

Legitimacy and legality of 15th Amendment

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THE just concluded three-day *harta* has been quite violent and bloody. According to media reports, 18 to 20 people were killed and thousands injured. There was also widespread destruction of properties. Such mayhem was unnecessary and our two major political parties -- Awami League and Bangladesh Nationalist Party -- must bear its responsibility.

The two major parties have been at loggerheads over the nature of election-time government since the unilateral adoption of the Fifteenth Amendment by the Parliament on June 30, 2011, which abolished the system of Caretaker Government (CTG) from our Constitution. The opposition has been demanding the revival of the CTG, as a part of which they called the three-day *harta* to put pressure on the government. The ruling party, on the other hand, has been dismissing the demand on constitutional grounds that the CTG is no longer in the Constitution. It is thus clear that the Fifteenth Amendment is the source of the present political crisis and the mayhem that followed. However, the amendment's legitimacy, and even its legality, are seriously in question.

One may recall that on July 21, 2010, the Hon'ble Prime Minister proposed the formation of a 15-member special parliamentary

committee, with the Deputy Leader of the House Syeda Sajeda Chowdhury as the Chair and Mr. Suranji Sengupta as the Vice-chair, to amend the Constitution. The opposition BNP was invited to join the committee, but they refused. The Committee, over the next 11 months, held 27 sessions and consulted experts, political parties (including the ruling party), journalists and the civil society representatives.

According to the prepared proceedings, the Committee, in its 14th meeting held on March 29, 2011, after extensive discussions, "unanimously decided to keep the existing CTG system intact." However, the Committee decided to identify the limitations of the system and discuss those in its future meetings.

The statements of some of the Committee members in the same meeting are worth quoting. For example, Mr. Tofail Ahmed, a senior Awami League leader, stated: "My personal view is that we should not touch any major aspect of the CTG. We should not create another issue ... We should not unsettle a settled matter." He opposed the idea of imposing a term limit on the CTG and warned that with such a limit the present ruling party may have to fight for the CTG again. He also opposed the idea of disassociating the judiciary from the CTG.

Mr. Amir Hossain Amu stated: "A lot of complications would arise if we want to change the CTG and we would get entangled into difficulties. It is better that the CTG is kept as it is."

MDGs in the LDCs: Six lessons for post-2015

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AS the deadline for the Millennium Development Goals (MDG) draws near, the state of delivery regarding these development targets has become a matter of renewed and intense debate. Both national governments and the international development community are preoccupied with generating the 'final push' towards accelerated implementation of the MDGs. At the same time, there appears to be an explicit understanding that the MDGs are going to continue beyond 2015 in one form or another. In this regard, the state of attainment of MDGs in the least-developed countries (LDCs) -- one of the most disadvantaged and vulnerable groups of countries -- remains a matter of special developmental concern.

At the Centre for Policy Dialogue (CPD), we have recently made what is possibly the first attempt to take a close analytical look at progress towards achievement of MDGs in the LDCs. We selected and analysed 14 MDG indicators (out of the 49 relevant to LDCs) for all the 49 LDCs in the paper. The study developed the MDG Progress Index (MPI) based on the countries' linear progress, and deployed the Unbiased Rate of Progress Method (URPM) to estimate acceleration of development after the launching of the MDGs. The findings of our study have six important implications for designing the post-2015 international development framework.

(1) LDCs as a group may not achieve any of the 14 targets we studied. However, the Asian LDCs are likely to meet the targets for at least two indicators, poverty and child mortality. The Island LDCs are also likely to meet two targets: safe drinking water and child mortality. The African LDCs are regrettably likely to miss all the targets studied in this paper. It is becoming increasingly obvious that the post-2015 international development framework will be 'universal' in nature. It is yet to be seen how, in an uneven world, a universal framework can accommodate the specific

concerns and interests of the countries with special needs -- including the LDCs.

(2) LDCs have generally made some progress in most of the indicators -- 11 out of the 14 we reviewed. In contrast, for three indicators -- employment, HIV prevalence and forestation -- the group is 'off track,' so much so that the situation in 2015 may turn out to be worse compared to their respective 1990 benchmark. Many LDCs have made significant progress in attaining MDG indicators relating to human-development, but many of these targets concern inputs, rather than access and outcome. Accordingly, we must give outcome-related indicators due importance in the post-MDGs framework.

(3) Progress remained uneven across

Delivering on MDGs in the LDCs: A Progress Report

MDG Indicator No.	Indicators	African LDCs	Asian LDCs	Island LDCs	LDCs
1.1	Proportion of population above USD 1.25 (PPP per day)	Slow Progress	On track	Slow Progress	Slow Progress
1.5	Employment-to-population ratio	Slow Progress	Off track	Slow Progress	Off track
1.9	Proportion of population above minimum level of dietary energy consumption	Slow Progress	Slow Progress	Off track	Slow Progress
2.1	Net enrolment ratio in primary education	Slow Progress	Slow Progress	Slow Progress	Slow Progress
2.3	Literacy rates of 15-24 years old, both sexes, percentage	Slow Progress	Slow Progress	Slow Progress	Slow Progress
3.1	Ratio of girls to boys in primary, secondary and tertiary education	Slow Progress	Slow Progress	Slow Progress	Slow Progress
4.1	Under-five survival rate	Slow Progress	On track	On track	Slow Progress
4.2	Infant survival rate	Slow Progress	Slow Progress	Slow Progress	Slow Progress
4.3	Proportion of one-year old children immunised against measles	Slow Progress	Slow Progress	Off track	Slow Progress
5.1	Maternal survival ratio (per 100,000 live births)	Slow Progress	Slow Progress	Slow Progress	Slow Progress
6.1	HIV prevalence among population aged 15-24 years	Off track	Off track	Off track	Off track
7.1	Proportion of land area covered by forest	Off track	Off track	Off track	Off track
7.8	Proportion of population not using an improved drinking water source	Slow Progress	Slow Progress	On track	Slow Progress
7.9	Proportion of population using an improved sanitation facility	Slow Progress	Slow Progress	Slow Progress	Slow Progress

Source: Authors' calculation based on UN data on MDGs.

the LDCs. The MPI shows that Rwanda is in the top position, followed by Bangladesh and Cambodia. At the bottom of the list are five African countries: Somalia, Equatorial Guinea, Sudan, Lesotho and Chad. Four countries are unlikely to meet any of the targets: Mozambique, Sierra Leone, Somalia and South Sudan. Yet this does not mean that these countries did not make any progress concerning the 14 indicators. For example, Mozambique has made progress in 12 out of 14 indicators. As we embark upon an international development framework with global goals and national targets, we need to think about inter-country inequalities.

(4) One of the worst-performing

indicators in the LDCs is the employment-to-population ratio. Moreover, a large proportion of the employed population in the LDCs works in the agriculture sector, which is characterised by a high level of underemployment. This seems to indicate that, to remain sustainable, the relative progress attained in social sectors such as education and health must be underwritten by a steady flow of income backed by the creation of new and decent jobs. The post-2015 framework must put due emphasis on goals and targets concerning gainful employment from productive capacity development.

(5) Not all LDCs have accelerated progress towards attainment of the MDGs in the post-2000 period. The most notable 'area of acceleration' relates to five indicators: HIV prevalence, maternal mortality, poverty, forestation and safe drinking water. This re-emphasises the fact that some LDCs' success with the MDGs is largely down to the head-start they had, i.e. policy initiatives undertaken before 2000. We will have to think through how a global initiative may translate into faster implementation of the international goals and targets.

(6) Our projection, based on linear progress, suggests that in six areas the achievements could be more than 95% against the target. These areas are: maternal mortality, HIV prevalence, child mortality, infant mortality, net enrolment ratio in primary education and gender parity in primary education. With a 'final push' some LDCs may meet more targets by 2015.

As we move towards 2015, when success will be defined by the level of achievement of the lowest denominator, we must consider the actual state of delivery of MDGs in the LDCs and address the above-mentioned issues in order to realise the international political commitment to 'leave no one behind.' In most cases, the LDCs will define these lowest denominators.

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The paper is available at <http://cpd.org.bd/wp->

is."

Mr. Abdul Matin Khashru stated: "We agreed in our first meeting that we would not go into anything that would entangle us into controversies. We would not touch anything controversial. This proposal was given by the Hon'ble Member Mr. Tofail Ahmed five meetings ago from today. We all agreed with him. I want to humbly say that we should keep the system of CTG as it is. It would not be appropriate for us to touch it. This would only add to complications. We will give the opposition the opportunity to protest and wound us."

Dr. Shirin Sharmin Chowdhury stated: "I also agree that there is no need to make any change in the CTG at this time. If there is question of putting a time limit, we can perhaps make decision about it."

The other members of the Committee present at that meeting, including Syeda Sajeda Chowdhury, Mr. Suranji Sengupta, Mr. Rashed Khan Menon, Mr. Hasanul Haq Inu, Barrister Anisul Islam Mahmud, Advocate Rahmat Ali and Advocate Fazle Rabbi Mia, also concurred with their colleagues, making the decision to keep the CTG system unanimous.

On April 27, 2011, a group of Awami League leaders, led by Prime Minister Hasina, appeared before the special Committee. The PM observed that the people do not want unelected and undemocratic government anymore, yet we had such governments in the past because of the loopholes in the

Constitution. She asked the Committee to impose a time frame by amending Article 58 so that similar opportunities do not exist in the future. Note that the PM recommended the amendment of the CTG, not its abolition. The finance minister also stated that we would keep the CTG.

On May 10, 2011, the Appellate Division of the Bangladesh Supreme Court declared the CTG unconstitutional. The 4-3 split decision also observed that the Parliament could, for the safety of the state and the people, keep the CTG for two more terms. It further recommended the abolition of the Parliament 42 days before the election.

After the pronouncement of short order by the Apex Court, the Committee decided in its 24th meeting, held on May 16, 2011, to reopen the issue of CTG after 'receiving the final judgment of the Appellate Division of the Supreme Court.' Absent the final judgment, the Committee, however, prepared its revised recommendations on May 29, 2011, in which it decided to keep the CTG with two rather minor changes. The first change called for imposing a time limit of 90 days for the CTG. The second change imposed restrictions on signing foreign treaties by the CTG and the ratification of any treaty, if signed, by the next Parliament.

The Committee met with the PM on May 30, 2011, the day after it prepared its recommendations. The rest is part of history. The

Committee, in its final report prepared in June, recommended the abolition of the CTG. On June 20, 2011, before the final judgment was even written by the Supreme Court, the Fifteenth Amendment bill without the CTG was approved by the cabinet. On June 25, the bill was introduced in the Parliament and on June 25 it was passed while the opposition was boycotting the Parliament. The present crisis, needless to say, is the result of such a rash and unilateral decision to abolish the CTG, which remains to be very popular, and the senior Awami League parliamentarians warned of such consequences.

Our Constitution, according to its Preamble, is 'the embodiment of the will of the people of Bangladesh.' Unfortunately we cannot say the same thing about the Fifteenth Amendment. It does not even reflect the will of the Committee members, all of whom belonged to Awami League or its allies, rather it is the result of the dictate of one person -- the PM. Thus, the legitimacy of the Fifteenth Amendment is highly questionable.

Even the legality of the Fifteenth Amendment is doubtful. Article 7B makes about a third of our Constitution unamendable. But as Mahmudul Islam wrote: "No Parliament can bind the successor Parliament" (*Constitutional Law of Bangladesh*, 3rd Edition, p. 31).

Window for nomination trading opened!

SHAKHAWAT LITON

BEFORE the ninth parliamentary election held on December 29, 2008, some important provisions were included in the Representation of the People Order (RPO), the legal framework for conducting the general election. One of them was making it mandatory for an individual to be a member of a registered political party for at least three years to contest the national elections from that party.

The then Election Commission (EC) had drafted this proposal to stop alleged widespread nomination trading by major political parties in the parliamentary polls. And the then caretaker government led by Fakhruddin Ahmed translated it into law through an ordinance.

This provision was made against those individuals, especially businessmen, who did not do active politics or were not involved in any political party, but joined major political parties before the polls and bought tickets from them with a huge amount of money. After the elections, if they got elected as MPs, they took return of their investments through alleged illegal means. In the past, many honest and competent political leaders who did not have much money had been subject to the unethical nomination trading by major parties' high commands.

This provision was also aimed at stopping the dirty culture of provoking someone to leave his party and join another ahead of the polls only to get nomination. However, it was not applied in the run-up to the last parliamentary election as none of the political parties registered before the 2008 polls had been active for three years after their registration.

This provision was supposed to be applied ahead of the next parliamentary election. But the parliamentary standing committee on the law, justice and parliamentary affairs ministry decided that it was 'unconstitutional' and, on October 24, recommended that the parliament scrap it. The parliament acted on their advice and scrapped it on October 28, when it passed a bill bringing some changes in the RPO.

Interestingly, this parliamentary standing committee did not find any unconstitutional element in this provision in February 2009 when it scrutinised a bill to transform the electoral changes made before the 2008 polls into law. The bill was passed to ensure continuation of the legal provision even after the ordinance promulgated by the caretaker government ceased to have effect.

The present EC remained silent about the scrapping of this significant provision. Journalists covering the EC's affairs seem to have become worried about the cancellation. On Tuesday, they drew attention of Chief Election Commissioner Kazi Rakibuddin Ahmad (CEC) to the issue. Alas! His comment was surprising. He said the EC had nothing to do as the parliament scrapped the provision.

What could the CEC have done in this regard? He could have written to the parliamentary standing committee requesting it not to take a stance against the provision. He could have spoken about the necessity of the provision immediately after the parliamentary body recommended scrapping it. This could have brightened the image of the EC and increased public confidence in it.

But under his leadership the EC did nothing. He just remained silent along with his colleagues in the EC. They hold constitutional offices. They are leading a constitutional body which is responsible for conducting the general elections. They, however, preferred to remain silent, letting the government abruptly do something which will have a huge impact in the next elections. The CEC might not have assessed the impact of nomination trading in the parliamentary elections.

Another significant provision made with some other objectives, including the one for stopping nomination trade, has been weakened by the AL-led government. Before the 2008 polls, it was included in the RPO, making it mandatory for a registered political party to finalise nomination of candidate by its central parliamentary board from the panels prepared by members of the Ward, Union, Thana, Upazila or District Committees of the party, as the case may be, of the constituency concerned. This provision empowered grassroots level leaders of political parties to pick their candidates to contest the parliamentary polls. It also limited the powers of the parties' parliamentary boards consisting of central leaders to pick any parliamentary candidates.

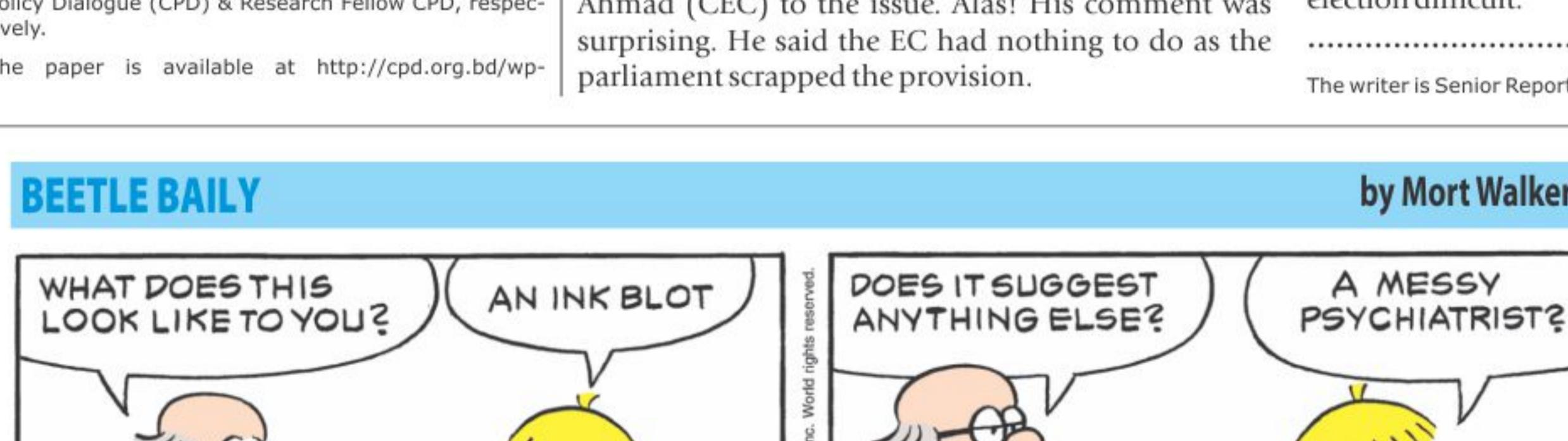
The other rationale behind this provision was to ensure democratic practices within the parties through empowering the grassroots level units of political parties. Initially, the EC had proposed introduction of secret ballots to prepare the grassroots panels. But in face of strong objections, the EC dropped the idea.

The Awami League-led government has damaged the spirit and effectiveness of this provision. It brought changes in it by empowering the parties' parliamentary boards again to pick candidates to contest the parliamentary elections. As per the changed provision, the parliamentary boards may consider the grassroots panels in finalising the candidates. But it is not mandatory any more for the boards to pick candidates from the grassroots panels.

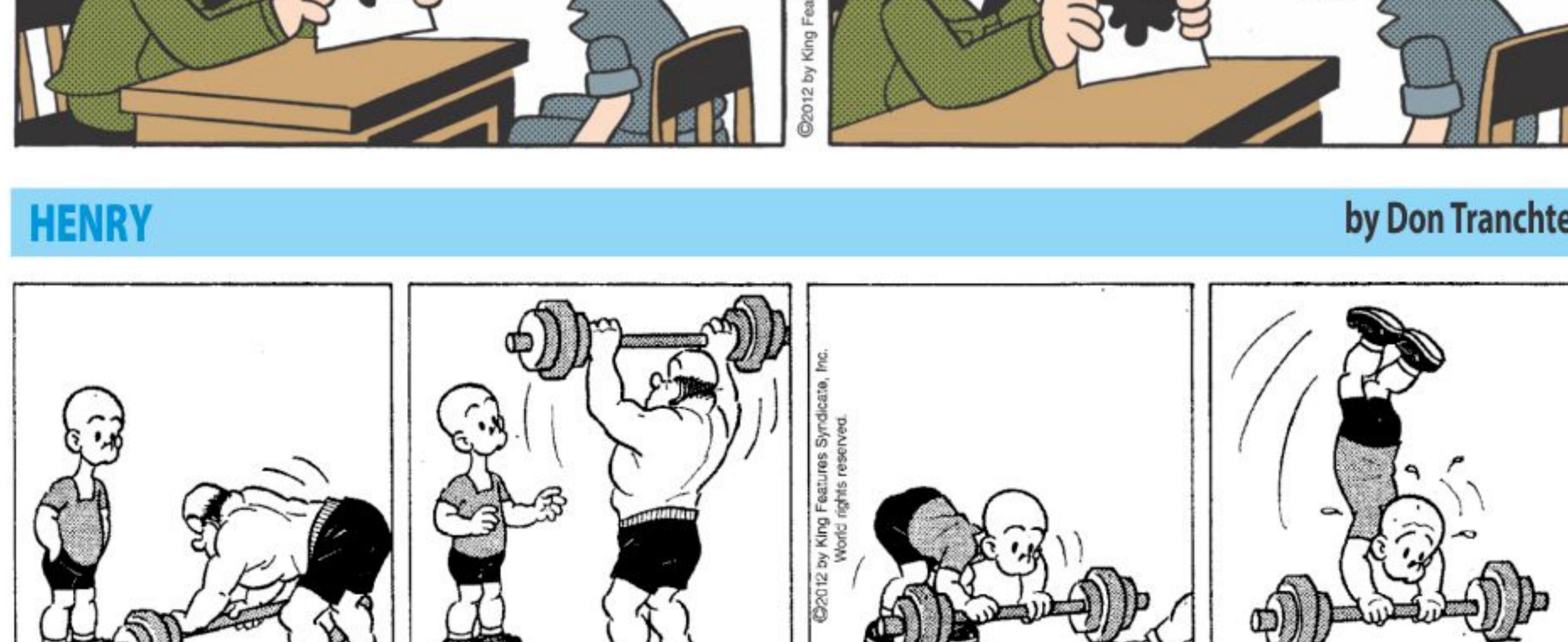
So, the high commands of major political parties will have unlimited freedom to pick anybody as their candidates. The window for nomination trading will remain open for them! Businessmen and others will have the opportunity to invest in politics to get elected as MPs through buying major parties' nominations. This will undoubtedly increase the opportunity of use of black money in the next parliamentary elections, and make the EC's job of holding a free and fair election difficult.

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by Mort Walker



HENRY



QUOTE

Violence never brings permanent peace. It solves no social problem: It merely creates new and more complicated ones."

Martin

