

CTG in the midst of political chess

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EVERYBODY was taken aback when President Iajuddin Ahmed assumed the additional responsibility of chief adviser of the caretaker government. In an article captioned "Political chess game," published in The Daily Star on September 22, I suggested exclusion of judges from the "fit list" for becoming CA, and appointment of someone acceptable to all major political parties.

In that article I inferred that "in case the major political parties fail to reach an agreement ... there would be no option left for the president but to assume the functions of CA, as provided in article 58C(6) of the constitution."

The outgoing BNP-led government made that most improbable happen when their chosen Justice Hasan declined to assume the post.

In the same article I wrote:

"Once a CTG is in place it will act in full public view. Any partisan decision, or reluctance to make the administration neutral and create a level playing field for all participating parties, would be apparent. Therefore, the AL should withdraw from the electoral process and launch a movement only when it becomes apparent that the CTG is averse to creating a level playing field, and is hatching a plot to favor any particular party." I further wrote: "Withdraw from the contest, ab initio, by either party is not really an option."

AL head Sheikh Hasina neither welcomed, nor rejected, the president's assumption of the CA's responsibility. In a press briefing soon after she smilingly said that her 14-party combine would observe the activities of the CTG for some time. The next day she personally handed over to the Hon'ble President an 11-point task list for creating a "level playing field" for all political parties in the forthcoming election, and demanded that those should be implemented before they

hold a public meeting in Paltan on November 3.

Reconstitution of the Election Commission and making the administration non-partisan are high on the list. The council of advisers decided to reconstitute the EC, and two advisers personally conveyed the message to Sheikh Hasina. The interim government has also effected some top level changes in the secretariat and in the police administration, which apparently did not elicit AL's applause. AL general secretary, while commenting to the press, termed these measures as going "from the frying pan to the fire." In this scenario, the 14-party combine extended the deadline by a week, and Sheikh Hasina declared at Paltan that if their demands were not met, they would again enforce indefinite blockade programs across the country with effect from November 12.

The EC is a constitutional body vested with the responsibility of the superintendence, direction and control of the preparation of the electoral rolls for elections to the office of president and to parliament, and the conduct of such elections shall vest in the Election Commission.

Article 118(4) of the constitution provides: "The Election Commission shall be independent in the exercise of its functions, and subject only to this constitution and any other law." Its independence is granted with the provision that "an Election Commissioner shall not be removed from his office except in the like manner and on the like grounds as a judge of the Supreme Court." However, "an Election Commissioner may resign his office by writing under his hand addressed to the President."

The Election Commission has been mired in a series of controversies since the CEC unilaterally decided to prepare a new voter list, replacing the existing one, ignoring the opposing views of his two other

colleagues, and for keeping the portrait of former Prime Minister Khaleda Zia hanging in its office even seven days after she relinquished office.

The entire nation, save the die-hard members and supporters of BNP-Jamaat alliance, doubts the EC's neutrality, and holds the view that a free and fair election under their supervision is very unlikely. Article 58D(2) stipulated that "The Non-Party Care-taker Government shall give to 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."

With the present incumbents of the EC, holding of a fair and impartial election peacefully seems to be a far cry, and in this scenario how far the providing of assistance to the EC by the Council of Advisers would be appropriate is doubtful, to say the least.

In 1991, as well as in 1996, the integrity of the EC was questioned, and the members of the commission thought it dignified for them to resign. This time, not only is the integrity of the CEC and other members of EC in question, their competence to conduct the election is also doubtful.

Despite the commission's wasting over Tk 400 million in the preparation of a new voter list, ignoring the High Court's order, and then spending a similar amount in updating the list, it has miserably failed to come up with an accurate voter roll. In the meantime, a former judge has opined that the CEC is "unsound" of mind. In case a competent court declares him so, he would become ineligible for the position he is holding now. It seems that it is high time for him to resign and leave with grace, and save the nation from a catastrophic political turmoil.

It is alleged that during the past five years the BNP-led four-party government had politicized the administration on an unprecedented scale. However, bureau-

cracy, by its very nature, tends to become neutral once the overbearing political influence is removed, and most civil servants would act neutrally under a non-partisan CTG. However, to remove all doubts, the CTG should replace the officials now holding various positions considered to be relevant in the context of the forthcoming election with officials who were sidelined by the previous government.

In this connection, a remark of former minister late Col Albar Hossain appears to me very pertinent. He once said that his opponents may be allowed to have officials of their choice, from the level of secretary down to UNO, leaving for him only the OC, who would be in charge of law and order on the election-day. The message he wanted to convey is loud and clear. The CTG should, therefore, make sure that the law enforcers act neutrally for holding a free and fair election.

President Professor Iajuddin Ahmed is a political appointee. However, the advisers he has chosen are persons of unimpeachable integrity. The people in general are of the view that if they do not allow themselves to be constrained by the activities of the EC and chief adviser they have the ability and wisdom to present the nation a free and fair election.

The president and the Council of Advisers are now in the midst of a political chess game. However, their place in history would be determined, not by party loyalty, but by their success in holding a credible and impartial election with participation of all major political parties. The nation expects from them expeditious and bold actions to create a level playing field for all political parties – old and new, large and small.

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CEC impasse: Roadmap to solution

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PERHAPS the first and foremost barrier to holding a free and fair election is the present setup of the Election Commission (EC). The demand for reconstitution and reformation of the election commission should not be treated as the demand of the 14-party led alliance only.

In fact, the majority of the population in the country, as well as foreign observers have opined that unless reconstitution and reformation of the Election Commission is carried out the election will be a farce, and not credible. Fortunately, the Advisers' Council of the CTG has realised this, and started to work on this issue.

Apparently, the task of reconstitution of the EC seems to be a complex one. First of all, there is the changed stance of the BNP alliance which, during the dialogue with the 14-party alliance, agreed to change the EC, but is now opposing its reconstitution. It is assumed that the chief election commissioner is being stubborn about not resigning because he is backed by the BNP alliance.

Resignation from this key electoral office, for the greater interest of the nation, is not unprecedented in Bangladesh. For instance, before the 1991 parliamentary elections, the then CEC, Justice Sultan Hossain Khan, resigned because of severe opposition from the major political parties.

Similarly, former CEC, Justice AKM Sadek, who conducted the February 15 parliamentary election in 1996, also resigned upon request of the then caretaker government. Already, Justice Aziz has refused to resign at the request of some members of the Advisory Council of the CTG.

Under these circumstances, the CTG must take some appropriate measures to reconstitute the CEC. On the other hand, some people are saying that the CEC is a constitutional post, and his removal is impossible, unless he resigns willingly, according to Article 118(6) of the constitution.

But this is not absolutely true. Our constitution has empowered the government with some avenues to remove the CEC, if necessary. Let us investigate the possible options for such removal of the CEC, as endorsed by the constitution.

Option One: Article 118(5) of the constitution states: "An Election Commissioner shall not be removed from the office except in like manner and on the grounds as a judge of the Supreme Court."

How to remove a judge of the Supreme Court is ascribed in Article 96, which suggests that the president should refer to the Supreme Judicial Council for possible removal of a judge of the Supreme Court.

Article 96(4b) The function of the council shall be to inquire into the capacity or conduct of a Judge, or of any other functionary who is not removable from office except in like manner as a Judge.

Article 96 (5) Where, upon any information received from the Council, or from any other source, the president has reason to apprehend that a Judge-

(a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity; or (b) may have been guilty of gross misconduct, the president may direct the council to inquire into the matter and report its finding.

Article 96(6) If, after the inquiry, the Council reports to the president that, in its opinion, the Judge has ceased to be capable of properly performing the functions of his office, or has been guilty of gross misconduct, the president shall, by order, remove the Judge from the office.

In fact, this immunity had saved

the formation and functionaries of the Supreme Judicial Council has been explicitly stated in Article 96(3) and Article 96(4).

So, if the CEC continues to be reluctant to resign voluntarily then the president may refer the matter to the Supreme Judicial Council for its opinion.

Obviously, for referring the case to the Supreme Judicial Council, the president should have some allegations against the CEC. In fact, the allegations against the present CEC are manifold. Some of the misdeeds committed by the CEC are cited below:

- The present Election Commission has prepared a voter list that is in contravention of court order and that is riddled with errors.
- By appointing about 300 partisan election officers, the CEC has shown absolute loyalty to a certain political party.
- Before retiring as a justice he held the offices of the two key positions of the state, (the CEC and a justice of the higher court) concurrently. This was a clear violation of the constitution. However, the case is under trial.

- It has been questioned whether Justice Aziz is mentally sound enough to discharge his responsibilities properly. In this context, his pretension of being sick and getting "admitted" to a hospital, with a view to avoiding the scheduled interview with some representatives of the EU delegation, can be mentioned.

Option Two: The president alone, for the sake of the continuation of democracy and the aspirations of the common people, can also take the decision on reconstitution of the EC, following the special immunity provided in Article 51(1) which explicitly states that "the president shall not be answerable in any court for anything done or omitted by him in the exercise, or purported exercise, of the functions of his office."

Perhaps the most crucial task for the CTG is the reconstitution and reformation of the Election Commission to ensure a free and fair election. Without doing so, and with the present setup of the EC, holding a free and fair election, which is the prime task of the CTG, will not be possible. If the CTG can take the right decisions in this regard it will, undoubtedly, receive the support of the common people of the country.

president from facing the court when he assumed the post of head of the CTG without exhausting all the constitutional provisions. So, considering the stubbornness of the CEC, the president can remove him for the greater interest of the nation, using his special immunity.

Option Three: To remove the present CEC from his post Article 99(1) of the constitution can also be applied. The article is stated below:

Article 99(1): "[A] person who has held office as a Judge otherwise than as an Additional Judge shall not, after his retirement or removal there from plead or act before any court or authority or hold any office of profit in the service of the Republic not being a judicial or quasi-judicial office or the office of Chief Adviser or Adviser."

The CEC has recently retired as full-fledged judge of the higher court, and so, according to the above article, he is no longer eligible to continue in the office of the CEC.

The above are some options for a way out of the present impasse. It would be wise for the president to take advice from the experts of the constitution, and to follow the most suitable option to get relief from the present crisis.

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World export and status of LDCs

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rising of oil price, this share is increasing. Clothing, where Bangladesh is in the second category, accounted for 19.9% of the total LDC exports.

In terms of market concentration, the EU and the US absorb the majority of LDC exports. In 1995 their share was almost 60%, but by 2004 this figure had dropped to 52%. However, the dramatic increase in LDC exports to China has resulted in the top three markets accounting for 69% of total exports.

Interestingly, six of the top ten markets are developing countries, and they accounted for 41% of total LDC exports in 2004. In 1995 this figure was 32%. In September, 2005 China declared to provide LDCs non-reciprocal market access. So China's share will be increasing further in the years to come. Besides China, Thailand and Chinese Taipei have also increased imports from LDCs. But India and South Korea have roughly maintained their share.

Although the prospects for improvement are getting brighter the overall trade performances of the LDCs have been quite poor. The diversity of export performance across countries is also significant. Two LDCs accounted for 36% of all LDC exports in 2004. Annex F of the Ministerial Declaration commits developed WTO members to allowing duty-free and quota-free market access for all products originating from all LDCs by 2008. It also states that members facing difficulty in achieving this objective must meet a target of a minimum 97% of all products, defined at the tariff line level.

Although WTO members are currently assessing the extent to which Annex F can be translated into substantial improvements in market access, it can be forecasted that it will not have any impact on the exports of Bangladesh, as the excluded 3% will cover most of tariff lines of Bangladesh exports, especially in the markets of the US and Japan.

Another concern of the LDCs is the preference erosion arising from reductions in Most Favoured Nation tariff rates, which is less than one per cent in many developing countries. It reduces the competitiveness of the LDCs' products, and will lower productivity mainly due to dearth in technological know-how and managerial inefficiency.

A surge in Regional Trade Agreements (RTAs) that allow the contracting parties to offer mutually duty-free access is also a great concern for LDCs, as more than half of the world trade is now conducted under RTAs. Some developing countries have argued for invigorating the global system of tariff preferences which envisages trade for preferences among developing countries, and reduces the scope for LDCs for preferential market access.

Non-tariff barriers (NTBs) frustrating market access opportunities for LDCs have been rising in the WTO since its inception in 1995, and also in other international forums. It has been acting as an unseen hurdle to obstruct LDCs' products from entering. LDCs do not have the ability to raise the specific issue at the WTO Dispute Settlement Body.

In 2004, the oil exporting LDCs accounted for 47% of the total LDCs' exports. They experienced a growth rate of 52%. In contrast, the values for manufacturing exporters and commodity exporters were 19% and 22%, respectively. Eight LDCs from these two groups experienced negative growth rates. Over the last decade fuels have sharply increased their share in LDC merchandise export. In 2003 they accounted for 37% of the total value of all LDC exports. With the

markets of developed countries.

Achieving duty-free and quota-free market access to developed countries for all products originating from LDCs' agriculture export was the most prominent category in LDC exports up to 1995 as there were not many NTBs.

Since 1998, the share of agriculture has been sliding down and reached 17.4% in 2003. LDCs also face the challenge of developing supply capacity. The pledge of developed and developing countries to provide technical support for capacity building is not working with the spirit it is supposed to.

On the market access issue, according to 2003 data, 27.6% of total LDC exports remain dutiable. Developed countries account for 61% of this total, and accordingly developing countries account for the remaining 39%. Although LDCs have historically been dependent on preferential market access to developed country markets, and enjoyed duty-free access to Australia, Canada, and the EU (99.2%), Japan and the US maintain, respectively, 49.1% and 38.4% of LDCs imports dutiable.

Thirty-seven per cent of exports from Bangladesh to the US is dutiable. On the other hand, 93.3% of LDC exports to China, in 2003, entered duty-free. New measures by China, last year, will increase the total duty-free figure to 95.2%. India (4%) and South Korea (3%) still remain miserly in allowing LDCs duty-free access.

As a result, despite a growing world economy and significant advances in technology, 852 million people, mostly of LDCs, suffer from hunger and malnutrition. 1.1 billion people do not have access to clean drinking water, and every hour 1,200 children die from preventable diseases. Weaker economies are not reaping the potential benefits of globalization.

The poorest 40 percent of the world population, who live on less than \$2 a day, account for five percent of global income. In contrast, the richest 10 percent, that is 620 million, account for 50 percent of global income. This shocking polarization of trade and wealth can only be stopped if the developed and developing countries take unilateral initiatives, like China, to provide expeditious mechanism for enhancing market access for LDC exports in their markets.

The reasons they offered for Pakistan's collapse were unconvincing, for a couple of reasons. In the first place, most of these writers (except perhaps for Hasan Zaheer) tried to pin the blame for the defeat on anyone but themselves and their friends. In the second, they studiously ignored the awful repression that their soldiers perpetrated on the Bengalis in the final nine months of Pakistani military action in Bangladesh.

His assessment, given the circumstances of the time when his book hit the stands, was generally considered reasonably fair, though he made it a point never to mention the atrocities the soldiers had committed against the Bengalis.

After Salik, other men -- Rao Farman Ali, AAK Niazi, Hasan Zaheer, et al -- emerged with what one could consider their own mea culpa.

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Given such inadequacies on the part of Pakistan's writers where dealing with the Bangladesh crisis is concerned, it is quite refreshing to come by Brigadier AR Siddiqi's assessment of the political problems which developed in East Pakistan in the two years, 1969-1971, during which time he was

the central information secretary, feel confidence about Pakistan's future rushing back into the army.

Yahya Khan finishes his address to the country on the evening of March 26. The killing of Bengalis has been underway for nearly thirty six hours. Sheikh Mujib Rahman has been taken into custody, and the Awami League has been outlawed. The junta is in a state of ecstasy. Myopia has come into play.

It was his good, or bad, fortune to have watched the rise of Yahya Khan as Pakistan's military ruler in March 1969 when a tottering Ayub Khan failed to rally the army behind him for a second bout of martial law, under his leadership of course.

Thereafter, Siddiqi's observation of politics in the country, especially in East Pakistan, constituted the focal point of what remained of his career in the army.

He was in Dacca in the critical days of Mujib's non-cooperation movement, killing time with his fellow West Pakistanis at President's House where first the Mujib-Yahya negotiations, and then the Mujib-Yahya-Bhutto talks went underway, with eventually disastrous results.