Session 2: Judiciary in a Constitutional Democracy

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Conquest of the judiciary

- Why is judiciary a prized conquest?
- Constitutional checks and balances

The price of liberty

- In terms of lawyers fees

Anthropology- why are human beings a successful species?

- Communication
  - ➢number,
  - ➢Geographical extent and
  - ➢time

Viewing the constitution and statutes as communication

- Conversation between the legislature and the common people, the executive and the judiciary
- The difference in the conversations
  - ➢Time lag
  - ➢Meaning of the conversation

The Judiciary is a prize for conquest because it interprets and applies the conversation

- Interpretation and application
- What is 'legislative intent'?

How to conquer the judiciary?

- How are judges bribed? Richard Posner
- Administrative and disciplinary control
- Appointments
- Class and socio-economic bias

Constitution of Bangladesh

Appointment of Judges Article 95. (1) The Chief Justice shall be appointed by the President, and the other Judges shall be appointed by the President after consultation with the Chief Justice.

Appointments to subordinate Courts Article 115. Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf.

Control and discipline of subordinate courts Article 116. 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 President and shall be exercised by him in consultation with the Supreme Court.

Constitution of India

124. Establishment and constitution of Supreme Court.—(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal **after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for that purpose** *[on the recommendation of the National Judicial Appointments Commission referred to in article 124A]* and shall hold office until he attains the age of sixty-five years:

Constitution of India

217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and sea) after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office until he attains the age of sixty years

Amended

217. Appointment and conditions of the office of a Judge of a High Court.—(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal **[on the recommendation of the National Judicial Appointments Commission referred to in article 124A]**, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years:

Collegium system of appointments

- Advantages
- Disadvantages

Judicial Appointments Commission England and Wales

- The JAC is
  - ➢ to select candidates solely on merit;
  - ➢ to select only people of good character; and
  - ➢ to have regard to the need to encourage diversity in the range of persons available for judicial selection.

The Chairman of the Commission must always be a lay member. Of the 14 other Commissioners:

5 must be judicial members (of which one must be a senior tribunal judge)

2 must be professional members (each of whom must hold a qualification listed below but must not hold the same qualification as each other*)

5 must be lay members

1 must be a tribunal judge

1 must be a non-legally qualified judicial member