We needed a law for EC formation, we're getting one for Search Committee

THE THIRD VIEW

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ILLUSTRATION: ANWAR SOHEL

WHAT waited for nearly 50 years is now being implemented with super speed. Why? Until recently, the government said that there was no chance of an Election Commission law being passed in this session of parliament. So why the sudden change of mind and the incredible hurry?

The Awami League government drafted it, had it approved by the cabinet, and informed the president about it during its dialogue with him—who welcomed it. Now, the Awami League government will place it in parliament, and the Awami League-dominated parliament will, in all likelihood, pass it in this session. And then, of course, the ruling party will congratulate the government for taking a timely action on something that everyone wanted, and then the Awami League will probably hold a nationwide celebration (maybe not due to Covid-19) for finally giving the nation an Election Commission law.

Hello, is there anyone else in the country?

According to the law minister, a bill will be placed in parliament on January 23, 2022. No public discussion, no discussion with other political parties who are the main participants in the process, no sharing through public announcement, no invitation to stakeholders, no exchange of views with constitutional or election law experts, no discussion in the media, in fact no discussion with anyone except perhaps the government's inner core—and yet, it is set to be placed in parliament as a bill. Of course, the bill will go through a process in which some form of hearing will probably take place, in which a hand-picked set of outsiders will be called in to testify. However, elaborate as this process may be, it will be a far cry from the type of discussion necessary to build the mass support essential for such a major step forward—especially if the aim is to gather wide acceptability.

Yes, most of the political parties wanted an EC law, but definitely not a "Search Committee law" masquerading as an EC law. Our constitution mandates a law for the formation of the Election Commission. We never got it. Blame the military or military-led governments for not enacting such a law, but what about the democratic governments who have been ruling us since 1991? In the last 31 years, neither the BNP nor the Awami League bothered to make any law that would have highly strengthened this vital institution, kept it above so much criticism and denigration, and saved us from rotten elections that gradually eroded all meaning from the process of election.

In the meantime, we instituted a caretaker system to ensure free and fair elections, continued it for 15 years (1996-2011), and then abolished it. And yet, we found no time to go for the easier option of enacting an EC law with sufficient independence and guaranteed legal and moral structure and stature—as it exists in other countries holding elections for decades. There was a reason for it: no ruling party of the day ever wants to lose control of the election process in which the EC plays a pivotal role, and as such, lose control over that vital institution. And what better way to control it than by determining who runs it? That was the reason why we didn't have any EC law for the last five decades. Has that mindset changed?

If one is of the view that something is better than nothing, then of course the Search Committee law is something to cheer about. But if that something is quite different, and if it is likely to confuse the issue further, rather than resolve it, then maybe instead of cheering, we should be concerned.

In a nutshell, here is what's happening. We needed a law for the formation of the Election Commission, as mandated in the constitution. Now we are being offered a law for the formation of a Search Committee, which is not asked for in the constitution. So why, instead of fulfilling a constitutional mandate, are we fulfilling something which is not?

Given our history of election manipulation, questions naturally arise as to what lies behind this move.

The government's response is that we are not seeing the real point. Instead of praising them for initiating something that did not happen for nearly 50 years, we are nit-picking and blaming them for taking the first step in that direction. The idea is that a Search Committee will recommend suitable candidates to the president, who will then appoint the new Election Commission. Isn't it much better than what we have?

From what information is available in the media, the Search Committee will be headed by a serving judge of the Appellate Division, nominated by the chief justice. Another member will be a High Court judge. The chair of Bangladesh Public Service Commission (BPSC) and the comptroller and auditor general (CAG) will be ex-officio members. Finally, there will be two nominees by the president to complete the six-member committee.

Without the slightest prejudice to the venerable people suggested, and with the highest respect for their professionalism and competence, it can be said that all of them are from a realm outside of politics and of dealing with people on a mass scale. Holding elections is a massive public affair—perhaps the biggest—which is not a bureaucrat's or official's cup of tea. These highly competent people—as, at the apex of their lives, they are already habituated to doing things within "channels" and "specifics of procedures," and are steeped in either legalism or bureaucratic maze—are not trained to handle messy public affairs. As such, they will be more comfortable with people of their backgrounds and end up choosing others of the same ilk. The supreme task of the body they are tasked to form, towards which they have neither experience nor proclivity, cannot produce the type of Election Commission that will enjoy public confidence. Judges establish the rule of law, and both the BPSC chair and the CAG run offices under meticulously laid out procedures. None of them have to deal with political acceptability, public perception, and the ability to bring divergent groups together to bring about convergence, if not consensus. Judges don't negotiate, they pronounce—hardly suitable for selecting people for a highly sensitive political institution.

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This group will be a square peg in a round hole.

Then, there are the issues of their process of functioning. How independent will they be? How openly and transparently will they be able to function? Even if they are totally open to the public eye, how will their final recommendations play out? Will it be submitted secretly? We think that the list of names given by a Search Committee should be made public with reasons given as to why the listed people were chosen. Otherwise, we will never know the choices of the committee and who were replaced and why in the final selection.

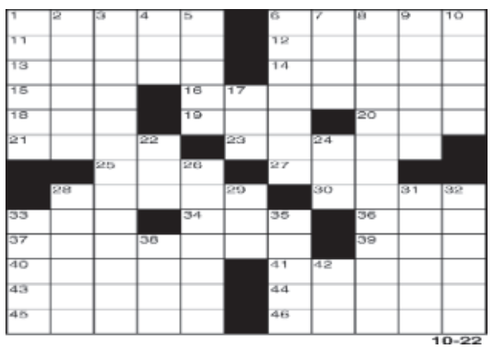
When the recommendations reach the presidential palace, a whole new range of issues will arise. The president is bound by the constitution to act only on the advice of the prime minister on everything, save the well-known two issues. "In the exercise of all his functions, save only that of appointing the prime minister pursuant to Clause 3 of Article 56 and the chief justice pursuant to Clause 1 of Article 95, the president shall act in accordance with the advice of the prime minister," according to Clause 3 of Article 48 of Bangladesh Constitution. So, when making the final selection of the Election Commission, the president doesn't actually have the power to choose and can act only on the advice of the prime minister. So, whatever may be the process, the decision ultimately comes from the prime minister. How she will use it is her choice, but her constitutional power exists.

Post-script: Indemnifying the past through laws with retrospective effect is a bad legal practice, usually used by military dictators or autocrats who give legal cover for their past misdeeds. Have the past ECs done things that need to be indemnified? Were illegalities committed that need legal cover? Please, don't go in that direction. It sets very bad precedents.

CROSSWORD BY THOMAS JOSEPH

ACROSS
1 New Orleans cuisine
6 Useful skill
11 Blue hue
12 Play part
13 Pat's TV colleague
14 Annual visitor
15 Yale rooter
16 Dorm sharers
18 Old roadster
19 Georgia, once: Abbr.
20 Lode material
21 DEA agent
23 Constellation makeup
25 Plopped down
27 Attack command
28 Wild
30 Coin, essentially
33 Boxer Norton
34 Disfigure
36 Kicker's aid
37 Soybean snack
39 S&L offering
40 Add up
41 Naps
43 Witch
44 Singer Cara
45 Fast runners
46 Copenhagen natives

DOWN
1 Bat abode
2 Flowery shrub
3 New member of Congress, perhaps
4 Ornate vase
5 Draws close to
6 Classifies
7 Racket
8 Golden ager
9 Comes in
10 Make fun of
17 CIA forerunner
22 Lot sight
24 Help out
26 Sonora snacks
28 Felt topper
29 Hurried flight
31 Placid
32 Stops
33 Yawl's kin
35 Made over
38 Horse feature
42—pro nobis



10-22

TUESDAY'S **ANSWERS**

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