



LAW opinion

What if Article 54 becomes operative?

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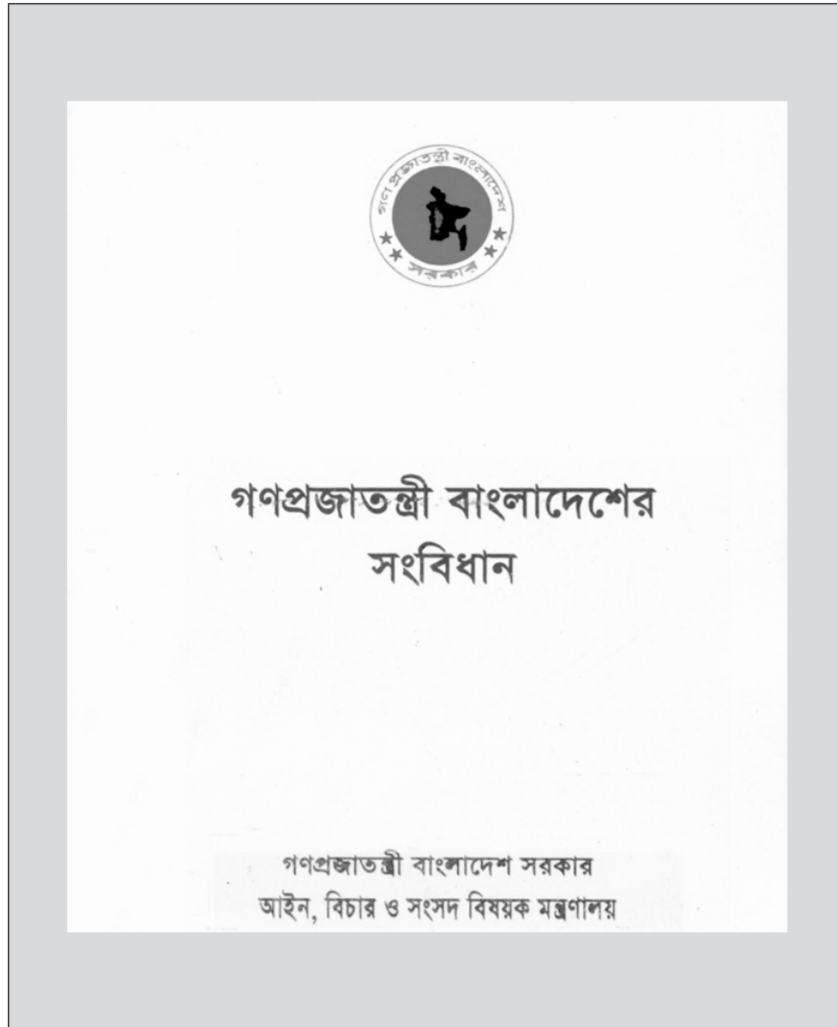
PRESIDENT Professor Dr Iajuddin Ahmed's putting on the cap of the Chief Adviser of the non-party, neutral caretaker government following Article 58C(6) in the wake of the deadlock arising out of opposing stands of AL-led fourteen parties' combine and BNP-led four parties alliance, for the time being apparently paved the way for holding free and fair election by the Election Commission to the ninth parliament. But it has also created a big problem that may upset the whole scenario overnight. It is the possible operation of Article 54 of the Constitution.

Article 54 reads: If a vacancy occurs in the office of President or if the President is unable to discharge the functions of his office on account of absence, illness or any of other cause the Speaker shall discharge those functions until a President is elected or until the President resumes the functions of his office, as the case may be.

If such situation actually does crop up any time then the incumbent speaker of the 8th parliament Barrister Jamiruddin Sircar will put on the shoes of President Iajuddin and become acting President. It is known to all that Professor Iajuddin is not involved directly in the politics of BNP; rather his attachment with Zia Porished was dimly a reality. His political obligation to BNP and to Begum Khaleda Zia may not be so fluid as well. He cannot be ungrateful at least morally to the party and its chairperson for backing him to the office of the Head of the State.

After the dissolution of the parliament on 27th October, constitutional obligations under Article 48(3) are no more alive and now Articles 58B(2) and 58C(6) are on in full swing; whether, under the given circumstances, his moral obligation shall bring anything positively meaningful for BNP and its leader Khaleda Zia is still a matter of gymnastics to be exercised by the President-cum-CA Dr Iajuddin Ahmed.

Meanwhile he, in the exercise of such gymnastics, has made himself a bit of acceptable Chief Adviser to fourteen parties' combine, but his final acceptance depends on the meeting of the eleven points demand placed by the combine. Recently taken initiatives may be just a beginning, but nothing promising and/or



alluring at all. Is it really possible for him to satisfy the combine at the cost of the so-called political benefits of BNP? Justice Shahabuddin Ahmed, President during the rule of AL led government headed by Sheikh Hasina could not stand by Sheikh Hasina at the time of her self defined requirements during the general elections in 2001. It is on record in history that Sheikh Hasina made a Herculean attempt to convince Justice Shahabuddin to become the President in 1996.

Is there any possibility of the same to be repeated in case of President Iajuddin and Khaleda Zia? Sequence of events since 29th October bears testimony that professor Iajuddin, in most cases, willingly or unwillingly, is complying with the outgoing

government led by Khaleda Zia. There is a wave of belief that Dr. Iajuddin's Presidency-cum-Chief Advisership has been strongly tied up with hidden design of the outgoing government. That the four walls of his administration are within the grip of those who are committed and loyal not to the President and CA but to the Hawabhaban. Is the President-cum-CA nothing but a helpless spectator to the ongoing happenings in and around his two-edged administration?

Even an ordinary citizen in the country today does not take time to utter that President's tortoise steps for overhauling and restructuring political setup of the government signal that he may not be going for anything substantial to ensure a

befitting atmosphere where all the political parties including the fourteen parties' combine can sigh a relief to be able to participate in the polls likely to be held in January 2007. Why the President-cum-CA distributed the portfolios of the government in such a manner that ultimately made him sole master of all the major ministries and departments directly connected with elections? The Chief Election Commissioner's views about his resignation is not understandable at all as he is not taking any lesson from his predecessors Justice Sultan Hossain Khan and Justice Sadeque who resigned at the request of the then CTGs. Will President-cum-CA be daring enough to take decision by initiating a drive to refer the matter to the Supreme Judicial Council?

It is not beyond any suspicion that President-cum-CA has taken over burden on his shoulders either forgetting his overall physical fitness or setting it aside, willingly or unwillingly. If there happens any sort of complicity with the health of the President-cum-CA in that case he has no better choice but to go for a rest upon advice of medical board. If such scenario develops then automatically, without any design by any quarter, option for the office of President shall go to the Speaker under Article 54. If there is any hidden design to invite such reality otherwise, option is again for the Speaker to act as President under the same article.

Then the question arises: will the acting president be discharging as acting CA too, as the President is doing?

Sayed Badrul Hasan, a leading columnist, wrote: "The health of the president and the health of the country somehow do not allow us to think that Iajuddin Ahmed can handle all these jobs all by himself. And if he cannot, there arises the very grim spectre of what unknown and fearsome course the country might take should he falter. The speaker of the just-dissolved Jatiya Shangshad, we have been told on good authority, has had to hold a planned tour abroad in abeyance the assumption of near-absolute powers by the president and the postponement of Jamiruddin Sircar's trip are a pointer to the uncertainties we in this country try to muddle through even as we look ahead, tentatively and with trepidation, to a good, healthy general election in January." (Years ago, President Sattar had his chance, November 7, 2006,

The Daily Star.)

After such arrival of the Speaker as the Acting President as well as Acting CA as it appears (situation no option but to allow it), the political landscape shall have a possibility to be upset abruptly because of the direct partisan involvement and role of the Speaker, a BNP groomed politician. It is very difficult to convince oneself that the political situation shall then not be rapidly deteriorating one as a result of which holding of elections to the 9th parliament may not also be possible then.

But as a nation we are not at all pessimistic; we hope against hope. We must be pragmatic in getting rid of any kind of pessimism. The remarks of the chief architect of Bangladesh constitution, Dr Kamal Hossain, deserves to be drawn here logically and relevantly. In an article titled "The caretaker government needs intensive care" published in The Daily Star on 7th November, 2006, he wrote: "The present Caretaker Government cannot continue to remain an important bystander while the administration, the law-enforcing agencies, and the state machinery are manipulated by an 'invisible government,' which has at its care loyalists of the out-going government. To allow them to do so, without accountability, amounts to subversion of the constitution."

He further added: "There is still time to save the country from a constitutional crisis by appointing, without delay, a non-party chief adviser, following the guidelines of clauses 3 to 5 of Article 58C. This would carry out the basic purpose of assuring the nation that it would be governed in the interim period till the election of the next parliament by a non-party caretaker government so that it could, together with an independent Election Commission, hold a fair, free, and peaceful election."

Therefore before signing off, attention must be given to the universal truth that: to err is human President-cum-CA Professor Dr Iajuddin is a man therefore he can err; but there is nothing wrong and shameful to correct such errors and follow the right course courageously.

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LAW news

'Taleban law' passed in Pakistan

Pakistan's North West Frontier Province (NWFP) has passed a bill setting up a Taleban-style department under a cleric to enforce Islamic morality. It gives the new department the power to use the police and media for the promotion of Islamic values. The NWFP is governed by an alliance of religious parties, the MMA, that is sympathetic to the Taleban. It has already introduced measures such as the banning of music on public transport. The BBC's Syed Shoaib Hassan in Karachi says the wording of the bill has been deliberately left vague and therefore open to different interpretations. Critics say this leaves it open to misuse by politicians in the future.

Opposition MPs wore black armbands and staged a walkout from the assembly, saying their proposed changes to the law had been ignored. The move comes only days before the federal assembly is due to debate moves to water down Islamic laws on divorce that have been denounced by women's groups. The Hisba (Accountability) bill was passed in the NWFP assembly by a majority of 66 to 30.

Last year, the province's governor refused to sign a similar bill into effect, and the Supreme Court declared aspects of the proposed law unconstitutional. Under the constitution, the provincial governor is obliged to agree to the latest version, as he is only allowed to veto a bill once. He must give his assent within 30 days of the bill being presented to him. Some of the provisions in the 2005 bill that the Supreme Court criticised have been dropped.

The department will not now have its own police force. It will, however, be able to requisition police "to promote virtue and prevent vice". In other concessions, the power to cap spending on weddings or to enforce an Islamic dress code in public has been removed. The legislation also allows the department to tackle issues like honour killings of women, child labour and ensuring the rights of minority religious groups.

"We had promised an Islamic system to the nation and approval of the Hisba bill is an important step in that direction," NWFP Chief Minister Akram Khan Durrani was quoted as saying by the Associated Press news agency. Commentators say that it remains to be seen which areas of its remit the department will choose to focus on. Last year, President Pervez Musharraf denounced the original bill as a breach of fundamental human rights.

Source: BBC



HUMAN RIGHTS advocacy



Child labor in Asia decreasing

The good news is that child labor in Asia is decreasing. The bad news? It's not declining fast enough. Despite a drop of about 5 million since 2000, working children number an estimated 122 million in Asia, or 64 percent of the worldwide total, according to the International

labor specialist at the ILO, said in an interview. "A large number of working poor means that we have a large number of people who are unable to support children to go to school." Child labor is one of the topics under discussion at the U.N. body's first Asian conference in five



Labor Organization. That's just slightly less than the entire population of Japan.

Though the causes of child labor are complex, the U.N. agency says a key problem is that there are too many people who, despite wanting their children in school, either can't afford fees or related costs like transportation and uniforms or would find it hard to get by without the extra income.

In such an environment, many families send their kids to work — in the fields, in factories, selling trinkets on the street or even in dangerous work sites like mines. "The problem is the reduction in Asia is not as rapid as it should be," Panudda Boonpala, senior child

years. Under the theme of "Realizing Decent Work," government representatives from 40 countries and territories as well as workers' and employers' organizations have been meeting this week to discuss issues such as youth employment, migration, globalization, competitiveness and productivity.

Participants in a session on youth employment watched a short video on child labor, in which children were shown working at a gold mine in Mongolia. In a report on labor and social trends in the region, the ILO said that the number of child workers, defined as being between the ages of 5 to 14, in Asia fell to 122.3 million in 2004 from 127.3 million four years ear-

lier. South Asia, which includes Afghanistan, India, Pakistan, Bangladesh and Sri Lanka, remains a child labor hotspot, according to World Bank statistics contained in the ILO report. Perhaps nowhere is the problem more acute than in Nepal, where as of 2004, according to the ILO, nearly 40 percent of children aged 10-14 were working, sometimes for long hours and in jobs requiring strenuous physical labor such as in mines, quarries and carpet factories. But even there, the statistics show improvement, with the percentage of children on the job declining from near 50 percent in 1990. The Philippines, which has a national action plan crafted under ILO guidance, has also shown improvement, though problems remain in areas such as fireworks production, deep-sea fishing and mining. "The laws are all there," said Undersecretary of Labor and Employment Manuel G. Imson. He added that the government is working to enforce them by cooperating with NGOs and national organizations like the police. Perceptions have also improved. "I think 10 years ago there was lots of denial," the ILO's Panudda said. Further progress, however, depends on how much effort and resources Asian countries put into the fight, she added. People who work as children also have less chance of securing good jobs in early adulthood because their lack of basic schooling makes it hard for them to receive skills in the form of vocational education. The ILO is committed to ending what it calls the worst forms of child labor and abuse, which include slavery, using children in armed conflicts, trafficking in sex and drugs and hazardous labor, over the next 10 years.

Source: The New York Times.

LAW week

Aziz wants to announce polls schedule Nov 25

Chief Election Commissioner (CEC) MA Aziz remains nonchalant about the growing crisis in the political arena centring demands for his immediate resignation and is preparing to declare the schedules for the next general elections. "The election schedules will be declared by November 25," Aziz told reporters while leaving his office yesterday afternoon. He, however, repeatedly declined earlier to talk to reporters who tried to communicate him through his personal secretary. Aziz declined to answer any further questions regarding the next parliamentary elections and left the EC premises amid tight security. Meanwhile, the 14-party alliance led by Awami League (AL) also remains rigid on its stance against participating in the polls under the present Aziz-led Election Commission (EC). In the wake of prevailing situation, the other election commissioners and officials at the EC Secretariat have become frustrated as the preparatory work is not going on smoothly. Although the secretariat has been carrying out some routine work, it is not adequate to conduct the polls in early January, they said. Sources close to Aziz said he is still indifferent about the growing volatile political situation. He did not discuss the latest political situation at the EC meeting and other election commissioners also did not raise the issue, sources added. Officials in the EC Secretariat also said Aziz remains silent if any one informs him of the deteriorating political situation. -The Daily Star, November 13.

Mokhlesur now an adviser with state minister's rank

President Iajuddin Ahmed appointed his controversial Press Secretary Mokhlesur Rahman Chowdhury as an adviser with the rank and status of a state minister. Mokhlesur was politically appointed to the president's press secretary post during the immediate past BNP regime. A handout from the Cabinet Division disclosed the appointment without saying which portfolio he received. The appointment, however, raised confusion and legal questions, as the caretaker government already has 11 advisers with the president as his chief. "The president has no jurisdiction to appoint more than 10 advisers," said Barrister Tanjib ul Alam, "A clear violation of the constitution," he added. Awami League (AL) Publicity Secretary Asaduzzaman Noor said they would lodge a protest against the appointment. "He is appointed with ill intentions," said Noor, adding that Mokhlesur was appointed politically by the BNP regime. Political parties have been demanding the cancellation of all political appointments, Noor said. BNP gave the appointment to Mokhlesur in the office of the president to have access to information about the council's decisions and other state related matters, he added. Meanwhile, several advisers to the caretaker government expressed their annoyance at Mokhlesur's attending the meeting of the advisers' council, a violation of the rule, as he is the press secretary to the president, sources said. Liberal Democratic Party (LDP) recently accused Mokhlesur for despatching information by attending the council meetings. -The Daily Star, November 14.

Army Deployment Circular Home secy's transfer halted mysteriously

A move to transfer Home Secretary SM Jahurul Islam to the education ministry has halted midway for a mysterious reason. Jahurul issued the controversial circular regarding army

deployment, keeping the advisers to the caretaker government in the dark. President and Chief Adviser Iajuddin Ahmed summoned him to the Bangabhaban for an explanation and the same day a step was initiated to send him to the education ministry. According to sources, the president also wanted to know from the home secretary whether he had taken any action against the policemen responsible for the mayhem at Karwan Bazar that left one killed and several others injured. In reply, the home secretary informed Iajuddin that he was going to discipline Kohinor Mia, the deputy police commissioner who had ordered for shooting high-pressure hot water on the demonstrators. Jahurul asked the president not to like him to Kohinor and said he was ready to quit his job or comply with any transfer order, added the sources. Later, the establishment secretary was asked to take the dossier on the embattled home secretary to the Bangabhaban, but soon the move stopped for a reason not yet known. The 'unlawful and devious' decision [to deploy troops], which was eventually cancelled, had stunned the council of advisers, and some of them have requested the chief adviser (also in charge of the home ministry) to take disciplinary action against Jahurul Islam. -The Daily Star, November 15.

Uphold democratic spirit and human rights

Speakers tell int'l confce in London

Speakers at an international conference in London have expressed concern over recent political developments in Bangladesh and stressed the need to uphold the country's democratic spirit and fundamental human rights. Policy Exchange, London, in association with the US-based Hudson Institute, The New Statesman and the International Bangladesh Foundation organised the conference on November 15, according to a press release received in Dhaka. Dean Godson of Policy Exchange and Maneeza Hossain of Hudson Institute jointly opened the conference. Representatives of the three main UK political parties, Awami League leader Saber Hossain Chowdhury and former law minister Moudud Ahmed of BNP attended the conference where the speakers urged the UK government to listen to the concerns being expressed by the Bengali population in the UK about the forthcoming elections in Bangladesh. Mahfuz Anam, editor and publisher of The Daily Star, delivered the keynote address while Lord Avebury, Dean Godson and former British high commissioner to Bangladesh Peter Fowler chaired the sessions. Nicholas Boles, director of the Policy Exchange, said: "Whether the BNP or the Awami League forms the next government is, in a sense, not the point: Bangladesh democracy must be the winner." Shamsuddin Choudhury Manik, a former justice, and Mohidur Rahman, international coordinator of the UK BNP, Dr Reza Kibria and MA Malik, UK BNP secretary, took part in the discussion. In the final session, Abbas Faiz of Amnesty International, Shahriar Kabir, acting president of Forum for Secular Bangladesh, Ahmed Ziauddin of Centre for Genocide Studies, and Brad Adams of Human Rights Watch raised their concerns about human rights violations. -The Daily Star, November 16.

CEC's removal, transfer of biased staff key to fair polls

Removal of the controversial Chief Election Commissioner (CEC) and other commissioners and transfer of biased officials is the prime condition for a free and fair election, eminent citizens said. At a press conference at the National Press Club, they demanded that the chief adviser and

other advisers work collectively as a cabinet, upholding the spirit of the parliamentary form of government. They expressed concern over the slow pace of the activities of the caretaker government, especially the chief adviser, in creating a congenial environment for a fair election by making necessary transfers in the civil and police administration. They urged the political parties to design their next course of action keeping in mind the public sufferings and damage to the country's economy. The citizens appreciated the caretaker government's initiative of consulting the political parties on reconstitution of the Election Commission (EC). Dr Ajay Roy, a professor Dhaka University, read out a written speech on behalf of the citizens. Referring to the appointment of the president's former press secretary as an adviser to the caretaker government, he said, "The official had already been controversial. So, his promotion has raised question over the neutral character of the caretaker government." Controversial police officer Kohinor Miah should be kept closed until completion of a probe, he said. He demanded compensation to the family of the killed and injured in the Karwan Bazar incident. He demanded immediate removal of the home secretary and a neutral probe into how and why the home secretary issued a circular on the deployment of army in aid to the civil administration without any consultation with the president/chief adviser or other advisers. -Prothom Alo, November 16.

No election commissioner willing to quit Claims EC

The Election Commission (EC) Secretariat claimed that none of the election commissioners is willing to resign now while the three election commissioners, who earlier told reporters of their unwillingness to continue their job, remained silent. "They [election commissioners] do not have the attitude to resign from the posts. I talked to them," Secretary to the EC Secretariat Abdur Rashid Sarkar told reporters in his office. Directed by Chief Election Commissioner (CEC) MA Aziz, the EC secretariat in a press release yesterday termed 'baseless' the report run by a section of newspapers and electronic media that the election commissioners and the EC secretary were unwilling to discharge their duties. The media published the report in a bid to create confusion, the release said. Terming the Election Commission a constitutional body, the EC secretariat urged all concerned to refrain from creating confusion through running reports that are not based on information. The three election commissioners — Justice Mahfuzur Rahman, SM Zakaria and Mahmud Hasan Mansur — who earlier told reporters that they were unwilling to continue the job amid the volatile political situation, yesterday declined to talk to journalists on the issue. Journalists sought appointment from the three election commissioners separately through their personal secretaries, but the personal secretaries said the commissioners would not talk to newsmen on the matter. -The Daily Star, November 16.

Corresponding with the Law Desk

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