POINT ** COUNTERPOINT

Caretaker controversy



HARUN UR RASHID

HE controversy of the nonparty caretaker government, in my view, largely rests on the poorly drafted constitutional provisions, incorporated under Chapter IIA by the Thirteenth Amendment Act in 1996.

As a result, a national robust debate has been raging over the composition of the non-party caretaker government and the constitutional legality of the chief adviser and advisers.

One group says that the president has complied strictly with the provisions of the constitution. while another group holds the view that he has not followed the terms of the constitution in forming the caretaker government.

Interpretation of

a legal document

If a legal document is not couched in precise language, it becomes like interpreting a horoscope. They can mean just about whatever you want them to mean

To interpret a legal document, it is very important to be aware of the

Many have raised concerns as to why the political parties were allowed to provide a list of candidates for advisers to the president with the fanfare of the media. One may argue that such request is not only unwarranted by the constitution, but a gross violation of the letter and spirit of the constitution underpinning the purpose and objective of the non-party care taker government. In the current politically charged atmosphere, submission of names by political parties to the president does not help boost the image of the non-party caretaker government to the public in general.

purpose for which the document has been prepared, although the document may not reveal the background. It is ordinarily noted that each and every word, even the punctuation in the sentence or definite or indefinite article, prefixing a word, has a purpose and a

Some of the basic principles of interpreting a legal document deserve mention as follows:

(a) An article of a constitution or a section of a legislation has to be read as whole. It means that all the sub-clauses or sub-sections of a particular Article or a section cannot be detached or interpreted out

(b) The words of an article or a section of a legislation are to be given their natural meaning and an interpretation cannot be made doing violence in the words, contrary to the general purpose and tenor of the document.

(c) If the words lead to various interpretations, then the method of interpretation will be to ascertain

what the parties really meant when they used the words.

(d) An interpretation of an article or section that would deprive the purpose of the document is inadmissible because the purpose and the object of the legal document must be given effect to.

Article 58C

A question has arisen whether the president has gone through all the stages, articulated in Article 58C of the constitution, prior to becoming himself the chief adviser. It is noted as a last resort the president "shall assume the functions of the Chief Adviser of the Non-Party Caretaker Government in addition to his own functions under this Constitution." [Article 58 C (6)]

Step one

Of all the retired chief justices of Bangladesh, one interpretation is that only two retired chief justices are eligible to become the chief adviser, the two being, the chief justice who retired last and if he is

not available or is not willing to hold the office of the chief adviser, the chief justice who retired next before the last retired chief justice.

Since the chief justice who retired last has declined to accept the office, the second eligible retired chief iustice is eligible. But he regrettably has passed away. It is now arguable as to whether the next retired (i.e. third) chief justice

Some legal experts argue that the constitutional provision should not be applicable to a dead person and accordingly, the third retired chief justice is eligible for the office of the chief adviser.

Others contest the above proposition and argue that since the person is not available whether because of death or otherwise, the provision of eligibility of the retired chief justices for the office of the chief adviser has been exhausted. If the third retired chief justice is considered, it will be a violation of the constitution, they argue.

Another confusion was created

by the words in 58C (4) of the constitution, namely, "If no retired chief iustice is available". One may argue that the phrase is to be interpreted in the context of 58C

The words "if no retired chief justice is available," are argued only to refer to two eligible retired chief justices. To support their argument, they invoke general principles of interpretation that all the sub-clauses shall be read as a whole and the words in sub-clause (3) and sub-clause (4) of Article 58C are inter-related and subclause (4) should not be taken out of the context.

It would have been desirable that the above phrase should have been qualified in the constitution by the words "as referred to in the previous sub-clause 58C (3) and then this debate would not have

Step two

If the eligible retired chief justices are not available, the selection of the chief adviser will pass on to the retired judges of the Appellate Division of the Supreme Court in the same order as the retired chief justices. That means again only two retired judges of the Appellate are eligible

In this case, one judge of the Appellate Division who retired last is holding the office of the chief election commissioner. The person is not eligible for the office of the chief adviser under Article 118 (3) (a,) which provides that "a person who has held office as Chief Election Commissioner shall not be

eligible for appointment in the service of the Republic."

The phrase "Service of the Republic" under Article 152 of the constitution means "any service. post or office whether in a civil or military capacity, in respect of the Government of Bangladesh, and any other service declared by law to be a service of the Republic.

Therefore, the next retired judge of the Appellate Division is eligible.

It has been reported that the person in question reportedly told the media that he would consider i the two major parties agree to his appointment. Since there was no agreement between the two major parties, his candidacy was ruled

Step three

If no retired judge of the Appellate Division is available, the president goes to the next stage and applies

Article 58C (5) provides that the president "shall, after consultation, as far as practicable, with the major political parties, appoint the Chief Adviser from among citizens of Bangladesh who are qualified to be appointed as Advisers under this Article."

It is significant to note three phrases used in the above article, namely, "after consultation," "as far as practicable," and " the major political parties" (not all political parties) have to be given full meaning. The word "consultation differs vastly in meaning from the word One may strongly argue that the

president is bound under the con-

stitution to consult major political parties but does not need any agreement with political parties as to the selection and appointment of the chief adviser from "among

In the light of the above, many legal experts suggest that if the third retired chief justice is not eliqible under 58C (3), the president could appoint him under 58C (5) as being one of the "citizens" of Bangladesh or any non-party

citizen as the chief adviser. Against the background, they argue that the president has not adequately applied his mind to exhausting all the stages of the Article 58C, prior to his assumption as the chief adviser. They further argue the president is in breach of the constitution by not appointing a non-party citizen as chief adviser

Appointment of advisers

Before I conclude. I wish to refer to the article relating to the appointment of advisers. For ready reference, Article 58C (8), dealing with the appointment of advisers, provides as follows:

"The Advisers shall be appointed by the President on the advice of the Chief Adviser '

The simple interpretation is that the president is empowered to appoint advisers on the advice of the chief adviser. Since the president assumed himself the office of the chief adviser in addition his own functions, he has the sole powers to appoint advisers from non-party

Many have raised concerns as to why the political parties were allowed to provide a list of candidates for advisers to the president with the fanfare of the media.

One may argue that such request is not only unwarranted by the constitution, but a gross violation of the letter and spirit of the constitution underpinning the purpose and objective of the non-

party care taker government. In the current politically charged atmosphere, submission of names by political parties to the president does not help boost the image of the non-party caretaker government to the public in general.

It is noted that the whole scheme of the non-party caretaker government originates in the perception of failure of ruling parties to conduct a fair and free election. The idea came from the allegation that those in power rig election to continue its

This allegation is not only leveled against Bangladesh political parties but also for India's as well. In 1996, eminent columnist Kuldip Nayar wrote: "Elections in India are increasingly reduced to the outcome of the pressure that a ruling party and its cohorts, including criminals and money bags, can exert on the voters. The attitude of the general run of the government servants is largely characterized by a paralysis of the will to do the right and proper thing. They can be countered only if non-party public men oversee the polls.

Barrister Harun ur Rashid is a former Bangladesh

Corporate social responsibility (CSR) and political responsibility (PR)

In Bangladesh the boundary of CSR extends into the political realm; management strategy, recruitment and organizational vision in some organizations are driven by political wisdom, necessitating their human resource base to participate in political rallies and/or promote politically motivated policies. The institutions of higher learning are guilty along the same lines. As a rational citizen of Bangladesh, I must point to the irresponsibility of these theoretically pristine institutions, as their organizational beliefs have turned partisan.

ZIAUR RAHMAN

OLITICAL and economic ethics are responsible for a country or society to progress. Social norms, belief systems and practices are crucial while charting a responsible future. The word "responsibility" has taken a new dimension in Bangladesh.

Given the specter of havoc unleashed recently by the two opposing political groups, I feel that total "irresponsibility" has gripped the nation. In this article. I do not intend to position any particular political view but would like to add the dimension of responsibility to our national psyche and discuss how issues of responsibility is shared between actors within the society for peaceful existence and economic progress.

Progress and prosperity have different connotations if we viewed from social lenses. By the same token, progress and prosperity are synonymous -- one is dysfunctional without the other. Bangladesh has passed its 35th year, but what is our standing in the international order? These days, as the intricacies of the world grow, business and politics as usual have changed colour, paradigms, and norms. So has the interactions of politics and business transformed.

Bangladesh has shown that we can no longer think of solving society's problems as distinct islands, especially since the social fabric is so intertwined and meshed together that politics, economics and social welfare have become part of the same puzzle. One cannot function without the cooperation of the other. This brings us to promote social responsibility even more vigorously by corporations, government, political parties and people's organizations. The responsibility that corporations take on their shoulders for the welfare of their various stakeholders is termed as Corporate Social Responsibility (CSR)

However, all actors within a state have to discharge responsi-

bility for the smooth functioning of various elements of the national machinery. Each day that Bangladesh sits without production a few hundred crore taka worth of productivity goes wasted. On one hand, we talk about MDC goals and set targets at reducing poverty by half within a decade; on The recent political chaos in the other hand, we create havoc based on political lines and set shameless examples of "democracy going berserk."

Where is the rationality here? Are our national pressure points from the people's organizations and the corporations working properly? I believe not, because we are still at the infancy of democracy. Most notably, we lack responsible corporate citizenry. In an advanced economy, these types of dissentions would have been settled at political dialogs with or without the urgings of the civil society, trade bodies, diplomats and/or corporate bodies. The political quardians are not acting responsibly and no amount of outside cajoling or advice is coming to any use, but the country continues to slide backwards. This is far from democracy working

All civil unrests have deepseated frustrations that, if repressed for too long, are bound to flare up. We have seen it in the garments sector and now noticing it in the political fold where perhaps people's aspirations, demands, and well-being have not been addressed responsibly. If a country sees extremely lopsided growth, and along party lines only, then the general frustrations of the people will pile up and may take on destructive route where the political leaders can provide fodder to spark the crisis even further. Their irresponsible behaviour may produce widespread destruction and loss of human lives in the name of "democracy."

Similar to nation-states, corporations can also wreak havoc in their own domains, creating mass discontentment and problems for the society at large, if they do not act responsibly. They can also act irresponsibly by becoming a that is unfortunately the economic reality in Bangladesh. These issues further complicate the total equation and trying to steer the country based on economic rationality alone becomes ineffective as all decisions gravitate along political lines. Amidst these myriads of economic, social and political tangents, we can still workout a stable future if we wear the hat of responsibility in all our actions.

Responsibility purely from the eyes of the corporations also needs to be strengthened in Bangladesh or elsewhere. Due to extended global trade and commerce, an irresponsible act by a corporation internationally (especially a large one) creates farreaching negative ripples and can really de-stabilize a local economy. The likes of Enron and other transnational corporations have sent economic shock waves across the globe due to rapacious greed and corporate irresponsibil-Both locally and globally, the

concept of ethics has taken center stage with so much economic devastation across large global corporations where people have lost their lifelong savings due to corporate misappropriations, greed and lack of transparency. Reinventing the global corporation has become a priority, especially when we had experienced death knells from the ill motives of many corporate giants that have withered away losing billions of dollars of taxpaver money. Corporate social responsibility (CSR) is building momentum globally that attempts to put a leash on greedy global expansions. Through a corrupt political environment, the corporations can turn loose their own corruptions as the balancing government and political bodies may not show any sign of responsibility due to their own corrupt nature.

CSR is defined in many ways and no universally accepted definition is in place; however, the scope of CSR in corporate board rooms to the management ranks has pervaded and continues to gain momentum. Bangladesh, being a country of scarce resources, has not been active in promoting CSR initiatives either individually, part of a global framework or through citizens' groups. Some efforts dot the Bangladeshi landscape that have connotation and association with CSR; however, the tie ins of these initiatives are loose and disconnected with CSR as they are mainly driven by citizens' action committees and the corporate sector is not active in these formations and awareness generation programs.

World Business Council for Sustainable Development states that "corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large." In Bangladesh the boundary of

CSR extends into the political realm; management strategy, recruitment and organizational vision in some organizations are driven by political wisdom, necessitating their human resource base to participate in political rallies and/or promote politically motivated policies. The institutions of higher learning are guilty along the same lines. As a rational citizen of Bangladesh, I must point to the irresponsibility of these theoretically pristine institutions, as their organizational beliefs have turned partisan.

From a wider canvas, corporate social responsibly (CSR) and political social responsibility have to be addressed together for a country like Bangladesh where the social and legal structure are still being formed and the civil society maturing into adulthood. The present state of industrialization and investments by overseas investors has added the implications of corporate accountability and has also created new grounds for reporting on employee, ethical and environmental issues. We see that issue of labour

policy is gaining currency due to the introduction of international investments and buying practices. For organizations to see bottom line profits, issues of keeping the work force content have been gaining momentum, driving home the point of responsible action in all spheres, be it business, government, or people's movement. To cite Milton Friedman's

phrase, "the business of business changed business environment of today. CSR deals in areas beyond business, but for the growth of business and social welfare. It is a novel and effective idea globally and is forming some interest in Bangladesh, in spite of political infringements at certain organiza-

The scope of CSR at industry or academic level is extensive and worth exploring for the welfare of Bangladesh. The corporations in Bangladesh are focused on marketing their own brands and

images by creating competitive positioning, driving towards increasing revenue. The marketing strategy at play may have sizeable impact on various stakeholders, including customers and common people on the street. The issues of governance and responsibility from a broad perspective channel the efforts of corporate decisions; however, the positive impact of CSR in Bangladesh is slow in coming.

The strategic decision makers at the business, civil or political level must objectively understand the benevolent impact of taking CSR initiatives for balancing the equity position of the people of Bangladesh. The economic landscape, along with a stable political climate, free from foreign intervention, can actually raise the possibility of Bangladesh. If Bangladesh is to join the Asian Tigers in not too distant a future then proper dispensations of CSR and political responsibility become a responsibility -- a realit that responsible citizens of Bangladesh must strive toward

In conclusion, the political turmoil signals potential joblessness and, therefore, responsible political actions are imperative and discharging corporate responsibility without adhering to any particular political lines is essential, otherwise the country so dear to us and liberated at the cost of our martyrs, will go in vain.

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Where are we on MDGs?

M. ABDUL LATIF MONDAL

HE Asian Development Bank (ADB) report titled "Millennium Development Goals: Progress in Asia and the Pacific 2006" released on October 16 identified Bangladesh and seven other countries in this region as the countries of great concern considering the current level of progress on the Millennium Development Goals (MDGs).

The eight goals of the millennium development that all the members of the United Nations agreed (in 2000) to try to achieve by the year 2015 are:

- To eradicate extreme poverty and hunger reducing by half the proportion of people living.
- To achieve universal primary education. To promote gender equality and empower women
- To improve maternal health • To combat HIV/AIDS, malaria and other diseases.

· To reduce child mortality.

- To ensure environmental sustainability.
- To develop a global partnership for development. The countries of most concern are identified in the ADB report by

combining a measurement of their current level of deprivation against progress on the MDGs. Using this, they are grouped into four catego-Moving ahead: Those countries

which are making good progress and with a latest status are better than average for the region.

- Losing momentum: Those countries which will have to accelerate progress to be able to meet targets, although from a relatively favourable latest
- Catching up: Those countries which are making progress but their latest status is below the region's average Falling further behind: Those
- countries which are causing greatest concern because they score negatively on both progress and latest status indexes. Bangladesh has been placed in the "falling further behind" category. The areas of concern are:
- Bangladesh has reduced income poverty from 58 percent in 1992 to about 50 percent in 2000. But income inequality has deepened. As a result, 65 million people are poor. Poverty remains a crucial phenomenon with 85 percent of the country's poor living in rural areas.
- Another area of concern is the number of pupils reaching grade five. A significant drop out rate is registered in rural areas, urban slums, coastal areas and the Chittagong Hill Tracts. Discrepancies exist in schooling between urban and rural areas, and also between genders.
- Despite recent progress, child malnutrition will remain among the highest in the world. The proportion of underweight children is 16 percent higher than in 16 other Asian countries at similar levels of percapita GDP.
- Access to sanitation has increased in rural areas from 11

- 2002. In urban areas, however, the situation has worsened, with access falling from 71 percent to 56 percent. This is primarily due to unplanned urbanization in recent years.
- A major environmental concern is the proportion of Bangladesh covered by forest. Only about 769,000 hectares or 6 percent of the country has tree cover. This includes mangrove and planted forests.

Why is Bangladesh falling further behind by scoring negatively on both progress and latest indexes? First, there is lack of strong political commitment. The political parties, in particular the major political parties, did not present the

strategies for implementing the

Now the question that arises is:

MDGs in their election manifestos. Second, the confrontational politics of the two major political parties, the ruling BNP and the main opposition AL, affected proper functioning of parliamentary democracy as well as developmental activities, and thereby affected progress on the MDGs.

Third, parliament is one of the

three pillars of the state, the other two being executive and judiciary. According to our constitution, the cabinet is collectively responsible to parliament. Parliament, which mostly remained dysfunctional due to sustained boycott by the main opposition, had no time to discuss the policies and strategies for making good progress on the goals like poverty reduction, attainment of universal primary education, improvement in child health care, percent in 1990 to 29 percent in ensuring environmental

sustainability, etc of the millennium development.

Fourth, pervasive corruption in all spheres of national life, particularly among the political masters, public servants and private corporate sector, has made Bangladesh the most corrupt country in the world for five consecutive years beginning from 2001. It has damaged the image of the country internationally. It has eaten into the vitals of the economy of the nation and thereby affected accelerated growth of the economy. Consequently, this has affected achieving satisfactory progress on the MDGs.

Last but not the least, the studies undertaken by BBS and BIDS show growing inequalities in income between the poor and the non-poor on the one hand, and between urban and rural areas on the other hand. While income of the poor has slightly increased in recent years, income of the non-poor has increased significantly. Similarly, there has been little increase in household income in rural areas compared to steep rise in household income in urban areas.

To conclude, all out efforts are needed for achieving success with the MDGs. The political parties, particularly the major political parties, should include the strategies for implementing the MDGs in their election manifestos for the forthcoming general election. The next government(s) will have to take all possible measures for making good progress on the MDGs in order to attain complete success by the year 2015.

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Does it matter which party wins?

ROBERT J SAMUELSON

OVEMBER 1, 2006: "Towering over Presidents and [Congress] ... public opinion stands out, in the United States, as the great source of power, the master of servants who tremble before it." -- James Bryce, "The American Commonwealth," 1888.

The problem of American democracy is (of course) democracy. We are on the cusp of an election that commentators have already imbued with vast significance if Democrats recapture part or all of Congress -- or if they don't. But here's something that no one's saying: regardless of who wins, it won't make much difference for most of our pressing problems. We won't have a major new budget policy, energy policy or immigration policy. The election might not even

much affect the Iraq war. In many ways, the election doesn't matter, and all the hoopla is an exercise in delusional hype. We could blame the prospect of divided government or a bipartisan leadership vacuum; both might promote paralysis. But the deeper cause is public opinion. As Bryce saw, our politicians are slaves to public opinion. Superficially, this should be reassuring. Democracy is working, because public attitudes remain the dominant influence -not "big money" or "special inter-

But it is not reassuring. The trouble is that public opinion is often ignorant, confused and contradictory; and so the policies it produces are often ignorant, confused and contradictory -- which means

ests," as many believe.

they're ineffective. The Catch-22 of American democracy is this: a government that mirrors public opinion offends public opinion by failing to do what it promises People then conclude that the system has "failed."

The election is rightly seen as a referendum on the war. In late 2003, 67 percent of Americans thought that President Bush's invasion was the "right decision," reports the Pew Research Center; only 26 percent thought it the "wrong decision." Now views are split, 43 percent "right" and 47 percent "wrong." But it's public opinion, not the election outcome, that matters for policy. Indeed, it explains why the Democrats lack a unified position on Iraq.

Suppose that the Democrats retook Congress but that the situation in Iraq -- and public opinion -improved. Then, Democrats would look foolish if they'd promoted a quick withdrawal. Now suppose that the Republicans kept control of Congress and that the situation in Iraq -- and public opinion -- worsened. Then, the pressure on Bush from Republicans to pull back would intensify. Either way, public opinion

Aside from being fickle, public opinion also marches in many directions at once.

Americans favor balanced budgets. But in 66 years of surveys, taxpayers have never said their income taxes were too low, reports Karlyn Bowman of the American Enterprise Institute. A Gallup poll in April found that 48 percent thought their taxes too high and only 2 percent too low. Americans also think government spending is hugely wasteful; 61 percent said so in a 2004 poll by the University of Michigan. But locating that waste is hard. A recent Fox News poll found that only 19 percent favor cuts in Social Security, 21 percent in health care, 19 percent in education and

25 percent for the military. Or consider energy. Americans crave cheap gasoline. Unfortunately, that increases our oil demand -- which conflicts with our desire to reduce oil imports. Or immigration. A Pew Research Center survey in March said that 52 percent of Americans think immigrants are "a burden because they take jobs and housing." But only 27 percent would require illegal immigrants to go home, and only 40 percent would reduce legal immigration.

Facing such inconsistencies, how can government make sensible policy? Not easily.

Occasionally presidents and congresses get a free pass -- some crisis or event fosters national unity. Bush had such a moment after September 11; Lyndon Johnson had one after John F Kennedy's assassination; Franklin Roosevelt had one in his first 100 days. Otherwise, politicians can deal with public opinion in three ways: ignore it, change it or pander to it. Politicians who choose the first often become ex-politicians. The second is hard; among recent presidents, Ronald Reagan did it best. The easiest course is to pander.

Bush and the Republican Congress happily cut taxes enacted the Medicare drug benefit and praised deficit reduction. Anyone who thinks the Democrats set a higher standard should read "A New Direction for America," the

manifesto issued by House Democratic leader Nancy Pelosi. It proposes much new spending (bigger drug benefits, Pell grants and veterans benefits), new tax breaks, balanced budgets and no specific new taxes.

It also promises energy "independence" by 2020 -- a popular but (unfortunately) impossible goal. We mport 12.5 million barrels of oil a day, 60 percent of our use. No conceivable combination of new fuels and conservation could offset that by 2020. Unsurprisingly, House Republicans also plug energy "independence."

Tell people what they want to hear, regardless of how inaccurate, shortsighted or stupid it might be That's the bipartisan instinct. In this election, the Republicans deserve to lose, and the Democrats don't deserve to win. Yes. I am a longtime believer in divided government. because it may check each party's worst excesses. But don't expect fundamental changes if Democrats reclaim some power.

The enduring significance of public opinion reflects both national optimism and suspicion of power. Believing that all problems can be "solved" -- even if goals are inconsistent -- we blame government for not accomplishing the impossible. We won't acknowledge choices, contradictions, unpalatable facts. So, many problems persist for years. Throwing the bums out is a venerable tradition, but what if the ultimate bums are us?

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