

Bangabandhu Murder Case: Hearing not held for single day in 5 yrs

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of the view that the judges are unwilling to hear the case, and, in so doing, avoiding their responsibility.
"I've even seen that when the hearing of the case was about to end, the judge going by the words of lawyers would often feel embarrassed to hear the case without assigning any specific reason," he added.
He also observed that judges do not have the courage to hear the particular case.
However, the judges while taking oath pledge to discharge their responsibilities as per law and with total faithfulness. They pledge, "...I will do right to all manner of people according to law, without fear or favour, affection or ill-will."
Former chief justice Mostafa Kamal told the BBC on March 27, 2002, "This is an important case which has political implications, and no judge wants to get involved in politics. But ultimately they [judges] have to be bold enough to deal with the issue."
Jurists believe the judges must rise above the petty technical issues and play more active role to uphold the constitutional guarantees.
Usually, a judge may feel embarrassed in the cases that they had earlier moved as a lawyer, or the ones where their relatives or friends are involved. Otherwise, no judge can refuse to hear a case.
When the judges felt embarrassed in the past, they would write in the order book that they should not hear the case. The chief justice then would refer the case to other courts. However, in those days a few judges felt embarrassed, said a former judge.
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 political controversy or political element within an

important case that might arise afterwards, he, in fact, denies justice, he opined.
Moreover, if a pattern of embarrassment is developed on a particular case, the ultimate end of justice will not be served.
A judge should also give reasons for his embarrassment in the interests of justice and transparency. Otherwise, the culture of secrecy might encourage malpractice and undermine impartiality of the sacred judicial duty, he added.
On the other hand, the government did nothing in last four and a half years to appoint ad hoc judges to the Appellate Division from the HC to expedite disposal of the case that has been pending since August 2001. Rather, it appeared intent on creating obstacles in many ways to the course of the trial.
By superseding seniors, the government appointed in the Appellate Division the judges who had already felt embarrassed in the HC to hear the case. The appointments seem to have been given with an objective to prevent formation of the bench.
Besides, the government had extended retirement age of the judges, enabling the embarrassed ones to stay in the Appellate Division for two more years.
Scope remains for the government side to appoint judges on an ad hoc basis to hear the Bangabandhu murder case.
However, Law Minister Moudud Ahmed, who on several occasions had refused to take initiative for disposal of the case, recently said that the constitution does not allow more than two judges to be appointed on an ad hoc basis.
Other jurists including Dr Kamal Hossain disagreed with Moudud's interpretation and maintained that the constitution provides for appointing as many judges as required.
Before May 23, 2005 when Justice MA Aziz was made the CEC, the case required one judge to be

appointed. Still the law minister did not make any move to that end.
In October 2001, the then chief justice Mahmudul Amin Choudhury wanted to have a judge in the Appellate Division on ad hoc basis and suggested that the government act accordingly. But he never got a positive response.
"If you don't want to continue with the case, then do let us know, please.... I don't get it why every government tries to pull the trigger resting the gun on the shoulder of the court," Justice Mahmudul Amin Choudhury had said in an open court.
The then president Bangabandhu Sheikh Mujibur Rahman, along with most of his families, was brutally killed at his residence by a group of army officers on August 15, 1975.
After killing of Bangabandhu, successors in the government thwarted trial through an executive order that indemnified the brutal crime and also rewarded the killers by offering jobs in different foreign missions of Bangladesh. After long 21 years, the infamous indemnity ordinance was finally scrapped in 1996 when the Awami League came to power.
The murder case was filed on October 2, 1996 and the trial court awarded capital punishment to 15 retired and sacked army men on November 8, 1998. The HC, in April 2001, upheld the punishment of 12, only four of whom are now in jail.
The case has been shelved since the four have filed petitions for a leave to appeal with the Appellate Division against the HC verdict.
Jurists believe the Bangabandhu murder case is of critical importance for establishing the rule of law and impartial governance. It is a constitutional responsibility of the judiciary to serve justice expeditiously, and also vital for ending the cycle of impunity.
The case must not be viewed or analysed in mere political consideration. It is indeed a heinous murder case with lasting political, historical and constitutional significance. The significance demands professional and objective handling of the case.
But the fact remains that in unprecedented instances, many judges felt embarrassed in this particular case. It gives a wrong signal to the nation about the judiciary, especially the lower courts.