

A Credibility Gap

Almost the entire country smarted yesterday under the cumulative effects of black-outs, for reasons both avoidable and unavoidable, amidst unusual heat waves sweeping across the country. The off-and-on power supply or failure has become a part of people's routine experiences. The snapping of electricity to the Jatiya Sangsad and the Secretariat was an act of defiance and a show of discontent and repugnance. But cause for the country-wide load-shedding is, as usual, an explosion of a transformer. Whether such regular transformer disorder can be treated as an accident — and therefore unavoidable — in advanced countries is a question never to be asked here. By our standards we have now become accustomed to accepting such disorders as quite normal.

Now although the nature of power disruptions in the two cases differs from one another, there is an inherent connection between the two. This relates to effective governance — or more precisely the lack of it. Otherwise, how can one explain the foolhardy act of indiscretion by angry employees of the Public Works Department? How dare they demonstrate so much contempt for the occupants of the JS and the Secretariat? In effect, those employees responsible for stopping power supply to the JS and other important offices have held the entire country in contempt. After all, public utility services are nobody's private property and their distribution must not depend on the whims of an individual or an organised group.

While the disenchanted but violent employees of the PWD have to be severely dealt with for their insensible and illegal programme of action, the question of retrenchment must not be glossed over as something insignificant either. Sure enough, the retrenchment of as many as 2,400 employees of the PWD is too serious a matter to be treated lightly. We do not know if the necessary rules and procedures have been followed before sacking so many people. If it was done, we have no reasons to fault the authority. But if it was not, the authority will have to share responsibilities for the unfortunate and illegal occurrence involving the snapping of electricity on Tuesday.

The government is more prone than not to deferring decisions on important, complex and contentious issues — as if they will get settled by themselves with time. The government has failed to learn that so left, those problems mount to the point of explosion. It has happened in case of the fixing of wages for the fourth class employees, and about the nurses' strike, teachers' strike and Prokrishi impasse.

At this point we must refer to the government's much-vaunted 'golden handshake' programme. The basic principle and spirit of the programme seem to have been compromised and this again has led to a credibility gap. If the voluntary option for retirement does not look better than no job at all, why should people be encouraged to go for it? If they face undesirable complications to get the smaller benefits they have opted for, such a programme cannot induce people to take the painful decision.

The fact that a chronic power failure should not be confused with the irrational and uncalled-for behaviour of a department is understood, but at the same time the contemptuous attitude of these employees cannot be altogether delinked from the general lack of credibility of the authority. It is this damage that needs urgent repair.

And Now the Scripts

It is quite some time the HSC exams are over. The JESSORE Board scripts have as yet not been reached to the examiners. On Monday the striking teachers laid a siege on the Board establishments for the second time and the government school teachers had to retire without taking delivery of scripts. In a gallant gesture they rather than forcing their way to the scripts requested the Board to settle the script examination issue with the striking teacher first.

It is not known what has happened to the scripts of the other three boards. But it is certain that as none of the 200,000 teachers on strike are available to mark the answer papers, the scripts of those boards, as also of the JESSORE one, aren't headed for all the right persons and in right numbers. Who can be these new examiners? Where were they so long? Most of these new ones are understandably less than competent for the job or they would have been doing the job from long before. What will this mean in terms of loss of quality and dependability of script examination?

Central examinations of the ten-year and twelve-year types are the overriding and final mechanism of assessing the performance of students — holding the key to stopping them from or leading them on to the next higher phase of education. The all-important assessment is done at the script examination level. The government foolishly thought that the holding the HSC exams was the only challenge. Or perhaps they made it look like that and once the exams were over at the hall level without the help of the striking teachers, they patted themselves on their great victory that were sure to demoralise the strikers. What now? Invigilation of the examination halls could be done by any kind of personnel, police or peon, authorised to do so — and unless these newly charged ones were easily purchasable or otherwise ineffective — that part of the examination did not stand to suffer greatly. Although serious questions have been raised about the conduct of the exams at the halls, that is something well past. What remains is the examination itself. What do the government now propose about saving the HSC exams from being reduced to a regular farce?

No, they cannot do anything about keeping whatever quality here was in the existing examination system without getting the regular examinations among the strikers to take their scripts and mark them. Is it by now clear to the government that this can be done only through talking to the strikers and arriving at a resolution of the crisis created mainly by the government's renegeing on committed positions. And the talking, on the government side, should feature gestures made by the Prime Minister herself — as a show of sincerity and may be magnanimity too.

The cause of intermediate education, as it is, has taken a very serious and perhaps irreparable beating already. It is high time things took a turn. This would not be possible as long as government deludes itself to be talking to the teachers when in truth they are only doing so with non-striking agents of the government itself.

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

Over the last few weeks The Daily Star has been running a public debate on whether or not the next general election should be held under a caretaker government.

A lot of ideas and suggestions have been put forward through our columns. In the following article Barrister Amirul Islam, an eminent lawyer of the country and well known opposition politician takes the debate one step further by presenting a 'Draft Bill' for a possible Constitutional Amendment. The Daily Star publishes it as a part of its policy to provide our readers the maximum opportunity to express their views and help forward the process of dialogue, without endorsing any of them.

Proposed Draft of Bangladesh Constitution Thirteenth Amendment

BILL

FOR AMENDING ARTICLE 56(4), 57(3) AND 123(3) OF THE CONSTITUTION AND FURTHER TO ADD A NEW CHAPTER II UNDER PART VII UNDER THE TITLE, "PANEL OF ELDERS" INTRODUCING ART. 126A & 126B WHILE RETAINING EXISTING ARTICLES 118 TO 126 AS CHAPTER I UNDER THE HEADING "ELECTION COMMISSION".

OBJECT

1. To introduce a provide and create a PANEL OF ELDERS for the purpose of acting as a cabinet for the interim period between dissolution of Parliament and the entering into office of the Prime Minister after securing a vote of confidence of the new Parliament to be ushered in through a free and fair election to be conducted by the Election Commission in accordance with the Constitution and the law without having a party government in power for the interim period.

2. To provide for the Panel of Elders, while not acting as members of interim government:

(a) to act as adviser, expert and commission for the Parliamentary Committee as and when required to do so.

(b) to monitor, coordinate and evaluate the by-elections of members of Parliament and elections of the local government and also to help, assist and advise for the improvement of electoral system, and its working for the purpose of ensuring the free exercise by the people of their right of franchise without any fear or favour and being free from any threat, coercion, intimidation, violence and being free from the influence of any corrupt practice.

ACT NO. . . OF 1994

PREAMBLE

WHEREAS historically it has been one of the fundamental aspirations of the people of Bangladesh to have freedom to form the government of their own choice which inspired the valiant freedom fighters to participate in the war of liberation leading to a victory enabling the people to give a Constitution and the government to themselves.

AND

WHEREAS one of the fundamental tenets of the Constitution is to realise through democratic process a society in which the rule of law, fundamental human rights and freedom, equality and Justice — Political, Economic and Social — will be secured for all Citizens:

AND

WHEREAS under the Constitution all powers of the Republic belong to the people and their exercise on behalf of the people can only be meaningful and effective if the citizens can themselves become free and active participants in the decision making as well as in exercising their right of franchise without any fear or favour and being free from any threat, coercion, intimidation or violence and from the influence of any corrupt practice in an environment of honesty peace and freedom.

AND

WHEREAS in order to create such an environment people must be able to perceive the government being above any party or group interest when it comes to the rule of law, law enforcement and particularly when people's right to have a free choice for giving a government to themselves is in question and that the people must be reassured for that purpose that no part of the state machinery could be used in any manner for influencing the result of elections in favour of any party or group:

AND

WHEREAS, in order that people can make a free choice, they must also have free flow of information which is only possible through a free press and the electronic media giving reliable and adequate information about the socio-economic problems of the country and the stand, policy and programme of the respective political parties and their leaders on those national issues, so that those issues and the stand of the respective parties and their leaders on these can be identified by the people for making their own judgement and at the same time to be able to know the full antecedents of candidates for the Parliament election and their experience and qualification can be made known to the people so that people can also assess the suitability and credibility of those whose candidature is offered for becoming members of Parliament.

AND

WHEREAS, it has been the political experience of the people of Bangladesh that election instead of being an institution and mechanism for the people to make their own choice for shaping the policy and giving a government to themselves has been abused by the party or group in power either to legitimise and/or to perpetuate itself in power as a result of which the election under a party government in power lost its credibility giving rise to serious doubts and controversies as to the fairness of the election and thus denying legitimacy to governments causing threat to the stability of democracy.

AND

WHEREAS, the movement for establishing democracy was

participated by all the parties and people and their alliances who identified among others the need for having an election to be held under a neutral caretaker government in order to facilitate the transfer of power for which a framework was proposed by the three alliances known as the historic Declaration of November 1990 which received universal acceptance and acclamation of the people of Bangladesh.

AND

WHEREAS, in accordance with the terms of that historic declaration of November, 1990 adopted as the charter on behalf of the people, the autocratic regime in power was forced to step down and an interim caretaker government was formed headed by the Chief Justice in order to facilitate holding of a free and fair election in accordance with the Constitution and the law and for the first time the people's confidence was restored in the electoral system.

AND

WHEREAS, in order to maintain the credibility of election and in order to ensure that the people can use the election as an effective and meaningful process for exercising their freedom of choice, freedom of information and freedom to form government of their own free will in a peaceful and orderly manner, free of corruption and intimidation, further ensuring thereby the free flow of information and deliberations on real issues so that the people can become master of their own destiny in deciding the future governments on the basis of correct and reliable informations on such issues as are most relevant to the socio-economic and political life and future of the nation thus enabling the people to actually wield the power which belongs to them as ordained under the Constitution.

And further in order to ensure the sanctity and spirit of election as an instrument for power to the people and to be abused in the hand of any party, group, state or private agency or individual, it has become necessary to make provisions in the Constitution for a neutral caretaker government for an interim period consisting of a 15-members panel to work as a cabinet headed by its senior most member for creating and protecting an environment of peace, freedom and honesty in which people can exercise this plenary power in choosing the future parliament and the government and thereby shaping the future policy for securing their interest and the interest of their future generations so that they can live in peace and prosperity.

Wherefore changes are made by way of amendment to the Constitution in the following manner.

SECTION 1:

This Act will be called BANGLADESH CONSTITUTION THIRTEENTH AMENDMENT ACT, 1994.

COMMENCEMENT: SECTION 2:

This Act will come into force immediately on the happening of the following:

PASSAGE OF THE BILL WITH TWO THIRD MAJORITY IN PARLIAMENT:

a) The Bill is passed by the votes of not less than two thirds of the total number of Members of Parliament.

REFERENDUM:

b) The Bill receives majority of the total votes cast in a referendum conducted by the Election Commission.

REPLACING ARTICLE 56(4) INTRODUCING INTERIM NEUTRAL CARETAKER GOVERNMENT:

SECTION 3:

Article 56(4) be deleted and replaced by the following:

a) 56(4) NOTWITHSTANDING any provision in this Constitution, on dissolution of Parliament the Prime Minister will cease to hold the office and the cabinet will thereby stand dissolved, whereupon the senior most member of the Panel of Elders will enter into the office of Prime Minister without having to take a separate oath of office, who will then head the caretaker government along with other members on the panel entering into the office of ministers who will hold such portfolios as may be determined by the Prime Minister of the interim government and the Panel of Elders would thus act as the cabinet during an interim period between a dissolution of parliament and the entering upon the office by the Prime Minister after taking the oath of his office following a vote of confidence in the new Parliament.

OBJECT OF THE CARETAKER GOVERNMENT

b) Primary object of the caretaker government, comprising of a cabinet consisting of members of the Panel of Elders headed by its senior most members acting as the Prime Minister, will be primarily to facilitate and ensure a peaceful environment for holding of a free and fair general election of members of Parliament, to be conducted by the Election Commission within the period as stipulated under Article 123(3) so that the President can appoint a member of Parliament as the Prime Minister who appears to him to command the support of the majority of the members of Parliament.

VOTE OF CONFIDENCE TO BE SECURED BY THE PRIME MINISTER DESIGNATE FOLLOWED BY OATH OF OFFICE

Provided that the Prime Minister so appointed by the President will remain a Prime Minister designate until he secures a vote of confidence in the House within seven days of his/her appointment by securing a clear majority of total number of members of Parliament whereupon he/she will enter upon the office of Prime Minister by taking the oath of office.

IN CASE OF FAILURE TO SECURE A VOTE OF CONFIDENCE

c) On the failure of securing the vote of confidence his/her appointment as given under Art 56(3) to become the Prime Minister will stand terminated and a fresh appointment be given to another Member of Parliament in similar manner till one could be found to command the confidence of the House within the stipulated time of one week. If on the third attempt the Prime Minister so appointed fails to secure a vote of confidence the Parliament will be dissolved for organising a fresh election.

END OF CARETAKER GOVERNMENT AND THE INTERIM PERIOD

d) The senior-most member of the Panel of Elders holding the office of the Prime Minister during the interim period will cease to hold the office of the Prime Minister on the expiry of the interim period which will end on the entering upon the office by the new Prime Minister having taken the oath of office after securing a vote of confidence in the new Parliament and his cabinet will thus be dissolved automatically.

APPOINTMENT OF OTHER MINISTERS

SECTION 4:

The following Proviso be added at the end of Article 56(4) Provided that Article 55(3), 56(2) and 56(3) will have no manner of application for the purpose of appointing the Prime Minister for the interim period or to the working of

his/her cabinet; nor for the purpose of appointing other ministers, ministers of State and Deputy Ministers during the interim period.

SECTION 5:

Part VII be so amended that the existing Articles 118 to 126 under Part VII be placed under a heading 'Election Commission' to appear under 'Chapter I' under the said part and two more Articles 126A and 126B be added under 'Chapter II' with a heading of 'Panel of Elders' as follows:

Chapter II PANEL OF ELDERS

Article 126A:

FORMATION AND COMPOSITION OF THE PANEL OF ELDERS.

a) There shall be a Panel of Elders consisting of 15 members to be chosen by the Chief Justice in consultation with the Speaker of the House, the Leader of the House and the Leaders of the Opposition and the Chief Election Commissioner and such other person as may be deemed necessary by the Chief Justice from among those persons who are qualified for election as President and having high integrity and honesty with outstanding service and contribution to society or in public life and with a known record of extraordinary performance in the field of their own disciplines and expertise.

ORDER OF PRECEDENCE

b) The Panel of Elders will be maintained in such a manner as would be the order in precedence which is to be decided by the Chief Justice while preparing the list and the name at the top of the list will be that of the senior-most member on the panel.

FILLING OF VACANCY

c) Any vacancy occurring either due to death or resignation will be filled in the like manner by the Chief Justice as in case of preparing the panel.

DURATION OF THE PANEL OF ELDERS AND ITS ANNUAL REVIEW.

d) The Panel of Elders should be prepared for five years with a provision for review each year. If any change is deemed necessary by the Chief Justice with such consultation as is required to be made at the time of selecting the Panel.

PLACING BEFORE THE PARLIAMENT AND THE OATH OF OFFICE

e) As soon as the Panel of Elders are finalised the list will be forwarded to the Speaker who will place the same before the Parliament, whereupon the Panel members will take the oath of office in the same manner as is applicable to the Deputy Speaker.

126B

RESPONSIBILITIES WHILE NOT ACTING AS MEMBERS OF CABINET

a) In addition to working as members of an interim government as provided under Article 56(4) of one or more members of the panel while not acting as member of Cabinet could be requisitioned by any parliamentary committee or by a law reform commission or permanent law commission in consultation with the senior-most members of the panel for acting as an adviser or an expert or an enquiry commission, on such terms of reference as may be decided by the said Parliamentary Committee or Commission as the case may be, and such member or members of the panel would advise the Committee and/or Testify before it on such matters as the member of the Panel concerned is asked to advise or testify and/or conduct such inquiry as the committee may require such members of the panel to conduct and report the same before the Committee.

COORDINATION OF ELECTIONS INCLUDING BY-ELECTION FOR MEMBERS OF PARLIAMENT, AND LOCAL GOVERNMENT BODIES.

b) In addition to its other responsibilities the Panel of Elders will also coordinate with the Election Commission and Leaders of the Political parties and various ministries and government agencies in order to ensure commission for such support as may be necessary for the Election the smooth running of free and fair elections of the members of Parliament as well as all elections and by-elections including those for Local Government and will monitor those elections with such observers as may be deemed necessary.

HELP, ASSIST AND ADVISE THE ELECTION COMMISSION

c) The Panel of Elders will help, assist and advise the Election Commission for the purpose of evaluating each election conducted by it for the purpose of improving the system so that the people can exercise their right of franchise without any fear or favour and being free from any threat, coercion, intimidation, violence and being free from the influence of any corrupt practice.

OFFICE, PRIVILEGES AND REMUNERATION WHILE NOT ACTING AS MEMBERS OF INTERIM GOVT.