

The Acting CEC

He must act with greater prudence than his predecessor

It must be said that there was something ungraceful about the way Justice Mahfuzur Rahman declared himself the acting CEC. It looked as if there was an empty chair and he rushed to occupy it. One can argue that the three sitting members of EC were left with very little option but to go ahead and do something. But that something should have been consultation with the President before the three election commissioners made the move that they did. We have two former CECs speaking on record that the decision should have been left to the President or at least the three EC members should have discussed the matter with him before convening their meeting. It looked that they tried to pre-empt any move that the President might have had in mind.

This impression got currency when the acting CEC, in his very first press meet, said that "There was no scope to change the decision" and added that he would not accept anybody placed above him. He particularly hinted at any secretary being placed as the acting CEC. The reason, he said, was that as a judge of the appellate division his position was far above that of any secretary in the order of precedence. Here the acting CEC has unnecessarily dragged himself into a controversy. He is wrong about his "warrant of precedence" argument as it only applies when one is serving. After retirement no such order of precedence applies. Again why should he say that there is no scope to change this decision, particularly as it deals with him, and as he was the initiator, according to his own admission, of the meeting that made him the acting CEC?

He also did not have to make any comments about the nature of parties now making up the 14-party alliance. Such comments equally apply to other alliances.

The country has already suffered from a prolonged political confrontation resulting in severe damage to the economy (see editorial below). We must now move ahead, full speed, to ensure a free and fair election. The acting CEC has a very difficult task, which he should not make more difficult by careless remarks. As recent political events have proved, if proof was at all necessary, without the acceptance of the two major parties nothing really can be done. So the new acting CEC must do everything to earn that confidence, including that of the civil society, the media and the people in general. Winning public confidence is crucial to delivering a free and fair election. Judges tend to look at this job more from the legal perspective and ignore the political and public confidence aspects. That is where Justice Aziz went so fundamentally wrong. Justice Rahman must not make the same mistake, though he said "I will do what MA Aziz would do". We hope not.

Economic loss of blockade

Alternative programmes must be searched

WHATEVER gains the leaders of the two major political alliances are claiming for themselves are no doubt costing the nation dearly. While shortsightedness and obstinacy rule the roost, country's economy takes a plunge for the worse. Example from only one sector will throw enough light on the magnitude of financial loss that the traders had incurred in the past months with the two main political alliances imposing programmes and counter-programmes.

According to one source, the traders engaged in the business of perishable goods like fish and vegetables, incurred a daily loss of Tk. 200 crore because of the country-wide blockade and other programmes that made safe and timely transportation of such items to the intended destinations next to impossible. We must also keep in mind the evil machination of the syndicates of importers and wholesalers for the last two years or more that has totally destabilised the markets of essential commodities.

The Bangladesh Cold Storage Association has also sent distress signals to the relevant authorities to allow release of imported potato seeds worth about Tk. 100 crore from the port on an emergency basis. According to the association leaders if the seeds do not reach the farmers there will be acute crisis of potato in the market, the price of which is already going up. With the lifting of the blockade we hope essential goods will be released and taken to the intended destination without further delay.

We have always remained vocal about the damaging effect of political programmes like hartal and blockade as most of the time such programmes turn out to be counter-productive. We strongly believe people would welcome any political programme that would not affect normal flow of life and yet attain the objectives. It is time for the political leaders to stop making the people hostage for attaining their objectives. They must search for political programmes that support rather than ruin our economy.

Depoliticisation of administration is imperative

MUSTAFA CHOWDHURY

BANGLADESH is facing a political crisis that is quite different from other crises which it had faced in the past. The term "crisis" is used here to mean certain tendencies toward steady deterioration within the polity. The present crisis refers to certain problems which, if unresolved, will lead to the breakdown of a democratic political order.

Crisis may originate from the failure of the rulers to resolve certain conflicts and solve problems. Political crises do not occur if the government can sustain legitimacy, promote socio-economic development and maintain order without coercion. The inability of the rulers to perform these tasks can be conceptualised as a manifestation of crisis. Therefore, effectiveness is highly significant for the sustenance of a democratic government. Effectiveness can enhance legitimacy, and vice-versa. However, the cost of maintaining effectiveness without legitimacy can be very high.

A few comments may be made about the democratic nature of politics, which is based on the twin principles of majority rule and freedom of dissent. Majority rule is the fundamental operational principle of a democratic govern-

ment. It implies two things. First, it applies to the electoral process in that the candidate who gets the largest number of votes in an election becomes the representative for the societal unit. It is, therefore, necessary to hold the election in a free and fair manner. Manipulation of the election process by the party in power will destroy the basic fabric of the democratic system. Secondly, representatives must make policy decisions to promote the welfare of the citizens. However, the doctrine of majority rule is by no means absolute because not even if the majority is competent to speak perfectly, or permanently, for all. For example, if a majority decided to abolish one of the basic freedoms, such as the right to speak freely, freedom of association or the right of franchise the system would cease to be democratic. It is important to note that if the party in power tries to manipulate the election in the name of the majority, conscious citizens would never accept such a move. Such tampering with democratic values, even by the majority, is normally considered to be unacceptable in democratic political systems.

A corollary of the limitation on the principle of majority rule is that the minority will accept decisions of the majority as long as the majority does not violate such

democratic values as political equality and the right to franchise. A political system ceases to be democratic if the minority refuses to accept a decision of the majority that suppresses the legitimate rights of the minority and the people in general.

The BNP-alliance came to power in 2001, and tried to rule the nation in the name of the majority. People expected that the installation of an elected government would set up a democratic political order, but the behaviour of the BNP-alliance during its five-year rule resulted in its failure to rule the nation democratically. Its various policies and behaviour had antagonised the opposition parties and the people in general. It failed to overcome terrorism, and the party officials resorted to massive corruption. Some of the ministers reportedly amassed huge amounts of wealth. The BNP-alliance had failed to control the rising prices of essential commodities. It is alleged that some BNP-alliance party high-ups had formed a syndicate to control the prices of commodities. This syndicate amassed unprecedented amount of wealth.

The political crisis that first developed began with the issue of the non-party caretaker government, which the BNP Government was forced to introduce in 1996 as

a result of the demand of the Awami League, other parties and the people. The non-party caretaker government was introduced to stop manipulation of the national election. The February 15, 1996, election was a rigged one. As a result of this rigged election, a non-party caretaker government was introduced to discharge its functions as an interim arrangement, which would carry on the routine functions of government and give the "Election Commission all possible aid and assistance that may be required for holding the general election of Members of Parliament peacefully, fairly and impartially."

The BNP-alliance government was responsible for creating the national crisis regarding the non-party caretaker government by extending the retirement age limit of Justices from 65 to 67 years. This was done with a motive to install Justice K. M. Hassan, who was the International Secretary of BNP, as the chief adviser of the non-party caretaker government. This created suspicion in the minds of opposition political parties because it was believed that the BNP-alliance extended the retirement age of Justices to influence the next general election. Ultimately, this led to the movement of the 14-party alliance against the move to install Justice

K.M. Hassan as the caretaker chief. The opposition political parties demanded two things: replacement of Justice K.M. Hassan by any other person according to article 58C(3,4,5) of the Constitution of Bangladesh, and transfer of the authority of the president to use the armed forces to the non-party caretaker government.

It may be noted that the use of armed forces by the president requires the consent of the prime minister during the tenure of an elected government. The Thirteenth Amendment to the Constitution, which was passed by the BNP government in 1996, transferred the power of using the armed forces to the president during the functioning of the non-party caretaker government. Since the president is a party person, Awami League and its allied parties demanded the transfer of power of using the armed forces from the president to the chief adviser of the caretaker government. These were the reforms demanded by the 14-party alliance.

In the face of strong opposition from political parties led by Sheikh Hasina, Justice K.M. Hassan had to express unwillingness to accept the position of the chief adviser of the caretaker government. Soon thereafter, the president appar-

ently by-passed articles 58C (3, 4, 5) and took oath as the chief adviser of the caretaker government under article 58C(6) of the constitution. This assumption of the post of chief adviser by the president has violated the provisions of the Constitution of Bangladesh. However, the 14-party alliance accepted the president as caretaker chief on condition that he prove his neutrality by his actions as chief adviser.

All political parties except the BNP-alliance demanded the reconstitution of the Election Commission (E.C.) since, with its Chief M.A. Aziz, has failed to prepare the electoral roll fairly. About 14 million false voters were registered by the Election Commission. No action has yet been taken against the persons who were involved in registering false voters. This action, and other actions regarding the process of preparing the electoral roll have created suspicion in the minds of the political parties that the CEC, and three election commissioners are not acting neutrally. Consequently, these parties have demanded the reconstitution of the Election Commission and launched a movement, the culmination of which ended with "Dhaka Siege" programme.

It is believed by all political parties, except the BNP-alliance,

that under the present set-up of the Election Commission, a free and fair election cannot be held. Therefore, reconstitution of the Election Commission is absolutely necessary in order to hold a free and fair election, and to sustain the democratic process.

Another factor which has contributed to the political crisis is the politicisation of the administration. The BNP-alliance government created a band of officials by giving undue promotion on the basis of party affiliation, and posted them to different districts and to important positions in the Secretariat. The BNP-alliance government also politicised the police administration. It recruited many Jatityabadi Chhatra Dal activists in the police service. These police personnel acted, and are acting, in favour of the BNP-alliance. Politicisation of civil and police administration has made the services ineffective and inefficient, and violated the principle of neutrality as desired by Max Weber. Moreover, the BNP-alliance government also politicised the judiciary, which is regarded as the guardian of the constitution, and the protector of the rights of the citizens.

Certain recommendations may be made to hold a free and fair election which is the life-blood of democracy:

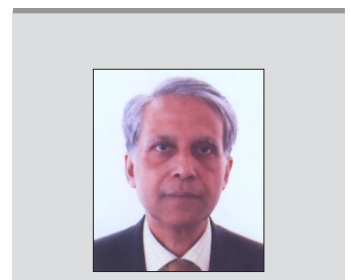
a) The president should cease to be the chief adviser of the non-party caretaker government, and should appoint a person as chief adviser by following article 58C(5) of the constitution.

b) Partition chief election commissioner, election commissioners and secretary of election commission should be changed, and these positions should be filled up by the president after consultation with the major political parties. It is a democratic practice that if people lose trust in any person, he should resign. The constitution cannot be a bar to the removal of the persons holding constitutional positions. The constitution is for the people, not the people for the constitution.

c) Depoliticisation of those positions related to election activities is imperative. I believe these will help overcome the national crisis and contribute significantly to the sustenance of democracy. Failure to conduct a free and fair election will severely damage the democratic process in Bangladesh.

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Are we really out of the tunnel?



MUHAMMAD ZAMIR

THE last few days have witnessed blockades, but contrary to what happened towards the end of October, this time round, it has been generally peaceful barring stray minor incidents in different parts of the country. There have been demonstrations, but there have also been festivities on the streets with cartoonists having a field day.

Journalists and media representatives have been in the front line and despite severe limitations and provocations have continued the difficult task of providing breaking news both for the print as well as the electronic media. We have also had several roundtable discussions participated by jurists, educationists, politicians, columnists and representatives of civil society. Such panels have underlined the need for calm and a peaceful resolution of the continuing crisis.

There has however been a common threat in all the above developments. An overwhelming consensus has emerged on the need to take all necessary steps for the holding of a free and fair election in January, 2007. This has forced the Caretaker Chief Adviser to take some action. This has been a victory of people's rights.

The momentum of this public upheaval received an added spurt

Many issues still remain till we can claim that we are out of the tunnel and are suffused with light. Departure of one individual is not enough. It will have a catalytic effect but there are several other steps that need to be taken before our journey can even start. The light at the end of the tunnel might just be another train rushing in towards us.

from the Resolution approved by the European Parliament in Strasbourg, France on 16 November, 2006. This international development has had its own impact. It was immediately reflected in the clearer language on the part of our development partners -- USA, UK and the members of the European Union -- and the need to reconstitute our Election Commission. The stakes were raised in a manner of speaking through the foreign envoys expressing their concern during their meetings with different Advisers and stressing on the need for immediate changes in the Election Commission to ensure that future election results are deemed acceptable both at home and abroad. Moral thresholds were identified and the electoral mechanism in place was found wanting. The net result -- MA Aziz has agreed to go on leave.

Hopes have been expressed by many that the temporary departure of the controversial Justice MA Aziz, from the helm of the Election Commission might herald a fairer, non-partisan electoral process. I personally consider such an assumption as superficial.

His departure might contribute towards resumption of a semblance of normalcy on the streets and also in trade and economic activities. However, many other serious questions will remain.

These factors will determine whether there will really be light at the end of the tunnel. The road ahead is filled with many pot-holes, any one of which might trip the future electoral process.

The first and the most obvious factor will be the re-constitution of the Election Commission, appointment of an Acting Chief Election Commissioner and other Commissioners. A sensitive and complex legal task, this will require pragmatism, balance and flexibility. Otherwise, the emerging factorisation will not resolve the debate that is now associated with this institution.

All concerned in the Caretaker Administration have to understand that the efforts to reform the Election Commission and the public reaction on the streets are aimed at improving the efficiency of the institution, and stop the transformation of it becoming a tool for any particular political party. Justice MA Aziz's going on leave has been a step in the right direction but that definitely is just one of many other required steps. The President as Chief Adviser has to address himself to these issues.

The second outstanding aspect revolves around the voters list prepared by the Election Commission. Its present status is considered unacceptable both within Bangladesh and abroad. The 14 Party Alliance have now

been joined in their criticism by other political parties and the civil society. They have pointed out many inadequacies in this list. It has also been the subject of judicial process.

The NDI team that visited Bangladesh earlier this year, after meetings with civil society representatives and leaders of political parties came to the conclusion that the voters' list needs rectification. Similar sentiments have now been expressed by the European Parliament in their near consensus resolution on the situation obtaining in our country. They have stated that 'compilation of the electoral register' has been heavily criticized by domestic and international observers. They have also pointed out that 'according to an estimate of the EU Commission 13 million of invalid names have been added to the register'. These have not been very kind words and do not speak well of the manner in which our Election Commission and the Secretary of the Election Commission Secretariat have functioned over the last year. Public money has been spent and at the end of the day we have a flawed voters list.

We are only a few days away from the announcement of the election schedule. Against this background, we have in our hands a voters' list that is far from satisfactory. We are talking here of revision, deletion and scrutiny of millions of names. I am not sure that any one can assure the electorate that such a task can be completed satisfactorily within the next two weeks, leaving us still time for the printing of the corrected list as required within the electoral process. This also has to be dovetailed within the election schedule.

Next comes the question of 1107 officials at the Thana, Union and District levels who will be expected to monitor and ensure that the election is free and fair. These include law enforcement officials. The mind-set of these officials will be crucial on the polling day and the week leading up to that date. I hope that these officials will be able to rise over the partisanship created through election engineering.

The Caretaker Administration over the last two weeks have taken certain superficial steps and transferred an insignificant number of officials through an administrative merry-go-round. An analysis of the effort undertaken however indicates that there has been little change of the situation on the ground.

I have no hesitation in stating that the failure of the Caretaker Administration in taking speedy and requisite steps towards the creation of a 'level playing field' and dealing effectively with the governance problem has harmed us considerably. We have lost precious weeks.

The sorry state of affairs facing us today also includes the question of guaranteeing equal opportunities for the non-Muslim electorate. Many of them, considered a vote bank of a particular political party, have deliberately been left out of the voters list by the enumerators. This method of disenfranchisement has been a negation of their fundamental rights.

Undue harassment and erosion of secular democracy have left

moderate us elsewhere.

What the Polish ambassador spelled out to me (I was then Home Minister G.B Pant's press officer) was swap of sorts. China would recognise the McMahon Line, enunciating most of Arunachal as part of the Indian territories provided New Delhi accepted Chinese suzerainty over the Aksai Chin. Jawaharlal Nehru, then the Prime Minister, was willing to give it on a perpetual lease. But the public in India was too angry to accept the proposal because of the border clashes where many Indian soldiers had died.

Forty-five years ago when this happened, followed by a war, both China and India were struggling countries -- highly nationalist and suspicious. Today, they are emerging economies which need to transcend their shores. At least, they have to understand each other now. New Delhi should seriously think over the proposal to exchange Aksai Chin with Arunachal if China's old proposal still stands.

Beijing should, in the meanwhile, show its gesture by accepting the 1962 Colombo proposal which suggested, one, nowhere would Indian troops be required any further withdrawals; two, the McMahon Line would be more or less the ceasefire line. (India gave an assurance that it would not take its troops right up to the McMahon Line even though the Colombo conference had allowed it to do so).

Hu Jintao has said enough at New Delhi to indicate China's desire to help foster closer rela-

tionship and firmer commitment to sort out even the intractable border question. The various agreement signed at New Delhi evoke hope that in the days to come the two countries would adjust their relationship in such a way that the nations in South East Asia and South Asia do not have to fear New Delhi or Beijing. There are no areas of influence or interest. Both should jointly formulate programmes to help the countries develop a common market, like the arrangement in Europe.

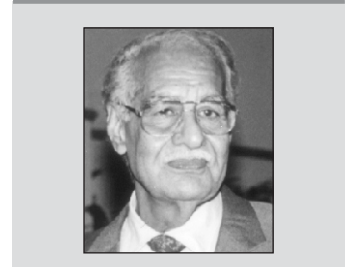
Both New Delhi and Beijing have done well to keep aside the border problem and promote business between the two. Doubling the trade in another four years is quite a challenge. This requires peace and understanding. They have indicated a lot of it in their statements and agreements. But they are yet to go beyond the paper.

Islamabad should appreciate this point. It may not have been involved in all the blasts in India. But the perception at Delhi is that the military government at Islamabad wants to destabilise India. The trouble in Kashmir is considered part of the scheme. Islamabad has to falsify the impression. Both India and Pakistan should realise that there is no option to peace because only then will they be able to settle down to development. It has been experienced all over the world that economic ties strengthen political ties in the long run. India and Pakistan should not behave as if they are an exception.

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Chinese lesson for Pakistan



KULDIP NAYAR
writes from New Delhi

CHINESE President Hu Jintao's visit to New Delhi, within a space of 10 days of talks between foreign secretaries of India and Pakistan, may be a coincidence. But it sums up our foreign options. Both Beijing and Islamabad are most important places because their attitude tells upon our economic growth and security considerations.

Both Pakistan and China are intransigent neighbours. Both are nuclear powers. Both have fought wars against us. And both, firmly close to each other, matter in our pursuit to get a rightful place in the comity of nations. Who can stop us from permanent membership of the Security Council if we mend fences with the two countries?

Our problems with Pakistan and China, in that order, are not going to be resolved in a few sittings or a few years. They are territorial, strategic, and, above all, emotional. There is no easy solution. If New Delhi were to rise about its personal gains and past hurts, it would realise that a bit of accommodation to the concerns of Pakistan and China may not be a bad investment. Our approach

BETWEEN THE LINES

Both New Delhi and Beijing have done well to keep aside the border problem and promote business between the two. Doubling the trade in another four years is quite a challenge. This requires peace and understanding. Islamabad should appreciate this point. The perception at Delhi is that the military government at Islamabad wants to destabilise India. Islamabad has to falsify the impression. Both India and Pakistan should realise that there is no option to peace because only then will they be able to settle down to development. It has been experienced all over the world that economic ties strengthen political ties in the long run.

cannot be based on the policy of "we" and "they." It has to be consensual, buttressed by the spirit of give and take.

Talks between the foreign secretaries of India and Pakistan were useful because they revived the peace process which was gasping for breath. But the meeting did not serve the real purpose. The issue was terrorism and whether Islamabad was involved in Mumbai bomb blasts. We claimed we had nearly clinching evidence. Many in Pakistan too had come to believe that ISI, the parallel government, had a hand in the blasts.

For our foreign secretary to say at the meeting that information could be handed over only after a charge-sheet was filed in the court was a let down, only a legal quibbling. If that was the case, why did we go to town that the evidence would be provided at the meeting? This is not to say that Islamabad has no hand in the blast in India. But our case has weakened. Even

the arrest of the 'Pakistani' in this connection may not be that of 'Pakistani.'

We have given information on Islamabad's "complicity" in the blasts at Varanasi. But the Pakistan foreign secretary has already said that a confession can always be extracted by the police. The joint mechanism which both countries have set up may not get at terrorists if we indulge in technicalities. A court case is sub-judice, not the information given before registration.

Had we signed an agreement on the Siachen glacier we would have attended to Pakistan's concerns as well. Seeing the change, Islamabad might have been more forthcoming on the activity of terrorists in its territory and might have dismantled the training camps that are still in operation.

Siachen glacier problem boils down to deployment of troops on both sides. Every time the problem is near a solution, some one raises objections. This time our army has

said that vacating Siachen would weaken India's defence. Yet, back channel diplomacy gives another message because Pakistan's foreign minister Khurshid Mahmood Kasuri said that the solution was "a matter of days, not weeks." What goes wrong where and who is to blame should be made public. Even after initiating an agreement during the Rajiv Gandhi regime we have been hedging. There may be an element of risk but it generates good will.

Goodwill is what needs to be generated in our relations with China. It seems to have sorted out the doubts. Hu's visit indicates that we have yet to formulate our stance. The controversy over the Aksai Chin says it all. The area is under China's occupation, although it is part of our territory. In the fifties and the early sixties China made many overtures to let India know that Aksai Chin was essential for it to link Sinkiang with Tibet. China was willing to accom-