

Keep Bangabhaban door open

MIZANUR RAHMAN KHAN

THE optimism in our political horizon set in motion by the presidential dialogue should not come to a halt only after reconstituting the Election Commission (EC). The proposed legislation for a search committee under Article 118 of the Constitution is a welcome development, although it might be of little help in overcoming our political impasse. It is the responsibility of the contending parties to make the presidential palace a lighthouse. The door of the Bangabhaban must be open since the opposition feels uncomfortable on the parliament floor.

The most significant outcome of the dialogue so far is the indications of willingness by the ruling party to talk about the caretaker government. LGRD Minister Syed Ashrafur Islam said that they would welcome "any initiative" taken by the president for holding free and fair polls. "Any initiative" is a ray of hope that reminded me of the Clause 5 of Article 48 of the Constitution, which was hardly invoked in Bangladesh.

Clause 5 of Article 48 says that the prime minister shall submit for the consideration of the cabinet "any matter" which the president may request him/her to refer to it. There are a few constitutional options that warranted the attention of the president. One of them will be discussed. He will need to examine the full verdict of the apex court, which is yet to be written.

The Daily Star editorial (November 29,

2011) rightly relied upon the essence of short order of the apex court which validated tenth and eleventh parliamentary elections under the 13th Amendment. *The Daily Star* response came following a remark made by Justice M.H. Rahman, who said that "self respecting nations cannot adhere to the caretaker system." Thanks to his consideration that he did not use "self respecting leaders."

Interestingly, *The Daily Star* highlighted a report titled "Caretaker illegal right after the verdict" on its front page on June 17, 2011. The short order said: "The 13th Amendment is prospectively declared void and *ultra vires* the Constitution."

The Daily Star's interpretation of "prospectively" contradicted the arguments advanced by the opposition leader. Eminent experts said the word "prospectively" meant that the declaration became effective the moment the apex court announced it. However, a lead item appeared on the same day's newspaper titled "PM interpreted verdict wrongly."



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Backed by Barrister Moudud Ahmed, the former PM argued that "prospectively" meant that the illegality of the caretaker would not be effective immediately.

The PM took the decision to repeal the CTG, overriding the draft of the Special Parliamentary Committee which only recommended minor amendments of the CTG in light of the verdict.

On the meaning and scope of "prospectively," I talked with five law experts in June -- former Chief Justice Mostafa Kamal, Mahmudul Islam, Dr. M Zahir, Dr. Shahdhin Malik and the Attorney General Mahbubey Alam. As I understand, there are different

opinions but consensus on two counts. All at least agreed that the short order was ambiguous and their opinion should not be taken as conclusive since the full verdict was still to be published. Dr. Kamal Hossain told me he would go for review of the 13th Amendment verdict if necessary.

The Supreme Court of India (SCI) first invoked the "doctrine of prospective overruling" in 1967 in the famous Golaknath case "in the context of invalidity of certain constitutional amendments and extended gradually to the laws found unconstitutional or even to the interpretation of ordinary statutes."

A 1994 SCI ruling said: "It is now well settled that courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice."

In Bangladesh, the apex court never discussed this great harmonising principle; invoked only in our 8th Amendment. Mahmudul Islam discussed this briefly in his book "The Constitutional Law of Bangladesh."

Senior advocate M.I. Farooki, the petitioner's lawyer in the 13th Amendment

case, confirmed to me that the Golaknath case was merely mentioned in the hearing, though its "elasticity" and its extent were not discussed. The SCI in *Saurabh Choudhury v. Union of India* (2004) held: "Prospective application of a judgment by the court must, therefore, be expressly stated." It is expected that the full verdict has fixed the terms and conditions quite precisely about the two term election which the apex court had envisioned in the time tested Latin maxims such as "quod alias non est licitum, necessitas licitum facit (that which otherwise is not lawful, necessity makes lawful)."

The significance of reconstitution of the EC through a search committee is paramount, though the stalemate will not end. BNP should not oppose the reconstitution process considering it as a routine constitutional imperative.

Let these dialogues be carried on to the 2013 general election. The president has absolute power to appoint a PM. There should not be any misconception about the privilege and constitutional authority of our ceremonial head. It does not matter that his "hands are tied." Our president has four conventional rights. The right to be consulted, the right to warn, the right to encourage and the right to put forward his opinions to the PM even though he may eventually be bound to act on her advice.

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The writer is a journalist.

US-Iran confrontation escalates

MAHMOOD HASAN

THE WAR of words between the US and Iran has taken an ugly turn since November 2011.

On November 8, 2011, the IAEA published a Report entitled "Implementation of the Safeguards Agreement and relevant provisions of Security Council Resolutions in the Islamic Republic of Iran". The 12-page Annex of the Report details the steps Iran has taken between 2003 and 2009, allegedly to develop a nuclear device. They include enriching uranium to 20%; developing a detonator; making computer models and calculations, etc. All this information was provided by Iran, claiming that its nuclear programme was strictly for civilian purposes. But IAEA accuses Iran of not giving accurate information and suspects that Iran is developing a nuclear device.

The Report contained nothing new, yet its release raised hair in Washington, Europe and Israel and gave them an excuse to further toughen their stance against Iran.

On December 31, 2011, US President Obama signed legislation penalising financial institutions doing business with Iran's Central Bank. The Draconian move is intended to shrink Iran's oil exports and deny it much needed cash for its nuclear programme. The Central Bank of Iran now cannot encash Letters of Credit from foreign banks for selling oil or any other goods. Iran will now be financially isolated from the rest of the world. The sanction had immediate repercussions on the Iranian "Rial," which lost 10% of its value.

Iran, the third largest supplier of oil, exports 2.5 million barrels a day to the world market. More than 50% of this goes to Japan, South Korea, China and India.

Iran declared that the US move was an act of war. Anticipating US sanctions, Iran started naval exercises in the Persian Gulf on December 24, 2011 and, in a show of strength, test-fired long and short range missiles. On January 3, 2012, when the exercise ended, Iran threatened that it could block the Strait of Hormuz for all oil tankers. US quickly warned Iran that any such act would be firmly dealt with.

Iran's threat to block the Strait is ominous as 35% (17 million barrels) of the world's sea-borne oil shipment passes through this route every day. Oil tankers from Iran, Iraq, Saudi Arabia, UAE, Kuwait, Bahrain and Qatar pass through this 20-mile wide water channel. Given its geo-strategic location, Iran has the capability to close the channel for a

period of time, if not for long. But until it is reopened oil prices will skyrocket, bringing the recession infected western economies crashing down.

The US move to blacklist Iran's financial institutions is based on the assumption that the Strait of Hormuz will be kept open, if necessary by force, and Iran's lost oil supply will be made up from increased productions from Libya, Iraq and Saudi Arabia. Therefore, there

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would be no impact on world oil prices. This is US brinkmanship at its height.

On the other hand, Iranian calculations are based on the fact that China, and possibly India and some African countries, will continue to import Iranian oil. The threat to close the waterway is a bargaining card Iran would like to use if pushed to the corner, knowing fully well that such an act would call for an all-out war in the region. Not only would the US and Nato move in to keep the Strait free and open, but Israel would also jump into the fray.

America is worried about the safety and security of Israel. Iran has time and again declared that Israel has to be obliterated. A nuclear Iran will pose a serious threat to the existence of Israel. Israel has been increasingly talking about hitting Iran's nuclear facilities, as it did to Iraq's nuclear reactor in 1981. Israel is closely watching Washington's reaction to the IAEA Report. Israel's Mossad has already started an undeclared war against Iran. It has allegedly killed four top Iranian nuclear scientists through dissident agents -- the latest (January 11) being Mostfa Ahmadi Roshan, Deputy Director at Iran's Natanz uranium enrichment facility.

Israel is in a dilemma over whether to attack Iranian nuclear facilities now or wait till the US presidential election is

over. Prime Minister Benjamin Netanyahu despises President Obama and knows that with the elections coming up in November later this year Obama will not approve any military action against Iran. Netanyahu has, therefore, concentrated his efforts through the powerful America Israel Public Affairs Committee (AIPAC) to get closer to the Republican candidate Mitt Romney, who is likely to win the presidential ticket. To appease Netanyahu, the US has already stationed several thousand troops in Israel, just in case.

Israel needs full US military backing to unleash an attack on Iran. Any military action on Iran will undoubtedly suck in the countries in the region -- a scenario too horrifying to contemplate. Oil prices in that event would go beyond \$200 per barrel and world economies will plummet.

Russia and China have already warned that any military action against Iran would be a terrible mistake and have urged that diplomatic efforts should be strengthened to resolve the issue.

Actually the US has, so far, never sincerely tried to engage Iran in a meaningful dialogue, though President Obama, before being elected, had openly declared that he would not hesitate to talk to Iran with an open mind.

The prelude to the Iraq war has uncanny similarities to the scenario that is being played against Iran. The bogey of weapons of mass destruction (WMD) against Saddam Hossain and links to al-Qaeda -- were the ultimate excuses used for war and regime change in Iraq. Iran is considered a part of the "axis of evil" and is bent on developing an atom bomb. Ample reasons to justify US military action.

The ultimate goal of the US-led sanctions is regime change in Iran. The strategy is that repeated oppressive sanctions will cause an economic squeeze in Iran that will help the opposition Green Movement to overthrow the current regime. The other goal that US has been persistently pursuing is to retain its military supremacy in the oil rich region.

The American game of threatening Iran has been going on for over three decades -- both sides increasingly hardening their respective positions -- with neither yielding so far. Somehow war strategists in Washington do not seem to get tired of war-mongering. One hopes that current sabre rattling will not eventually break out into a devastating war.

The writer, a former Ambassador and Secretary, is Policy Advisor, Center for Foreign Affairs Studies.

SULTAN MOHAMMED ZAKARIA

PEOPLE are flocking to his mass gatherings more than ever before. He is becoming the new hope for the change-loving people of Pakistan. Imran Khan has quite patiently built-up his Movement for Justice Party, and organised numerous small rallies, mass gatherings, door-to-door meetings. He slowly but confidently built a positive image of a politician that common people can trust and lay confidence in. He invested his time, resources and labour to visit every nook and corner of the country to talk to people, to understand their problems and to mobilise them, and made them believe that he could be their change-agent. The patience is paying-off. Millions have started responding to his call and joining his rallies. Seasoned politicians also feel that vibration of change and have started joining Mr. Khan. He might be "the one" for Pakistan, and a few say the leader in the offing in a country that is almost on the brink of being a failed state.

Imran Khan's gradual and steady rise to the centre point of politics bears much more significance if we consider the state of our own political crisis and widespread despair surrounding it. We have long been crying for credible leadership that can deliver and rise to the people's expectations. So far, we have not found "the one."

There might be several reasons why we could not produce one Imran Khan, or maybe our socio-economic-political reality disfavours the rise of a new leader. Nevertheless, to me, the foremost reason is that we hardly have anyone who is willing to tread that painstaking path of grassroots mobilisation, patiently and persistently worked to build political networks across the country, and devote time and resources for that cause. Without taking this long route, no politics, political agenda, or political leader can gain much in the long run. Politics is all about patience and compromise -- compromise with competing interests and political stands but not with those of the bad elements.

We have some political parties and movements -- both the left and the right -- who have long been advocating bringing about change. But the problem is that, along with their call for change they have their radical political agendas, which many consider would invite more anarchy and chaos in a society like ours, which is less than ready to adopt those radical thoughts. They think of

Imran Khan, the agent of change and our politics

change, they talk about change but unfortunately what they are trying is to turn everything upside-down. The leftists are dreaming of a socialist form of state, reversing our entire capitalist economic structure, and the rightists are determined change the entire socio-political-cultural-legal structures. However, the sad news for them is that our society is not ready to entertain any of their radical ideologies. As a result, both the right and the left have less appeal to the voters.

Apart from the left and right wing change-agents, we have a few seasoned change-lovers; some of them are very renowned professionals and personalities. All are very qualified and competent in their professional careers and very respected and dignified persons. They have the potential to bring about change, but have not been able to do so for various reasons.

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and you have to give more than 100% to win people's hearts and minds, to gain their trust and confidence. Once you can do that, the passion itself will drive you further rather than you driving the passion. Ironically, whoever had made an effort to change our politics had their own commitment crisis. They wanted something overnight, without undergoing a political struggle. But at the end of the day, you must say that the people are the best judge of their own fate and they rejected those seasoned politicians who were reluctant to tread the long path of struggle. We need one Imran Khan now. We need someone who will rise above his material cost-benefit analyses. We need our own leader who shall not necessarily be the best of his profession but should be one who will care about his poor fellow countrymen, travel to every nook and corner of the country to understand the strengths and weaknesses of the country, hear the unheard voices of his countrymen, understand their needs and necessities, and respond when they need him. Without this painstaking process, no party or leader can gain the trust and confidence of their countrymen. The more a political party/leader invests its/his time and resources before rising up, the more its/his ideology will be entrenched, deep-rooted and strong. We need a change but, above all, we need someone to act for change, someone who wants to be a change-catalyst.

The writer is a researcher, Institute of Governance Studies, BRAC University. E-mail: zak_info@yahoo.co.uk

(The views expressed are those of the author and do not reflect the views of IGS.)