The Baily Star

Founder-Editor: Late S. M. Ali

What's Happening?

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At uncertain times we become trouble-prone in so many ways. The Benapole fire is a simmering case in point. An act of sabotage is suspected by local official sources and members of the law enforcing agencies.

It looks like a terrible accident though. Three truck workers of Indian origin, on crossing to our side of the border, lighted a kerosene stove to cook underneath their large vehicle which then exploded to start the devastating fire gutting goods and property worth Tk 3-5 billion. It was broad day-light, 1.30 pm or so; but no border guard took them to task for ignoring a rule-of-the-thumb safety precaution. Perhaps such aberrant cooking style had gone on for some time by default not to perhaps catch anyone's attention one time too many. This has been an unpardonable oversight, to start with.

Basically, the landport was, in a given sense, quite vulnerable to a disaster, either by an act of sabotage or by a tragic accident. Beelines of trucks and gluts of goods had developed as the shutdown on our side continued.

It is worthwhile to note that not only were three godown burnt to ashes, 16 Indian trucks, laden with merchandise, were also gutted. So, it has been a huge loss to the exporters, importers, truckers, and our customs establishment at Benapole. There could be an inflated insurance claim angle to it. Or was somebody up to discrediting any opposition political party? The guess-work can go on and on. The motive, if there was any at all, needs to be established by a thorough-going and professional investigation.

The inquiry must necessarily focus on what appears to us to be border guard lapses and lack of - vigil on the part of the customs personnel. The marked absence of any fire-fighting arrangement at Benapole an entrepot of such a size, is inexplicable. That as the flames spread, fire-fighters came tolling their bells all the way from Jessore or Satkhira towns sounds extremely uninspiring.

As an investigation is ordered into the incident and it gets underway to unravel the truth, there should be no passing of the buck around to confuse the people unnecessarily. We want the episode to end up streamlining the rather messy administration at Benapole.

Why Risk so Much?

Two foreign firms working at the Jamuna Multipurpose Bridge (JMB) site have been forced to postpone work and another may follow suit any time. All because of the non-cooperation programme that has led to a serious shortage of essential input like the fuel and the failure to release equipment from Chittagong Port. Under the contract, foreign firms will get reimbursed on account of such unintentional delays. Definitely the bridge is heading for quite a big cost overrun with the continuation of the non-cooperation.

As things stand now, the country just manages to limp forward because there are a few exemptions from the all-out non-cooperation. In a stifling situation these relaxations are appreciated but then this is unquestionably outweighed by the fact of our hurting the economy, development and social stability otherwise through the shutdown. The JMB is nobody's private property. This huge project belongs to the nation and delaying its work or adding to its cost means a terrible loss to the nation. Political prerogative cannot always be at the cost of the nation's vital interests in socio-economic and developmental areas. Particularly where foreign investment and technical assistance are involved, a disruption of the sort can have a farreaching negative impact on our economic prospects.

It is this overriding consideration for the national economy and economic ties with friendly countries that demands unhindered work at the JMB site. An unwritten understanding — a sort of national consensus among the political parties not to disturb work at similar projects is a must.

The news that a car carrying two experts of a Korean firm came under attack is all the more disturbing and most unfortunate. Other technicians feel threatened. That was an act of insanity. Pushing it further will not only earn bad name for the country but might also breed a negative attitude to the contract.

Unbearable for them

"Bhat chai, taka chai, noile bari jabar bus chai" (want food and money or else a bus ride to get back home) was the screaming slogan of an uncommon procession brought out by some students on the Jahangirnagar University campus. The ongoing non-cooperation movement of the opposition parties made them bring up their grievance before the authorities in such a fashion. Their plight can be easily imagined when the postal or courier services along with other types of communication with home remain suspended.

Like the country which is running on borrowed time and perhaps resources, they have finished their last buck and have also run out of the borrowing sources. They have only the university authorities to turn to now. Students of the JU - unlike those at the DU who can count on part-time jobs including that of a tutor — are really the hardest-hit.

How their problem will be solved is not yet known. Maybe the university authorities will do something reasonable to help them tide over this crisis. But what about the teeming millions who have nobody to turn to for their survival when they are losing out on their daily wages? They are the greatest sacrificers. Even if they survive, will they be rewarded for their sacrifice?

President Should Resume Dialogue

by Dr Kamad Hossain

We should not forget that the country belongs to 120 million people and that no individual group or party by adopting self-destructive courses in their pursuit of power should inflict disaster on the entire nation

not be held.

constitutional crisis

has \ developed over

the last two years as a

result of which the citizens of

despair. People are deprived of

security of life and property

entire society has become

hostage to terror. Every day

being pushed towards destruc-

tion. Industrial units, mills and

factories are being shut down.

Goods are piling up in ports

and ships berthed in the port

are unable to load and unload.

Ships are being diverted away

to other ports. Hundreds of

garments factories have been

shut down while others are

expected to follow suit. Buyers

not being able to obtain deliv-

eries are diverting their

orders to factories in other

countries. The enormous loss

in foreign exchange earnings

threatens the existence of the

promising garment industry.

Farmers are suffering as a re-

sult of acute shortage in supply

of fertilizer and diesel, and

their not being able to take

their produce to markets. If

this situation continues they

will very soon face famine con-

ditions. The universities and

other educational institutions

are not functioning and

scheduled examinations can-

valuable lives are being lost.

and their livelihood. The

The national economy is

the country are being driven to

The "election" held on 15 February, 1996 without participation of voters could not produce a representative Parliament acceptable to the people. This controversial election could not, therefore, provide any solution to the cri-

 Today a consensus has been achieved on the basic issues (even if belatedly) that is, on the need to hold as soon as possible an election to Parliament under a neutral caretaker government. There is continuing controversy between the government and the three party-opposition on the modalities or procedures for installing a caretaker government which drags on as both sides continue rigidly to maintain their respective posi-

The President in response to the urging of the political parties including the ruling party, professionals and conscious citizens from all walks of life, had on 10th March initiated a national dialogue. This raised hopes among the peo-

ple. The President had consulted three former chief justices, had meetings with all the parties represented in the last Parliament, and with number of lawyers, with a view to finding a way to resolve the present crisis.

We, on behalf of Gonoforum,

had met with the President and subsequently sent him our written proposal urging that a caretaker government be expeditiously established and power transferred to it. A consensus was discernible on the appointment of a retired Chief Justice, either Chief Justice Shahabuddin Ahmed, who had successfully headed the last caretaker government and earned every one's respect by the impartial manner in which he had discharged his responsibilities, or if he, for any reason, was not able to accept this responsibility, then the immediate past Chief Justice. If the procedural disagreement continued, the former Chief Justices could be consulted and thereafter this matter could be referred under Article 106 of the Constitution to

the Supreme Court for an advisory opinion. Since the Supreme Court is the ultimate authority to interpret the Constitution, it is reasonable to expect that if this course is adopted all parties would accept the opinion delivered by the Supreme Court and pro-

ceed to implement it. An effective consensus had already begun to emerge in the course of the first round of consultations initiated by the President. It is noteworthy that Awami League and indeed three-party opposition alliance had indicated that a caretaker government could be formed on the basis of their earlier proposal which had included the suggestion that a former Chief Justice could be appointed as the head of the caretaker government.

Just as the President's dialogue had begun to show positive prospects it was abruptly brought to a halt by the President, resulting in disappointment and concern on the part of citizens. It was reasonable to expect that when the first round of consultations had

shown a broad consensus on substance including, who might head the neutral caretaker government, the process should have continued to narrow down the difference on the procedural question and if any difference remained this could be referred to the

Supreme Court. We would, therefore, reiterate our request that the President should resume the dialogue process today and seek to narrow down the differences on procedure. If this done, or even if some gap remains between the parties, the matter should be referred without delay to the Supreme. Court. Once the opinion of the Supreme Court is obtained then everyone should concert their pressure on the government and all parties concerned to take necessary steps in compliance with the opinion of the Supreme Court.

We have, for the last two years, been urging that political and constitutional discord should be resolved through discussion and dialogue. Unfortunately this has not been

done, and the crisis has now deepened alarmingly. We have consistently naintained that the resolution of the crisis through dialogue is a must in the interest of the people and the national economy.

While we are entering the 25th anniversary of our independence we should recall the sacrifices of those who laid down their lives for our independence. We must rise above sectional and party interests and unitedly move forward to protect our motherland. Our people want to survive as selfrespecting citizens. People wish to work in the fields, in the factories and in the offices. and want normalcy to return to their lives. People crave for democracy and the rule of law and for a civil society. We should not forget that the country belongs to 120 million people and that no individual group or party by adopting self-destructive courses in their pursuit of power should inflict disaster on the entire nation. This cannot be allowed to happen.

Let each one of us draw upon our inner strength to unite together to protect our rights and to establish. through a people's movement, that power indeed belongs to the people of Bangladesh. The author is the President of Ganoforum

For a President Who Can Take an Initiative

N the face of 24-month long stand-of that has virtually brought the country to the point of a total collapse, the head of the Head of the State was perhaps hung/bent down in shame, but upon an instant advice by the prime minister and BNP chairperson Begum Khaleda Zia, president overhauled his strength and started moving for a solution through dialogue with the political parties concerned and consultation with legal and constitutional experts including two former chief justice. In a statement of the nation on March 15, first since his becoming the President, he said: "From a thorough study of the constitution and opinions received from legal experts, it appears that the President has limitations and the constitution is required to be amended to accommodate the provision for formation of caretaker government (CTG) followed by a countrywide referendum. Appreciating the views of the opposition and constitutional experts on CTG he told .: "A Presidential Reference, as suggested by some of them, may be made to the Appellate Division of the Supreme Court under Article 106 of the Constitution to seek its opin-

He warned: "National consensus cannot be reached unless the concerned parties show more flexibility in their respective positions" and pointed out very specifically: The ruling party has accepted the main demands of the opposition of holding a fresh election and they have also agreed to pass a bill on CTG in the first session of the 6th Sangsad and hold general election by May under CTG."

. ion provided all parties agree."

President's statement was a clear indication to the futility of the outcome of dialogue initiated by him apparently upon requests by the concerned political parties and professional groups like FBCCI, ADAB, intelligentsia of various groups and shades of opinions but, actually upon an instant advice by the Prime Minister and BNP

chairperson Khaleda Zia. The opposition denounced the statement saying that the President just echoed the views of BNP Ironically enough, within the passage of 24 hours President substantiated the opposition's blame by summoning the 6th Sangsad to

a session at 4pm on March 19. My sincere intention is to focus on the points and situation under which the nation is supposed to suffer with reference to the powers and functions of the President and the election to elect the President according to articles, clauses and sub-clauses of the constitution amended by the 12th Amendment and the inherent weakness therein.

In fact, to speak the truth, the condition of President Abdur Rahman Biswas is almost like a "fish out of water" first, out of his obligation to the constitution named as Constitutional Obligation and secondly, perhaps out of his obligation to the BNP that backed him to the office of the head of the state.

Constitutional Obligation The articles, clauses and .sub-clause directly or indirectly connected with the powers and functions of the President of the People's Republic of Bangladesh are: 1. Article 48 (1), (2), (3), (5), read with article 56 (3) and 95 (1) dealing with powers and functions of President. 2.

Article 72 (1), (2), (3) and (5) dealing with sessions of parliament. 3. Article 93 (1). (2). (3) and (4) dealing with ordi nance making power of President. 4. Article 106 dealing with advisory jurisdiction of Supreme Court. 5. Article 119 (1), a.b.c. dealing with functions of Election Commission 6. Article 52 (1), (2). (3) and (4) dealing with the Impeachment of the President.

The most important as direct reference to understand the constitutional position of the president are the following that need to be highlighted for immediate attention

Article 48 (1) reads: There shall be a President of Bangladesh who shall be elected by member of parliament in accordance with law. Clause (2) reads : the President shall, as Head of State, take precedence over all other persons in the state, and shall exercise powers and perform the duties conferred and imposed on him by this constitution and by any other law. Clause (3) reads: In the exercise of all his functions. save only that of appointing the prime minister pursuant to clause (3) of article 56 and the chief justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the prime minis-

Article 57 (2) reads: If the prime minister ceases to retain the support of a majority of the members of parliament, he shall either resign his office or advise the president in writing to dissolve parliament. and if he so advises the President shall, if he is satisfied that no other member of parliament commands the support of the majority of the members of parliament, disso-

lves parliament accordingly...... Clause (3) says : Nothing in this article shall disqualify the prime minister for holding office until his successor has entered upon office. Article 52 (1) reads :

President may be impeached on a charge of violating this constitution or of grave misconduct, preferred by a notice of motion signed by a majority of the total member of members of parliament..... Clause (4) reads: If after the consideration of the charge a resolution is passed by parliament by the votes of not less than two-thirds of the total number of members declaring that the charge has been substantiated, the President shall vacate his office on the date on which the resolution is passed.

In realityconstitution made it clear that President shall have precedence over all others in the state including the prime minister, head of the government, and shall act upon advice by the prime minister excepting appointing prime minister and chief justice. If analysed carefully it is also found that even appointing the prime minister is also conditional constitutionally that asserts that President shall appoint as the prime minister a member of parkiament who appears to him to command the support of the majority of members of par-'liament, article 56 (3). Even the appointment of chief justice is basically based on a set of disciplines, norms and values which the President hardly breaks, if not necessitated otherwise. President has to work within the four walls and limit of this constitutional frame, otherwise he has to face impeachment under article 52.

tionally been made a titular head of the state by the 12th amendment to the constitution. Not a single voice was heard or sounded within or without parliament who could even sympathetically pointed put: What should be the constitutional provision for the President if the situation urges him to take an initiative for a solution which the ruling party fails to accommodate positively? This very lack of farsightedness was later on detected by Chief Justice Shahabuddin Ahmed who through 11th amendment constitutionally found path to go back to the office of chief justice of Bangladesh from that of the president of the caretaker government. On October 10 1991 in his address to the Supreme Court Bar Association, first after his come-back the Chief Justice noted with very dissatisfaction that the powers and functions of the President under the newly introduced system of parliamentary from of government through 12th amendment has been reduced to such a limit wherefrom the President has nothing to do substantially but to offer prayer at the graveyard'

Our leaders might have been influenced by the then political turmoils in Pakistan and the role of its President Golam Ishaque Khan who by dint of his constitutional powers initiated such an unhealthy and unbecoming parliamentary democratic atmosphere that finally brought the untimely fall of the elected government of Benazir Bhutto and Nawaz Sharif government luckily escaped the wrath after having been blessed with a verdict by

Lahore High Court. But they could have taken a stock of the theory and practice of parliamentary democracy being followed in India since its birth on August 15,

This is very interesting to note that whenever our leaders or political parties moved for a system they tailored that only to suit their instant party or group interests. The 5th and 7th amendments introduced a kind of "presidential form of dictatorship" under president Zia and President Ershad in the name of 'presidential form of government'. Their prime ministers were more or less like the president under the 12th amendment, of course, with variations in a different perspective.

Political Obligation The concept of head of the

government under a parliamentary system of democracy originated from the role and position of King/Queen in the British system of parliamentary democracy, the motherland of

modern democracy. The British system, mostly based on conventions, customs, norms and values, accepted the King/Queen as a compromise formula that generated concepts like "King/ Queen reigns, does not rule". "if a parliament passes a bill giving the King/Queen even a death sentence, the King/ Queen has no choice but to sign it" and with birth and development of more and more political parties the balance has not yet been jeopar-

But in case of a country or countries where King/Queen does not exist and where this can not be introduced, a procedure is sure to be followed to find out a head of state and the possible best practicable

by Sinha M A Sayeed

choice is "election". Keeping this reality in true perspective, article 48 (1) reads: There shall be a president of Bangladesh who shall be elected by members of parliament in a accordance with law. Article 50 (1) says Subject to the provisions of this constitution, the president shall hold office for a term of five years from the date on which he enters upon his office, provided that notwithstanding the expiration of his term the President shall continue to hold office until his successor enters upon office. Clause 2 says: No person shall hold office for more than two terms. It has further been asserted that President shall be elected by a majority members of parliament. Constitution does not say whether he should belong to a party or not. But constitution made it clear pursuant to article 50 (4) If a member of parliament

is elected as President, he shall vacate his seat in parliament on the day on which he enters upon his office as President. The very basis of the con-

cept of election to the office of the head of the state gives birth to two possible alternative approaches as follows: a) Nomination from within the party structure line; b) Nomination from without the party structure/line. If a nomination is decided

from within the party struc-

ture/line, it must go to a person or party leader below the rank and file of the party chief. It happened in case of Mohammedullah, a former AL office secretary under Bangabandhu and Abdur Rahman Biswas, an ex-vice president of BNP under Khaleda Zia. Mohammedullah was virtually insignificant to prime minister Bangabandhu, father of the

overall position to his party leader BNP chairperson Khaleda Zia can be understood from a reference that happened immediately after his having been elected to the office of the President. Khaleda Zia is learnt to have passed a message to the president-elect Abdur Rahman Biswas to meet her at the former's sangsad office. Biswas's elevated position could not duly be weighed by his leader.

So, the problem of nomination from within the party structure/line is that it arises from party chief's preference who, it is proved historically, hardly commits a mistake to find out such a nominee.

A party may also feel that

instead of nominating a party leader it is wiser and better to go for a non-party personality. who has enough integrity and maturity with a legal background and who commands the confidence of the nation as a whole at the same time being responsible to the party. Bangabandhu picked up Abu Sayeed Chowdhury as the head of the state on consideration of his outstanding contribution to the genesis of Dangladesh

System of re-election at least at the initial phase of parliamentary democracy may not be helpful as the incumbent president may feel tempted for being re-elected addressing himself to the majority party in parliament at the defiance of national interest and that's why it is in the air that the sitting president Abdur Rahman Biswas has been offered Presidency by BNP for the second term for which he may

have to be obliged to BNP. Therefore, constitutionally and politically President of the Republic has been under two obligations and it is a call of the time, the nation and the reality to develop a third the-, ory or a sort of compromise

formula so that President in time of crisis of any nature may initiate a move or dialogue being at least for the time being above party or group interests. In such a background the following suggestions are put forward for immediate taking into account by the political parties while dealing with the powers and functions of the head of the state in the coming parliament:

1. Let the office of the President of the People's Republic of Bangladesh be fixed for one term only for a non-party outstanding personality with enough integrity and maturity having a legal background who at the same time enjoys the confidence of the nation as a whole. It is better to go for a retired Chief Justice or retired Justice of the Appellate Division of the Supreme Court of Bangladesh.

2. Let there be a constitutional provision that as the head of the state, as the custodian of the constitution and as the commander-in-chief of Armed Forces President of the Republic shall enjoy a set of powers to deal with a national crisis, political or otherwise. provided the party-in-power has failed to cope with the same positively within the

time frame of say 60/90 days. 3. Let the president move for an initiative either with a ref. to the Appellate Division of the Supreme Court or at his own without a prior advice from the prime minister.

We have meanwhile suffered a lot in almost all areas. Our prestige and dignity have been lowered. But as a nation "We > must stand with the head high in pride, not with the face hung down in shame." The sooner our political parties and leaders realise this, the better The writer is Joint

Secretary for International Affairs. Jatiya Party

OPINION

Non-partisan Government is Required for Five Years and Not for Five Months

Many of us are now hopeful that the present political stalemate will be over within foreseeable future but the question is, will it be the last one? Definitely not. I am not being sceptical but if past experiences are anything to go by, then this must happen again and again because this is our political culture. The politicians here have more faith on movement in the streets than on the Parliament itself. I just do not understand why do they try to go to the parliament rather than remaining on the street. where they belong. They have been getting results from their movement on the street and this encourages them to continue this unhealthy practice. For their personal gains, keeping the nation and its economy hostage is a mere political strategy to them.

I have wondered why this has to happen to our impoverished country where most important thing in life to 90 per cent of population is two square meals a day and a roof over their head and politics is the last thing in their mind. In my humble opinion the reasons for this could be attributed to following:

Politics is a profession here and is a means of livelihood to most politicians and motive behind entering such a profession is to get control of state machinery in order to plunder the national resources under their control for personal

Disproportionately large public sector in the country gives them easy access to the resources of the public undertaking. This results in their midriff to bulge and at the same time chocking the national enterprises. This is one of the reasons why successive governments have not disinvested the government undertakings that are bleeding the nation to white inspite of repeated promises by them to do so. So long as these easy

Salahuddin Ayubi

sources of making money remain open to the politicians, their lust for taking control of state machinery will remain.

Another thing is that the entire administrative machinery has been deliberately kept corrupt, so that these unscrupulous politicians can fish in troubled waters for their personal gains by keeping corrupt officials under their thumb. It is incredible that a well meaning government cannot control corruption within its own administration.

In order to have a peaceful working atmosphere in the country, we need a government that will govern the least and must not involve itself in any business other than those that are of vital national interest but where private capital is shy. Maintenance of law and order, peaceful and congenial working atmosphere and collection of revenue shall be the government's primary business. The government's attitude must also be businessman-like as can be seen in Singapore etc. The administration must remember that public money is not for squandering or throwing away or

Our politicians have miserably failed to give us the kind of leadership needed to pull this impoverished nation out of the curse of poverty though they have done well for them selves. Condition of Malaysia or Indonesia was no better than ourselves in the 60s but in past 25/30 years, they have achieved an economic growth of which we can only dream People in those countries are not smarter than us or they are not more hard working than us. The difference lies in the quality of leadership in our country the politicians have proved themselves as the biggest liability to this impov erished country whereas lead ers in those countries are their

principal assets. It is in this context that I suggest to our politicians to give us a break and they should immediately go into a political hibernation for a period of five years and allow a neutral and non-political government to work for bringing the nation on to the track so that politicians can take over a better Bangladesh after five years in order not to mess it up again.

litical government would be: a) Reform has to be brought in to our outdated judicial system so that justice can be dis pensed with quickly. If need be, the reforms made by the newly-emerging countries may be used as references.

The task before the non-po-

b) Establish a transparent. efficient and honest administration through an administra-

tive reform. c) Disinvest all public en terprises so that government could concentrate on running the business of the state effi ciently, the job they are nor

mally supposed to be doing. d) Introduce political reforms based on he well tried and proven systems of newlyemerging countries e.g. Malaysia, Singapore, Taiwan Hong Kong, Korea etc. A code of conduct for our politicians is

also needed.

e) Agrarian and land reform for the better utilisation of land for the benefit of maxi mum population of the country is long overdue. Land reforms of Taiwan can be used as a guide, interesting thing about their reform was that negligible number of people were hurt by the reform.

This writer is confident once these basics are implemented without fear or favour by dedicated and patriotic leaders, we can look forward to a bright future. We have the ability and the intelligence to achieve rapid economic progress unless of course our politicians use their intelligence to put spike on the wheels of progress

Bravo BGMEA

Sir, Congratulations to the BGMEA on holding a most successful rally amid bomb explosions. We salute all the makers and workers who assembled at this critical juncture for voicing their demands to save garment sector and the country from economic ruins. Statements made by the representatives were courageous, neutral and to the point - just what the doctor ordered. The

demands are simple: To the government — if you cannot take steps to protect and keep this most essential

sector operating, then you have no business running the country.

Our President has constitu-

To the opposition - keep the ports, factories and any other elements related to this trade out of your programme. News of Bangladesh navy intervention in Chittagong port

operations was like music to our ears. A Desperate Maker Dhanmondi, Dhaka

Let the journalists work Sir, During the recent political action programmes, a

injured or even killed while they were on duty. The most tragic incident occured when a young journalist, Kamruzzaman, dled when he was discharging his professional responsibilities in Nilphamari. It is indeed very much shocking.

number of journalists has been

We would appeal to both the government and the opposition parties to let the journalists work during any political programmes. Allow the journalists discharge their duties independently.

M Zahidul Haque BAI, Sher-e-Bangla Nagar, Dhaka-1207