French society into three classes called trias politica: the monarchy, the aristocracy, and the commons. Montesquieu saw two types of governmental power: the sovereign and the administrative. The administrative powers were the executive, the legislative, and the judicial. Montesquieu proposed that these powers should be separate from and dependent upon each other so that the influence of any one power would not be able to exceed that of the other two, either singly or in combination.

These two stories epitomise two ideals of state systems: one, the supremacy of judiciary as testified by the stern stand of Abu Hanifa, and the other the independence as well as checks and balance among three organs of government as theorised by Montesquieu. The background to this writing is a recent divisive High Court (HC) verdict that created much backlash. I consider the verdict to be rational in two ways. To me, the verdict has both functional and substantive rationality, though the content of the verdict is debatable and should be set by the executive authority. The verdict, however, ignites a sensitive question: Who should retain and exercise sovereign power? Before I detail my arguments let's revisit the context and content of the verdict.



AMIRUL RAJIV

The Story Begins

On February 4 this year, the HC declared the present Warrant of Precedence (WoP) illegal and void and directed the government to issue a new WoP for the republic within 60 days, giving district judges and equivalent judicial officers, additional district judges, chief judicial magistrates and chief metropolitan magistrates precedence over the chiefs of armed forces, and government secretaries. The HC directive came as a part of its verdict in a writ petition filed in 2006 claiming that the cabinet division had framed the existing WoP in 1986 in an arbitrary manner, without evaluating the dignity and status of judicial officials. The petition was filed on behalf of Bangladesh Judicial Service Association by Md Ataur Rahman, a former secretary general of the association who was also the then district judge of the tribunal for prevention of repression on women and children, in Patuakhali.

In its reaction to the HC directive, the government on February 7, 2010, appealed against the order. The Attorney General's Office filed the petition with the court of the chamber judge of the Appellate Division on behalf of the government seeking a stay on the HC order given on February 4, 2010. In response, the chamber judge of the Appellate Division passed a stay order for six weeks on the HC verdict on February 8, 2010.

Are There Anomalies in the WoP?

As I pointed out earlier I think the verdict has a functional rationality and should be taken into consideration with a view to remove conspicuous discrepancies from the WoP. By saying so, I am not suggesting that the WoP should be amended to verdict of the court: I am just saying that anomalies exist in the WoP and they should be removed upon consultation with different legal and public administration experts. For example, the cabinet secretary ranked 12 has precedence over the attorney general, comptroller and auditor general, ombudsman, chairman of both public service commission and university grants commission in the WoP – all of whom are ranked 15. Recently, the governor of Bangladesh Bank put in an application to the Prime Minister's Office to upgrade his ranking from 15 to 10, similar to the status of deputy ministers of the republic. I strongly believe these examples underscore the necessity to amend the current WoP.