

Chipping away at the Government's Authority

There suddenly appears to be a surge of rightist fundamentalist action with each element in it having the seed of destabilising the state and spreading social disorder. These incidents could very well be unconnected in that the perpetrators may not have hatched the thrust sitting in villainous sessions. But their effect nevertheless is very evidently engendering social turmoil and is even poised to undermine the fundamentals of the existence of our state and society.

The attacks on newspaper offices and their transport and distribution activity are very plainly premeditated actions mounted by zealots of some particular political persuasion. The same applies to the demonstrations denouncing certain very provocative utterances of indiscretion by a writer which have forced the hand of the state to take a stand. And then to cap it all, for the moment at least, was the highly depre-ciable act of lowering the national flag that the Jatiya Sangsad flies in front of its seat symbolising the sovereignty of this nation, and replacing it by some contrivance of a piece of cloth making this unlikely to be an act of sheer vandalism.

The perpetrators of these and possible similar future actions have chosen their time well. The government is agreeably in a very vulnerable position owing to its foolish excesses in the Magura election, in the aftermath of which the Opposition in one phalanx has been decimating it of its moral authority to rule and conduct the next elections. The continuing Prokrishi-BCS action and the prolonged teachers' strike have also done their bit of denting government's equanimous handling of things and in the end its self-confidence. Sectarian-interest groups such as the fundamentalists could not hope to find a more opportune moment of strike. And their calculation is readily paying dividends in the government's gathering itself to sending overtures and harking back to the apertures it once had prided pressed by the necessity of beating Awami League to state power. The same necessity of beating Awami League's mounting pressures is very visibly making the government go soft on the fundamentalists. This has resulted in the government's failing to find the right resolve to respond to the rightist imprecations with any amount of strength.

That this is going to prove very dissipating to the BNP's temper of governance is indubitable. And with it the social and political fabric of the nation is also sure to suffer injury.

Only Dialogue can Resolve the Issue

The nation would have heaved a sigh of relief yesterday had the first sitting of the Parliament's budget session assumed the look of a full House with the Opposition in attendance. But if that has proved to be something of an euphoria — briefly, so we would like to believe — all is not certainly lost. We take heart in the fact that Speaker Shaikh Razzak Ali, who has lately acquired a new esteem with his neutrality credentials after having spurned high party positions, has taken up the role of bringing the BNP and the opposition into an immediate dialogue aimed at ending the political deadlock over the caretaker government issue. Yesterday's long sessions of the Speaker with both Begum Khaleda Zia and Sheikh Hasina may not have resolved the crisis, but have atleast provided some genuine communication between the two sides.

We welcome Speaker Razzak Ali's overture which has had two well-thought-out aspects to it. First, he has been labouriously trying to persuade the leaders of the opposing camps to hold an official meeting, as distinguished from emissary-level unofficial talks for devising ways and means to resolve the crisis. Secondly, with the spade-work so done, the BNP and AL chiefs Begum Khaleda Zia and Sheikh Hasina could meet at the summit level to iron out their differences in the light of the formula agreed upon at the pre-summit meeting.

Prime Minister Begum Khaleda Zia has reportedly responded to the Speaker's request for a dialogue with the Opposition leader Sheikh Hasina. But the latter has made the summit meet conditional upon a BNP-initiated bill in the Parliament for holding the national elections under a caretaker government. In keeping with this tenor, the Opposition leaders have rejected the offer for official talks with the ruling party leaders, made by BNP secretary general Abdus Salam Talukdar.

If the Opposition is serious about a change in the Constitution, then they will have to enter into a dialogue with the BNP for reaching an understanding on the issue like they had done in regard to the 12th amendment to the Constitution. But for the Opposition to come to a dialogue, the ruling party will have to create the appropriate conditions so that such a dialogue can take place.

Let the middle ground be hit to save democracy. We appeal to both the parties to put the interest of the nation and of our down-trodden people above everything else.

The Daily Star Public Debate: What do Our Readers Think?

Referendum on Caretaker Government is the Solution

by Abdur Razzaq

In 1991 a caretaker government presented the country with a democratic government, in 1994 the democratic government is refusing to accept the idea of a caretaker government. In 1991 through a caretaker government, the nation averted a constitutional crisis, in 1994 the issue of caretaker government has created a political crisis and may lead to a constitutional crisis. There are arguments for and against. But this is not an issue which can be brushed aside. This is not an idea which can be imposed upon. By applying the accepted democratic norms and procedures, the nation should find a solution. The government has a greater responsibility. The Opposition should also behave sensibly.

Opposing the idea, a number of points have been raised on behalf of the government: there is no precedent of holding elections under a caretaker government, there is no provision in the constitution for holding such elections, it is unconstitutional, caretaker government cannot be an alternative to an elected government, even if Parliamentary elections are held under a caretaker government by-elections and local elections cannot be so held, the solution lies not in caretaker government but in strengthening the Election Commission and so on.

Precedent or want of it cannot alone justify a proposition. But if one is needed, last election in Pakistan is one such precedent, even if for argument's sake the 1991 election in Bangladesh under a caretaker government is excluded.

True, there is no provision in the constitution for holding elections under a caretaker government, the whole exercise is to incorporate such a provision. But to say that holding elections under a caretaker government would be unconstitutional is to say something wholly different which has very wider constitutional implications. Because under no circumstances an unconstitutional provision can be incorporated in the Constitution even if it is done by Parliament unanimously. This will be beyond the amending powers of Parliament and hence unconstitutional. But it is not for

the government, and far less for any minister, to rule upon the constitutionality or otherwise of the proposed amendment. It is the Supreme Court and Supreme Court alone which can pass an opinion on that.

We are of the opinion that Articles 57 and 58 of the Constitution may be amended to incorporate the provisions of holding elections under a caretaker government without offending the basic structures of the Constitution within the meaning of Supreme Court's judgement in the famous Constitution (Eighth Amendment) Case. It will not offend Article 11 of the Constitution, because the sole object of holding elections under a caretaker government is to provide guarantee for democratic process which is also incidentally the object of Article 11, and at any rate Article 11 is not judicially enforceable. A caretaker government will also not be violative of Article 27 of the Constitution as the present provision under Article 65 (3) of reserving 30 seats for women members of Parliament who are elected not by universal adult franchise but by MPs themselves, has been held by the Supreme Court in a recent case not to be violative of the Constitution. However if the government has come to the conclusion that such an amendment would be unconstitutional then it would be its duty to refer the matter to the Supreme Court for its opinion under Article 106 of the Constitution because the Prime Minister and all the other members of the Cabinet has taken oath 'to preserve, protect and defend the Constitution'. And if the Supreme Court's opinion goes in favour of the government, the door will be finally closed for the Opposition to bring any such bill. Mention may be made that both Indian and Pakistani Constitutions have similar provisions, and on many occasions in India and at least one occasion in Pakistan the Supreme Court's opinion was sought. The argument that a caretaker government is practicable under Presidential System and a Parliamentary System does not appear to have any substance. A caretaker government cannot be an alternative to an elected government. The purpose of the two is totally

different.

An elected government's function is to embark upon the long-term programme of governing the country in accordance with its election pledges, a caretaker government's principal function is to hold elections. An elected government's term is for a period of 5 years whereas a caretaker government will be in office for a period of 90 days or 120 days. It is true that by-elections cannot be held under a caretaker government. This is perhaps not necessary as well. Because no where in the world governments are changed through by-elections — although it is theoretically possible. The same is the case with the local elections. If the timings of the local elections can be synchronised with the Parliamentary elections — and those elections are held under a caretaker government so much the better. But it is not necessary either, because government is only changed through Parliamentary elections. Strengthening the Election Commission is complementary and not contradictory to the idea of a caretaker government. It may be recalled that one of the first few things the caretaker government of Justice Shahabuddin Ahmad did was to strengthen Election Commission. But without a caretaker government it is difficult to ensure the true independence of Election Commission.

The Opposition's and particularly the AL's demand that since the government has failed to ensure free and fair elections in Magura, therefore it has lost all its credibility, and therefore all future elections should be held under a caretaker government appears to be too simplistic and straightforward a view. If Magura is the sole cause, then if the government had lost Magura, as it had lost Dhaka and Chittagong City Corporations elections, then Opposition's demand would have been baseless. On a single instance you cannot change the whole system and change the Constitution. And it will be unfair to equate this government with the government of President Ershad which had no legitimacy.

As a matter of fact the idea of a caretaker government should be looked upon from a

wider context. Ours is a nascent democracy. Except the 1991 elections, not a single election under any government — be it 1973, 1979, 1986 or 1988 — was totally free and fair. There were manipulations, malpractices and riggings — although to varying degrees and undoubtedly the 1988 election was the worst and 1988 was a worthless one. This is primarily because our politicians, those who were voted to power or grabbed power, wanted to hang on to it at all cost and secondly because democratic process needs time to take root, which process was interrupted many a time. Even in England the road to democracy was a long one and in the process there was a tug of war between Parliament and King. In 1649 the House of Commons condemned King Charles — I to death.

Hence the idea is that if a caretaker government conducts election for a few terms, a democratic culture, culture of holding free and fair elections would develop. This coupled with a strong election commission will lay the foundation of holding free and fair elections. Elections under caretaker government cannot be a permanent phenomenon. It will be a temporary arrangement: once the infrastructure is laid down, we have to revert back to elections under an elected government. Take the case of Pakistan for example. In 1977, the combined opposition denounced elections conducted by the government of Prime Minister Zulfikar Ali Bhutto as rigged. And following a mass movement, Pakistan came under a worst form of dictatorship. Bhutto was hanged. Of late his daughter has become the Prime Minister of Pakistan (second time though) in the first ever elections held under a caretaker government. Perhaps Pakistan's political history would not have been that unhappy had the elections there were held under a caretaker government since at least 1977. If elections in Bangladesh, in 1986, were held under a caretaker government for which there was a clear demand the country would have been on the road to democracy much earlier.

Parliamentary democracy, in law and in fact, is a partner. * * * * *

ship between two partners: the government and the Opposition. And this partnership, like all other partnerships, cannot continue without the co-operation of both partners. In this context let us consider the Opposition's boycott of Parliament firstly on an unhappy remark by minister and secondly on the issue of caretaker government. Upon being elected, an MP takes a solemn oath under Article 148 of the Constitution to discharge his duties in accordance with law. Now the question is: how far it is within the fitness of an MP's job to boycott Parliament. The Opposition's case is that the government have pushed them to such a situation that they had no other alternative. If the boycott is designed to weaken the government, perhaps it will. But certainly it will weaken Parliament and all those values for which Parliament stands.

The Opposition is demanding that the government should bring a bill on caretaker government. There is no provision in our Constitution, no rule in the Rules of Procedure, no precedent in any democracy that an Opposition Party can compel a party in power to bring a bill. If the Opposition's demand is a popular one, then the government by not accepting the popular demand will become unpopular. The Opposition can certainly make it an election issue. But the Opposition has no right to compel the government to bring a bill. Equally, the government has no right to delay indefinitely a bill submitted by an Opposition MP. In this regard the democratic government has acted manifestly undemocratically in not tabling the bill on caretaker government submitted by the Jamaat-e-Islami in 1992, and the bill for the separation of judiciary by the Awami League. These are unacceptable behaviours and inexplicable as well — when BNP has a comfortable majority in Parliament — and no bill can get through without its consent.

Perhaps we are not very far from a Constitutional crisis. If the Opposition continues to boycott Parliament, and by dissolving Parliament elections are declared and again the Opposition chooses to boycott the elections under the BNP government, and the BNP goes to

elections without the three main Opposition parties, the political clock will then revert back to the post 1988 election position. And we will have a very undesirable political landscape and our new-found democracy will be in danger. The country must find a way out of it.

In the early Seventies, a Constitutional debate was going on in Britain about the wisdom of joining the European Community. It was a complicated Constitutional issue. But finally, in 1975, the government of Prime Minister Harold Wilson laid the matter to a rest through a referendum. The government of Prime Minister Khaleda Zia should also organise a nationwide debate on the issue of caretaker government and finally if necessary, go for a referendum. It may be costly, but the cost may be otherwise too high.

Give and take is another essential element of parliamentary democracy specially in time of crisis. At the beginning of World War II, the conservative Prime Minister of Britain Mr Chamberlain, invited the Opposition Labour Party to join the government of national unity. The Labour Party refused to join the government with Chamberlain as the Prime Minister. Chamberlain resigned, and Winston Churchill became the Prime Minister and the Labour Party joined the government. But for the flexibility of the British Conservative Party, perhaps Hitler would not have defeated and the political history of Europe rather the whole world would have been very different from what it is today.

The present political crisis represents the weakness of leadership of the two top political leaders, who are reportedly not in speaking terms. This country has suffered too much, and for too long. And the worst sufferers are the commonman, the man on the street, who always made supreme sacrifices. On behalf of the 120 million people, we therefore appeal to the politicians on both sides of the political divide to see reasons, open dialogue and for God's sake sacrifice personal interest for national interest.

The writer is a Barrister-at-Law.

To Sustain Democracy in its True Essence, General Elections under a Caretaker Government is a Necessity

by G A Momin

A heap of things have been said in favour or against as to whether the next general election should be held under a caretaker government or not.

Thanks to The Daily Star which has once again proved to be a newspaper with an imaginative initiative and drive, we were given a chance to participate in a debate on this important issue. Over the last few weeks we have read a lot of arguments and comments from our learned political leaders from both the camps — the government and the opposition. The issue has been very adequately and competently debated by all the leaders.

We also appreciate the way the eminent political leaders of different political parties co-operated with the 'Daily Star' efforts.

As a tax-paying, rate-paying and franchise-exercising citizen of the country, I feel obliged to express my humble opinion on the issue.

I have limited my observation to that of an empirical one without any stance to theorising on the given premise. If we look at the political history of our country right from the fifties, we cannot spot a government whether elected or self-imposed or put into power somehow or other surrendering power voluntarily. All the change-overs in power hierarchy took place either through coups or assassinations of the head of government or the head of the state, except the forced stepping down of General Ershad. Let alone surrender of power by any government, I do not remember to have come across any noteworthy resignation of a cabinet minister even in the face of documentary evidence of his guilt and consequent public condemnation. These tendencies show quite clearly that we as a people are a power hungry nation. We are unduly so with due apology to political leaders. I must say that our experiences about political leaders both past and present suggest

that most of our leaders, with of course some magnificent exceptions to whom we owe our existence as a nation, look upon a power-wielding position as an end in itself and not certainly a means towards an end which is the right way of looking upon it. I strongly feel that qualities of education, characteristics and love for the populace should be taken into account to ensure effectiveness of any political process.

Under the present circumstances, to change a government through polls with the ruling party still in power, is hardly possible. To make my point clear I would say that currently we have a democratic government in our country like that of the UK. But do these two democracies function identically? Does our democracy touch the life of an average citizen the way the British democracy does? There is a vast difference. This difference mainly stems from our government's lack of a sense of accountability to our people who have voted it into power.

The people changed general Ershad for an elected government with the hope that the ruling party would come to an end. But peoples' hopes have been cast helpless by drift. Things all around us have gone worse with the economy in jeopardy, business and industrial sectors reporting pathetic situation, the despondent consumers sweating

power. In our country as soon as a voter casts his vote, the voter is cast away into oblivion like household waste. He remains distant and dusty. Once elected, the government does not hesitate to renounce its obligations and responsibilities to the electorate. Hence useful interactions between the elected and the electorate can be established only when a general election is held under a caretaker government, for no genuine political party will address the voters for five years only and the voters will feel free to choose their own candidates without any intimidation from the ruling party or its agents.

The people changed general Ershad for an elected government with the hope that the ruling party would come to an end. But peoples' hopes have been cast helpless by drift. Things all around us have gone worse with the economy in jeopardy, business and industrial sectors reporting pathetic situation, the despondent consumers sweating

mercenaries, the ruling party can ignore the people and still win an election because the mercenaries and other wrongful beneficiaries will be there to herd the voters and ensure a victory in polls; if necessary through rigging and violence. The civil administration which is allowed against indulging in rampant corruption. With the communist and fundamentalist forces staging a daring and sinister come-back, the country has turned out to be a safe haven for the anti-social elements. It is painful to see that these are all happening when an elected government is presiding over the country's affairs.

How can the present government feel confident about winning the next general election when the ruling party leaders including the Prime Minister are keeping their eyes shut to the agonies and sufferings of the common people? This is the crux of the whole issue. When the target beneficiaries of administration are the *mustans* and

mercenaries, the ruling party can ignore the people and still win an election because the mercenaries and other wrongful beneficiaries will be there to herd the voters and ensure a victory in polls; if necessary through rigging and violence. The civil administration which is allowed against indulging in rampant corruption. With the communist and fundamentalist forces staging a daring and sinister come-back, the country has turned out to be a safe haven for the anti-social elements. It is painful to see that these are all happening when an elected government is presiding over the country's affairs.

So a fair election is only possible if a neutral caretaker government oversees the polls; otherwise the best known definition of democracy 'The government of the people, by the people and for the people', will be robbed of its two most significant components', by the people and for the people'.

Hence to sustain democracy in its true essence all general elections should be held under a caretaker government.

The writer is a retired official of a multinational company

Why Not Reform the Defective System?

by S M Harmuz Ahmed

A WAMI League (AL) General Secretary Mr Zillur Rahman has passed his opinion in favour of holding the next election under a caretaker government. And BNP Secretary General Barrister Abdus Salam Talukdar has opined against the same.

I have gone through their opinions very closely and my views are as follows: Majority of the people hold the opinion that when most of the election results go against the AL, the party terms the election to be 'unfair'. After the last general election, held under a caretaker government, Awami League said that the election was rigged very tactfully. But Dr Kamal Hossain in an interview with the BBC said that the election was fair and free though he himself had lost in the poll to a BNP candidate who was not more competent than Dr Kamal, in my view.

We have observed as a regular feature before the commencement of any by-election to a Jatiya Sangsad seat or in case of any Pourashava election the AL Chief saying if the election were held freely and fairly, her party's victory was inevitable. After the election if the AL loses the seat it simply says that its victory has been snatched away through rigging by the BNP. The AL starts issuing

statements to the press and delivers speeches in public meetings that they have been defeated in the election by rigging and that no more election should be held under BNP

The AL does not care to see why the BNP had to face humiliating defeats in Dhaka and Chittagong Mayoralty elections. The demand for election under a caretaker government without any conclusive proof against the BNP that it has failed to hold fair and free elections amounts to expression of no confidence in the people.

If election is held under a caretaker government after the expiry of the term of BNP government and as a result of the same any particular party comes to power and as a routine matter holds elections of local bodies and any by-election, what will be the remedy if they take recourse to unfair means? So, election under

caretaker government is not the solution. The solution would have to be worked out by removing the odds within the existing system.

In the bye-election for Magura-II constituency, the difference of the two major contestants that the victory of BNP candidate could not be the outcome of rigging, as I view it.

But BNP has done some wrong in case of Magura-II election like transferring government official (connected with the election duty), using facilities like transports, etc. making development commitments through the ministers, visits and campaign by the ministers and the Prime Minister and distribution of relief materials at the time of election. But such instances are not attributable to the BNP government alone, these have rather been a regular feature of the post-Bangladesh election

scenario. Even we observed these to happen during the Pakistan regime in the then East Pakistan. These are not acceptable and in the developed countries, these do not

occur.

By the 12th amendment to the Constitution, Bangladesh has switched over to the Parliamentary form of government in place of the one-man show as in a Presidential system.

Both BNP and AL had rejected a suggestion made by Rashed Khan Menon and Jamaat leader Ansar Ali Khan for keeping a provision in the Constitution for holding elections under a caretaker government after expiry of the term of each government.

What is best for the country should be worked out and settled sitting together in the Parliament. As a ruling party