8. A message for the Judiciary

It goes without saying that the Judiciary is one of the vital organs of the State. The Judiciary serves as the Guardian of the Constitution and the protector of the fundamental rights of the people as enshrined in Part III of the Constitution. A resilient, independent and accountable Judiciary is vital not only for democracy and human rights, but also for sustainable economic and social development. Only through coordinated constitutional and institutional reforms, Bangladesh can ensure a Judiciary that is independent, impartial, transparent and worthy of public trust. As Lord Denning rightly said, "When a Judge sits to try a case, he himself is on trial."

The Judiciary is the dispenser of justice, the shield of the vulnerable and the compass of democracy. Public trust in the Judiciary is not merely desirable—it is a bedrock of a functional society. Without it, the rule of law crumbles and chaos prevails. A trusted Judiciary is the soul of democracy. It ensures that no one—individual, corporation or the Government— is above the law and everybody is subject to the law. Public confidence in the Judges cannot be demanded—it must be earned.

Judges promote and protect human rights through administration of justice. Almost all basic human rights as articulated in the United Nations Universal Declaration of Human Rights, 1948 have been incorporated in Part III of our Constitution. As a matter of fact, human rights are those rights without which human existence is impossible on this planet. Anyway, Judges are charged with saying what the law means. When they speak, the force behind the law begins to operate.

The confidence of the people in the Judge depends upon the quality of justice he administers with integrity and impartiality, neutrally and efficiently, ethically and transparently. A Judge should treat every case whether involving the Prime Minister or a street vendor with equal rigor. Judges

are not merely arbiters of law. They are also custodians of hope. In their hands lies the power to heal societal fractures and inspire a generation.

As the Judges don their robes every morning, they should remember the words of our Constitution:- "The Republic shall be a democracy in which fundamental human rights and freedom……shall be guaranteed." This guarantee should begin with the Judges. Let us build a Judiciary where a rickshaw driver in Dhaka and a garment worker in Sylhet alike can say, "We trust the Court – we trust the Judiciary." The journey is arduous, but the reward—a just, confident Bangladesh—is immeasurable.

Judicial independence is the lifeblood of constitutionalism in a democratic polity. This independence is not for the sake of the Judges, but for the judged. When it comes to judicial independence, the perception of the people is very important. If the perception of the people is that the Judiciary is not functioning independently of the Executive and the Legislature (unfortunately this is the perception of the people of this country), the Judiciary stands nowhere.

In the words of late lamented Chief Justice of the then East Pakistan High Court Mr. Justice Syed Mahbub Murshed, "No tyranny is worse than judicial arbitrariness and no misfortune is worse than judicial subservience." This insightful observation of Mr. Justice Syed Mahbub Murshed is self-explanatory and very germane to the context of Bangladesh. However, it should be borne in mind that judicial independence does not mean judicial highhandedness at all. There is no conflict between judicial independence and judicial accountability; rather judicial accountability reinforces proper exercise of judicial independence. Judicial independence and accountability are not opposing ideas but complementary pillars of constitutional democracy. Bangladesh's experience demonstrates that neglecting either principle undermines institutional integrity and public trust.

The members of the law-enforcing and intelligence agencies are not above the law of the land. Any sort of torture and degrading or inhuman treatment on the victims in their custody are expressly illegal, unconstitutional and condemnable. In that event, the victims have the right to seek the protection of the law in any independent and impartial Court or Tribunal, as the case may be. Enforced disappearance and custodial death are the worst forms of violations of human rights. Even a hardcore criminal has the right to be tried in the competent Court of law for his alleged perpetration of crimes. He cannot be subjected to enforced disappearance or physically annihilated by the members of the law-enforcing and intelligence agencies for his alleged offences, if any. By subjecting the victims to enforced disappearance, they took the law into their own hands and by

so doing, they themselves violated the law. This violation of the law cannot be countenanced in a democratic society.

The rule of law requires the protection of the fundamental rights of the citizens against the Government and other entities and instrumentalities. Whenever one speaks of law, it must satisfy at least the prerequisite that it guarantees basic human rights and human dignity and ensures their implementation by due process through an independent Judiciary. In the absence of this requirement, the rule of law becomes a hollow slogan. Lord Justice Stephen Sedley of the Court of Appeal of the UK once observed, "The irreducible content of the rule of law is a safety net of human rights protected by an independent judicial system" (quoted from Soli, J. Sorabjee).

In Civil Appeal no. 53 of 2004 [Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs & Others Versus Bangladesh Legal Aid and Services Trust (BLAST) reported in 69 DLR (AD) (2017) 63], our Appellate Division issued the following guidelines for the Magistrates, Judges and Tribunals having power to take cognizance of offences:

(a) If a person is produced by the law-enforcing agency with a prayer for his detention in any custody, without producing a copy of the entries in the diary as per Section 167(2) of the Code of Criminal Procedure, the Magistrate or the Court or the Tribunal, as the case may be, shall release him in accordance with Section 169 of the Code on taking a bond from him;

(b) If a law-enforcing officer seeks an arrested person to be shown arrested in a particular case, who is already in custody, such Magistrate or Judge or Tribunal shall not allow such prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case and if the prayer for showing him arrested is not well-founded and baseless, he shall reject the prayer;

(c) On the fulfilment of the above conditions, if the investigation of the case cannot be concluded within 15 days of the detention of the arrested person as required under Section 167(2) of the Code of Criminal Procedure and if the case is exclusively triable by the Court of Session or the Tribunal, the Magistrate may send such accused person on remand under Section 344 of the Code for a term not exceeding 15 days at a time;

(d) It the Magistrate is satisfied on consideration of the reasons stated in the forwarding report and the case diary that the accused or the information is well-founded and that there are

materials in the case diary for detaining the person in custody, the Magistrate shall pass an order for further detention in such custody as he deems fit and proper;

(e) The Magistrate shall not make an order of detention of a person in the judicial custody if the police forwarding report discloses that the arrest has been made for the purpose of putting the arrestee in preventive detention;

(f) It shall be the duty of the Magistrate/Tribunal, before whom the accused person is produced, to satisfy that these requirements have been complied with before making any order relating to such accused person under section 167 of the Code;

(g) If the Magistrate has reason to believe that any member of the law-enforcing agency or any officer who has legal authority to commit a person to confinement has acted contrary to law, the Magistrate shall proceed against such officer under Section 220 of the Penal Code;

(h) Whenever a law-enforcing officer takes an accused person in his custody on remand, it is his responsibility to produce such accused person in Court upon expiry of the period of remand and if it is found from the post- remand forwarding report or otherwise that the arrested person is dead, the Magistrate shall direct examination of the victim by a medical board, and in the event of burial of the victim, he shall direct exhumation of the dead body for medical examination by a medical board, and if the report of the board reveals that the death is homicidal in nature, he shall take cognizance of the offence punishable under Section 15 of the Torture and Custodial Death (Prevention) Act, 2013 against such officer and the Officer-in-Charge of the police station concerned or the Commanding Officer of such officer in whose custody the death of the accused person took place; and

(i) If there are materials or information to a Magistrate that a person has been subjected to 'Nirjatan' or has died in custody within the meaning of Section 2 of the Torture and Custodial Death (Prevention) Act, 2013, the Magistrate shall refer the victim to the nearest doctor in case of 'Nirjatan' and to a medical board in case of a death for ascertaining the injury or the cause of death, as the case may be, and if the medical evidence reveals that the person detained has been tortured or has died due to torture, the Magistrate shall take cognizance of the offence *suo motu* under Section 190(1)(c) of the Code of Criminal Procedure without awaiting the filing of a case under

Sections 4 and 5 of the Torture and Custodial Death (Prevention) Act, 2013 and proceed in accordance with law.

If the above-mentioned guidelines formulated by the Appellate Division are followed in right earnest by the Magistrates, Judges and Tribunals concerned, this will hopefully improve the human right situation and pave the way for the establishment of rule of law in the country.

The Magistrates, Judges and Tribunals are mandated by law to dispense evenhanded justice to the litigant people without fear or favour and ill will or affection. In their day-to-day judicial work, they are supposed to be mindful of the well-known legal dictum—"Let justice be done, though the Heavens fall." But regrettably our Judiciary failed to play a proactive role in curbing the enforced disappearances of the victims, even though the same were brought to their notice in various cases during the immediate past Hasina-led Administration.

9. Conclusion and Recommendations

A major obstacle to truth and accountability in Bangladesh today is the culture of denialism around the issue of enforced disappearance. The Awami League has consistently denied the existence of a systematic practice of enforced disappearance, and as a nation, even after the changeover of 5 August 2024, we have struggled to confront this denialism largely because many of the perpetrators remain in positions of power. This has led to widespread destruction of evidence, institutional non-cooperation, intimidation of potential witnesses, and a climate of fear. When victims come forward, they are overtly and covertly threatened. When the members of this Commission carry out their lawful duties, they face intimidation of various sorts by the security forces from time to time. As a result, attempts to fully expose the system risk re-victimising those already targeted by it.

It would, however, be incorrect to say that no attempts have been made to expose this system. Many victims have independently come forward, and both national and international media have covered their stories, often in great detail. Numerous media reports have revealed the existence of secret detention cells. The Chief Advisor himself has visited some of these facilities, accompanied by the victims and members of the press. Victims have stood in the very cells they were incarcerated in and recounted their harrowing experience in front of the press. The existence of these secret sites is now an incontrovertible fact. And yet, given that many of their abusers or those complicit in the system still occupy positions of power, particularly within the security forces, a full exposure that brings forward all the victims still risks re-victimising them. This has fostered a culture of fear and silence that we have, so far, struggled to break through.

Given these constraints, we have had to explore alternative means of presenting compelling evidence that enforced disappearance in Bangladesh was not incidental but systemic. This interim report does so through an analysis of a dataset of 253 individuals out of the nearly 1800 complaints

submitted to us. These individuals matter because, at the point of their disappearance, there was contemporaneous documentation—general diary entries, criminal complaints, or media reports—recording that they had gone missing. At the point of reappearance, law enforcement or security agencies filed cases against them, thereby confirming they were in state custody. These individuals are also alive and have testified about the intervening period. In many instances, they encountered each other in secret detention facilities, becoming witnesses to each other's captivity. Thus, what we have is a dataset of 253 people, dispersed across the country and over more than a decade, who describe remarkably similar experiences, despite having no way of coordinating among themselves or anticipating so many years ago that their cases would one day be scrutinised collectively by a Commission like ours. Therefore, the consistency of their accounts offers compelling evidence of a coordinated and systematic practice.

What this dataset shows is the existence of an organised system of enforced disappearance, undergirded by the logic of securitisation, throughout the decade and a half of Sheikh Hasina's rule. It reveals that, under the guise of counterterrorism, the Awami League pursued an *authoritarian bargain*—using the threat of Islamist extremism to consolidate political power, secure international legitimacy, and extend its rule. In doing so, it weaponised the criminal justice system, compromised the security forces, and institutionalised torture and secret detention.

This was not a counterterrorism campaign marred by human rights violations. Whilst that would be bad enough, this was a politically motivated repression apparatus that used counterterrorism as a convenient fig leaf. Instead of being neutral arbiters, the data from the Anti-Terrorism Tribunal shows there was underlying political and performance driven logic to case inflows and outflows.

The 253 individuals in our sample span more than a decade; they vary in age, profession, and the length of their disappearance. Yet their experiences also converge in striking ways. Most were supporters of then-opposition political parties and, in many instances, were interrogated specifically about those affiliations. Even those linked to the ruling party were disappeared in connection with intra-party disputes or political rivalries. Across the board, victims were subjected to the same rituals—exposed to systematic torture, presented to the press as terrorists, charged under similar laws, and described in very similar language.

This convergence of experience from such diverse backgrounds but similar political identities strongly suggest a political logic behind these actions. Heterogeneous lives were processed through a homogenised machinery of repression.

As in the rest of the world, terrorism is a genuine threat to Bangladesh, which must be addressed with analytical clarity and institutional resolve. But it must also be addressed with integrity. The Holey Artisan Bakery attack in 2016, among the deadliest in the country's history, was a brutal wake-up call; significantly, one of the attackers was the son of an Awami League politician. This undercuts the narrative that extremism is confined to any one segment of society.

And yet, the then government used counterterrorism as a convenient frame to discredit rivals for their political dissent. More fundamentally, the campaign itself descended into lawlessness: enforced disappearances, torture, extra judicial killings, and fabricated charges. Such methods not only violate human rights, they also betray the very principles needed to confront extremist violence. A state cannot credibly fight lawlessness with lawlessness. When it does, it corrodes the institutions meant to protect the public and ultimately makes the country less safe. Terrorism must be countered—but not like this.

Fig 9A: Female captives have complained of not being able to cover themselves with orna and being harassed by male law enforcers (illustration based on survivor accounts)

The human cost of sustaining the Awami League's rule in this manner has been staggering. Lives have been lost. Careers destroyed. Education derailed. Families torn apart. Victims have endured profound psychological and physical trauma, often compounded by years trapped in fabricated

legal cases. The criminal justice system too has been weaponised into a tool of repression. The median legal cost per victim in our sample is BDT 700,000, nearly twice the average annual household income. These cases stretch on for years, leaving entire communities exhausted by fear, uncertainty, and the slow erosion of hope. Many victims were also forcibly transferred across borders in illegal renditions. Even the security forces were not spared. Demoralised by institutional complicity and compromised by the presence of culpable actors within their ranks—many of whom are now vulnerable to hostile intelligence services and, thus, pose a threat to national security—they require deep reform to resist future political pressure of a similarly criminal nature.

Enforced disappearance is not a partisan political issue and should not be made one. As the examples below demonstrate, under Sheikh Hasina, it affected everyone.

A BNP activist recounted to us the traumatic memory of his torture (Code BJH[115]): "গোপনাঙ্গে ইলেকট্রিক শক দেয়ার সাথে সাথে আমি সেন্সলেস হয়ে পড়ে যাই ওইখানে। কতক্ষণ শুয়ে আছি জানিনা। কিছুক্ষণ পর কানে আওয়াজ শুনতেছি, তারা কথা বলতেছে, 'বেঁচে আছে, বেঁচে আছে'... দাঁড়ানোর পর বলতেছে 'তাকে ঝুলা।' ... আবার ঝুলাইয়া, আবার পিটানো। ... বলে তুই বুঝস না? তুই পিলখানা হত্যাকাণ্ড নিয়ে লেখস।" (9-1)

A medical student, who was a Shibir activist, was left with permanent injury following his disappearance (Code CEB[116]): "আমাকে ওদের টর্চার রুমটার সামনে রাখতো। তো যখনই খুবই হাই ভলিউম মিউজিক বাজতো, তখনই আমি বুঝতাম যে, কাউকে না কাউকে মারতেছে। এবং তাদের চিৎকারের শব্দ এত বেশি আসতো, আসলে আমার তখনই মানে ডেফিকেশনের [মলত্যাগ] চাপ চলে আসতো। ... আমার কন্টিনিউয়াস দুই মাস চোখ বাঁধা ছিল। ওরা চোখ বেঁধে রাখার কারণে আমার চোখে প্রচণ্ড ব্যথা হতো। মনে হচ্ছে সবকিছু ছিড়ে যাবে। ... পরে যখন আমি বের হলাম, তখন আমার চোখে অপারেশন করা হয়। মানে এই চোখে রেটিনা এন্ডিং যেটা, এটা ছিড়ে যায়।" (9-2).

A female student recalls her humiliation when (Code BIAH[117]): "অনেকটা ক্রুসিফাইড হওয়ার মত করে হাত দুই দিকে বেঁধে ঝুলিয়ে রাখছে। ওরা আমাদের ওড়না নিয়ে নিছিল; আমার গায়ে ওড়না ছিল না। আর যেহেতু জানালার দিকে মুখ করা ছিল, অহরহ পুরুষ মানুষ যে কতগুলা আসছে দেখার জন্য এটা বলার বাহিরে। মানে তারা একটা মজা পাচ্ছে। বলাবলি করতেছিল যে, 'এমন পর্দাই করছে, এখন সব পর্দা ছুটে গেসে।'" (9-3) She also added, "আমার পিরিয়ড হওয়ার ডেট ছিল অনেক লেটে। কিন্তু যেই টর্চার করে তাতে আমি এত পরিমাণ অসুস্থ হয়ে যাই যে, সাথে সাথে আমার পিরিয়ড আরম্ভ হয়ে যায়। তারপর উনাদেরকে বলি যে, "আমার তো প্যাড লাগবে" - এটা নিয়ে অনেক হাসাহাসি করে ওরা।" (9-4)

[115] 38 year old male; abducted by CTTC in 2021; disappeared for 33 days
[116] 21 year old male; abducted by RAB Intelligence and RAB 13 in 2016; disappeared for 2 months
[117] 25 year old female; abducted by police in 2018; disappeared for 24 days

Clearly, the Awami League's regime of fear affected people of all strata of society wearing all political colours. It should, thus, be our unified national goal to eradicate this culture altogether.

Recommendations

Based on this interim report's findings, we have two major recommendations for the government: one forward thinking, the other past oriented.

1. Undoing past wrongs: Expedite trials

A critical challenge now facing the justice system in Bangladesh is how to resolve the thousands of fabricated anti-terrorism cases that continue to entangle the victims of enforced disappearance. Many of those caught in this web have already endured incommunicado detention, torture, and staged reappearances. Upon resurfacing, they found themselves facing charges for crimes they could not have committed, often because they were already in state custody at the time the alleged offenses occurred. This presents a grave miscarriage of justice and a direct violation of legal principles, most notably the requirement that guilt must be established for a specific act, not presumed on the basis of association or ideology.

It must be acknowledged that, within this group, there will be individuals who do harbour radical beliefs. But the right to due process demands that individuals be prosecuted only for acts they have committed. It is also evident that large numbers of those currently being tried under the law are not guilty even of such associations, let alone the specific offenses for which they stand accused. Many, as discussed in this report, were caught up in political dragnets. This complex reality underscores the importance of careful and fair judicial scrutiny.

As per section 33 of the Anti-Terrorism Act (ATA), 2009 trials of cases thereunder shall be concluded within a year including the extended periods from the date of commencement of trial (charge framing). If the Anti-Terrorism Special Tribunals constituted pursuant to Section 28 ATA fail to conclude the trial of the cases pending therein within the aforesaid period of one year, then what consequences will follow? Section 33 of the Act does not contemplate any consequence whatsoever for non-compliance with the timeline (one year in all) for conclusion of trial of the cases under the Act. As a result, a huge number of victims have been languishing in jail custody even more than 10 years, and the cases are being dragged on for an indefinite period. This state of affairs cannot be allowed to continue in view of clause (3) of Article 35 of the Constitution.

Given this scenario, an amendment should be made to the ATA to the effect that if the trial of a case pending in the special tribunal cannot be concluded within the maximum time frame of a year as provided by Section 33 of the Act, in that event, the Anti-Terrorism Special Tribunals must record an order in the order-sheet that the proceedings of the case be terminated and the accused shall stand acquitted of the charge levelled against him.

To that end, the tribunals must expedite the trials of cases. These bodies must be tasked with systematically reviewing and resolving the backlog of pending anti-terrorism cases. Many have languished for years, producing severe psychological and financial hardship for the accused and their families. These include long-term detention without resolution, repeated court appearances that disrupt livelihoods and education, and in some cases, life sentences and death penalties based on flimsy or manufactured evidence.

The judges appointed to the Anti-Terrorism Special Tribunals should be sensitised about the structural realities documented in this report by the Commission.

2. Doing better in the future: Rehabilitation, not securitisation

In multiple conversations with senior police and military intelligence officials with expertise in this area, it became clear that many believed Bangladesh should draw lessons from successful regional examples, where the emphasis has been on prevention and rehabilitation rather than militarised crackdowns as ways of doing counterterrorism. Among the most experienced and thoughtful officers, there was notable frustration with Bangladesh's wholesale adoption of a militarised, securitised American model. They expressed concern that this trajectory was being shaped less by its proven effectiveness in the local context and more by the availability and influence of international funding.

To better understand the roots of the divergence between stated aims and operational practice, it is instructive to consider the models Bangladesh has looked into and the consequences of emulating them. The UK's counter-terrorism strategy is organised around four pillars: Prevent, Pursue, Protect, and Prepare. It emphasises early intervention, community engagement, and safeguarding against radicalisation. In contrast, the U.S. approach has traditionally leaned on hard power, prioritising disruption through domestic surveillance and military-led interventions abroad. While both nations aim to prevent attacks and protect their citizens, the UK emphasises integration and prevention, whereas the U.S. model foregrounds force projection and intelligence dominance.

Bangladesh's counterterrorism posture in the past decade echoed the UK rhetoric, with public statements emphasising deradicalisation and community vigilance. However, the actual operational architecture aligned more closely with the American model of disruption, marked by military-led operations, secret detentions, coercive interrogations, and the weaponisation of anti-terror laws to neutralise dissent. The state projects a soft counter-extremism narrative but practices a form of securitisation divorced from community trust or procedural safeguards. This mismatch between language and action not only undermines counterterrorism legitimacy but also weakens national security by blurring the lines between actual threats and political opposition.

A more effective and sustainable counterterrorism strategy for Bangladesh should move beyond a purely securitised model and embrace a holistic, rehabilitative framework that addresses the ideological, social, and economic drivers of extremism. This includes structured programs for *religious education*, led by credible scholars capable of dismantling misinterpretations of religious doctrine that justify violence. Alongside this, psychological counselling, family-based interventions, and community reintegration efforts should be prioritised to facilitate deradicalisation. Bangladesh could benefit from involving *reformed former extremists* as mentors or interlocutors, who can credibly challenge violent ideologies from within. Additionally, *vocational training, economic support, and long-term monitoring* after release are essential to reducing recidivism and fostering genuine reintegration.

A 'risk reduction' initiative of this kind need not mirror any single model but should be adapted to Bangladesh's context through locally trusted actors and institutions. Indonesia and Malaysia's rehabilitation-oriented approaches have demonstrated that community engagement, religious dialogue, and deradicalisation efforts can yield significant results without resorting to widespread surveillance or militarised policing. These models underscore the importance of building societal resilience and addressing extremism at its roots, rather than framing it solely as a law enforcement issue. For Bangladesh, the way forward lies in constructing a locally grounded, non-coercive strategy that builds trust with communities, protects rights, and weakens the appeal of extremism from within, rather than relying on reactive or punitive measures that risk deepening alienation.