

Repeal of Supreme Court ordinances may return courts to political captivity



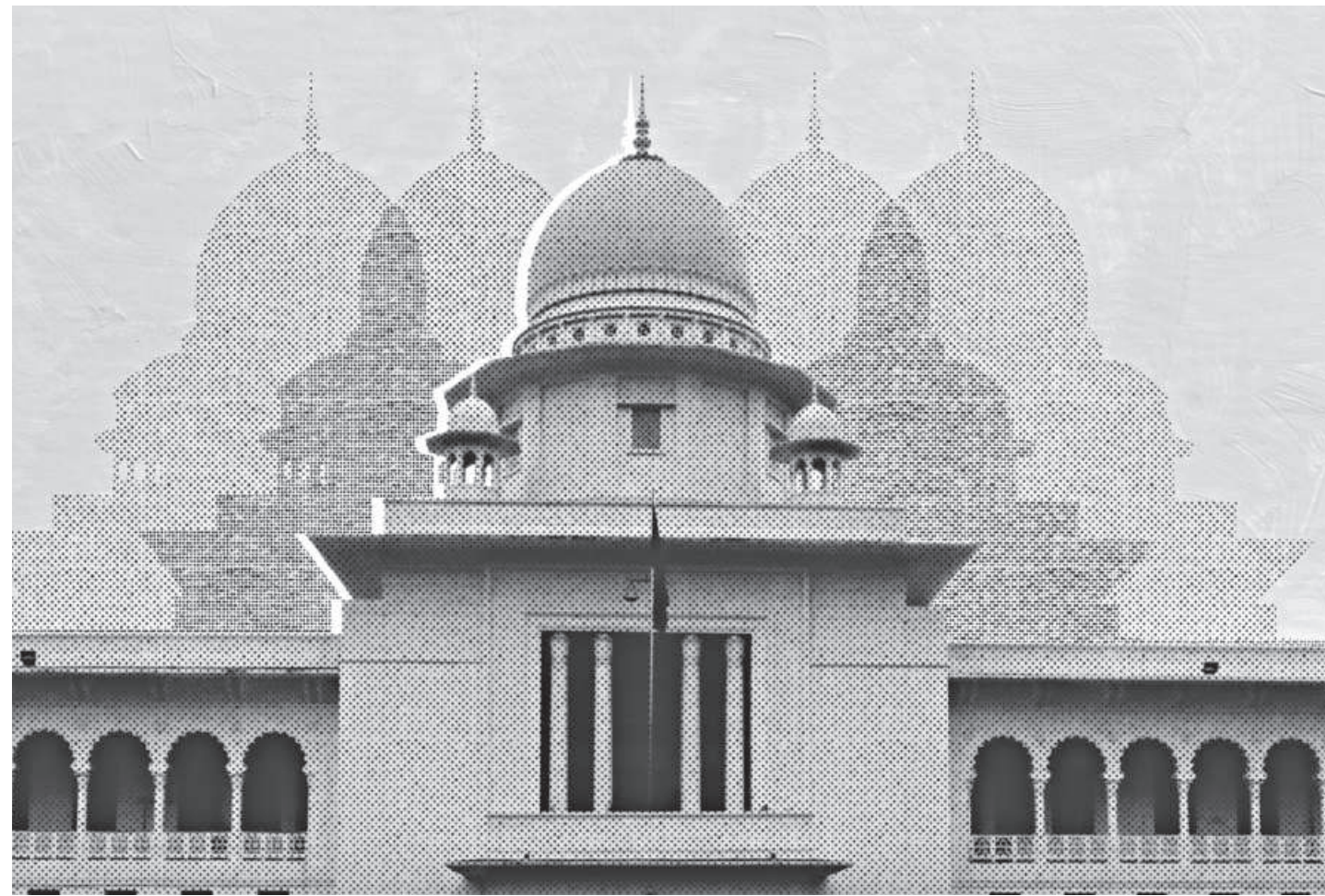
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The move to repeal the Supreme Court Secretariat Ordinance, 2025 and the Supreme Court Judges' Appointment Ordinance, 2025 is being presented as prudence. But it is actually the latest expression of an old political reflex: every ruling class in Bangladesh wants courts that speak the language of independence but operate within boundaries set elsewhere. Experts have seriously condemned and criticised the proposed repeal. The law minister's assurance that the texts can be scrutinised and returned later as bills should be read together with the rollback itself, not as a cure for it. Usually, first comes institutional retreat, then comes the promise of consultation, and then comes the graveyard of reform. Bangladesh has seen this script too many times now to mistake it for caution.

The real mistake in much of public discussion is to treat judicial independence as a noble abstraction. The issue is far more concrete and far uglier. A politically pliant judiciary helps governments do three things that raw executive power alone cannot do: it sanitises persecution, legitimises constitutional vandalism, and disciplines dissidents through procedure rather than openly through force. That is why these ordinances matter. They touch the two pressure points through which capture usually operates: who gets onto the bench and who controls judges once they are in office.

Anyone who thinks this is exaggeration should return to the 13th Amendment review judgment. The most damning passage in it is not the restoration of the caretaker framework, but the court's acknowledgement that, in the gap between the 2011 short order and the later full judgment, the judiciary appeared to have "buckled under the legislative pressure" (pp 59-61). That is an extraordinary admission. It amounts to a constitutional confession that the court could be bent at the very moment it was meant to operate in the nation's interest. Once the highest court says that politics may have shaped constitutional adjudication, appointments and institutional control cease to be technical questions and instead become factors influencing the survival of democracy. It is also noteworthy that former Chief Justice Khairul Haque, who authored the 13th Amendment judgment, has been in custody since July 24, 2025 (albeit on unrelated charges). The symbolism is difficult to ignore. The same pattern has been visible in other cases as well. Former Chief Justice SK Sinha



VISUAL: ANWAR SOHEL

resigned following intense government pressure after the 16th Amendment judgment. He publicly denied claims of illness and stated he was forced to leave the country. He had to say openly before the media that he was neither sick, nor was he escaping, and that the government was misguided. In later interviews and in his book, *A Broken Dream*, he alleged intimidation by intelligence officials, coercion by senior state authorities (namely, the then prime minister, law minister, and attorney general) at Bangabhaban, and severe personal and institutional pressure to deliver a judgment favourable to the then government—which he had refused to do (pp 526-530).

In August 2024, then Chief Justice Obaidul Hassan and several Appellate Division judges resigned, again confirming how shattered

public confidence in judicial neutrality had become. And the cases against Khaleda Zia showed, in perhaps the cruellest possible way, what a compromised judiciary can do to a political opponent. No principled democrat needed to be a partisan of Khaleda Zia to see the problem: an elderly opposition leader with serious medical complications was denied bail and/or meaningful relief for years, only for the Appellate Division to later (that is, after

follows the prime minister's advice. The most sensitive stage has long been the appointment of additional judges under Article 98, which serves as the main entry point to the higher judiciary. This structural feature allowed patronage-driven appointments to persist.

Although the Awami League restored consultation with the chief justice for permanent appointments under Article 95 through the 15th Amendment in 2011, it chose

opaque patronage system with a statutory process. The High Court itself (when asked to strike down parts of it) accepted that the existing scheme had defects and lacunae, noted the prevalence of political appointments, and described the ordinance as desirable in the national interest while leaving room for parliamentary debate and revision. That is the correct constitutional sequence: courts identify vulnerabilities and parliament improves the law. What the parliament must not do is destroy the framework first and promise improvement later. That is not refinement. It is a relapse.

The same is true of the Supreme Court Secretariat Ordinance. Judicial independence is not secured merely because judges write their own judgments. It requires administrative control over postings, promotions, discipline, staffing, and the everyday machinery through which careers are made or broken. The High Court's 2025 ruling restoring Supreme Court control over the lower judiciary and ordering a separate judicial secretariat was important precisely because it confronted the operating core of executive influence. A lower court judge who knows that administrative destiny still depends on the executive does not need to receive a direct order to understand the limits of courage. Institutional dependence teaches self-censorship more efficiently than threats ever could.

Defenders of the repeal say no elected parliament should feel bound by ordinances issued by an interim government. That is a respectable argument only if it is applied honestly. These ordinances are being targeted not because they are procedurally impure, but because they constrain the two forms of influence that elected governments most prize: control over appointments and control over judicial administration. If there are defects in composition, age thresholds, disclosure rules, or selection criteria, amend them now. Strip out what is weak. Tighten what is vague. Add transparency where it is missing. But do not reopen the old void and ask the public to trust that something better will one day emerge from it. In Bangladesh, legal vacuums are rarely neutral and are almost always filled by the executive.

The real question before parliament now is brutally simple. Does it want an independent judiciary, or merely a friendlier one?

If these ordinances are allowed to die, the answer will become obvious. The country will be told once again that reform is admirable in speeches, expendable in office, and negotiable whenever it threatens the political class' control over the courts. That would not just be a waste of a historic reform moment; it would restore the institutional conditions that made constitutional distortion, partisan prosecution, and judicial intimidation possible in the first place. Bangladesh does not need that system repaired. It needs it buried and replaced with one that no government can quietly reclaim.

not to extend the same safeguard to Article 98, thus clearly violating the 1972 framework's structure. As a result, initial appointments to the High Court Division remain largely within executive control, creating space for political preference and favouritism.

The system relied on convention where firm legal limits were required, and that reliance proved misplaced. The 2008 attempt to establish a Supreme Judicial Commission was later abandoned with the return of electoral politics, not because it failed but because it restricted executive discretion. The underlying reality is clear: control over appointments is a source of power, and governments are reluctant to surrender it.

The Supreme Court Judges' Appointment Ordinance in particular was an attempt, admittedly an imperfect one, to replace that

the August 8, 2024 regime change) describe the proceedings as a "manifestly contrived misapplication of the law" amounting to "malicious prosecution." This was not a minor judicial error, but a structural failure that demonstrated how laws can be weaponised when courts cease to function as independent adjudicators.

The historical justification for the repealed ordinances is, therefore, significant. Bangladesh's present situation is the result of a gradual weakening of constitutional safeguards. The original 1972 constitutional framework assigned the chief justice a role in judicial appointments, but later amendments and political practice steadily reduced the scope of the role. In practice, the consultation requirement was always limited, since Article 48(3) ensures that presidential authority

How 'middle powers' are leaving the Global South behind



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At last week's World Trade Organisation (WTO) Ministerial conference in Cameroon, the world's big trading nations, including Europe, the UK, and Canada, effectively gave up on collective decision-making. Instead, they said they'd focus more on seeking voluntary agreements or plurilateral agreements among themselves. These types of deals diverge from normal WTO consensus-based decision-making, where every country is supposed to agree on everything.

The so-called middle powers have decided to strike trade deals with each other in e-commerce, digital trade, and services, ignoring international poverty or what the Global South wants. If these plurilateral agreements eventually become international law, all countries will be obliged to comply irrespective of whether they helped write the rules. The global South must either put up or shut up.

One advantage of multilateralism—the idea that all countries must be involved in decisions—was that smaller, less powerful countries had clout because they could block deals they didn't like. Whilst it was clunky in practice, at least it gave these countries a small voice.

Plurilateral agreements "aim to sideline multilateralism so that self-selective groups of more powerful states can cherry-pick what they negotiate," said Jane Kelsey, an emeritus professor of law at the University of Auckland. On top of these plurilateral agreements, the less powerful countries are increasingly

being subjected to regional and bilateral agreements. They risk being excluded as the middle powers do more deals.

Smaller economic size, skills, resources, and negotiating capacities often mean they are not proactive enough to initiate talks and do not negotiate effectively. In relative terms, their market access will decline unless they take action. January's India-EU trade deal, in effect, nullifies Bangladesh's zero-tariff arrangement with Belgium because Indian exporters now also enjoy lower tariffs on some products in Europe. Australia, the UK, and Canada's membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) enhances market access for the 12 countries involved in the deal compared to the least developed countries, none of which are part of it.

The death of the rules-based order

At the Davos meeting of the World Economic Forum in January, Canadian Prime Minister Mark Carney crystallised the hypocrisy. Carney, former governor of the Bank of England and Canada, pronounced the rules-based international order dead. He compared the system to "living within a lie" under the former Eastern Bloc countries, where the system only preserved itself because everyone else pretended to support it.

"The system's power comes not from its truth but from everyone's willingness to perform as if it were true. When even one person stops performing ... the illusion begins to crack." The former Goldman Sachs

banker continued: "We knew the story of the international rules-based order was partially false." But if you knew it was false, why did you promote it, benefit from it and shape it? If you knew the system you were promoting was a lie designed to benefit the rich while exploiting the poor, did all your rich, powerful friends at Davos know it was a lie, too?

For decades, countries in the Global South were told that the rules-based order

Europe often touts itself as a 'development partner.'

Where was Europe as a partner when Trump was hammering the LDCs with tariffs? If Brussels had any muscles and meant what it said, it'd surely be pushing its interests. But no, in its feeble deal with the US, the EU managed to entirely forget about the impact on its supposed developing country sisters.

would make them prosperous. Join the WTO, open markets, and accept the dollar as the world's currency. The International Monetary Fund and the World Bank will manage the global economy. Everything will be OK. The system worked for the North and for some less advantaged countries. China's WTO membership in 2001 hyper-charged its headlong rush into international markets and sparked the biggest mass reduction in poverty the world has ever seen. Hundreds of millions of people who'd otherwise have toiled as subsistence farmers began to form a new middle class. China became the most successful capitalist growth story in history. In Bangladesh, crores of people moved out of extreme poverty in a couple of decades as relative economic stability and more open

markets allowed the ready-made garment sector to prosper, although that success story may now be wobbling.

But for many, the gains were far more patchy. About 15 to 18 crores more Africans are extremely poor now than in 1990. Poverty reduction across the globe has gone backwards since 2020. The international rules-based order paid scant attention to the environment. The rules worked very well for the beneficiaries at the top of the mountain, while only a select few from the majority world were allowed to clamber up onto its lower slopes. They always knew the story was false.

Forgetting the poor

This abandonment of the less advantaged comes at a time when they most need support. Tariffs on exports from the Least Developed Countries (LDCs) have soared to over 28 percent in the United States on a trade-weighted basis, up from about 2.8 percent before the Trump tariffs. Astonishingly, LDCs on average now pay more than twice the rate charged to developed countries to access the US market. This is simple victimisation. Countries like Bangladesh and Cambodia face tariffs worth half the value of their exports. This huge new tax is directly killing jobs and putting low-income people out of work in poor countries.

Europe often touts itself as a "development partner." Where was Europe as a partner when Trump was hammering the LDCs with tariffs? If Brussels had any muscles and meant what it said, it'd surely be pushing its interests. But no, in its feeble deal with the US, the EU managed to entirely forget about the impact on its supposed developing country sisters, landing them in a worse position than itself.

My friend from Lesotho told me that a government delegation was rebuffed in its efforts to negotiate with a visiting US trade team in neighbouring South Africa. A quick phone call from the EU ambassador might

have helped.

The end of aid?

This process of desertion by the middle powers has a longer background: 22 countries have chopped tens of billions of dollars off official development assistance since 2023. The latest is the UK, which last month slashed official development assistance to less than 0.3 percent of gross national income—the steepest cut of any G7 economy and more than halving the level from its peak three years ago. Africa faces the worst cutbacks. A 40 percent decline in UK aid to the continent will take bilateral assistance to its lowest level since the 1970s, in effect unwinding decades of supposed commitment to the world's poorest.

The UK is hardly alone: Sweden, Germany, France, the Netherlands and other EU donors have also found themselves becoming less generous in recent years as they rediscover an appetite for war and austerity.

At a time when their supposed adversary, Trump, "threw the US Agency for International Development into the wood chipper," this seems a particularly bad moment to suck much-needed cash out of the Global South. It's strange how the so-called middle powers criticise Trump, then in some areas copy him.

It's also an own-goal. It'll erode whatever mild influence these governments wielded abroad. Fed up with the hypocrisy, governments from Nairobi to Dhaka are going their own ways or siding with China, which has abolished taxes on their exports and has spent the past decade or more spending a trillion dollars on useful things like building bridges, roads and ports.

Of course, many of us knew that the rules-based order was a lie, but now the truth is clear, as even its former proponents admit. And if there are middle powers, there must be higher powers and lower powers. It's a sad admission to rank the world's countries based on power rather than rules or justice.