

We want election the soonest but ...

SHAMSUDDIN AHMED

ELECTION seems to have become the main focus of the nation now. The Awami League, especially party chief Sheikh Hasina, wants election to be held soonest possible, which means, it should not take more than six months to prepare the voter list with photographs, after which the election should be held. Bangladesh Nationalist Party (BNP) leaders also want election at the earliest, before all its tainted leaders are hunted down, tried and punished. Uncle Sam, too, seems to be putting pressure for early election, perhaps because he does not want to see AL and BNP thoroughly cleaned of their rotten eggs and reduced to a rump. If we have a corruption free democratic polity, then America will have very little ground to lecture us on why it wants speedy election without necessary reforms. The EU has also lately voiced support for election before the time frame announced by the Election Commission (EC). Sheikh Hasina is becoming increasingly critical of the caretaker government (CTG). She is accusing the CTG of "wasting time in the name of reforms." Earlier, she said that the CTG's constitutional basis was weak. But she was the most jubilant when the present CTG was sworn into power. She is now interested only in election, and not in reforms, because she wants to capture power. Of course, we all want election to be held the soonest possible in order to get back to the system of governance of the country by a democratically elected government. But the election must necessarily be free and fair, and reflect the hopes and aspirations of the

people. And that is not all. The election must be such that it brings about a qualitative change for the better, as far as the men and women to be elected members of the parliament are concerned. Fair election means nothing whatsoever if the political thugs, the criminals and their god fathers, the "tainted" former ministers, state ministers and members of parliament, and the nouveau riche who suddenly acquired political and social space grossly disproportionate to their legitimate income and became owners of fabulous wealth and property -- multi storied shopping complexes, private TV channels, banks, chains of industries etc, are the ones the people have to choose from for electing their representative in the parliament. Fair and free election means damn all if the same corrupt, inept; power hungry and unscrupulous political leadership again manages to climb back to power as the new government following the election. So, free and fair election means nothing if we do not bring about meaningful electoral and political reforms, and punish those who only exploited the people and plundered and looted the wealth and property of the state and, in the process, sullied the good name of this country. We need reforms to bring about transparency and accountability in the conduct of our parliamentarians and ministers. We need reforms to ensure that henceforth not a single member of parliament will boycott parliament on political grounds and make it dysfunctional without paying the penalty of not being entitled to pay and allowances and all other perks and privileges for the period of absenteeism. We need reforms to slam the door of our august parliament

house on the corrupt and the criminals. All these reforms will take time. We have a God sent opportunity to expect a truly free and fair election, now that a military backed CTG is in place, which can, by and large, boast of being not only neutral but national as well in its outlook and conduct. The AL and the BNP fought each other tooth and nail on the streets till the other day over the issue of the January 22 defunct election. The AL opposing and resisting the holding of election unless essential electoral and other related reforms packages were in place, and BNP adamant on holding the election on the dot as per constitution, sans any reforms whatsoever. Both have seemingly closed their ranks and are demanding that election be held as early as possible. They both fear that by the time voter list with photographs is prepared, and the necessary reforms are in place, many of their party leaders with track records of corruption and criminal offences will have been hounded, tried and put behind bars, which will rob them of the whip hand in the upcoming election. As days progress into a month and months into a year, both AL and BNP, the main two contenders for political power, have much to lose and very little to gain. With the EC and the Anti Corruption Commission (ACC) now asserting their authority and expressing their resolve and commitment to play their due role, there is every possibility that much of the dirty linen of AL and BNP will be washed in public by the CTG, and much of the advantage they had been enjoying in the past as major political parties will fritter away as well. This may facilitate the coming into being of a third political force

in our politics -- something like the LDP and Gono Forum, and other progressive political entities, welded into a grand political alliance which can offer itself as a credible alternative to both AL and BNP, forcing the latter to introduce democratic reforms in their parties. The haste with which AL and BNP would like to proceed with election is understandable. But the mood of the people and the civil society, as evident from TV talk shows and public reactions shown on TV channels across the country, is totally different. They want the political debris and scum to be cleared from the political arena, and necessary reforms duly effected to guard against any elected government ever trying to rig election and stay in power after having failed to deliver. They do not want to hear any more hollow promises of democracy and development from our political leaders. They do not want to see the parliament being used for slandering rival political leaders or being rendered dysfunctional, as they were wont to see over the last sixteen years. They want reforms not only to strengthen the democratic character and contours of our national and public institutions but also to insulate these organizations against any possible threat of ever becoming vehicles of political and partisan influence. The CTG has done a splendid job by reconstituting the EC and the ACC. Those who lead these national institutions are all men of honour whom we are all proud of. We feel the same way about the new chairman of the Public Service Commission (PSC). But can we guarantee that men and women with such impeccable integrity and credentials will continue to lead these institutions in



future, once elected political governments come to power, unless the rules and regulations governing the system of appointment of those who are going to lead these organizations are amended suitably? This is the sort of reforms the CTG must embark upon and pursue as its agenda of reforms. A national commission can be set up to suggest how well we can democratize the system of appointment of men and women who are going to lead and run the affairs of the national and public institutions, including the University Grants Commission, various university syndicates etc, in line with practice in western democracies like the US and UK. This CTG can rightly boast of

some phenomenal achievements in the just over three months time since it came to power. It has done what no elected government could do in the whole of its tenure. It has recovered Tk.2323 crore of outstanding utility bills, and Tk 320.5 crore of the money siphoned abroad. It has recovered 14,187 acres of government land, which was illegally grabbed by the corrupt political elites and their cronies during the rule of the past elected governments. Besides, during this period the overall performance of the Chittagong Port has shown remarkable improvement. A ship's average turn around time has been reduced, and the number of containers handled per day has



increased significantly. Against the backdrop of these achievements, the CTG can look forward to holding a credible election in minimum possible time. Meanwhile, the political parties, particularly AL and BNP, the civil society, the intelligentsia, the media and the people at large should cooperate with the CTG and the EC in their task of implementing the essential reforms proposals and laying out a level playing field for all the political parties, big and small, to participate in the next election. Let us not hurry through the election to put a particular party in power, because this will spell disaster for the country. Let the CTG and the EC take

their time and present a credible and meaningful election to the people -- an election that will send packing to the museum, to borrow the phrase of Professor Mohammad Yunus, all the discredited and tainted politicians, criminals and their god fathers who have so long occupied the centre stage of our national politics -- and help bring in a new breed of politicians with patriotic fervour and strong commitment for democracy and the well-being of the people.

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Upholding the dignity of the judiciary

SALAHUDDIN AHMED

THE recent momentous comment made by the Chief Justice of Bangladesh on the irregularity in the appointment of judges of the Supreme Court, had a rippling effect in citizens' minds. The chief justice said that it might take around twenty years before the issue dies down, probably as a result of entrenched procedure of removal (Daily Star Apr 30). The question is: Can the country afford to wait for that prolonged period, or should some cleansing process be started as soon as possible to save the image of the judiciary and, for that matter, the prestige of the country itself? After the new caretaker government was catapulted to power by a tumultuous wave of political events, nobody questioned its role as a saviour of the nation from the horrendous bad management of the political parties. The way the CTG has been cleansing the state apparatus of Bangladesh reminds one of the proverbial cleansing of the Augean stables. Regarding the legal position of the CTG, the reality is that it is backed by the armed forces of the country, but the real inspiration and the source

of power comes from the spontaneous support of the people. It appears that although Bangladesh has copied a lofty Westminster-style Constitution saturated with the Western values and ideas, it was drowned in the Bay of Bengal more than once. But the closing months of 2006 and the very beginning of the current year is a turning point in our political history. During the three terms of administration by the political parties, covering a 15-year period, the two bosses of their respective political parties have proved themselves to be equally ruthless and indifferent to the interests and welfare of the ordinary citizens of this country. Currently the CTG is busy arresting and prosecuting the offenders of high social standing who have been described as raghob boal (very large local fish). The CTG has succeeded in annulling the appointments in the coveted posts in the EC and the Anti-Corruption Commission. The politicisation in all sectors by the previous governments is the curse, which befell Bangladesh. The CTG has asked everyone, including the judiciary, to show their allegiance only to Bangladesh, and not to any political party.

All incumbents of the organizations and institutions, including the public universities, which receive funds from the government, must not publicly show their political allegiance to any political party. Their allegiance should be to the people of Bangladesh first and last, and to no political party in between. The caretaker government provision in our Constitution is unique, as we have copied the parliamentary or presidential style but have not learnt that the success of these democratic systems depends on tolerance of the views of the other political parties, and a responsible attitude adopted by the opposition in the parliament through keeping a check on the policies of the party in power. As the Constitution provides that the last retired chief justice would be the head of the CTG, it has become a political game to determine who that person would be. It has been alleged that the last political government extended the retirement age for the judges of the Supreme Court so that it could pin its hope on getting favours from the person who would be the chief adviser of the CTG before the ninth parliamentary election. It should be a matter of shame

for any political party to expect that the chief adviser would side with the political party while holding the election because it appointed him as a judge in the Supreme Court. The high-water mark of this game dipped to the lowest level when Justice K. M. Hasan became a pawn in this political chess game. It is true that in Western countries higher court judges are appointed and promoted by the government of the day. However, it needs to be noted that in all those countries, once appointed, the judges become truly non-political, without any bias towards the political party, which they once supported. Possibly they remain true to their broad ideologies, in the sense that they are conservative, liberal or labour-oriented, or supporters of environment or capitalism. But in those countries no compromises are made in relation to the qualification and integrity of a judge whose only duty is to deliver judgements without being influenced by the policy of a political party, whether in power or in opposition. Coming to the Supreme Court, we find that there are 67 judges in the High Court Division and 7 in the Appellate Division, including the chief justice. The last political

regime confirmed 41 judges, even as it withheld the confirmation of the appointments of the majority of the judges made by the Awami League government. It has been alleged that in the majority of these appointments, confirmations, withholding confirmations, the principal criteria were not observed in selecting legal eagles shining in brilliance, but in loyalty to the political party in power. The principle of maintaining and honouring seniority in the case of elevation to the Appellate Division from the High Court Division was sacrificed by the Awami League government when, in 1999, it promoted two judges superseding two other senior judges. The BNP-led government played a tit for tat game when it appointed Justice K.M. Hasan to the post of chief justice, superseding two senior judges of the Appellate Division. The Constitution provides that a legal practitioner of ten years standing in the Supreme Court, or one, who has performed judicial functions for ten years, is eligible for appointment a judge. It need not be said that it is the minimum technical qualification of a judge. The president appoints a judge in the Supreme Court after being advised by the government of the

day. In that sense, it is a political appointment like any other appointment for high position in the country. In the matter of appointment, confirmation and promotion of a judge, the role of the chief justice seems to be negligible. In the current Constitution, there is no need on the part of the government for consultation with the chief justice when appointing judges to the Supreme Court or promoting judges from the High Court Division to the Appellate Division. The chief justice can only recommend confirmation of an additional judge of the High Court after the expiry of a two-year period. But it is up to the government to accept or override his recommendation. After confirmation of a judge of the Supreme Court, he or she cannot be removed unless she/he voluntarily resigns, or the Supreme Judicial Council makes an enquiry and submits a report to the president, when he may pass an order removing the judge on grounds of gross misconduct. In the past Justice Syed Shahidur Rahman was removed on April 20, 2004, based on the report of the Supreme Judicial Council. Since the current CTG came into power, the Supreme

Judicial Council has been making an enquiry in the case of Justice Faisal Mahmud Faizee after Chittagong University cancelled his LL.B. degree. It may be noted that the outgoing government confirmed the appointment of Justice Faizee, although the chief justice did not recommend the confirmation. It has been proved that, once appointed the judges are not invincible, and they can be removed if there are serious allegations against them. Under the current potentially harmful circumstances, it would be proper for the Supreme Judicial Council to conduct enquiries into suspected cases and inform the president accordingly. The president may deem it fit to ask the Supreme Judicial Council to make enquiries in the appropriate cases and report its findings. The president, after getting advice from the government, may pass removal orders of the questionable judges on grounds of gross misconduct. The day has come for an operation directed at a cleaning-up of the judiciary, for the judiciary is the last bastion of hope and the guardian of the fundamental rights of the citizens of the country. How can it play the role of a

guardian unless its human guardians do not have impeccable records of brilliance, integrity and high morality? It is an obligation upon the CTG to restore the loftiness of the judiciary to its proper height so that people of the country can be proud of its stature and dignity. The administration of justice is a field where we need to prop up our own resources, particularly when the question comes of holding aloft our legal integrity and sagacity, and dispensing justice without fear or favour. For that reason we need to have judiciary personnel of high calibre, both in morals and depth of knowledge, equal in dignity with their counterparts in other countries. Not only litigants but also all citizens of the country want to show their respect to an institution where the symbol is the scale of justice, determining right from wrong. It needs to be remembered that ultimately a judge, and for that matter the prime minister or the president of the country, is in office only to serve the people and serve the nation. Barrier-Salahuddin-Ahmed-is-a-former-Visiting-Professor-at-the-Law-School,-University-of-North-Carolina,USA.

Is water the next oil?

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IS water the next oil? Motives behind the question vary, depending on who asks the question. Those who see water as a future core commodity -- therefore as profitable a prospect as oil -- pose the question to create the right market conditions for water trade. Those who see the potential for conflict arising from scarcity compare diminishing freshwater to oil's depleting reserves. Those who see an environmental threat from mismanagement of water see parallels with the abuse and waste of oil. So there are lessons to be learned from how we have managed oil on this planet over the past century and more. The oil crisis confronting the world today is much like the looming crisis in water, with depleting supplies, unequal distribution and access, and the inevitable specter of rising costs and increasing conflict around the sharing of this vital natural resource. As with oil, water exploitation raises an inter-

generational debt that will be hard to repay. The uncontrolled and rapacious exploitation of oil has led to unintended consequences, and if we continue on a similar trajectory with water, the oil crisis will seem like the trailer of some horrible disaster movie. Ironically, our untrammelled use of oil fuels the crisis in water. Burning of fossil fuels has led to global warming, the melting of glaciers and ice caps, and the early snowmelts that will cause flooding in areas that can hardly bear another burden. And it may also cause the climate to fluctuate in a way that brings too much rain in some places and too little in others. In addition, the move to replace oil with biomass-based fuels will intensify water use, not so much for sustaining our life and this planet as to sustain our lifestyles. All this is worth thinking about at the individual level, because if change really happens, it must begin within the individual consciousness. The challenges are immense. The first, of course, is that the earth

has a finite amount of usable water, despite it being a beautiful blue planet. The 2.5 percent of usable planet water is in a precarious balance with glaciers and fossil groundwater remaining intact. Another challenge is the inefficiencies and inequities in how water is used. Agriculture consumes 70 percent of the world's water, much of it to produce what we eat. There is tremendous wastage in our agricultural processes, though the levels are somewhat stable or even improving slightly. Demand for domestic water has risen sharply over the century, which again brings us back to questioning what we as individuals can do. The sectoral demand on water is increasing rapidly within both industry and domestic settings. Competing demand will create pressure on the agriculture sector, perhaps leading water-scarce regions to produce less food and outsource food production to water-rich countries, spurring concerns about the food security of individual nation states. Poverty,

power and inequality are at the core of the water issue and not scarcity, as the UN Development Program Human Development Report 2006 powerfully argues. And herein lies the rub. Since we have taken water for granted, we must face the alarming inequality in safe water. More than 1.5 billion people lack access to adequate water and sanitation. If poverty is bad, then poverty without water is hell on earth. Recently, the millennium development goals have supplied a normative framework for governments to prioritize how water is delivered. Still, not enough money or resources flow into this sector. Worldwide, only 5 percent of all international aid goes into water and sanitation. We are still far from universal access to good water for life. And this inequity instigates the raging debate around water today. Another critical problem for the water sector is wastewater and pollution of our ponds, streams, lakes and rivers. No one can estimate the costs to clean our water resources and how much of the

damage is irreversible. So maybe it is time to apply the lessons learned from the management of another natural resource -- oil. It's safe to say that, with oil, among other mistakes, we have seen overuse; gross inequity in benefit sharing, across both geography and time, of what is essentially a common property; poor environmental management; an overarching supply-side focus; the use of technology to speed unsustainable extraction; and the lack of effective global governance. For water, therefore, we need to focus on demand management and universal access, affordable pricing, pollution control and source sustainability. We need to use technology not to extract water more efficiently from the bowels of the earth, but to replace the use of water with other means where we can, especially to reverse our use of freshwater to carry human waste. And we need urgently to set up more appropriate platforms for negotiation and regulation that are truly participatory across the globe. These steps are much easier

written about than done. So where should one begin? Already some work is underway to restore good practices or generate new ones: One example is that of reversing the practice of using water to flush and carry human waste. European cities such as Oslo have introduced vacuum-flush toilet systems that use little or no water. Gaining ground in South Asia is eco-sanitation, which provides a viable alternative to water-borne sewage and also converts human waste into nutrient-rich fertilizer. For source sustainability, New York City has made a creative breakthrough by supporting the preservation of forests in the watersheds of the Catskill Mountains, after finding it more cost-effective to preserve the watersheds that supply the metro's drinking water than to build costly treatment and source-augmentation plants. Demand management is perhaps the trickiest issue of all. How do we convince ourselves to use much less water?

Perhaps the urban consumer is the key to solving some of the problems. Urbanites are removed from the natural world, and urban demand fuels new and unsustainable uses of water. And yet, the urbanite is arguably more integrated with the global economy and increasingly understands its pitfalls. If there is to be a change in human consciousness, the urban mind is fertile ground. We must focus quickly on making the invisible visible. Much of our incompetence stems from a lack of awareness. We need to reduce the knowledge gaps if water consumers are to make more virtuous choices about products and lifestyles that abuse water. But if such inquiry is to deliver creative solutions, then people must internalize the locus of control. They must see themselves as not only part of the problem but also part of the solution. As a Chinese proverb says, "Tell me, I forget. Show me, I remember. Involve me, I understand." Among the most important lessons to be taken from the his-

tory of oil is not taking essentials for granted. Conserve oil, but also conserve water. If our Hummers are a red flag in oil, maybe our Jacuzzis are the same for water. A new universal water ethic could eliminate our lethal bottleneck of overpopulation and wasteful consumption. Can the water crisis be prevented from becoming a catastrophe? Can we all change the way we think of water? Now that we know every drop counts, can we count every drop? We will soon find out. And it will be bitter irony if our freshwater reserves are depleted before our oil wells have run dry. Rohini Nilekani is chairperson of Arghyam, a charitable foundation that supports a safe and sustainable global water supply. © 2007 Yale Center for the Study of Globalization. Reprinted by arrangement.