

# Without judicial supremacy, all institutions will collapse

In conversation with Barrister Jyotirmoy Barua, advocate, Supreme Court of Bangladesh.



Jyotirmoy Barua

**The Daily Star (IDS):** What are the key reforms required for the judiciary in Bangladesh?

**Jyotirmoy Barua (JB):** Judicial reform revolves around judicial supremacy, with a key focus on entry-level appointments. The judiciary consists of lower and higher courts, yet the Constitutional Reform Commission (CRC) proposed abolishing subordinate courts without addressing necessary structural reforms. For example, Article III mandates Supreme Court rulings as binding on lower courts, but the CRC did not recommend amending this, creating contradictions.

Currently, subordinate court judges are recruited through a commission, often appointed after passing an exam with minimal training. This system allows individuals with limited practical experience to adjudicate complex legal matters. In the past, judicial appointments required maturity and experience, but today, candidates can memorise textbooks, pass exams, and become judges with little real-world exposure. A minimum of five years of legal practice

before judicial appointment would ensure practical knowledge.

The appointment of Supreme Court judges in Bangladesh is governed by Articles 95 and 98 of the Constitution. Article 95 outlines judge appointments, while Article 98 addresses temporary appointments. The Supreme Court Judges Appointment Ordinance 2025 introduced changes, some necessary but others problematic. Despite stakeholder consultations, key concerns were overlooked.

Previously, the Chief Justice (CJ) appointed judges in consultation with the President, though political interference was common. The new ordinance shifts this authority to a Supreme Judicial Appointment Council, contradicting Article 95, which mandates that only the CJ nominates judges. Again, the CJ is designated as a council member, despite the council's stated purpose of advising him. If such a council were necessary, it should have been structured to allow the CJ to form it at his discretion.

Other members include senior judges from the Appellate and High Court



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Divisions, but the inclusion of a district judge is problematic. Article 152(1) defines an administrative unit as comprising judges below the district judge rank. Allowing subordinate judges to influence Supreme Court appointments disrupts judicial hierarchy and raises concerns about conflicts of interest.

Another issue is the Attorney General's participation in the council. As a political appointee, the Attorney General is susceptible to government influence, which could compromise judicial impartiality. Additionally, the ordinance allows the CJ to appoint a law professor or legal expert as a council member. However, professors lacking direct legal practice experience may not be suited to assess judicial candidates.

The ordinance's provisions appear to promote inclusivity by allowing lower judiciary members and external stakeholders a role in judicial appointments. However, this structure is unsuitable for the judiciary, where hierarchy is crucial.

Historically, around 70% of Supreme Court judges have been appointed from practising lawyers, while 30% have come from the judiciary. This balance recognises the distinct skill sets required in higher

courts. Lower court judges primarily follow strict legal procedures, whereas Supreme Court judges must exercise judicial discretion. Judges accustomed to rigid procedural rulings may struggle with the broader interpretative role required in the Supreme Court.

Article 6 of the ordinance outlines the council's authority to nominate candidates and introduce additional eligibility criteria beyond those in Articles 95 and 98 of the Constitution. One such criterion is a minimum age of 45 years for appointment. Lowering this to 40 years would be more reasonable, as lawyers gain substantial expertise within ten years of practice. Talented legal professionals may be dissuaded from joining the judiciary if they must wait until 45, especially given the financial and professional constraints of judicial roles.

The ordinance also introduces qualifications related to candidates' education, professional experience, and publications. While these may appear beneficial, they introduce loopholes that disadvantage practising lawyers. Lawyers can begin practising with an undergraduate degree, whereas lower court judges often pursue postgraduate degrees at government expense. This discrepancy gives judicial officers an advantage in Supreme Court appointments, effectively reducing the number of lawyer appointees.

Judicial appointments should not be based on retrospective scrutiny of qualifications but rather on professional competence. Eligibility criteria should be established by the Constitution or Parliament, not left to an appointment council's discretion. By undermining merit-based selection, the ordinance fails in its stated objective of enhancing transparency and competence in judicial appointments.

CONTINUED ON PAGE 9

- » A minimum of five years of legal practice before judicial appointment would ensure aspiring judges gain practical knowledge before assuming responsibilities.
- » The interim government should prioritise establishing an independent, transparent judicial appointment process to ensure competence, diversity, and public confidence.
- » Decentralisation, like India's model, could ease burdens for litigants by establishing High Courts and circuit benches, improving judicial accessibility in Bangladesh.
- » Decentralisation improves accessibility, but its success depends on structured implementation ensuring judicial consistency; otherwise, its effectiveness remains uncertain.
- » Judicial reforms must ensure CJ's accountability while preserving the position's dignity.

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