

The speech of Justice Md. Muzammel Hossain, the Hon'ble Chief Justice of Bangladesh to be delivered in the Fifth Meeting of the Asia Pacific Judicial Reform Forum on "Public and International Confidence in Legal Systems" scheduled for Thursday 31st October 2013 at 11.00 A.M. in Singapore.

Theme of the Fifth Meeting: "Developing judicial capabilities to enhance public and international Confidence in legal Systems."

The First Panel on "Public and International Confidence in the legal system".

The Hon'ble Chief Justice of Bangladesh would be required to address the following questions:

1. Is it relevant and important? How and why?
2. How can the level and quality of judicial capabilities affect that confidence?

Hon'ble Chairperson, My brother Chief Justices, distinguished members of the Judicial Reform Forum, ladies and gentlemen.

Good Morning.

I am honoured to have been invited here to express my views on the relevance and importance of "Public and International Confidence in the legal system" and how can the level and quality of judicial capabilities affect that confidence.

An independent and competent judiciary is indispensable for establishment of a true democracy, advancement of rule of law and protection of human rights. Judiciary is an important organ of the state which derives its judicial power from the Constitution and laws. But it exercises its judicial authority predominantly with its moral and ethical force. The core strength of the judiciary lies in public confidence in its competence, integrity and impartiality. Independence of the judiciary is a precondition for gaining confidence of the people in the justice system. People's confidence in the independence and competence of the judiciary and moral authority and integrity of the judges is of utmost importance for making the judiciary truly effective and functional. It is expected that a judge deserves respect and trust of the communities he serves. Therefore a judge should at all-time act in a manner that promotes public confidence. A judge should avoid impropriety or even the appearance of impropriety. In Bangladesh in 2009 the Judicial Magistracy has been separated from the Executive Organ of the state and

placed under the High Court Division. This has significantly strengthened judicial independence and in turn enhanced people's confidence in the judiciary.

According to the latest GALLUP Worldwide Survey on Confidence in Judicial System done in 2012 the Bangladesh judiciary enjoys 70% public confidence (www.worldview.gallup.com/?ref=S). Above rating is quite encouraging in view of the fact that the lowest rating was 17% while the highest was 90%.

The judiciary alone cannot ensure dispensation of quality justice, since it has to work with some other organizations. It also needs support of the executive branch of the government for the smooth running of the judicial administration and execution of judicial decisions.

Deficiency in public confidence in the judiciary has a disastrous effect on the rule of law and over all development of the country. It discourages people to bring their genuine disputes to courts and encourages them to resort to extra-judicial means of dispute resolution. This seriously affects the genuine interests of the poor, women, children and other vulnerable group of people and further aggravates their position in the society.

The state of people's confidence in a national judiciary determines the level of acceptance and trust of the international community. Now we live in a global society and it is difficult for any state to survive in a condition of absolute isolation. Not only international trade and commerce, now-a-days, the state of individual rights, liberties and freedom is an issue of concern for the international community. We all share the great saying of Martin Luther King Junior -'injustice anywhere is a threat to justice everywhere'. International confidence in the legal system is very relevant and important for overall governance and development of a nation. Anarchy and underdevelopment of a nation impacts negatively on other nations, especially on the neighbours.

2. People's confidence in the judiciary rests on the followings:

- (1) Capability of the judiciary to deliver affordable and quality justice without delay,
- (2) Decisions and verdicts of the judiciary are consistent and in accordance with law and the Constitution,

(3) Judicial decisions are made independently and impartially through an open and transparent process and a majority number of judicial decisions are upheld on appeal, and

(4) More importantly, professional knowledge and managerial skills of the judges are commendable and their integrity and acceptability are undisputed and beyond any question.

To promote confidence the judiciary needs to enhance its overall capacity, infrastructure, logistics and human resources, to deliver justice through continuous reforms and development. A well-equipped court room is a basic need for a judge. In the subordinate courts of Bangladesh there are in total 1860 judges and magistrates but we are unable to provide some of them separate court rooms, let alone a well-equipped one. This deprives those judges from utilizing full court time which causes suffering of the justice seekers and delay. The absence of modern management tools, techniques and skills, shortage of trained supporting staff and deficiency in efficient monitoring and evaluation mechanism for the subordinate courts and tribunals continue to impede the speedy dispensation of quality justice in Bangladesh. A huge backlog of cases, is the single greatest impediment in the way of promoting confidence in Bangladesh judiciary.

It cannot be denied that judicial arbitrariness and corruption in judiciary are main causes of erosion of public confidence in the judiciary. Judicial independence is needed to ensure impartiality of judicial decisions, not to protect the misdeeds of a delinquent judge. A judge must have an independent, open and receptive mind and moral courage ready to take and maintain unpleasant decisions when necessary.

On 7 May 2000 the Supreme Judicial Council in exercise of power under Article 96 (4) (a) of the Constitution of the People's Republic of Bangladesh has framed an updated Code of Conduct for Judges of the Supreme Court. Above Code of Conduct is in conformity with the Bangalore Principles of Judicial Conduct. It contains 14 paragraphs, which in fact, is a restatement of time tested values of judicial life. It is a practical guidance as to the conduct of a judge's private, judicial and financial affairs. Zero tolerance against corruption is the stated policy of the Supreme Court of Bangladesh against corruption. Every valid allegation of corruption is investigated by a

senior judge and stringent punitive measures are taken against the delinquent judge or court staff.

The President of Bangladesh is the sole external authority for oversight and discipline of the Judges of the Supreme Court. But the President can act only upon a report of the Supreme Judicial Council (SJC) which comprises the Chief Justice of Bangladesh and two next Senior Judges of the Supreme Court. On receipt of a guilty report from the SJC the President may remove the concerned judge from office.

The judges and magistrates of the subordinate judiciary are subject to a separate set of disciplinary rules and code of conduct, namely, the Government Servants (Discipline and Appeal) Rules, 1985 and the Government Servants (Conduct) Rules of 1979, respectively, which are in essence and spirit not different from above mentioned Code of Conduct and values.

Article 116 of the Constitution provides that the control (including the power of posting, promotion, grant of leave) and discipline of persons employed in the judicial service and magistrates shall vest in the President and shall be exercised by him in consultation with the Supreme Court. This duality of authority in respect of control and discipline of the judges of Subordinate Judiciary is compromising with the quality and effectiveness of superintendence, control, monitoring and evaluation of performance of the judges of Subordinate Judiciary. The Supreme Court also does not have adequate and efficient administrative and logistic support for superintendence and control of the Subordinate Judiciary. As such the Supreme Court has taken up an initiative for establishment of a separate office, namely, Judicial Secretariat for this with the support of UNDP funded the judicial strengthening project (JUST).

The Bangladesh judiciary has to go a long way for achieving judicial excellence. In fact every man-made system needs, after passage of time, updating through reforms and development. The Bangladesh judiciary was needed to be familiar with international experience and identify and adopt best practice for elimination of case backlogs and further improve its case management and court administration processes. As such the Supreme Court of Bangladesh, for the first time in its history has undertaken the Judicial Strengthening Project with the Support of United Nations

Development Program (UNDP) and Government of Bangladesh. The Project has started functioning from July 2012 and making spectacular progress.

The Project is contributing greatly in introducing mediation in the settlement of civil cases and ICT in the case management and court administration processes and knowledge and skills development of judges and court officers. It is encouraging to note that there is an overall change of mind of the judges and court staff in favour of reforms and excellence.

Thank you all.