



**Legal Counsel**

BARRISTERS-ADVOCATES-LEGAL CONSULTANTS



# SPECIAL BULLETIN INTERIM GOVERNMENT



Date : 13 August 2024

[www.legalcounselbd.com](http://www.legalcounselbd.com)

## EDITORIAL

Bangladesh has witnessed dramatic development in the political landscape and political demography of the country. With the resignation of the long serving Prime Minister of Bangladesh, Ms Sheikh Hasina on 5th August 2024 following the Anti-Discrimination Students' Movement 2024 and the dissolution of the Parliament, known as the Jatiya Shangsad that to place on 6th August 2024 resulted into a vacuum in the government of Bangladesh, with no Prime Minister and no ministers to lead and control the country's affairs. The Head of the State, President of Bangladesh, H.E Mohammed Shahabuddin upon consultation with the leaders of the Anti-Discrimination Students' Movement 2024, the chiefs of the country's three divisions of the military, and civil society members, political parties as well as some business leaders selected 17 distinguished persons as members/advisors of the interim government of the country. The interim government took oath on 8th August led by the Nobel Laureate Dr Muhammad Yunus, as the Chief Advisor equivalent to the Prime Minister. Other 15 advisors equivalent to Ministers have also taken oath and commenced their respective offices and 1 is yet to take oath till date.

In this backdrop, crucially important constitutional questions have arisen. Major changes also took place in the higher judiciary of the country amongst others.

Legal Counsel is pleased to publish this special bulletin addressing the fundamental constitutional issues revolving around the interim government and also some important development in the legal arena.

## INTERIM GOVERNMENT: LEGAL PERSPECTIVE

Formulated on November 4, 1972, the Constitution of the People's Republic of Bangladesh is the supreme law of Bangladesh. It is a codified set of basic principles, rules and rights applicable to the citizens of Bangladesh. It sets out the fundamental principles of the state policies and guarantees human rights and freedoms, freedom from exploitation, secularism, protection of tribes, minor races, ethnic sects and communities.

The Constitution empowers the Prime Minister and the Cabinet, the President, local government, defence services, the Attorney-General, the Parliament and the judiciary including courts and tribunals of Bangladesh. It defines their powers, their structures, functions, the procedures of appointments and their tenure of office, wherever applicable.

1990 mass uprising, popularly known as '90's Anti-Authoritarian Movement', was a democratic movement that took place in Bangladesh, which led to the oust of the then incumbent President General Hussain Muhammad Ershad in Bangladesh, who was heading a military dictatorship under a presidential system of government. He resigned from his position as the President of Bangladesh on December 6, 1990. The aftermath of this resignation was that an interim government had to be formed to fill in the void in the government. Hence, Justice Shahabuddin Ahmed was nominated as the Chief Adviser of the interim government based on the discussions amongst the political parties. The provisions as to the caretaker government was subsequently adopted by the Thirteenth Amendment to the Constitution in 1996 by the Sixth Parliament, thereby validating the caretaker government of Justice Shahabuddin Ahmed and the following caretaker governments.

In June 2011, the Fifteenth Amendment to the Constitution repealed the provisions related to the caretaker government in the Constitution followed by the judgment of the hon'ble Appellate Division of the Supreme Court of Bangladesh, which declared the provision of the caretaker government as unconstitutional being undemocratic and unelected amongst other grounds. The amendment revoking the provision of the caretaker government was passed by the Bangladesh Awami League government. Hence, currently, there is no provision in the Constitution relating to a caretaker or interim government. The Constitution does not address a situation such as the current one, an abrupt fall of the ruling political party leaving the country devoid of a government. In these exceptional circumstances, an interim government is being formed without any constitutional support or prevailing legal basis.

In international law, there is an important doctrine, namely, the 'doctrine of necessity', which forms the basis of extraordinary actions taken by an administrative authority in a country which are designed to restore order or uphold fundamental constitutional principles. The legal doctrine of necessity is the acceptance of necessity as a source of authority for acting in a manner not regulated by law but required, in prevailing extraordinary circumstances, by supreme public interest, for the salvation of the State and its people (Cyprus Case: *The Attorney General of the Republic v. Mustafa Ibrahim and Others*, 1964, CLR 195). The doctrine of necessity has been invoked by various countries in various instances. Such as, in Pakistan, when the Governor-General of Pakistan, Ghulam Mohammad, dissolved the Constituent Assembly and appointed a new Council of Ministers on the grounds that the existing one no longer represented the people of Pakistan (*Federation of Pakistan v Maulvi Tamizuddin Khan*). Another classic case in which the doctrine of necessity was invoked was in Grenada in 1985, wherein the High Court of Grenada validated the legal existence of a court then trying for murder the persons who had conducted a coup against former leader, Maurice Bishop. In Nigeria, the doctrine of necessity was applied on February 9, 2010 wherein the joint session of the National Assembly passed a resolution making Vice President Goodluck Jonathan, the Acting President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria. Very recently, in justifying its attempt to unilaterally overturn parts of the post-Brexit agreement with the EU, the UK government has invoked the doctrine of necessity. The doctrine of necessity is allowed by the United Nation's International Law Commission (ILC) in Article 25 (Necessity) of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. It states that the doctrine is to be used by a state facing grave and imminent peril.

In the current circumstances in Bangladesh, it can be firmly said that without an interim government the country would face grave and imminent peril in the wake of absence of law and order, hence, forming an interim government is justified even when the Constitution does not have any direct provision relating to the same at the moment. The government so formed is to be considered as a valid and lawful government under the doctrine of necessity. It is further likely that like the caretaker government of 1990 led by Justice Shahbuddin Ahmed was validated retrospectively by including a provision in the Constitution at a subsequent stage, constitutional amendment will be done in the future when the parliament will be in session following the general election.

Further, it is pertinent to mention here that the President of Bangladesh by exercising his right under Article 106 of the Constitution of Bangladesh, has sought opinion from the Appellate Division of the Supreme Court of Bangladesh. Article 106 allows the President to seek opinion from the Appellate Division on any legal issue having public interest. As such, the President sought opinion on 8th August in relation to whether the interim govt. can be formed. The Hon'ble Appellate Division opined to the President that in the current situation where the prime minister has resigned at a premature stage and where the parliament is dissolved leaving no government to run the country, an interim government may be formed. After receipt of such opinion, the oath of the advisors took place on the same day. The exact contents of such opinion is not made public and hence the precise legal reasoning cannot be described. It is, however, understood that the hon'ble Appellate Division has opined in line with the doctrine of necessity.



## APPOINTMENT OF 25TH CHIEF JUSTICE OF BANGLADESH



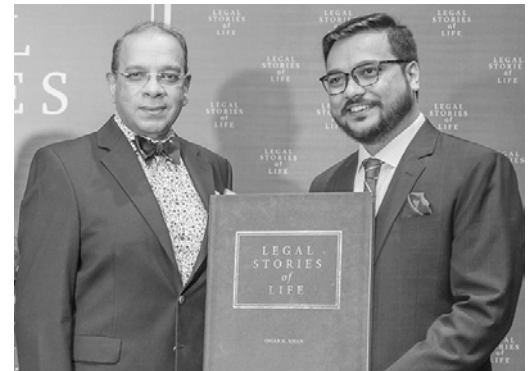
Mr Justice Syed Refaat Ahmed has been appointed as the 25th Chief Justice of Bangladesh. Justice Syed Refaat Ahmed was born on December 28, 1958. His Lordship has an exemplary academic and professional background. He began his legal education by studying LL.B (Hons) at University of Dhaka and completed the course with a First Class. He further obtained a degree in Bachelor of Arts in jurisprudence and Master of Laws from Wadham College of Oxford University in 1983.

He then completed Masters of Laws and PhD at The Fletcher School of Law and Diplomacy of Tufts University. He was enrolled as an Advocate of the District Court, the High Court Division and the Appellate Division of Bangladesh Supreme Court in 1984, 1986 and 2002 respectively. He was appointed as Additional Judge of the High Court Division on April 27, 2003, and was appointed Judge of the same Division on 27.04.2005. He has also previously worked as a lawyer in London and with the United Nations High Commissioner for Refugees in Hong Kong and Washington, D.C.

Dr. Justice Syed Refaat Ahmed has an aristocratic family background. His father, Syed Ishtiaq Ahmed, was a renowned lawyer and constitutionalist and Attorney General of Bangladesh. His mother, Sufia Ahmed, was the first female national professor, recipient of Ekushey Padak, the second highest civilian award in Bangladesh. She was also the chairperson of the Department of Islamic History and Culture at University of Dhaka.

Dr. Justice Syed Refaat Ahmed's monumental academic and professional achievements coupled with his great analytical abilities, dignified personality may steer along the judiciary to greater heights. We wish him great success in his new role as the Chief Justice of Bangladesh. We look forward for a stronger and efficient judiciary under his guidance establishing the rule of law in its true sense.

In June 2018, the hon'ble Chief Justice of Bangladesh attended the book launching ceremony of 'Legal Stories of Life', a book authored by the head of chambers of Legal Counsel, Barrister Omar H Khan, as a special guest while he was serving as a Justice of the hon'ble High Court Division of the Supreme Court of Bangladesh. His well-articulated speech during the ceremony is worth listening in this link: <https://youtu.be/4Quli9fL1uc>



## ADVISOR OF THE INTERIM GOVERNMENT FOR LAW, JUSTICE AND PARLIAMENTARY AFFAIRS



Mr. Mohammad Nazrul Islam, popularly known as Asif Nazrul, has been appointed as the Advisor equivalent to the Minister of Law, Justice and Parliamentary Affairs. He is a popular Bangladeshi writer, novelist, columnist, political commentator, social activist and a professor of law at the University of Dhaka. Mr. Nazrul completed LL.B and LLM in law at the University of Dhaka in 1986 and 1987 respectively. He has also completed his PhD degree from the University of London in 1999. He later received a postdoctoral fellowship from the Environmental Law Center in Bonn, Germany. Further, he has served as a Commonwealth Fellow at the School of Oriental and African Studies (SOAS).

He wrote various book chapters and research papers on constitutional and international legal issues in leading journals. His books have been published by Kluwer, Routledge, Brill, Nijhoff and Oxford University Press. He has also worked as a consultant to a number of organizations including European Union Delegation in Bangladesh, United Nations Development Programme (UNDP), Asian Development Bank, Danish International Development Agency, the Swedish International Development Cooperation Agency, CARE and Transparency International Bangladesh etc.

### Dhaka Office

Momtaz Vision, (Suite - B4, Level 2),  
House-11/A, Road-99, Gulshan-2 Dhaka-1212,  
Bangladesh Telephone: +88028835174-6  
Fax: +88028835176  
[info@legalcounselbd.com](mailto:info@legalcounselbd.com)

### Chattogram Office

World Trade Centre (Suite - 4, Level 3),  
102-103, Agrabad C/A Chittagong 4100,  
Bangladesh  
Telephone: +88 09678 677 688  
[info@legalcounselbd.com](mailto:info@legalcounselbd.com)