



REVIEWING THE VIEWS

FORMATION OF POLL-TIME GOVT.

Solution lies in the Constitution

ANISUR RAHMAN

THE proposal that the leader of the opposition in the Parliament has offered regarding the poll-time government may be called as 'old wine in a new bottle'. She has re-iterated it and has called for the Prime Minister in an indecent way to accept it during their much awaited talk. She was inhospitable while talking to the Prime Minister on phone.

Her's is an unconstitutional, undoubtedly, formula: the Constitution specifically prohibits rule of un-elected persons in every tier of administration. It has also been declared as one of the basic structures of the Constitution in many cases especially in Kudrat-E-Elahi Panir case in 1992. And all of us know that the basic structures of the Constitution are infallible.

According to her formula the selected persons from the last two caretaker governments may be elected as the women members are elected in the parliament. It is [technically] defective solution as the parliament consists of 350 members of which 300 are directly elected by the people. The rest of the 50 seats in the legislature are reserved for women to be elected by the members in the parliament already elected. Therefore, unless all the selected persons, I am afraid, are women there would really a constitutional crisis.

The next question is who will be the Prime Minister in that poll-time government? Constitution indicates that the President will appoint the Prime Minister who appears to him commands the support of the majority of the members in the parliament. Many try to say that the satisfaction of the President is subjective and therefore he may appoint a 'selected cum elected' person as Prime Minister. I humbly express my disagreement with them. My reading of the Constitution as well as in our

constitutional practice the President is required to appoint the chief of a political party as Prime Minister. That is the satisfaction of the President since s/he commands the support of the majority members of that party. Therefore, one must be a member of a political party and has been elected as chief of that party through council to be appeared to the President to have support of the majority of the members of that party. And of course this political party must have majority in the parliament. Another option could be that majority members in the parliament may support a person directly elected to be appointed as Prime Minister which requires many things, i.e., resignation of existed parliament member/s, holding election in that vacated seat and so on.

Therefore, the formula offered by the leader of the opposition in the Parliament is not easy to execute within the present constitutional framework. The other option according to her supporters is to go back to the old caretaker system which has been ruled out by Constitutional Fifteenth Amendment Act as per the direction of the Supreme Court of Bangladesh. Many would argue that the highest court has recommended to continue that system if parliament thinks so for the next two



parliament elections at least. I would like to say that this suggestion of the Supreme Court cannot be said as judicious if we consider Hohfeld's (1879-1918) doctrine of jural opposite: that 'right' and 'no right' cannot go together; either you have right or you have no right. Similarly, a system cannot be 'unconstitu-

tional' and 'constitutional' at the same time even the parliament things so. We may recall that the old caretaker government system was passed in the parliament and the Supreme Court invalidates it. How can it be constitutional again?

And of course the old system was faulty ab initio as we have already experienced it in 2007. The problem of that system, as it was then said by the present leader of the opposition, is that except minor and lunatic none is apolitical. And we have not forgotten yet, I am afraid, that our political parties failed to choose a non-political person then which led the President to assume the responsibility of the Chief Advisor. The rest of the history is known to all.

What/where is the solution then? I must say that it is the Constitution. Our Constitution has had provisions for transfer of power by one elected government to another. We may call it a transitional time.

In the transitional time the legitimacy of law-making authority may be questioned. As a post-colonial country we have inherited Austinian (1790-1859) approach of law-making where continuation of sovereignty is a must. Instead of, there will be no law and the political society will be run by anarchists. I

sometime surprise that, knowingly or unknowingly, the bellicose fifteenth amendment of the Constitution provides for a system where there will not be a lack of sovereign authority.

At best we may go with all party poll-time government as offered by the Prime Minister. It is possible within the present constitutional system. Many would say that this system will not guarantee the free and fair election and the opposition parties may lose their confidence. I do note their concern. At the same time I would like to request all to look at the official position instead of person. The authority of Prime Minister as it is in our present Constitution is despotic. Therefore, an amendment is necessary to limit the authority of the Prime Minister at least during the time of election. In a political society we must not expect a person apolitical but we can limit the power of an official to make him/her neutral.

It is our irony that none of us is talking about the Election Commission. We must not forget that during the poll it is the constitutional mandate that the administration (civil/military) and the government will assist the Commission to have an election free and fair. It is the Election Commission which will ensure the level playing field (a popular term used in our talk show). Even all the ministries should be run by the Election Commission during the time of election. The ministers will be acted as a de-facto head of the ministry. This is the ideal situation in a Constitutional democracy. And it could be a permanent solution for the present political crisis.

Let's we forget that there is no option to go back to the antebellum way of democracy from here.

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RIGHTS CORNER

ATTACK ON HINDUS

A clarion call

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THE recent demonic attacks over the hapless Hindus have again unmasked the tragic vulnerability of the god-forsaken minorities in Bangladesh against the pernicious religious zealots. The fanatic vandals galvanized by the concocted story of humiliation of the prophet of Islam, a brain-storming stratagem to provoke the credulous masses, have mercilessly torched the houses, nefariously desecrated the sacred temples and ruthlessly robbed the Hindus of all their belongings. These monstrous incidents are well-calculated sequel of the great Calcutta mayhem and the horrendous carnage of Hindus in Noakhali in 1946, the horrible massacre of Hindus by the atrocious rioters in 1950, 1964, 1965 and the mindless holocaust of Hindus by the Pakistani plunderers in 1971. Millions of Hindus have been engulfed by the orgy of violence. Neither the politicians, kleptocrat and opportunist, nor the administration, stooges of the Machiavellian coterie, come to their rescue. One captivating example is *Fulchand v. Md. Hammad* 34 DLR (AD) 361 depicting a poignant story of miscarriage of justice to the riot-hit Hindus swindled by a trickster.

The minority community is the glittering pearl in a statecraft. The striking benchmark of the democratic advancement in a state polity is how the minority community is treated in the state apparatus. The harmonious merging of majority and minority communities can bolster economic advancement and repel communal animosity. The majority will not hold any supercilious attitude towards the minority and the latter will not estrange themselves from amalgamation in the mainstream society. The constitution shall ensure vibrant protection of the minority from majoritarian highhandedness and myriad discriminations.

The Hindu community has immensely contributed to the nascent edifice of the statecraft. The Hindus, harbinger of democratic ideals and preachers of liberalism, were gruesomely massacred, their houses were indiscriminately torched and the Hindu women were raped by the hideous Pakistani military in 1971. With the grisly assassination of Sheikh Mujib, the cronies of Pakistan assumed the statesmanship and reinstalled their divisive dogmas and virulent bigotry in the naive masses. Consequently religious fanaticism carried the day with the rapid polarisation of Hindu community.



abode in the realm of oblivion. The facade of present time is that the satanic specter of the Muslim League has again resurrected in the political scene with the vicious goal to talibanise the country. They now advocate the people's right to democracy which they mutilated in 1971 and the sustenance of Islam which they abuse to defraud the gullible masses.

The Hindu community bearing the pang of partition in 1947 found their resistance into resilience against the formidable foes beleving the statecraft. But does it justify the assumption that the Hindus have been cowards to face their nemesis? Have we not intrepidly countered the tumultuous days of 1971? Have we not descended from the victorious Aryans who excelled in literature, war tactics and theosophical monism? Are we not the proud progeny of the great revolutionary Syrja Sen who shook the British imperialistic edifice and the mighty leader Subhas Chandra Bose who piloted the Azad Hind Force to arouse the motherland from the perpetual subjugation? Have we forgotten the luminous precept of fluorescent Geeta that the soul of us cannot be breached, pierced, saturated and burnt? Therefore why is there such decadent lassitude towards those ferocious vandals? Hindus must unite and stand a stiff resistance to these plunderers.

In the transitional time the legitimacy of law-making authority may be questioned. As a post-colonial country we have inherited Austinian (1790-1859) approach of law-making where continuation of sovereignty is a must. Instead of, there will be no law and the political society will be run by anarchists. I



RIGHTS ADVOCACY

Child rights under threat

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ALL of the readers must be touched by the news story published in the front page of The Daily Star on October 30, 2013. If somebody read the news item, titled, "Blinded by blind politics"; it unveiled another chapter of brutality where a child became victim of our turbulent political culture. It is not the only story though. There are many dimensions of this violent political upsurge taking toll on many children in Bangladesh. Educational activities and learning of children got suffered largely due to turbulent situation and uncompromising attitude of major political parties.

Many of the readers might also read the news of a juvenile who sustained serious injuries as a crude bomb went off in his hand at Kakrail in the capital, published in The Daily Star (Monday, October 28, 2013). As political rivalry has escalated recently, children in increased number got lured, and in some instances forced to participate in political campaign, exposing them to abuse and maltreatment.

In the first incident, the child was exposed to a bomb unknowingly. The girl found the object while playing with fellow children near her house in Jurain, Dhaka. She had no idea what she had thought to be a plaything was actually a bomb wrapped in red scotch tape. As she began to peel the tape off, the bomb exploded injuring her severely. The incident occurred after a procession allegedly passed through the area.

However, juvenile victim in the second incident came in conflict with law as he has been treated in police custody as suspected picker. Most of the political parties in our country allegedly lure children in their political campaign and their rights are seriously violated in the process. Though children are often forced to join in political campaign, law enforcing agencies in most occasions treat them with equal force.

As it appeared in the news report, Assistant Commissioner of Ramma division of Dhaka Metropolitan Police (DMP) claimed that juvenile, namely Sumon might have got hurt while attempting to throw the bomb. On the other hand, the victim said he had thought of being a food container. No matter whether he attempted to throw it or opened the object unknowingly, this juvenile became a victim of explosion and admitted in hospital.

In the spirit of Convention on the Rights of the Child (CRC) where it said in Article 2, "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier", Bangladesh enacted a law in 2013 defining age of children specifically. For children in conflict with the law, the act abolishes previous Children Act 1974 and reinforces the importance of diversion (alternative procedure and care) in the juvenile justice system. There is provision for separate Juvenile Courts. Among others, it also includes the provision for Child Help Desks in the police stations and a designated skilled child-friendly officer.

However, situation has not improved much and children are increasingly vulnerable when political climate deteriorates. As opposition has recently launched an all-out agitation programme against the government, vulnerability of children has increased significantly. Due to economic insecurity of street children, some political elements easily pick them for pre-Hartal vandalising activities. They are also lured to engage in fighting with law enforcing agencies. There are also some reported incidents where children picked crude bombs left in the street by political hooligans and got injured severely.

It is the duty of state to provide adequate care for child victim. It has been stated in Article 39, "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child". Bangladesh as a state party must take all appropriate measures to help children victim attain physical and psychological recovery. At the same time, it is necessary to provide necessary assistance to juveniles coming in conflict with law in the light of Children Act 2013.

After all, state is the principal duty bearer in realising rights of the children. As it is said in Article 4 of the CRC, "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation"; Bangladesh must come forward to undertake all measures in the light of CRC. Promulgation of Children Act 2013 is good initiative, however more efforts are needed. Timely response would help avoid repeating same incident in the future.



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