountability and foster public confidence in the higher Judiciary.

Article 96 (before the Sixteenth Amendment) reads as follows:

> "(1) Subject to the other provisions of this article, a Judge shall hold office until he attains the age of sixty-seven years.
>
> (2) A Judge shall not be removed from his office except in accordance with the following provisions of this article.
>
> (3) There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges:
>
> Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.
>
> ***(4) The function of the Council shall be -***
>
> > ***(a) to prescribe a Code of Conduct to be observed by the Judges;*** and
> >
> > (b) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge.
>
> (5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge -
>
> > (a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or
> >
> > (b) may have been guilty of gross misconduct, the
> >
> > President may direct the Council to inquire into the

matter and report its finding.

(6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office.

(7) For the purpose of an inquiry under this article, the Council shall regulate its procedure and shall have, in respect of the issue and execution of processes, the same as the Supreme Court.

(8) A Judge may resign his office by writing under his hand addressed to the President."

On a plain reading of the now-restored clause (4) of Article 96, it is found that it empowers the Supreme Judicial Council to formulate a Code of Conduct for judges of the higher Judiciary, and the Supreme Judicial Council has to ensure the accountability of the judges, through the Code of Conduct to be observed by the Judges. Judicial accountability refers specifically to obedience to the Code of Conduct formulated under the Constitution.

The Code of Conduct has been promulgated by this Court. However, according to the provisions of Articles 103 and 105 of the Constitution, this Court can frame any Code of Conduct. Nonetheless, since sub-article 4 of Article 96 of the Constitution explicitly grants this authority to the Supreme Judicial Council. Therefore, in my opinion, it is the Supreme Judicial Council that must hold the absolute authority to formulate the Code of Conduct and to make rules for pioneering the transparent inquiry and investigation against the Judges of the Supreme Court. In this instant case, my Lord Honourable Chief Justice has taken the view that:

"There is a common thread too binding all the issues raised in this Review Petition touching also upon the Supreme Judicial Council's continued authority, for example, to evaluate and

revise, if need be, the content of the Judges' Code of Conduct. The said Code as contemplated under the now-restored clause (4)(a) of Article 96 is foremost an essential component of gauging the sufficiency and indeed the constitutionality judicial conduct in a constitution which itself is a living document permitting of perpetual reinvention. In this, much reliance is placed on the competence, authority and power of an independent judiciary to undertake the progressive interpretation of the Constitution. Indeed, this is key to the survival of the Constitution itself. It is also the case that the spirit of the Constitution over and beyond merely the letter of the Constitution gains prominence within such a narrative. Otherwise, constitutionalism itself is placed at a risk. Considered in this context the Code of Conduct to be considered in this context the Code of Conduct to be considered relevant permits of growth and mutations drawing on the inherent power of the Supreme Judicial Council to revisit existing provisions as and when necessary.

Predicated on the above, Article 96 is, accordingly, restored in its entirety. This Review Petition is, accordingly, disposed of with the observations above. But to dispel any confusion and to obviate any necessary ambiguity and dispute in the operation of the operating part of the impugned judgment, clauses 2-8 of Article 96 are, hereby, declared to be in their entirety."

I fully concur with the view of my Lord Honourable Chief Justice.

On perusal of the 16th Amendment judgment, it is reasonably noticeable that though some remarks made in the judgment of the High Court Division about the members of parliament have been expunged, the remarks of the third judge i.e., Justice Md. Ashraful Kamal of the judgment in the High Court Division about the political and historical context remained intact.

However, during the hearing of this Review Petition, learned Attorney-General Md. Asaduzzaman mentioned that the part of the third judge's remarks in the judgment of the High Court Division was considered Obiter Dictum.

In the given backdrop, we need to look into the meaning of the term Obiter Dicta (often referred to simply as dicta or obiter), which is the plural form of Obiter Dictum.

Black's Law Dictionary defines obiter dicta in the following way-

> ***"["Something said in passing"] A judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (though it may be considered persuasive)- Often shortened to dictum or, less commonly, obiter." [Black's Law Dictionary, p. 1100(17th ed. 1999)] and "Judicial dictum" meaning- "An opinion by a court on a question that is directly involved, briefed, and argued by a counsel, and even passed by the court, but that is not essential to the decision." [Black's Law Dictionary, p. 465 (17th ed. 1999)]***

The Law Lexicon provides that-

> ***"1. An obiter dictum is a remark made or opinion expressed by a judge, in his decision upon a cause, 'by the way' that is incidentally or collaterally and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy or suggestion." 2. A saying by the way, an opinion of a judge not necessary to the judgment given of records, in contradistinction to a judicial dictum, which is necessary to the judgment. 3. An "obiter dictum" as distinguished from ratio decidendi is an observation by the court on a legal question suggested in a case before it but not arising in such a manner as to require a decision. Such an obiter may not have a binding precedent but it***

> ***cannot be denied that it is of considerable weight" [The Law Lexicon with Maxims, p. 792, 1st ed. 2016]***

According to **Stroud's Judicial Dictionary**-

> ***"Obiter dicta are what the words literally signify, namely, statements by the way. If a judge thinks it desirable to give his opinion on some point which is not necessary for the decision of the case, that, of course, has not the binding weight of the decision of the case, and the reasons for the decision." [Stroud's Judicial Dictionary, p. 1741, sixth ed.]***

The Lexicon the encyclopedic Law Dictionary provides the following-

> ***"An opinion of law not necessary to the decision. In the course of a suit, many incidental questions arise indirectly connected with the main question for consideration, the observation on such questions whether casual or of collateral relevance are known as "obiter dicta" or simply known as dicta." [The Lexicon The encyclopedic Law Dictionary, p. 1230, 3rd ed. 2012]***

Under English common law, a judgment consists of two components: ratio decidendi and obiter dicta. The ratio decidendi is binding, while obiter dictum is considered persuasive but not obligatory. A judicial statement is considered ratio decidendi only if it directly addresses the key facts and legal issues of the case. Statements that are non-essential, or that relate to hypothetical situations or unrelated legal matters, are classified as obiter dictum. Obiter dictum refers to remarks or observations made by a judge that, although included in the court's opinion, are not essential to the court's ruling. In a judicial opinion, obiter dictum may include comments made for illustration, analogy, or argument. Obiter dictum does not influence the judicial decision, even if it accurately reflects the law.

So, from the above discussion, it is quite clear that **the Obiter Dictum does not have any authority or binding force on other courts but it can be cited as persuasive authority in future litigation.**

The subject matter of Obiter dictum can include discussions of hypothetical facts, cases, or laws. However, ***to avoid further persuasion in any future litigation or any discussions*** it is proper to mention that a judge should not comment on any political matter in his judgment as it reflects his political or personal views, thus affecting the independence of the judiciary.

Now we need to have a glimpse of the situation prevailed in the aftermath of the Fourth Amendment of the Constitution. The Fourth Amendment was passed in January, 1975 altering and destroying the basic and essential features of the original Constitution. Renowned lawyer Mahmudul Islam described the situation in his book titled "Constitutional Law of Bangladesh", 3rd edition at page 24 which is extracted below:

> "In January, 1975 the Constitution (Fourth Amendment) Act, 1975 was passed transforming the Constitution beyond any resemblance with the original. Part VIA was incorporated prescribing that there would be only one political party in the State, thereby rendering a severe blow to the democratic set up of the Constitution and paved the way for military dictatorship. Art.102(1) which conferred power on the High Court Division to enforce the fundamental rights was repealed and by an amendment of art. 44 Parliament was empowered to establish by law a constitutional court, tribunal or commission for enforcement of the fundamental rights. The parliamentary form of government was replaced by a form of government which was an apology of a presidential form as the normal checks and balances of a presidential form of government were not incorporated. A provision was made for a Vice-President who was to be appointed

> by the President. The President became the repository of the executive power of the Republic which he would exercise with the assistance of ministers selected by him. The President was empowered to appoint the Prime Minister and other ministers from among the members of Parliament or persons qualified to be elected as members of Parliament. The President would preside over the meetings of the Council of Ministers, and the Prime Minister and all other ministers would hold office during the pleasure of the President. The Ministers had the right to speak and take part in the proceedings of Parliament. But they were not entitled to vote unless they were members of Parliament. The Judges of the Supreme Court were made removable by the President on the ground of misbehaviour or incapacity. The provision for consultation with the Chief Justice in respect of the appointment of puisne Judges of the Supreme Court was repealed. The control in respect of subordinate courts and judges was taken away from the Supreme Court and vested in the President. The system introduced was a mishmash of parliamentary and presidential forms of government and the upshot was that the President emerged as the all-powerful authority in the Republic."

Chief Justice Mustafa Kamal in his book titled "Bangladesh Constitution: Trends and Issues" at page 39 commented in the following-

> "The Fourth Amendment made a drastic inroad into the independence and jurisdiction of the judiciary, which has been considered in Chapter II. A one-party State was established. The person holding office as President immediately before this amendment ceased to hold the office and Sheikh Mujibur Rahman entered upon the office of President from the commencement of the Fourth Amendment Act, as if elected to that office."

Thus, the Fourth Amendment brought a devastating effect to the original basic structure of the constitution. Bangladesh Krishak Sramik Awami League was formed to the exclusion of all other parties. All newspapers and periodicals

except a designated few lost their declaration. The President was made the owner of supreme power of the state and the democracy lost its existence. The power of removal of Judges of the Supreme Court was vested to the President. In the said way, the independence of judiciary was posed under a serious threat.

On 15th August, 1975 President Sheikh Mujibur Rahman was assassinated and Mr. Khandaker Moshtaque Ahmed assumed the office of the President placing the whole country under Martial Law. In Bangladesh Martial Law was imposed twice first, on the 15th August, 1975 and secondly, on the 24th March, 1982. By a Proclamation dated 20th August, 1975 though the Constitution was not suspended the same was made subservient to the Martial Law Proclamation and the Martial Law Regulations and Orders. All courts, including the Supreme Court, were divested of any power to call in question or declare void or illegal the said Martial Law Proclamation, Regulation.

On the 3rd November, 1975 there was a coup under the leadership of Khaled Mosharrof and the then Army Chief Major General Ziaur Rahman was removed from his office and he was taken to the house arrest. On 6th November, 1975, Mr. Khandaker Moshtaque Ahmed left office of President to the Chief Justice of Bangladesh, Mr. Justice A. M. Sayem. On 7th November, 1975 the soldiers along with the support from the general masses through the Sipahi–Janata Revolution freed Ziaur Rahman from house arrest. On 8th November, 1975 the Second Proclamation was declared by virtue of which Mr. Justice A. M. Sayem assumed the powers of Chief Martial Law Administrator for the effective enforcement of Martial Law and Parliament was dissolved with effect from the 6th November, 1975.

By third Proclamation on 29th November, 1976 Mr. Justice Sayem relinquished the Office of the Chief Martial Law Administrator in favour of Major General Ziaur Rahman. On 21st April, 1977 Mr. Justice Sayem resigned from the office of President and appointed Major General Ziaur Rahman as the President. While Major General Ziaur Rahman continued to hold the two offices together lifted Martial Law by a Proclamation dated 7th April, 1979.

At this juncture, I need to shed light on the discussion regarding doctrine of necessity in the context of assumption of power by Major General Ziaur Rahman.

Mahmudul Islam observed in his book titled "Constitutional Law of Bangladesh", 3rd edition at page 106 in the following-

> "Principle of necessity: We have seen that unconstitutional acts were found legal on application of the principle of necessity. The principle, in its application to constitutional law, which are otherwise illegal or not permitted by the constitution be held legal if done *bona fide* under the stress of necessity with intention to preserve the constitution, the State or the society. In *Reference by Governor General* Munir (1955) 7DLR(FC) 395 CJ after quoting from the statement of Lord Mansfield in *R. v. Stratton*,(1779) 21 St. Tr. 1045.
>
> Observed -
>
> > "The principle clearly emerging from this address of Lord Mansfield is that subject to the condition of absoluteness, extremeness and imminence, an act which would otherwise illegal becomes legal if it is done bona fide under the stress of necessity, the necessity being referable to an intention to preserve the constitution, the State or the Society and to prevent it from dissolution, and affirms Chitty's statement that the necessity knows no law and the maxim cited by Bracton that necessity makes lawful which otherwise is not

> lawful. Since the address expressly refers to the right of a private person to act in necessity, in the case of Head of the State justification to act must a fortiori be clearer and more imperative."

For smooth transition to a lawful government it may be necessary to condone some of the actions of the usurper, but there is no necessity of condoning the illegality of promulgation of laws by the usurper. Furthermore, it should be noted that a constitution of a democratic polity confers power of making law only on the legislature and the legislature may under certain conditions discussed earlier in this chapter delegate the legislative power to specified authority and any law not made by the legislature or its delegate is *ultra vires* the constitution. Imparting validity to such law would amount to infringing the basic feature of the constitution, namely, supremacy of the constitution, which neither Parliament can do, nor the court can pronounce. Lord Pearce and Justice Iftikhar Muhammad Choudhury were right in narrowly setting the limit of condonable actions. There is no forensic reason to go beyond what Lord Pearce and Justice Iftikhar Muhammad Choudhury considered valid on the application of the principle of necessity."

Regarding the Fourth Amendment Chief Justice Mostafa Kamal aptly said in his book (supra) at page 54-

> "It is thus a great irony of history that while the elected representatives of the people in a democratic dispensation banned all political parties except one, it was a Judge and later a General, who, under the cover of Martial Law, restored the multi-party system."

It is not gainsaying that the third Judge's opinion in relation to the 16th Amendment case passed by the High Court Division has no binding effect. However, they may be referred to as obiter dicta. In the said context, it is essential to mention some of his observations which are made regarding

controversial political and historical issues. Accordingly, some of the observations made by the third Judge, Mr. Justice Ashraful Kamal are extracted below-

> "একদিকে বীর বাঙ্গালী জাতীয় মুক্তি সংগ্রামে আত্মনিয়োগ ও প্রাণ উৎসর্গ করেছিলেন অপরদিকে পাকিস্তানী হানাদার বাহিনীর সাথে এক যোগ হয়ে আমাদের দেশের জামায়াতে ইসলামী বাংলাদেশ দলটি এবং তার সমর্থকরা স্বাধীনতার বিরোধীতা করেছে।
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> পৃথিবীর এমন কোন দেশ খুঁজে পাওয়া যাবে না যেখানে সে দেশের কিছু সংখ্যক জনগোষ্ঠী তাদের স্বাধীনতার বিরোধীতা করেছে। একমাত্র আমাদের এই বাংলাদেশ ব্যতিক্রম। উপরের রায়টি পর্যালোচনা করলে এটা কাঁচের মত পরিস্কার যে, মুক্তিযুদ্ধের সময় আমাদের দেশের কিছু সংখ্যক ব্যক্তি, জনগোষ্ঠী এবং দল, যার নেতৃত্বে ছিল জামায়াতে ইসলামী বাংলাদেশ, আমাদের দেশের স্বাধীনতার বিরোধীতা করে এবং পাকিস্তানের সৈন্যবাহিনীকে সহযোগিতা করেছে। এর চেয়ে দুর্ভাগা দেশ আর আছে কিনা- আমি জানি না। এখন ধরা যাক ঐ স্বাধীনতাবিরোধী জনগোষ্ঠীর মধ্য থেকে কোন একজনকে সুপ্রীম কোর্টে বিচারপতি নিয়োগ করা হল। এখন তাকে যদি সংবিধানের ব্যাখ্যা প্রদান করার জন্য বলা হয় তাহলে তিনি সংবিধানকে কোন আঙ্গিকে ব্যাখ্যা বিশ্লেষণ করবেন? অবশ্যই তিনি তার স্বাধীনতাবিরোধী মন মাসনিকতার আঙ্গিকেই আমাদের এই মহান পবিত্র সংবিধানকে ব্যাখ্যা করবেন। বাংলাদেশের স্বাধীনতা বিরোধী মন মানসিকতা সম্পন্ন এই ধরনের বিচারক আমরা অতীতে দেখেছি।
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> স্বাধীনতার চার দশকেরও অধিককাল অতিবাহিত হওয়ার পরও কেন বাংলাদেশের জনগন স্বাধীনতাবিরোধী চিন্তা চেতনার বিচারক দেখবে? ৩০ লক্ষ মুক্তিযোদ্ধার রক্তের উপর দাড়িয়ে স্বাধীনতাবিরোধী জামায়াতী বিচারপতিরা কেন বহাল থাকবে? কেন রাজাকার বিচারপতি বহাল থাকবে? কেন আলবদর বিচারপতি বহাল থাকবে? কেন ত্রিশ লক্ষ বাঙ্গালী হত্যাকারী ও দুই লক্ষ মা বোনের সম্ভ্রম হরণকারী জামায়াতী বিচারপতিরা বহাল থাকবে? আমাদের বীর মুক্তিযোদ্ধারা কি এই জন্য যুদ্ধ করেছিল?
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> বাংলাদেশের জনগণকে ধন্যবাদ তারা এবার আমাদেরকে স্বাধীনতাবিরোধী তথা জামায়াতমুক্ত তথা রাজাকারমুক্ত জাতীয় সংসদ উপহার দিয়েছেন। সেই মহান জাতীয় সংসদের নিকট জনগনের চাওয়া বিচার বিভাগ থেকে স্বাধীনতাবিরোধী, রাজাকার, আলবদর এবং জামায়াতে ইসলামী নামক রাজনৈতিক দলটির আদর্শে বিশ্বাসী (যারা আমাদের স্বাধীনতা এবং সংবিধানকে বিশ্বাস করে না) বিচারপতিদের অপসারণ করে বিচার বিভাগ তথা জাতিকে কলংকমুক্ত করবেন। তা না হলে ঐসব বিচারপতিরা আমাদের পবিত্র সংবিধানকে তাদের স্বাধীনতাবিরোধী মানসিকতায় ইচ্ছামত ভুল ব্যাখ্যা করে জামায়াতে ইসলামী নামক দলটির সংবিধানে পরিণত করবেন।"

বিচারপতি আবু সাদাত মোহাম্মদ সায়েম নির্বাচিত জাতীয় সংসদকে বাতিল করে আরো ভয়ংকর কাজ করেন এবং ২৯শে নভেম্বর ১৯৭৬ তারিখে একজন আর্মি রুলস ভঙ্গকারী সরকারী কর্মচারী মেজর জেনারেল জিয়াউর রহমানকে দেশের রাষ্ট্রপতি বানিয়ে দেন। অবস্থাদৃষ্টে মনে হয় তিনি (সায়েম) যেন তখন ইচ্ছা পোষণ করলে একজন ডাকাতকেও দেশের রাষ্ট্রপতি বানিয়ে দিতে পারতেন। দেশের জনগনের তখন কোন ইচ্ছা অনিচ্ছা ছিলনা। জনগন অবাক হয়ে দেখলো যিনি সংবিধান ও দেশকে রক্ষা করার শপথ নিয়েছিলেন বা যে বিভাগটিকে সংবিধানের অভিভাবক হিসেবে দায়িত্ব প্রদান করা হয়েছিল তিনি এবং তারা সংবিধান তছনছ করেছেন। যাকে এক কথায় বলা যায় জংলী শাসন।

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আমরা জানি ডাকাতরা সংঘবদ্ধভাবে ডাকাতি করে। ডাকাতদের যে নেতৃত্ব দেয় তাকে ডাকাত সর্দার বলে। ডাকাতি করার সময়ে ডাকাতরা বাড়িটি বা ঘরটি কিছু সময়ের জন্য অস্ত্রের মুখে দখল করে এবং মূল্যবান দ্রব্যাদি লুণ্ঠন করে। বিচারপতি আবু সাইদ চৌধুরী, প্রধান বিচারপতি আবু সাদাত মোহাম্মদ সায়েম, মেজর জেনারেল জিয়াউর রহমান গংরা দেশে নির্বাচিত প্রতিনিধি থাকা সত্ত্বেও অস্ত্র এবং অবৈধ কলমের খোচায় নির্বাচিত জাতীয় সংসদকে ভেঙ্গে ডাকাতদের মত অবৈধভাবে জোরপূর্বক জনগনের ক্ষমতা ডাকাতি করে দখল করেন। যে বিচার বিভাগ এবং এর বিচারকদের ওপর আইনগত দায়িত্ব ছিল সাংবিধানের সামান্যতম বিচ্যুতিকে রক্ষা করা, সংরক্ষণ করা এবং নিরাপত্তা প্রদান করা; সেই বিচার বিভাগ এবং এর তৎকালীন বিচারকরা সংবিধানকে এক কথায় হত্যা করলেন, জনগনের রায় ডাকাতি করে জনগনের নির্বাচিত সংসদকে বাতিল করলেন। অপরদিকে মেজর জেনারেল জিয়াউর রহমান নিজে একজন সরকারী কর্মচারী হয়েও আর্মি রুলস ভঙ্গ করে জনগনের রায়ে নির্বাচিত জাতীয় সংসদকে হত্যা করে দেশের সংবিধানকে হত্যা করে অস্ত্রেও মুখে অন্যায়ভাবে অসৎভাবে হত্যাকারীদের দোসর হয়ে জনগনকে চরম অবজ্ঞা করে ক্ষমতা দখল করেন। একজন মুক্তিযোদ্ধা হয়ে মেজর জেনারেল জিয়াউর রহমান মুক্তিযুদ্ধের বিরোধী তথা স্বাধীনতাবিরোধী রাজাকার, আলবদর, আল শামস এবং জামায়াতে ইসলামীকে এদেশে পুর্নবাসন করেন। তাদেরকে রাজনীতি করার অধিকার দেন; তাদেরকে নাগরিকত্ব দেন। ***(যে নাগরিকত্বকে আমাদের তথাকথিত জামায়াতী এবং স্বাধীনতা বিরোধী মানসিকতার বিচারকরা বৈধ বলেন)*** তিনি স্বাধীনতাবিরোধী এবং মানবতাবিরোধী অপরাধীদের সংসদ সদস্য করেন এবং তাদেরকে মন্ত্রী বানিয়ে তাদের গাড়িতে বাংলাদেশের পতাকা দিয়ে ত্রিশ লক্ষ শহীদের রক্তের সাথে এবং দুই লক্ষ মা বোনের সম্ভ্রমের সাথে বেইমানী করেন। এরপরেও কি বাংলাদেশের জনগন মেজর জেনারেল জিয়াউর রহমানকে মুক্তিযোদ্ধা বলতে পারে?

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"বিচারপতি আবু সাইদ চৌধুরী, প্রধান বিচারপতি আবু সাদাত মোহাম্মদ সায়েম, বিচারপতি ফজলে মুনিম, বিচারপতি এ এফ এম আবদুল হুল ইসলামসহ অন্যরা সংবিধানের প্রস্তাবনায় উলিস্নখিত জাতীয় মুক্তির জন্য আমাদের যে ঐতিহাসিক সংগ্রাম এবং যে সকল মহান আদর্শ আমদের বীর জনগনকে জাতীয় মুক্তির সংগ্রামে আত্মনিয়োগ ও বীর শহীদগণকে প্রাণোৎসর্গ করতে উদ্বুদ্ধ করেছিল সেই সকল মহান আদর্শ সমূহকে এবং স্বাধীনতার চেতনাকে ধারণ করতে ব্যর্থ হয়েছেন বিধায় সংবিধানকে সামরিক ফরমানের নীচে মর্মে ঘোষণা করেছিলেন। অথচ তারা সকলে এই মর্মে শপথ গ্রহণ করেছিলেন যে, 'আমি বাংলাদেশের সংবিধান ও আইনের রক্ষণ, সমর্থন ও নিরাপত্তা বিধান করিব' এবং অনুমেয় তারা ব্যর্থ হয়েছিলেন তাদের সাংবিধানিক দায়িত্ব পালনে তথা 'সুপ্রীম জুডিসিয়াল কাউন্সিল' সম্বলিত অনুচেছদ ৯৬ সংবিধানের মূল কাঠামো **(basic structure),** *বিচার বিভাগের স্বাধীনতা এবং সংবিধানের বিধানাবলীর পরিপন্থী মর্মে ঘোষণা করতে।"*

(underlines supplied)

It appears from the above that the third Judge made the aforesaid comments out of sheer political motivation and personal biasness.

In Bangladesh Vs. Professor Golam Azam and others 46 DLR(AD) (1994)-192 (popularly known as citizenship case) the apex Court comprising of Mr. Justice M.H. Rahman, Mr. Justice A.T.M. Afzal, Mr. Justice Mustafa Kamal and Mr. Justice Latifur Rahman unanimously dismissed the appeal and upheld the judgment of High Court Division. In the said case Professor Golam Azam was denied Bangladeshi citizenship by the Government. It has been alleged by the Government that he had been staying abroad since before liberation of Bangladesh as a citizen of Pakistan. On account of his anti-liberation role and active collaboration with the Pakistan Army in raising irregular forces like the Rajakers, Al-Badrs and Al-Shams and placing his party, the Jamaat-e-Islami, at the disposal of the Pakistani Army, and because of his conduct during and after the liberation war, and his voluntarily residing in Pakistan as a citizen of Pakistan he could not be deemed to be a citizen of

Bangladesh. Ultimately, the citizenship of Professor Golam Azam was restored to him by the Supreme Court. In the case of Professor Golam Azam(ibid) Justice M.H. Rahman observed that-

> "In considering a matter before it the Court will only consider whether the aggrieved person has got the legal entitlement to the relief claimed. Any consideration of his political antecedents having no bearing on the questions of law involved in the matter will be irrelevant. Equally, it will be irrelevant to consider to what probable political consequences will follow if the relief is granted."

The aforesaid judgment is the testament to the fact that our apex Court holds the view that a person belonging to Jamaat-e-Islami cannot be deprived of his legal right merely because of his political identity imputing him the stigma of anti-liberation force. But the third Judge in his separate opinion regarding against a particular political party i.e. Jamaat-e-Islami alleging it as a force against the liberation of our country and further observed that there are some Judges in the Supreme Court belonging to the said party. The third Judge, thus, stated that **"***(যে নাগরিকত্বকে আমাদের তথাকথিত জামায়াতী এবং স্বাধীনতা বিরোধী মানসিকতার বিচারকরা বৈধ বলেন)।***"** thereby the authority of the apex Court regarding the case of Bangladesh Vs. Professor Golam Azam and others reported in 46 DLR (AD) (1994)-192 (popularly known as citizenship case) has been challenged. Those remarks are perverse and not according to the settled legal proposition inasmuch as a Judge should not reflect his political view while writing judgment. Moreover, upon taking oath a Judge will not bear his own political belief or identity which may have an adverse impact in case of arriving at decision on any particular matter.

Apart from the above, the third Judge made some derogatory remarks against Mr. Justice Abu Sayed Chowdhury, Chief Justice Abu Sadat

Mohammad Sayem, Justice Fazle Munim, Justice Ruhul Islam and others Judges of the Supreme Court alleging them not upholding the supremacy of the constitution, which are not, at all, warranted by law. **Simultaneously, the said action of the third Judge is violative of Article 111 of the Constitution.** According to Article 111, the law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either Division of the Supreme Court shall be binding on all courts subordinate to it. But the third Judge in his separate opinion flouted the authority of apex Court which is clear violation of the Code of Conduct.

Despite the third Judge is a Judge of the High Court Division, he showed utter disregard to the judgment regarding citizenship case (46 DLR(AD)-192) delivered by the apex Court of our country, and castigated the Judges of the apex Court while according to Article 111 the judgment of the apex Court is binding on the High Court Division as well as other Courts. The third Judge, thus, made the following observations in this regard-

> *"একজন মুক্তিযোদ্ধা হয়ে মেজর জেনারেল জিয়াউর রহমান মুক্তিযুদ্ধের বিরোধী তথা স্বাধীনতাবিরোধী রাজাকার, আলবদর, আল শামস এবং জামায়াতে ইসলামীকে এদেশে পুর্নবাসন করেন। তাদেরকে রাজনীতি করার অধিকার দেন; তাদেরকে নাগরিকত্ব দেন। (যে নাগরিকত্বকে আমাদের তথাকথিত জামায়াতী এবং স্বাধীনতা বিরোধী মানসিকতার বিচারকরা বৈধ বলেন)......"*
>
> (underlines supplied)

In this regard, it is advantageous to extract the following observations made by this Division in Re: Special Reference No. 1 of 1995, 47 DLR (1995) 111-

> "25.....Mr. Ahmed referred to a maxim of Judicial self-restraint referred to in "The Judicial Process" 3rd Ed by Henri J. Abraham P. 364 which says that the Court has been inclined to defer to certain legislative or execute actions by classifying an

> issue otherwise quite properly before it as a political question - hence refusing to come to grips with it.
>
> 26. It will be of advantage to quote the aforesaid author himself who poses the question -what really is a "political question"? and then quotes Mr. Justice Holmes. who once characterised it as "... little more than a play of words." Nixon Vs. Herndon, 273 US 536 (1927) at 540). The author says further – "However attractive in theory the "political question" maxim is a treadmill: perhaps to a fatal degree -its supporting logic is circular." Seervai in his "Constitutional Law of India". 3rd Ed.. P. 2212 adds: "It is circular for the U.S. Supreme Court will not decide a question because it is a 'political question' and it becomes a 'political question' because the Supreme Court will not decide it."

Therefore, a judge while deciding a case should refrain from entering into any controversial political issue which demoralizes him putting him under serious criticism. A judge should, thus, remain abstinent in expressing his political view which may have an anarchic impact on the image of judiciary and thereby affects the independence of judiciary.

Plausibly, it has been remarked by Imran A. Siddiq in an article titled "The Judicial Appointments Process in Bangladesh: In Search of Transparency," in The Rule of Law in Developing Countries: The Case of Bangladesh, edited by Chowdhury Ishrak Ahmed Siddiky, New York: Routledge that-

> "Chagla J., writing in the aftermath of supersessions in the appointment of Chief Justice of India in 1973, lamented that 'the Judges in a court are expected to function as a team and be loyal to each other', but that 'henceforth there will be a competition among the Judges as to who is more forward-looking and who has better imbibed the gospel of the ruling party'. A concerned Chagla J. wrote,

> Junior Judges of the High Court have started making speeches and writing articles giving expression to ultra socialistic views so as to catch the eye and the ear of the authority that will ultimately select a Chief Justice when a vacancy arises.
>
> .....
>
> Judges are 'more often bribed by their loyalities and ambitions than by money. A strong desire to be elevated to the highest court of the land opens up avenues for the Executive to exercise coercion with the candidate Judge to obtain favourable verdicts. Ambitious candidate Judges may prefer to disregard some of the more onerous provisions of their Code of Conduct in an attempt to secure positions in the highest court of the land."
>
> (underlines supplied)

It reveals from the above that a High Court Judge though may not be corrupt in terms of monetary affairs but may be intellectually corrupt. The third Judge made the aforesaid remarks *mala fide* with a view to getting a favour of the ruling party in future to secure some unfair advantages. Such manner is seriously deprecated.

Again, on an overall reading of the third Judge's observation it is apparent that he used several words which are abusive, vulgar and indecent. In the above context, the third Judge is found to have been violated the code of conduct for the Judges of Supreme Court formulated by this Division as well as the Article 111 of the Constitution of the People's Republic of Bangladesh.

In view of the above discussion, I conclude that despite **the *obiter dicta* do not have any binding force or authority on other courts but the same can be cited as persuasive authority in future litigation**. Taking into consideration of the aforesaid facts and circumstances, the comments of the

third Judge as stated above made by him in his separate opinion dated 05.5.2016 in Writ Petition No. 9989 of 2024 are, hereby, expunged.

J.

COURT'S ORDER

With the above separate observations as mentioned above, we, therefore, unanimously dispose of the Civil Review Petition. Resultantly, Article 96 of the Constitution stands restored in its entirety.

However, there is no order as to costs.

C.J.

J.

J.

J.

J.

J.

The 20th day of October, 2024
RRO; Total words 13,607