

# The Daily Star

FOUNDER EDITOR  
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## Railway ministry owes citizens an explanation

*Officials involved in irregularities must be punished*

We are appalled by the railway ministry's decision to ignore its own probe committee's recommendation to take punitive measures against 21 officials for purchase anomalies. Of the officials involved, all but one—who was suspended last year over a separate allegation—continue to serve in their positions without facing any departmental action since the probe report was submitted. Not only that, the ministry has gone on to promote one of them and started the promotion process for another.

The probe committee, formed by the ministry itself, found that the 21 officials were involved in irregularities in the procurement of Covid-19 protective materials at higher prices, even without completing any tender process. Because of these anomalies, the committee in its report recommended taking disciplinary action against those responsible and also excluding them from any kind of procurement process. Unfortunately, the ministry seems to have not received the memo. According to documents obtained by this newspaper, four officials named in the report still have the authority to purchase materials for Bangladesh Railway.

The probe report found many forms of irregularities. For example, some materials mentioned in the demand letter were received from suppliers even before tenders were called. And the exact same materials were procured by three different BR offices at prices that were significantly different. In fact, the irregularities were so glaring that the report said the "allegations [of corruption] published in the newspapers are true and the matter of purchasing goods at higher prices is also proved."

If it can be "proved" that these officials were involved in corruption and that they had abused their positions to procure materials at higher prices, why then would the ministry not take any action against these officials, and instead reward some of them while continuing to provide them with the opportunity to repeat the offence? Doesn't this point towards corruption within the BR that is much larger in scale than what the probe report initially suggests? Why else would the ministry brush aside the report so blatantly? And what is the point of forming such probe committees if their findings and recommendations are going to be disregarded like this?

All this raises more questions than answers. But ultimately, what is obvious is that the BR is mired in mismanagement, inefficiency and corruption. We call on the government to intervene and for the ministry to reverse its decision of letting the corrupt officials get off the hook without so much as a slap on the wrist. The officials that were responsible for the acquisition of materials at higher prices and without following proper procedures must be punished according to the law. And lastly, the ministry must answer to the people why it hasn't taken any action so far.

## Attack on Barishal University students

*Arrest the transport workers involved, punish them under the law*

We are alarmed at the way a group of transport workers attacked Barishal University (BU) students in their private dormitories on Wednesday, leaving at least 25 of them injured. Reportedly, on Tuesday, two students of the university had gotten into an altercation with a transport worker at a BRTC bus counter and at one stage the worker allegedly stabbed one of them. Later, the university students vandalised the BRTC bus counter and blocked the Barishal-Kuakata regional highway for two hours in protest, so the transport workers, in a counter-attack the following day, attacked the students in their dormitories with sticks, rods and sharp weapons.

Clashes between transport workers and university students are nothing new in our country. Many such incidents were reported in the newspapers in the past. But attacking the students in their dormitories, with sharp weapons no less, has broken all the previous records of such atrocities carried out by transport workers.

This certainly deserves proper police investigation. We need to know what prompted or emboldened Rafiq (the transport worker) to stab Sajol (the student) in the first place. We also need to know the source of the power wielded by workers and who backs them so that they can commit such horrible crimes. The incident has also brought to light the overall rowdiness of our transport workers who often misbehave with the commuters on trivial matters. They need to be disciplined not only to stop such crimes but also to establish a safe and trustworthy public transport system. The impunity the transport workers enjoy after committing such crimes needs to be done away with.

However, it is good to know that police have already arrested Rafiq after the victim filed a case. We urge the police to arrest others involved in the attack in the dorms after conducting a thorough investigation. The BU authorities should also take proper measures to ensure their students' safety in the dorms and on the university campus. Such attacks on students are condemnable and must not be repeated.

## LETTERS TO THE EDITOR

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### Woes of Bangladesh cricket team

It was shocking to see how the Bangladeshi cricket team lost the last Test match against the West Indies. They showed disappointing levels of patience, technique, commitment and presence of mind, leading to a humiliating defeat. Why were the Bangladeshi batsmen in such a rush to end the innings, when the bowlers had restricted the Indies to just 117? Players as well as coaches and selectors should be held accountable for this performance, and further humiliation may await us if they aren't.

Aeman, A fan of Bangladesh cricket



THE THIRD VIEW

MAHFUZ ANAM

We commend the army chief, General Aziz Ahmed, for having the moral courage and fulfilling his duty to explain to the public, through a press gathering, his own position

regarding the recent media reportage on his brothers and his links with them. He needn't have come before the press, but he did. We sincerely thank him for it. We also welcome his promise that the family will hold a separate press conference soon to explain the issues concerning his brothers.

We also share his justified confidence that our army is now a highly disciplined, well-trained and motivated force deeply imbued with the values of democracy, an essential aspect of which is to accept views and observations—critical or otherwise—of the responsible sections of society. We share his conviction that the chain of command in our army is deeply instituted and that no amount of propaganda and misleading information is likely to have any impact on this venerable institution that has brought us prestige and global honour through its peacekeeping activities. It is in that confidence that our following observations are made, focused on specific instances, and not on the institutions of the armed forces.

We have some problem in accepting the army chief's press statement that "demeaning the army chief is demeaning the prime minister". According to him, as it was Prime Minister Sheikh Hasina who appointed him, questioning him, therefore, amounts to questioning the PM. How judicious is this argument? As the chief executive of our government, Sheikh Hasina appoints her own staff, every minister, every secretary, the chiefs of all institutions, and hundreds, if not thousands, of other high officials including chiefs of intelligence services, police, and security agencies. In fact, the more pertinent question would be, as head of the government, who doesn't she appoint? If we are to follow Gen Aziz's logic, then criticising any action of any high-level government official would be tantamount to criticising the prime minister, meaning that no one at any level of the government can be criticised without "demeaning" the PM.

Are we understanding our army chief correctly? If not, we stand ready to be corrected.

The army chief's logic also runs counter to the notion of personal responsibility which is an integral part of the duty and obligations of every head of institution. The prime minister appoints all high officials but how that individual official will conduct himself or herself, or what sort of company he or she will keep, is, and by definition must be, the personal responsibility of that particular official. By making this specific comment, the army chief has unnecessarily dragged the prime minister into his personal family controversy.

Another comment by the army chief also needs to be clarified. He said that when his brothers attended his son's wedding, they had no charges or cases against them. So there was nothing wrong in having them at a function where top dignitaries were present, including the president of our republic.

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*Does "pardon" constitute proof of innocence? All three brothers of the army chief were convicted by the courts for murder. One brother, Joseph, was condemned to death. On appeal, his death sentence was commuted to life imprisonment. That life term in jail was "pardoned" by the president upon a clemency plea by Joseph's mother. Does the president's pardon prove that Joseph was innocent of the original crime? Legal experts say no.*

## ARMY CHIEF TALKS TO THE PRESS

# Some comments require clarification

condemned to death. On appeal, his death sentence was commuted to life imprisonment. That life term in jail was "pardoned" by the president upon a clemency plea by Joseph's mother. Does the president's pardon prove that Joseph was innocent of the original crime? Legal experts say no. Only a court can pronounce a verdict of guilt or innocence. Joseph was not found innocent of the crime of murder by any court. He was only pardoned by the president. The

home minister told the press that he did not know about it. The law minister also said the same. How did it happen then? Who authorised their release? At what level was it signed—secretary, additional secretary, joint secretary? So far, we have been told nothing about it. If two persons "convicted" of murder can be set free by the home ministry without the knowledge of the home minister himself or other senior officials, then what does it say about the chain of command and

exercisable arbitrarily or mala fide and ordinarily."

The judgment goes further by suggesting that, "Thus, we are of the view that for fair, proper and bonafide exercise of the above power, the government may frame rule and guideline or even amend the Code, as has been done in one of our neighbouring countries. Possibly it is high time for the government to think over the matter to avoid controversy, criticism and misuse of power."

When our declared aim is independence of the judiciary from the executive, this provision (section 401 of CrPC) constitutes a direct threat to that aim. We think 401 should be abolished or clear provisions should be laid down regarding its use, as observed by the High Court in its judgment.

The most recent media revelation—again by Prothom Alo—that false information was used in procuring fake national identity cards, fake birth certificates, and finally false passports by Haris Ahmed and Tofael Ahmed (also known as Joseph) is most shocking. A clear violation of the law occurred here. In the press conference to be held by the army chief's family, as promised by him, we hope the above questions will be clarified. Meanwhile, we think the home ministry should immediately start an investigation both about how section 401 of CrPC was used without the knowledge and consent of the home minister, and about the false NID and passports.

The pattern of crying "conspiracy" every time an uncomfortable truth is revealed in a media report is both immature and revelatory of a sense of insecurity which is unbecoming of a stable, robust and functioning country like ours. The years of steady economic growth and the latest case of Covid-19 handling show the strength and stability we have acquired as a society and as a state. We only undermine ourselves by such claims. Similar claims by former US President Donald Trump, that there was a conspiracy against the US, turned out to be nothing more than an attempt to secure his own power. Any criticism of Erdogan of Turkey, Putin of Russia, or Xi Jinping of China is similarly castigated. Media reports on protests by the Thai people against the military regime of Gen. Prayut Chan-o-cha and the recent

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other two brothers—Anis and Haris—were similarly pardoned by the home ministry under section 401 of the Code of Criminal Procedure (CrPC), 1898.

Simply put, there is the crime and then there is the punishment for that crime. A presidential pardon or the action of the home ministry only frees a person of the "punishment" part, but not of the "crime" part. We are certain that our army chief knows the difference and understands the point.

If so, was it proper for him to involve the president by inviting him at the same function? Was the president told that someone he had "pardoned" of murder conviction would also be present at the function? If the president was told and he still came, it was extremely injudicious of him. If he was not told, then he was ill-served both by the host and his large staff, some of whom belong to the military. Our president's position is far from

institutional discipline within these crucial bodies that lead our fight against terrorists?

This brings us to the far bigger question of the demarcation of authority between our judiciary and executive branches of the state. Dispensation of justice is wholly the prerogative of the judiciary. They follow a rigorous judicial process including hearing of witnesses and arguments and counterarguments and then give a verdict. Then there is the whole hierarchy of appeal process which a person found guilty of a crime can avail themselves of. A mistake in the lower courts can be corrected by a higher court. At the end of it all, a person is finally declared innocent or sentenced, as was done in the cases of Anis and Haris.

But while absconding for years, suddenly they were set free. We still don't know what triggered the action, what procedure was followed, and whether



Dispensation of justice is wholly the prerogative of the judiciary. They follow a rigorous judicial process including hearing of witnesses and arguments and counterarguments and then give a verdict. PHOTO: COLLECTED

executive but supremely "symbolic". Does it go with the symbolism of his office to publicly appear with "convicted" but "pardoned" persons who were originally found guilty of no less a crime than murder? What does it do for the image of the president, presidency, and head of state?

Then, there is the army chief's own image and position as the head of an institution one of whose fundamental traits must, by definition, be discipline and highest level of behavioural code, not only in a narrow legalistic sense but also in the wider sense of providing moral authority. So, was it proper for the army chief to have his two "pardoned" brothers with him, whatever may have been the family occasion? It is obvious that he loves his brothers very much—and one may praise him for that, after all families are what we are born into, find joy and happiness with, and give so much of our love and attention to. But then, what about the position he currently occupies? Isn't he the symbol of ethical conduct and respect for both the letter and essence of law that lies at the heart of army ethos?

An army fights a war only rarely. For the rest of the time, it lives and thrives on discipline and moral authority. If the army chief thinks little of allowing his "convicted" but "pardoned" brothers to mingle with his own family, then what sort of an example does it set?

Then there is the issue of his two brothers—convicted of murder—being set free by an order of the home ministry under section 401 of our CrPC, a rule from the colonial times. There are several questions associated with this action. The

there was any appeal for their release, and if so, by whom? In fact, till a media report—by Prothom Alo—made the news of their release public, we had no knowledge of it, and there was no acknowledgment either in the several ministerial protestations and the two press statements by the ISPR.

In addition to the questions of procedure, we consider this to be a very serious issue of conflict between a judicial process and executive authority. Section 401 of CrPC is based on a colonial law dating back to 1898. The need for it at that time was to perpetuate the superior authority of the colonial executive power over the judicial process which was becoming more and more manned by "native" judges. Such executive authority over the judiciary is a dangerous provision that can lead to political considerations taking precedence over the cause of justice. Here, a relevant judgement of the High Court on April 25, 2012 is worthy of reference.

High Court justices M Enayetur Rahim and Sheikh Md Zakir Hossain had said that the court cannot direct the president and the government on how to exercise their powers according to Article 49 of the constitution and Section 401 of the Code of Criminal Procedure, but "the action of the president or the government, as the case may be, must be based on some rational, reasonable, fair and relevant principle which is non-discriminatory, and it must not be guided by any extraneous or irrelevant considerations." They further stated that, "It is well-settled that public power, including constitutional power, shall never be

coup in Myanmar have all been said to be "conspiracies" against their respective countries. We are not like any of the abovementioned countries. We have our own achievements to tell the world about, and vigorously so.

Sheikh Hasina's uninterrupted rule over the last 13 years has brought us tremendous progress. Her decisive and bold leadership has given us new self-confidence and a "can-do" mindset. But as it happens, when one party stays in power for long and when there is no check and balance and executive power reigns supreme, unquestioned by the parliament and the judiciary, then corruption permeates and institutional rot sets in. The lesson that repeatedly comes to the fore in nation-building is that countries that build institutions, especially those of accountable governance and of law, have a far better chance of sustaining their growth than others. The growth that Sheikh Hasina's government has brought for us now needs to be sustained for which we need to focus more and more on institutions.

On the 50th anniversary of our independence, let us pledge to move away from enacting laws that enchain rather than empower people, desist from arbitrary use of laws, stop bending laws for short-term gains, stop destroying principles of good governance, not allowing personal interest to override institutional prerogatives, and truly establish the rule of law.

Sound like a dream? Didn't our economic growth seem the same a few years ago?

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