CINEFORUM
ISSN: 0009-7039
Vol. 66. No. S9, 2026 (S9)

Reclaiming the Autonomy of the Subordinate Judiciary: Administrative Dualism, Executive Encroachment, and Judicial Independence in Bangladesh

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ABSTRACT
Purpose: This paper explains why constitutional and judicial guarantees failed, for five decades, to secure institutional autonomy for Bangladesh's subordinate judiciary, and evaluates the High Court Division's 2025 judgment in Mohammad Saddam Hossen v. Bangladesh, which restored the 1972 text of Article 116.
Design/methodology/approach: The study applies doctrinal, historical-legal and comparative analysis to the constitutional amendments of 1975–2011, leading judgments, the full 2025 judgment, the 2017 Disciplinary Rules, and the 2025 Secretariat Ordinance and its 2026 repeal, organised through an original "administrative conduit" framework.
Findings: Executive control survived Masdar Hossain (1999) because the Ministry retained three operational levers: personnel files, gazette notification and budgetary sanction. The 2025 judgment invalidated the relevant Fourth and Fifteenth Amendment provisions on procedural and basic-structure grounds, revived the 1972 Article 116, voided the 2017 Rules and ordered a Supreme Court Secretariat. Parliament dissolved the Secretariat by statute in April 2026, and the Appellate Division stayed the judgment in June 2026, showing that statutory autonomy is readily reversible.
Research limitations/implications: The study is doctrinal and uses no primary empirical data; the State's appeal is pending.
Practical implications: Durable autonomy requires constitutional entrenchment combined with a self-executing Secretariat holding gazetting authority, a block grant charged on the Consolidated Fund and accountable peer-led discipline.
Originality/value: This is among the first scholarly analyses of the full 2025 judgment and its aftermath, and it offers a transferable explanation of non-compliance with apex-court rulings on judicial independence.
Keywords: Article 116; Subordinate judiciary; Judicial independence; Basic structure doctrine; Compliance deficit; Supreme Court Secretariat; Bangladesh

1. INTRODUCTION

The operational efficacy of a constitutional democracy depends on shielding the judicial branch from political and administrative encroachment.[1] Where courts become bureaucratic appendages of the political executive, guarantees of fundamental rights become dead letters.[2] In Bangladesh, the subordinate judiciary is the primary point of contact between citizens and the machinery of justice.[3] According to Transparency International Bangladesh, the subordinate courts deal with approximately 86 per cent of all cases filed in the country.[4] For most litigants, therefore, the trial judge is the tangible face of the rule of law.[5]

[1]Constitution of the People's Republic of Bangladesh, arts. 22, 94(4) and 116A; Secretary, Ministry of Finance v. Md. Masdar Hossain, 52 DLR (AD) 82 (2000).
[2]Tom Bingham, The Rule of Law (London: Allen Lane, 2010); United Nations, Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985, endorsed by General Assembly resolutions 40/32 and 40/146, principles 1–2.
[3]Constitution of Bangladesh, arts. 114–116A; Transparency International Bangladesh (TIB), Subordinate Court System of Bangladesh: Governance Challenges and Way Forward (Dhaka: TIB, 30 November 2017).
[4]TIB, Subordinate Court System of Bangladesh. The same study identified the dual control exercised simultaneously by the Supreme Court and the Ministry of Law, Justice and Parliamentary Affairs as a source of governance problems.
[5]Constitution of Bangladesh, arts. 27, 31 and 35(3); UN, Basic Principles, principle 6.

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Despite this foundational role, the subordinate judiciary has endured a persistent structural paradox. While judges of the Supreme Court enjoy tenure and functional independence under Chapter I of Part VI of the Constitution, the district courts have historically remained subject to executive oversight.[6] The tension originates in the constitutional design itself. "Judicial independence" is not enacted as a single operative term; it is anchored in a matrix of interrelated provisions. Article 22, a Fundamental Principle of State Policy, directs the State to ensure the separation of the judiciary from the executive organs of the State.[7] Article 116A guarantees that judicial officers and magistrates shall be independent in the exercise of their judicial functions.[8] Article 109 vests superintendence and control over all subordinate courts in the High Court Division. Read together, these provisions mandate an institutional design capable of shielding adjudicators from external pressure.[9]

This aspiration was long compromised by the amended Article 116, which vests the control and discipline of judicial officers in the President, to be exercised "in consultation with the Supreme Court."[10] Vesting authority in the President subject to consultation created an entrenched system of administrative dualism.[11] Under Article 48(3), the President must act on the advice of the Prime Minister in all matters except the appointment of the Prime Minister and the Chief Justice.[12] Because Article 55(2) concentrates executive power in the Prime Minister and the Cabinet, personnel governance over subordinate judges was exercised in practice by the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs.[13] In day-to-day administration, consultation degraded into a procedural formality: the Ministry initiated postings, processed promotions, framed disciplinary charges and controlled gazette notifications, leaving the higher judiciary with little more than an advisory voice.[14] As Justice Md. Abdul Matin observed in 2009, until the unamended Articles 115 and 116 were restored, separation of the judiciary would remain "a distant cry."[15]

The tension reached a turning point in Mohammad Saddam Hossen v. Bangladesh, decided by a Special Bench of the High Court Division on 2 September 2025.[16] By declaring Section 19 (Section 20 of the English version) of the Fourth Amendment Act, 1975 and Section 39 of the Fifteenth Amendment Act, 2011 unconstitutional, the Court invoked the doctrine of automatic revival to restore the 1972 formulation of Article 116, vesting administrative authority over the subordinate judiciary in the Supreme Court.[17] It also struck down the Bangladesh Judicial Service (Disciplinary) Rules, 2017 in their entirety and issued a mandamus directing the establishment of an independent Supreme Court Secretariat.[18] The subsequent enactment of the Supreme Court Secretariat (Repeal) Act, 2026 and the Appellate Division's stay of the judgment on 9 June 2026 demonstrate that formal textual change

[6]Constitution of Bangladesh, arts. 94(4), 96 and 116; Masdar Hossain, 52 DLR (AD) 82.
[7]Constitution of Bangladesh, art. 22.
[8]Constitution of Bangladesh, art. 116A, inserted by the Constitution (Fourth Amendment) Act, 1975 (Act No. II of 1975).
[9]M. Rafiqul Islam and S. M. Solaiman, "The Enforcement of Rulings of the Supreme Court on Judicial Independence in Bangladesh: When Enforcer Becomes Violator," Australian Journal of Asian Law 4, no. 2 (2002): 107–26.
[10]Constitution of Bangladesh, art. 116, as substituted by the Constitution (Fifteenth Amendment) Act, 2011 (Act No. XIV of 2011), s. 39.
[11]Masdar Hossain, 52 DLR (AD) 82; Government of Bangladesh v. Idrisur Rahman, 1999 BLD (AD) 203; Bangladesh v. Md. Abu Bakar, 57 DLR (AD) 186 (2005).
[12]Constitution of Bangladesh, art. 48(3).
[13]Constitution of Bangladesh, art. 55(2). The Masdar Hossain judgment examined the relationship between arts. 48(3), 55(2) and 116 and the practical exercise of control over subordinate judicial officers.
[14]Md. Milan Hossain, "Separation of Judiciary in Bangladesh—Constitutional Mandates and Masdar Hossain Case's Directions: A Post Separation Evaluation," International Journal for Court Administration 11, no. 2 (2020): 4, https://doi.org/10.36745/ijca.310; Islam and Solaiman, "Enforcement of Rulings," 107–26.
[15]Bangladesh v. Md. Idrisur Rahman (Judges' Case), 17 BLT (AD) 231 (2009), para. 166.
[16]Mohammad Saddam Hossen and others v. Bangladesh and others, Writ Petition No. 10356 of 2024 (High Court Division, Supreme Court of Bangladesh, judgment of 2 September 2025; full text of 185 pages published 7 April 2026) (hereafter Saddam Hossen).
[17]Saddam Hossen, 2–6; Constitution of Bangladesh, art. 116 as originally adopted (1972).
[18]Saddam Hossen, operative order.

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faces what this paper terms an executive compliance deficit.[19]

Existing scholarship has documented executive non-compliance with Masdar Hossain,[20] the gap between constitutional theory and practice, particularly for the superior judiciary,[21] and the significance of Masdar Hossain itself.[22] Three gaps remain. First, no peer-reviewed study has yet analysed the full 2025 judgment, which became public only in April 2026. Second, the literature describes non-compliance but rarely explains the mechanism through which a binding apex-court ruling can be neutralised without open defiance. Third, the 2025–2026 cycle of ordinance, repeal and appellate stay has not been examined as evidence on the limits of statutory reform. Accordingly, this study addresses three research questions:

RQ1. Through what institutional mechanisms did the executive retain control over the subordinate judiciary despite Masdar Hossain's declaration of Supreme Court primacy?

RQ2. On what procedural and substantive grounds did the High Court Division invalidate the amended Article 116 in 2025, and how robust are those grounds against the State's objections?

RQ3. What does the 2025–2026 aftermath reveal about the legal vehicle and administrative machinery required to secure sustainable judicial self-governance?

The paper makes three contributions. Conceptually, it develops an "administrative conduit" framework distinguishing who holds formal decision-making authority from who controls the operational levers that give decisions legal effect. Doctrinally, it offers a systematic analysis of the grounds of the 2025 judgment and the objections raised against it. Normatively, it proposes a reform framework that pairs constitutional entrenchment with self-executing administrative machinery and accountability safeguards. Section 2 sets out the methodology; Section 3 reviews the literature and develops the theoretical framework; Section 4 traces the trajectory of Article 116; Section 5 presents the analysis of the 2025 judgment; Section 6 examines the aftermath; Section 7 discusses the findings, policy implications and limitations; and Section 8 concludes.

2. RESEARCH DESIGN AND METHODOLOGY

2.1. Research approach

This study adopts a qualitative doctrinal and normative legal methodology, supplemented by historical-legal and comparative analysis.[23] Doctrinal analysis is used to identify and interpret the governing constitutional provisions, rules and precedents (RQ2). Historical-legal analysis reconstructs the evolution of Article 116 and the administrative practices built around it (RQ1). Normative and comparative analysis evaluates the reform options in light of South Asian constitutional models and international standards (RQ3).

2.2. Sources and selection criteria

Sources were selected purposively according to three criteria: (i) legal authority, giving priority to constitutional texts and binding judgments; (ii) direct relevance to the control and discipline of subordinate judicial officers; and (iii) currency, covering developments up to October 2026. The full text of the 2025 judgment was obtained from the official Supreme Court website. Contemporaneous reports from the national news agency and leading newspapers were used only to establish dates and procedural facts that are not yet reported in law reports, and each

[19]Sharif Bhuiyan, "Judicial Independence: Now Is the Time to Choose the Right Path," Prothom Alo (English), 31 August 2026; "Appellate Division Stays HC Verdict on SC Secretariat," Bangladesh Sangbad Sangstha (BSS), 9 June 2026.

[20]Islam and Solaiman, "Enforcement of Rulings," 107–26; Hossain, "Separation of Judiciary in Bangladesh," 4.

[21]M. Ehteshamul Bari, The Independence of the Judiciary in Bangladesh: Exploring the Gap Between Theory and Practice (Singapore: Springer, 2022), https://doi.org/10.1007/978-981-16-6222-5; Md. Awal Hossain Mollah, "Independence of Judiciary in Bangladesh: An Overview," International Journal of Law and Management 54, no. 1 (2012): 61–77.

[22]Md. Rafiqul Islam Hossaini, "Secretary, Ministry of Finance vs Md. Masdar Hossain and Others: A Note on the Case That Ascertained the Independence of the Subordinate Judiciary of Bangladesh," International Journal of Law and Management 60, no. 2 (2018): 563–70, https://doi.org/10.1108/IJLMA-01-2017-0011.

[23]On the doctrinal method in public-law research, see Mahmudul Islam, Constitutional Law of Bangladesh, 3rd ed. (Dhaka: Mullick Brothers, 2012), ch. 1; on comparative constitutional method, see Ran Hirschl, Towards Juristocracy: The Origins and Consequences of the New Constitutionalism (Cambridge, MA: Harvard University Press, 2004), 1–16.

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such fact was cross-checked against at least two independent sources. Table 1 summarises the corpus.

Table 1. Corpus of sources analysed

Category	Principal sources	Analytical use
Constitutional texts	Constitution of Bangladesh (1972, original); Fourth Amendment Act, 1975; Second Proclamation Order No. IV of 1978; Fifth Amendment Act, 1979; Twelfth Amendment Act, 1991; Fifteenth Amendment Act, 2011	Textual evolution of Article 116 (RQ1, RQ2)
Bangladeshi judgments	Masdar Hossain (1999); Anwar Hossain Chowdhury (1989); Khondker Delwar Hossain (2010); Idrisur Rahman (2009); Asaduzzaman Siddiqui (2017, review 2025); Saddam Hossen (2025; full text 2026)	Doctrinal analysis of grounds and remedies (RQ2)
Comparative judgments	Kesavananda Bharati; Minerva Mills; SC Advocates-on-Record Association (2016); Nripendra Nath Bagchi; Sharaf Faridi; Valente	Basic structure, revival and comparative models (RQ2, RQ3)
Statutes and rules	Disciplinary Rules, 2017; Supreme Court Secretariat Ordinance, 2025; Supreme Court Secretariat (Repeal) Act, 2026; Jatiya Sangsad Secretariat Act, 1994; Election Commission Secretariat Act, 2009	Mapping of administrative levers (RQ1, RQ3)
Policy documents	Constitution Reform Commission report (Jan. 2025); Judiciary Reform Commission report (Feb. 2025); OHCHR report (2025); TIB reports (2014, 2017); UN Basic Principles (1985)	Normative benchmarks and reform options (RQ3)
Secondary literature	Peer-reviewed articles and monographs on judicial independence, judicial self-governance and compliance with courts	Theoretical framework (Section 3)

Source: Authors' compilation.

2.3. Analytical framework

The analysis is organised around an original "administrative conduit" framework, developed in Section 3.4 and depicted in Figure 1. The framework holds that judicial independence at the trial level depends not only on who decides matters of posting, promotion, leave and discipline, but on who controls the conduits through which those decisions acquire legal effect: (1) the physical custody of personnel files and initiation of proposals; (2) the statutory notification of orders in the official gazette; and (3) the sanctioning of operational budgets. Each legal instrument and judgment examined was coded according to whether it relocated one or more of these levers from the executive to the judiciary.

2.4. Limitations of the method

Two limitations should be noted. First, the study does not include interviews or surveys of judicial officers; claims about administrative practice therefore rely on judicial findings, official reports and published scholarship. Second, the State's appeal against the 2025 judgment was pending at the time of writing. The analysis is accordingly framed to remain valid whether the Appellate Division affirms, modifies or reverses the judgment, and its normative conclusions do not depend on any particular outcome of the appeal.

3. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

3.1. Separation of powers and executive encroachment

The theoretical imperative for insulating trial courts is rooted in Montesquieu's warning that there is no liberty where the power of judging is not separated from the legislative and executive powers.[24] In Mohammad Saddam

[24]Montesquieu, The Spirit of the Laws, trans. and ed. Anne M. Cohler, Basia Carolyn Miller and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989), bk. 11, ch. 6; M. J. C. Vile, Constitutionalism and the Separation of Powers (Oxford: Clarendon Press, 1967).

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Hossen v. Bangladesh, Ahmed Sohel J. situated the Court's inquiry within this lineage, drawing on Aristotle, Maitland, Bolingbroke, Montesquieu and Blackstone.[25] The Court rejected the State's contention that the consultative mechanism in Article 116 itself constituted adequate checks and balances, reasoning that checks and balances exist to preserve coordinate autonomy, not to justify the administrative subordination of one organ to another.[26]

In a parliamentary system operating under Westminster conventions, the boundary between executive and legislature is porous because ministers sit in, and command a majority of, Parliament.[27] Where the same executive also administers trial judges, judicial oversight is compromised.[28] The vulnerability is acute because the State is the principal litigant before district courts, prosecuting crimes, acquiring land, enforcing revenue claims and defending administrative action.[29] Subordinating the presiding judge to a ministry whose law officers appear before that judge offends the maxim nemo judex in causa sua.[30]

3.2. De jure guarantees and de facto independence

Comparative scholarship distinguishes de jure independence, the protections codified in law, from de facto independence, the autonomy judges actually exercise without fear of reprisal.[31] Cross-national studies show that the two frequently diverge and that formal guarantees predict actual independence only weakly, with institutional provisions concerning the selection and control of judges among the more consequential.[32] The Supreme Court of Canada's influential formulation identifies three essential conditions of independence: security of tenure, financial security, and institutional independence over matters of administration bearing directly on adjudication.[33] Bangladesh's subordinate judiciary illustrates the divergence acutely: Article 116A guarantees functional independence, while the third Valente condition, administrative independence, was withheld by the amended Article 116.

Masdar Hossain was an ambitious attempt to bridge the divide. Through twelve directions, the Appellate Division declared the judicial service functionally and structurally distinct from the civil executive services under Article 152(1), required a separate Judicial Service Commission and pay commission, and held that the views of the Supreme Court must have primacy in consultation under Article 116.[34] The Court did not, however, declare the amended Article 116 unconstitutional; it expressly set aside the High Court Division's view that no constitutional amendment was needed and left fuller separation to Parliament.[35] Formal separation of the magistracy followed only on 1 November 2007, under a caretaker government, and the core levers of judicial careers remained routed through the Law Ministry.[36]

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[25]Saddam Hossen, 44–47, discussing Aristotle, The Politics, trans. T. A. Sinclair (Harmondsworth: Penguin, 1962); F. W. Maitland, The Constitutional History of England (Cambridge: Cambridge University Press, 1908); Henry St John Bolingbroke, Remarks on the History of England, 3rd ed. (London: Francklin, 1748); and William Blackstone, Commentaries on the Laws of England, ed. Wayne Morrison (London: Cavendish, 2001).

[26]Saddam Hossen, 15–20 (State's submissions) and the Court's findings on checks and balances.

[27]Walter Bagehot, The English Constitution (London: Chapman and Hall, 1867); Vernon Bogdanor, The New British Constitution (Oxford: Hart Publishing, 2009).

[28]Constitution of Bangladesh, arts. 22, 116 and 116A.

[29]Constitution of Bangladesh, arts. 102, 117 and 133.

[30]Lord Woolf, Jeffrey Jowell, Catherine Donnelly and Ivan Hare, De Smith's Judicial Review, 8th ed. (London: Sweet & Maxwell, 2018).

[31]Shimon Shetreet, Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary (Amsterdam: North-Holland, 1976); Peter H. Russell and David M. O'Brien, eds., Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World (Charlottesville: University Press of Virginia, 2001).

[32]Bernd Hayo and Stefan Voigt, "Explaining De Facto Judicial Independence," International Review of Law and Economics 27, no. 3 (2007): 269–90; James Melton and Tom Ginsburg, "Does De Jure Judicial Independence Really Matter? A Reevaluation of Explanations for Judicial Independence," Journal of Law and Courts 2, no. 2 (2014): 187–217.

[33]Valente v. The Queen, [1985] 2 SCR 673; British Columbia v. Imperial Tobacco Canada Ltd., [2005] 2 SCR 473, paras. 44–47. The Appellate Division adopted the Valente conditions in Masdar Hossain: see Saddam Hossen, 56–57.

[34]Masdar Hossain, 52 DLR (AD) 82, directions 1–12, reproduced in Saddam Hossen, 58–60; Hossaini, "Secretary, Ministry of Finance vs Md. Masdar Hossain," 563–70.

[35]Masdar Hossain, direction 11, reproduced in Saddam Hossen, 60.

[36]Hossain, "Separation of Judiciary in Bangladesh," 4; Mollah, "Independence of Judiciary in Bangladesh," 61–77.

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3.3. Judicial self-governance and its risks

A second body of literature examines judicial councils and other forms of judicial self-governance. Garoupa and Ginsburg show that councils are designed to balance independence against accountability, but find little systematic relationship between council design and judicial quality.[37] Kosař warns that transferring administrative power from politicians to senior judges can leave individual judges dependent on court leadership even within an institutionally independent judiciary, because promotions and transfers can then be used to discipline junior colleagues.[38] This literature cautions that relocating control to the Supreme Court is necessary but not sufficient; it must be accompanied by transparent criteria and internal accountability. International standards point the same way, recommending that bodies deciding on the careers of judges be independent of the executive and operate through transparent procedures.[39]

3.4. The compliance deficit and the administrative conduit framework

A third strand concerns why governments comply with, evade or defy courts. Courts lack the purse and the sword; compliance therefore depends on political incentives, public visibility and the design of judicial orders.[40] Islam and Solaiman described the Bangladeshi pattern as one in which the enforcer of court rulings becomes their violator.[41] Building on this work, the paper explains the mechanism of non-compliance through three administrative levers (Figure 1).

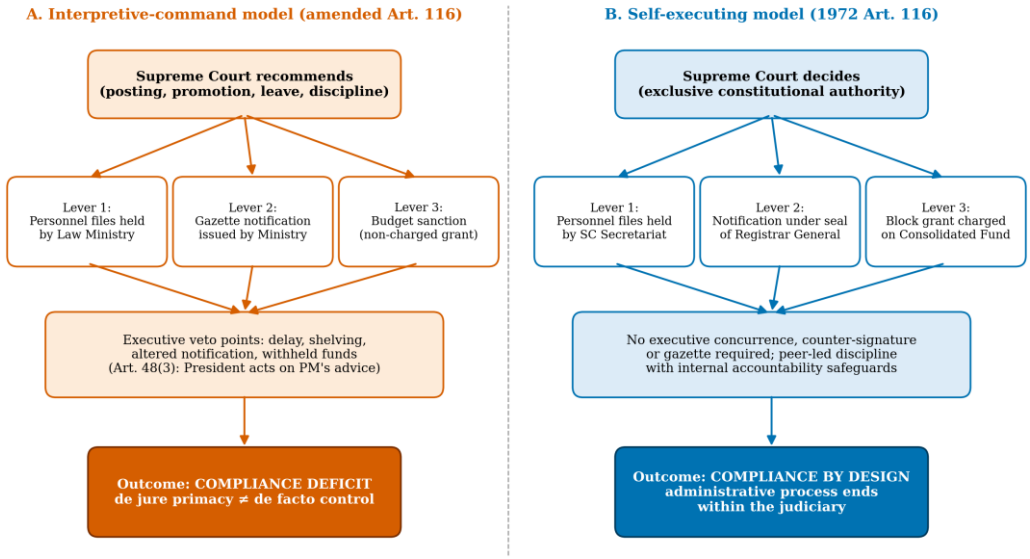


Figure 1. The administrative conduit framework: interpretive-command and self-executing models of subordinate-court governance

Source: Authors' own elaboration.

Lever 1: personnel files. Although the Supreme Court's General Administration Committee vetted proposals, administrative files originated and remained within the Law Ministry, which could shelve recommendations

[37]Nuno Garoupa and Tom Ginsburg, "Guarding the Guardians: Judicial Councils and Judicial Independence," American Journal of Comparative Law 57, no. 1 (2009): 103–34.

[38]David Kosař, Perils of Judicial Self-Government in Transitional Societies (Cambridge: Cambridge University Press, 2016); David Kosař, "Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe," German Law Journal 19, no. 7 (2018): 1567–1612.

[39]UN, Basic Principles, principles 11–14, 17–20; Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (1995); Commonwealth (Latimer House) Principles on the Three Branches of Government (2003).

[40]Georg Vanberg, The Politics of Constitutional Review in Germany (Cambridge: Cambridge University Press, 2005); Jeffrey K. Staton and Georg Vanberg, "The Value of Vagueness: Delegation, Defiance, and Judicial Opinions," American Journal of Political Science 52, no. 3 (2008): 504–19; Gretchen Helmke and Frances Rosenbluth, "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective," Annual Review of Political Science 12 (2009): 345–66.

[41]Islam and Solaiman, "Enforcement of Rulings," 107–26.

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indefinitely.[42] Lever 2: gazette notification. Transfers, promotions and leave take legal effect only upon notification in the Bangladesh Gazette; by withholding, delaying or altering notifications, the executive retained a de facto veto. The protracted dispute over gazetting the conduct and discipline rules in 2017, during which the then Chief Justice complained that the judiciary had been "taken hostage," illustrates the lever in operation.[43] Lever 3: budgetary sanction. Whereas the remuneration of Supreme Court judges and the Court's administrative expenses are charged on the Consolidated Fund under Article 88, subordinate court expenditure has been voted as ordinary grants under Article 89, leaving infrastructure, logistics and housing dependent on ministerial sanction.[44] The framework explains why Masdar Hossain faltered. Its directions sought to enforce judicial primacy while leaving all three levers inside the Ministry. In that setting the executive did not need to defy the Supreme Court openly; it could rely on bureaucratic attrition, gazette delay and shelved recommendations. The Court held the legal authority to decide; the Ministry held the logistical power to execute.[45] The persistence of the problem is illustrated by the fate of the Supreme Court Secretariat. On 6 September 2012 the Full Court resolved to establish a separate secretariat; a letter of 19 September 2012 seeking an inauguration date from the Prime Minister's Office went unanswered; on 23 November 2012 the then Chief Justice unveiled a name plaque at Sarak Bhaban; and by 2018 the plaque had been removed and the initiative had lapsed.[46]

A revived 1972 Article 116, by contrast, alters the institutional balance in three ways. First, it removes the textual ambiguity of consultation. Because the amended text vested authority in the President, who is bound by Article 48(3) to act on the Prime Minister's advice, the executive could always assert a competing constitutional mandate; the 1972 text removes the President and Cabinet from the loop entirely.[47] Second, compliance is secured not by goodwill but by transferring the levers themselves: when the Secretariat holds personnel files and orders take effect under the seal of the Registrar General, the administrative process terminates within the judiciary.[48] Third, a block grant charged on the Consolidated Fund removes fiscal gatekeeping. When the executive loses both the constitutional pretext of Article 48(3) and the operational levers, compliance ceases to be a matter of political discretion and becomes a feature of institutional design.[49]

4. THE CONSTITUTIONAL TRAJECTORY OF ARTICLE 116

4.1. The framers' design: the 1972 text

When the Constituent Assembly adopted the Constitution on 4 November 1972, the original Article 116 provided that "the control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the Supreme Court."[50] The framers sought to end the colonial model under which judicial magistrates were subordinate to the executive bureaucracy. The Constituent Assembly debates, reviewed in the 2025 judgment, record support for the provision from members including Syed Nazrul Islam, Khondkar Abdul Hafiz, Ahsan Ullah, Abdul Muntakim Chowdhury and Dr Kamal Hossain, and Article 116 was adopted without amendment or dissent.[51] Table 2 traces the subsequent alterations, and Figure 2 situates them on a timeline.

[42]Hossain, "Separation of Judiciary in Bangladesh," 4; TIB, Subordinate Court System of Bangladesh.
[43]"Judiciary Has Been Taken Hostage: CJ," The Daily Star, 14 March 2017; "Govt Issues Gazette on Disciplinary Rules for Lower Court Judges," The Daily Star, 11 December 2017.
[44]Constitution of Bangladesh, arts. 87–90. Article 88 lists expenditure charged on the Consolidated Fund; art. 89 distinguishes such charged expenditure from other expenditure submitted to Parliament as demands for grants.
[45]Hirschl, Towards Juristocracy; Martin Shapiro, Courts: A Comparative and Political Analysis (Chicago: University of Chicago Press, 1981).
[46]Saddam Hossen, 3, 14; Rezaul Karim, "Lost Name Plaque Tells It All about a Separate Judicial Secretariat," The Business Standard, 1 November 2019.
[47]Constitution of Bangladesh, arts. 48(3) and 116.
[48]Compare Supreme Court Secretariat Ordinance, 2025 (Bangladesh), promulgated 30 November 2025, ss. 1(2) and 7, discussed in Section 6, which left the control-and-discipline function conditional on further executive notification.
[49]Tom R. Tyler, Why People Obey the Law (New Haven, CT: Yale University Press, 1990); Staton and Vanberg, "Value of Vagueness," 504–19.
[50]Constitution of Bangladesh (1972), original art. 116; Saddam Hossen, 5.
[51]Saddam Hossen, 9, reviewing the Constituent Assembly Debates (1972).

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Table 2. Textual evolution of Article 116, 1972–2011

Instrument (date)	Text or effect on Article 116	Status after the 2025 judgment
Constitution, original text (4 November 1972)	Control (including posting, promotion and grant of leave) and discipline of judicial officers and magistrates vest in the **Supreme Court**	Declared revived by the HCD (judgment stayed by the AD on 9 June 2026)
Fourth Amendment Act, 1975, s. 19 (s. 20 English version) (25 January 1975)	"President" substituted for "Supreme Court"; Article 116A inserted	Section 19 (20) declared void ab initio
Second Proclamation (Fifteenth Amendment) Order, 1978; ratified by Fifth Amendment Act, 1979	"and shall be exercised by him in consultation with the Supreme Court" added	Fifth Amendment invalidated in 2010, but Article 116 left undisturbed
Twelfth Amendment Act, 1991	Article 48(3): President acts on Prime Minister's advice; control passes in substance to the Law Ministry	Not directly in issue
Fifteenth Amendment Act, 2011, s. 39 (June 2011)	Article 116 substituted, reproducing the 1978 consultative text	Section 39 declared void ab initio

Source: Authors' compilation from the constitutional instruments and Saddam Hossen, 2–6, 15–21.

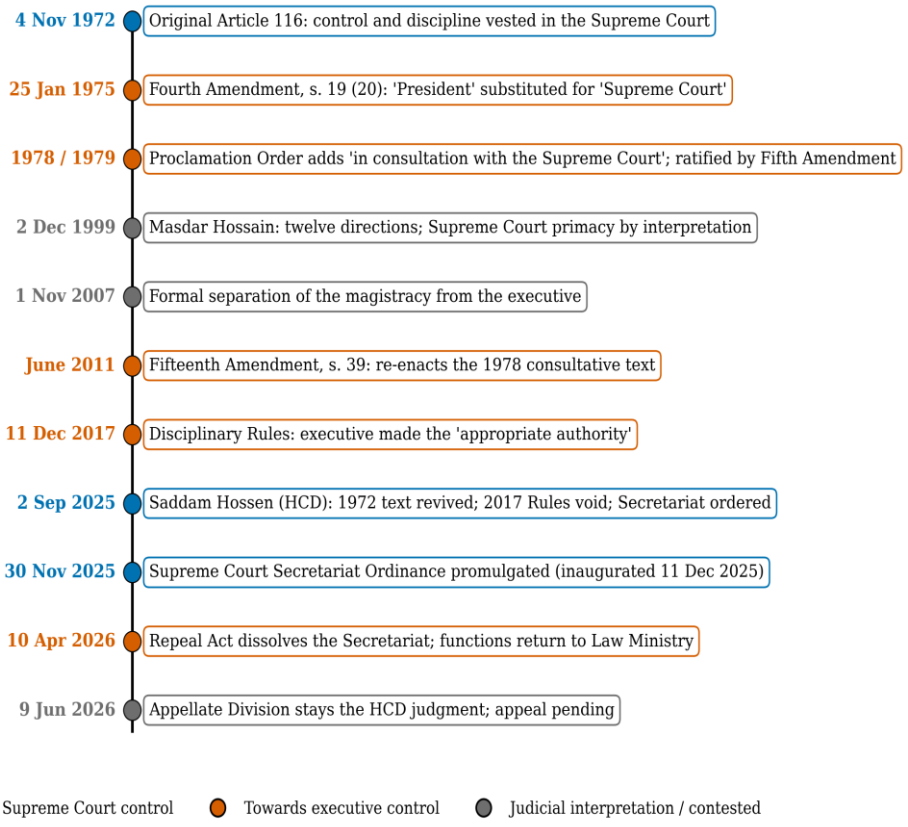


Figure 2. Timeline of the control of the subordinate judiciary in Bangladesh, 1972–2026

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Source: Authors' compilation from the Constitution, Saddam Hossen (2025) and official and news-agency reports cited in the text.

4.2. Constitutional retrogression, 1975–2011

The Constitution (Fourth Amendment) Act, 1975, passed on 25 January 1975, substituted the word "President" for the words "Supreme Court" in Article 116 through Section 19 (Section 20 of the English version), and simultaneously inserted Article 116A proclaiming the functional independence of judicial officers.[52] This created an institutional contradiction: trial judges were expected to adjudicate fearlessly while their careers depended on the executive. Under martial law, the Second Proclamation (Fifteenth Amendment) Order, 1978 (Second Proclamation No. IV of 1978) inserted the phrase "and shall be exercised by him in consultation with the Supreme Court," which was ratified by the Constitution (Fifth Amendment) Act, 1979.[53] When the Appellate Division invalidated the Fifth Amendment, it left Article 116 undisturbed but observed that judicial independence could not be fully realised unless Articles 115 and 116 were restored, expressing the "earnest hope" that Parliament would do so.[54]

The Constitution (Twelfth Amendment) Act, 1991 restored parliamentary government and, through Article 48(3), bound the President to act on prime-ministerial advice, so that control over the subordinate judiciary passed in substance to the Law Ministry. Although the Constitution (Fifteenth Amendment) Act, 2011 was presented as restoring the 1972 Constitution, its Section 39 substituted Article 116 by reproducing the 1978 consultative text, entrenching executive control under the guise of restoration.[55] In the Sixteenth Amendment Case, three judges of the Appellate Division observed that the substitution of "President" for "Supreme Court" had impaired the independence of the lower judiciary and was inconsistent with Articles 109 and 116A, although the Court made no order on Article 116.[56]

4.3. The mechanisms of bureaucratic leverage

Between 1975 and 2025, administrative dualism gave the executive systemic leverage over judicial officers. Promotion screening relied heavily on Annual Confidential Reports (ACRs), and an adverse remark or delay in transmitting a dossier could operate as an invisible veto.[57] Because senior District and Sessions Judges form the principal recruitment pool for the High Court Division under Article 95(2)(b), executive management of ACRs also conferred gatekeeping influence over the superior courts. Nationwide transfer liability operated as a lever of patronage: metropolitan postings, ministerial deputations and foreign training could reward compliance, while transfers to remote stations could follow adverse rulings.[58]

This subordination was codified by the Bangladesh Judicial Service (Disciplinary) Rules, 2017, promulgated under Article 133 on 11 December 2017.[59] Rule 2(f) defined the "appropriate authority" as the President, which, under Article 55(6) and the Rules of Business, meant the Law and Justice Division. Under Rules 3 and 4, the Ministry could initiate preliminary inquiries, frame charges and appoint inquiry officers, relegating the Supreme Court to a consultative role.[60] Six eminent jurists, including Dr Kamal Hossain, publicly warned that the rules had placed the subordinate judiciary under the executive and taken the country back to the pre-Masdar era.[61] Table 3 applies the administrative conduit framework to the twelve Masdar directions.

[52]Constitution (Fourth Amendment) Act, 1975 (Act No. II of 1975), s. 19 (s. 20 of the English version); Saddam Hossen, 5, 21.
[53]Saddam Hossen, 5–6, 16–17.
[54]Khondker Delwar Hossain v. Bangladesh Italian Marble Works Ltd., 62 DLR (AD) 298 (2010), paras. 236, 239.
[55]Constitution (Fifteenth Amendment) Act, 2011 (Act No. XIV of 2011), s. 39; Saddam Hossen, 6, 55.
[56]Government of Bangladesh v. Advocate Asaduzzaman Siddiqui (Sixteenth Amendment Case), 71 DLR (AD) 52 (judgment of 3 July 2017); "Fourth Amendment: It 'Impairs Freedom of Lower Judiciary'," The Daily Star, August 2017.
[57]TIB, National Integrity System Assessment: Bangladesh (Dhaka: TIB, 2014), 89.
[58]Islam and Solaiman, "Enforcement of Rulings," 107–26; Hossain, "Separation of Judiciary in Bangladesh," 4.
[59]Constitution of Bangladesh, art. 133; Saddam Hossen, 6–7.
[60]Bangladesh Judicial Service (Disciplinary) Rules, 2017, rr. 2(f), 3–4.
[61]"Lower Courts' Freedom Undermined by 3 Rules," The Daily Star, 2 January 2018.

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Table 3. The twelve Masdar Hossain directions mapped to the administrative conduit framework

Direction (summary)	Lever or domain addressed	Did it relocate the conduit away from the Ministry?
1. Judicial service functionally and structurally distinct from civil executive services	Structural status	Partly: separate service recognised, but still administered through the Ministry
2. Article 115 governs creation of the service and pre-appointment matters	Appointment rules	No: rule-making remained with the President (executive)
3. BCS (Judicial) cadre declared ultra vires	Structural status	Yes (declaratory)
4. Rules under Article 115; Judicial Service Commission with judicial majority	Recruitment	Yes: Commission established in 2007
5. Separate rules on posting, promotion, leave and discipline consistent with Articles 116 and 116A	Levers 1 and 2	No: the 2017 Rules made the executive the appropriate authority
6. Separate Judicial Pay Commission	Remuneration	Partly
7. Supreme Court's views to have primacy in consultation under Article 116	Levers 1 and 2	No: primacy depended on ministerial processing and notification
8. Tenure, salary and institutional independence to be secured in rules	All levers	Partly
9. No executive approval for expenditure within the Supreme Court's sanctioned budget	Lever 3	Partly: covered Supreme Court allocations, not subordinate-court operational budgets
10. Judicial officers within Administrative Tribunal jurisdiction	Remedies	Not applicable
11. Further constitutional amendment left to Parliament	Constitutional text	No: amended Article 116 left intact
12. Interim pay arrangements pending the Pay Commission	Remuneration	Transitional

Source: Directions summarised from Masdar Hossain, 52 DLR (AD) 82, as reproduced in Saddam Hossen, 58–60; assessment in the third column is the authors' analysis.

Table 3 answers RQ1. Of the twelve directions, those that created new institutions outside the Ministry's administrative chain, such as the Judicial Service Commission, were implemented, whereas the directions governing day-to-day control (directions 5, 7 and 9) required the Ministry to act against its own institutional interest and were diluted through the three levers.

5. RESULTS: THE 2025 JUDGMENT IN WRIT PETITION NO. 10356 OF 2024

5.1. Procedural history, locus standi and preliminary objections

On 2 September 2025, a Special Bench of the High Court Division comprising Ahmed Sohel and Debasish Roy Chowdhury JJ. delivered judgment after twenty days of hearing between April and August 2025, assisted by Dr Sharif Bhuiyan as amicus curiae.[62] The petition, brought by practising advocates as public interest litigation under Article 102 read with Article 44, challenged the amendments to Article 116, the 2017 Disciplinary Rules, and the failure to establish a Supreme Court Secretariat.[63] Applying Dr. Mohiuddin Farooque v. Bangladesh, the Court

[62]Saddam Hossen, 1–3.
[63]Saddam Hossen, 2–4.

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held that lawyers, as officers of the court, had sufficient standing to vindicate the integrity of the judicial branch.[64] The Attorney General and an intervener raised four principal objections: (i) Section 19 (20) of the Fourth Amendment was a repealed provision immune from review under Kudrat-e-Elahi Panir v. Bangladesh; (ii) striking down the word "President" would leave a textual vacuum and invite judicial legislation; (iii) the petition was defective for failing to challenge Articles 115 and 133; and (iv) Article 22, as a Fundamental Principle of State Policy, is not judicially enforceable.[65] The Attorney General also submitted that, by order of 29 June 2025 in Civil Review Petition No. 147 of 2025, the Appellate Division had granted leave and stayed its order of 3 January 2018 in Civil Appeal No. 79 of 1999, so that the 2017 Rules were themselves stayed and sub judice.[66] The Court rejected each objection; objections (ii) and (iv) are addressed in Sections 5.4 and 5.3 respectively. On objection (i), Article 142 recognises four modes of amendment—addition, alteration, substitution and repeal—and the Fourth Amendment operated by substitution, a text that continued to live through the Fifteenth Amendment; Kudrat-e-Elahi Panir concerned ordinary legislation, not constitutional amendment. On objection (iii), vesting administrative control in the Supreme Court under Article 116 while retaining formal appointing power in the President under Article 115 was, the Court held, coherent and workable.[67] Table 4 summarises the grounds of decision.

Table 4. Grounds of decision in Saddam Hossen (2025)

Issue	Objection raised	Holding of the High Court Division	Principal authorities
Locus standi	Not seriously contested	Advocates, as officers of the court, have standing in public interest litigation	Mohiuddin Farooque (1997)
Reviewability of the Fourth Amendment	Repealed provision is not reviewable	Substitution is not repeal; the substituted text lived on through the Fifteenth Amendment	Art. 142; Kudrat-e-Elahi Panir distinguished
Failure to challenge Articles 115 and 133	Petition defective	Appointment (Art. 115) and control (Art. 116) are separable and the scheme remains workable	Arts. 115–116
Procedural validity	—	Long titles of the 1975 and 2011 Bills did not comply; provisions void ab initio	Art. 142(1)(a)(i); Rules of Procedure, r. 99
Basic structure	Art. 116 is not a basic pillar; Art. 22 is non-justiciable	Conflicts with Arts. 109 and 116A, read with Art. 22 through Art. 8(2); violates independence and separation of powers	Kesavananda; Eighth and Sixteenth Amendment Cases
Remedy for Article 116	Textual vacuum; judicial legislation	Automatic revival of the 1972 text	Ful Chand Das; Minerva Mills; SCAORA
2017 Disciplinary Rules	Framed under Art. 133; not challengeable	Void in their entirety; not severable	Mahmudul Islam; Bindra
Supreme Court Secretariat	State had "no objection" in principle	Mandamus to establish within three months	Arts. 28, 29, 79(1), 109

Source: Authors' analysis of Saddam Hossen (2025), including the parties' submissions at 15–44.

5.2. Procedural invalidation under Article 142(1)(a)(i)

The Court invalidated the amendments on a procedural ground that had not previously been applied to Article 116.

[64]Dr. Mohiuddin Farooque v. Bangladesh, 49 DLR (AD) 1 (1997); Saddam Hossen, 4–5.
[65]Saddam Hossen, 15–26, 43–44; Kudrat-e-Elahi Panir v. Bangladesh, 44 DLR (AD) 319 (1992).
[66]Saddam Hossen, 19.
[67]Saddam Hossen, rejecting the submissions recorded at 15–26 and 43–44.

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Article 142(1)(a)(i), read with Rule 99 of the Rules of Procedure of Parliament, provides that no bill to amend the Constitution shall proceed unless its long title expressly states that it will amend a provision of the Constitution.[68] Drawing on drafting authorities,[69] the Court held that the long title must identify the provisions to be amended, and found that neither the Fourth Amendment Bill, 1975 nor the Fifteenth Amendment Bill, 2011 complied. Because the amending power under Article 142 is a derivative competence, strict compliance with mandatory procedural preconditions was held to be a condition of validity, rendering both provisions void ab initio.[70]

5.3. Substantive invalidation and the basic structure doctrine

The Court further held the amended Article 116 substantively unconstitutional. Relying on Kesavananda Bharati, the Eighth Amendment Case and the Sixteenth Amendment Case, it affirmed that judicial independence, the separation of powers and the rule of law are structural pillars that the derivative amending power cannot abrogate.[71] It found the amended text irreconcilable with Article 109, which vests superintendence and control over subordinate courts in the High Court Division: vesting posting, promotion, leave and discipline in the executive rendered that supervisory jurisdiction inoperative in its administrative dimension. Responding to the objection that Article 22 is non-justiciable, the Court reasoned that under Article 8(2) the Fundamental Principles are a mandatory guide to interpretation, so Article 22 must inform the construction of Articles 109 and 116; executive control dismantled the separation Article 22 demands and rendered the guarantee in Article 116A illusory.[72]

5.4. Automatic revival and non-severability of the 2017 Rules

Addressing the remedial consequences, the Court rejected the claim that invalidation would leave a vacuum. Applying the doctrine of eclipse and the principle of automatic revival recognised in Bangladesh and India, it held that when an amending provision is declared void ab initio, the pre-existing text revives without intervening legislation.[73] Because both the 1975 and the 2011 alterations were invalidated in a single proceeding, the 1972 Article 116 was declared restored.[74]

On the 2017 Rules, the Court held that severability cannot apply where valid and invalid provisions form a single scheme.[75] Because the entire framework rested on the executive as the appropriate authority under Rules 2(f), 3 and 4, the Rules were declared void in their entirety.[76] Finally, holding that judicial independence cannot survive without administrative machinery, the Court directed the establishment of an independent Supreme Court Secretariat within three months. It noted that Parliament has its own secretariat under Article 79(1) and the Jatiya Sangsad Secretariat Act, 1994, and the Election Commission under the Election Commission Secretariat Act, 2009, and held that denying the judiciary an equivalent body offended Articles 28 and 29 and the coordinate equality of the organs of State.[77] The Court certified the case under Article 103(2)(a) as involving a substantial

[68]Constitution of Bangladesh, art. 142(1)(a)(i); Rules of Procedure of Parliament, r. 99; Saddam Hossen, 39–40.
[69]Bryan A. Garner, ed., Black's Law Dictionary, 9th ed. (St Paul, MN: West, 2009), s.v. "long title"; D. J. Gifford and John Salter, How to Understand an Act of Parliament (London: Cavendish, 1996), 19; William N. Eskridge Jr., Philip P. Frickey and Elizabeth Garrett, Cases and Materials on Legislation: Statutes and the Creation of Public Policy, 3rd ed. (St Paul, MN: West Group, 2001), 831.
[70]Saddam Hossen, findings on the long-title requirement. On procedural limits to the amending power, see Richard Albert, Constitutional Amendments: Making, Breaking, and Changing Constitutions (Oxford: Oxford University Press, 2019).
[71]Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; Anwar Hossain Chowdhury v. Bangladesh, 41 DLR (AD) 165 (1989); Asaduzzaman Siddiqui, 71 DLR (AD) 52; Saddam Hossen, findings on the basic structure. See also Yaniv Roznai, Unconstitutional Constitutional Amendments: The Limits of Amendment Powers (Oxford: Oxford University Press, 2017).
[72]Saddam Hossen, findings on Articles 8(2), 22, 109 and 116A; for the State's contrary submission, see 20.
[73]Ful Chand Das v. Mohammad Hamad, 34 DLR (AD) 361 (1982); Anwar Hossain Chowdhury, 41 DLR (AD) 165; Asaduzzaman Siddiqui, 71 DLR (AD) 52; Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625; Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1; Property Owners' Association v. State of Maharashtra, 2024 (13) SCALE 107; Saddam Hossen, 11–12 (petitioners' submissions) and the Court's findings on revival.
[74]Saddam Hossen, operative order.
[75]Mahmudul Islam, Constitutional Law of Bangladesh; N. S. Bindra, Interpretation of Statutes, 12th ed. (New Delhi: LexisNexis, 2017), 542; Saddam Hossen, 12–13 (petitioners' submissions) and the Court's findings on severability.
[76]Saddam Hossen, operative order; Bangladesh Judicial Service (Disciplinary) Rules, 2017, rr. 2(f), 3–4.
[77]Constitution of Bangladesh, arts. 28–29, 79(1); Saddam Hossen, findings on the Secretariat and operative order; see also the intervener's submissions at 37–38.

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question of constitutional interpretation.[78]

5.5. Comparative position

The petitioners relied on comparative provisions to show that vesting control of the subordinate judiciary in the higher judiciary or an independent judicial commission is a mainstream constitutional design in the region.[79] Table 5 situates Bangladesh against these models. In India, Article 235 vests control over district courts, including posting, promotion and leave, in the High Court, a provision the Supreme Court of India has treated as a cornerstone of the independence of the district judiciary.[80] Pakistan's Supreme Court ordered the separation of the judiciary from the executive under Article 175(3).[81] Sri Lanka and Nepal entrust the careers of judicial officers to judicial service commissions chaired by the Chief Justice.[82]

Table 5. Control of the subordinate judiciary in selected South Asian constitutions

Jurisdiction	Constitutional basis	Body controlling posting, promotion and discipline	Executive role
Bangladesh (1972 text; revived 2025, stayed 2026)	Art. 116 (original)	Supreme Court	Formal appointment by the President (Art. 115)
Bangladesh (1975–2025)	Art. 116 (amended)	President, acting on the Prime Minister's advice, in consultation with the Supreme Court	Decisive
India	Arts. 233–235	High Court	Governor appoints district judges in consultation with the High Court
Pakistan	Arts. 175(3), 203	High Courts (supervision and control of subordinate courts)	Separation from the executive mandated (Sharaf Faridi, 1994)
Sri Lanka	Art. 111H (1978 Constitution, as amended)	Judicial Service Commission chaired by the Chief Justice	No role in individual decisions
Nepal	Art. 154 (2015 Constitution)	Judicial Service Commission chaired by the Chief Justice	Minority representation on the Commission

Source: Authors' compilation from the constitutional texts and Saddam Hossen, 7.

Table 5 shows that, between 1975 and 2025, Bangladesh was an outlier among its neighbours in leaving final control of trial judges with the political executive. The 2025 judgment, if affirmed, would realign Bangladesh with the regional model and with its own founding text.

6. THE AFTERMATH: STATUTORY FRAGILITY, THE 2026 REPEAL AND THE APPELLATE STAY

Following the political transition of August 2024, both the Constitution Reform Commission (report submitted on

[78]"State to Appeal against HC Verdict on Separate SC Secretariat: AG," Bangladesh Post (BSS), 8 April 2026.
[79]Saddam Hossen, 7.
[80]Constitution of India, art. 235; State of West Bengal v. Nripendra Nath Bagchi, AIR 1966 SC 447; All India Judges' Association v. Union of India, (1993) 4 SCC 288; Somesh Chaurasia v. State of Madhya Pradesh, AIR 2021 SC 3563, para. 42, cited in Saddam Hossen, 37.
[81]Government of Sindh v. Sharaf Faridi, PLD 1994 SC 105.
[82]Constitution of the Democratic Socialist Republic of Sri Lanka (1978, as amended), art. 111H; Constitution of Nepal (2015), art. 154; Saddam Hossen, 7.

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15 January 2025) and the Judiciary Reform Commission (report submitted on 5 February 2025) recommended restoring Supreme Court control over the subordinate judiciary and establishing a separate secretariat.[83] The United Nations fact-finding report on the events of July and August 2024 likewise recommended institutional measures to secure the independence of the judiciary.[84] These commitments were carried into the July National Charter without dissent on this point.[85] Building on the mandamus, the interim government promulgated the Supreme Court Secretariat Ordinance, 2025 on 30 November 2025. The Ordinance placed overall control of the Secretariat with the Chief Justice and made the Chief Justice the final authority for approving expenditure from funds allocated to it.[86] A post-creation committee created 489 posts on 7 December 2025, and Chief Justice Syed Refaat Ahmed inaugurated the Secretariat on 11 December 2025.[87] The design nevertheless stopped short of relocating all three levers. Under Section 1(2), Section 7, which governs the control and discipline of judicial officers, was to come into force only by a separate government notification once the Secretariat became fully operational, and Section 7(2) framed the Secretariat as performing administrative functions "on behalf of the President" for the purposes of the amended Article 116. By the end of December 2025, the Secretariat was reported to remain dependent on the Law Ministry for most secretarial functions, with its new posts awaiting Finance Ministry endorsement.[88] The Ordinance thus strengthened budgetary authority within the Secretariat's own allocation (Lever 3) while leaving Levers 1 and 2 conditional on further executive action, a clear illustration of the administrative conduit problem identified in Section 3.4.

The reform proved fragile. The full text of the judgment was published on 7 April 2026; the newly elected Parliament passed the Supreme Court Secretariat (Repeal) Bill on 9 April 2026, and the Act took effect on 10 April 2026, dissolving the Secretariat and returning its functions to the Law and Justice Division.[89] Notably, the governing party had pledged in its 2023 reform programme and its February 2026 electoral manifesto to vest control of subordinate courts in the Supreme Court and to strengthen the Secretariat.[90] A civil-society appeal seeking to preserve the status quo was filed on 20 April 2026, and the State filed its appeal on 21 May 2026.[91] On 9 June 2026, a four-member bench of the Appellate Division headed by Chief Justice Zubayer Rahman Chowdhury stayed the High Court Division's judgment and fixed the appeal for hearing.[92] In its appeal, the State contended that the High Court Division erred in holding that invalidation automatically revived the 1972 text, and warned of "serious constitutional conflicts" in the administration of the subordinate judiciary.[93] As of the time of writing, the appeal remains pending.

Proponents of the repeal argued that an autonomous secretariat could not be built by ordinance before the Appellate Division had settled the status of Article 116, which on their view remained in its amended form; the Attorney

[83]Constitution Reform Commission, Report of the Constitution Reform Commission (Dhaka: Government of Bangladesh, submitted 15 January 2025); Judiciary Reform Commission, Report of the Judiciary Reform Commission (Dhaka: Government of Bangladesh, submitted 5 February 2025); "Yunus Urges All to Accept Reform Reports," Jago News, 5 February 2025.

[84]Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights Violations and Abuses Related to the Protests of July and August 2024 in Bangladesh (Geneva: OHCHR, 12 February 2025), para. 345, cited in Saddam Hossen, 42.

[85]Bhuiyan, "Judicial Independence."

[86]Supreme Court Secretariat Ordinance, 2025, s. 12(1); "Supreme Court Secretariat Ordinance, 2025, Issued Delegating Overall Control to CJ," The Business Standard, 1 December 2025.

[87]"Inauguration of SC Secretariat Is Historic Institutional Milestone: CJ," BSS, 11 December 2025; Gulam Rabbani, "Supreme Court Secretariat: Lack of Manpower, Infrastructure Hinders Operations," The Financial Express, 30 December 2025.

[88]Supreme Court Secretariat Ordinance, 2025, ss. 1(2), 7(2); Rabbani, "Lack of Manpower."

[89]"Appeal Filed Seeking Status Quo on SC Secretariat Operations," Jago News, 20 April 2026; Bhuiyan, "Judicial Independence."

[90]Bhuiyan, "Judicial Independence."

[91]"Appeal Filed against HC Verdict on SC Secretariat," BSS, 21 May 2026.

[92]"Appellate Division Stays HC Verdict on SC Secretariat," BSS, 9 June 2026; "AD Stays HC Verdict on SC Secretariat," New Age, 9 June 2026.

[93]"AD Stays HC Verdict on SC Secretariat," New Age.

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General had announced the State's intention to appeal on 8 April 2026.[94] Critics, including the amicus curiae, responded that until the judgment was stayed it bound the executive under Article 111, so that the government acted in breach of it between 10 April and 9 June 2026.[95] Whatever view is taken of that dispute, the episode answers part of RQ3: protections resting on ordinary legislation or ordinance can be repealed by a simple parliamentary majority within days. Durable autonomy therefore requires an entrenched constitutional foundation, whether through appellate affirmation of the 2025 judgment or through formal amendment.

7. DISCUSSION

7.1. Principal findings

Three findings emerge. In answer to RQ1, executive control survived Masdar Hossain not mainly because the consultation clause was textually ambiguous, but because the three operational levers remained in ministerial hands; consistent with Staton and Vanberg's analysis, the interpretive primacy of the Supreme Court was a ruling whose implementation depended on the very actor it constrained.[96] In answer to RQ2, the 2025 judgment rests on two independent grounds. The substantive ground builds incrementally on obiter observations in the Fifth and Sixteenth Amendment Cases and is therefore the more doctrinally secure; the procedural long-title ground is more novel, and its acceptance on appeal would have implications for the validity of other amendments, which may make the Appellate Division cautious about endorsing it in broad terms. The automatic-revival holding is the most contested element, as the State's appeal confirms, although it has support in both Bangladeshi and Indian precedent.[97] In answer to RQ3, the 2025–2026 cycle shows that each lever must be secured by a legal instrument at least as durable as the threat it faces. Even the 2025 Ordinance, the most ambitious reform to date, left the control-and-discipline function dependent on a further executive notification, and its statutory form allowed a new majority to dissolve the Secretariat within days.

7.2. Engaging counter-arguments

Three objections deserve engagement. First, critics of judicial empowerment warn that courts expanding their own institutional authority risk "juristocracy."[98] The objection has less force here, because the 2025 judgment restored a text adopted without dissent by the Constituent Assembly and endorsed by successive reform commissions and political parties, rather than inventing a new arrangement. Second, the self-governance literature warns that concentrating career control in senior judges can reproduce dependence internally.[99] This risk is real and is addressed in the reform framework below through transparent criteria, collegial decision-making and review. Third, democratic accountability may be thought to require ministerial responsibility for the courts' budget and administration. Accountability can, however, be secured through parliamentary scrutiny of a charged block grant, published performance data and audit, without ministerial control over individual judges' careers.

7.3. Policy framework

Securing sustainable autonomy requires a two-tier strategy. At the constitutional tier, the Appellate Division's affirmation of the 2025 judgment would make the revival of the 1972 Article 116 binding under Article 111. Independently, Parliament could reconcile the text with the 1972 mandate by amendment, honouring the cross-party consensus recorded in the July National Charter. Under either route, the provision should state that control (including posting, promotion, determination of seniority and grant of leave) and discipline vest solely in the Supreme Court; that these powers are exercised through a permanent Judicial Secretariat under the Court's superintendence; and that no order shall require the concurrence, counter-signature or notification of any executive ministry. At the administrative tier, each lever must be relocated, as summarised in Table 6.

[94]"State to Appeal against HC Verdict," Bangladesh Post (BSS), 8 April 2026.
[95]Bhuiyan, "Judicial Independence"; Constitution of Bangladesh, arts. 111–112.
[96]Staton and Vanberg, "Value of Vagueness," 504–19.
[97]Anwar Hossain Chowdhury, 41 DLR (AD) 165; Asaduzzaman Siddiqui, 71 DLR (AD) 52; Supreme Court Advocates-on-Record Association, (2016) 5 SCC 1.
[98]Hirschl, Towards Juristocracy; Mark Tushnet, Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law (Princeton, NJ: Princeton University Press, 2008).
[99]Kosař, Perils of Judicial Self-Government; Garoupa and Ginsburg, "Guarding the Guardians," 103–34.

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Table 6. Reform framework for securing subordinate judicial autonomy

Lever	Current deficit	Proposed measure	Legal vehicle	Durability
Constitutional authority	Status of Art. 116 contested pending appeal	Affirm the 1972 text; add a clause excluding executive concurrence, counter-signature or notification	AD affirmation (Art. 111) or amendment (Art. 142)	High
Lever 1: Personnel files	Never fully transferred (Ordinance s. 7 awaited notification); returned to the Law and Justice Division in 2026	Permanent Secretariat under the Registrar General holding service books, leave and evaluation records	Constitutional clause plus Act of Parliament	High
Lever 2: Gazette notification	Ministry controls notification	Supreme Court Gazette; orders effective on publication under the Registrar General's seal	Act of Parliament anchored in the Constitution	Medium–High
Lever 3: Budget	Subordinate courts funded through voted grants	Block grant charged on the Consolidated Fund, managed by the Secretariat, Chief Justice as approving authority	Amendment of Art. 88	High
Discipline and accountability	2017 Rules void; regulatory gap	Peer-led rules; vigilance cell; collegial committees; published criteria; right of review	Supreme Court rules under restored Art. 116	Medium
Transparency	Opaque evaluation and transfer practice	Published transfer policy, disposal data and an annual report laid before Parliament	Supreme Court rules or Act	Medium

Source: Authors' proposal.

Peer-led discipline must be designed to avoid the internal-dependence problem identified by Kosař. Designated High Court Division judges with portfolio oversight of judicial districts could conduct inspections, review disposal data and engage with local bar associations, providing evaluations that replace executive-vetted ACRs. Complaints should be received by an internal vigilance cell of senior District Judges; charges and hearings should be decided by collegial committees under published rules; and affected officers should enjoy a right of review. Such a system would hold judges accountable to their peers under due process, while protecting them from politically motivated inquiries.

7.4. Limitations and directions for future research

This study is doctrinal and does not measure the perceptions or experiences of trial judges. Future research could survey judicial officers on transfer, promotion and disciplinary practices before and after December 2025, compile administrative data on gazette delays, and compare the brief operation of the Secretariat with judicial self-governance bodies elsewhere in South Asia. Most importantly, the forthcoming Appellate Division decision will warrant fresh analysis, particularly of its treatment of the automatic-revival and long-title doctrines.

8. CONCLUSION

A bifurcated constitutional order that insulates the superior courts while leaving trial judges under executive administration is unsustainable. Judicial independence is not a privilege of appellate benches; it is a structural property that must anchor the justice system from the courts that handle some 86 per cent of its cases. This paper has shown that executive dominance over Bangladesh's subordinate judiciary persisted for half a century because the levers that give judicial decisions legal effect—personnel files, gazette notification and budgetary sanction—remained with the Ministry even after the Supreme Court was granted interpretive primacy.

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The judgment in Mohammad Saddam Hossen v. Bangladesh confronted fifty years of constitutional erosion by invalidating the relevant provisions of the Fourth and Fifteenth Amendments on procedural and substantive grounds, reviving the 1972 Article 116, voiding the 2017 Disciplinary Rules and ordering an independent Secretariat. Yet the dissolution of that Secretariat by statute in April 2026 and the appellate stay in June 2026 show that judicial declarations cannot by themselves overcome the executive compliance deficit. The take-home message for constitution-makers, judges and reformers is clear: lasting autonomy for trial judges requires a constitutional foundation that a simple majority cannot repeal, combined with self-executing machinery—an autonomous Secretariat with gazetting authority, a charged block grant and an accountable peer-led disciplinary system. Only when these levers are permanently located within the judiciary will the subordinate courts of Bangladesh function as independent guardians of fundamental rights.

9.DECLARATIONS

Funding: The authors received no specific funding for this research.
Conflict of interest: The authors declare no conflict of interest.
Author contributions (CRediT): Md. Rafiqul Islam Hossaini: Conceptualization, Methodology, Formal analysis, Writing – original draft. Sirajum Monira Hossaini: Investigation, Resources, Writing – review & editing. Tanjila Tamanna: Investigation, Resources, Writing – review & editing
Data availability: Data sharing is not applicable to this article as no new data were created or analysed. All legal sources cited are publicly available.
Ethics statement: Not applicable; the study involved no human participants or personal data.
Use of AI tools: An AI-based tool was used to assist with language editing and formatting. The authors reviewed and verified all content, legal analysis and citations, and take full responsibility for the manuscript.

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