

# WE REMEMBER, WE MOURN

## Bangabandhu Murder Case

### A question of trust in the justice system

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THE history of Bangladesh is replete with killings - extra-constitutional, or of the plain street variety - of political leaders. The trial of Bangabandhu Murder Case would add another chapter to that long hunt for a proper process by which those culpable, belonging to whichever party, are kept within the reach of the law. For that, the judiciary will have to enjoy a free run, without interference from any quarter. It must be left to search its own soul and set its own accountability standards. However, if it continues to defer the trial process for indefinite period, it might risk losing firm public confidence it has been enjoying for decades.

An independent and honourable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The legal system of Bangladesh is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to our concepts of justice and the rule of law. Judges, individually and collectively, must respect and honour the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judiciary of Bangladesh, in fact, plays significant role in upholding constitutional principle of governance. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. And the governance can be well reflected through upholding the natural course of justice, not denying or deferring it. Bangabandhu Murder Case put the judiciary of Bangladesh in real challenge.

#### The Trial of Bangabandhu Murder Case

The much-talked about trial formally began on March 12, 1997, after the personal assistant of Sheikh Mujibur Rahman, Mr Mohitul Islam lodged a first information report with the Dhanamondi police station on October 2, 1996. Deposition and cross-examination began on July 6, 1997. A total of 61 witnesses, including 39 of the army, navy, air force and Bangladesh Rifles, made depositions.

The trial court, the District and Sessions Court Dhaka, with Judge Kazi Golam Rasul announced the verdict on November 8, 1998 awarding death sentence to 15 former army personnel for killing Bangabandhu and his family members on August 15, 1975. The historic verdict, which was delivered after 17 months of hearings, came at the end of an agonising trial. The "Bangabandhu Murder Case" - as it is called - was filed in October 1996, more than 21 years after the assassination took place and four months after the Awami League Government led by Sheikh Hasina, one of Sheikh Mujibur Rahman's two surviving daughters, assumed office.

The Judge gave the verdict after 148 days of hearings and cross-examination. Passing the sentence under Section 302/34 of the Bangladesh Penal Code, the Judge said: "It has been proved beyond reasonable doubt that a total of 15 accused killed the then President Bangabandhu, along with his family members, relatives and some others at the 677 Dhanamondi residence of Bangabandhu in furtherance of a pre-planned conspiracy at about 5 a.m. on August 15, 1975." The judgment continued: "After the incident, some of the accused also boasted, identifying themselves as 'self-confessed killers' at home and abroad." "The incident," it added, "was not only brutal, but also marked the ruthless shooting of two newly married women and a 10-year-old child." The district court, however, acquitted Taheruddin Thakur, former state minister in the Sheikh Mujib government and two other army personnel.

Two consecutive High Court benches had refused to confirm death sentences handed down by Judge Golam Rasul as per the procedural stipulation. The reason was simple: the judges felt embarrassed. And no explanation was given. The then Chief Justice Latifur Rahman had to intervene and reallocate the case with a fresh two-judge bench to proceed with the review.

After long one and a half years of the lower court verdict, a High Court bench comprising Justice Ruhul Amin and Justice ABM Khairul Huq gave a split verdict on the death reference of the case. In his verdict on December 14, 2000 Justice Ruhul Amin of the High Court acquitted five of the accused and sentenced nine to death while Justice ABM Khairul Huq of the same

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bench convicted all 15 with death penalty. It was finally settled by a single bench of the High Court Division on April 30, 2001. Third single judge court was entrusted by the Chief Justice to try the case following a split judgement by two justices in the case. The prosecution completed their arguments earlier. Justice Mohammad Fazlul Karim, the third judge, confirmed the death sentences against two but upheld the acquittal of three of the former army officers acquitted in a split judgement on the historic Bangabandhu murder case. Only four of the accused sentenced to death are in custody. They are retired Lieutenant Colonels Farook Rahman, Shahrir Rashid Khan and Mohiuddin Ahmed (artillery) and Major Bazlul Huda. The last one was arrested by Thai authority in Bangkok and was later handed over to Bangladesh under an extradition treaty. The convicts to face the death penalty fled from their place of posting as diplomats and are now fugitives. The five who are fugitive but convicted to death are former Lieutenant Colonels Khondakar Abdur Rashid, Shariful Huq Dalim, AM Rashed Chowdhury, SHBM Nur Chowdhury, Abdul Aziz Pasha. The three convicted and acquitted are also fugitive.

The single judge bench took up hearing on the split judgement on February 12, 2001 and completed the hearing in 24 court days. Since then the appeals (leave to appeal) of the condemned prisoners have been lying with the Appellate Division, without seeing any headway on this or that plea.

#### None to Hear Bangabandhu Murder Case?

On 16 July 2000, the application for leave to appeal of the Bangabandhu Murder Case was presented before the Appellate Division comprising the then Chief Justice Mahmudul Amin Chowdhury, Justice Mainur Reza Chowdhury and Justice Mohammad Golam Rabbani. The defence lawyers objected Justice Golam Rabbani on the ground that he was a judge of the bench of the High Court Division which admitted the appeal. They also reportedly expressed their doubts of his neutrality. Though Justice Rabbani did not entertain their apprehensions, he felt embarrassed and decided not to take part in the hearing of the case. A deadlock situation was created as the two of the remaining judges could not hear the leave to appeal because of their participation in the appeal of the same case at High Court Division. As per the Supreme Court rule, a bench comprising a minimum of three judges is required to hear any appeal. Now!

Even after increasing the judges of the Appellate Division from five to seven, the hearing of the leave to appeal of the case could not be heard. Two newly recruited judges Justice J.R. Mudasser and Justice Abu Syed Ahmed felt embarrassed on March 27, 2002 last to hear the appeal. Of five other judges, Justice Md. Ruhul Amin and Md. Fazlul Karim would not be able to hear the case as they already heard it in the High Court, while Justice K.M. Hasan earlier expressed his embarrassment to hear the case. The then Chief Justice Mahmudul Amin Chowdhury requested the government to appoint the senior most judge of the High Court Division Justice Nurul Islam as additional judge of the Appellate Division. The government did not respond to the request. Eventually, Justice Nurul Islam retired from the High Court Division.

With the retirement of Chief Justice Mahmudul Amin Chowdhury on June 17, 2002, the government elevated Justice Kazi A.T. Monowaruddin from the High Court Division to the Appellate Division. As part of a bench, he could hear the leave to appeal; however, he also retired within a very short period. Afterwards Justice Fazlul Huq has been appointed as the newest member of the Appellate Division. So far, Chief Justice Mainur Reza Chowdhury and Justice Fazlul Huq are eligible to hear the leave to appeal. However, they need one more "unenbarrassed" colleague to hear the leave to appeal. And, there is none to join them now.

seven judges could not find three judges to hear this very important case for months. In most cases, nobody bothered to give substantial explanation as to why he was feeling embarrassed to hear the leave to appeal of this significant case. A solution could be reached if the government appoints an *ad hoc* judge to the Appellate Division. A Law, Justice and Parliamentary Affairs Ministry source claimed that there is no need for appointing any *ad hoc* judge for this particular case and the case would proceed normally. However, that does not seem to be the case. To quote Special Prosecutor in the Bangabandhu Murder Case advocate Anisul Huq, "I don't think the government is sincere in finishing this case. The difficulties have been expressed officially and it is now only the government, who can take steps to remove those difficulties. But I don't see any such move (as reported in some newspapers)" In fact, the Appellate Division might have no scope to hear the appeal of the Bangabandhu Murder Case before 17 January 2004 when required number of unembarrassed judges would reportedly be available. Judges' frequent expressions of embarrassment in courtroom, without giving substantive reasons officially have made the situation uncertain and difficult and provide the government an opportunity to delay the process of justice on political ground.

#### Judge's Embarrassment

The question of judge's embarrassment has recently been raised in discussions concerning the Bangabandhu Murder Case. It is clear from the discussions that few have bothered to research the matter, not only in Bangladesh but also in other jurisdictions, as there seems to be no consistent pattern of precedent. Also little understanding of the essence of the legal principles involved with this peculiar situation (judge's embarrassment) is to be blamed. A cursory glance will reveal that there is a vast difference in practice, between the 'appearance of possible embarrassment' and 'the actual existence of embarrassment', which is critical, as only the former (i.e. 'the appearance of embarrassment') is required to trigger refusal to entertain a particular case. Embarrassment is a somewhat nebulous concept, almost impossible to ever prove in most cases... For how do you prove that which is in someone's mind?

There might be genuine grounds for a judge to feel embarrassed. Acute embarrassment might deter a judge from application of judicial mind. To feel embarrassed for the sake of justice in a case in the court is within the discretion of the judge concerned. However, if a judge feels embarrassed just to avoid any political controversy or political element within an important case that might arise afterwards, he, in fact, denies justice. Moreover, if a pattern of embarrassment is developed on a particular case, the ultimate end of justice will not be served. Also a judge should inform the reason of his embarrassment for the sake of justice and transparency. Otherwise the culture of secrecy might encourage malpractice and deject the impartiality of the sacred judicial duty.

Little guidance is available to judges on how to meet their duty of impartiality and yet assure a pro se litigant of his or her right to a fair hearing. Advisory Opinion 1-97 of the Indiana Commission on Judicial Qualifications (<http://www.state.in.us/judiciary/admin/judicial/1-97.html>) is one of the very few opinions that explores this issue. It concludes that a judge's ethical obligation to treat all litigants fairly obligates the judge to ensure that a pro se litigant in a non-adversarial setting is not denied the relief sought only on the basis of a minor or easily established deficiency in the litigant's presentation or pleadings. It states:

*neutrality and impartiality are virtues which are essential to the integrity of the judiciary. Perhaps because those virtues so often are extolled, it appears to the Commission that, from time to time, judges who have before them pro se litigants whose pleadings or presentations are deficient in some minor way, sometimes take an unnecessarily strict approach to those deficiencies, turn the litigants away on those grounds, and, in the name of strict neutrality, violate other sections of the Code of Judicial Conduct. Fairness, courtesy, and efficiency also are hallmarks of an honourable judicial system. . . .* The Commission members believe that in presiding in a case with a pro se litigant in a non-adversarial setting, where the litigant has failed in some minor or technical way, or on an uncontroverted or easily established issue, to submit every point technically required or which would be required from an attorney, the judge violates the Code by refusing to

# Essence of political leadership and Bangabandhu

NURUL ISLAM ANU

REMEMBRANCES are often rendered special by events significant by their own character. August 15<sup>th</sup> is a bad day and a black day in the history of the nation: because it signified the introduction of violence in changing civilian authority; because it demonstrated the morally unacceptable tendency to usurp the sovereign right of the people to change constitutional authority by illegitimate armed adventurism; because it meant ominous induction of conspiratorial politics as a serious challenge to transparent democratic evolution; it was the attempt of an immature group to influence the dynamics of a complex social process they understood least. The result was an enormous distortion in the overall social process from which the nation is yet to recover.

The above calls for an analysis which is not the subject matter of the present write-up.

the latter merely seeking to highlight some of the essence of political leadership in a society by dramatising it with reference to that fateful 15<sup>th</sup> of August, 1975.

The writer is conscious about the risk of such endeavour in an atmosphere of pervasive loss of confidence in the political leadership and the sceptic reception that such exercise might generate among discerning readers. As a matter of fact a friend and a well-wisher specifically discouraged any such noble indulgence by me because to him the image of political leadership is nothing but an aggrandised exercise in the pursuit of self-interest; unprincipled, representing a continuous exercise in betrayal of popular confidence, abuse of power etc. If my friend's position represents a cynic's sense of negativism and a pervasive disappointment with the quality of political leadership. I thought, it makes a good case for saying something about it whatever marginal benefit it might generate.

Nevertheless the exercise is undertaken because political leadership represents the most precious ingredient in the complex task of social and political engineering to build a happy and prosperous nation. Every society in the ultimate analysis is a political society and the difficult job of nation building is undertaken unavoidably within the framework of a political process.

Politics, as an organised endeavour, ultimately seeks to materialise the latent aspirations of self-serving section of the exploited minority usually becomes collaborative partner in this colonial arrangement. A vicious combination of allurements and intimidation is a necessary component of this exploitative culture. Providing political leadership in such an objective setting becomes a terrifying challenge requiring a high level of moral commitment to cause, a sterling combination of political and

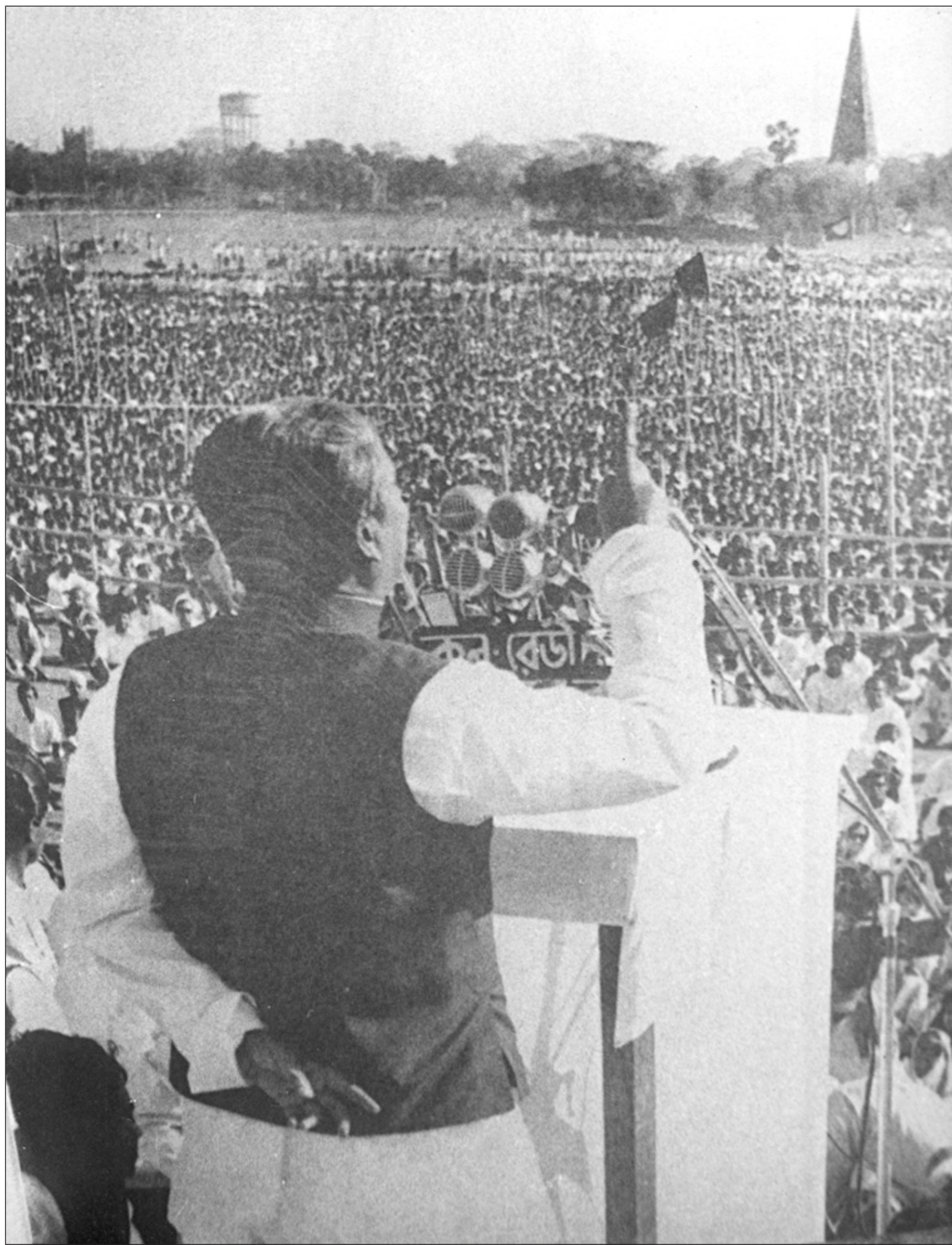
His commitment was intense and absolute; he took his message with relentless determination to the people, spread it from village to village inspiring the common man continuously to the content of his message. Suffering imprisonment for 17 years of his life, threatened with death several times -- Agartala conspiracy case -- arrest in 1971 -- he continued to gamble with life -- with an astonishingly serene confidence remaining loyal to his cause. His thunderous voice roared on the historic 7th of March at the Ramna race course in a feat of rare eloquence -- Bangladesh, as a nation, was born.

personal qualities -- political honesty, indomitable courage, resolute determination to pursue a cause -- which act as the sustaining inspiration to meet these challenges. It lifts the committed practitioner to a new level of moral height, where he finds mundane challenges negligible to the greater mission history calls upon him to accomplish. He engages himself in a continuous exercise of identifying himself with a dream, a cause remaining steadfastly loyal to it, scornfully indifferent to the allurements that are set out to deviate him from his mission. He accepts successive attempts at physical harm, not as sufferings, but as inspirations to sustain his loyalty in his mission. In the last century Mahatma Gandhi of India and Nelson Mandela of South Africa admirably exemplified this moral

content of political leadership. The most significant part of Bangabandhu's political career demonstrated moral and philosophical adherence to an ideal -- committed and unwavering against all the classical allurements of the day. It held out the image of a bold determination to a cause, and the preparation to any level of sacrifice to uphold it.

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His Six Point Programme was the product of an intense love for the common man and this emotional element had been the significant part of the passion that characterised Bangabandhu's politics. Six Point was not the product of a partisan political opportunism -- these were programmes that touched the deeply held aspirations of the common man of Bangladesh. It enjoyed that magic element of universal appeal, understood by every member of all political persuasion elevating it to the status of a national demand. The struggle that followed was long and agonising: the sacrifice that it entailed was colossal; the demand on the creative aspect of political leadership was ruthless. The whole process forms a glorious chapter in our struggle for national identity. In that chapter Bangabandhu stands out as an inspiring model of patriotism which combined with a love for the common man makes him a glittering example of the most creative of our political leadership.



Bangabandhu delivering the historic 7th March(1971) speech at Race Course Maidan (Suhrawardy Uddyayn)

make any effort to help that litigant along, instead choosing to deny the litigant's request or relief.

#### Impunity and Human Rights

The phenomenon of impunity is one of the main contributing factors to the continuing pattern of human rights violations the world over. Impunity, literally the exemption from punishment, has serious implication for the state of human rights protection in a country. By bringing criminal charges against perpetrators of human rights violations, the government sends a clear message that such violations will not be tolerated and that those found responsible will be held fully accountable.

If extrajudicial executions, torture and other grave human rights violations are to be brought to an end, all governments must fulfil certain fundamental responsibilities. First, there should be prompt, thorough, impartial and independent investigations conducted according to international standards into all allegations of human rights violations in order to determine responsibility. This principle should apply wherever the perpetrators happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. The results of such inquiries should be made public. Secondly, those found responsible for human rights violations should be brought to justice before a civilian court without delay. Thirdly, their trials should follow internationally established fair trial standards. Fourthly, amnesty laws or indemnifying provisions should not be allowed to prevent the emergence of truth and accountability before the law through a fair judicial process. Fortunately enough, most of these criteria were fulfilled in case of the trial of Bangabandhu Murder Case.

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No court system can function justly or effectively without built-in safeguards to ensure, as far as possible, the highest ethical standards for judges, attorneys, and others involved in the process. Their fair-mindedness, professionalism and integrity are absolutely essential to public confidence and support. By his or her conduct in the courtroom and elsewhere, the judge should uphold respect for universal human rights. By activities in the legal profession and in contact with judicial and legal colleagues overseas, the judge, inescapably, has a leadership role. Necessarily, the judicial role is subordinate to the Constitution and the law. It is controlled by convention and strong traditions. But at the end of a century which has seen fearful abuses of human rights, the role of the judge as a guardian and expositor of fundamental rights is changing. Judges must rise above the petty technical issues and discretion and will have to play more *pro active* role for the greater interest of constitutional guarantees.

#### Justice Delayed Justice Denied

There has in the past been a tendency on the part of different participants in the administration of justice to blame others for what is universally accepted to be excessive delay. The entire thrust of the development of case management over recent decades has been for the Court to accept increased responsibility for ensuring that matters are made ready for trial and that trials focus on the real issues and are conducted expeditiously and objectively. The judicial process as a whole should be a process in which the profession and the judiciary have, at times, separate but interdependent responsibilities. These standards can only be attained by cooperation between the profession and the judiciary. It is a must, otherwise justice cannot be served promptly and efficiently which will tantamount to denial of justice.

When judges take oath to protect and defend the Constitution it cannot mean that the constitutionally guaranteed fundamental rights would go undefended and unprotected. We cannot be free unless we think and act like free people. As we enter a new millennium, it is apt to reflect on the trail of our past and chart our journey to the future. For that, embarrassment will not lead anyone to any solution. Also inaction on the part of the government to appoint an additional judge to the Appellate Division of the Supreme Court for holding leave to appeal hearing of the Bangabandhu Murder Case might send a wrong signal to the society that the government is not committed to rule of law. Facing the reality objectively might provide a way out. Will the government come forward to break the vicious cycle of impunity and the unfortunate deadlock?

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