

Confrontational path — on Bangladesh's Parliament-Judiciary standoff

Bangladesh's Parliament raised the stakes in a stand-off against the judiciary last week by passing a unanimous resolution to take "proper legal steps" over a [Supreme Court verdict nullifying the Constitution's 16th amendment](#). The amendment, passed in 2014, had empowered Parliament to remove judges of the Supreme Court found incompetent or guilty of misconduct, based on a two-thirds majority. This amendment had in a way restored the power of Parliament to impeach judges and was in line with the original Constitution of 1972. The Supreme Court had in July this year scrapped the amendment, suggesting that it was antithetical to the independence of the judiciary and restored the Supreme Judicial Council, headed by the Chief Justice, with powers to remove errant judges. The Parliament, dominated by the Awami League, not only resolved to reverse the Supreme Court's decision, but also found fault with Chief Justice S.K. Sinha's comments in this regard. He had said that the Constitution was a product of the collective will of the people and not just one individual, which was interpreted as an affront to "Bangabandhu", Sheikh Mujibur Rahman, by the ruling Awami League. The largest party in opposition, the Bangladesh Nationalist Party, is not represented in Parliament as it had boycotted the elections held in 2014. The BNP had welcomed the Supreme Court decision but its position seemed to be guided more by schadenfreude and less by a clear-cut position on the judiciary's independence.

It is difficult for the polarised polity in Bangladesh to debate any issue without political overtones, let alone one that pertains to separation of powers between the judiciary and legislature. The Supreme Court's contention is that Bangladesh's political system is unlike the parliamentary systems in the United Kingdom and India, for example, where legislators are empowered to impeach judges. Bangladeshi MPs do not have the freedom to vote on conscience on issues including impeachment, bound as they are by Article 70 that prevents legislators from voting against their party's decision on any matter. This prevents a dispassionate deliberation over any prospective impeachment, giving political parties, and those in the executive undue influence over appointments in the judiciary. Instead of taking a course of confrontation against the judiciary, Bangladesh's parliamentarians and its attorney general would be better off proceeding with a review petition to the Supreme Court and presenting their position dispassionately. The Supreme Judicial Council might have had a legacy connecting it to the country's authoritarian past, but the arguments of the Supreme Court that it is seeking to protect judicial independence from the executive in light of other laws that bind legislative work in Bangladesh need to be contested by the government point by point — not by a mere resolution.

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