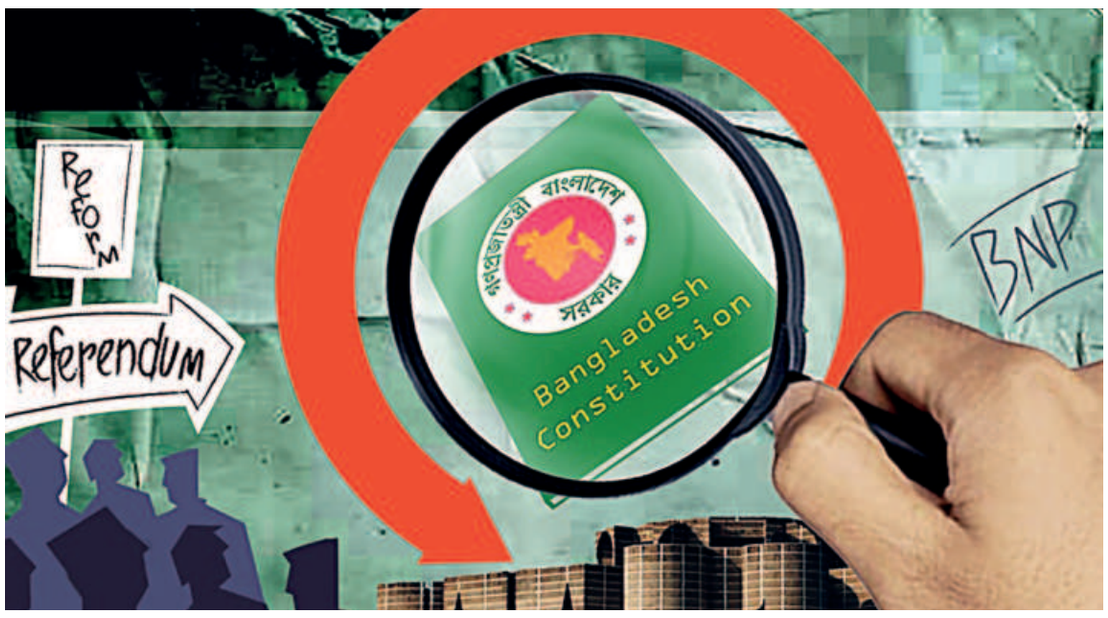
LAW OPINION

Navigating questions revolving the July Charter and constitutional reforms

KAZI LATIFUR REZA

In Bangladesh's constitutional history, the 'July Charter' and the issuance of the July National Charter (Constitutional Reform) Implementation Order, 2025 (hereinafter referred to as the 'Order') are not mere administrative measures. They bring forth three fundamental questions at once: the source of state power, the legitimacy of constitutional change, and the legal recognition of the sovereign will of the people. With the public endorsement of the Charter through a 'Yes' vote in the referendum, the matter has now moved beyond a political commitment to the level of a national and legal obligation. The question, however, is whether this obligation will survive constitutional scrutiny in the future.

Questions regarding the limits of presidential power are inevitable. The Constitution grants the President authority to promulgate Ordinances under specific conditions. However, it does not authorise the issuance of a new type of executive order drawing legitimacy from 'revolutionary will' or a 'sovereign popular verdict.' Therefore, such an order may easily be challenged as ultra vires. In a democracy, while popularity may be the source of power, the Constitution determines the manner of its exercise. That popularity can never serve as a license to breach constitutional limits is the essence of constitutional governance.



VISUAL: BIPLOB CHAKROBORTY

Indeed, Article 93 of the Constitution empowers the President to promulgate Ordinances only when Parliament is not in session. Yet the Order claims legitimacy beyond the traditional Ordinance framework, deriving authority from the sovereign will of the people as derived from July uprising. The Court may, therefore, question whether the President can issue an order that transforms Members of Parliament into members of a 'Constitution Reform Council' and imposes a time-bound obligation to amend the Constitution. The core debate will be whether this constitutes an administrative mechanism within the constitutional framework or represents a new exercise of 'constituent power' outside of it.

The first legal challenge in this process is whether an executive order can form the basis of fundamental constitutional reform. Article 93 authorises only Ordinances, which must subsequently be approved by Parliament. However, the 'July Implementation Order' claims a higher legal foundation—not in any specific constitutional provision, but in the doctrine of revolutionary legality. Should the matter reach the Court, the judiciary would need to determine whether the President is merely a preserver of the Constitution or, in moments of crisis, may act as a bearer of the people's constituent power. Thus, if it is treated as an ordinary administrative order, the reform process may falter at the outset. But if it is accepted as a transitional legal framework, it may receive constitutional protection.

There may also arise a debate owing to the implications of the terms 'Order' and 'Act'. Although Article 152 includes 'order' within the definition of law, an executive order does not carry the same status as a parliamentary statute. Proposals such as a bicameral legislature, proportional representation, or decentralisation are not merely procedural reforms; they are structural transformations of the State. The question is whether such fundamental changes can be initiated through an order, or is a full legislative process indispensable. If the court finds the Order lawful yet insufficient for such a structural reform, the entire process may become entangled in legal complexity at a much early stage.

The procedure for constitutional amendment is an even more fundamental. Articles 142 and 142(1A), as reinstated by the High Court Division in the 15th Amendment case, provide the recognised methods for amendment through Parliament. Transforming Parliament into a 'Constitution Reform Council' via executive order is not merely administrative rearrangement it may be viewed as bypassing the constitutional amendment framework itself. To amend the Constitution, one must use the doors within it—breaking in through a window is inconsistent with constitutional propriety. If the Court does not prioritise procedural purity, future governments may be encouraged to take constitutional shortcuts 'in the name of the people', risking constitutional anarchy.

The third and most sensitive issue concerns the Basic Structure Doctrine.

Ultimately, the central question remains: will legal challenges obstruct reform, or will the referendum verdict prevail? The issue is less 'law versus politics' than 'law and politics' in coordination.

Although the repeal of Article 7B led some to believe that no barrier remains to altering the Constitution's fundamental structure, the doctrine now exists as a judicial principle rather than merely a textual restriction. If the character of Parliament, separation of powers, or democratic framework is fundamentally altered, the Court may ask whether the very spirit of the Constitution is being undermined. Popular support may exert moral pressure but that does not automatically remove constitutional limits. Comparative jurisprudence supports this view.

Bangladesh's judicial tradition has also recognised this doctrine, interpreting elements such as unicameralism, democracy, judicial independence, and separation of powers as possible parts of the basic structure. Yet, with the repeal of Article 7B, the amendment rigidity has somewhat relaxed. Thus, if the people clearly endorse bicameralism or PR through referendum, can the court reject that will on basic structure grounds? Here arises the tension between judicial authority and popular sovereignty. Is the court's role to protect the Constitution, or to recognise the people's power of reconstruction?

This debate is not new. In India's Kesavananda Bharati case, the Basic Structure Doctrine was established in the context of questioning the limits of Parliament's amending power. In Nepal, after mass movements, the judiciary adopted a transformative interpretation during constitutional rewriting. In South Africa, during the post-apartheid constitution-making process, popular participation and referendum created moral pressure on the judiciary. These comparative experiences show that in moments of deep reform, courts that cling solely to technical interpretation may clash with political reality.

Thus emerges the classic debate of judicial review versus popular sovereignty. Experiences from Nepal and South Africa suggest that in transformative moments, courts may adopt an evolutionary rather than rigidly conservative interpretation. A constitution is not an immutable inscription in stone but a living reflection of the people's aspirations. It is submitted that elevating the referendum verdict above the Basic Structure Doctrine may, therefore, be the true realisation of democratic justice.

The fourth issue concerns the 180-day deadline. While time limits may accelerate reform, they raise concerns about constitutional stability. If reform is not completed within the prescribed period, questioning Parliament's legitimacy could endanger state continuity. A constitution is not a project to be completed on schedule; it is the state's foundational compact. Excessive haste may undermine deliberation, consensus, and public participation. Legally, such a timeframe should be viewed as directory rather than mandatory. Preserving the quality of reform is more vital than meeting a deadline.

From a comparative view, while the Indian Supreme Court in Kesavananda case restrained Parliament, it did not confront a direct popular mandate. In South Africa, the court acted as a certifier of the new constitution, bridging judicial authority and popular aspiration. Should a similar question arise in Bangladesh, the judiciary may need to assume a comparable role. If reforms are inclusive and transparent, the author believes, courts should adopt a transformative jurisprudence rather than mechanical interpretation.

Furthermore, with the ruling party taking oath, matter of implementation of the July Charter arises, and new political and legal complexities may emerge as well. One may argue that the referendum's victory elevates the Order from a political document to a legal framework. Taking an oath under the Charter would signify a constitutional undertaking to abide by the framework, supported by a referendum. If the Charter were to be implemented, older political reservations will lose legal force. If disagreement arises, Court may introduce further complexity. However, political dissent remains possible through proposing amendments within the constituent body, arguing for modifications of specific clauses, or attempting future repeal or revision. Thus, oath-taking means accepting the framework but not surrendering dissent.

Ultimately, the central question remains: will legal challenges obstruct reform, or will the referendum verdict prevail? The issue is less 'law versus politics' than 'law and politics' in coordination. If litigated, in author's opinion, judges must look beyond literal interpretation, considering context, popular will, and the evolving character of the Constitution. Indeed, a constitution is not a museum artifact; it is a living document.

The writer is Head of the Department of Law at Bangladesh University.

RIGHTS WATCH

The chain of oppression of our tea-workers

UMMA USWATUN RAFIA

Despite being part of a BDT 3500 crore industry, tea workers in Bangladesh face unsustainable wages, horrendous living conditions, and structural marginalisation. The history of the repression of tea workers in Bengal stretches dates far beyond the colonial era. From the echoes of the Mulluk Cholo uprising to the present day, tea workers have endured a persistent cycle of exploitation, inhumane labour, and systemic neglect.

Tea gardens in Sylhet, Moulvibazar, Habiganj and the Northern regions collectively form an industry worth crore annually, making Bangladesh the 64th-largest tea exporter. However, the daily wages of tea-workers are Tk 178, which is barely sufficient to secure one meal, let alone feed a family. Despite the vast workforce of 300,000 workers, of which 75% are women, their socio-economic status stands in stark contrast to the value they produce, evident from the fact that 74% of the tea workers live below the poverty line. Needless to say, a change to this condition is imperative.

Critics argue that increased labour costs could render some gardens uncompetitive internationally, or that enforcement will remain weak without political will. However, these shortcomings are pale in comparison to the profits made by tea plantation owners and the moral costs of maintaining a labour system that treats human beings as expendable units of production.

If we firstly look at our law, the Bangladesh Labour Act 2006, we will find that it formally guarantees tea workers minimum wages, provident fund, and certain welfare benefits. Specifically, the Act provides for a Tea Plantation Workers' Provident Fund and for employer contributions. The Bangladesh Tea Workers' Welfare Fund Act 2016 establishes a government-supervised welfare fund and management board to provide financial assistance and social-welfare grants, such as death, disability, education, medical, and family-support benefits to tea workers and their dependents. However, in reality, instead of effective labour protection, workers of the tea industry experience violations such as the absence of appointment letters and identity documentation despite the requirement under the Labour Act.

Despite the great promises of the law, the reality is far grimmer. Firs, tea workers are subjected to legal discrimination and labour rights violations. For instance, per section 115 of the Labour Act, they have discriminatory leave provisions, as unlike most other sectors, they are explicitly excluded from paid casual leave or equitable earned leave, which goes on to institutionalise the inferior status of the tea workers within the same legal framework. Second, tea workers become dependent on housing provided by tea plantation owners and an employment structure which is coercive in nature. Essentially, many workers reside on employer-owned land without ownership rights. Moreover, section 32 of the Labour Act requires workers to vacate employer accommodation upon termination. This creates a coercive dynamic resembling bonded labour. The net effect of all these is that legal rights exist solely in the abstract. Unfortunately, their enforcement is undermined by weak monitoring and the socio-economic dependency of workers.

Tea-producing regions like Assam and West Bengal have attempted to institute minimum wage boards, profit-sharing rules and social welfare mechanisms. They offer models for statutory welfare schemes, and wage indexing to inflation. For Bangladesh, concrete steps need to be taken. Legal reform through amending labour laws to eliminate discriminatory provisions targeting tea workers is a must, and it is important to explicitly incorporate enforceable standards for wages and other rights. Similarly, institutional and enforcement reform through empowering labour courts that are accessible and equipped to monitor tea gardens and sanction violators is equally necessary. Besides, socio-economic and community welfare reform through offering a secure land tenure to the employers for their homes and cultivation plots may end the dependency cycle.

Indeed, each proposal will face budgetary constraints, employer resistance, and political indifference. Critics argue that increased labour costs could render some gardens uncompetitive internationally, or that enforcement will remain weak without political will. However, these shortcomings are pale in comparison to the profits made by tea plantation owners and the moral costs of maintaining a labour system that treats human beings as expendable units of production.

If anything, exploitative labour conditions can be challenged through a collective reading of Articles 14, 15 and 32 of the Constitution, alongside Dr. Mohiuddin Farooque v Bangladesh (1996), where the Appellate Division interpreted the right to life to include environmental and livelihood protections. This, in turn, can be interpreted to extend to be a safeguard against substandard living conditions and structural dependency perpetrated in tea estates. In neighbouring India, the Supreme Court in People's Union for Democratic Rights v Union of India (1982) held that payment below the minimum wage constitutes forced labour. How long before Bangladesh follows suit?

The writer studies law at the Department of Law, University of Dhaka.