

BRAC UNIVERSITY

# Students protest 'assault' on teacher

STAFF CORRESPONDENT

BRAC University students took to the streets for the second consecutive day yesterday, protesting an alleged assault on a teacher of law department by the administrative staff, including the registrar.

They also demanded that the authorities concerned reinstate the teacher, Farhaan Uddin Ahmed, who was terminated on Sunday.

Yesterday, over hundred students, mostly from the law department, started staging a sit-in in front of the university's Building-2 in 9:00am. The protest began on Sunday after the news of the assault, as well as the termination, spread among students.

Meanwhile, the university authorities yesterday formed a five-member committee to investigate the incident. It has been asked to submit the report

within seven working days.

But the protesters rejected the committee.

The students chanted slogans for removal of three officials - Registrar Sahool Azal, Assistant Registrar Mahi Uddin and senior officer at the office of co-curricular activities Iqbal Rasel.

Some students alleged that the university authorities intimidated them into stopping their agitation.

They complained that security guards of the university drove them out from its administrative building around 6:00pm.

Some female students alleged that they had been assaulted.

Following the incident, Alumni Association of Brac University yesterday protested the alleged assault on its President Tajdin Hassan called upon the association members to



Brac University students demonstrate on their campus at Mohakhali yesterday protesting the alleged assault of terminated law department teacher Farhaan Uddin Ahmed by his three colleagues. They also demanded his reinstatement. Farhaan was let go last Sunday by the university. PHOTO: COLLECTED

# Barguna UNO transferred to cabinet div

STAFF CORRESPONDENT

Upazila Nirbahi Officer (UNO) of Barguna Sadar Kazi Tariq Salman, who was sued for publishing a portrait of Bangabandhu recently, has been transferred to the cabinet division as senior assistant secretary.

The public administration ministry issued a gazette notification on Monday in this regard.

Salman had printed the portrait of Bangabandhu Sheikh Mujibur Rahman, drawn by a child, on an invitation card.

Tariq was the Upazila Nirbahi Officer of Agailhara upazila in Barisal at that time.

Later former Awami League leader of Barisal district unit filed the Tk 5 crore defamation case against the UNO on a charge of using a distorted portrait of Bangabandhu in the invitation card issued on the occasion of Independence Day.

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# It impairs freedom of lower judiciary

FROM PAGE 1

But parliament through the fourth amendment to the constitution during the AL rule in 1975 scrapped that authority of the SC and gave it to the apex court.

Under the 1978, during the martial law regime, the article was amended further through the martial law proclamation and a provision was introduced saying the president would exercise the authority in consultation with the SC.

The independence of the lower judiciary has been totally impaired, curtailed and whittled down," observed the SC in the 16th amendment verdict, delivered on July 3.

"This amendment [fourth amendment] is unconstitutional because it destroys the basic structure of the constitution and therefore this substitution of the word 'President' is ultra vires the constitution."

According to Merriam-Webster dictionary, ultra vires, a Latin phrase of legal power or authority.

"Though there was a provision for consultation in exercising this power,

practically this consultation is meaningless if the executive does not cooperate with the Supreme Court," the court added.

It further said current Article 109 is also inconsistent with article 116 and 116A.

Article 116 says, "The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates subordinate to the SC shall vest in the President and shall be exercised by him in consultation with the Supreme Court."

Article 109, which has been in the constitution since 1972, reads: "The High Court Division shall have superintendence and control over all courts and tribunals subordinate to it."

And article 116A, introduced by the fourth amendment, says: "Subject to provisions of the constitution, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions."

At first sight, it may seem that the president has been empowered, by the amendment to article 116, but in reality, he himself cannot exercise the power. The prime minister exercises the power as the president performs all his functions on advice of the

prime minister, except for the appointment of the PM and the chief justice.

"There cannot be any independence in the judiciary if the disciplinary mechanism including the power of appointment, posting and promotion of the officers of the lower and higher judiciary are kept in the hands of the executive," said the SC verdict.

It also said there is no mechanism under the scheme of the constitution as to how the executive branch shall control the power of posting, promotion and discipline of persons employed in the judicial service and the higher judiciary.

"Keeping articles 116 and 116A intact and substituting article 96 [empowering parliament to remove SC judges], the judiciary is totally crippled now. This has caused embarrassment on the part of the Chief Justice and the members of the bench," said the SC verdict.

"The full text of the judgment was released yesterday."

It said there were 12 amendments to the constitution after the fourth amendment. None of the governments took any step in this regard despite the observations by this court in 5th, 8th and 13th amendments cases.

In the verdicts in those cases, the

apex court stressed the need for restoration of the original article 116.

Of the seven members of the Appellate Division bench, the chief justice and two other judges agreed with the findings about article 116 in the 16th amendment verdict. One judge disagreed while three others did not make any comment.

In the verdict, the SC said the subordinate judiciary has been brought most closely into contact with the executive, the High Court said, perhaps indeed even more important that its independence should be placed beyond question. To establish the rule of law, the subordinate judiciary must also be independent and impartial."

It added, "Shocking situation now the judiciary is facing that till now nothing has been done to give effect to article 22 despite the direction given in Masdar Hossain."

Article 22 says: "The State shall ensure the separation of the judiciary from the executive organs of the State."

As successive governments since 1972 refrained from separating the judiciary from the executive, the High Court in a landmark verdict in May 1997 asked the government to separate the judiciary in line with the constitutional provision.

The then AL government

challenged the HC judgment and filed an appeal with the Appellate Division.

Upholding the HC verdict, the Appellate Division in its milestone ruling in December 1999 issued a 12-point directive to the government to separate the judiciary.

The government then opted to buy time to take necessary measures, like formulation of rules and regulations, to implement the judgment until the tenure of the AL-led government ended in October 2001.

After the changover in power, the BNP-led government in its five-year tenure did the same.

Both AL and BNP governments from 1999 to 2006 took more than two dozen time extensions to complete the necessary work.

Finally, it was the caretaker government of 2007 that took effective steps to separate the judiciary.

On November 2007, the then caretaker government officially separated the judiciary from the executive. Some rules were also made.

The process was not completed as the rules determining the discipline and code of conduct for lower court judges were not made.

Over seven years after the official separation of the judiciary, the government drafted rules in 2015 and sent those to the SC for its opinion last year.

In the draft rules, which deal with issues like posting, promotion, grant of leave and discipline of judges and judicial magistrates, the law ministry included some provisions to retain the power to control the lower judiciary.

The SC revised the draft by curtailing the law ministry's control over lower judiciary and sent it back to the government for issuing a gazette to this effect.

But the government refrained from doing so and took time extension for more than a dozen times.

In the latest move, the law ministry brought some changes in the draft rules and submitted it to the chief justice last week.

The proposed changes gave the president the authority to play significant role in taking disciplinary actions against lower court judges and judicial magistrates and carrying out investigations and inquiries against judicial officials working at other ministries on deputation.

The changes irked the apex court and on Sunday it refused to accept in full the draft rules.

The minister on Monday defended article 116 and alleged that the SC's power to take away the president's powers provided under the article.

# SC critical

FROM PAGE 1

The apex court criticises the last two martial law regimes as well.

"In such a situation, the executive becomes arrogant and uncontrolled and the bureaucracy will never opt for efficiency," the apex court says in its verdict.

"Further states, "Even after forty-six years of independence, we have not been able to institutionalise any public institutions. There are no checks and balances, there is no watchdog mechanism, work is done in a haphazard manner and by using inducements or abuse of power and showing audacity in fresh exercise of power."

In the verdict, the apex court also focuses on the state of the judiciary. It says the SC is the only independent institution in the judiciary is the only relatively independent organ of the state which, even though sinking, is striving to keep its nose above the water.

"But judiciary too cannot survive long in this situation. Yet, no law has been formulated for selection and appointment of judges in the higher judiciary. There is no scope for imparting training to the judges of the higher judiciary. It is the state which is the enemy of the law. The selection of the judges and their training so that they can be equipped to face the challenges of 21st century," reads the verdict.

It states, "Instead of strengthening the judiciary, the government is now trying to cripple it and if it happens, there could be disastrous consequences."

The government in September 2014 brought the 16th amendment. The HC in 2015, through a landmark verdict in the High Court, the HC in May 2016 declared the amendment unconstitutional and void. The government challenged the verdict by filing an appeal with the Appellate Division which rejected the government's appeal on July 3 and upheld the HC verdict.

On both occasions, MPs in Jatiya Sangsal launched a scathing attack on the apex court for scrapping the amendment.

In the full verdict, the apex court also focuses on the country's politics and says it says that state power, which is another dimension of political power, is nowadays becoming a monopoly of a few and this suicidal tendency of concentration of power is a serious challenge.

"The greed for power is alive plague, once set in motion it will try to devour everything. Needless to say, this WAS NOT at all the aims and vision of our liberation struggle. Our Forefathers fought to establish the country's politics to produce any power-monster," the court observes.

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# Supreme Judicial Council restored

FROM PAGE 1

The 16th amendment deals with the procedure for formation and functions of the SC and the formulation of the code of conduct.

The 16th amendment to the constitution, allowing the SC to continue.

But in September 2014, the AL government abolished the decades-old SIC.

In the full verdict, the apex court also said the independence of the judiciary is the foundation stone of the constitution and as contemplated by article 22, it is one of the fundamental principles of state policy.

The significance of an independent judiciary, free from the interference of other two organs of the government as envisaged in article 22 has been emphasised in articles 94(4), 116A and 147 of the constitution, it added.

"Without a political tradition in which members of parliament could clearly demonstrate that they can act neutrally and impartially if they are given the power of removal and will not be affected by the party's views under article 70, the purported process of impeachment introduced by the 16th amendment would clearly undermine the independence of judiciary and will definitely alter the basic structure of the constitution," said the verdict.

According to Article 70, a lawmaker has to vacate his or her seat if the party votes in parliament against the party which nominated him or her.

"The object of this article is to ensure stability and continuity of government and also to ensure discipline among the members of the political parties so that corruption and instability due to political horse trading can be removed from national politics."

"By reason of article 70 of our constitution and its impact on members of parliament, it is an inescapable conclusion that this new mechanism cannot be expected to function independently and neutrally if a judge attracts displeasure from the political party in power, he may be subjected to removal from parliament," the SC said in the verdict.

Meanwhile, Law Minister Anisul Huq yesterday told The Daily Star that he would not comment on the SC verdict with going against the full text.

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standards so that the integrity and independence of the judiciary is preserved.

A judge should respect and comply with the constitution and law, and should act at all times in a manner that promotes public confidence in the judiciary, and the private interests of others; nor convey or permit others to convey the impression that they are in a special position to influence the judge.

"A judge should be faithful to and maintain professional competence in the law, and should not be swayed by partisan interests, public clamour, or fear of criticism," it said.

It added, "A judge should be patient, dignified, respectful, and courteous to litigants, lawyers, and others with whom the judge deals in an official capacity."

"A judge should dispose promptly the business of the court including avoiding inordinate delay in delivering judgments/orders. In no case a judgment shall be signed later than six months of the date of delivery of judgment," the apex court said, adding that a judge should avoid public comment on the merit of a pending or impending court case.

"A judge shall disqualify himself/herself in a proceeding in which the judge's impartiality might reasonably be questioned. A judge shall disqualify himself/herself to hear a matter/cause where he served as lawyer in the matter in controversy, or with whom the judge previously practiced during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness in the proceeding."

According to the code of conduct, a judge shall not hear any matter if he/she knows or if he/she is aware or if it is brought into his/her notice that, individually or as a fiduciary, the judge or the judge's spouse or children have a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be affected substantially.

"A judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person.

A judge must at all times be conscious that he is under the public gaze and he shall be permitted to no act or omission by him which is unbecoming of his office and the public esteem in which that office is held, it said, adding that a judge should not engage in any political activities, whatsoever in the nature of the private interests of a judge shall disclose his assets and liabilities, if asked for by the chief justice, it said, adding that a judge should not permit any spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the bar, to appear before him or even be associated in any manner with cause to be dealt with by him.

"The SC said in the code of conduct that no member of his family, who is a member of the Bar, shall be permitted to use the residence in which the judge actually resides or other facilities for professional work."

A judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or to be taken up for judicial determination, it said, adding that a judge is expected to let his judgments speak for themselves. He shall not give interview to the media.

The above code of conduct and the ethical values to be followed by a judge, failing which, it shall be considered as gross misconduct, the SC said in the verdict.

# Noab, Atco

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discussions would help find solutions.

Like in other countries, the media owners said, the newspaper industry in Bangladesh is also becoming weak and its earning is decreasing. Besides, the industry has to face many competitors, most put the newspaper industry under more pressure, it said.

The revenue collection from advertisement is also declining but the size of investment had to be increased. Against this backdrop, implementation of the ninth wage board award would put the newspaper industry under more pressure, it said.

On behalf of Noab, Prothom Alo Editor Matiuur Rahman, Samakal Publisher AK Azad, The Daily Star Editor and Publisher Mahfuz Anam, among others, were present at the meeting while the Atco leaders included Salma F Rahman and Mozammel Haque Babu.