

ACC as anti-graft body Retain the enabling provisions

THE parliamentary standing committee on law ministry has been scrutinizing amendment proposals to ACC Act, 2004 submitted before it in bill form on February 28. It seems to have reached a water-shed. In the backdrop of ACC's reservations on some of the proposals, with civil society including jurists, the media and development partners expressing concern over the fetters being put on the anti-graft body, a rethink is apparently going on. Hopefully, it will lead to retaining the effectiveness of the ACC, and if necessary, add value to it, rather than curtailing its powers in any fundamental way.

The point at issue is the proposal insisting that permission of the government be sought and obtained to process anti-corruption cases against government officials. The chief of the parliamentary standing committee Suranjit Sengupta seems seized with the issue while finance minister AMA Muhith has evinced an active interest in giving his input. He reportedly suggested in a letter that the 'mandatory provision' to take a prior government permission to file corruption cases against government officials be scrapped. Also, the finance minister is said to be for the ACC having authority to appoint its own secretary. Suranjit's position seems to be that 'if a government servant is personally involved in corruption and assists in committing corruption the state cannot take his responsibility'. In other words, taking prior approval from the government won't be necessary there. It's cutting too fine; a stone-cast legalistic expression may be difficult to provide drawing a line between personal and otherwise. It is good to hear though that the committee has decided to examine laws, jurisdictions and procedures of FBI in the USA and CBI in India. We understand that the latest meeting of the parliamentary standing committee questioned the proposal for according blanket coverage to government officials.

The proposed provisions will not only curtail the independent working of the ACC but will also lead to discriminatory treatment between citizens and government officials. It will negate the constitutional principle of equality before law as has been pointed out by the eminent jurist Shahid Malik.

A commendable initiative

An eye opener, too

THE photo news carried on the front page of this paper yesterday says it all. It is a tell-tale depiction of state of affairs in perhaps many a primary school. The school is a one-staff enterprise in Manikganj town. It also shows the commitment and disposition of a lady with a missionary zeal to keep alight the cause of education.

In a way, it's only a tip of the iceberg. There must be more such schools, not necessarily a single handed venture, scattered in the nook and cranny of the country struggling to keep alive and serving. Many may have had a forced closure or are barely afloat crying for government or private sector attention.

The dismal state of affairs of our rural primary schools is nothing new. These schools are constantly under financial stress, shortages of teachers and support staff. Main reasons being their poor pay, service conditions and lack of supervision.

The recruitment of teachers is cluttered with tedious procedures now that it has to go through a bureaucratic process instead of school committee appointing them. Some ways must be found to streamline the procedure.

Overall the Education Ministry has been doing quite a commendable job in managing the sector. It has been overseeing holding of public school exams and ensuring timely publication of books and reaching them to schools.

But situation in most primary schools in villages and districts, both government and non-government, is far from ideal. The problems have to be addressed sooner rather than later. District education offices should conduct a thorough survey of the conditions of schools all over the country and categorise them on a scale of needs for improvement and the urgency associated with these. It is only then that the ministry can come up with a development plan.

Since the government aims at universal primary education it should provide for employment and training of teachers' panels with an improved pay package and ensure education to those who are being deprived for no fault of theirs.

THIS DAY IN HISTORY

May 21

878

Syracuse, Italy is captured by the Muslim sultan of Sicily.

1904

The Fédération Internationale de Football Association (FIFA) is founded in Paris.

1927

Charles Lindbergh touches down at Le Bourget Field in Paris, completing the world's first solo nonstop flight across the Atlantic Ocean.

1982

Falklands War: British amphibious assault during Operation Sutton lead to the Battle of San Carlos.

1990

Democratic Republic of Yemen and North Yemen agree to merge into the Republic of Yemen.

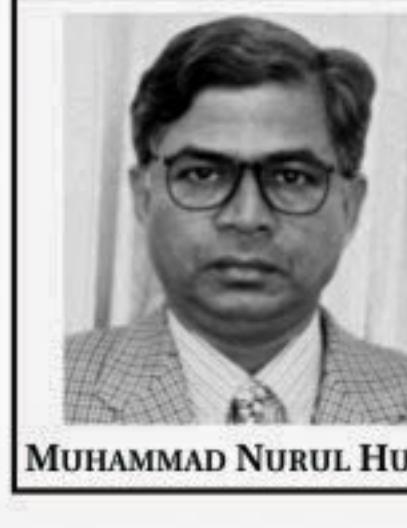
1991

Former Indian prime minister Rajiv Gandhi is assassinated by a female suicide bomber near Madras.

1991

Mengistu Haile Mariam, president of the People's Democratic Republic of Ethiopia, flees Ethiopia, effectively bringing the Ethiopian Civil War to an end.

STRAIGHT LINE



MUHAMMAD NURUL HUDA

THE constitutional incorporated non-partisan and supposedly impartial caretaker dispensation to oversee the general

election that has been a unique feature of Bangladesh polity is currently undergoing intense public scrutiny. The apex court finds the arrangement prospectively unconstitutional but would like the system to continue for two more general elections for reasons that are not known at this point of time. The issue of continuation of the caretaker system or otherwise has been left to the parliament for taking appropriate action.

Under the circumstances, we will have to wait and see the parliamentary deliberations and actions on the subject. However, one eventuality can be foreseen. This relates to the appointment of chief adviser which, if done according to the first option as laid in the constitution, will give rise to a stalemate reminiscent of the violent occurrences of late 2006. This is so because the present opposition party has made it quite clear that they will not accept the immediate retiring chief justice as caretaker chief.

As one can see, the crux of the matter lies in the trust factor. Therefore, the cynics cannot be faulted when they say that the caretaker system is, in fact, a scathing indictment on the unreliability of our political class. The situation appears ludicrous because five years tenure can be run on a democratic system characterised by the primacy of politicians but elections have to be managed by a clearly non-democratic arrangement.

The question is, how have we created the apparently unbridled trust deficit? Is it the result of cumulative deficiencies of the regulatory institutions that we have willy-nilly allowed to grow at our own peril? A circumspect view would be

that multiple institutions have not displayed the courage, fairness and firmness expected of them in ensuring propriety in conducting elections.

This scribe is of the considered view that no matter under what arrangement, caretaker or party government, the elections are held, the determination and firmness of the executive branch has an overarching role in ensuring reasonably fair election. Experience shows that the conduction

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of election is preeminently an executive function. The skipper, the National Election Commission, performs some judicial and quasi-judicial functions with regard to election matters but it is the unstinted support and loyalty of the district and police administrations coupled with the deterrent presence of the armed forces that largely determine the course of election.

As per constitutional provision and administrative directives the Election Commission, a constitutional body, enjoys complete command and control over the executive branch, including the armed forces in so far as it relates to the conduction of election. Therefore, the Commission can effectively energise field level executive magistracy and law enforcement functionaries. On ground it is the magistracy and police who deal with the specifics of election management like selection of polling agents, the safety and security of ballot boxes and polling centers and ensuring peaceful environment.

Before and during election some judicial officers under direction of Election Commission perform functions that punish the electoral malpractices

but again it is the executive branch that, on account of their full time presence on ground, can play an effective deterrent role in preventing and punishing electoral malpractices of all descriptions.

The point to note is that the Election Commission has to be really empowered so that nobody takes it lightly and the field executives do their duties conscientiously and remain answerable. If 34 years of rule by a particular political

party has not been able to influence the bureaucracy in favour of the incumbent in the neighbouring state of West Bengal then why should our public servants fail? When our public servants have served reasonably creditably during caretaker dispensation they can also perform similarly under a party government.

The above may appear wishful thinking in the backdrop of our confrontational political culture, sharp polarisation along political lines, politicisation of public service including institutional cracks but we have not reached a precipice. Surely we can salvage our nation's honour by institutional strengthening. There may be some practical wisdom in retaining the caretaker system for sometime but for healthy political transaction to take place we need to follow the system that is in practice in most democracies.

It needs to be reminded that we have willy-nilly embarked upon a crash programme of institution bashing which appears to be a favourite pastime. We have devalued the judiciary, as we have devalued every other important institution. Instead of defending

our judges against political pressures and threats, instead of insisting upon integrity and impartiality in judicial appointments, we have permitted the executive to appoint men who subscribe to the philosophy of the ruling party. The political and constitutional malaise is not recognised.

It is pertinent to note that the West Bengal scenario does not need the umbrella of a caretaker government to oversee elections because their institutions have not been interfered with and made weak like ours. There, State Assembly elections have been held on six different dates and Election Commission's authority has been seen to be manifestly upright. This has been possible because the regulatory authorities have not been politicised there and the distinction between private desire and public propriety has not been blurred. Constitutional positions retain their halo and service ethos remains unblemished.

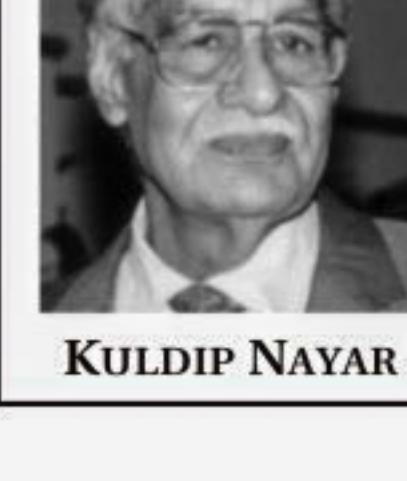
The illiterate intelligence of our masses has been reflected in most elections but the educated incapacity of our intelligentsia could not appreciate it and hardly ever foresaw it. Indigenous autocrats through its own apathy, follies of irresponsible utterances by strong-headed dictators and brute force have stifled our free nation. History will also apportion the blame and the responsibility among a wide spectrum of the elected representatives who have betrayed their trust.

The executives in their role as appointed representatives of the republic can, under the bold stewardship of the Election Commission, put a halt to electoral malpractices and hold the wayward politicians at bay, being supported by a caring and proactive judiciary. They have to take pride in their role as impartial public servants. In the ultimate analysis our guardians will hopefully appreciate that an upright executive and fair judiciary befitting the correct ethos of public service will act as guarantor of democracy.

Muhammad Nurul Huda is a columnist for The Daily Star.

BETWEEN THE LINES

Major parties lose ground



KULDIP NAYAR

INDIA'S biggest story of latest state elections is the decimation of communism. Most believe it is a good ride-dance of an ideology that

had outlived its utility. In fact, it got buried under the debris when the Soviet Union collapsed in 1990, after losing the cold war.

Yet, West Bengal and Kerala, more so the first, were the only two states which defiantly stuck to the Stalin philosophy and even put up his life-size photo at the politburo. The rout in West Bengal was humiliating, the party securing only 63 seats in the 294-member house.

Kerala had a better showing winning 68 out of 140 seats, primarily due to the outgoing chief minister V. S.

Achuthanandan's clean image, without the humbug of ideology.

However, the advance of capitalism or consumerism without any challenge has not made the world better. While Russia has settled down to a western pattern, the communists in India are riding a high horse. The jaded ideology is still sacrosanct for them. They do not see that their agenda has been appropriated by the Maoists who have also used the gun and coercion to spread.

China's version of communism is a free economy under the strict discipline of the party and the army. The classical type of communism does not sell any more. The middle class has to be associated in one way or the other.

In any case, the West Bengal communist government was not the setup which could have retrieved the ideology because the leaders were arrogant, the ministers nonchalant and the cadres law unto themselves.

The Communist Party of India (Marxists), which either misgoverned or non-governed the state for 34 years, had a cocky idea of ideology that by flaunting the red flag or mouthing slo-

gans they could win popular support. Little did the CPM realise that there was disconnect between it and the people. The party's debacle in the Lok Sabha elections should have made it read the writing on the wall.

In Kerala, something worse is emerging. Communalism is replacing the remnants of communist ideology. Hindus and Christians have voted for the Congress and Muslims for the victorious United Democratic Front.

Muslims won 20 seats out of the 24 they contested. For the first time, the state is

How to revive the dividing line between right and wrong, moral and immoral that has got erased is the challenge. This is not only for Mamata but also for Jayalalithaa who has smashed the family-cum-government apparatus in Tamil Nadu. By securing 203 seats in the 234-member house, she has proved that her win was not negative but positive.

But she has begun on a wrong note. She appears to be making up with the ruling Congress. When the case of "unaccounted assets" is pending against

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in the throes of religious fervour, although the BJP's Hindutva forces have been defeated roundly.

I do not think that the communists can stage a comeback with the same old Lenin-Stalin approach. They have to return to the grassroots and expand their base. The Left has to keep in mind that any ideology without morality will not go very far in India, inspired by Mahatma Gandhi.

Mamata Banerjee of Trinamul Congress, now West Bengal's Chief Minister -- she won 226 seats -- realised the moral aspect. But a maverick as she is, she can wreck a system but may find it hard to overhaul.

The administrators, the police and other government agencies have to be rejuvenated with passion and dedication to serve the people, not to be at the beck and call of others like commissars in the Left government.

Switching over loyalty is the bane of civil service. But it can be awakened to the ethical considerations inherent in public behaviour. At present, they have become generally dim.

A telephone call from Congress President Sonia Gandhi within 24 hours of Jayalalithaa's winning elections says it all. Yet she must keep in mind that the people in Tamil Nadu have trounced the Congress and reduced its tally from 34 to five. Her election plank to eliminate corruption should be on top of the agenda.

In fact, the Dravida Munnetra Kazhagam (DMK) would not have been routed if it had not faced the fallout of 2G spectrum scam. The problem that the Manmohan Singh government faces is that the DMK has 19 seats in the Lok Sabha. However, Jayalalithaa's 11 will make up the deficit to some extent. At some stage, either the Congress will dump the DMK or the latter would withdraw its support.

The Congress victory in Assam was expected. Once State Chief Minister Tarun Gogoi brought the United Liberation Front of Assam (ULFA) lead-

ership to Guwahati for talks, it was clear that his eyes were fixed on state assembly election. The ULFA still has an emotional appeal in Assam. The Congress won at the polls last time with the help of Bangladeshis who had been registered as voters.

The chief minister left them high and dry this time. And his victory pushed into the background the grave charges of corruption against his government. Before long, both forces will catch up.

It would be, however, heartening if something tangible, not just an agreement, emerges from the talks to reconcile the aspirations of the ULFA with Assam's identity within the constitution of India. The Congress should learn a lesson: political problems need political solutions and not the military ones. The large presence of the armed forces in the northeast region operating under the outmoded Armed Forces (Unlawful Activity) Act, has alienated the people, not calmed them down.

In due course, when the election dust settles down, all the three major parties -- the Congress, the BJP and the communists -- will realise that they are losing the ground.

Regional parties are beginning to occupy the space which an all-India party should be commanding. This means a coalition government at the centre for a long time to come. There is nothing wrong with it if the federal structure is respected and a consensus of opinion sought. But the manner in which the major parties growl at one another holds little hope.

They have defamed the system so much that their own credibility is zero.

One thing that the nation must keep in mind is that morality has been squeezed out of Indian politics. The polity has to go through a series of coalitions at the centre and even in the states. There will be shocking bargains and business-dictated combinations. People would be mute spectators. They will have to wait for a third alternative before they reach the sunny ground.

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