

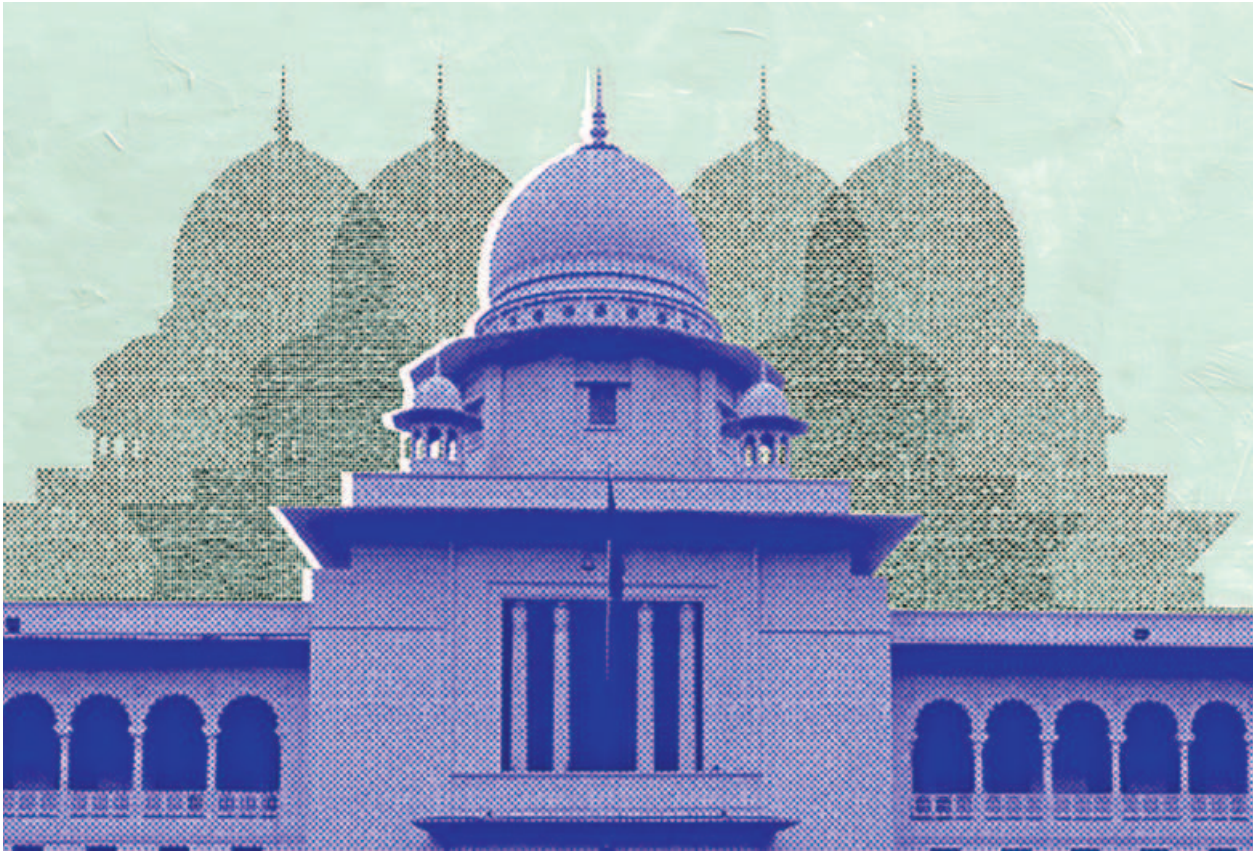
JUDGMENT REVIEW

Reviewing the separate judicial secretariat judgment

JEBA MOBASHWIRA

After the final hearing of the writ petition of *Mohammad Saddam Hossen v Bangladesh* (2025) case, the High Court Division (HCD) of the Supreme Court of Bangladesh (SCOB) directed the establishment of a separate secretariat for the Supreme Court within three months. Consequently, the Supreme Court Secretariat was subsequently inaugurated by the interim government under the ‘Supreme Court Secretariat Ordinance, 2025’ in December of the same year. However, the elected government later enacted the ‘Supreme Court Secretariat (Repeal) Act’ in the National Parliament on 10 April 2026. Consequently, the Supreme Court Secretariat stands dissolved as of now. However, a writ petition was filed before the HCD on 19 April 2026, challenging the legality of the ‘Supreme Court Secretariat (Repeal) Act. On the other hand, the state has also filed an appeal to the Appellate Division, being aggrieved by the decision in the *Saddam Hossen* case.

To begin with the background of this case, the Constitution of the People’s Republic of Bangladesh conferred on the Supreme Court



VISUAL: ANWAR SOHEL

Genuine checks and balances presuppose an effective separation of powers, which is very unlikely to exist where the executive exercises control over the judiciary through the president acting on the advice of the Prime Minister.

control over the subordinate judiciary, including posting, promotion, leave, and discipline. In 1975, through the Constitution (Fourth Amendment) Act, however, this authority was transferred to the President, and thereby, the power shifted to the executive organ of the state. Subsequently, the effect of the Fifth Amendment (brought in 1979) was that the President would exercise this power ‘*in consultation with the Supreme Court.*’ The Fifteenth Amendment (brought in 2011) also supported this position. Thereafter, a writ petition was filed challenging Article 116 and the Bangladesh Judicial

Service (Disciplinary) Rules, 2017, and seeking direction for a separate judicial secretariat.

Moving forward with the petitioner’s argument, firstly, it was contended that this executive control (Article 116) undermined judicial independence and violated the separation of powers and accordingly, that these amendments (both Fifteenth Amendment and Fourth Amendment) are unconstitutional. Secondly, it was argued that executive influence was reinforced by the 2017 Rules, which officially conferred authority over judicial matters on the Executive.

Petitioners further asserted that India (Article 235), Singapore (Article 111F), Nepal (Article 154) and Sri Lanka (Article 111H) have constitutionally vested the control over subordinate courts in the High Court regarding posting, promotion, leave decisions and overall service matters of lower court judges. Moreover, the petitioner substantiated the argument by stating that the separation of powers and independence

of the judiciary are the basic structure of the Constitution, and Article 116 is its central framework. The petitioners, in support of their arguments, primarily referred to the *Idrisur Rahman* case and the 16th Amendment cases.

The respondent lawyers, in contrast, submitted that Article 116 deals only with certain matters (such as posting, promotion, and leave) rather than complete control, and that these powers are exercised in concurrence with the Supreme Court and thus ensures checks and balances among the state organs. Additionally, Article 116A explicitly states that judicial officers can exercise their powers within their functions, which eventually ensures the independence of the judiciary. They drew their conclusions based on the rulings of the *Idrisur Rahman* and *Md Abu Bakar* judgments, which clarified that actions taken under this provision without consultation with the Supreme Court are invalid. Regarding the 2017’s Disciplinary Rules, they further argued it was made under Article 133, which allows

regulation of service conditions. Since Article 133 was not challenged, the Rules cannot be declared unconstitutional.

Moreover, the respondents argued that courts cannot legislate or amend the Constitution; they can only interpret it. The respondent also negated the basic structure argument, stating that although some constitutional principles were recognised as basic structures of the Constitution, Article 116 was never unequivocally held as one. Furthermore, the respondents argued that the 4th Amendment cannot be challenged as it is no longer in effect, and only the 15th Amendment can be challenged. As such, if the Court finds the changes brought by the 15th Amendment unconstitutional, we have to inevitably go back to the language of the 4th Amendment, not the original text of 1972.

Coming to the decision of the court, the Court ruled that the amendments to Article 116 introduced by the 4th and the 15th Amendments were unconstitutional, as they violated the Constitution’s basic structure

(particularly the principles of judicial independence and separation of powers between the Executive and the Judiciary). The amendments were also found procedurally defective because the relevant amendment Bills lacked the constitutionally required proper ‘long title’.

Rejecting the Attorney General’s contention that the 4th Amendment was beyond judicial scrutiny due to its repeal, the Court observed that the amendment had not truly repealed Article 116; rather, it merely substituted the term ‘*Supreme Court*’ with ‘*President*’. The judgment further clarified that constitutional amendments cannot be equated with ordinary legislation. Referring to the Doctrine of Eclipse and Revival, the Court also held that if the 15th Amendment to Article 116 is struck down, the 4th Amendment version automatically revives, and if that too is found unconstitutional, then the original 1972 version of Article 116 revives without the need for any new legislation.

Moreover, the Court rejected the argument that the present framework under Article 116 ensures ‘checks and balances.’ It noted that genuine checks and balances presuppose an effective separation of powers, which is very unlikely to exist where the executive exercises control over the judiciary through the president acting on the advice of the Prime Minister. Thus, such authority, the Court opined, must be vested in the Supreme Court itself. Similarly, the Disciplinary Rules 2017 were declared unconstitutional as they conferred authority over the supervision of judicial officers upon the executive. And finally, the Court directed the formation of an independent and separate Supreme Court Secretariat.

In light of the Court’s observations, I believe the separation of the judiciary through a separate judicial secretariat is not just a luxury; indeed, it is a necessity for realising a desired culture of constitutionalism and it is hoped that the government will not impede the dream of a separate judicial secretariat of the people.

The writer is intern at Law Desk, The Daily Star.

LAW AND JUSTICE

Brutal cases of sexual violence and a justice system in collapse

SABRINA HILALI

The mutilated body of Ramisa Akter, an 8-year-old child raped, murdered and beheaded, was recently found in the capital of Bangladesh whose Constitution promises right to life, equality, and protection to every citizen. The accused confessed within a day and eventually named another man. In any case, many remain in disbelief that justice will be delivered- an indictment in itself of Bangladesh’s rape adjudication system. When citizens lose faith that victims of child rape and murder will see justice reliably delivered through fair trials, convictions, and meaningful punishment, the crisis is no longer merely criminal but constitutional.

Bangladesh Mahila Parishad documented 786 rape and gang rape victims in 2025, while Ain o Salish Kendra recorded 749 rape cases nationwide in the same year. On 28 April 2026, Bangladesh’s Home Minister informed Parliament that 666 rape cases had already been filed nationwide since the current government assumed office on 17 February 2026. These are not isolated crimes within an otherwise functioning legal system, they are the epidemiological symptoms of a state whose rape adjudication structure has lost both deterrent credibility and constitutional seriousness. It is a collapse of adjudicatory capacity so full of failure that it jeopardises faith in the rule of law itself. The real number of child rape incidents in Bangladesh is almost certainly far higher than the official figures because survivors are socially punished before perpetrators are legally prosecuted. Cases vanish before they become cases.

Bangladesh currently operates a child rape adjudication system with a conviction rate of 0.52 percent. For every two hundred children sexually assaulted in Bangladesh, only one case ends in conviction. The Women and Children Repression



Prevention Act 2000 was enacted in a very urgent manner, with the zeal and aim of protecting women and children. In 2025, amendments were made to change investigation time limits from 30 days to 15 and trial time limits from 180 days to 90, as well as to widen the definitions of sexual violence, and made rape a non-bailable offence. The country still operates under the colonial-era Evidence Act 1872 that categorically treated women’s sexual history as evidence until 2022 amendment, under which questions on “general immoral character or previous sexual behaviour of the victim” can still be asked with permission of the court and “for ends of justice”. Unlike the United Kingdom’s Section 41 rape shield protections or India’s post-Nirbhaya reforms under Section 53A of the Indian Evidence Act, Bangladesh still lacks a comprehensive rape shield law.

Essentially therefore, it is the colonial rape jurisprudence surviving inside a postcolonial constitutional republic and the underlying reason behind the issue remains intact: that the survivor’s morality is more

legally suspicious than the perpetrator’s brutality. The crisis of faith in Bangladesh’s legal system that generates demands for alternative justice, including Sharia- is a crisis that the state created through decades of structural neglect.

Indeed, the rising demand for “Sharia punishment” after Ramisa Akter’s murder should be understood not as a coherent jurisprudential movement but as a symptom of institutional collapse. Citizens have lost faith in constitutional adjudication and become swayed by political actors who can promise theological certainty in lieu of legal credibility. Crucially, the recent invocation of “Sharia justice” within the Bangladesh’s rape discourse is highly curated, disingenuous, and potentially lethal for women.

Classical hadd jurisprudence imposed evidentiary standards so restrictive that most rape prosecutions would become nearly impossible by making contemporary demands for “Sharia punishment” less a call for figh than of symbolic severity. Bangladesh has already seen what

informalised “religious justice” through salish produces: coerced settlements, forced marriages, and the transfer of rape adjudication from constitutional courts to patriarchal community control.

What justice for Ramisa Akter requires now are not temporary protests or performative outrage, symbolic mourning, or another legislation announcing deadlines the state lacks the institutional seriousness to honour. Instead, it begs structural reconstruction. First, Bangladesh must immediately expand the tribunal capacity from 101 judges to at least 350 specialised Women and Children Repression Prevention Tribunals with compulsory backlog clearance obligations, and functional and emergency forensic support units attached to each bench. Second, there

evidence of the alleged victims pertaining to, among others, the complainants’ sexual history. Third, Bangladesh must establish nationwide survivor and witness protection mechanisms, along with district-level One-Stop Crisis Centres that can offer medical, psychosocial, forensic and legal support irrespective of the geography. In case of aggravated sexual crimes against minors, countries like South Korea and Indonesia have enacted or authorised forms of chemical castration for certain convicted offenders, although the constitutionality of such punishments is itself a matter of considerable debate. Demands for severe punishment or public execution are also being made in Bangladesh. However, the country must confront an uncomfortable socioeconomic reality: child sexual violence cannot be only prevented through harsher punishments. Much research in forensic psychology and child-protection studies show that abuse continues where states refuse to invest in comprehensive sex education, school-based child protection mechanisms, early psychiatric intervention for individuals presenting risk factors, and mandatory reporting and followup mechanisms.

Bangladesh must now face the uncomfortable truth Ramisa Akter’s murder lays bare: this was not an unexpected epidemic failure but the inevitable consequence of a country for decades starving the justice system, demonising survivors and legislating outrage over institutional capacity. The backlog, the collapse of forensic infrastructure, the lack of protection for survivors, the existence of colonial evidentiary laws that mistrust women more than the rapists- everything has contributed to compounding the crisis and the solution to all these indeed lies in sincere institutional investment.

The writer is independent researcher and Apprentice Lawyer.

What justice for victims of sexual violence require now are not temporary protests or performative outrage, symbolic mourning, or another legislation announcing deadlines that the state lacks the institutional seriousness to honour. Instead, it begs structural reconstruction.

must be critical oversight and follow-up of investigation, trial, and sentencing in child rape cases within stipulated timeframe, thus balancing between justice and due process. Third, a comprehensive rape shield legislation must be enacted categorically negating admissibility of character