



Daffodil
International
University

16th Amendment is the Violation of Basic Philosophy of the Constitution: A Critical Analysis

Researcher

Name: Ranu Moni

ID: 141-38-229

Muktadir Hasan Rifat

ID: 181-38-230

Program: LLM

Department of Law

Daffodil International University

Supervisor

Dr. Farhana Helal Mehtab

Associate Dean

Faculty of Humanities and Social Sciences

Daffodil International University

Date of Submission: 11 December, 2018

Dedication

We are dedicated our research work on ‘16th Amendment is the Violation of Basic Philosophy of the Constitution: A Critical Analysis’ to all the freedom fighters of the liberation war of Bangladesh.

Letter of Transmittal

Date: 23 April, 2017

Dr. Farhana Helal Mehtab

Associate Dean

Faculty of Humanities and Social Sciences

Daffodil International University

Dear Madam,

After my utmost endeavor we have been able to make a research on **16th Amendment is the Violation of Basic Philosophy of the Constitution: A Critical Analysis**. Thereby it's a great pleasure for us to submit this research paper on the above stated topic. During concluding this research we have made all attempts to make this research useful and up-to-date by gathering all the relevant information in this paper so that it can fulfill one's thirst for knowledge and your expectation.

Therefore, we will remain grateful to you if you go through this research paper for your evaluation and we would be happy if any valuable suggestion is made from your part in this matter.

We are always available for any clarification of any part of this paper at your convenience.

Thanking you.

Name: Ranu Moni

ID: 181-38-229

Muktadir Hasan Rifat

ID: 181-38-229

Program: LLM

Department of Law

Daffodil International University

Acknowledgements

Firstly we offer millions of heartfelt thanks to almighty ALLAH, who has given me strength to complete of this Research Monograph successfully. We are very much grateful to our Research supervisor Dr. Farhana Helal Mehtab, Associate Dean Faculty of Humanities and Social Sciences of Daffodil International University who has given proper guideline to complete this research paper. Eventually, we remember our parents as well as classmates and other senior students for their great assistance for this research. We have always used the Library and Computer Lab of daffodil International University to complete our Report. So we express my heartfelt gratitude to all librarians and lab assistant. We also use the Library of Press Institute of Bangladesh. So we are equally thankful to all of their authority and their staff. iv

Abstract

The Constitution is the guide which leads a nation to the prosperity. A modern state cannot be thought of without it. So, after nine months long blood-shedding battle in 1971, Bangladesh achieved her long awaited independence and therefore, took an instant effort to formulate a constitution rapidly, based on the ideological spirit of the war of independence. However, to accommodate the demands and will of the people and even sometimes to fulfill the narrow interests of the rulers, Bangladesh Constitution has been amended several times. 16th amendment is one of them.

Except a few cases almost every amendments has a great political impacts in the constitution. The most aspired and comprehensive sixteenth amendment induced a great debate among the political parties, intellectual part, constitution experts and masses.

This research on An Empirical Study on 16th amendment regarding the impeachment of judges. My research is divided into seven chapters. Our research Paper discussion clears the validity of the 16 amendment, and the arguments of parties. The 16th amendment enacted on 17th September 2014, vested the power of impeachment of judge to the parliament. A writ petition was filed against this amendment and the high court division declared the amendment is void, illegal and unconstitutional.

Analyzing the 16th amendment and verdict on 16th amendment it is said that the amendment injured the separation of power, independence of judiciary, rule of law, which are the basic philosophy of the Bangladesh constitution.

Table of Contents

Chapter-1

Introduction

1. Introduction.....	01
2. Object of Study.....	01
3. Importance of Study.....	02
4. Research Question.....	02
5. Methodology of Research.....	02
6. Literature review.....	02
7. Limitation of the Research.....	03

Chapter-2

16th Amendment of Bangladesh Constitution

1. Amendments of Bangladesh Constitution.....	04
2. 16th amendment of Bangladesh Constitution.....	04
3. Comparative study between 5th& 16th Amendment.....	05
4. Comparative study between 8th& 16th Amendment.....	05

Chapter-3

Impeachment of Judges in International Perspective

1. Common Wealth Countries.....	07
2. USA.....	07
3. UK.....	08
4. India.....	09

Chapter-4

Judicial and Constitutional Impact on 16th Amendment

1. Writ against 16th Amendment.....	10
2. Judgment of High Court Division.....	15
3. Appeal.....	15
4. Judgment of the Appellate Division.....	15
5. Review may lie.....	16

Chapter-5

Violation of Basic Philosophy of Constitution

1. Violation of Basic Structure.....	18
2. Violation of separation of power	19
3. Violation of Rule of Law.....	19
4. Violation of Independence of Judiciary.....	19
5. 16th Amendment violates the basic philosophy or not.....	20

Chapter-6

Opinions of Legal Experts

1. Dr. Kamal Hossain.....	21
2. Barrister Amirul Islam.....	22
3. Mr. Rokanuddin Mahmud.....	24
4. Mr. Azmaul Hossain.....	24

Chapter-7

Conclusion

1. Recommendation.....	27
2. Conclusion.....	29

Chapter 1

Introduction

1.1 Introduction

A cutting edge state can't be thought of without a Constitution. The whole legal, official and authoritative elements of the State are managed and guided by the Constitution. In 1972, the main constitution of Bangladesh is drafted that enabled to the Parliament to evacuate the judges of the Supreme Court (SC). At that point under fourth amendment, this power was vested to the President of Bangladesh. The Fifth Amendment sanctioned the development of a Supreme Judicial Council (SJC). The Supreme Judicial Council, comprising of the Chief Justice and two next senior-most judges of the Supreme Court, was engaged to denounce made a decision on the grounds of demonstrated trouble making or inadequacy. The higher legal executive of Bangladesh isn't thoroughly free from the official while playing out its capacities. Since under articles 95(1) and 48(3) of the Constitution, the President after earlier counsel with the Chief Justice and on exhortation from the Prime Minister would select judges in the Supreme Court. After the arrangement, the Supreme Judicial Council additionally vested with the ability to residency of office and conditions of unfortunate behavior because of which an equity can be denounced. Nonetheless, the Parliament got back the intensity of indictment of Supreme Court made a decision by sixteenth amendment. As per the changed article 96(2) of the Constitution has reestablished the ability to indict the judges of the Supreme Court to the parliament pursued by a request of the President. Article 96(3) has engages the parliament to direct the method by law. The crucial idea of reprimand is straightforward. Under Article 94, 95 of the Bangladesh Constitution judges are named and hold their workplaces amid great conduct. Under Article 96 of the constitution they are arraigned.

1.2 Object of study

The study has covered the 16th amendment 2014, controversies, arguments and debates regarding the amendments have been discussed.

The main objectives of the study are to:

- Know and analyze the sixteen amendment of the Bangladesh Constitution
- Focus on the impeachment of judges
- Understand the validity of 16th amendment.

1.3 Importance of studies

Bangladesh adopted its Constitution in 1972. However in 1973, the first initiative was taken for amending the Constitution and from then to till today under different regimes the Constitution has been amended. It has taken an attempt to closely analyze the sixteen amendment 2014 to the Bangladesh constitution in this study. The study covers the impeachment of judges and open up an opportunity to make a comparative analysis. The findings of the study are helpful to the students, researchers, academics, constitutional experts and others.

1.4 Question of research

1. Whether 16th amendment is legal or not?
2. How a judge should be impeached?
3. Is impeachment by parliament affected to the independence of judiciary?
4. Is the sixteenth amendment violating the basic structure of Bangladesh constitution?
5. Is sixteenth amendment violating the separation of power?

1.5 Methodology

To purchase books relating to the given topics we have gone some books shops. However, the information was not sufficient. Then to find out relevant materials about the topic we have started searching the World Wide Web and internet through Google search engines. We have also found some other study materials from some important books. We prepared the research paper on 16th Amendment of Bangladesh Constitution after studying the all document. At the beginning of preparing this research paper we have follow the instruction of my honorable teacher and supervisor Dr. Farhana Helal Mehtab, Associate Dean, Faculty of Humanities and Social Sciences of Daffodil International University. Then we inquired the library of our university and asked for some reference books relating to the given topic amendment of Bangladesh Constitution and basic structure doctrine but no such books were available.

1.6 Literature Review

This exploration paper is set up in a way just for Problem examination and not concentrated on proposals. This paper indicates sixteenth Amendment is the Violation of Basic Philosophy of the Constitution: A Critical Analysis. Initially, we read entire decision has been composed by the main equity, Surendra Kumar Sinha, and the other six judges of the Appellate Division. The Supreme Court's choice to scrap the sixteenth amendment to the constitution, invalidating parliament's capacity to evacuate sitting judges, has offered ascend to a warmed discussion about the particular forces of the legal executive and the governing body. In light of the State versus

Masdar Hossain case decision, the legal executive was isolated from the official and administrative organs on November 1, 2007. The Supreme Court rejected the sixteenth amendment on the ground that it undermined the autonomy of the legal executive. Invalidating parliament's capacity to evacuate judges, the zenith court reestablished the Supreme Judicial Council for the expulsion of errant judges.

The higher legal executive of Bangladesh isn't absolutely free from the official while playing out its capacities. Since under articles 95(1) and 48(3) of the Constitution, the President after earlier counsel with the Chief Justice and on exhortation from the Prime Minister would choose made a decision in the Supreme Court. Under Article 94, 95 of the Bangladesh Constitution judges are designated and hold their workplaces amid great conduct. Under Article 96 of the constitution they are arraigned. As indicated by the Commonwealth Latimer House Principles and, procedures to decide if a judge ought to be expelled from office 'ought to incorporate proper protections to guarantee reasonableness'. The Latimer House Guidelines further demonstrate that a judge confronting expulsion 'must have the privilege to be completely educated of the charges, to be spoken to at a meeting, to make a full protection and to be made a decision by an autonomous and unbiased council'. Article III government judges are named to life terms while serving "amid great Behavior," as expressed in Section 1 of Article III of the United States Constitution.

1.7 Limitation of Research

Although this research was carefully prepared, researcher is still aware of its limitations and shortcomings. In this study it is tried to analyze various documents, books, journals, etc. But the materials are not sufficient and very few pertinent research works are found in this regard. Moreover, web documents on the research area are limited; even their downloading or reading subscription is too high to have. So the non-availability of relevant materials was a limitation to this work.

Chapter: 2

16th Amendment of Bangladesh Constitution

2.1 Amendments of Bangladesh Constitution

An amendment is a formal or official change made to a law, contract, constitution, or other legal document. It is based on the verb to amend, which means to change for better. The Constitution of the People's Republic of Bangladesh was adopted and enacted on 4 November 1972, after the victory of the independent country on 16 December 1971. As of 2018 the Constitution has been amended 17 times. Amending the Constitution of Bangladesh is the process of making changes to the nation's fundamental law or supreme law. The list of amendments to the constitution of Bangladesh is given below:

2.2 16th Amendment

Bangladesh Act No XIII of 2014 amended the Constitution of Bangladesh, engaging Parliament to denounce Supreme Court judges. Part VI, section one, article 96, of the Bangladesh Constitution, which incorporates arrangements on the residency of office of the Supreme Court judges, now states:

- (1) Subject to alternate arrangements of this article, a Judge will hold office until the point that he achieves the age of sixty-seven years.
- (2) A Judge will not be expelled from his office with the exception of by a request of the President passed in accordance with a goal of Parliament upheld by a greater part of at the very least 66% of the aggregate number of individuals from Parliament, on the ground of demonstrated bad conduct or insufficiency.
- (3) Parliament may by law direct the method in connection to a goal under condition (2) and for examination and evidence of the bad conduct or inadequacy of a Judge.
- (4) A Judge may leave his office by composing under his hand routed to the president.

The Parliamentary Standing Committee on the Ministry of Law, Justice and Parliamentary Affairs had proposed the enactment, now received as law that recommended substitution of segments 2 through 8 of article 96 with the areas 2, 3, and 4. The draft revision was passed with a 327-0 vote, in light of the proposal of the Parliamentary Standing Committee.

2.3 A comparative study between 5th and 16th

Prior to the selection of the Sixteenth Amendment, articles 96 (2) and (3) of the Bangladesh Constitution under Part VI incorporated an arrangement on indictment did by the Supreme Judicial Council rather than the Parliament. It expressed:

- (1) A judge will not be expelled from office aside from as per the accompanying arrangements of this article.
- (2) There will be a Supreme Judicial Council, in this article alluded to as the Council, which will comprise of the Chief Justice of Bangladesh, and two next senior judges.

Under sixteenth amendment, by an Act of Parliament there will be an exploring or inquisitive expert which is very unmistakable and separate from the Legislature or the Executive organ of the State. A blamed Judge will be completely qualified for guard himself amid examination or request, by and large. That being in this way, he won't endure any preference on any check. Under fifth change, there will be a legal chamber, which will comprise of boss equity and two next senior judge. The board will endorse the set of accepted rules to be seen by the judges. The board will ask into the limit or lead of the judges. Upon any data got from committee the president will evacuate the judges on the ground of offense, physical or mental insufficiency.

The autonomous of legal executive exceptionally the established status and sacredness of the Supreme Court was reestablished by fifth change. In spite of the fact that the undesirable arrangement presented by the fourth amendment identifying with arrangement of judges were left immaculate, the arrangements for security of residency which is the first and the most imperative state of autonomy of legal executive was reestablished by giving a solid gadget of Supreme Judicial Council. In addition, in regard of control including the intensity of posting, advancement and give of leave and order of the subordinate judges and justices which was vested completely in the president under the fourth amendment, it was given that the president should practice that control in meeting with the Supreme Court. In this manner established part of freedom of both higher and bring down legal executive was reestablished.

2.4 Comparative study between 8th& 16th Amendment

The constitution eighth amendment case corrected Article 100 .A division seat of HCD denied the writ appeal. Such a correction changing the fundamental structure of the constitution was ultra vires and not reasonable in law. The change intensity of the parliament is given by Article 142 under the constitution. The constitution has some essential columns which can't revise by its changing force under Article 142. Some fundamental highlights of the constitution are autonomy of legal executive, partition of forces, matchless quality of the constitution and so on. By the

sixteenth amendment is hampered the freedom of legal executive and division powers. So, this change is disregarded the fundamental structure of the constitution.

Chapter: 3

Impeachment on world perspective:

3.1 Commonwealth countries

As indicated by the Commonwealth Latimer House Principles, procedures to decide if a judge ought to be expelled from office 'ought to incorporate proper protections to guarantee decency'. The Latimer House Guidelines further demonstrate that a judge confronting expulsion 'must have the privilege to be completely educated of the charges, to be spoken to at a meeting, to make a full resistance and to be made a decision by an autonomous and fair council'. The custom-based law standards of authoritative law require, what's more: an assumption of blamelessness in inquiries of bad behavior; adequate time to set up a guard; the chance to introduce proof and where important to interview observers; a privilege to legitimate or other portrayal; a privilege to reasons, especially in issues, for example, these in which there is extraordinary open intrigue; and the likelihood of legal audit to guarantee that all the lawful necessities of the expulsion procedure are clung to buy and by, and, where suitable, additionally an intrigue which may think about the two inquiries of law and certainty. To the extent the foundations and open bodies in charge of expulsion choices are concerned, a few unique methodologies exist. In 42% of Commonwealth wards, when an underlying examination sets up that an issue of expulsion has emerged, an impromptu council is framed to decide the issue. In another 21% of locales a perpetual disciplinary chamber is set up for that reason. A parliamentary evacuation system is found in 34% of purviews. In the remaining 4% of wards, SUMMARY OF FINDINGS AND BEST PRACTICE xxi Comp of Judicial Proj_Summary 25/6/15 13:05 Page xxi a few judges are expelled by a parliamentary procedure and others by a disciplinary gathering.

3.2 USA

Article III government judges are chosen to life terms while serving "in the midst of incredible Behavior," as communicated in Section 1 of Article III of the United States Constitution. Regardless of the way that it doesn't expressly state in the Constitution that judges may be reviled and ousted from office, they fall under the characteristic of "Regular Officers" in Article II, Section 4. That says:

"The President, Vice President and each Civil Officer of the United States, will be ousted from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. Article II of the Constitution gives the United States House of Representatives

sole power of denounce, and apportions the capacity to endeavor criticisms to the United States Senate."

The technique of what is known as arraignment contains two phases. The underlying advance, the one that is in certainty the upbraiding, is taken by the House of Representatives. By an essential lion's offer, the House can cast a tally to criticize an administration official. By then, when the specialist is reproved, the Senate holds a primer to choose whether the expert should be arraigned, in which case the specialist is removed from office. The Senate, in any case, needs a 66% bigger part to convict. Not a lot of government specialists have ever been reviled, and even less have been prosecuted and ousted from office. By strategy for example, President Bill Clinton was reproved by the House of Representatives, anyway he was not prosecuted by the Senate. The prosecution of government judges, frankly, is every now and again an impressively more dinky process than the reprimand of various experts. While Article II, Section 4 contains some dark tenets for what warrants criticize methods – and this region relates to government specialists when all is said in done – Article Three just clears up that judges should remain in office only while in "extraordinary Behavior." Fifteen government judges have been decried. Of those fifteen: eight were condemned by the Senate, four were vindicated by the Senate, and three surrendered before an outcome at primer.

3.3 UK

Judges in England and Wales hold office 'in the midst of incredible direct'. They are ousted from office by the Crown on an area shown by the two Houses of Parliament (Senior Courts Act 1981, s 11(3)). – a comparative departure framework applies to people from the UK Supreme Court (CRA, s 33). A person from the Supreme Court who faces a charge of offense will get the opportunity to appear before a gathering whose people consolidate the heads of court of the diverse wards inside the UK, and the chamber must report before any development is tabled in Parliament.

In case a protestation is gotten against a judge in England and Wales, the Office for Judicial Complaints works a course of action of principal demand and examination finished by two exceptional judges, trailed by a review board which picks whether to provoke the Lord Chancellor to table a development in Parliament (Judicial Discipline (Prescribed Procedures) Regulations 2013).

In Scotland, judges are emptied by the Crown on proposal by the Scottish First Minister. The proposition can't be made with the exception of if an objective to that affect is passed by the Scottish Parliament on a development begun by the First Minister. That development can't in any case be begun with the exception of if a committee, set up of two serving or surrendered judges, a senior lawful guide and a layman, has laid before the Scottish Parliament a report construing that the judge is unfit for office by reason of weakness, dismissal of commitment or awful direct. Because of proposed departure of the Lord President or the Lord Justice Clerk, the Scottish First

Minister ought to in like manner advise the UK Prime Minister. An equivalent course of action applies in Northern Ireland, where the court contains two senior judges and a lay individual from the Northern Ireland Judicial Appointments Commission.

3.4 India

Judges may be removed on the grounds of 'exhibited insidiousness or insufficiency' (articles 124(4) and 218). – The methodology of removal is begun by the presentation in either House of Parliament of a motion for removal. In the Lok Sabha (Lower House), such a motion must be supported by not less than 100 of its 545 members. In the Rajya Sabha (Upper House) the motion must be supported by not less than 50 of its 250 members. – Once a motion for removal is presented, the presiding officer of the House will decide whether the issue raised warrants consideration. If the issue is seen as adequately real, the presiding officer must refer it to a committee (Judges (Inquiry) Act 1968, s 3(1) – (2)). – The committee is made up of a Supreme Court judge, a High Court Chief Justice and a perceived legitimate member (Judges (Inquiry) Act 1968, s 3(2)) is responsible for checking the facts and the insufficiency of the judge. The judge is given the opportunity to exhibit a written statement, to respond to the charges and a while later has the benefit to talk with onlookers, refer to evidence and to be heard with all due regard (Judges (Inquiry) Act 1968, ss 3(4) and 4(1)). – Only if the Committee reasons that the judge is at risk of any incapacity or encounters any inadequacy may the Houses of Parliament vote on a motion for the judge's removal (Judges (Inquiry) Act 1968, s. 6(2)). If the motion is passed by a majority of not less than two-thirds of those present and voting, the President may remove the judge from office (articles 124(4) and 218).³ UK.

Chapter 4

Judicial and constitutional impacts on 16th amendment

4.1 Writ against 16th amendment

An application under Article 102 of the Constitution of the People's Republic of Bangladesh was made against sixteenth amendment by Advocate Asaduzzaman Siddiqui, and others Candidates, Versus Bangladesh spoken to by the Cabinet Secretary, Cabinet Division, Bangladesh Secretariat, Police Station Shahbag, Dhaka-1000 and others Respondents.

Mr. Manzill Murshid with Mr. Moyeen A. Firozze and Mr. Sanjoy Mandal were Advocates for the candidates.

Mr. Mahbubey Alam, Attorney General with Mr. Md. Motaher Hossain (Sazu), DAG, Ms. Purabi Rani Sharma, AAG, Mr. A.B.M. Mahbub, AAG and Ms. Purabi Saha, AAG were for the respondent no. 1, Mr. Murad Reza, Additional Attorney-General with Mr. Amit Taluk derand DAG for the respondent no. 4.

Grounds of petitioner on the writ

1.The foundation of the activity to correct the applicable arrangements identifying with the evacuation of the Judges of the Apex Court radiated from a few occurrences which occurred in the ongoing past. 1. One of them is that our Parliament passed a law of Contempt of Court in 2013, the High Court Division pronounced the said law of Contempt of Court of 2013 void and ultra-infection the Constitution.

2.An amendment was made in the Anti-Corruption Commission Act of 2004 for the security of local official from the charge of defilement, the High Court Division proclaimed the alteration void and ultra infection the Constitution.

3.In a seven-murder case in Narayanganj which murder was submitted by law upholding offices, a Public Interest Litigation was recorded under the watchful eye of the High Court Division and the High Court Division guided the concerned experts to capture those work force of the law-authorizing organizations. From that point a detestable move was taken by the political officials to correct Article 96 of the Constitution through the Parliament.

4.This move was solidified by the death of the Sixteenth Amendment at the command of the political administrators with the mala fide aim of meddling with the freedom of the Judges of the Supreme Court of Bangladesh in the release of their legal capacities.

5. In the vast majority of the cases (Writ Petitions), the Government is the respondent; yet the Members of Parliament are crucially inspired by those cases emerging out of the improvement exercises in their neighborhoods. In addition, in the present setting of Bangladesh, the vast majority of the Members of Parliament are from business parts and by that reason; they have individual enthusiasm for those cases. Against this scenery, the Judges of the Apex Court would *suomotu* be limited from passing any request in the cases in which the Members of Parliament are intrigued.

6. In perspective of the Sixteenth Amendment, any Member of Parliament can bring a movement against any Judge of the Supreme Court and talk about the equivalent in that and because of this reason, no Judge will have the capacity to play out his obligations fair-mindedly and autonomously. Over the long haul, equity will be disappointed and organization of equity will fall in a matter of moments.

7. The Sixteenth Amendment is *ultra infection* the Constitution for what it's worth in direct clash with and opposing to the soul of the Preamble of the Constitution.

8. Independence of the Judiciary is one of the fundamental highlights of the Constitution as elucidated in *Anwar Hossain Chowdhury and others... Vs... Bangladesh and others* (prominently known as Eighth Amendment Case) [1989 BLD (SPL) 1] which has been repeated and reaffirmed in *Masdar Hossain's Case* [52 DLR (AD) 82]. The essential goal of the Sixteenth Amendment is to decimate the guideline of autonomy of the Judiciary and to render the Judiciary weak and insufficient.

9. It is violative to Article 7B of the Constitution as no arrangements identifying with the fundamental structures of the Constitution will be amendable by method for inclusion, change, substitution, and revoke or something else.

10. The Sixteenth Amendment glaringly devastates the soul and embodiment of the arrangements of Article 22 of the Constitution and along these lines obscures the partition of forces among the distinctive organs of the State and plainly builds up the mastery of the Executive through the Parliament over the Judiciary which will make an incredible lopsidedness inside the protected bodies and in this way make the Judiciary a joke and a toothless and sorrowful quiet observer.

11. The Sixteenth Amendment is additionally *ultra infection* the Constitution as by dint of Article 70, the Members of Parliament can't express their autonomous perspectives/sentiments against their partisan principal and as a characteristic culmination thereto, the expulsion of the Judges of the Apex Court of Bangladesh will be preferential by its immediate ramifications.

12. The Sixteenth Amendment is *ultra infection* the Constitution as it has undermined the specialist and pride of the Apex Court due to the way that the legitimacy of the procedures in the Parliament can't be addressed in any Court by uprightness of Article 78 of the Constitution. In

that capacity the Judiciary will be helpless before the Executive through the Legislature and it won't have the capacity to shield itself.

13. The Supreme Court of Bangladesh being the gatekeeper of the Constitution must not permit any advance upon the Constitution; but rather the Sixteenth Amendment is an advance upon the autonomy of the watchman of the Constitution.

14. In the Fifth Amendment Case, the High Court Division pronounced the Constitution (Fifth Amendment) Act, 1979 illicit and drained of initio subject to specific conditions. The Appellate Division in the Fifth Amendment Case embraced those conditions with a few changes. According to the judgment of the Appellate Division in the Fifth Amendment Case, the arrangements identifying with the Supreme Judicial Council were kept unblemished in the Constitution of Bangladesh. So the sixteen revision disregard the decision of appealing party division by giving the intensity of expulsion of judges of the Supreme Court, to the parliament.

15. In the Supplementary Affidavit dated 27.05.2015, it has been referenced by the solicitors that the Sixteenth Amendment is conflicting with and violative of Article 147 (2) of the Constitution which gives that the compensation, benefits and different terms and states of administration of an individual holding or acting in any office to which this Article applies will not be shifted to the drawback of any such individual amid his term of office. According to Article 147(4) of the Constitution, this (Article 147) applies, among others, to the workplace of a Judge of the Supreme Court. The Sixteenth Amendment has without a doubt fluctuated the expulsion component of the sitting Judges of the Supreme Court of Bangladesh for their unfortunate behavior or inadequacy to their disservice. Accordingly the Sixteenth Amendment is unlawful and void.

16. The Sixteenth Amendment will likewise straightforwardly influence the Election Commissioners, Comptroller and Auditor-General, Members of the Public Service Commission and also Members of the Anti-Corruption Commission. By uprightness of this Amendment, they will be evacuated in like way as a Judge of the Supreme Court as per Articles 118(5), 129(2) and 139(2) of the Constitution of Bangladesh and Section 10(3) of the Anti-Corruption Commission Act, 2004 individually. The autonomy of the Commissioners of the Anti-Corruption Commission and the Comptroller and Auditor-General of Bangladesh will be in peril in light of the fact that they won't have the capacity to act fairly and adequately against the wrongdoings of the concerned Members of Parliament who are their genuine supervisors.

17. One of the fundamental parts of legal freedom is solid assurance against expulsion from office. That worldwide standard on legal evacuation has been stressed in the "UN Basic Principles on the Independence of the Judiciary" as embraced by the General Assembly in 1985. The Judges of the Supreme Court can't be expelled without demonstrated unfortunate behavior or inadequacy by a reasonable, unprejudiced, autonomous and unbiased body who is allowed to direct the request and make an assurance all alone from the impact of alternate parts of the State.

18. The Sixteenth Amendment by method for giving intensity of expulsion of the Judges of the Supreme Court to the Members of Parliament is certainly against the soul of the freedom of the Judiciary. This change has been made in exercise of the subsidiary intensity of the Constitution and this won't consequently make the revision invulnerable from test by method for legal audit. No alteration to the Constitution can be made in practicing subordinate power disregarding the current arrangements of the Constitution and the restrictions forced by it. So the Sixteenth Amendment is ultra vires the Constitution.

Grounds of respondent against the writ petitions

1. In the Fifth Amendment Case, all martial law proclamations, martial law regulations, martial law orders made/promulgated during the period between 20th August, 1975 and 9th April, 1979 which were validated by the Act No. 1 of 1979 was declared illegal, void ab initio and ultra vires; but those were provisionally condoned until 31st December, 2012 so as to enable the Parliament to make necessary amendment to the Constitution (vide judgment and order dated 11th May, 2011 passed by the Appellate Division in Civil Review Petition Nos. 17-18 of 2011). So it is totally a misconceived idea that in the Fifth Amendment Case, the Appellate Division of the Supreme Court by its observation favoured to retain or condone the provisions of the Supreme Judicial Council which were introduced by General Ziaur Rahman.

2. Thereafter the Constitution (Fifteenth Amendment) Act was passed in 2011 which endorsed the system of the Supreme Judicial Council which may be considered as a departure from the original provisions of the Constitution relating to removal of the Judges of the Supreme Court by the Parliament. Finally it was thought expedient and necessary to restore/revive the original provisions of the Constitution about removal of the Supreme Court Judges through the Parliament which were introduced in Article 96 of the original Constitution and therefore, the Sixteenth Amendment was passed in 2014 reviving the relevant provisions (provisions of Article 96) of the original Constitution.

3. The Sixteenth Amendment is not intended to dominate the Judiciary by the Executive through the Legislature undermining its independence.

4. In the instant Writ Petition, no public interest is involved for which the Sixteenth Amendment can be challenged in the form of judicial review of any legislative action nor is the same amenable to judicial review.

5. The Sixteenth Amendment is not ultra virus; rather it is intra virus the Constitution which cannot be called in question by way of judicial review in that the same has revived and restored the original provisions of Article 96 of the Constitution (barring age limit) relating to removal of the Supreme Court Judges. As the Parliament has restored the original provisions of Article 96 of the Constitution, the Sixteenth Amendment cannot be subjected to judicial scrutiny. No provision

of the original Constitution as enacted and adopted by the Constituent Assembly in 1972 can be judicially reviewed.

6. By enacting the Sixteenth Amendment, the Government has taken the necessary initiative to maintain the high judicial standard of the Supreme Court Judges and to keep their jobs secured following the best practices of the contemporary world.

The system of parliamentary removal of Judges has a long history. It was developed in the 18th century in England to ensure that the King could only dismiss a Judge if both Houses of Parliament passed a resolution or “address” calling for the removal of the Judge. Parliamentary removal procedure is in place in 33% Commonwealth jurisdictions. The Westminster model of parliamentary removal of Judges as has been reintroduced in Bangladesh through the Sixteenth Amendment is a standard mechanism of removal of Judges of the Supreme Court of Bangladesh for their proved misbehavior or incapacity.

7. It is not true that the Members of Parliament have been empowered to perform the functions of all development activities of their local areas and the whole administration is under their control. Though the Government has made them advisers to the Upazilla Parishads, yet it does not necessarily mean that they control the whole of the local administration. The Members of Parliament have no scope to act arbitrarily and illegally. There is not a single instance that exposes the interest of the Members of Parliament in any case where the Judges of the Supreme Court have restrained themselves from passing any order in connection therewith.

8. It is not correct that by reason of Article 70 of the Constitution, the Members of Parliament cannot express their independent views and opinions against the stance of their respective parties. Every Member of Parliament has the right to express his/her opinion in the Parliament. Removal of Judges is not a political issue; rather it is a delicate constitutional issue that demands a debate in the Parliament among all the members irrespective of their political identity.

9. The statement made in the Writ Petition that the Sixteenth Amendment has undermined the authority and dignity of the Apex Court because of the fact that the validity of the proceedings in the Parliament cannot be called in question in any Court by reason of Article 78 of the Constitution is quite meaningless and unwarranted. The Constitution itself has given the mandate that the validity of the Parliamentary proceedings shall not be called in question in any Court of law. Being the sovereign law-making body, Parliament’s proceedings are immune from judicial interference. This is a universal practice prevailing all over the world.

10. Had Article 96 of the Constitution not been unconstitutionally and illegally amended by the unconstitutional military regime introducing the system of the Supreme Judicial Council, the Sixteenth Amendment would not have been required to restore Article 96 to its original position of 1972. The Supreme Court is the guardian of the Constitution, but not the supervisor of the whole governmental process.

The Sixteenth Amendment is a valid piece of legislation. So the Rule is liable to be discharged.

4.2 Judgment of High Court Division

The high court seeks opinions from the following person as Amici Curiae, Dr. Kamal Hossain, Senior Advocate, Mr. M. Amir-ul Islam, Senior Advocate, Mr. Rokanuddin Mahmud, Senior Advocate and Mr. Ajmalul Hossain QC, Senior Advocate.

The writ petition was heard on 28.05.2015, 18.06.2015, 02.07.2015, 30.07.2015, 06.08.2015, 19.08.2015, 20.08.2015, 02.09.2015, 03.09.2015, 09.09.2015, 11.11.2015, 01.12.2015, 02.02.2016, 03.02.2016, 04.02.2016, 23.02.2016, 03.03.2016 and 10.03.2016.

Judgment was given by the high court division on 05.05.2016.

Moynul Islam J said that, he has no hesitation in holding that the Sixteenth Amendment is a colorable legislation and is violative of separation of powers among the 3(three) organs of the State, namely, the Executive, the Legislature and the Judiciary and independence of the Judiciary as guaranteed by Articles 94(4) and 147(2), two basic structures of the Constitution and the same are also hit by Article 7B of the Constitution. So he finds merit in the Rule. The Rule, therefore, succeeds. Accordingly, the Rule is made absolute without any order as to costs. It is hereby declared that the Constitution (Sixteenth Amendment) Act, 2014 (Act No. 13 of 2014) (Annexure-‘A’ to the Writ Petition) is colorable, void and ultra virus the Constitution of the People’s Republic of Bangladesh. However, as per Article 103(2)(a) of the Constitution, we certify that the case involves a substantial question of law as to the interpretation of the Constitution. QUAZI REZA-UL HOQUE J: & MD. ASHRAFUL KAMAL, J: agreed with the judgment of Moynul Islam.

4.3 Appeal against judgment

Government of Bangladesh and others (appellant) applied an appeal from the judgment and order passed by the high court division in writ petition No 9989 Of 2014 before the appellate division versus Advocate Asaduzzaman Siddiqui and others (respondent).

The appeal was heard on 8th, 9th, 21st, 22nd, 23rd, 24th, 25th, 28th, 29th, 30th May, 2017 and 1st June, 2017. And the Judgment was passed on 3rd July, 2017.

4.4 Judgment of Appellate Division

An Order was passed by appellant division. Since all but one wrote separate judgments expressing their separate opinions, we unanimously dismiss the appeal, expunge the remarks made by the High Court Division as quoted in the judgment of the learned Chief Justice and also

restore clause (2) (3), (4), (5), (6) and (7) of article 96 and also approve the Code of Conduct formulated in the main.

The 799-page verdict has been written by the chief justice, Surendra Kumar Sinha, and the other six judges of the Appellate Division - Md Abdul Wahhab Miah, Nazmun Ara Sultana, Syed Mahmud Hossain, Muhammad Imman Ali, Hasan Foez Siddique, and Mirza Hussain Haider - have concurred with the views of the chief justice.

The full bench of the Appellate Division of the Supreme Court unanimously declared the 16th amendment of the Constitution as illegal, affirming the judgment the earlier decision of the High Court Division. By this trailblazing verdict, the power to impeach a Judge of either division of the Supreme Court remained in the hands of the President, on a report of inquiry of the Supreme Judicial Council as enshrined in article 96 of the Constitution.¹

This decision was based on the doctrine of separation of powers among the three organs of the state namely Legislature, Executive and Judiciary. Our Constitution is largely found upon the doctrine of Separation of Power, which was projected to the whole world by the French Philosopher Montesquieu who, through his theory, had us to believe that assimilation of all three kinds of power in one authority would ensue tyranny. This separation is a prerequisite to ensure independence of higher judiciary as enshrined in article 95 of the Constitution. Moreover, separation of judiciary is a provision of our Constitution under art. 22, as such, a part of the 'Basic Structure' of the Constitution too under art. 7B. consequently, the Parliament, although got power to amend any provision of the Constitution under art. 142, but it cannot make any amendment which withers away any provision of basic structure under art. 7B.²

People from different corners of the legal arena including intellectuals, practitioners, teachers, students mostly welcomed the verdict. The Government, however, became outstandingly astonished to, and seriously dissatisfied, with the verdict. The key argument placed by the Govt. was centered on the 'Impeachment-Power', which was vested in the Parliament under the original Constitution of 1972, and subsequently forwarded to the President through the Fourth Amendment of the Constitution in 1975.³

4.5 Pending Review

Law minister Anisul Huq on Friday said the government is making preparations to file a review petition against the 16th amendment verdict that scrapped parliament's power to remove judges on the grounds of misconduct and incapacity.

¹<https://futrlaw.org/judgment-16th-amendment-case-new-dimension-judicial-interpretation/>

² ibid

³ ibid

The verdict is being scrutinized. The government is getting ready to file the review petition,” said Anisul. He went on to say, “We don’t agree with the verdict, but we are respectful of it.”

The Appellate Division of the Supreme Court on 3 July this year scrapped the 16th amendment and restored the Supreme Judicial Council as well as the full text of the verdict was released 1 August, stirring a huge debate over which of the state organ is sovereign - is it the legislature or the judiciary.

Chapter – 5

Violation of Basic Philosophy of the Constitution

5.1 Violation of basic structure of the constitution

The fundamental structure regulation is a legal rule that the Constitution has certain essential highlights that can't be changed or crushed through alterations by the parliament. Fundamental structure of constitution is the establishment mainstay of the constitution that can't be corrected. In the event that the essential structure of the constitution is altered, it will be ultra infection of the constitution.

In the constitution of Bangladesh Article 7 referenced about the matchless quality of the constitution. Article 7B of the constitution referenced that, despite anything contained in article 142 of the Constitution, the preface, all articles of Part I, all articles of Part II, subject to the arrangements of Part IXA all articles of Part III, and the arrangements of articles identifying with the essential structures of the Constitution including article 150 of Part XI will not be amendable by method for inclusion, adjustment, substitution, annul or by some other means. That implies the essential structures of Bangladesh constitution are:

1. Supremacy of the constitution which states in Article 7 of the constitution
2. Democracy which states in the preface
3. Republican government which states in Article 1 of constitution
4. Separation of intensity which states in Article 22 of the constitution
5. Unitary government which states in Article 9 of the constitution
6. Independence of legal executive which states in Article 22 of the constitution
7. Fundamental rights which is referenced from Article 26 to Article 47A of the constitution

In sixteenth amendment of Bangladesh constitution freedom of legal executive and detachment of intensity two essential structure of the constitution is damaged. On the off chance that the judges evacuation process is finished by the parliament, the legal executive will be under control of the parliament and legal executive won't be autonomy. Thus, 26th amendment of Bangladesh constitution damages the fundamental structure of the constitution.

5.2 Violation of separation of power

Division of forces is a political convention beginning in the compositions of Charles de Secondat, Baron de Montesquieu in *The Spirit of the Laws*. As indicated by Montesquieu hypothesis of partition of intensity the three organ of the state will play out their obligation independently. No organ will meddle in the matter of other organ. Partition of intensity implies the Executive, the Legislative and the Judiciary will be isolated and they will play out their capacities autonomously with no impedance of different organs.

Article 22 of Bangladesh constitution guarantees partition of intensity. Through sixteenth amendment the indictment component of judges are goes to the parliament. Parliament oversees the legal executive. That is against the convention of fundamental structure on the grounds that under this teaching no organ can't control or meddle in the matter of other organ. Along these lines, sixteenth amendment disregards the convention of division of intensity.

5.3 Violation of rule of law

Standard of law hypothesis is first elucidated by the UK law Professor A. V. Sketchy in his 1885 book 'Prologue To The Study Of Law Of The Constitution,' it depends on three rules that (1) lawful obligations, and risk to discipline, all things considered, is controlled by the standard (customary) law and not by any subjective authority fiat, government proclaim, or wide optional forces, (2) question among natives and government authorities are to be dictated by the normal courts applying common law, and the (3) principal privileges of the residents (opportunity of the individual, opportunity of affiliation, the right to speak freely) are established in the regular law, and are not reliant on any theoretical sacred idea, affirmation, or insurance.

As indicated by sixteenth amendment of the constitution of Bangladesh, the judges arraignment powers goes to the hand of parliament individuals. In nearness of Article 70 it is troublesome for an individual from parliament to from a conclusion autonomously overlooking the headings given by the gathering central leadership of political gathering in power. At that point the political party in power can expel the judges and control the judges as they need. By this procedure the general population will deny from equity. In this way, sixteenth amendment disregards the standard of law.

5.4 Violation of Independence of judiciary

Judicial independence is the concept that the judiciary should be independent from the other branches of government. That is, courts should not be subject to improper influence from the other branches of government or from private or partisan interests. Judicial independence is important to the idea of separation of powers. Different countries deal with the idea of judicial independence through different means of judicial selection, or choosing judges. One way to promote judicial independence is by granting life tenure or long tenure for judges, which ideally

frees them to decide cases and make rulings according to the rule of law and judicial discretion, even if those decisions are politically unpopular or opposed by powerful interests.

In Bangladesh the independence of judiciary is ensured under Article 22 of the constitution. The judiciary will be independent to perform its function and free from the interference of other organ. Article 22 of the constitution mention that, the State shall ensure the separation of the judiciary from the executive organs of the State.⁴ According to Article 116, subject to provisions of the Constitution, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions.⁵

Through 16th amendment article 96 of the constitution is amended and the judges impeachment process goes to the hand of the parliament from the Supreme Judicial Council. The legislative gets control over the judiciary. If the judges of the Supreme Court are removed by the parliament then the judges shall not be in a position to work independently. In this process the independence of judiciary is surely be affected and violated.

5.5 Violation of Basic philosophy of the constitution

Fundamental logic implies the essential or the principle them of the constitution that mirrors the primary motivation behind the constitution. The things dependent on which the constitution is made and without that things the constitution will be useless is essential theory of a constitution. The essential logic of Bangladesh constitution is essential structures, standard of law, division of intensity, key standards of state arrangement, basic rights. Sixteenth amendment of the constitution rolled out the improvement of article 96 of the constitution by giving the intensity of arraignment of Supreme Court judges to the parliament individuals from the Supreme Judicial Council. This change damages the guideline of principle of law, detachment of intensity, fundamental structure of the constitution. The parliament individuals are the individuals from lawmaking body and the judges are the individuals from the legal executive. In sixteenth amendment of the constitution the lawmaking body is meddle or control the legal executive. That influenced or hampered or abridge the freedom of legal executive and also detachment of intensity. Division of intensity and freedom of legal executive are essential structure of the constitution. Along these lines, sixteenth amendment disregards the fundamental structure of the constitution and it will be ultra-infection of the constitution in nearness of Article 70 it is troublesome for an individual from parliament to shape a sentiment freely overlooking the headings given by the gathering central leadership of political gathering in power. At that point the political party in power can evacuate the judges and control the judges as they need. The judges can't be the situation to work freely in practicing their legal power. By this procedure the general population will deny from equity which is influenced the standard of law another essential rationality of the constitution

⁴ The Constitution of the People's Republic of Bangladesh

⁵ The Constitution of the People's Republic of Bangladesh

Chapter: 6

Opinions of Legal experts

The 16th amendment debate is now seriously intense at several levels. It is a conflict between the Judiciary and the Legislature as its powers to remove Judges have been taken away. Many legal experts have given several opinions about the sixteenth amendment. This chapter focuses some expert's opinions regarding the sixteenth amendment.⁶

6.1 Opinion of D. Kamal Hossain:

Dr. Kamal Hossain, who was the Chairman of the Bangladesh constitution drafting Committee and acted in sixteenth amendment case as amicus curia. His supposition is that the sixteenth amendment is ultra-infection the constitution his assessment depends on the accompanying grounds:

□The autonomy of the Judiciary is the establishment stone of the Constitution as thought about by Article 22 and it is one of the central standards of State strategy and the importance of the autonomous Judiciary, free from the obstruction of the other 2(two) organs of the State, has been underscored in Articles 94(4), 116A and 147 of the Constitution and in the Eighth Amendment Case, it has been held that Democracy, Republican Government, Unitary State, Separation of Powers, Independence of the Judiciary, Rule of Law, Fundamental Rights and so on are essential structures of the Constitution.

□The agreement has all the earmarks of being that the established standard of freedom of the Judiciary is proposed to avoid any sort of factional exercise of intensity by the Legislature in connection to the Judiciary, specifically, the intensity of the Legislature to expel the Judges of the Supreme Court of Bangladesh.

□Although the freedom of the Judiciary is a fundamental component of the standard of law, yet by establishing the Sixteenth Amendment, the Parliament is inclined to practice command over the Judiciary by method for protecting a privilege to take choices on the subject of expulsion of the Judges of the Supreme Court.

□In the first 1972 Constitution, expulsion of Judges of the Supreme Court was endowed to the Parliament on the commence that the Parliament being established by the chose delegates of the general population, when in practicing its capacity, would do as such scrupulously and autonomously, free from any gathering mandate and this is the manner by which it was seen when a comparable arrangement was embraced in the Indian Constitution and both in the Indian Constitution and in the first 1972 Constitution of Bangladesh, the intensity of evacuation of any Judge would just be practiced after a request led by a free Judicial Inquiry Committee; yet H. M.

⁶Judgment of appellate division against the appeal of the judgment of high court division on 16th amendment.

Seervai has communicated his worry in his book "The Position of the Judiciary under the Constitution of India" (distributed by Bombay University Press) at page 109 that political and party contemplations have become an integral factor in denunciation procedures.

□ Article 96 of the first 1972 Constitution identifying with the expulsion of Judges was physically influenced by the Fourth Amendment of the Constitution in 1975 which erased Clause (3) of Article 96 and from that point by the Fifth Amendment of the Constitution, the arrangements for evacuation of Judges by the Supreme Judicial Council were presented and eventually the Fifth Amendment was held to be unlawful by the Appellate Division in the Fifth Amendment Case, though the Appellate Division excused the arrangements identifying with the Supreme Judicial Council in Article 96 of the Constitution; however the criticized Sixteenth Amendment implies to abuse the judgment of the Appellate Division go all things considered.

□ The Judges can't play out their serious obligations except if their autonomy is ensured and secured by anchoring their residency as underlined in the United Nation's Instrument on "Essential Principles on the Independence of the Judiciary. The formal necessities of autonomy of the Judges incorporate, among others, their security of residency and reasonable states of administration.

□ The Parliament, in negligence of the choice of the Appellate Division rendered in the Fifth Amendment Case, has abrogated the Supreme Judicial Council, which unmistakably bargains and debilitates the autonomy of the Judiciary through the Sixteenth Amendment and this Sixteenth Amendment is violative of Articles 94(4) and 22 of the Constitution by method for oppressing the residency of the Judges of the Supreme Court to the impulses and inclinations of the Members of Parliament.

□ The outcome of the Sixteenth Amendment is that it has rendered the residency of the Judges of the Apex Court unreliable and all things considered the Sixteenth Amendment has made a chance to undermine the autonomy of the Judiciary by making the equivalent defenseless against outside impacts and weights endangering the standard of law in the nation.

□ As the Sixteenth Amendment is violative of freedom of the Judiciary and detachment of forces, the equivalent is in struggle with Article 7B of the Constitution and by that reason, it is subject to be struck down.

□ The Sixteenth Amendment has unmistakably changed the expulsion component of the Supreme Court Judges for their demonstrated mischief or inadequacy to their disservice amid their term of office and in this point of view, the Sixteenth Amendment is violative of Article 147(2) of the Constitution.

□ Article 23 of the "Beijing Statement of Principles of the Independence of the Judiciary" gives that by reason of distinction in history and culture, the methodology embraced for the expulsion of Judges may vary in various social orders and evacuation by Parliamentary strategies has

customarily been received in a few purviews; yet in different wards, that strategy is unacceptable and its utilization other than for the most genuine of reasons is well-suited to prompt abuse and having respect to the socio-political states of Bangladesh, the arrangements identifying with the Supreme Judicial Council for expulsion of the Judges of the Supreme Court are most appropriate.

□The American situation of reprimand of the Judges has been condemned as an unacceptable procedure in which "political and party impact has become an integral factor" and along these lines, the danger of indictment being exceedingly politicized will be considerably progressively prominent in the current political setting of Bangladesh, particularly because of the nearness of Article 70 in the Constitution of Bangladesh and saw from this edge, the freedom of the Judiciary will be jeopardized.

6.2 Opinion of Mr. M. Amir-ul Islam

Mr. M. Amir-ul Islam learned Amicus Curiae, he was one of the Members of the Constitution Drafting Committee in the post-freedom period in 1972. As indicated by him the sixteenth amendment is unlawful and illicit and violative of the division of intensity. He demonstrated numerous contentions to help his sentiment, these are:

□There was no other choice for the Members of the drafting Committee however to relegate the activity of evacuation of the Supreme Court Judges to the Parliament and that being thus, the Parliament was endowed therewith by the first Constitution of 1972.

□We learn through involvement and experience is the best instructor of an individual and rebuilding of the first Article 96 of the Constitution by the Sixteenth Amendment isn't upheld by experience and in such manner, the Sri Lankan, Indian and Malaysian encounters are not cheerful.

□Separation of forces and autonomy of the Judiciary go connected at the hip and the regulation of detachment of forces must be clung to in making the Judiciary totally autonomous of the impact of the Executive or the Legislature and the Sixteenth Amendment, it's implied, is a hit to the freedom of the Judiciary.

□The expulsion methodology of the Judges of the Supreme Court is a piece of their arrangement procedure, however sadly in Bangladesh, the arrangement procedure of the Judges of the Supreme Court isn't straightforward, open and open and even following 45 years of our freedom, Article 95(2) (c) of the Constitution identifying with alternate capabilities for arrangement of a Judge of the Supreme Court has not seen the light of the day to the extraordinary disadvantage of open intrigue.

□The power of law isn't rationale, however encounter and our experience demonstrates that about 70% of the Members of Parliament in Bangladesh are currently a-days representatives and disputants and for freedom of the Judiciary, they ought not be associated with the procedure of evacuation of the Judges of the Supreme Court of Bangladesh on the ground of demonstrated mischief or insufficiency.

□The Parliamentary evacuation system of the Judges of the Apex Court is in vogue in a few nations of the world like the UK, USA, Canada, Australia, India and so forth., yet that has turned out to be out of date and obsolete with the developing sacred statute of the freedom of the Judiciary.

□The chronicled point of view combined with our experience and legal perceptions in different cases, to be specific, Masdar Hossain's Case, Eighth Amendment Case, Fifth Amendment Case and so on militate against the Sixteenth Amendment and homecoming of Article 96 (rebuilding of Article 96) is definitely not a conceivable contention in the present situation of Bangladesh.

□The guideline of freedom of the Judiciary requests that a Judge ought to be attempted by his companions for his bad conduct/wrongdoing or insufficiency and that will best ensure his autonomy in the release of his legal capacities

.6.3 Opinion of Mr. Rokanuddin Mahmud

Mr. Rokanuddin Mahmud, learned Amicus Curiae on the sixteenth amendment case. His supposition about the sixteenth amendment case is given beneath:

□He does not discover blame with the Sixteenth Amendment, but rather what is of foremost significance is that the law to be encircled according to the revised Article 96(3) of the Constitution must be gone into before he makes any accommodation on the point and except if that law is confined by the Parliament, it is hard to state at this phase regarding whether the Sixteenth Amendment has weakened the freedom of the Judiciary or not.

□The Judges of the Supreme Court ought to be attempted by their friends if there should arise an occurrence of bad conduct or inadequacy and that will ensure the freedom of the higher Judiciary without bounds degree and in this regard, the Supreme Judicial Council as presented in Article 96 by the Fifteenth Amendment of the Constitution is the best component.

6.4 Opinion of Mr. Ajmalul Hossain

□The Sixteenth Amendment has reestablished the arrangements of Article 96 of the first Constitution of 1972, it will be a tough occupation for him to pounce upon the defendability of the Sixteenth Amendment.

□The arrangements identifying with the Supreme Judicial Council were presented continuously Proclamation (Tenth Amendment) Order, 1977 (Second Proclamation Order No. 1 of 1977) and in the Fifth Amendment Case, the Appellate Division overlooked those arrangements as being increasingly straightforward and protecting the freedom of the Judiciary.

□In Civil Review Petition Nos. 17-18 of 2011 by the request dated 29th March, 2011, the Appellate Division by altering its prior choice in the Fifth Amendment Case temporarily excused the arrangements identifying with the Supreme Judicial Council in Article 96 of the Constitution till 31st December, 2012 and the Fifteenth Amendment embraced the arrangements identifying with the Supreme Judicial Council in Article 96 and kept up the equivalent; however from there on out of the blue, the Sixteenth Amendment was pushed through bringing doubts up in the brains of the general population about the autonomy of the higher Judiciary.

□There is dependably a degree for maltreatment of the intensity of evacuation of the Judges of the Supreme Court by the Members of Parliament on the quality of the Sixteenth Amendment disabling the freedom of the higher Judiciary.

□Article 7B of the Constitution ought to have been at the back of the psyche of the Members of Parliament before going of the Sixteenth Amendment and the Sixteenth Amendment is hit by Article 7B of the Constitution as it has influenced the freedom of the Judiciary, one of the essential highlights of the Constitution.

□Judicial autonomy envelops both an individual and institutional measurement and the individual measurement identifies with the autonomy of a specific Judge, and the institutional measurement identifies with the autonomy of the Court which he keeps an eye on and every one of these measurements relies upon the target conditions or ensures that guarantee the Judiciary's opportunity from any outside impact or obstruction and the essential assurances are security of residency, budgetary security and managerial freedom.

□Judicial freedom has been perceived as "the backbone of constitutionalism in law based social orders" and the standard of legal autonomy requires the Judiciary to be autonomous both actually and discernment.

□The institutional freedom of the Judiciary mirrors a more profound promise to the tenet of partition of forces among the Executive, Legislative and Judicial organs of the State and albeit legal autonomy had generally created as a rampart against the maltreatment of the Executive power, it similarly connected against other potential interruptions, including any from the Legislative organ because of enactment. So as to support up this accommodation.

□It is regular information that in our nation, a dominant part of the officials have criminal records; yet in any case they will be engaged with the procedure of expulsion of the Judges of the Supreme Court by dint of the Sixteenth Amendment and this may offer ascent to irreconcilable circumstance representing a risk to the standard of law.

□ A question must be replied with respect to whether the Sixteenth Amendment has propelled open intrigue or crushed it and he trusts that the Sixteenth Amendment has vanquished it. Mr. Ajmalul Hossain finally presents that the Sixteenth Amendment is a colourable bit of enactment in the realities and conditions of the case and in that capacity the Sixteenth Amendment ought to go.

Chapter: 7

Conclusion

7.1 Recommendation

Above notice discourse is the sixteenth amendment of constitution in regards to the evacuation of judges. In our view that the indictment of judge on the grounds of wrongdoing or ineptitude, is fundamental for a decent legal administration. Be that as it may, it is the obligation of judge to settle the debate and guarantee the equity. Also, the judge must be free from any political impact to secure the privilege of the native and guarantee the equity .The incomparable court is the gatekeeper of the constitution, its duty to ensure it. For guaranteeing the regular equity the partition of intensity, autonomy of legal executive and principle of law must be set up in the nation. Be that as it may, I trust that these three fundamental structures of the Bangladesh constitution have been decimated by the sixteenth amendment through giving the intensity of arraignment to the parliament. The parliament can't change the essential structure of the constitution, + each arrangement of the constitution can be revised given in the outcome the establishment and the structure of the constitution continues as before. I give some suggestion to indict the judge, for example, pursues:

A technique for prosecution is as per the following:

1. A changeless body, National Judicial Commission must be set up
2. Whose creation of 5 individuals is rearranged like clockwork? The piece of the Commission must be in the way recommended: Chief Justice of the Supreme Court, a senior Supreme Court Judge picked by the Speaker of the parliament, a Chief Justice of a High Court picked by the Leader of Opposition and two prominent legal advisers designated by the individuals from the Bar Association.
3. The working of this body isn't to subvert the ward of the Parliament to start procedures. It is just a devoted discussion to manage the restraining the individuals from the Judiciary.
4. The point of the body among others, including arrangement of judges will primarily manage investigating claims of inappropriateness and offense against the individuals from the Judiciary.
5. Crafted by the NJC will be to start disciplinary procedures against the said judge and the forces vested in the body will be to the tune of forcing minor estimates, for example, issuing warnings, asking for retirement, ceasing task of legal work temporarily, issuing a notice and blame or rebuke which may be in the idea of being open or private.

6. Their work will be liable to examination by a Parliamentary Committee shaped for the said

7. There is a bar for responsibility of judges while in the meantime guaranteeing that their freedom isn't encroached.

8. The judges of Supreme Court must pursue the set of principles.

The Supreme Court has reformulated 39-point set of principles for its judges with a view to keeping away from any second thought and perplexity under article 96 of the constitution.

(1) A Judge ought to take an interest in setting up, keeping up, and authorizing elevated expectations of lead, and ought to by and by watch those benchmarks with the goal that the uprightness and autonomy of the legal executive is protected. (6) A Judge ought to discard immediately the matter of the court incorporating maintaining a strategic distance from over the top deferral in conveying decisions/orders. For no situation a judgment will be marked later than a half year of the date of conveyance of judgment.

(2) A Judge ought to maintain a strategic distance from open remark on the value of a pending or approaching Court case.

(3) A Judge will preclude himself/herself in a procedure in which the Judge's unprejudiced nature may sensibly be addressed.

(4) A Judge will exclude himself/herself to hear an issue/cause where he filled in as legal advisor in the issue in discussion, or with whom the Judge recently working on amid such relationship as a legal counselor concerning the issue, or the Judge or such legal advisor has been a material observer.

(5) A Judge will not hear any issue on the off chance that he/she knows or on the off chance that he/she knows or on the off chance that it is brought into his/her notice that, exclusively or as a trustee, the Judge or the Judge's life partner or kids have a budgetary enthusiasm for the topic in debate or is involved with the procedure, or whatever other intrigue that could be influenced significantly.

(6) A Judge requires a level of separation and objectivity in legal agreement and he is compelled by a sense of honor by the promise of office.

(7) A Judge should rehearse a level of lack of approachability steady with the pride of his office.

(8) A Judge ought not connect straightforwardly or in a roundabout way in exchange or business, either independent from anyone else or in relationship with some other individual.

(9) A Judge should consistently be cognizant that he is under people in general look and there ought to be no demonstration or exclusion by him which is unbecoming of his office and the general population regard in which that office is held.

(10) A Judge ought not participate in any political exercises, at all in the nation and abroad.

(11) A Judge will uncover his advantages and liabilities, whenever requested, by the Chief Justice.

(12) Justice must not exclusively be done yet it should likewise be believed to be finished. The conduct and lead of an individual from the higher legal executive must reaffirm the general population's confidence in the fairness of the legal executive. Likewise, any demonstration of a Judge, regardless of whether in official or individual limit, which disintegrates the validity of this observation must be dodged.

(13) Close relationship with individual individuals from the Bar, especially the individuals who practice in a similar court, will be shunned.

(14) A Judge ought not allow any individual from his close family, for example, life partner, child, little girl, child in-law or little girl in-law or some other close relative, if an individual from the Bar, to show up before him or even be related in any way with a reason to be managed by him.

(15) No individual from his family, who is an individual from the Bar, will be allowed to utilize the living arrangement in which the Judge really lives or different offices for expert work.

(16) A Judge will not go into open discussion or express his perspectives out in the open on political issues or on issues that are pending or are probably going to emerge for legal assurance.

(17) A Judge is relied upon to give his decisions a chance to represent themselves. He will not offer meeting to the media.

7.2 Conclusion

There are a few issues in protected law which can't be replied in single word, for instance, what might be the importance of 'net offense' under articles 52 and 96. The idea of 'Autonomy of Judiciary' is one of such issues; one can't characterize how much freedom is essential for guaranteeing equity. In any case, the base dimension is sure that there shouldn't be digestion or transgression, rather, there ought to be check and equalization. On the off chance that it is acknowledged that the arrangement of unique Constitution ought to win, the sixteenth Amendment is great. Be that as it may, as per the assessments of Amicus Curies and Judges of the decision, it'll generally make political effects on judges exasperating legal freedom and put a steady dread on them as well. Accordingly, vesting of such power in the Parliament, as in India and England, won't be reasonable, in light of the fact that the circumstances of majority rule government of Bangladesh and those nations are extraordinary. It might be contended that the Judiciary, being an organ of the State, is autonomous and separate hypothetically however not

for all intents and purposes. Since, the Judiciary, being subordinate to the President, is subordinate to the choice of the Prime Minister as well, who is additionally the head of the decision political gathering. Regarding the choice of the Supreme Court in sixteenth amendment case, I should state that the decision has been an esteemed dream for the people of legitimate field explicitly and for the general population by and large. In any case, the decision has made a doctrinal or hypothetical authority with respect to the utilization of unique Constitution for discovering the Basic Structure. The savvy people will additionally think about that 'is there any extension to keep the first Constitution stay relevant?'. The most advantageous way will be to keep both all the while for both of 'autonomy' and 'check and parity' are fundamental. Along these lines, the Parliament and Supreme Judicial Council can act simultaneously in relationship of one another; and there might be two establishments for nitty gritty arrangements to be specific 'The Judges (Appointment) Act, and 'The Judges (Inquiry) Act'. Something else, this decision will be a point of reference for canceling any arrangement of the first Constitution in future days through practicing political malafide and naming as 'chronicled botch'.

References:

Bibliography

1. Bangladesh Act No XIII of 2014 amended the Constitution of Bangladesh.
2. (Scotland Act 1998, s 95 and Judiciary and Courts (Scotland) Act 2008, ss 35–38).
3. (Judicature (Northern Ireland) Act 1978, s 12C).
4. Constitution of India
5. Judgment of high court division regarding 16th amendment
6. Judgement of high court division on 16th amendment
- 7.
8. Juggement of appellant division against the appeal of the judgement of highcourt division on 16th amendment.
9. The judgment of appellate division on 16th amendment regarding code of conduct of judges.

SELECTED WEBSITES

1. https://www.academia.edu/35099683/A_critical_analysis_on_16th_Amendment_to_the_Constitution_of_Bangladesh_2016
2. <http://thecommonwealth.org>
3. http://www.supremecourt.gov.bd/resources1082040_C.A.6of17.pdf
4. <https://futrlaw.org/judgment-16th-amendment-case-judicial-interpretation/>
5. <https://constitutionallaw.com/article-03-section-01/impeachment-of-federal-judges/>
6. <https://.supremecourt.uk/about/judicial-conduct-and-complaints.html>
7. https://www.ballotpedia.org/Impeachment_of_federal_judges