

Resignation of the advisers

President's go-it-alone policy responsible for it

WE regret that four of the council of advisers to the caretaker government thought it fit to resign their post. The entire council of advisers had come to gain public trust and confidence by their actions, particularly the four had come to be acknowledged as straight talking and forthright persons.

We are certain that it was their conscience that they were beholden to and it is the reason for their departure. What other options were they left with, given that their efforts to resolve the political issues met with an unsupportive boss and his go-it-alone policy. And it is perhaps the unilateral decision of the president to deploy the army, while they felt that there was absolutely no reason to do so, that precipitated their action.

They have acted on the conviction that much as they would have liked to assist in the conduct of a free and fair election, their efforts to do so had been made unsuccessful by the way the president and the caretaker chief handled the issues. They have acted with dignity and honour, men and women with such qualities one seldom comes by these days. But notwithstanding the indignity that they might have had to put up with, they would have served the cause of the people better being inside the cabinet than outside it. Therefore, while we empathize with their reason for resignation we cannot support their decision. The resignation has further complicated an already turbulent situation.

From the very outset we had noticed the marginalisation of the advisers by the president. His mindset regarding the character of his government, which he did not hesitate to make public as a presidential form of government, that was later retracted though, has been reflected in the manner in which he has conducted the business of the caretaker government so far. The important decisions were taken unilaterally sidelining the advisers and making them feel ignored and irrelevant.

It is public pressure that underscored the relevance of his advisers, more than his desire to do so, that compelled the reluctant president to involve them more intensely, which was reflected in the negotiations undertaken by them with the two alliances to overcome the political bottleneck. The negotiations were conducted extremely well and we were really making headway when inexplicably it floundered on the issue of one individual, Mr. Zakaria. For one person the entire deal was cast off.

The resignation exposes the limit to which the advisers had been pushed to by the president. We urge upon him to convince the four to reconsider their decision with a firm commitment by him that in the remaining period the caretaker government would run on the collective decision of the council of advisers.

Nagorik Committee's 'vision' on polls and politics

The two major parties should act on the recommendations

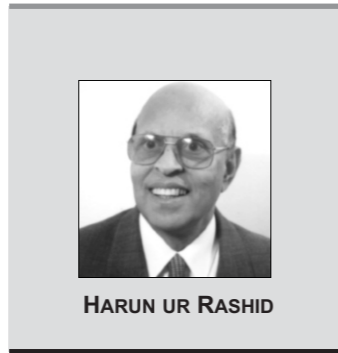
THE Nagorik Committee recommendations on politics and polity were laid out to the people at a function held the other day at the capital by Nagorik Forum. It was perhaps for the first time such recommendations were made by a non-political forum after having elicited countrywide opinions over the last several months. This exercise is part of the political process which we feel should ideally have been undertaken by the political parties. The CPD, Channel i, Prothom Alo and The Daily Star should be commended for undertaking the exercise, which will surely strengthen the democratic process in the country.

The recommendations were a part of the 'vision' document for Bangladesh for 2021, which the Nagorik Committee had put together after 15 extensive dialogues held across the country aimed at bringing about necessary amendment to the Representative of People Order (RPO). The civil society's recommendations in the paper also include such other issues like bringing about necessary reforms in the political system, the electoral process, electoral code of conduct, reforming of the election commission etc.

We are indeed happy to note that no less than the general secretaries of both the major parties have welcomed the recommendations. While BNP Secretary General has said that "no gentleman will come forward for contesting election in the future" if the present state of black money and muscle power are allowed to continue influence the election process a similar view was expressed by the Secretary General of AL when he said that "the dream of independence will be shattered if we cannot free politics and economy from the clutches of massive corruption and terrorism."

As much as we are pleased with the display of concern and consensus expressed on the various aspects of the recommendations by the two, we sincerely hope that the comments made by the two Secretary Generals were not mere empty words. We certainly wish to see a reflection of their commitments translated into real action in the forthcoming election. It is they who can render the recommendations into actions if they have the political will to do so.

Army on the street: Will it serve the intended purpose?



HARUN UR RASHID

IT is noted that the president is empowered to call emergency under Article 141A of the Constitution and also, as he is in charge of the defense portfolio, entitled to call out the army for reasons he deems fit.

The president has thought it fit to call the army to join ranks with the other law enforcement agencies in "maintaining law and order" to ensure a fair election. On December 10, the president stated in a nation-wide address that in the past the army had been called out in aid of the civil administration to curb terrorism, tackle disasters, control traffic, distribute VGF cards, and manage water supply in the Dhaka city. This means that calling out the army to assist the civil administration is not something extraordinary.

It is correct that the army had been deployed in the past to assist and aid the civil administration, and the decision to do that was made by the government led by the elected prime minister.

During the caretaker government, the executive power of the country is exercised not by the



BOTTOM LINE

In the light of this background, many legal experts argue that the chief adviser alone cannot take a decision, such as the calling out the army, disregarding the opinion of the advisers, even though the chief adviser in this case happens to be in charge of home affairs. Such a decision arguably contravenes the provision of the working of the non-party caretaker government under the Constitution.

president but by the chief adviser, who shall act in accordance with the advice of the non-party caretaker government (Article 58B.3). A distinction is to be made between the powers of the president and the chief adviser under the Constitution, and it is important.

The distinction I again make is that the powers exercised by the elected prime minister are not the same as those of the un-elected chief adviser. The scope of the powers of the un-elected chief adviser is very limited compared with that of the elected prime minister.

The first question that arises in this connection is whether the decision to call out the army was in his capacity as the president or as the chief adviser in charge of home affairs. I raise this issue because both the high offices are currently held by the same person, and it is often confusing to people whether he is exercising his powers as the president or the chief adviser.

It is widely reported in the media that it is routine for the home affairs ministry to call out the army in aid of civil administration. Therefore, it is reasonable to

assume that the chief adviser, who is in charge of the home affairs portfolio (among others), has decided to call out army.

The second question is, since the calling out of army on the streets is made out to be a decision of the chief adviser, not of the president, can the chief adviser do it alone, disregarding the opinion of the advisers?

This question essentially boils down to the issue about the powers of the chief adviser of the non-party caretaker government under the terms of the constitution, which the chief adviser is oath bound "to preserve, protect and defend." The non-party caretaker government is interpreted as the council of advisers led by the chief adviser (first among the equals).

It has been reported that at least four advisers do not consider that the current situation in the country calls for army deployment. It is significant to note that one of the advisers is the last army chief. These four advisers have, in fact, now resigned from the caretaker government in protest at the president's unilateral decision making.

In the light of this background, many legal experts argue that the chief adviser alone cannot take a decision, such as the calling out the army, disregarding the opinion of the advisers, even though the chief adviser in this case happens to be in charge of home affairs. Such a decision arguably contravenes the provision of the working of the non-party caretaker government under the Constitution.

It is noted that in terms of the Constitution, the non-party caretaker government is collectively responsible to the president (Article 58B.2.)

In the past it has often been the experience that the president did not endorse some of the proposed actions of the chief adviser. In such a situation the chief adviser, together with the advisers, had no unfettered power to take decisions.

For instance, in 2001 the chief adviser, after the approval of the council of advisers, wanted to amend the Criminal Penal Code (Amendment) Ordinance but the president did not agree. Since the same person occupies both the high offices, there appears to be no second opinion on any pro-

posed action. The third question is related to the purpose of calling out the army in a situation that has produced mixed reaction among the public and civil society.

Many perceive that the army should not be called out in a situation where the political parties are in confrontation in their attitudes and views as to how to ensure a fair, free and credible election. Mass civil and peaceful demonstrations are often carried out against any unpopular decision, or commission or omission, of the government, and they are the legitimate methods of democratic society.

Calling out the army is not a light matter. There must be considerable justifiable reasons for doing so. There should not be differing views on deployment of army. If their presence becomes controversial, the army personnel may become demoralized.

Many argue that there could be four, among others, implications arising out of the deployment of army in a situation where some core issues need to be resolved by the caretaker government in consultation with political parties to create an environment for free, fair and credible election.

First, the army is to defend the sovereignty and territorial integrity of the country. The army has been essentially trained to fight with an enemy during a war, and brutality in wars is commonplace. That is why people fear the army. They are not trained to maintain law and order.

Second, history provides ample examples when authori-

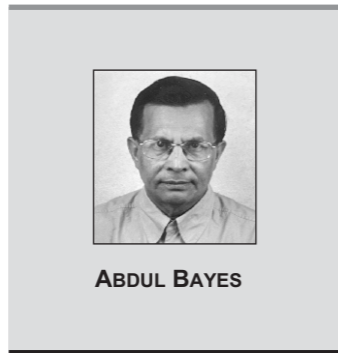
ties, to suppress public protest and demonstrations, called the army. Army personnel may not be able to handle the situation, and their deployment becomes counter-productive. The army personnel carry lethal weapons, and if there is a confrontation between a group of demonstrators and the army, the situation may go totally out of control.

Third, most people fear the army, but if the soldiers become a part of the normal scenario for some weeks, people will not fear them any more. This is psychological, because if people become familiar with the army personnel, they will treat them (the army) as part of them. This works reciprocally in that the army personnel often appreciate the people's grievances and reasons for their protests.

Fourth and finally, Article 21 (2) of the Constitution provides that "every person in the service of the Republic has a duty to strive at all times to serve the people." The phrase "service of the Republic" includes any service, whether in a civil or military capacity (Article 152 of the Constitution). Many argue that any suppressive action by the army against a group of demonstrators contravenes Article 21 that is "to serve the people at all times."

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Light from the advisers, plight from the president



ABDUL BAYES

ONE of the advisors of the caretaker government (CTG) had assured us of the light at the end of the dark tunnel. Another adviser reminded us of many tunnels -- not just one -- till the election is done. The same advisor possibly warned us against leaving any room for complacency resulting from his colleague's comment. But, be it one tunnel or many, it is the president who has led us into the dark tunnels. Let us test the hypotheses one by one.

Notwithstanding the constitutional validity of his assumption of power as CTG chief, Dr Iajuddin Ahmed made the first serious mistake by monopolizing the major ministries, and, thus, showing little trust in his council of advisers. Even the education ministry was kept under him, paving the way for massive recruitment in educational institutions, especially in the universities. It may be mentioned here that the erstwhile government had appointed most of the heads of these institutions.



BENEATH THE SURFACE

There is no doubt that the economy is seriously suffering due to the current political crisis. It is unfortunate that, unlike in the past, the economy is witnessing a serious blow during the tenure of the current CTG. And all the suffering and suffocation seem to originate from the demand for a neutral, free and fair general election which has to be delivered by the government. We fervently hope that the sufferings should subside within the shortest possible time, with good wishes from the president. Let us wait to see the light at the end of the tunnel(s), and request the president to take measures that would reduce the public's plight.

It would, perhaps, be pertinent on the part of the CTG to issue an order withholding all appointments during the tenure of the CTG. Again, it took a long time regarding transfers of key officials -- a preliminary task of any CTG after assumption of power. The enquiry of the "Uttara conspiracy" seems to be on its way to the shelf to shelter the culprits. But common sense tells us that those officials should be barred from being active during election time.

Perhaps the president could have plugged some of the holes by inculcating team spirit in the cabinet, following the tune of the past CTGs. No doubt he has a bunch of efficient and energetic advisors waiting for full utilization of their potential. Only very recently, we notice that he had started to work -- perhaps by force rather than by choice -- in a spirit of cooperation with his council of advisers. The light was looming large at the end of the long tunnel.

But the light lasted only for a

while. No sooner had the advisors reached an acceptable solution to the current conundrum, then the president put a spanner in the works. Mention may be made of the mini-package programs for the solution. Earlier, the president brought in two highly politicized personalities as commissioners in the EC, to public wrath. Thus, the looming light turned into a perennial plight for the public. Now everything seems to be stalled because of an unwillingness to reconstitute the EC. The 14-party alliance and others have rightly been raising the issue of overhauling the EC in right earnest.

The supporters of the BNP-Jamaat axis argue that the 2001 general election was held under an EC constituted by the then Awami League (AL) government, and hence, AL should have also accepted the present EC constituted by the previous government. But, delving into the dynamics would reveal that the present EC has lost credibility through its

unconstitutional and politicized activities and not because of the way it was created.

The CEC (on leave) MA Aziz prepared a massively maligned voter list with support from the two commissioners, SM Zakaria and Mahfuzur Rahman. Everyone, including the highest court of the country, decried that voter list. Second, after the verdict from the court, the EC declined to visit door to door for updating the voter list. Rather, the EC asked the voters to go to specified places to enlist their names. Third, rejecting the claims from all corners, the EC sat on the voter list and vehemently argued against its updating. Sometimes, shortage of time was shown as a cause.

But when NDI showed the faults and the US embassy asked for a revision, the EC has now decided to update the voter list. One could conclude that the present EC headed by Justice Mahfuzur Rahman deliberately killed time to suit the interest of a

particular political party. Therefore, it is not because the EC was constituted by the BNP-Jamaat alliance that the fire was sparked off, but it was the mistakes made by the EC that turned the popular tide against it.

The argument that the 14-party alliance is raising issues one after another to create confusion also does not seem to hold water. One should judge whether their demands are valid in the quest for a free and fair election. The earlier CTGs had sailed off peacefully because the president of the country and the chief of CTG were two separate persons: the former being political and the latter being neutral. This time, the president was drawn into the picture to represent the interest of a particular political party, which he belongs to.

The 14-party alliance made a good gesture by requesting the chief of CTG to show his neutrality within a time frame. Unfortunately, the president of the country paid no heed to their request. Instead, by words and deeds, the CTG turned out to be increasingly tilted towards holding an election under a hierarchy left by the erstwhile government. For example, the president's midnight speech to the nation bypassed the consensus of the advisors and reflected the wishes of his unofficial advisors from a particular bhaban. In fact, his speech could not assure us of any light at the end of the tunnel, quite the opposite.

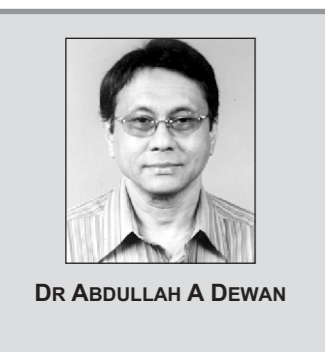
But, better late than never. We expect that the president will work

in consultation with the official advisors to be in line with the constitution, and arrange an environment for a neutral, free and fair election. As a president he is political, but as chief of CTG he should display his sense of neutrality, that is yet to be seen, to the public to take them into confidence. To this effect, the EC should be reconstituted very soon with non-partisan persons so that the nation can witness a much-awaited free, fair and neutral election. The CTG has to see that all political parties participate in the coming election in a celebratory mood.

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Upholding the rule of law: Khaleda vs Hasina



DR ABDULLAH A DEWAN

IT is an intriguing question as to how the BNP-alliance would benefit from deployment of the army when the political atmosphere was improving propitiously. All the hard work, and the days of hectic negotiations by the CTG advisers which had gone into restoring pre-election congeniality among the fractious political parties, has now been spoiled by the partisan chief adviser and president, Iajuddin Ahmed. It seems that keeping two controversial election commissioners -- Zakaria and Modabbir -- is worth more than the image of the country at home and abroad. Why are these two "undesirables" so indispensable, unless they were implanted to manipulate the election outcomes?

From a titular president he was made an imperial president, and



NO NONSENSE

My friends often tease me that I should've pursued a career in politics. Instead of studying physics, nuclear engineering, and then economics, possibly I could have become a finance minister by studying "accounting," a health minister by studying "geology," an education minister by studying "agricultural economics," or president of the country by studying "soil science." Obviously, I couldn't have become the prime minister because of my education and gender.

Iajuddin has now become an absolute dictator by deploying the army and violating all precedents in the process of governing the interim administration based on the advice and consent of the CTG advisers.

Since usurping the post of chief of the CTG, Iajuddin came close to deploying the army twice, but each time he backtracked when faced with "crisis de Coeur" from the advisers. How did he dare to deploy the army at a time when there was no casus belli? It's not a Gordian knot that it can't be untied.

While addressing the non-government school, college and madrasa teachers at the BIAM auditorium on November 27, Khaleda Zia urged them to work for BNP to protect the country's independence and sovereignty. She didn't, however, clarify who they ought to be afraid of losing the

country's "independence and sovereignty" to.

Such statements have the same tone that the Pakistani military rulers used against Bangladeshi politicians to perpetuate their power. Khaleda's parroting of the Pakistani military rulers' "independence and sovereignty" campaign is simply too old-fashioned. Like the Pakistani military rulers, she takes refuge under such statements; possibly because she was influenced by the military environment for the nearly 45 years that she spent in military barracks, including her last 15 years in politics.

It is hard to assess how much of her indifference, or tolerance of the violations of human rights and the rule of law, is attributable to her living in the military barracks. There is no area in which her administration's violations of the rule of law and the rights of some groups or individuals didn't

adversely affect someone. It is an inexplicable folly if Khaleda engineered the deployment of the army to circumscribe the political rights of her opponents. But will the army take sides?

The dislike of, and frustration with, Khaleda run as deep at home as abroad. This was felt when I met many distinguished Bangladeshis on December 2 at a conference on "Democracy and Human Rights in Bangladesh" held in Toronto, Canada. My presentation, "Saviour of democracy: Khaleda vs Hasina," argued why democracy will be further maligned if Khaleda Zia returns to power. Today's article covers another topic: why rule of law will further worsen if BNP again regains the majority. Since democracy and human rights are inseparable, I wouldn't trust Khaleda with human rights either.

Democracy, human rights, free-

dom of media, and the rule of law are all intertwined. During Khaleda's rule all four rights were violated on an unmatched scale. No wonder the Economic Intelligence Unit categorized Bangladesh as a "Flawed Democracy." For a glimpse of the extent of violations of human rights under Khaleda's administration watch the following video link: (<http://video.google.com/videoplay?docid=1210025978229776205>).

It was disappointing that only a small fraction of the 30,000 plus Bangladeshi-born residents in Toronto showed up at the conference. Paper presenters came from Boston, Chicago, and Michigan, in addition to local human rights activists.

In response to comments from an audience (who blamed the low attendance on aggravation with the interminable political tangles back home) Dr Mozammel Hossain Khan, convener of the conference (and a columnist of The Daily Star), concluded the session by quoting Tagore's poem: "Jodi tor dak shune keu na ashe, tobe aekia cholo re."

Everyone in the conference was deeply abhorrent of the extent of politicization of the country's judiciary, the EC, the police, and even the defense forces. Most people, however, thought that the CTG advisers are committed to a free and fair election, and are working

against the election rigging machinations of the BNP-Jamaat alliance.

The CTG advisers' recent success in retiring BNP supporting civil servants who were on extended contract and transferring other incompetent BNP lackeys to less important departments is commendable. More importantly, promoting officers who were the victims of BNP's dirty politicization was an act that uplifted human spirit. Their rights were violated; they were humiliated and they should bring law-suits against Khaleda and her administration. This recourse will deter future politicians in power from violating the rights and privileges of dedicated public servants.

Freedom House's annual Legal System and Property Rights (LSPR) report shows that the rule of law in Bangladesh has been deteriorating over the last 5 years. The index is based on a scale of 1 (worst) to 10 (best). In recent years, the LSPR index went down from 5.0 in 1995 to 3.2, judicial independence decreased from 3.7 in 2001 to 3.2; impartial courts index dropped from 4.2 in 2000 to 2.8; integrity of the legal system index declined from 7.0 in 1995 to 3.3. Don't forget the number one corruption ranking of her administration for five consecutive years. This deterioration in overall governance started within a

year after Hasina handed over power to Khaleda in 2001.

Her administration has been castigated for political killings estimated to be in many thousands. Extra-judicial killings by Rab cross-fire numbered about 1037 until October. Besides, there were numerous killings of political protestors and workers agitated by unfair labour practices, price spiral, energy shortage, and so on.

Khaleda's administration has failed to arrest the killers of former finance minister Kibria, and also those who made the unprovoked grenade attack on Awami League rally on August 21, 2005 in which several people were killed, and Hasina escaped death.

There are countless instances of her party people unleashing terror by beating people and burning houses and properties of the opponents in many parts of the country (DS: June 23, 2005). Persecution of journalists during the last five years epitomized BNP's intolerance of the free media and drew world-wide condemnation (DS: June 16, 2006).

Repression of minorities (Ahmadiyya, Hindu and indigenous people) rose to unprecedented levels during her tenure (DS: June 29, 2005). One example of ethnic repression in which about 65 families, consisting mostly of

Hindu and indigenous communities, were evicted from government land in Mostafapur union in Parbatipur upazila under the pretext of a rehabilitation project for the landless, which was certainly a state sponsored act of lawlessness and violation of human rights (DS: June 25, 2005). The evictees themselves were homeless and landless.

My everyday frustrations and sleeplessness are not as much for the political impasse in the country as they are for the degradation of the rule of law, and violations of basic human rights.

My friends often tease me that I should've pursued a career in politics. Instead of studying physics, nuclear engineering, and then economics, possibly I could have become a finance minister by studying "accounting," a health minister by studying "geology," an education minister by studying "agricultural economics," or president of the country by studying "soil science." Obviously, I couldn't have become the prime minister because of my education and gender.

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