# The Paradigm of Judicial independence in Common Law Countries and its limitation in developing Countries

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## Abstract

According to popular perception, judicial independence and the rule of law are indispensable features of modern democracy. The countries with common law jurisdiction and democratic set up are not always stable in making the judicial branch free from executive interference. On the other hand, the common law countries coexist with different approach in terms of judicial independence and indulging political strategies to either influence or make the judicial branch completely independent from other governmental bodies. The question is to what extent the judicial branch enjoys its freedom? How constitutional reforms impact in common law countries to make the judicial body more independent discarding political or executive interference? The judicial independence, in fact, always crucial for establishing the rule of law? The significance of International norms and its implementation widens the scope of judicial independence and gives a new directions and standards ensuring the legitimacy and efficiency of the judicial process. The constitutional reforms of British Judiciary have been more effective in making the judiciary more independent than ever. In spite of deriving from the common law jurisdiction the difference between Indian and Bangladeshi legal system surprisingly distinguished themselves particularly in terms of judicial governance and independence.

## Introduction

In 2012 Egyptian president Mohamed Morsi produced a constitution which states that he was beyond the court, above the law and thus stigmatized the judiciary. The whole world cried out in anguish and criticism. Mohamed Morsi was found guilty afterwards and sentenced three years of imprisonment for stigmatizing and insulting the Judiciary. In what basis the judicial system having such rights or discretion to impeach the executive officials? What is the foundation? We all know that the dignity and stability of government in all of its branches, morals of the people and every place in a society depends so much upon an upright and skillful administration of justice. An independent judiciary has become a cornerstone of freedom in every democratic country. In this paper, I will discuss the judicial culture in common law countries as well as an overview of independence of judiciary and its international norms fortifying judicial independence and will analyze whether the judicial branch in developing countries (British Colonized) are still striving

to be free from the executive power, does economic stability matter or does economic development affect judicial system in developing countries in making the judiciary free from executive influence? This paper also examines the events and happenings particularly in common law countries emphasizing independence of judiciary, briefly explained the judicial functions and whether appointments of judges, security of tenure and other judicial administration is completely free from the executive interference or not.

**Theory of Separation of Power**

Theory of separation of power, this idea of the judicial independence was first introduced by a French Enlightenment Political Philosopher and jurist Baron de Montesquieu. In his book "The Spirit of Law" he postulated the distribution of political power in judicial branch, executive branch and legislative branch. He also emphasized the theory of separation by arguing that, each division should only exercise its own function and refrain from intervening others. He explicitly stated from his book the followings,

"When the legislative and executive powers are united in the same person, or in the same body of magistracy, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner" (2)

"Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man, or same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individual".

As of January 1959 in New Delhi the Congress of the international commission of Jurists accepted this approach when it said: Judicial independence implies freedom from interference by the executive or legislative with the exercise of judicial function. It is now contended that the independence of judiciary is mainly an outcome of the application of the doctrine of separation of power. (3)

In legal studies, by judicial independence, we mean that the Judiciary as a branch of the government possesses the freedom and the ability to decide the dispute neutrally regardless of real, potential, or proffers of favor with the aim at promoting justice. By independence here we mean, a stable surrounding where judges are free to make a decision and pass judgment without any external pressure from the other entities of the government either executive or legislative branch.

This separation of power makes the judicial branch free from the undue influence and executive control as a guarantee of individual freedom. It is imperative for individual autonomy that the judges have given the verdict without any apprehension or favor and they are now free to pass impartial judgment even if confronting popular opposition.

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(2) Montesquieu, The Spirit of the Laws ,Book VI The French Revolution and Industrial Revolution, Chapter III, page 218
(3) http://studentsrepo.um.edu.my/3239/3/CHAPTER1.pdf

**History of Judicial Independence**:

The concept of independence of the judiciary was not easy to achieve in the early monarchical system of government in England. The judges would hold the position by Crown's pleasure and could be sacked as other servants by the King at will. Thus judges were trivial to the King and subordinated naturally which led the judges to favor the royal prerogative. In 1701 the judicial independence was protected by the Act of Settlement (1701). This ruling formally recognized as the principle of protection of judiciary by establishing that judges from the High Court and the Lords of Justice of Appeal hold office during good behavior. The Suitable and official mechanisms had to be in place before a judge could be dismissed from the office. Through the Act of Settlement, it is possible to remove a senior judge from the office with the consent of the queen and agreed by both house of parliament. (3)

**Four Meanings of Judicial Independence**

The most fundamental and conventional meaning of judicial independence implies freedom from control; pressure, inducement and interference or threat from any sector including executive, legislation or any private individual so that they can independently perform their function neutrally in accordance with their own understanding of the law and the fact. There are four meanings of judicial independence in general. These are the following (4)

(1) Substantive Independence
(2) Personal Independence
(3) Collective independence
(4) Internal Independence

The concept of substantive independence and personal independence can easily be understood and recognized by the legal scholars and legal system. The collective independence and internal independence was first introduced and recognized in 1982 by the International Bar Association's Minimum Standards of the Judicial Independence in New Delhi, and in 1983 by the Montreal Universal Declaration on the Independence of Justice afterwards. This incorporation of two concepts of collective independence and internal independence believed to be the vital for empowering judicial independence in recent legal history.

**Substantive independence**: This means the independence of judges to reach at their decisions in accordance with their oath of office without submitting to any kind of pressure whether internal or external but only to their own sense of justice and the dictates of law. This can also be described as functional and decisional independence. A European Jurist, Erkki Juhani Taipale stated that "the Judges can only be subordinate to the law while administrative justice, no other state authority, not even the highest, is allowed to influence the decisions made by the judicial branch.

(4) http://studentsrepo.um.edu.my/3239/3/CHAPTER1.pdf page 6 to 11

Substantive independent judge thus dispenses justice according to law without regard to the policies and inclinations of the government of the day. According to the International Bar Association's Minimum Standards of Judicial Independence defines substantive independence as judges are subject to the law and the commands of his conscience. This concept was explained in the Universal Declaration on the Independence of Justice thus, judges individually shall be free, and it shall be their duty, to decide matters before them impartially, in accordance with their assessment of the facts their understanding of the law without any restrictions, influence, inducement pressure, threats or interference, direct or indirect from any quarter or for any reason. In 1985 UN Basic Principles of the Independence of the Judiciary emphasized thus: "The Judiciary shall decide matters before them impartially, on the basis of the facts and in accordance with the law, without any restrictions, improper influence, inducement, pressures, threats or interferences, direct or indirect, from any quarter or for any reason and which was again reflected in 1995 at the Beijing Statement of principles of the independence of the Judiciary in the LAWASIA region. (5)

The idea of substantive independence considered as the essential part of judicial independence and recognized in the Constitutions of some countries prior to the expansion of international standard in this regard. For an instance, the Constitution of Japan was adopted in 1946 which states "All Judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution of the Laws".(6) In 1981 the Constitution of the Republic of Korea provides that "Judges shall rule independently according to their conscience and in conformity with the Constitution and law.(7) So therefore, the substantive independence ensures the independence of the judges to perform on the basis of their assessment of the facts-merit of the cases and must be free from any inducement, influence and threat from individual or state governing authority.

(5) 2 Article 3(a), the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, 1995
(6) Article 76(3), the Constitution of Japan, 1946
(7) Article 103, the Constitution of the Republic of Korea, 1981.

**Personal independence**: As mentioned above, this correlates with the conventional and central meaning of the independence of the judiciary. This means Judges are free from any influence, force, inducement or threats coming from the government or anything that affect to reach to decision in individual case.(8) In 1982 it was defined by International Bar Association's Minimum Standards of Judicial Independence that says, "The terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control".(9) Personal independence therefore implies that the individual judges are free from the political branches of the government, particularly executive regarding the terms of judicial service including, transfer, remuneration, pension and the security of tenure until or obligatory retiring age and should be "placed in a position where he has no interest whatsoever that could be availed from the decision he made.(10)

**Collective independence**: By collective independence we mean the judicial branch absolutely independent from executive interference regarding the judicial institutions administration and financial matters. It seeks to eradicate of the dominant role of the executive branch in the administration and financial matters of the Court. This includes control over administrative personnel, maintenance of the Court and formulation of its budget and allocation of resources. The interference of the executive branch believed to be having inauspicious impact on the individual judges in performing their judicial function and it actually has negative impact in judicial system thus it becomes subservient to the executive or other governmental bodies. The Collective independence of the judiciary is compelling system that protects the judiciary from executive control where the judicial branch enjoys its autonomy in controlling its administration and financial independence. In 1996 a meeting held in Kuala Lumpur, Malaysia by the Commonwealth Law Ministers where they claimed that the collective independence is an important defense against improper interference and free the judiciary to discharge the particular responsibilities given to it within national constitutional framework and it was also emphasized by the Montreal Universal Declaration on the independence of justice thus: 'It shall be a priority of the highest order, for the state to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency , judicial and administrative personnel and operating budgets. (11) The Beijing Statement of Principles of the independence of the Judiciary in the LAWASIA region,

1995, emphasizes that "The principal responsibility for court administration, including appointment, supervision and disciplinary control of administration personnel and support staff must vest in the judiciary, or in a body in which the Judiciary is represented and has an effective role.(12) In 1993 South Australia passed the Court Administration Act and established the State Court Administrative Council which was independent from the control of executive and made up of Chief Justices from the Supreme Court, Chief Judges from the district courts and Chief Magistrates from the Magistrate Courts and other associate members appointed by the judges. The roles and responsibilities of the State Court Administrative Council were to control and management of the Judiciary and carry out the judicial and administrative functions independently. (13) This can be the role model for other democratic countries to follow and to ensure collective independence of the judiciary.

(8) J.A.G Griffith, The Politics of the Judiciary (London: Fontana, 1977) at p. 29.

(9) Article 1(b), International Bar Association's Minimum Standards of Judicial Independence, 1982.

(10) R.M. Dawson, The Government of Canada (Toronto: University of Toronto Press, 1954) at p. 486.

(11) Article 2.41, Montreal Universal Declaration on the Independence of Justice, 1983

(12) Article 36, the Beijing Statement of the Principles of the Independence of the Judiciary in the LAWASIA Region, 1995.

(13) Section 7, the Courts Administration Act, 1993

**Internal Independence**: Internal independence of the judiciary is the freedom from any order, pressure or indication from superior judges and colleagues in reaching to decision in individual cases which means that the threat to judicial independence may not only come from the other governmental organs or externally, it can be internal pressure from senior judges or colleagues. To be more candidly the judges not only independent from the interference of the executive and legislative but also from judicial colleagues and seniors having administrative power while deciding cases. The International Bar Association's Minimum Standards and Montreal Declaration explicitly recognize the significance of the idea of internal judicial independence. The International Bar Association's Standards of judicial independence says "In the decision-making process, a judge must be independent vis-à-vis his judicial-making process, a judge must be independent vis-à-vis his judicial colleagues and superiors (14) whereas the Montreal Universal Declaration on the Independent of justice more emphatically emphasized the judiciary independence by saying that "In the decision making process, judges shall be independent vis-à-vis their judicial colleagues and superiors. Any hierarchical organization of

the judiciary and any difference in grade or ran shall in no way interfere with the right of the judge to pronounce his judgment freely. (15) In the same way, Beijing Statement of the Principles of the Independence of the Judiciary, 1995, provides. "In the decision-making process any hierarchical organization of the judiciary and any difference in grade or ran shall in no way interfere with the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgment. The UN basic principles on the Independence of the Judiciary, 1985 states that "There shall not be any inappropriate or unwarranted interference with the judicial process". (16)

(14) Article 46, International Bar Association's Minimum Standards of Judicial Independence, 1982

(15) Article 2.03, Montreal Universal Declaration on the Independence of Justice, 1983.

(16) Article 6, the Beijing Statement of the Principles of the Independence of the Judiciary in the LAWASIA Region, 1995.

**Judicial Independence in Practice**

Independence of the judiciary is a sine qua non for the democratic countries. In every democratic country judicial independence is considered as the foundation of law and the principle of the due process of law is also based on judicial independence. The countries in a democratic setting always emphasize the importance of judicial independence and therefore place an immense store on the independence of the judiciary as a guarantee of individual freedom. The capricious power of the executive or legislative body sometimes can be unjustified, unethical and immoral; in that case, the independent judicial system can play a crucial role in protecting the rights of the citizens striving for justice for the sake of the citizens' interests. Many democratic countries adopted a range of measures to ensure the judiciary independence, on the other hand, and there are many countries where the judicial system is not completely independent of the executive branch of the government. In the US judicial system, there is a separation of power ensured the judicial independence but in the constitutional system based on the concept of parliamentary supremacy.

The conversion of separation of power ruled out. This is the case in England and India. The doctrine of parliamentary and constitutional sovereignty both are integrated.

**The operation of English legal System (Judicial branch and its independence**)

Judicial independence is now considered a central part of any liberal democracy that a strong independent judiciary exists in order to hold the executive to account. In many dictatorships around the world the judiciaries are not independent and instead are a major part of the apparatus of control. The UK Judiciary now has a reputation for judiciary independence. However, this is only the refusal of very recent reforms. Prior to 2003 there were a number of issues which called into account judicial independence in the UK. The prime minister in theory had the powers of patronage. Their prerogative powers extended to choosing senior judges and this was obviously based on advice and suitability but it was hardly free from political judgment. The chief judges in the country were known as the law lords they say in the House of Lords which were also therefore the highest court in the Land. This was part of the fusion of powers in the UK. The judiciary being also part of the legislature and this undermines the theory of 'separation of powers'. The Lord Chancellor was regarded as being the head of the judiciary. This however was a political appointment by the prime minister. The Lord Chancellor also was a member of all three branches as they were in the cabinet, judiciary and house of lord (Legislature). Obviously this was not a perfect system. A series of reforms helped to make the judiciary a lot more independent.

After reform now there are seven ways to protect judicial independent in the UK. First the appointment process as it now has a little political influence; otherwise judges would simply be selected on their sympathy for the government. Judges had previously been appointed by the prime minister and the lord of chancellor: this made it very difficult to rule out political consideration. The establishment of the judicial appointment commission (JAC) has introduced greater independence into the process. This was launched in 2006 as part of the constitutional reform act. They are a independent panel and they make their appointment decision on the basis of merit – free from political control.

Secondly, the security of tenure. This simply means that once they are appointed, they cannot be sacked they stay in office until the age of 70. This is important because judges don't want to have to under the threat of demotion or even dismissal due to their decisions otherwise it will affect their decision making. The senior judges can only be removed by an address to both houses of parliament which last happened in 1830. Thirdly "Pay". Just as in security of tenure the judges don't' want their pay be threatened if they make a decision which conflicts with the government. To protect this therefore, they are paid out of what is known as the consolidated fund this is an independently assigned fund which is independently assessed and granted.

Another way is the reform of Lord Chancellor. Undue the constitutional reform act 2005 much of the legislative powers of the office of Lord Chancellor were removed. The Lord Chancellor therefore ins not the head of the judiciary in fact the position is bound up with minister for justice which gives it a much greater degree of legitimacy. They also no longer play the significant role in the appointment process. Independent legal profession is the fifth way to protect judicial independent, unlike many other countries lawyers in the UK are trained independently of the state.

Their profession has a fierce independence protected and self-regulated by law society. Another way is the freedom from criticism, by which judges are by convention supposed to be protected from criticism of their judicial decisions. This is particularly true of criticism from the executive. The sub judice rule forbids on commentary of trials as they are taking place and the last way to protect judicial independent is the British Supreme Court. The Supreme Court in the UK was also established as a result of the constitutional reform act. It removed the law Lords from the House of Lords and therefore the legislature. It established itself independently with 12 law Lords in the Supreme Court in Westminster – Across from the house or parliament – but now very separate physically and constitutionally. The Supreme Court was set up in order to achieve ea complete separation between United Kingdom's senior judges and the legislature and executive. This helped to emphasis the independence o the judicial branch and increased the transparency between parliament and courts. (17)

Today UK Supreme Court plays a vital role as the final arbiter between the citizen of the UK and the British State. Judicial power ought to be distinct from both the legislative and executive body, judges are not to be dependent on political process, and they were to be immune from politicians and from politics. Article III of the US constitution established a judicial branch in the United States and empowers the judicial branch as part of the national government which is the court system that interprets the law.

(17) https://www.supremecourt.uk/docs/separation-of-powers-post-visit-worksheets-for-teachers.pdf

**The Judicial branch and its independence in India**

The Indian constitution adopts miscellaneous strategy to ensure the independence of the judiciary where the doctrines of constitutional and parliamentary power both are incorporated. Elaborated provisions are in place for ensuring the independent position of judges of the Supreme Court and High Court. Firstly, the judges of the Supreme court and the High court prior to entering the office take an oath saying that they will serve faithfully without fear, favor and affection, animosity and defend the constitution of the India and the laws. The acknowledgment of the doctrine of constitutional sovereignty is implied in this oath. Secondly, the process of their appointment also ensures the independence of judiciary in India. The President has the constitutional rights and obligation to appoint the judges of the Supreme Court and the High Courts in consultation with the highest judicial authorities and Cabinet. The Indian Constitution also prescribes required qualifications for such appointments and makes it impartial by political considerations. Indian constitution ensures the security of tenure of judges, once the judges are appointed they cannot be arbitrarily sacked by the president but only through impeachment. A judge can only be sacked on the ground of proved misbehavior or incapacity by the majority of the members of both Houses

and Parliament. In terms of salary and allowances of judges, India similar to that of UK has the Consolidated Fund of India from which judges are paid out and cannot be reduced during their tenure unless if there is any financial emergency under Article 360 of the constitution. The Judgment and other activities of judges are not subject to criticism by either executive or legislative branch, except in case of dismissal. The retirement system of the judges and the post retirement restrictions make the Indian judicial system more transparent. The high court judges usually retire at the age of 62 and the Supreme Court judges retire at the age of 65, such long tenor facilitates the judges to function independently and impartially. The retired Supreme Court judges cannot engage in legal practice in any court in India but retired high court judges can engage into legal practice other than the state he served as High court judge. This post retirement restriction imposed to retired judges to avoid any situation where they could influence the decision of the Courts. (18)

(18) https://www.importantindia.com/2146/independence-of-judiciary-in-indian-constitution/

**Independence of Judiciary in Bangladesh**

Unlike India, the judicial system of Bangladesh not absolutely independent from the intervention of the executive branch of the government. Since the British colonial rule, the separation of the judiciary from the executive had been a constant debate. Technically and physically the judicial branch is separated but it is not independent from executive interference and it seems intuitively obvious that without separation of power judicial independence is not achieved.

Bangladesh, as being a part of common law jurisdiction, its legal system originated from the laws of British India. Bangladesh seceded from its amalgamation with West Pakistan and became independent in 1971. Pakistan was a part of India until 1947 after the British departed from Indian subcontinent. Even though Bangladesh became independent in 1971 democratic movement, though fragile, prevailed in 1991. The supreme court of Bangladesh is the highest court of Bangladesh comprised of the Appellate division and High Court Division with separate jurisdiction. The Jurisdiction of the Supreme Court of Bangladesh has been described in Article 94(1) if the constitution of Bangladesh. Although The Supreme Court believed to be independent from the executive branch and has constitutional rights and ability to rule against the government but pragmatically this is not always the case.

The president of Bangladesh appoints the Chief Justice of Bangladesh and other judges of the Supreme Courts with prior compulsory consultation with prime minister under the provision of the Article 95 of the Constitution. The Judges of the Appellate division also appointed by the

president under the same provision. All appointments come into effect from the date of taking oath by the appointee under the provision of Article 148 of the constitution. The security of tenure, the Supreme Court judges stay in office until the age of 67 and cannot be sacked from the office prior their retirement age except with the provision of Article 96 of the constitution that empowers Supreme Judicial council to sack the Supreme Court judges from the office. Furthermore, the constitution of Bangladesh gives neutral and independent judiciary but in reality judiciary has been acquiescent to executive government since 1971 from the very beginning of the sovereign state. There are many rhetorical promises made by different governments to separate the judiciary from the executive interference just to conciliate popular demand of an independent judiciary. The dictatorial culture of executive absolutism over the constitutional exigent of the separation of power hindered against the creation of an independent judiciary. (18)

Article 22 of the constitution of Bangladesh clearly state that the separation of judiciary from the executive. In 1999 The High Court Division issued a directive to separate the judiciary (both higher and lower courts) from the executive because there were many instances where judiciary was interfered with executive in both lower and higher courts. This ruling was prevailed on appeal and reaffirmed in the review case in the Appellate division afterwards. The Supreme Court issued more directives

emphasizing the separation of judiciary without any constitutional amendment but it was spurned. In January 2007 the interim caretaker government enacted sets of rules which were implemented afterwards and rendered to the Supreme Court independent and allowed the magistrates exercising judicial function under the control of the Supreme Court free from executive influence. This modification yet to be implemented in the inferior judiciary which is still under control of the executive.

The judicial system in Bangladesh striving for the ages to obtain absolute separation from its other governmental bodies even in these days, there are many instances of executive efforts to control over the judiciary and the lower judiciary is in tight control of the executive. There is some tension between the judiciary and the executive branch with the power of controlling judiciary that had been treated unfairly and the administration never let the judiciary to run separately. The constitutional requirement of the separation of the judiciary has been fulfilled to allot justice independently but still it is not absolutely free from the executive control. After having achieved the independence in 1971, democratic practices just begun in 1990 and there are many efforts have been made to establish an expeditious judicial system in Bangladesh but it cannot be achieved if the judicial system is absolutely separated from other governmental organ or individual. There are many developing countries with thriving economy around the world where the judiciary independence is emphasized as prerequisite of democratic practice. Sudan can be a role model in terms of independence of judiciary where the judicial branch is completely separated financially and from executive control. The High Judicial Council consisted of the Chief of Judges and some other members are appointed by the Chief Justice. The constitution of Bangladesh does not have any provision aiming at to prevent growing concern and arbitrary questions about the conduct of

a judge of the Supreme Court in the Parliament which may cause distress and humiliate for the judges concerned. In addition, The Parliament persistently putting efforts to control the judiciary and it is still a controversial issue. (19)

(18) The Constitution of the People's Republic of Bangladesh.

(19) The Legal System of Bangladesh by MD Abdul Halim.

**People's faith in Judicial Impartiality**:

The Judiciary is the only hope for the people when they seek justice from their legal disputes and the Courts have the responsibility to preserve the faith of people in their judicial system. According to Justice Frankfurter "the confidence of the people is the ultimate reliance of the Court as an institution". The people's perceptions about the judicial system is as simple as the justice for everyone, regardless the race, gender, religion, disability or any other type of discriminations. The people seem to be more confident in judicial system rather than others governing bodies. Furthermore, the integral part of people's positive vibe towards the Courts largely reply upon judicial independency. The chief justice Holland of the Ontario supreme court in the case R.vs. Valente put it thus, "it is most important that the judiciary be independent and be so perceived by public. The Judge must not have cause to fear that they will be prejudiced by their decisions or that the public would reasonably apprehend this to be the case". The Judicial independence is crucial to secure the people against wrongful encroachment of the executive and legislative branch. If these trends continue Bangladesh will never be able to establish "Absolutism in Government" which is an integral part of the democratic country.

**Conclusion**

In conclusion, the discussion above focuses on the core principles of the judicial independence and its culture around the world. There are some countries with democratic set up failed to ensure the independence of the judiciary whereas in some other thriving economic county like Sudan absolutely free from the executive control. So now, it's obvious that economic instability does not affect the judicial system and its independence, only a good and efficient government with its transparency, integrity, honesty, and rule of law can fortify the judicial branch and can ensure its freedom. The Independence of the judiciary is a fundamental requisite for every society where the people respect the rule of law as a subservient judiciary. An independent neutral judicial system and administration is "like oxygen in the air, people know and care nothing about it until it is

withdrawn "said Lord Aktin. The people appreciate the courts that are impartial, able to serve expeditious justice and therefore independence of judiciary should be emphasized and protected with greatest care.

With this presentation, I tried to demonstrate that the basic concept of judicial independence and this research predominantly was to overview the judicial culture in common law countries, and its differences between thriving economic developing countries, in spite of being developing country, Sudan has ensured that the executive power has no control over the judicial branch thus judicial independence is ensured and in contrast to Sudan, Bangladesh with a thriving economy, has not yet achieved the judicial independence which is not only much needed but inevitable necessity for every society preserving the rule of law.