



YEAR-END JUDGMENT REVIEW

Notable decisions of the Supreme Court of Bangladesh

Throughout the year, the High Court Division and the Appellate Division of the Supreme Court of Bangladesh handed down several significant judgments of immense constitutional importance.

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Last year witnessed an array of major judicial decisions shaping the jurisprudence and legal discourse in Bangladesh. Indeed, throughout the year, the High Court Division (HCD) and the Appellate Division (AD) of the Supreme Court of Bangladesh (SCB) handed down several significant judgments, of immense constitutional importance, among others.

The 15th Amendment to the Constitution has been partially invalidated.

The HCD has delivered a landmark judgment invalidating the 15th Amendment to the Constitution partially. A total of 54 changes were brought by the 15th Amendment in 2011. The major changes include scrapping the provision for a non-partisan Caretaker Government (CTG) to hold elections, incorporating an inexhaustive list of basic structure to the Constitution (Article 7B), etc. The HCD bench comprising Justice Farah Mahbub and Justice Debasish Roy Chowdhury gave the verdict, scrapping parts of the 15th amendment reinstalling the provision of CTG, omitting Articles 7A, 7B, etc. The final decision regarding the CTG will be taken by the Appellate Division as three review petitions are pending in it challenging a 2011 verdict that had scrapped the system.

Supreme Judicial Council (SJC) has been reinstalled

The AD of the SCB has recently scrapped the 16th Amendment of the Constitution. The SJC is a body composed of the Chief Justice and two other senior most judges of the AD to probe allegations on the grounds of incapacity or misconduct against any judge of the Apex court. The 16th Amendment scrapped the SJC and gave the power to the parliament in 2014. The 16th Amendment was invalidated by both

the HCD and the AD in 2016 and 2017, primarily focusing on the doctrine of 'separation of power' and concerns regarding judicial independence. However, when the government filed the review petition, the matter reached a legal stalemate and continued in that state until recently, when the AD again declared the 16th Amendment unconstitutional.

Discouraging disclosure of the sex of unborn babies

The HCD of the SCB has ruled that the guideline by the Directorate General of Health Services (DGHS) discouraging revealing the sex of unborn babies be followed. Prenatal sex detection oftentimes has a direct connection with the ill-treatment of babies and pregnant mothers. That is why the DGHS, in their guideline, discouraged hospitals, clinics, and diagnostic centres from revealing the sex of unborn babies for non-medical reasons. The HCD disposed of the writ petition seeking a ban on such disclosure by directing that the guidelines of the DGHS be followed.

Revising the quota scheme

The AD of the Apex Court of the country has revised the existing quota scheme, which some have embraced positively, while others raised concern over the level of interference in policy decisions done in the case. Prior to the decision of the AD, the HCD had decided that the notification by the government in 2018 withdrawing the quota system in government jobs was illegal. However, the AD reversed the decision of the HCD. The new quota scheme is applicable for government jobs in all grades. As per the new scheme, a seven percent quota is reserved for all jobs: five percent for children of freedom fighters, martyred freedom fighters and Beerangonas, one percent for the indigenous community, and one percent for people with disabilities and 'Tritiyu Lingo'.

The imposition of conservancy fees under section 3 of Conservancy and Pilotage Service Fees Rules 1990 is legal

The plaintiffs of the original case alleged, amongst others, that the imposition of conservancy fees under the 1990 Rules is illegal. The AD of the SCB found that, firstly, such imposition of fees under the 1990 Rules is justified and not at all a breach of the principle of double jeopardy. It moreover concluded that the imposition of conservancy fees is not a punitive measure but rather an investment in sustainable water management. Such measures are needed for both our economic interests as well as out of environmental concerns. In a country with concerning environmental conditions, such decisions by the Apex Court of the country are appreciable.

The legitimacy of the interim government under the current Constitution

The AD of the SCB on 8 August 2024 decided that the President of Bangladesh may, to fill in the constitutional vacancy, for urgent necessity, appoint chief advisor and other advisors to conduct executive functions on an interim basis. The AD exercised its power under Article 106 of the Constitution which allows it to give opinions to the President when the President seeks the same on a question of law of great public importance. The AD noted that as the previous Prime Minister resigned and the President dissolved the previous parliament, such an interim government could be established as of necessity. This decision by the AD was important to maintain the constitutional continuity of the country.

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LAW LETTER

Ensuring fair trials in Bangladesh

Any justice system must have fair trials as a cornerstone, ensuring that each individual receives the same impartial treatment while in conflict with the law. Articles 27 and 31 of the Constitution of Bangladesh upholds the concept of fair trial. Nevertheless, there are several obstacles that hamper the execution of justice when these concepts are put into practice.

A major concern is the overburdened judiciary. By 2023, there will be over 3.7 million cases still waiting, making it very difficult for the justice system to provide timely justice. Prolonged pre-trial detentions, as well as greater financial and emotional strains on litigants, may result from procedural delays. Due largely to this backlog, people's right to a fair trial gets routinely violated.

Moreover, securing competent legal representation continues to be a serious struggle, especially for the socioeconomically disadvantaged citizens. While the Legal Aid Services Act, 2000 provides for

free legal aid, the system remains underfunded and hence inaccessible to a vast swathe of people.

Consequently, the marginalised groups are often without access to adequate representation fuelling miscarriages of justice. The legal system suffers from corruption as well, further undermining the fairness of trials. Corrupt practices undermine public confidence in the judiciary and

often distort the outcome of trials in favor of the wealthy, powerful and/or political elites.

Another obstacle to fair trial is the manner in which investigations are carried out. In Bangladesh, law enforcement agencies are often accused of fabricating evidence, obtaining forced confessions through torture, and conducting investigations that are neither thorough nor neutral. Along with that, there are insufficient forensic facilities and trained personnel, which makes it more difficult to deliver justice based on reliable evidence.

These challenges can be solved in different ways. To begin with, managing the backlog could be achieved by increasing the number of judges, improving case management systems and establishing specialised courts for specific types of cases. In addition, enhancing outreach of its free legal aid mechanisms and augmenting the resources for the Legal Aid Services Act may help under-privileged citizens access justice better. Furthermore, investing in advanced forensic facilities and enabling police to properly gather evidence and conduct fair investigations can lead to trials of a better standard. Finally, independent oversight authorities must be put in place to investigate corruption allegations within the judiciary and by the law enforcement agencies.

Upholding the rule of law and maintaining public trust in Bangladesh's justice system depend mostly on ensuring fair trials. Even though the obstacles are substantial, they are not insurmountable. By working together, the government, judiciary, and civil society can establish a more efficient and equitable judicial system, which will bring the nation closer to the principles enshrined in its Constitution.

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YEAR-END LAW REVIEW

Reviewing the laws enacted in 2024

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The year 2024 presented new hopes for Bangladesh. New laws and ordinances were enacted, some old laws were revised as the spirit of reforming the state touched the legal landscape. Ten Acts were enacted by the previous regime while 17 new Ordinances were passed after the parliament was dissolved. From finance to international crimes, this piece discusses some notable laws and ordinances from this year.

The Local Government (Union Parishad) (Amendment) Act 2024

The Act, originally enacted in 2009, was amended in 2024 to incorporate a provision for appointing an administrator on the expiry of the five-year tenure of the union-level local government body. Hence, the Union Parishad chairman and members shall not remain in their respective positions once the specified duration is over and will be replaced by an administrator appointed by the government to carry on the local activities until the next Parishad is formed. The administrator will be allocated a 120-day tenure for the task and cannot be appointed as the same more than once.

Payment and Settlement System Act 2024

The Payment and Settlement

System Act was passed to make provisions related to reducing the risk of financial transactions and protecting the interests of customers through integration, supervision and control of the payment, drainage and settlement system. No banking company can participate in any payment system, operate payment system or provide electronic currency payment services without the approval of Bangladesh Bank. Similarly, no individual, organisation, or company can run a payment system or perform payment services

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without first getting a license from Bangladesh Bank. Violation of this clause will result in a possible 5-year prison sentence, a fine of up to 50 lakhs, or both. Offenses committed under this Act shall be cognizable



and non-bailable.

National Primary Education Academy Act 2024

In order to execute the National Curriculum and improve the professional abilities of primary school teachers and primary education officials, the Act has been passed to create a National Primary Education Academy that would undertake research and offer cutting edge training. The Act aims to strengthen the primary education structure.

Offshore Banking Act 2024

The Offshore Banking Act 2024 was enacted to govern and regulate offshore banking activities in conformity with the dynamics of

the contemporary international financial system. It outlines the regulatory framework for establishing and operating offshore banking units by Scheduled Banks in Bangladesh. This law prohibits engagement with any offshore banking business except a scheduled bank operating in Bangladesh.

Offshore banking units in Bangladesh can accept deposits from foreign-owned enterprises in specific zones and provide financial services like loans, letters of credit, and bill discounting. They also handle deposits and loans from non-resident Bangladeshis, foreign individuals, and institutions, and operate foreign currency accounts for residents to facilitate remittances

and transfers. Certain restricted activities include unauthorized transactions and demand deposits, and credit facilities must follow prescribed procedures. Offshore banking units are required to keep records for easy auditing, with scheduled bank auditors conducting audits. Bangladesh Bank has the authority to inspect records and assets, impose fines for non-compliance, and issue directives and policies. Penalties for non-compliance include fines for failure to submit financial statements, providing false information, and other violations of the Act.

International Crimes (Tribunals) (Amendment) Ordinance 2024

Originally enacted in 1973, this Act was revised this year followed by the fall of Sheikh Hasina Regime. This was done to bring the Act more in line with the international instruments and address the loopholes of the previous version. The law now has the jurisdiction to international crimes committed extraterritorially. There have been some fundamental changes in the definitions of the crimes. Definition of Crime against Humanity is expanded to include explicitly forcible transfer of population, sexual exploitation, enforced disappearance, human trafficking, sexual slavery, enforced prostitution, forced pregnancy,

enforced sterilization among other acts when committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack, or persecutions based on political, racial, ethnic, or religious grounds. Incitement to commit any international crimes has been incorporated within the Jurisdiction of the Tribunal. Apart from this the new changes include provisions for recording and broadcasting tribunal hearings, allowing representatives from UN bodies and human rights organizations to observe public hearings. Accused persons are granted rights which the earlier version of the Act lacked. There are also new measures for submitting digital evidence, providing compensation to crime victims, and ensuring witness protection. These updates aim to enhance transparency, fairness, and protection within the judicial process in line with the international standards.

As Bangladesh stands at a crossroads and awaits meaningful reforms within its policy-legal framework, 2025 looks both full of hopes and anticipations.

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