

## True Independent Judiciary - A Myth under the Democratic System - but an Indispensable Part of the Righteous Khilafah

### News:

July 2017, the Appellate Division of the Supreme Court of Bangladesh rejected the government appeal and reaffirmed the decision of the High Court Division regarding the 16th amendment to the Bangladesh Constitution that the 16th amendment, which empowered parliament to remove the judges for incapacity or misbehavior, is illegal. Secular intellectuals and advocates of democracy are celebrating the judgment considering it being a big achievement and a milestone to the independence of Judiciary that will lead to rule of law, good governance and justice for the people.

### Comment:

Even though we observe the mindless delight among the secular intelligentsia regarding the verdict, the general people of Bangladesh are not sure how the annulment of 16th amendment will ensure true independence of our judiciary and ensure justice for them. Still, it is a valid and vital discussion that, after this verdict, is our judiciary now essentially free from the interference of the inherently corrupt democratic system that is being historically manipulated by the capitalist elites and their entourage?

Truly independent judiciary requires that judges should not be subject to control by the government or by anyone else. Independence of judiciary means the freedom of judges to exercise judicial powers without any interference or influence from the executive and legislature bodies of the state, which is impossible under the democratic form of government. In democracy, a group of privileged elites perform both the function of legislation and executive, and the judiciary that adjudicate according to that legislation is bound to be interfered with and influenced by that privileged elites. Moreover, the crude materialist value and personal greed that secular democracy promotes ultimately corrupt both individuals and intuitions of society.

Even before this 16th amendment, our judiciary has always been under the direct and indirect tentacles of political control and manipulated by ruling government. When Awami led alliance comes to power, all the corruption charges against the ruling party leaders and activists are quashed by our apex court and all opposition political activists and leaders are subject to punishment and harassment, and the same is equally true when the B.N.P led alliance comes to power. 'Top terror' criminals were pardoned by the President just because they were from the ruling political party. Bangladeshi democratic politicians never let the judges act independently and this is evident from the speech of the ruling party ministers. Finance Minister Abul Maal Abdul Muhith already told the reporters that his government would pass the constitutional [16th] amendment in parliament again, and they would do it continuously every time HC scraps the amendment [*The Daily Star*, August 04, 2017]. A few days ago, Bangladesh Chief Justice Surendra Kumar Sinha said in a function at the Supreme Court Auditorium in Dhaka that he would give more political statements to protect the judiciary. So, when the chief justice himself feels helpless in front of the political pressure coming from the ruling party, how can the general people expect justice with this annulment of the amendment? Where is the independent judiciary? How will the annulment of the 16th

amendment suddenly make our judiciary independent and free from the undue influence from the corrupt politics?

A true independent judiciary that ensures justice can only be achieved by removing the current secular democratic system and by replacing it with the Khilafah (Caliphate) of which the Islamic judiciary is an indispensable part. History witnesses that the Khilafah's judiciary enshrined both institutional and decisional independence to a level that far exceeds that of any of the democratic states today. The Khilafah's judicial branch is independent from the executive, and there is no legislative body as such, rather Allah (swt)'s Sharia is the supreme legislation of the State. Decisional and political independence of judges are also ensured, because under the Khilafah, judges would be able to decide the outcome of a trial solely based on the law and case itself, without letting the media, politics or other things sway their decision. There is no concept in the Khilafah of a 'Pardon' for crimes committed, as exists in the west and in their lackey countries.

The Shari'ah explicitly states that a judge must give an honest, knowledgeable and unbiased judgment on a case. The Prophet (saw) said:

«الْقَضَاءُ ثَلَاثَةٌ وَاحِدٌ فِي الْجَنَّةِ وَاثْنَانِ فِي النَّارِ فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ فَقَضَى بِهِ وَرَجُلٌ عَرَفَ الْحَقَّ فَجَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلِ فَهُوَ فِي النَّارِ»

**“Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to Hell; and a man who gives judgment for people when he is ignorant will go to Hell.”** (Sunan Abu-Dawud, Book 24, Number 3566: Narrated Buraydah ibn al-Hasib)

Hence, we saw that during the reign of the Khulafa-e-Rashideen and even the Khulafah ruling during the later periods, judges would play sovereign role in applying the Hukm Sharia. During the reign of Khalifah Ali bin Abu Talib (ra), the chief judge did not consider his (Ali's) arguments as strong and Ali (ra) lost his armor case to a Jew (who was in fact a liar). Even in later periods of the Khilafah, the judges were courageous enough to judge against the Khalifah if he was found to be in the wrong. The main reason of such judicial independence under Khilafah system was due to its separation from any man-made whims (like democracy). In Islam, there is no opportunity for humans to interfere with the legislations of Allah (swt), rather they rise above the tyranny of the oppressive rulers who try to abandon the Shariah of Allah (swt). Muslims, due to their ignorance, have lost the just Khilafah in 1924 but the coming of the second Khilafah Rashidah (righteous Caliphate) upon the method of the Prophethood is very near insh'allah which will again bring back true justice with its righteous brave independent judiciary.

**Written for the Central Media Office of Hizb ut Tahrir by**

**Muhammad Kamal**

**Media Office Member of Hizb ut Tahrir in Wilayah Bangladesh**