

# Oath of MPs-elect: No room for confusion

GOWHER RIZVI

IN the last few days the newspapers, commentators and talk show experts have been proffering conflicting views as to the legality of the members-elect of parliament taking oath of office before the end of tenure of the ninth parliament on January 24. The discussion has quite unnecessarily caused confusions in the minds of the people. Some of the comments coming from the leaders of political parties are understandably politically motivated. It is, however, less easy to understand our learned legal scholars, constitutional experts, eminent editors of the dailies, and the pontificating stars of the TV talk shows making the same mistakes. This is largely because, wittingly or unwittingly, the commentators are reading the constitution selectively or ignoring those parts of the constitution that do not fit their argument.

Our constitution is quite precise and clear, and it has left nothing in doubt. The references to "oath taking" and "assumption of office" are discussed in two different articles in the constitution. The first is a "general oath" that is applicable for offices that

not assume office as members of parliament except after the expiration of the term referred to therein." The constitution had correctly anticipated that election of new parliament would overlap the old by a few weeks and hence it made a separate provision taking this into consideration.

The framers of the constitution perhaps anticipating such confusion had further clarified the situation in the Third Schedule of the constitution. The text of the "Oaths and Affirmations" prescribed for the MPs-elect reads as follows: "I will faithfully discharge the duties upon which I am about to enter according to law..." The words underlined unequivocally distinguish between the taking of the oath and the assumption of the office by the new MPs on future date.

This clearly shows that there is no question of two parliaments -- 9th and 10th Parliaments -- existing at the same time. The 9th Parliament remains in place until it expires on January 24. The 10th parliament will come to life when convened by the president on January 25 or as soon as possible after that date.

Perhaps it would also be useful to clarify as to why there was an urgency to swear in the new members of parliament whilst the members of the 9th Parliament were still in situ. This arises both from constitutional and practical compulsions. Under Article 148 (2A) of the constitution it is obligatory for the Speaker of the Parliament to administer the oath to the members-elect. There are also some compelling practical and logistical reasons as to why the oath has to be administered.

First, it is only after the oath has been administered that the majority party can elect its parliamentary leader. Second, until the parliamentary leader is elected, the leader of the majority party cannot request the president to convene the new parliament (after the expiry of the old). Third, and perhaps most importantly, the person elected as the leader of the parliament is also the prime minister-designate. She/he must select her cabinet, swear them in and begin the work of the state without any delay.

The need for constitutional propriety and rule of law is vital for strengthening and institutionalising democracy. To that extent it is important that the newly elected government adheres to the constitutional norms and conventions. However, we must also be wary of creating unnecessary confusion, chaos and rancour that will distract the government from getting on with its task of addressing the urgent needs of the people. The people of the country have suffered for months. The violence, arson, deaths, mayhem, destruction of private and public property, the loss of livelihood and businesses, disruption of schools and college must be brought to an end. The minority community must be safe from death and carnage and be able to sleep in and pray in their temples without fear. Children should be able to play without being blown up bombs and explosives. The daily wage labourers can bring home their income to feed their families. These are the important tasks ahead for the nation. We must not create further distractions or confusions. Instead come together, put aside our difference and make sure we put the interest of the people first.

The writer is an advisor to the prime minister and Professor Emeritus of public policy.

# A cabinet: To what purpose?

ENAM AHMED CHAUDHURY

IN all likelihood a cabinet is going to be formed today. But to what purpose?

That the so called general elections, on the basis of which the 10th Parliament is being constituted was a farce and a mockery of the principles and practice of democracy is a fact, and a fact beyond all shadows of doubt cannot be questioned by anyone. Even government ministers have reiterated that holding of the show of the elections was a constitutional necessity and have tried to defend the process as a requirement for fulfilling constitutional obligation, which again, was of their own motivated making. There was no election observer from any foreign country or international organization as it was considered that the whole governmental exercise was not worthy of being called an election. Majority seats in the parliament had already been declared as uncontested and the selected lone candidates were declared MPs without any vote what so ever. It is significant and is an event of important consideration that no foreign government or organization has congratulated the so-called victorious party in the elections. Their reactions have been, to say in one word, negative.

Interestingly, the Anandabazar Patrika of Calcutta, which is generally appreciative of the AL government's keenness in looking after Indian interest, has unequivocally questioned the legitimacy and even the legality of the elections and the government which is being formed consequently. In its publication of January 10, it said-- "as a result of the non-participation of the main opposition party, the general elections in Bangladesh this time has certainly been on-sided, only 22% vote have been cast and the ruling party has again assumed power practically without any competition. Naturally, the validity of the new government is questionable, or even straight illegal."

I am tempted to quote two more sentences from the newspaper as they clearly indicate the course of activities, the new "government" will be expected to take. It says, "

"election" reaction. The European Union Statement aptly summarizes them all. It says-- "as part of our bilateral relations, the EU has consistently engaged with the Bangladesh to support the consolidation of democracy. In this context, the EU has repeatedly called on all parties to create favourable conditions for transparent, inclusive and credible election" further more it regretted the fact that such conditions did not materialize and "the people of Bangladesh were not given an opportunity to express fully their democratic choice". The EU also urged (actually the ruling party) to engage in a genuine dialogue to agree on a mutually acceptable way forward to hold transparent, inclusive and credible elections, putting the interests of the people of Bangladesh first.

I do not know the shape and nature of the cabinet which is perhaps will be sworn in today, in spite of the fact that the legality and the legitimacy of the so-called 10th Parliament has been strongly questioned as violation of the spirit 123 (3) (B) and Article 148 (3) of the present constitution. However, keeping in view the background and the question of legality and legitimacy of the election and results their of, the new cabinet should, in order of priority, take up the following assignment:

(a) Engage in a meaningful and result oriented dialogue with BNP to hold an immediate fair and inclusive general elections. For resumption of the UN sponsored dialogue, the ruling party should immediately specify a date and place.

(b) Release all the BNP political leaders and workers of BNP who has been held on the basis of fake charges and discontinuous political harassment.

(c) Withdraw all restriction on normal democratic activities of political parties and permit them to hold political rallies, human chains, meetings and other usual function; so that the parties do not have to take recourse to other activities which can turn violent or which could be misguided by miscreants to create violence and engage in destructive activities.

(d) The house and the office of the leader of opposition

*It is important that the newly elected government adheres to the constitutional norms and conventions. However, we must also be wary of creating unnecessary confusion, chaos and rancour that will distract the government from getting on with its task of addressing the urgent needs of the people.*

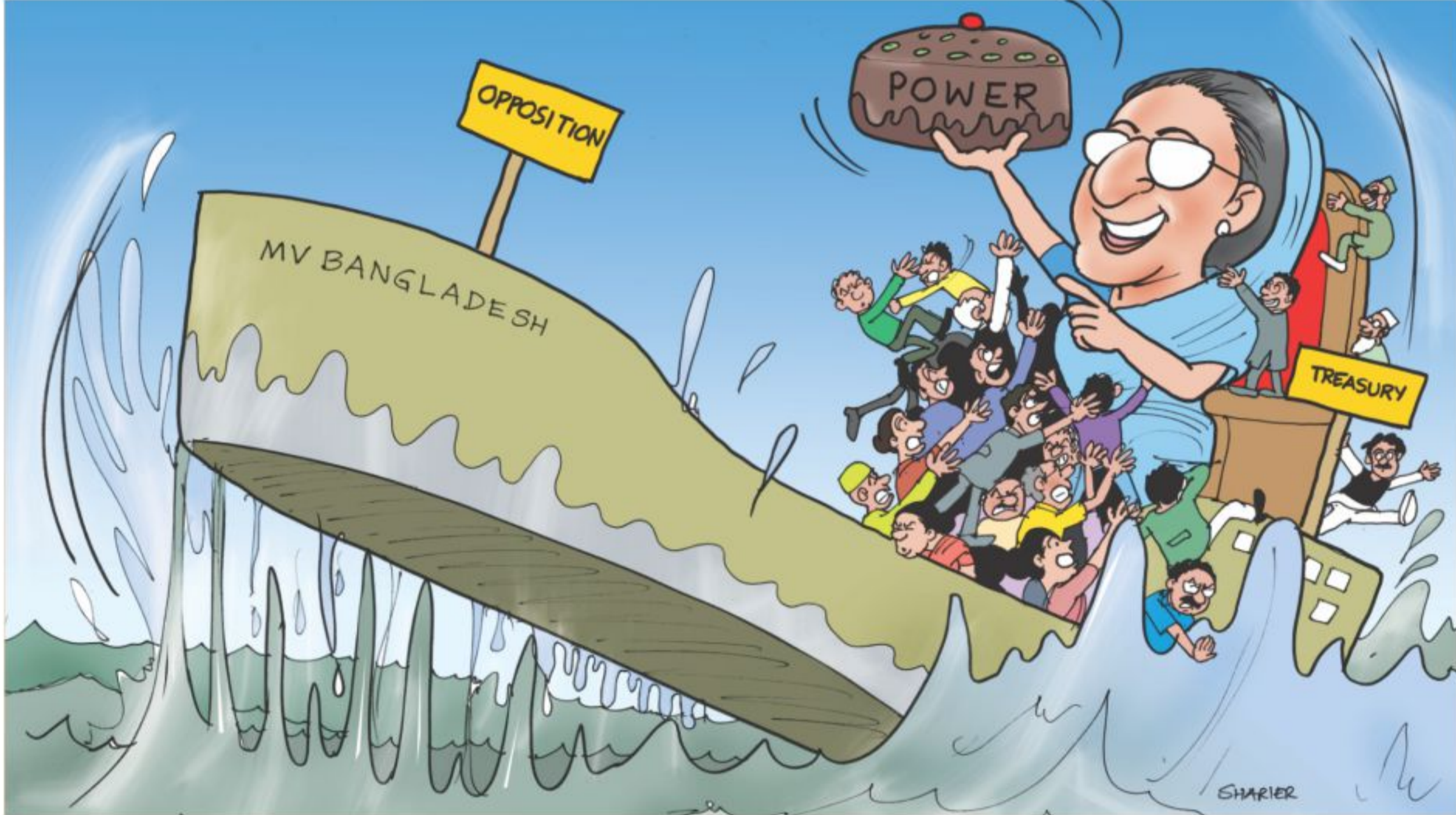
require taking an oath; and the second refers only to the members-elect of the Parliament.

The general provision for "oath of office" is found in Article 148(3). It says: "Where under this constitution a person is required to make an oath before he enters upon an office he shall be deemed to have entered upon the office immediately after he makes the oath."

The confusion seems to have been caused by the phrase that a person "shall be deemed to have entered upon the office immediately after taking the oath." As will be seen, this provision is not applicable to the Parliament members-elect.

If one reads the constitution further one will discover that the constitution has made a clear exception for of the Members of Parliament. Article 123 (3) proviso elaborates the conditions for the assuming of the office by the MPs when a parliamentary election is held "in the case of a dissolution by reason of the expiration of its term, within the period of 90 days preceding such dissolution." This was precisely the case with the January 5 election that was held under Article 123(3) sub-clause (a).

The proviso under Article 123 (3) says: the member-elect under Article 123(3) sub-clause (a) "shall



the way it is important to question the validity of the empowered government it is equally important that BNP-Jamaat, in their activities showing non-cooperation or disapproval, follow democratic practices". It also suggests that New Delhi (meaning the Indian government) should focus on this to bring the issue in the international arena (My translation from the Samakal, January 11). Even my good friend Abdul Gaffar Chowdhury, who is no lover of BNP, has on the same day written an article captioned "How many days this parliament and the government will sustain?" Written-- "under the circumstances, I will, with humility, make a request to Sheikh Hasina that she should not take the result of this election as any mandate or support for ruling the country for a term of five years." In other words, this should be taken as a temporary transitional phase.

Perhaps, for the first time in the history of Bangladesh, all development partners of Bangladesh, both bilateral and multilateral, have urged on the urgent necessity of holding an inclusive and credible election. The US Senate, after serious and prolonged deliberations, unanimously passed a resolution which is significant and meaningful, and should be taken in all seriousness. Six relevant issues all pertaining to the so-called recently held elections have been focused on. The emphasis is on holding a free, non-partisan, fair, transparent and participatory election which can be treated as acceptable.

The resolution condemns political violence and points out that because of the political impasse, many hindrances and obstacles have cropped up for Bangladesh in her efforts to meet important national challenges. The Senate also endorsed the efforts made by the UN representative Oscar Fernandes, thereby indicating that the ruling party should immediately resume the forsaken negotiations between AL and BNP. BNP has already asked for it. The Resolution also points out to the necessity of cessation of human rights violation, independence of the Judiciary and return of the autonomy (freedom from governmental control) of the Grameen Bank.

Besides the UN and the US, the governments of UK, Germany, France, China, Korea, Japan -- in fact all development partners of Bangladesh have expressed their grave concern at the happenings in Bangladesh, as their post

and the offices of BNP should be freed from restrictive control of the government.

(e) The atrocious and condemnable attack on the Hindu community should be immediately stopped and the culprits given exemplary punishment. It is not understood as to why and how the government failed to prevent such criminal activities, though all law enforcing agencies were in position and alert. Even request for help by victims were not immediately responded by governmental authorities. It has been alleged, even by victims that the ruling party men had involvement or complicity in such heinous attack. Immediate judicial inquiry should be held so that the truth is revealed. Communal peace and harmony is a sine-qua-non for holding peaceful election and ensuring such a situation is a prime governmental responsibility.

The only meaningful purpose the new "cabinet" may have to address the problems indicated above. It should be aware of the fact that it is essentially a very temporary "government", in office, only to fulfill "a constitutional obligation".

For a developing country like Bangladesh, it is absolutely necessary that we get full and willing cooperation from our development partners and organizations.

Unless the government is democratically elected through a free and fair election and unless democratic practices are permitted, our bilateral partners will not find it possible to cooperate with us in our development activities. With my long personal involvement in international development cooperation, I know it well that even for international organization like the UNDP, World Bank, IMF, ADB, IDB and others, it would be extremely difficult come to our assistance and support. The EU and some other important countries like the US and Canada may even impose sanctions. Our trade and commerce will suffer immeasurably, export will decline while the national economy badly hit. As a result, the worst victim would be the poor people and our beloved mother land Bangladesh.

We do not deserve this, particularly for the way and principles of which we earned our costly freedom.

We do hope the new "cabinet" will realise their priorities and come to terms with the reality of the situation.

The writer is advisor to chairperson, BNP and development expert and former international civil servant.

# Time to mobilise political capital

IFTEKHARUZZAMAN

THE time for our leaders to mobilise political capital putting the people first is now. It has for too long been about politics of power, be that deadly, unpleasant and embarrassing. The zero-sum game for power, caring precious little about public interest, has become extremely expensive by all indicators. It has invited newer forms of ruthless violence including petrol bombs, attacks on infrastructure, targeted attacks on minorities causing loss of innocent lives, and breach of people's rights.

What we have seen in the name of election to the 10th Parliament is a brazen exposure of how prospect of democracy and public interest can be undermined. Overwhelming majority of voters were deprived of the right to vote. Fundamental rights of the top leaders and workers of the opponents were violated blatantly; who, in their intransigence, resorted to unprecedented violence and mayhem introduced in the culture of hartal and oborodh. As if it was the end of history for both sides.

We have already written in this column that nobody has truly won the January 5 election. We also wrote that while constitutionality and legality of the election cannot be challenged, its political and moral credibility will remain questionable. That the new parliament and government are not considered to have achieved public mandate, nor was it even intended to be in terms of election manifesto, has been recognised at high level.

The election has helped violent, undemocratic, dogmatic and fundamentalist forces to gain ground in the political space rather menacingly. The cost of political intransigence is skyrocketing, not least in the form of despair and fear among common people. For kids and youngsters politics is about destroying educational infrastructure including burning of schools and books; it is about barring them from attending school or examination. Politics is being depicted to them as a game of killing and burning people, and as a means of getting money and muscle. It is about depriving the common people of their right to life and liberty. There are certainly a lot of politicians for whom all these are unacceptable, but who other than our leaders can take the responsibility for creating worst enemies of politics from within?

There is apparently no light at the end of the tunnel. Still, the January 5 election and the 10th Parliament being fait accompli, as the prime minister said more than once, she may now come up with a specific time-bound roadmap for negotiation for a mutually agreeable election time government for an inclusive 11th Parliament election. But whether or when it will happen is anybody's guess. The longer it takes, the more unlikely it will be.

Moreover, given the bad blood between the two top leaders there is any incentive for a negotiated settlement? Not really, unless the BNP takes a genuine hard look at its strategy assessing what it has gained and lost in the whole period of the 9th Parliament against what its strengths and witnesses are. Isn't it in BNP's interest to renounce the violent forms of hartals and oborodhs holding people hostage? Shouldn't they reassess organisational strength, expectation of the party rank and file and public support to be of much greater value than dependence on undemocratic, militant and dogmatic forces? Shouldn't they take a clearer stance vis a vis war crime trial? By so doing they stand to gain more in terms of regaining political capital.

The need for political capital is no less pressing for AL either. Shouldn't they reassess the cost and benefit of denying fundamental rights of the leaders and workers of BNP? By stopping such acts and making a genuine call for

dialogue with a time-bound roadmap AL can take a vital step for building political capital.

As the new government is formed, it stands to gain politically by responding positively to the public outcry that those who have been alleged of rampant corruption, including unprecedented amassing of wealth by abusing entrusted power, be excluded from the cabinet and brought to justice without fear or favour. Can we expect enactment of stricter legal provisions to prevent conflict of interest in government and politics?

However long the 10th Parliament lasts, it will suffer from ineffectiveness. There will probably be no parliamentary boycott, but it will have the dubious distinction of having no opposition at all, or at best a kangaroo opposition unless the handful of independent MPs remain so and fill in the gap to the extent possible. There will be practically hardly any standing committees worth the name. Will MPs of the 10th Parliament, barring exception of those from constituencies where voter turn-out was somewhat enthusiastic for one or other reason, truly deserve the privileges and powers at the expense of public money?

At the core of the crisis the nation faces is power-centric election. Nevertheless, only election can hardly resolve it. National consensus must be achieved on a number of key issues if accountable governance is to be institutionalised. On top of the list should be the proposal for proportionate voting system along with re-introduction of no-vote option and abolition of the practice of electoral coalition. The balance of power between president and prime minister must be reviewed, with particular emphasis on checks and balances on the authority of the chief executive, including limiting the tenure of this office to a maximum of two consecutive terms. The practice of holding the position of head of the government and leader of the opposition parallel with that of the respective party must be abolished.

A specific law should be enacted to stop boycott of parliament. The bill on Code of Conduct of MPs must be adopted and enforced. Deputy speaker of the Parliament should be elected from the opposition. Specific set of reforms are needed, including review of Article 70 of the Constitution, to facilitate democratic practice within political parties.

A code of conduct of hartal and oborodh must be adopted and enforced so that, in the exercise of political rights, fundamental rights of citizens are not affected. A permanent commission on rights of religious minorities and indigenous communities should be established with the mandate to review the factors and processes of discrimination, including the drastic fall of the ratio of minority population since independence, and to identify the beneficiaries of the process and bring them to justice. It should examine the plight of indigenous peoples, including failure to ensure constitutional recognition and non-implementation of the CHT Accord.

Above all, the growing trends towards kleptocratic state, capture and institutionalisation of amassing disproportionate wealth and income by abusing office of government and public representation must be uprooted by a duly designed anti-corruption strategy. The ever-increasing partisan influence on key institutions like administration, law-enforcement agencies, justice, Anti-corruption Commission, Election Commission must be stopped.

The catalogue is open-ended, and may be perceived to be a wish-list. As much as these may look unrealistic, the sooner our leaders consider such issues as their genuine agenda the better will be the prospect of building their people political capital.

The writer is Executive Director, TIB Bangladesh.

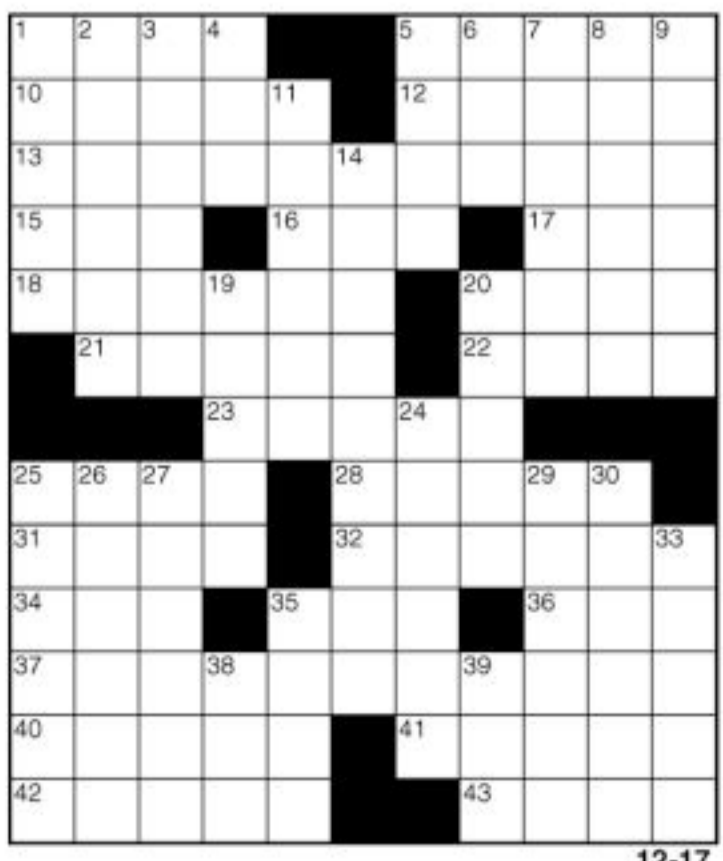
## CROSSWORD by Thomas Joseph

### ACROSS

- 1 June celebrant
- 5 Shady spot
- 10 Add zest to
- 12 Island south of Sicily
- 13 2010 John Goodman movie
- 15 Canine command
- 16 Opening
- 17 Stir-fry vessel
- 18 Be short with
- 20 Vend
- 21 Civil War general
- 22 Grove growth
- 23 Avoid
- 25 Wound reminder
- 28 Luminous glows
- 31 Like bad excuses
- 32 Strictly dance
- 34 Lyricist Gershwin
- 35 Write hastily
- 36 Early auto
- 37 1930 Joan Crawford movie
- 40 Tribal
- 41 Second airing
- 42 College VIPs
- 43 Airport area

### DOWN

- 1 Pane material
- 2 Irritating
- 3 Film set on Pandora
- 4 Cottillion girl
- 5 "Do I need to draw you--?"
- 6 Ewe's mate
- 7 Hand dryer
- 8 Peter of "Troy"
- 9 Irritate
- 11 1998 Winter Games site
- 14 "Elysium" star
- 19 Mission head
- 20 Exacting
- 24 Rock instrument
- 25 Like Bill Murray in "Ghost-busters"
- 26 King of music
- 27 Plummer of "Pulp Fiction"
- 29 Dawn goddess
- 30 Show to the door
- 33 1000 kilograms
- 35 Jelly buys
- 38 Toe count
- 39 One of the March sisters



## Yesterday's answer

C	H	A	D	D	E	L	T	A											
H	E	I	R		O	T	O	O	L	E									
U	N	D	O		O	H	W	E	L	L									
G	R	E	N	A	D	E	N	E	D										
S	I	D	E	C	A	R		A	G	E									
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B	R	O	O	D		G	I	L	D	S									
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R	E	L	I	V	E		N	I	N	E									
D	A	T	E	D		S	E	A	T										

### CRYPTOQUOTE

YL UBXHRM WV LVT HN QVWVWV  
HQETHPM GFL VP CFHWFMP, STW  
ATNW MQAVL LVTP HRM RPMUY  
GFHDM HW'N VQ LVTP CDUWM.

-- WFPVQWVQ GHDBMP

### Yesterday's CRYPTOQUOTE:

A study of economics usually reveals that the best time to buy anything is last year.

-- Marty Allen

### A KYDLBAAXR is LONGFELLOW

One letter stands for another. In this sample, A is used for the three L's, X for the two O's, etc. Single letters, apostrophes, the length and formation of the words are all hints. Each day the code letters are different.