

LAW OPINION

Bangladesh's Interim Government: What should be its tenure?

Although government tenure is a political issue, it must be examined from the constitutional perspective because the Constitution determines the terms and conditions of political appointments. More importantly, the BIG's terms and conditions are particularly critical as it was formed through a mass revolution. Therefore, materialising the revolution's mission and vision critically depends on the public perception about BIG's role and functions.

KHANDAKAR QUDRAT I ELAHI

How long can the Bangladesh Interim Government (BIG) led by Dr. Muhammad Yunus, stay in office? Several political parties, including BNP, have demanded that the 13th parliamentary elections be held as soon as possible, preferably within three months. This political attitude is nothing to be surprised about.

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Bangladesh has a parliamentary system of democracy. According to the Constitution, an independent election commission conducts general elections every five years to determine the political leadership of the government. The 12th parliament was sworn in on 9 January 2024, meaning the 13th parliamentary elections must be held within three months of January 9, 2029. AL could not stay in power mostly because its administrative policy and its leaders' attitude angered the general student community. They eventually succeeded in toppling Prime Minister Hasina's government. The president dissolved the Parliament and administered oaths to an interim government as recommended by the student leaders.

The Constitution does not contain any provision for the formation of this type of government. This is a constitutional vacuum that has sparked significant confusion and controversy in some circles about the BIG's tenure and its constitutional legitimacy. In my view, the said confusion has resulted from our failure to distinguish between an ordinary interim government and the current Interim Government. An ordinary interim government, variously called a caretaker, provisional, or transitional government, refers to a temporary public administration system that operates between two regular governments appointed through general elections. Thus, an interim government is part and parcel of a democratic system of government.

The current interim government, however, is a very interesting legal and political phenomenon. On the one hand, its tenure cannot be restricted to three months because it is different. On the other hand, our constitution does not contain any provision by which it can be rendered constitutionality. To resolve this paradox, we need to look at the Constitution's Preamble, whose first paragraph reads: *We, the*



people of Bangladesh, having proclaimed our independence on March 26, 1971 and through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh.

The Preamble is the most fundamental part of our Constitution for two reasons. First, it ordains the democratic nature of our Constitution: The people are collectively the owners of the sovereign republic of Bangladesh. This sovereign power is vested in the political organisation called government. The modern government is a complex service-giving public institution equipped with different kinds of professionals recruited, trained, and promoted. Because the people own this institution, they choose its leadership through general elections. Indeed, the meaning and the message conveyed by the Preamble, cannot be changed if the constitution's democratic nature is to be retained.

Bangladeshi citizens exercised this citizenship right on January 7 and gave AL a mandate to rule for five years. Unfortunately, the people had to force it to resign only after six months and appoint an interim government. The truth most of us overlook is that people have made both government leadership changes, one through election and the other through revolution. If we describe the BIG as unconstitutional, then it would

suggest that general elections are the only civic method by which people can exercise their sovereign authority. In other words, Bangladesh's Constitution does not permit people's revolution to change the government leadership no matter how it behaves. Alternately, the student force which caused the revolution is not part of Bangladeshi voters. On the contrary, if we accept the BIG's legitimacy, then in my view, it is supposed to enjoy the same tenurial status the Constitution prescribes for an elected government.

The intellectual issue before the nation is abundantly apparent. We must convince ourselves about the nature of the July Revolution, which was led by our ordinary student community: Did the mass join this movement voluntarily? If the answer is affirmative, then the BIG is constitutionally legitimate. In that case, it will enjoy most, if not all, of the powers and privileges that an elected government is entitled to. It is constitutionally constrained to arrange the 13th parliamentary elections from 09 November 2028 to 08 January 2029. However, like any elected government, it will have the freedom to decide whether to hold elections before this deadline.

The writer is retired faculty member of Bangladesh Agricultural University.

LAW REVIEW

A critical look into our Ombudsman law

MD. NAFIS ANOWAR SANTO

'Ombudsman' is a Swedish term meaning 'representative of the people'. The Swedish parliamentary Ombudsman was instituted in 1809. Since then, the Ombudsman function has taken many different forms and various purposes. 'Ombudsman', in terms of utility, means a 'watchdog of the administration'. The Ombudsman is an officer of the parliament, having as his/her primary function, the duty of acting as an agent for the parliament, to safeguard citizens against abuse or misuse of administrative power by the Executive.

The framers of the Constitution of the People's Republic of Bangladesh made the constitutional framework for the establishment of the office of the ombudsman in the country under article 77. The expression "may" used in clause (l) of the article indicates that the Constitution did not make it mandatory for the Parliament to establish the office of the Ombudsman but left it to the wisdom and discretion of Parliament. As per the provisions of the article, the Ombudsman shall exercise such powers and perform such functions as enshrined in the law, including the power to investigate any action taken by a Ministry, a public officer, or a statutory public authority. The office shall also prepare an annual report concerning the discharge of functions, and such report shall be laid before Parliament.



Following the constitutional provision, the relevant provisions of the Ombudsman Act 1980 empowers the state to establish the office of the Ombudsman to investigate complaints of maladministration against public authorities. The Act is insufficient and so the Law Commission published a report on 9 July 2000 recommending some amendments to the existing Act. The Commission also prepared another report on the law relating to the forfeiture of illegally acquired properties of public functionaries termed as the Corrupt Public Functionaries (Forfeiture of Property) Act 2000 which is an enactment supplementary to the Ombudsman Act.

There is a widespread public suspicion of administrative corruption in Bangladesh which has very much undermined public confidence in the administration. Therefore, if the administrator knows that the decisions taken are subject to scrutiny by an independent authority, he/she will be more careful in making decisions and be less tempted to misuse powers and show undue favours to anyone. Pertinently however, the "acts of corruption" and "illegal acquisition of property" are kept out of the jurisdiction of the Ombudsman.

Section 3(2) of the Act provides that the Ombudsman shall be a person of known legal or administrative ability and conspicuous integrity. But in reality, the Ombudsman must have legal as well as administrative expertise. The fact that this provision does not mandate both the requirements is a problem with the provision.

Section 13 of the Act provides that if a person obstructs the Ombudsman from carrying out his duties without lawful excuse, the Ombudsman shall have the power to punish that person with simple imprisonment which may extend to three months, or with fine which may extend to two thousand Taka, or with both. According to the current scenario, consideration should be made to review the extent of punishment.

Moreover, according to section 15 of the Act, the Government may exempt any public officer or class of public officers from the operation of all or any of the provisions of the Act. This provision empowers the Government to limit the jurisdiction of the Ombudsman. The Act also does not clarify financial independence to the Ombudsman.

Despite many limitations, the Ombudsman Act 1980 came into effect on 6 January 2002. However, no Ombudsman has been appointed yet. Necessary measures should be taken to amend the Ombudsman Act so that the Ombudsman can serve as a bridge between the Government and its citizens, ensuring that public institutions operate in the best interests of the people.

The writer is student of law, University of Dhaka.

LAW VISION

Rethinking our parliamentary accountability

MEHER NIGAR

Bangladesh is a parliamentary democracy with a constitutional mandate for responsible government. Responsible government is a conception of a system that embodies the principle of parliamentary accountability. Theoretically, Bangladesh is able to practice collective responsibility by deploying 'no confidence motion'. Article 55 of the Constitution of Bangladesh (COB) clearly states that the Cabinet shall be collectively responsible to the Parliament, which implies that if any matters go against their constitutional promise, the Parliament has the authority to move a motion of no confidence and force the Prime Minister, and even the entire regime, to resign from office. To pass the 'no confidence motion', a majority vote from the Parliament is required. But, here article 70 of the COB remains a bar to obtain the necessary majority votes and ultimately renders

the concept of collective responsibility ineffective.

Article 70 of the Constitution states that if a member of Parliament belonging to a political party resigns or votes against the party under which he is elected, he shall vacate his seat. Because of this article, the lawmakers belonging to the ruling party, who usually tend to be the majority in number, are prevented from casting their votes against their party in the 'no confidence motion'. Consequently, it is not possible to hold the Cabinet accountable to the Parliament.

One may argue that Parliament may hold the administration accountable through the parliamentary standing committees. It is mandated in rule 246 of the Rules of Procedure of Bangladesh Parliament that every Ministry must have a standing committee. Article 76 of the COB states that the committee shall investigate or inquire into the activities or administration

of a Ministry and may require it to furnish, through an authorised representative, relevant information and to answer questions, orally or in writing. Based on its investigation, it will prepare a report to submit to the Parliament. The idea behind it is the Parliament will consider the report and will take action as the report suggests, ranging from making the minister resign or taking action against concerned officials and thereby holding them accountable. Unfortunately, this report does not have any binding effect, and ultimately it is rare in the history of Bangladesh that any significant action has ever been taken against anyone based on such report.

The Constitution strategised many mechanisms which in the end creates a space for the Parliament to hold the ministers answerable but not accountable in the true sense. An effective accountability mechanism requires the guarantee of two elements— answerability and consequences, and here, in Bangladesh the answerability element is in place but there is no mechanism to make them face consequences. Consequently, we see that our democratic system gets compromised.

It is imperative to give these concerns priority. In this case, powerful standing committees with the ability to make binding decisions would be useful. Article 70 of the Bangladesh Constitution ought to be changed to allow parliamentarians to vote against their party. Only then would it be possible to pass a "no confidence motion" against the ruling government, which would hold them accountable for their actions. Side by side, mechanisms should be developed to hold the ministers personally accountable for any actions in their ministry. In sum, a sustainable parliamentary democracy in Bangladesh requires an accountable government and a performance-oriented, impartial civil service, both of which can only be achieved through reforming the present system of parliamentary accountability.

The writer is Assistant Professor, Premier University, Chittagong.

