

DHAKA TUESDAY FEBRUARY 24, 2009

From our archives

Here are some reprints of selected articles which bear relevance to the overall theme of the supplement.

Caretaker government:
Some suggestions

SHAH A M S KIBRIA

THE concept of a caretaker government during the interim period, when the term of an elected government ends and elections are held for installing a new government, is not new. Those who follow the Westminster style parliamentary system are familiar with it. When a new general election is scheduled and a date is fixed, the outgoing government remains in office but in effect it becomes a caretaker government. According to long established practice and tradition, the outgoing government is not expected to make any new law or take major policy decisions. They are expected to simply carry on the day-to-day routine work of the government. Not only the British, all the countries with parliamentary system follow this practice. I have seen this in Australia. I believe this practice is strictly followed in India.

Bangladesh is unique in the sense that the outgoing elected government, under the law passed in 1996, actually steps down and an interim government is installed as a caretaker government. I believe nowhere in the world such a system exists. The Bangladesh practice of a caretaker government is the result of deep distrust of the outgoing elected government. It is admission of failure, on

ter of profound disappointment that the ruling party headed by Begum Khaleda Zia was unable to live up to the expectations of the nation. The Magura by-election in 1994 convinced the Opposition parties that they did not stand the ghost of a chance to win if the ruling party remained in office. The one-party election held on 15 February 1996 further convinced the common people that unless the government resigns a free and fair election could not be held. Before resigning she quickly enacted a law on caretaker government.

Though the law followed the basic formula advocated by the Awami League, none of the Opposition parties was consulted on the actual text of the draft law. We are still living with this law under which two elections have been held. The flaws in the law were detected right from the beginning. It may be recalled that a crisis was brewing in early 1996 when President Abdur Rahman Biswas ordered tanks in the streets and sacked the chief of army staff Gen. Nasim. Though the chief adviser and his council enjoyed all the powers of the government, the president retained control over the armed forces. Thus the seed of conflict within the government was sown when the relevant law virtually split the powers of the government. The chief adviser exercised great restraint and averted a crisis. His skill and acumen

DCs act as Returning Officer, the government can manipulate the results through the DCs who are under its direct control. The upazila level officers also function as presiding officers and polling officers. Through them the government can rig the election. In 1996 the government was truly neutral and, as a result, the Election Commission was able to discharge its duties without direct or indirect interference. The general election on October 1 in 2001 was different from the earlier one. There were complaints of rigging and corruption. The problem started right from the moment when Justice Latifur Rahman took the oath of office as chief adviser. Within minutes he issued orders of transfer of 13 secretaries of the key ministries. It was obvious that Justice Latifur Rahman had an agenda that was not exactly neutral. In a recent article he characterized the Awami League as most corrupt. These preconceived ideas motivated him. He violated the spirit of the underlying principle of the caretaker government. For example, he requested the president to pass ordinances that were not acceptable to the Opposition. Article 58 D (1) of the Constitution clearly says that the caretaker government will perform only the routine duties of the government and that it will not take any policy decision.

sions created an impression that the outgoing government was guilty of corruption and that it had taken many wrong decisions. The first election under the caretaker law went smoothly largely due to the integrity, firmness of character and efficiency of the chief adviser. The major flaws in the law became clear during the term of the last advisory council headed by Justice Latifur Rahman. The defects in the existing law or its negative sides are as under. In the first place, the law as it exists opens up the possibility of manipulation by the ruling side to place a chief adviser in the post who is favourable to it. Since the chief adviser and the council chosen by him can

beyond human ingenuity to devise such a system. For example, if Justice Hasan declines to accept the post, the president will have the option to invite the next person listed in the Constitution. In the interest of national unity and compromise, will Justice Hasan do it? If he is a patriotic person, he will surely consider the option. Instead of limiting the selection only to the most recently retired chief justice, the field may be broadened to include all the retired chief justices and judges of the appellate division. One person may be chosen out of this pool who would be acceptable to both the ruling party and the principal opposition party in the Parliament. A procedure may be

The primary task of conducting election rests with the election commission. It would be the duty of the caretaker government to ensure that the election commission is able to function without fear or favour and without interference from any quarter. In particular, it would be the duty of both the caretaker government and the election commission to see that the administration remains neutral. Officials found guilty of partiality, misconduct or corruption must be dealt with severely.



the part of the elected governments to conduct the elections fairly and honestly. Unlike other countries that have practiced the parliamentary system successfully, in Bangladesh the outgoing government manipulates the levers of power to rig the election in order to ensure its own victory. The history of Bangladesh is unfortunately replete with these examples. The military rulers who assumed power after the coup of August 15, 1975 routinely rigged the election to legitimise their power. The formalities of election procedures were observed without the substance. People did not get the opportunity to freely exercise their choice. Ballot boxes were stuffed with ballot papers in favour of the dictator's chosen candidate. The district level officials of the administration (DCs, UNOs and Police Superintendents) were blatantly used for this purpose. With the fall of Ershad in 1990 and the installation of an elected government, it was expected that the practice of rigged election would come to an end. It was a mat-

ter crucial in maintaining peace and tranquillity in the country.

Given the history of Bangladesh where most elections in the past were rigged, the introduction of the caretaker system is indeed a positive development. If the system is implemented honestly the people's expectation of free and fair election can be fulfilled. The experiment with this system in 1996 proved to be a success. Neither side complained of rigging. Admittedly there were minor complaints but on the whole the elections were accepted as free and fair. Both the national and international observers expressed satisfaction about the arrangements. It should be pointed out that the primary responsibility for holding rigging-free elections rests with the Election Commission. However, the government has the power to influence the results if it so wishes. The deputy commissioners and their subordinates function directly under the government and they are the ones who make all the administrative arrangements. Since the

However, Justice Latifur Rahman and his colleagues changed the ground rules of the election system in Bangladesh. Such far-reaching changes in the law should have been done either by the elected Parliament or on the basis of a national consensus. On the question of changes in the electoral laws, the Election Commission also acted arbitrarily. In the absence of a national consensus, such hastily passed laws compromised the fairness and neutrality of the electoral process. The Constitution does not give the caretaker government the right to review and annul the orders and decisions of the outgoing government. After all, the outgoing government was an elected government that enjoyed the confidence of the nation. The caretaker council of advisers had no legal or moral right to sit on judgement over an elected government. The caretaker council of advisers suspended the implementation of many on-going projects. These presumptuous deci-

influence the elections by using the administration, the ruling party can start a calculated manoeuvre to ensure that the person known to be a member or sympathizer of the ruling party is appointed to this post. Exactly this has happened. The BNP-Jamaat Jote has extended the age limit of the judges of the appellate division with a view to ensuring that Justice Hasan is appointed the chief adviser. Justice Hasan, it may be mentioned, was a leading member of the BNP. In fact he was the secretary of the international committee of the BNP. Obviously he cannot be considered neutral. Thus by clever manipulation the BNP-Jamaat government has arranged that a person of their choice would head the next caretaker government. This is a major fault that must be rectified to prevent such manipulation. The chief adviser has to enjoy the confidence of both the treasury bench and the principal opposition party in the Parliament. It is going to be a difficult process but not

devised to break a deadlock. Secondly, the present law leaves the selection of the advisers entirely to the chief adviser. The principle of neutrality should be a governing factor in the selection. Besides, both the ruling party and the main opposition party should have the scope to suggest such neutral persons. During the interim government after the fall of Ershad, Justice Shahabuddin used these lists provided by the different political parties. If the advisers are chosen from amongst persons listed by the major parties, the council will enjoy their confidence and there would not be complaints of partiality. Thirdly, members of the advisory council including the chief adviser must give written undertaking to the effect that they will neither seek election in the forthcoming election nor accept any office of profit under the government that will be elected.

While this is a basic requirement of the caretaker concept, the law as it is drafted does not clearly state the point. Quite clearly, the advisers must not expect to be appointed to any high office in the next five years during the term of the Parliament. Fourthly, article 58 E of the present law confers extraordinary powers to the president. In a parliamentary system this is contrary to the underlying principle. Our jurists and political parties must consider the issue in order to prevent division of the executive powers of the government. The president must remain above all controversies. The advisory council of Justice Latifur Rahman had the electoral laws revised without due consultation. The issue should be reopened and fresh consultation should take place to determine whether those laws promulgated as ordinances serve the best interests of the country. As pointed out earlier, the primary task of conducting election rests with the election commission. It would be the duty of the caretaker government to ensure that the election commission is able to function without fear or favour and without interference from any quarter. In particular, it would be the duty of both the caretaker government and the election commission to see that the administration remains neutral. Officials found guilty of partiality, misconduct or corruption must be dealt with severely.

Shah A M S Kibria was Finance Minister and senior Awami League leader-since assassinated.

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Where is the alternative to caretaker govt?

M M REZAUL KARIM

THE principal area in which demand for reform has been repeatedly voiced recently in some quarters is about the caretaker government in vogue in the country. The caretaker government is a unique system bred out of political expediency and is designed to ensure free, fair and impartial parliamentary election. The system of caretaker government was formally introduced during the 1996 election of the parliament, though the 1991 election conducted under a caretaker government was so done as a sequel to political compromise but only on one time basis. This unprecedented system designed to ensure impartial election was, unfortunately, a product of enormous distrust prevalent among our major political parties and the outcome of a long and painstaking search for a solution acceptable to all concerned. It is ironic that the principal political parties, who are committed to the principle of democracy, yielded to the institution of caretaker government, which is basically a non-elective and thereby an undemocratic contraption. They accepted its rule, albeit for a brief period of 90 days prior to each election. The most important element of the caretaker government is neutrality, which must be ob-

served in carrying out its functions. Ordinarily, in most democratic countries, following announcement of the election schedule the outgoing government acts as a caretaker government and conducts election till the inauguration of a new government. The outgoing US Administration continues to govern for as long as almost three months after the election is over.

The formula consisted of the last retired Chief Justice of the Supreme Court to act as the Chief Advisor of the Caretaker government who would thereafter choose his fellow members of the Advisory Council. There is no constitutional requirement for the Chief Advisor to consult with political parties on the matter of selection of his advisors. Anyway, he would receive lists of candidates suggested by the two major political parties for consideration. The two elections that were held in 1996 and 2001 under caretaker governments were universally recognised as fair and impartial, though the defeated parties promptly made mild allegations of rigging before finally yielding to its outcome. Only lately, the main opposition party, the Awami League and its associates, made a demand for reform of the caretaker government system. The concept of the caretaker government, though originally

advanced by the Jamat-e-Islami party, was later taken up as the prime force of movement by the opposition Awami League during the second half of the BNP regime established in 1991. The movement was spearheaded with that sole demand and won support from people far and wide.

The ruling BNP opposed it on the plea that the demand was unconstitutional, as no such provision for establishment of caretaker government existed in the constitution. But in the teeth of heavy demand and intensive movement the BNP agreed to make the requisite amendment to the constitution. But all the Awami League members of the parliament had already resigned as a body and the necessary two-thirds majority was not available to amend the constitution. The BNP, however, was able to hold on to the last and held an election in February 1996 in order to get a two-thirds majority of seats necessary to amend the constitution. Since the Awami League boycotted the election, the BNP and its coalition partners easily bagged over two-thirds seats. The amendment was passed in a marathon session in one night before dissolving the parliament, thereby providing the legal basis to hold the next elections under caretaker government. What then prompted the

Awami League to demand replacement or modification of the system for the introduction of which it had organised such a massive and prolonged political movement earlier? The present demand appears to have been related to the acceptability of the person, who is expected to be the Chief Advisor supervising the next general election. Under the existing system, the Chief Advisor must be the last retired Chief Justice. If he is unwilling or unable to take office, choice will fall on a member of the Appellate Division of the Supreme Court and failing which a person chosen in consultation with the major political parties.

The Awami League became unhappy with the person of the next Chief Advisor following government's recent decision to raise the age of retirement of the Judges of the Appellate Division, hence the demand for reform. The opposition party apprehends that as he had been appointed as Chief Justice by the BNP government by superseding some other Judges, he might unduly discriminate in favour of the BNP during the next election. However, it is worthwhile to note that the Awami League itself had earlier superseded the same Judge in order to promote to the Appellate Division some other Judges of its choice. The Awami League quarters have been highly critical

of Justice Latifur Rahman as Chief Advisor of the Caretaker government in 2001. He was alleged to have been discriminatory and was at beck and call of the BNP high command. What he, in fact, did was to transfer some government officials against whom either of the political parties had reservations about their fairness and impartiality, but he never replaced them with officials suggested by any party. He may also have recommended to the President for issuance of some Ordinances, but mostly after consultation with the Election Commission with a view to facilitating the latter's work. However, nothing would prevent the elected government to repeal such ordinances promptly. Furthermore, there exists no motive for a retired Chief Justice to deviate from the set standard of justice and fairness in dealing with different political parties. Neither he nor any other Chief Advisor has since taken up any job under the government of the victorious party. For that matter, no Advisor has got a job subsequently which may bear semblance to acts of gratitude to their alleged mentors.

As for the replacement or modification of the caretaker system, there could be a few alternatives. Firstly,

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Caretaking isn't the last word

EMAJUDDIN AHAMED

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E obey law not because it is always right, but because it is right to obey law:" RM McIver. Democracy implies, from the days of Herodotus, a rule of the people. The people have ruled themselves directly as in the Greek city states or elected their representatives who ruled on their behalf with their consent. That speaks why the system of election has become so significant in democratic order. In the words of SP Huntington, "Elections, open, free and fair, are the essence of democracy, the inescapable sine qua non." In the western democracies, social conditions have been so orchestrated that a voter can cast his vote on his own volition, without anybody's prompting or coercion. Neither any voter, finding his vote already cast by somebody else on his behalf, gets dithered nor prevented from voting by force. In other words, social conditions are so modulated that elections require the politicians to compete for people's votes. The politicians take the entire electoral exercise in sportsmanship spirit. The election com-

from any quarter. In the new democracies like ours elections are held, though not regularly in all cases, and quite often these are rigged. The politicians, instead of competing for people's votes, try either to purchase them with their black money or cajole them to vote for them through questionable means. In some cases, they use their muscle power, often with hired goons, in broad day light, to force the recalcitrant voters either to abstain from voting or vote for them, thus getting themselves elected. They talk of black money and muscle power but have never made any serious attempts to eradicate these evils with a view to creating a congenial atmosphere for fair poll in the soci-

kind of no-confidence of the political leaders against the political leaders themselves. The elected ones run the government for five long years but they are adjudged unfit for handling the general election. Isn't it a dire aspersion on the integrity of the entire crop of political leadership in the country? I still remember how Mujahedul Islam Selim, one of the better products of Dhaka University, came up with a draft of a neutral caretaker government system in the dying days of 1990 for approval of the top leaders of different political parties so that elections could be free and fair during the tumultuous post-movement period. He prepared it as a temporary measure, for three or four gen-

amendment was possible; even then they went on pressing for the neutral caretaker government, thus taking the country to a no-government situation. Ultimately the sixth Jatiya Sangsad appeared as a necessary evil. Evil in the sense that general election, which was held, was not free and fair. Necessary in that the Non-Party Caretaker Government was brought forth through the thirteenth Amendment Act in March 1996. After a decade or so since then, the issue of free and fair election through the contrivance of Non-Party Caretaker Government has again come to the fore. The leader of the opposition Sheikh Hasina herself has raised this issue,

Government do about the mighty intrusion of black money or muscle power in the electoral process? I still recollect the operation of a countrywide small project initiated by a left party, when some dedicated workers of the party went out in different parts of the country with such slogans as: I will cast my own vote: I will vote for my own candidate at my own will. That was a small beginning. If the move continued, some of the aberrations now, confronting the electoral process in the country could have been wiped out. The spirit of the move is the very essence of democracy. This is how the western societies have been prepared for a democratic order. Indeed the game of politics must be played according to certain fixed rules. These rules are formulated and accepted by the political leaders themselves. Election Commission plays the role of a neutral umpire. To enable it to play the desired role, it must not only be independent but also powerful. Much of what is required in this area depends on democratic culture rather than on the Non-Party Caretaker Government. The consensual approach involving mutual give and take, being respectful to one another's views and the overriding concern of the majority party to work harmoniously with the minor ones emerges from the societal norms rather than from any political mechanism. In other words, the political leaders should be consciously inward -- looking. Taking a close look at the social conditions and at themselves they should fashion their political orientation so that the system of neutral caretaker government becomes a thing of the past in, the last analysis, and the political leaders themselves would emerge as the prime movers of general election. The non-Party Caretaker Government stands out as a veritable slur on the nature and capability of political leadership in the country. They should stop thinking of any reform measure for the Non-party Caretaker Government, because it can neither handle the evils of black money nor can it do anything of the undesirable muscle power nor can it make the Election Commission independent. That the Chief Adviser heading the Non-Party Caretaker Government should be a consensus candidate sounds quite good, but political reality in Bangladesh does not warrant it.

Where consensual approach in the society is conspicuous by its absence, how can you think of a consensus candidate? One can argue that those who matter in this area would be forced to accept the proposal. In that case it is not politics but something else that would work and to that extent political class in the society would hurtle themselves to the crevice of deep calumny and political system, to a deep crisis. The political leaders, moreover, must shift their attention from the rule of persons to rule of law. Here lies the area where they can exhibit the best in themselves. In here the creativity of political leadership should be demonstrated best, not in their expertise to fabricate confrontational politics or agitational juggernaut. If the rule of law becomes their overriding concern and if they can build consensus among themselves on the key social issues including electoral issues, political activities are bound to be back on the rail. Without consciously preparing social soil for eradicating the evils, any tinkering with the Non-Party Caretaker Government would certainly be fruitless, nay positively harmful. The political leaders should concentrate more on social conditions to make the society safe for democracy.

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mission, like a dispassionate umpire, takes care that the electoral rules are strictly followed. The political leaders trust the people and trust one another. Being victorious, the candidates do not lose their sense of proportion. At defeat they do not feel that the sky has fallen down; rather they start working for victory in the next election. Societal norms negate any form of captive votes. Social conditions make any type of vote-rigging practically impossible. These states thus have not been in need for any such political contrivance like the Non-Party Care-Taker Government for making elections open, free and fair. If any irregularity crops up any time, the political leaders concentrate on social conditions, come together, look at themselves, discuss and get it settled without caring for any mechanical political mechanism or any intervention

ety. They take election as the veritable gateway to political power and win they must, by means fair or foul. If they win, everything is fine. When they lose, they go on discovering conspiracies all around, at all layers of electoral exercise, as if the whole world were busy conspiring to bring about their defeat. Then they start talking about rigging or vote-robbing, whether subtle or blatant, even if an angel were in charge of the whole exercise. This is how the former President of Bangladesh Justice Shahabuddin Ahmed portrayed the cognitive map of our political leaders a few years ago in a seminar. The political leaders in our country do not trust the people nor do they trust themselves. No-Party Caretaker Government, the unique political creature in our history, brought forth through the Thirteenth Constitutional Amendment Act, reflects in fact a

eral elections. Social soil, he thought, could then be prepared by the political leaders themselves so that the important political sapling of election could have a luxuriant growth in the society, bringing in both vigour and sanity in political activities. The Thirteenth Amendment Act however has made it a permanent feature. Everybody remembers how the Thirteenth Amendment Act was passed by the sixth Jatiya Sangsad. The demand for neutral caretaker government began to be vociferous from the later part of 1994, though the sitting government was adamant against it. The movement for it by the opposition political parties became intense. To add fury to it as many as 148 members of the Jatiya Sangsad resigned on 28 December 1994. The opposition leaders knew that after the resignation of 148 members of the Jatiya Sangsad no constitutional

although she has not yet spelled it out clearly. Being utterly disappointed with the outcome of the last general election she, instead of taking closer look at the social milieu, has raised the issue of electoral reform. Top leaders of several left leaning political parties have also joined the chorus. Indeed there are areas which need to be straightened. In the interest of fair poll the evil influence of black money must be checked. The ominous role of muscle power must be brought to a halt. The election commission must be independent and strengthened so that it can effectively exercise its supervisory role. The financial dimension of the electioneering persons must be made transparent. Law and order situation must be normal. Everybody in the society would be happy to see these faultlines rectified. What can the poor Non-Party Caretaker

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Caretaker government in a democratic polity

DR. SAADAT HUSAIN

ELECTED government is the most important hall mark of the democratic polity which of course comprises many other institutions or elements as well. The acceptability and benignancy of the elected government hinge on the quality of the elections that perch the elected persons to the executive height. A flawed election is most likely to produce a substandard parliament replete with undesirable members which in turn will establish a rogue, inefficient and corrupt government. It is in fact a big caveat of the Westminster type of parliamentary democracy where some of the elected law makers form the executive government, though they were not specifically voted for such executive positions. A peaceful, perfect and impartial election is a sine qua non for efficient, transparent, accountable, fair and benign government. The whole range of electoral process, particularly the machinery for conducting elections, call for a serious examination before they are set in motion. The main focus of this article is the election machinery in its totality though pertinent aspects of election process will also be taken upon the sideline.

In every country or organization there has to be some authorized agent, be it an individual or a committee or commission, for conducting election. They wield substantial power from a coign of vantage. They, however, have to be assisted by the executive organ and judiciary outfit of the state. Organizing national elections is a huge task. It requires preparation and printing of voters' list, appointment of returning officers, presiding officers, polling officers, election observers, deployment of security personnel, setting communication and publicity channels in position, printing and carrying of ballot papers, collection and supply of stationary and enlisting the support of the political parties for conducting elections smoothly and at an acceptable level of perfection. The election commission is usually entrusted with the responsibility for conducting national elections. In most of the countries the commission is an independent body outside the control of the executive government. They conduct the election presumably in their own way with the assistance from the executive government. One cannot say with certitude that elections conducted by these commissions have always been free, fair and peaceful beyond question.

In Bangladesh for about twenty years up to '90, elections were in effect conducted by the executive government and election commissions were treated as an extended arms of the executive government. The announced results were always in favour of the ruling party. Elections were flawed and dense with irregularities and corruptions. The ruling party made failsafe arrangement to clinch victory so that they could form the government in order to perpetuate their rule. There was no room for the opposition parties to wrest power through election. They had no alternative but to organize street agitations and in many cases they succeeded in toppling the partisan governments and produced a consensus government based on "people power", an accepted and respected institution in the present day world. The interim governments which were not elected conducted the elections which were more acceptable as assessed by the election observers and common people in general. In this environment the ruling parties could not influence the election results; oftener than not they had to make room for the opposition.

The results of the elections depend on actions and decisions of the six group of people or organizations mentioned below:

1. Civil administration including police force
2. Armed forces
3. Election commission and its functionaries
4. Judiciary
5. Activists, workers and agents of political parties



The other school contends that since the concept of care taker government is incorporated in the constitution it is compatible with the democratic polity. Law makers have consciously brought this institution into existence. There are highly strategic institutions in the democratic dispensation which are not headed by or staffed by elected persons. The election commission which virtually takes over many crucial functions of the government during the election period is not also headed by or staffed by elected persons. Heads of the constitutional bodies including the Chief Justice are not elected. Their importance in the democratic governance cannot be overemphasised.

6. Voters

The first three of these groups are within the control of the executive government. Until the separation of judiciary is fully effected, the lower judiciary is also under the control of the executive government. Though the election commission is responsible for conducting the elections its formation and functions depend on the government. The commission is constituted by the government. According to the constitution of Bangladesh, government need not consult any one in selecting the Chief Election Commissioner and the Election Commissioners. This is a serious lacuna in our constitutional dispensation. While the Prime Minister cannot readily appoint even a clerical staff he can appoint the chief and other commissioners without following any selection procedure whatsoever. In this environment the commission is apt to be reduced ultimately into a subordinate organization of the ruling party. The ruling party will therefore have an unfair advantage in the national election with the support of their henchmen in the commission. The government has also the advantage of appointing officials of election commission at different levels. The commission and its officials proffer special advantage to the ruling party in the preparation of voter list, in selecting returning officers, presiding and polling officers. Once the election schedule is announced they have the power to deploy civil and military personnel to as they like. The ruling party

draws huge advantage from the loyalty of their protégé in the deployment of security forces, polling officials and also in the selection of polling centers.

In a unitary government, employees having no legal or constitutional protection are booked for being subjugated by the ruling coterie. In a federal system of government, the natural checks and balances between the central and provincial government act as a formidable cushion against abuse of employees in the government and autonomous bodies. No such built in cushion is available in the unitary government. The arms of the government, one may call it the central government, extend up to remote villages through the centrally appointed functionaries. Since the constitution of Bangladesh does not give any protection to the rights and entitlement of the civil servants they cannot withstand the aggressive pressure of the ruling party high ups and their local minions. The position of civil servants become extremely vulnerable on completion of 25 years of service. At this time they can be summarily dismissed without any notice and without showing any cause. It is a very unfortunate situation. When a civil servant has become mature enough to give his considered opinion at that stage he finds himself precariously helpless to resist any illegal pressure from the ruling hierarchy. If the national elections are held under the supervision of a ruling political party, the administration cannot take any independent decision. Officials at various levels have to oblige the execu-

tive heads belonging to the ruling party. In the Bangladesh context the ruling party commands the natural loyalty of the officials, much to the disadvantage of the opposition parties. The material resources at the command of the ruling party aggravates the disparate situation. This explains why the opposition parties could not win a single general election keeping the ruling party in power during the elections. All three major parties in the country, the AL, BNP and JP were in power and they know precisely how elections are manipulated. Officials at different levels conducting the elections have mastered the black art of manipulating the elections. They do it at the behest of their controlling officers or ministers.

It looks perspicuously clear that in the context of Bangladesh elections under party government is prone to be unfair and unacceptable by international standard. Some people contend that an independent and powerful election commission can ensure impartial and fair election with a party government in power. The author observes that this proposition is not based on the real life situation obtaining in the country. In a country like Bangladesh government is the biggest, most resourceful and powerful organization. Some people jokingly say that government is the only independent organization in the country; all other organizations are somehow or other controlled by the government apparatus. The control is particularly exercised through appointment, budget, security support and political pressure. We hear about legendary

personality like T.N Seshan of India. The author has tremendous respect for him. The author feels proud that he was also a Cabinet Secretary as the author was. Despite his towering personality and astute management algorithm elections in Bihar were far from satisfactory because of substandard administrative support in the province.

People of Bangladesh experienced errant electoral malpractices perpetrated by the ruling parties since independence of the country. Situation has exacerbated over time. It was pushed to the brink during the Magura by election. The election commission sat as mute observer humiliated by the aggressive ruling party. This was a turning point in the electoral history of Bangladesh. The opposition parties decided to boycott all elections under the ruling party in future. They also decided to launch a movement for establishing a caretaker government in order to conduct the national elections. The ruling party derided the demand dubbing it as the product of a deranged mind. Citizens were, however, convinced about the merit of the idea. A colossal movement for the caretaker movement soon gathered momentum with no letup or vacillation. The ruling party tried to disregard the movement. They held a unilateral election excluding the main opposition parties. The result was a disaster for them. It was a voterless election; turnout was negligible. Despite this debacle the ruling party tried to hold on. They formed a government which could not start work in the face of resistance from the employees of the secretariat and directorates. At this stage the ruling party had no option but to amend the constitution providing for the caretaker government and step down and clear the way for national elections under a non party care taker government. So far it is known there were two general elections under care taker government: one under Mueeen Qureshi's government in Pakistan and the other under Shahabuddin's government in Bangladesh. They were informal arrangement not incorporated in the constitution at the time the elections were held. This was for the first time that the concept of care taker government was formally institutionalized within the constitutional framework. The amendment bill was hastily drafted and it was passed by a one party parliament virtually without any deliberation. There was no

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Politics of confrontation: Retrospect and prospect

AKBAR ALI KHAN

BANGLADESH is an odd mix of opposites. It is indeed a strange paradox that a nation which is singularly homogenous by every measure (such as race, language etc.) could be so divisive in its politics. It is baffling that persons who are individually rational and mild like the Bangladeshis could be so irrational and violent in their collective behavior. Despite successful completion of their terms by three consecutive democratically elected governments, extreme political instability marked by conflict and violence haunts Bangladesh today.

World Bank ranks 213 countries and territories on the basis of six governance indicators. As table-1 shows, Bangladesh's performance is most appalling by two indicators: political instability and corruption. However, Bangladesh's Achilles heels lie in political instability. She is classified in the category of worst 6.6 percent countries by this indicator. Bangladesh's political instability is a more difficult dilemma than the intractable problem of corruption. Her standing in corruption (lowest 7.9 per cent) is slightly better than her ranking in political instability (lowest 6.6 percent).

As Table-1 indicates, Bangladesh's performance has declined by every measure of good governance between 1996 and 2005. These indicators are not entirely independent of each other; they are mutually reinforcing. However, political instability has most spill-over effects on other indicators. In fact, it is the key to large slide in governance in Bangladesh during the last decade.

The nature of political instability in Bangladesh is, however, different from that of other democratic countries. Usually, political instability in most democratic countries arises from the inability of a single political



all areas of governance. It creates a Darwinian world of the survival of the fittest where the poor, the weak and the disadvantaged are ruthlessly abused. In developing countries like Bangladesh, political instability is the greatest threat to human rights.

While the costs of political confrontation are evident, the cures are not. In fact, the prescriptions for cure depend on the diagnosis of maladies. There is, however, no consensus on what generates and sustains political instability in Bangladesh. There are five main approaches to political confrontation syndrome in Bangladesh

- Lack of Social Capital
- Dynastic antagonisms
- Inadequacies of the Constitution
- Patron client relationship
- Prisoner's dilemma

Lack of social capital

Throughout history, political instability has been endemic in Bangladesh. Political fragmentation and instability had been her historical destiny. During the period 500-1150 A.D., a ruling dynasty in Eastern and Southern Bengal lasted less than eighty years. In the first century of Muslim rule, the average reign of a ruler was 5.5 years, during the period 1342-1575, it was about nine years. There were also bouts of political anarchy. For example, Khalimpur copper plate records that anarchy prevailed in Bengal in the first half of the eighth century. In ancient Bengal, anarchy is described as matsanya or fish like condition where the bigger fishes devour the smaller ones. The imagery of matsyanaya graphically describes the sufferings of poor and marginal people in political anarchy.

In the sixteenth century, the first Moghul Emperor Babur wrote, "It is a singular custom in Bengal that there is little of hereditary descent in succession to the sovereignty. Whoever kills the king and succeeds in placing himself on the throne is immediately acknowledged as king; all the amirs, soldiers and peasants instantly obey and submit to him, consider him as being as much as their sovereign as they did their former prince and obey his orders implicitly. The people of Bengal say, "We are faithful to the throne, we are obedient and true to it". Abul Fazl, the Mughal historian, aptly described Bengal as Bulghakkhana or House of Turbulence.

Khan (1996) attributes political instability in Bengal to weakness of grassroots institutions in rural settlements in Bangladesh region owing to what is now described in the jargon of social science as lack of social capital. A moot question in applying this theory to contemporary situation is whether historical deficiency of social capital is also valid now. However, Khan's hypothesis is supported by recent research on social capital in Bangladesh. A study conducted in 1980s by Prof. U.A.B. Razia Akhter Banu suggests that level of interpersonal trust was quite low in Bangladesh. She reports that only 4.5 per cent respondents in rural areas and 2.5 per cent in the urban areas indicated high levels of trust on others. The corresponding figures in the USA are 37 per cent in rural areas and 44.9 per cent in urban areas. Pippa Norris (202) of Harvard University reports that a survey in the 1990s show that mean score of social trust in Bangladesh is 0.20 while the same score for Norway is 0.65; for USA, 0.35, for China, 0.50; and for India,

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Table-1
Ranking of Bangladesh among 213 countries by governance indicators

Governance Indicator	Ranking of Bangladesh in percentile rank in 1998	Ranking of Bangladesh in percentile rank in 2005
Voice and Accountability	Lowest 41.5%	Lowest 31.4%
Political stability/ No violence	Lowest 26.9%	Lowest 6.6%
Government Effectiveness	Lowest 38.3%	Lowest 21.1%
Regulatory Quality	Lowest 39.4%	Lowest 14.9%
Rule of Law	Lowest 26.4%	Lowest 19.8%
Control of corruption	Lowest 40.2%	Lowest 7.9%

Source: Kaufman, Daniel, Aart Kraay and Massimo Mastruzzi. Governance Matters V: Aggregate and Individual Governance Indicators for 1996-2005. (Mimeo). World Bank Washington D.C., September 2006.

Table-2
Average No. of hartals (including local and national) in Bangladesh, 1947-2002

Period	Average No of hartals per year
1947-1958	1.5
1959-1966	1.0
1967-70	12.7
1971-74	12.0
1975-1986	14.4
1987-1990	81.6
1991-1994	72.0
1995-1998	93.0
1999-2000	110.6

Source: UNDP. Beyond Hartals. Dhaka: UNDP, 2005.

Table-3
The relationship between % of votes received and % of seats won in Bangladesh Parliament, 1991-2001

Party	Election of 1991		Election of 1996		Election of 2001	
	% of votes	% of seats	% of votes	% of seats	% of votes	% of seats
(a) Awami League	30.08	29.3	37.46	48.6	40.03	20.6
(b) 4 party alliance including AL	33.67	33.33	---	---	---	---
(a)BNP	30.81	46.6	33.81	38.6	40.97	64.3
(b) 4 party alliance including BNP	---	---	---	---	47.04	72.0
Jatiya Party (E)	1.92	11.60	16.40	10.6	7.25	4.26
Jamaat-i-Islami	12.13	6.0	8.26	1.0	4.28	5.6
Independent and others	11.47	2.47	4.13	1.2	1.36	3.14

Source: Karim, Waresul. Election under a Caretaker Government. Dhaka: UPL, 2004.

party to muster a workable majority in the Parliament. In Bangladesh, elected governments have sufficient majority to complete their tenure but they fail to enforce good governance. Political instability in Bangladesh results not from the failure of the unlettered electorate but from the failure of political parties and their leaders. It is driven by agitational politics which challenge the ruling government through *andolons* (movements) and *hartals* (strikes). *Andolons* (movements) are usually launched by national parties and distributional coalitions or special interest organisations or collusions (such as trade unions and Associations) which are in many cases affiliated to political parties (Rahman, 2006). The agitations of distributional coalitions are not unique to Bangladesh (Olson, 1982).

Political instability in Bangladesh is nurtured by bitter conflicts and violence. What makes political instability confrontational and destructive are hartals (strikes), aborodhs (blockade), and gheraos (siege). The most popular weapon in agitational politics is hartal. The term hartal is derived from Hindi terms hat and tal (which implies locked market). Hartals in South Asia could be traced back to the seventeenth century Gujarat where traders used to resort to closure of shops in protest against the excesses of government functionaries (Habib, 1995, 256). It is not, therefore, surprising that hartal was turned into a political weapon throughout South Asia by Gandhiji who was himself a Gujrati. Hartals

are not at all new to Bangladesh. What make them unique today are their frequency and their destructiveness. Table- 2 presents trends of hartal in Bangladesh.

Table-2

Table-2 suggests two striking tendencies. First, the incidence of hartals in post-independence Bangladesh is much higher than the comparable figure in pre-independence Bangladesh. Between 1947 and 1970, there were 67 hartals in the erstwhile East Pakistan. The average number of hartals per year (about 71) in Bangladesh during last two decades exceeds total number of hartals in East Pakistan in 23 years. Ironically, political violence is more endemic in Bangladesh today than in colonial East Pakistan which fought a sanguinary struggle for independence against a brutal enemy. Secondly, the number of hartals per year shows a trend of continuous increase every year since 1979. In addition to nation-wide strikes, local hartals are also proliferating. During the period 1971-2000, about 22.5 per cent hartals were national and 77.5 percent were local.

Opinions vary on the costs of hartals. According to an estimate of World Bank, total economic losses on account of hartals during the period 1995-1999 stood at \$10 billion; the average cost of a national hartal being \$50 million. This amounts to loss of 4.5 5 percent of GDP per annum during 1995-99. UNDP (2002) estimates hartal cost at 3 - 4 per cent of GDP per annum on

an average during 1991-2000. These estimates appear to be exaggerated because about 40 percent of GDP are not directly affected by political unrest like hartal (such as agriculture, fisheries, mining, construction, electricity, gas, real estate and health). Three percent loss of GDP resulting from work stoppage in sectors which constitute only 60 per cent of GDP would amount to loss of the entire productions in these sectors of at least 18.2 days in a year. The average number of national hartals during 1995-2000 was 27.6. UNDP's estimate of three percent GDP loss from hartals implies that at least 65 per cent of GDP in affected sectors on a hartal day is lost. This estimate seems to be highly blown up. Particularly, the losses resulting from strikes are compensated by the private sector by substituting holidays as working days and by working secretly during strike. Furthermore, the intensity of hartals is much less in small towns and villages than in big towns. The static losses of hartal per year are likely to be in the range of 0.5 to 1 percent of GDP (assuming average loss of 10 to 20 percent in affected sectors throughout the entire country on hartal days). However, these are direct losses. They do not take into account declines in investment resulting from the erosion of confidence of both domestic and foreign investors. Political instability forces the economy to travel along a trajectory that is less conducive to growth. The ills of hartals are not confined to economic losses only. Political instability undermines

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Caretaker govt in democratic polity

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room for improvement on the eve of passing the bill. Two elections were held under such a dispensation. Losers in the election had resented the election results, but they did not criticize the framework or the concept of care taker government. It was acclaimed to be a novel and effective instrument for holding a fair general election. Some people even thought that the model could be gainfully replicated in other countries as well.

According to the constitutional provision, the last retired Chief Justice would be the Chief Adviser, the head of the non-party care taker government. This system went on

smoothly up to 2001. In 2004 the ruling party introduced an amendment in the constitution thereby increasing the age for superannuation of the supreme court judges much to the exclusion of civil servants or judges in the lower courts. The opposition considered this as a sinister move on the part of the government to install as chief adviser a particular person who was an office bearer of the ruling party about two decades ago. They started mobilizing people against the would be chief and other strategic officials. Their burden of argument was that the care taker government had to be non partition and as such there was no room for a past office

bearer of the ruling party to be the head of the non party government. The impugned amendment of the constitution along with the partisan whisker of the potential incumbent gave the opposition a big handle to assert their point and enlist public support to their demand. As soon as the tenure of the parliament was over, opposition activists thronged the streets and created a volatile situation which reached such a magnitude that the person waiting in the wing to head the care taker government declined to assume the office of the Chief Adviser. This triggered a high pitched drama serial with the President in the lead role. He became the Chief Adviser of the care taker government in addition to his own job. Despite all the adverse criticism that poured in, the President continued in this untenable position for about ten weeks. When the situation became too hot he resigned the post of the chief adviser and a new Chief Adviser was sworn in to fill in the gap. The happenings for the last one and a half year centering the care taker government has led to intense debate about the rationale and efficacy of the system itself.

One school holds that the care taker government is not compatible with the democratic polity. It is not an elected body and therefore does not have people's mandate. Proponents of this school argue that the ruling (elected) government can itself act as the care taker government doing only the routine work and refraining from framing any new policy or taking any serious decision. An independent and powerful election commission will perform all administrative and organizational activities pertaining to national election. The commission will also be responsible for all transfers, appointments and personnel management relating to election affairs. The ruling government will not interfere with the activities of the election commission; their job will be to assist the commission the way they want it. In that sense the ruling government will be reduced to a mute entity silently observing the proceeding of the elections and carrying out the instructions of the election commission as its loyal agent. It looks like that the election commission is the defacto government during this period.

The other school contends that since the concept of care taker government is incorporated in the con-

stitution it is compatible with the democratic polity. Law makers have consciously brought this institution into existence. There are highly strategic institutions in the democratic dispensation which are not headed by or staffed by elected persons. The election commission which virtually takes over many crucial functions of the government during the election period is not also headed by or staffed by elected persons. Heads of the constitutional bodies including the Chief Justice are not elected. Their importance in the democratic governance cannot be overemphasised. If these institutions with unelected heads and personnel at the higher echelon are considered compatible with the democratic polity the care taker government as an adhoc institution formed for a specific purpose resides very much within the ambit of the democratic polity.

What is the other alternative of the care taker government for running the affairs of the state during the national elections? The first alternative is the ruling party government. The other alternative is some sort of national government or all party government. The first alternative is not acceptable in the Bangladesh context. Party government will manipulate the election process beyond admissible limit such that it will not be acceptable at national and international level. People of Bangladesh have seen how atrocious the manipulation of election can be in the hands of the ruling parties. They cannot trust the ruling party for organizing a fair and acceptable election. The second alternative may create a deadlock in the working of the government because of inter party rivalry.

The compelling need for the non party government after 15th February's one party voterless elections produced the present vintage of care taker government in a pell-mell rush. It had been a workable arrangement for one decade. It now appears that the system needs fine tuning. For example the 5th alternative of selecting the Chief Adviser may be placed as the first alternative. Some people argue that it is impossible to find a suitable person for appointment as Chief Adviser in consultation with the political parties. This is not a sound argument. There are scientific algorithms to make a consensus choice. For that an elaborate exercise has to be carried out. The exercise may be

tiring in nature but it will ultimately produce result. The 6th alternative for selecting the President as the non party care taker chief should be dropped because it is against the spirit of the care taker government and it also creates a messy untenable situation. In fact if the proposed 1st alternative (now the 5th) is assiduously followed, there is no need for keeping the other alternatives in the constitution.

No nascent social or political system can be made perfect at one go. Perfection comes through iterative fine tuning that may continue on a regular basis. A newly innovated system cannot be discarded just because it is not in vogue in other countries, particularly in developed countries. The test of the innovated system is whether it is based on sound logic and whether it is effective in practice. On both counts the care taker government stands on a sound footing. We have seen that in order to address the real life problem a country had two Prime Ministers serving concurrently. We have known about group governance and we have also seen time sharing of executive tenure by the major power groups. The care taker government is much less radical than these systems. In the context of Bangladesh it is based on a robust framework for maintaining the integrity of the electoral process and it has so far delivered in practice. There had been some unfortunate experience because the system was deliberately distorted with an ulterior motive. People resisted such move tooth and nail, at times at the cost of their lives. They struggled to protect the spirit and the basic framework of the system. They succeeded. There is no gainsaying the fact that the system should be improved to make it more effective, transparent and practical. Care taker government is not only compatible with the democratic system, it bolsters the democratic institutions through ensuring the peaceful exit of the ruling party which might have developed a vested interest in the government machinery and destroyed the evenness of the playing field essential for a free, fair and impartial election. This innovative system merits replication in many other democratic countries including the developed ones.

Dr. Saadat Husain is chairman, Bangladesh Public Service Commission and former Cabinet Secretary.



Where is the alternative?

FROM PAGE 50

one may revert back to the old system under which the outgoing government would conduct election. This was precisely the system to change which the Awami League had led the countrywide movement for introduction of the caretaker government and, therefore, will be more severely opposed by the Awami League itself. The second possibility would be selection of impartial and highly respected personalities to constitute a neutral caretaker government by way of consultation and mutual agreement of the major political parties.

Alternatively, any other formula acceptable to them would serve the purpose. But this is also most unlikely to hold good. If there were scope for a compromise, there would have been no need to demand for the caretaker government system originally. After all efforts through inter-party talks failed since 1992, the Commonwealth facilitator Sir Ninian Stevens came to Bangladesh in 1994.

But all his month-long hard work to effect a compromise between the two major political parties came to naught. Earlier, along with a friend of mine from the opposite camp we came out with a formula for solution, on the Kurmitola Golf Course, only to be rebuffed later by our respective leaders. Both the Ninian Mission and the Golf diplomacy suggested various formulas and lists of personalities to the two parties, but to no avail. It was in stark contrast to the success of the ping-pong diplomacy. Also much later, during Shaikh Hasina's tenure as Prime Minister an attempt was made to secure acceptance of a compromise formula on some fundamental issues by President Justice Shahabuddin Ahmed, and I was to take the same to the then Leader of the Opposition. But the Prime Minister thereafter publicly advised the President not to meddle in politics.

Unfortunately, when our leaders turn their face away from each other even while being seated on the same

sofa, chances of any compromise through consultation between their parties are almost destined to be an exercise in futility. The third possibility may be that the Chief Advisor may appoint an equal number of advisors suggested by the two major political parties. Such an arrangement, one apprehends, would curb authority of the Chief Advisor, entail chaos in the Advisory Council and hinder its smooth functioning. Again, any or all such measures to modify the existing system of the caretaker government would call for constitutional amendment, which again presupposes agreement among the major political parties.

Of course, one can empower the Election Commission and make it truly independent by way of providing it with sufficient funds to be used at its discretion and with the authority of appointing its own personnel. However, as all governments showed definite reluctance to implement their pledge on this issue while in

office, it may be worthwhile to seek their agreement now and enact necessary legislation, which would, however, be effective only after the next election. So, it is difficult to suggest any new method of reform that would make the existing system of the caretaker government more neutral and effective.

One may recall that Justice Shahabuddin Ahmed and Mr. Abu Sayeed who had been appointed and adored by the Awami League as President and Chief Election Commissioner respectively, later fell from grace and were severely criticised by the Awami League. So, since a favourite may lose his charm and become unacceptable, by the same logic a non-favourite may likewise be a favourite and acceptable to the same political party later.

Furthermore, the nation should expect to get justice, which contains the inherent attribute of neutrality, from a Chief Justice, even though he had retired. His political background

should not be held against him in which case all students with political affiliation would smack of partisanship and become suspects when they join state services. His real test would lie in his record as a judge and I am not aware of any of his judgments or actions which can substantiate claims of unfairness or partisanship. However, one is free to appeal to him not to accept the post of Chief Adviser, but it would depend upon him entirely to reject the offer of the prestigious position or not. Finally, in the absence of a suitable alternative acceptable to the two major political parties, it would be in the national interest to expect that the caretaker system, which conducted two general elections in the past, both fairly and impartially, should be allowed the opportunity to prove its mettle again in future.

M M Rezaul Karim was advisor to Chairperson of BNP and former Ambassador-since deceased

DHAKA TUESDAY FEBRUARY 24, 2009

From our archives

Feasibility of proportional representation in Bangladesh

DR. SAADAT HUSAIN

DEMOCRACY is not a monochromatic institution. It has many shades and colours. The underlying principle is that the rulers or the supreme governing body should be elected by the owner-members of the country or the

organisations. The process of election is not uniquely defined; it differs across countries and organisations. In this paper we will discuss about election of the chief executive of the country—the president or the prime minister and the apex law making body, the parliament, the congress, the diet or the duma,

whatever be it. For national elections we also take it for granted that each person has one vote, unlike corporate democracy where share holder's voting entitlement depends on the number of shares held by him.

Mathematical logic postulates that the candidate who wins the highest

number of votes should be declared winner in the election. Nobody can question the validity of this axiomatic formula. This appears so compelling and convincing at once. Reality is, however, different. Electoral archives are replete with instances where the winner chief executive or his/her rul-

ing party did not pull the highest number of total votes cast. They were declared elected on the basis of an accepted formula which defies mathematical logic. In case of presidential elections in the USA the candidate who wins the highest number of electoral college as distinct from the total votes cast by the citizens of the country is declared the president. This has a strong semblance to unequivocally despised "basic democracy" system introduced by president Ayub Khan in Pakistan. In case of Westminster type of parliamentary democracy that we follow in Bangladesh, the country is divided into a number of constituencies, say 300 and one member of parliament (MP) is elected from each constituency. The MPs in turn elect the Prime Minister, the chief executive in the parliamentary system of democracy, leaving aside other intricate subtleties of the process. The aggregate votes pulled by the MPs who voted for the prime minister is not counted. It might so happen, as it did in reality on many occasions, that the aggregate votes pulled by the supporters were much less than those pulled by his or her opponents in the parliaments. The country therefore may be governed by a chief executive who represents minority of citizens, an anathema to the concept of democratic polity.

It is relatively simple to suggest a way out for the presidential system of government. A country may opt for direct voting for the presidential candidate as Bangladesh did when it had a presidential system of government. There is not much controversy about this undiluted form of direct election in a unitary system of government. There may be practical reasons for distorting the formula in a federal system of government, the principal one being the

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Politics of confrontation

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0.33. The available data strongly suggest that historical deficiency of social capital is still a factor in the life in Bangladesh.

If political instability of Bangladesh is attributed to lack of social capital, there is no quick fix for this malady. On the other hand, political instability will further erode existing social capital. This problem will have to be addressed over long run through building of grassroots institutions like people's organisations and old values of agrarian societies are still dominant owing to cultural lag. The veneration for political dynasties in countries like Bangladesh is not likely to disappear as long as the old values of agrarian societies persist.

Inadequacies of the Constitution

The proponents of this hypothesis maintain that though inadequacies of constitutions do not trigger political instability; they contribute to its perpetuation. There are several features of Bangladesh Constitution which generate political confrontation. First, "the first-past-the-post electoral system" which ensures the victory of a candidate who gets at least one more vote than the runner up in a particular constituency may lead to a situation where a party with minority votes nationally may form a majority in the Parliament. The relationship between the percentage of votes received and the percentage of seats won in the Parliament in last three elections in Bangladesh may be seen in table-3.

Table-3 shows that in parliamentary elections of Bangladesh, there is no clear relationship of votes received and seats won. In 1996, Awami league won 48.6 per cent seats on the basis of 37.46

The political leaders must realize that democracy means much more than an elected government. Democracy in the classical sense connotes liberal democracy which is concerned less with accumulation of power and more with the limitation of power. The strengths of Athenian democracy which were identified by Pericles 2438 years ago in his famous Funeral Speech honoring the Athenian Martyrs should be the guiding principles of democratic leaders throughout the world: "We give our obedience to those whom we put in possession of authority, and we obey the laws themselves, especially those which are for the protection of the oppressed, and those unwritten laws which it is an acknowledged shame to break" (Thucydides, 145).

votes (about 32 seats more than what they would have got under proportional representation). In 2001, the proportion of votes received by Awami League increased from 37.46 per cent to 40.03 per cent while the proportion of seats fell from 48.6 per cent in 1996 to 20.6 per cent in 2001. In 2001, Awami League got 59 seats less than what they would have received under proportional representation. There is, however, no inconsistency in these results. They may be unjust but are inevitable results of plurality rule. It is also discriminatory against small parties who may be denied of any seat on the basis plurality rule though they would be entitled to seats under proportional representation system. Obviously, the introduction of proportional representation would reduce political confrontation by making coalition with other parties inevitable. However, proportional representation may make the government weak. Another solution could be to

elect 50 per cent seats through proportional votes received by each party nationally and the other 50 per cent on the first past the post rule in each constituency.

Table-3 shows that in parliamentary elections of Bangladesh, there is no clear relationship of votes received and seats won. In 1996, Awami league won 48.6 per cent seats on the basis of 37.46 votes (about 32 seats more than what they would have got under proportional representation). In 2001, the proportion of votes received by Awami League increased from 37.46 per cent to 40.03 per cent while the proportion of seats fell from 48.6 per cent in 1996 to 20.6 per cent in 2001. In 2001, Awami League got 59 seats less than what they would have received under proportional representation. There is, however, no inconsistency in these results. They may be unjust but are inevitable results of plurality rule. It is also discriminatory against small parties

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A major limitation of the Constitution in Bangladesh is that the office of the Prime Minister is enormously powerful and is comparable to the autocratic emperors like Pharaohs in Egypt, Bourbons in France, Romanovs in Russia, and Moguls

in India. There is virtually no restraint on the power of the Chief Executive in

Bangladesh. Political confrontation in Bangladesh may be considerably reduced by curtailing the power of the Prime Minister and enhancing the powers of judiciary, local government, legislators, ministers, political parties, and the Head of the State. This is also essential for restoring democracy within political parties. Bangladesh needs what Anthony Giddens describes as "democratization of democracy". The existing constitutional framework is not conducive to such changes. A Constitution Commission should be formed at the earliest to formulate proposals for making the government more representative and responsive.

Patron client relationship

According to Stanley A. Kochanek, the driving force in the economy of Bangladesh is the distribution of spoils by the ruling party to its clients. Much of the spoils arise from rent-seeking in a resource poor country. Viewed in this perspective, political confrontation in Bangladesh is nothing but a scramble over scarce resources among the competing parties. If this line of analysis is correct, there are two remedies for reducing unhealthy competition in Bangladesh politics. First, the agencies for curbing corruption should be strengthened. The restrictions on illegal patronization would reduce the intensity of political confrontation. Secondly, Bangladesh Constitution provides a winner-take-all situation. As a result, the longer term implies a higher payoff for the winner. The stakes of elections could be lessened by making the tenure of the government shorter. There will be fewer agitations if the term of the Parliament is reduced to three years from five years. However, such reforms are not costless. Apart from increasing expenditure on

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TIME TO TURN A CORNER

PART-2: REVISITING THE CARETAKER GOVT

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Proportional representation

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overriding need for national integrity. The USA had passed through an excruciating civil war that threatened to disintegrate the country. It was necessary to design a mathematically irrational format in order to contain the centrifugal forces unleashed on the eve of and during the civil war. Logic, oftener than not, is dominated by compelling national needs. Ensuring acceptable territorial representation is crucial in a federal system of administration, the country can survive only by reconciling divergent demands of the territorial groups. In the absence of any such compelling circumstances, the country should straightforwardly choose direct election based on aggregate vote counting. In order to ensure absolute majority for the elected president some countries conduct second round of election where only two front runner candidates contest for the top job of the country.

Such a simple solution may not work for the parliamentary system of government. Territorial representation in parliament is considered a *sine qua non* in this system. The weight of the reasoning is value loaded. Proponents of the constituency based elections contend that satisfactory territorial representation is necessary for balanced welfare and development of the country. It ensures inclusiveness and national compact necessary for sustained development. MPs are not only law makers, they are also elected representatives of their areas

to the highest forum of the country. They are expected to vent the grievances and demands of their constituents, people of the locality, in the parliament. Extrapolation of this argument leads one to believe that parliament is not only a lawmaking body, it is also a forum for facilitating and overseeing the activities of the executive government. In the absence of constituency based elections parliament will cease to be a representative body for the whole nation. This will be a major inadequacy for the highest democratic institution of the country.

Constituency based elections are, however, afflicted with many limitations and weaknesses. It is argued that the system promotes criminalisation in politics. It can also lead to mathematically untenable results: party securing lower votes in nation wide aggregate computation may form government because it has majority in the parliament which means it has more elected MPs than any other party. It is also possible for a minority party to form government by cobbling a coalition with other parties: a scenario running counter to the philosophy of democratic dispensation. Election in each constituency is fought between candidates who are physically present there with phalanx of their supporters to organise the campaign. Big show downs, parade of muscle flexing workers, trading of violence, use of money and unethical influence to establish one's supremacy in the polling stations and electoral hierarchies vitiate the whole

environment so much that the system is reduced to an outlandish parody of its own self. Corrupt and undesirable persons come out victorious to turn the parliament into a den of substandard homo sapiens. The government produced by such a parliament is usually its miniature replica. It is corrupt, inefficient and anti people in character. It does not deliver people's welfare. The self seeking MPs and their cronies eat into the vitals of national economy and destroy the fabrics of a welfare society. The country is brought to the brink in an incredibly short time.

In the name of territorial representations the MPs, particularly those from the ruling party turn the constituency as their fiefdom. They become informal chief executives of their locality. They stymie the formation of local government and the growth of healthy leadership in the constituencies. Proponents of territorial representation who consider territorial representation as a desideratum for constituting the parliament find it embarrassing to face the question as to how the 7th parliament in Bangladesh could work without the representative from Bhola-1 constituency all through its tenure. This incident has significantly undermined the case for constituency based elections.

One way out of the problem would be parliamentary democracy with proportional representation. In this system all parties will select their candidates to fill up all or part of the

seats in the parliament and submit the list prepared according to preference in a sealed envelope to the election commission who will keep it in a safe vault. Elections will be held taking the whole country as a single constituency. Articulated in its simplest form, parliamentary seats will be distributed among the parties in proportion to the votes pulled by them. For example, if there are 300 seats and a party has pulled 40% of the total votes cast it will be awarded 120 parliamentary seats and the first 120 persons from its list will be declared MPs for the ensuing parliament. The same formula will be followed for other parties. There has to be a minimum number of votes, say 10%, that a party has to secure to reach the entitlement threshold. Seats will be divided amongst the parties which have reached the entitlement threshold so that the party or the coalition of parties commanding the majority will form the government. Some academics have suggested sophisticated but slightly complicated formula of seat distribution to accomplish mathematical perfection. Parliament in this scheme will primarily be a law making body; local development issues will be taken care of by the elected local bodies with necessary resources and authority. It is expected that while preparing the list of probable MPs parties will have regards to regional balance and territorial needs. This will do away with personal presence of the candidates in the constituencies and use of money and muscle in elections.

Experts and professionals of high standing will have scope to be MPs and to put their valuable inputs in law making and deliberation on important national issues. Government will almost always represent the majority population of the country. Theoretically this seems to be a sound proposition.

One problem will be that of independent candidates; they will forfeit the right to contest the elections in this dispensation. The other problem may be the inertia of citizens to move away from the present system and court all of a sudden a radically different system necessitating a drastic reform in the constitution. A possible way out may be to strike out a compromise between the present system and the proposed one. To start with, a portion say, 30 to 50% of the seats may be earmarked for proportional representation and the rest left for constituency based elections, the number may gradually be reduced for the latter system. This will not be a completely new thing; some sort of proportional division of seats is already in vogue in case of women's seats in the parliament. The country may try out the compromise formula; if this succeeds well it may ultimately shift to undiluted proportional system. That will in all odds usher in an improved democratic practice with markedly reduced use of money and muscle in national elections.

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18th

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TIME TO TURN A CORNER

PART-2: REVISITING THE CARETAKER GOVT

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Politics of confrontation



FROM PAGE 61

election, they will paralyze the government's capacity to introduce reforms which are necessary in the long run but politically unpopular in the short run.

Prisoner's dilemma

The current standoff between two major political parties in Bangladesh may be compared to a game which is

known in economic theory as prisoner's dilemma. In this game, two prisoners who jointly committed a crime are caught. The police do not have enough evidence to prove the case against them without their confession. They are kept in two separate rooms so that they cannot collude. The Police give them separately three choices: (1) if your partner

confesses and you remain silent, you'll get five years in prison. (2) if both of you confess, you will get three years (3) if both of you remain silent you will be in jail for one year. The best strategy for both the prisoners is to remain silent and get a sentence for a year. Both of them suspect each other and are afraid that if one remains silent, his partner

may confess and get away with a three month term while he will get a sentence of five years. Because they cannot conspire in physical isolation of separate rooms, both usually confess and get three years though both them would have got only a year's jail by remaining silent. Because of mutual distrust, both parties end up with the worst outcome where their combined sentence is the highest. According to economists this outcome remains unchanged in the short run though after innumerable repetitions the parties in the long run may arrive at the correct decision by learning from the past. In Bangladesh neither political party is gaining from the political standoff. The tit for tat is the best policy for their survival. The political situation in Bangladesh today is comparable to Cold War in the second half of twentieth century. In 1981 Robert Axelrod wrote a monograph entitled The Evolution of Cooperation to explore how cooperation could be promoted among contending parties in a prisoner's dilemma situation. Many of his recommendations are valid for the political standoff in Bangladesh today.

The implications of some of Axelrod's recommendations for political impasse in Bangladesh are as follows:

(a) The parties are likely to cooperate if there is frequent and continuous interaction. For example, in the First World War, the combatants in the trenches who were supposed to kill each other cooperated with each other by arranging surreptitious truces. Unfortunately, the distrust between the members of opposing political parties in Bangladesh is so deep that there is hardly any meaningful interaction among them at social and political levels. Such interactions are also

frowned upon by top political leadership. Measures should be taken for increasing the social interaction of the members of opposing political parties.

(b) The prospects of cooperation are better if payoffs are lowered This could be done by (1) reducing the term of the government (2) reducing the power of the executive and (3) strict enforcement of Anti-corruption laws.

(c) Teach people to care about each other. These values could be propagated by civil society

(d) Reciprocity among contending parties promote cooperation. This implies that parties should respond to gestures by each other.

In Axelrod's analysis, lack of cooperation is not a product of system failure alone; it is perpetuated by human failure. The most effective remedy for bitter political confrontation is the foresight of political leaders and their capacity to reciprocate with each other. The political leaders must realize that democracy means much more than an elected government. Democracy in the classical sense connotes liberal democracy which is concerned less with accumulation of power and more with the limitation of power. The strengths of Athenian democracy which were identified by Pericles 2438 years ago in his famous Funeral Speech honoring the Athenian Martyrs should be the guiding principles of democratic leaders throughout the world: "We give our obedience to those whom we put in possession of authority, and we obey the laws themselves, especially those which are for the protection of the oppressed, and those unwritten laws which it is an acknowledged shame to break" (Thucydides, 145).

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