

BOTTOM LINE

Addressing structural deficiencies of CTG



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ON May 10, the apex court of Bangladesh in a majority decision has ruled that the system of non-party care-taker government is unconstitutional.

However, it has observed that two more general elections may be held to avoid chaos. It has also observed that the

Parliament is at liberty to bring necessary amendments excluding the provisions of making former chief justices or other former apex court judges as head of the caretaker government. The court has left the issue with the Parliament.

The non-party care-taker government was introduced on the belief that the ruling parties could not hold a free, fair and credible parliamentary election as it would be manipulated in the favour of the parties in power. It is a child of mistrust and lack of confidence on the ruling party.

Three elections were held-in 1996, 2001 and 2009 under the care-taker government and the outcome of the elections has been judged by losing parties as not being "free and fair", even when international election-observers considered them as free and impartial.

Many constitutional experts believe the system of the non-party care-taker government had not been looked into thoroughly as to its feasibility prior to its introduction in 1996. Some structural faults exist and they are as follows:

The language of the provisions of appointment of chief adviser (58C) could lead to conflicting interpretations which may raise doubt on the legality of appointment of the chief adviser.

While the head of the caretaker government (chief adviser) is a non-partisan person, the president is most likely to be a politically-aligned person, elected by the ruling political party. Therefore, there is a potential conflict of interest between the politically- aligned president and the non-partisan chief adviser in achieving the goal of the care-taker government.

The system of the care-taker government is diarchic in the sense that powers and functions are divided between the care-taker government led by the chief adviser and the president. As a result, potential conflict between the two institutions may derail the purpose of the system.

It is reported that during 1996 the chief adviser had some difficulties in working with the president and in

2006, four advisers had resigned from the advisory council as they could not get along with the president who appointed himself as the chief adviser.

If the system were to work, the president would have to be a non-partisan/ non-political person and this occurred when AL in 1996 elected a non-partisan person as the president-a rarity.

The advisers, appointed by the president, cannot be dismissed unless they resign themselves. It is a departure from any system of government.

The requirement of election within a period of ninety days by the care-taker government is not mandatory as no link has been made between Article 58D (2) of Part IV of the Constitution which speaks about holding general election of members of parliament "peacefully, fairly and impartially" and Article 123(3) of Part VII of the Constitution where a general election is required to

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The tenure of the care-taker government has not been limited by any time-period as it can continue till the date on which a new prime minister enters upon his office after the constitution of parliament under Article 58B of the Constitution.

Constitution is a working document. Forty years have passed in which certain provisions of Constitution are found to be weak and do not reflect ground realities and therefore new provisions need to be added or existing ones be amended or deleted to suit changed situations. In all countries, constitutions are amended from time to time so as to be effective and workable.

The parliamentary special committee on constitutional amendments has looked into amending the constitution, in particular following the judgment of the apex court on the illegality of the fifth, eighth and thirteen amendments. The committee heard views from media, former chief justices, eminent lawyers, and civil society. The major opposition party in parliament, however, did not participate either in the committee or in the deliberations of the committee.

Many suggest that given the confrontational nature of political environment, non-party caretaker system

(13th amendment) should continue for sometime. Even the attorney general supported the system while making submissions to the apex court. If there was any weakness in the system, the Parliament could look into it, the AG added.

On the other hand, some suggested the system of the care-taker government should be abolished because an unelected government was contrary to the basic framework of the Constitution.

On June 8, the 51-recommendation report of the special committee was placed before the Parliament and on June 20 the Cabinet approved the recommendations.

On June 25, the bill for constitutional amendment, which suggested, among others, dissolution of the caretaker government system, was tabled at the parliament.

It is reported that lone independent MP Fazlul Azim (Noakhali-6) walked out of the House protesting the bill before it was placed. He said, "The nation is divided over this issue of constitutional amendment. Many amendments have been annulled based on two-thirds majority."

In the light of the verdict of the apex court, for the next two elections, many political parties and civil society suggest that a bill may be tabled for the system of caretaker government incorporating the following provisions:

First, a non-party person to act as chief adviser would be appointed on the basis of agreement / consensus by the representatives of majority of parties in the Parliament.

Second, the tenure of the caretaker government shall cease at the expiration of three months and their primary functions would be to assist the Election Commission to conduct peaceful, fair and free parliamentary elections within that period.

Third, if elections could not be held within three months because of natural calamities/ act of God, president shall recall the dissolved parliament that will decide an extra time by which the care-taker government will cease.

Meanwhile, the Election Commission will have to be provided adequate powers and resources to make it totally independent from the machinery of the government so as to enable it to implement the code of conduct for party-candidates in terms of the Representation of the Peoples Order 1972 as amended.

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THOUGH our finance minister is trying to assure us of normal economic growth of the country and give us hope for achieving the goals of the big and ambitious budget, we have a lot to worry about. People are suffering miserably due to price hike of commodities. Taking advantage of free economy, the business community is continuously pushing the prices.

Some analysts observe that certain business syndicates are pushing the pre-budget prices of some commodities on which there were no proposals for increasing prices in the budget. This is done due to unethical desire of the business community to make extra profit at the cost of common people.

The government appears to be less careful about the price hike because of our free market economy. Even though there may be suspicion in the statement of Center for Policy Dialogue (CPD) about the budget, we cannot throw it as nonsense because of the government's weakness in statistical data and level of efficiency of bureaucracy to attain the goals of the budget.

No doubt that people are suffering. Surprisingly, parties in the opposition are competing with the government to increase the misery of the people through resorting to devices like hartal to protest their grievances against the present government. In the June 5th hartal we did not see picketing, meetings or rallies. People may consider such activity of opposition as sheer obstinacy or competition. The hartal appeared to have failed in bringing any positive result.

The government seems to be apathetic towards the people's suffering. Such indifference may be interpreted as collusion between the government, business

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communities and the opposition. If there is even an iota of truth in such interpretation it may so happen that people themselves rise to stop this game.

Hartal has played a significant role in Bangladesh politics. It brought positive results in 1952, 1962, 1966, 1969 and 1970 during the Pakistani period. Ultimately it brought independence in 1971. After independence it threw out the military regime of H.M. Ershad in 1990. After 1990 there were discussions and debates on its utility. The latest 36-hour hartal called by BNP is a clear indication that it wants a mid-term election. However, apparently it is concentrating more on the continuation of the caretaker government.

We are regarded as a forgetful nation. AL went for agitation to establish a caretaker government in 1996. Now it wants its abolition. We are surprised at this. The system was introduced in 1990 as a stop-gap arrangement between abdication of military dictator Ershad and a return to democratic government.

It was necessary due to the existing mistrust among political parties. Needless to say that this mistrust still exists.

It is not that party/parties who can run a government for five years is not capable of conducting an election. The main reason appears to be the desire of the party/parties in position to prolong or make their stay permanent. It may be relevant to point out that even a bad democracy is better than any other system of government because no other system is capable of offering people's freedom.

A bad democracy leads towards good democracy and lack of democracy pushes towards dictatorship. Thus it is advisable that politicians should abjure the present attitude to cling to power.

In the 2008 national election, the AL-led alliance came to power with a thumping majority. Discussions among political analysts reveal the following reasons for the government's present behaviour:

Stopping opposition from agitating for mid-term election;

Creating public pressure on BNP to join parliament;

Trying to involve the opposition to agree to share the present economic malady; and

Relying on the past records that simple agitation or hartal is not enough to dislodge a democratically elected government.

On the other hand, Begum Zia understands that this is the right moment for shaking her party vigorously to bring reform in the party structure.

The declare programme of government and the opposition will result in confrontation and the undemocratic powers are happy about it. Perhaps foreign embassies would start diplomatic activities which may ultimately increase the dominance of multinational companies which would be detrimental to our national interest.

In the present circumstance the only remedy seems to be a united approach by the ruling AL and the opposition to solve the crises. Begum Zia has already indicated her willingness to have talks.

The Supreme Court verdict is that there is no problem for retaining the CTG system. The verdict has even indicated that "if the political parties agree, higher judiciary can be de-linked." We appreciate the opposition's positive response for dialogue. Simultaneously, we may appeal to her utilising the parliamentary forum and to avoid hartal as much as possible.

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Offshore PSC: Cynicism vs. facts

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THE main issue of opposing the Offshore 2008 contract is the issue of export. Let us examine the two extreme cases. A very likely case is that nothing will be found from these two blocks. In that case, the entire investment by the oil company will be at a loss to them with Bangladesh having no financial responsibility. That is the principal reason behind signing a PSC for most of the countries -- to avoid the high financial risk.

Hypothetically, if a small field (1 trillion cubic feet or less) is found spending \$110 million, the decision of developing that may run up to 500 to 600 million dollars and will depend on the economics of the project. If the company declares it as a commercial discovery and Bangladesh wants to buy the gas, it is likely that the company will never be able to recover its cost (\$700+ million).

Even then if they go ahead (which is extremely unlikely), for Bangladesh, a minimum of 25% of the entire gas as profit gas is ensured in the contract. The present ceiling fixes the gas price at \$4.5/Mcf (thousand cubic feet). The new contract says that the companies will pay their income tax which is currently paid by Petrobangla for the existing contracts. The current gas price is about \$3.6/Mcf (base price \$3 + tax \$0.6).

After recovering tax from the company, the effective gas price will be about \$4/Mcf in the new contract which is marginally more than the older contracts. The final cost of the gas, including our profit gas, would be \$3/Mcf (0.75 x \$4). This is the worst case scenario and would be a fantastic deal. In case Bangladesh refuses to buy it, there is absolutely no chance for the company to invest \$2 billion for an offshore LNG plant with a one tcf reserve.

Looking at the other extreme of probability, let us say that 5 to 10 tcf gas is found. Each tcf is roughly capable of producing 200 MMcf (million cubic feet per day) for 15 years. So 5 to 10 tcf gas will allow production of 1,000 MMcf to 2,000 MMcf.

Presently, Bangladesh is producing 2,000 MMcf with a deficit of 500 MMcf. The projection is that by the next ten years the demand will easily exceed 4,000 MMcf (Ref. Petrobangla). Even in case of a quick success, the offshore development will take at least five years to come on stream. With a large discovery and similar or little higher development cost, the cost recovery will be realised in 4-5 years time.

In the long run, Bangladesh cumulative share (after paying cost recovery) in a large discovery will be over 60% (conservatively). As a result the effective gas price will be only \$1.6/Mcf (0.4 x \$4).

The next critical question is: Will Bangladesh be able to buy 2,000 MMcf in the next ten year time? It will be extremely difficult for Petrobangla to even maintain the present level of production for the next five

years; as many of its fields are gradually declining.

There is no other alternate to discovering new gas fields -- whether onshore or offshore to meet the future demand. The question of being unable to buy even an unlikely 2,000 MMcf at an effective price of \$1.6/Mcf at the measurement point does not arise at all, because the present import option of LNG price is not less than \$10/Mcf. At that kind of low gas price, development will boom like mushrooms.

The high price speculation that piped offshore gas will be more expensive than the imported gas is mere propaganda. The large Bombay height gas discovered by Reliance Energy of India is being sold at \$5/Mcf in



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the Indian domestic market. The Myanmar offshore gas was bought by the Chinese at \$4.25/Mcf.

In an extreme case of a 15 tcf discovery, the chance of LNG export becomes a reality. In that case Bangladesh will have the right to use a maximum of 20% of the entire gas for domestic use that can be raised to 30% after ten years.

Although the Bangladesh share of the entire gas will not be less than 70% for the life of the project (Bangladesh share keeps increasing as the size of the discovery is bigger). That means even if the company sells 80% of the gas at a very high price, Bangladesh will get at least 62.5% (100 x 50/80) of that export revenue.

Now the equation for the 20% (3 tcf) is simple. That part will have to be brought onshore by Bangladesh. The cost of pipeline and a processing plant remains same (\$700 million). This gas is part of the profit gas for Bangladesh; costing nothing. The transportation and processing will be in the range of \$1.0-1.5/Mcf. The 600 MMcf gas even at \$2/Mcf will be a bonanza for the

country (compare that with the proposed 500 MMcf LNG import at \$10-15/Mcf).

The alternate to PSC contract, is being suggested that Bapex should do all the activities, both Onshore and Offshore. First of all, until the last caretaker government none of the previous governments seriously supported the Bapex development. The seven-year vision plan, proposed by Bapex, was approved in its entirety by CTG. Instead of lip service and rare example of continuity, the present government is sticking to that plan. Bapex hopes to add 200 MMcf by 2014 and become self-sustaining. Accordingly, they are presently fully occupied for the next three to four years.

Bapex has so far drilled relatively low risk areas and enjoyed a 3:1 success ratio but the ten Bapex discovered fields have only about 3 tcf reserves in place; out of which 2 tcf is recoverable. It simply couldn't take chance with the more risky areas; principally due to financial risk.

Apart from money, it also lacks technology and strong management. Even for onshore, it is not possible for Bapex to embark on exploration work outside its present plan at this moment; although they are in the right track to attain higher international standard. To suggest that Bapex should do offshore drilling is preposterous. Even with a third party contract, as suggested by some quarters, the financial risk is too high.

Ridiculing Petrobangla for inefficiency/corruption, poor management and at the same time to suggest that Bapex be engaged in a multi-million dollar deal with a third party is unreasonable.

Sacrificing the basic economic "comparative advantage," it will only waste money and time and the eventual cost will be much higher. Moreover, what will the country achieve by doing so? Just to avoid and/or for the fear of export, if all exploration by IOCs are stopped, what price would we have to pay? Extended years of energy shortage?

Not a single country in the world has developed its oil-gas sector by itself alone without foreign help. Two wells in two frontier offshore blocks, where no seismic data is available, are extremely unlikely to produce even a 5 tcf discovery. Let us pray for the country's sake that a miracle like that happens.

Moreover, awarding just these two blocks allows us to develop our offshore prospect in phases. Hopefully, by next year the maritime border dispute with Myanmar and India will be resolved and a quick seismic survey of the entire offshore area will give us a clear idea of the future prospects.

We may then proceed accordingly in steps. Any contract may be questioned on many issues but that must be based on facts and rationale, not cynicism.

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