

Attacks on court premises must stop

They seriously violate the rights of the accused

Recently, we have witnessed some disturbing incidents where accused politicians affiliated with Awami League were attacked when they appeared in court, or came out of it. This is quite alarming. If there is any place where the rule of law must prevail, it is within the courts which are considered sacrosanct. While violations of rights are unacceptable anywhere, for such incidents to occur on court grounds is not only an affront to the judiciary, but also to Bangladesh's commitment to the supremacy of law.

In some of the above incidents, what was equally shocking is that lawyers, who are bound by their pledge to uphold the law, were themselves involved in the attacks. As officers of the court, lawyers share the responsibility of upholding the law as much as the magistrates and judges, for example. But the actions of these lawyers clearly indicate that they do not believe in the supremacy of the law. Moreover, it is baffling why the Bangladesh Bar Council has not taken any action against them despite the clear breach of legal ethics. This reflects poorly on the Bar Council as well.

Over the past two months, there have been detailed reports revealing the extent of the corruption and crimes committed by those involved with the fallen regime, for which they must be held accountable through the legal process. However, any attack on them—that too while in police protection—is totally unacceptable. The continued occurrence of such incidents is also undermining the credibility of the current administration, particularly the law ministry which should have taken preventive actions.

It must be understood by all, especially lawyers, that an accused is an accused only, until proven guilty. The presumption of innocence is not only a cornerstone of criminal justice in Bangladesh but is also recognised globally, including in the Universal Declaration of Human Rights. A nation that believes in human rights and the rule of law must abide by this principle, too.

If we are to move forward as a nation respectful of law, then all such attacks on court premises must stop. By taking the law into their own hands, the attackers are not only breaking the law but also encouraging it. We urge the Bar Council to take stern measures against any lawyer found guilty, while the government must take legal actions against anyone generally involved. The government should also ramp up security when high-profile individuals are escorted to the court so that their rights as citizens are not violated in any way.

Is women's safety issue being sidelined?

Rise in harassment calls for stronger, more visible govt efforts

We are worried about the lack of urgency with which the government seems to be approaching women's safety, despite reports of increasing harassment ranging from physical attacks to verbal abuse to online hate speech. It was only the other day that we commented on the stark findings of an advocacy forum relating to sexual violence, and how the tumultuous political developments of the past few months served to deflect attention away from these crimes. That has not changed yet. Women continue to be easy targets for harassment on the streets. But rarely has there been a strong public message or directive from the council of advisers or law enforcement authorities. This lack of messaging—coupled with still inadequate police presence and insufficient legal action—is only emboldening potential harassers.

Our report in this regard, based on interviews and social media posts, describes the shock and fear facing victims. One of them is a filmmaker who reported experiencing a traumatic event last week, when an elderly man angrily berated her for not wearing a scarf while she was in her car. As his abuse escalated, she rolled up her window, which further enraged him, leading him to spit on her car before leaving. Shaken and humiliated, she explained how the incident made her feel powerless to protest, fearing backlash due to the man's age. There have been many such incidents of abuse in public spaces, workplaces, and online platforms, mostly for not adhering to conservative religious expectations.

What's evident from these cases is that there is a prevailing sense of lawlessness among certain groups due to which they feel they can get away with harassing women. To address this situation, strong condemnations from the government are necessary to send a message that there will be zero tolerance for gender-based crimes. At the same time, the authorities must ensure that law enforcement is visible and proactive both in public spaces and online, and that there are swift legal actions. As the country embarks on a reform drive in various sectors, it is imperative that women's safety issues are also included in it, making way for broader legal protections and their regular enforcement.

THIS DAY IN HISTORY



Malala Yousafzai shot in the head

On this day in 2012, a Taliban gunman shot Pakistani activist Malala Yousafzai, who was 15-years-old and a vocal opponent of the ultraconservative group's prohibition on girls' education.

TANNERY INDUSTRY

Does the 2024 proposed minimum wage meet expectations?

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TAMIM AHMED and KHONDAKER GOLAM MOAZZEM

After several deferments, the Minimum Wage Board has finally proposed the new minimum wage for the Bangladeshi tannery industry. On September 9, 2024, the board issued a draft gazette proposing Tk 18,001 (for Savar and divisional areas) and Tk 17,048 (for other areas) as the new minimum wage for the tannery industry, effective from 2024 onwards. This proposed wage is approximately 34 percent higher than the existing minimum wage of Tk 13,500 for urban areas and Tk 12,800 for non-urban areas, which has been in place since 2018. The provision for a five percent annual wage increment (based on basic wage) is also set to continue.

The Minimum Wage Board deserves appreciation for proposing the wage within a short period since the formation of the interim government. There was an uncertainty whether the change in government would restart the whole wage setting process. However, the process went through and after reviewing the feedback from the relevant stakeholders, we hope the new minimum wage would be finalised and implemented as quickly as possible. Any unnecessary delay would prolong workers' struggles to cope with the ongoing inflationary pressures.

The proposed wage amount is lower than Tk 18,378—which would have been the figure if only the inflation rate had been considered since 2018. The proposed wage falls short of the Tk 25,000 as well, the amount Tannery Workers Union (TWU) demands. It is also below Tk 22,776 that the Centre for Policy Dialogue proposed as the required minimum wage for tannery workers to maintain a basic standard of living, based on a recent empirical study. Hence, the wage board should consider further reviewing the proposed minimum wage amount and evaluate if increasing the amount is possible.

Consistency of grading practices

Unlike most other industries, one positive aspect of the tannery industry is its strong Collective Bargaining Agreement (CBA) practices. Over the years, wages have been determined through negotiations between workers and employers' representatives. CBA wages set over the last five years were found to be nominally higher than

the government-set minimum wage. However, the wages for CBA are announced for a different grading structure (highly skilled, skilled, semi-skilled, and unskilled workers) compared to what is followed by the minimum wage board (grade 1 to grade 5). It creates confusion since some

workers remain in the same grade with no possibility of grade promotion. However, the draft gazette issued by the minimum wage board mentions a grading system similar to the one it has been following in the past, and no instruction on merging different grading systems is noticed.

Changes in the wage structure

The minimum wage structure proposed for the year 2024 remains largely unchanged compared to the year 2018. The wage structure consists of four components: basic

expenditure for tannery workers over the years, it proposed the inclusion of a new cost category, "Children's Education Allowance," in the wage structure. However, this has not been considered in the board's latest wage proposal.

Proper implementation of the new minimum wage needs extended attention. CPD's study indicated that the minimum wage adopted in 2018 was not widely implemented. Furthermore, 69 percent of the surveyed tanneries did not adhere to the official grade structure issued by



FILE PHOTO: STAR

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tanneries follow the government's grading system while others follow the CBA grading system, and some do not adhere to any grading system at all.

To ensure consistent grading practices across the industry, CPD proposed a unified grading system incorporating wage board and CBA-based grades into a single framework with five major grades (Grade 1 to Grade 5). Additionally, CPD suggested introducing sub-grades (Grade A, Grade B, Grade C, etc) within these main grades, allowing workers the opportunity for promotion to higher wage scales—a benefit not available under the current system, where

allowance, housing allowance, medical allowance, and transport allowance. CPD recommended that housing allowances and other wage components be calculated as a percentage of the basic wage rather than remaining as fixed amounts. In line with CPD's recommendation, the housing allowance has been proposed at 70 percent of the basic wage (60 percent in non-divisional areas), which is a positive move. However, the health and transportation allowances remain fixed (Tk 1,100 and 700) for all categories of workers.

Given that CPD found educational costs have become a significant area of

the Minimum Wage Board.

In order to ensure the effective implementation of any newly proposed minimum wage in the tannery sector, the Department of Inspection for Factories and Establishments (DIFE) should conduct special inspections and produce progress reports within four months of the final approval of the new wage. There is a need to raise awareness among tannery workers who are primarily uninformed about government-set minimum wages. Additionally, mobile financial services (MFS) for wage transfers should be promoted to enhance accountability in wage disbursement.

The reason we need a new constitution



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The debate regarding a new constitution for Bangladesh has now reached mainstream politics. Responding to the discourse, the interim government has recently formed a nine-member commission for constitutional reform. In my opinion, adopting a new constitution for Bangladesh is a must if we want to achieve a robust democratic system with peaceful transitions of governmental power and I presuppose that the new constitution will be adopted by a democratically elected constituent assembly, not the interim government. Moreover, a fresh constitution is a must if we want to bypass the problem of the doctrine of basic structure, otherwise, all substantial constitutional changes that may be brought to reform the country may be reversed.

The judiciary imported the doctrine of basic structure into our legal system through the *Anwar Hossain Chowdhury v Bangladesh* (1989) case and applied it in other important constitutional instances in which the legality of a constitutional amendment was challenged. The basic structure doctrine notes that the constitution has an unamendable basic structure. It holds that the parliament's power to amend the constitution has inherent limitations, and an amendment will lose its legality if it changes the basic structure of the constitution. In simpler words, the constitution cannot

be amended in a way that it loses its identity.

In theory, the doctrine of basic structure is a principle that aims to maintain the integrity of the original constitution. However, the doctrine is intrinsically vague, as discussed in my paper titled "The Intrinsically Uncertain Doctrine of Basic Structure" published in the *Washington University Jurisprudence Review*. While using the doctrine of basic structure, judges note that certain provisions of the constitution cannot be changed. However, they have not provided an exhaustive list of these unamendable provisions, which allows the judges to decide what the basic structure of the constitution is on a case-to-case basis. Although it reads as an originalist principle, it has also been used to contradict a provision present in the original constitution.

The reforms needed to fix the problems of the transition of governmental power and restore democracy in Bangladesh would definitely change the basic structure of the constitution. For example, Brigadier General (retired) M Sakhawat Hussain, adviser to the Ministry of Textile and Jute, recently suggested that Bangladesh may be converted into a federal state, dividing the country into five provinces. Some people suggested a shift to a presidential form of government with a strict separation of powers between the executive and

the legislature. Some are advocating for a bicameral legislature. However, these proposed reforms would destroy Bangladesh's unitary form of government. The Supreme Court (SC) has previously struck down the Eighth Amendment that decentralised the High Court Division of the SC because the decentralisation changed the unitary form of the government, which is connected to the basic structure

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of the constitution. Similarly, the SC might strike down any amendment that challenges the unitary form of government.

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the basic structure away, but their Supreme Court struck down those amendments.

One way to ensure that the doctrine of basic structure is not used to reverse any substantial progress we achieve in restoring democracy in Bangladesh would be to make the constitutional amendment-making process more rigid. If the process possesses more democratic legitimacy, the court would lose its justification for using the basic structure doctrine. Consider the US system: their Supreme Court is theoretically as powerful as its Indian and Bangladeshi counterparts. However, the US Supreme Court has never struck down a constitutional amendment because the US Constitutional amendment-making process is very rigid and has a lot of democratic legitimacy. An amendment to the US Constitution can be proposed by either two-thirds of the two chambers of US Congress or by a request of two-thirds of the US states through a special convention called for that purpose. A proposed amendment must be ratified by three-fourths of all states to be valid. Because of its rigid nature, the US Constitution has been amended only 27 times despite more than 11,000 attempts. An amendment passing such a long and rigorous process with multiple democratic hurdles cannot be struck down by the judiciary without facing severe criticism.

Unfortunately, making the constitutional amendment process more rigid may also alter the basic structure of the constitution and may be reversed by the Supreme Court of Bangladesh. Thus, to ensure that the constitutional reforms remain unaffected by the politicisation of the judiciary, we have no other option but to adopt a new constitution by calling a constituent assembly.