



## LAW alter views

# Clean Candidates for Effective Parliament

DR BELAL HUSAIN JOY

**H**OW fair the words 'Fair Candidates' and 'Fair Parliament' sound to the people of Bangladesh? Of course fair if not to many or most of the candidates contested to-date to be Members of Bangladesh Parliament.

The background history of Parliament in this part of the world reveals that the Bengal Legislative Assembly was first constituted under the provision of the Government of India Act, 1935. The first session took place on 7 April 1937 and the very next on 3 February, 1947, with a gap of ten years, although in both the parliaments lively discussions did take place. Almost similar gaps are also found in the subsequent parliaments during the Pakistan and Bangladesh periods.

During the Pakistan period, the East Bengal Legislative Assembly was first held on 29 March, 1948 and thereafter on 5 August 1955, again, with a gap of more than seven years. Quite similar gap was also occurred when the East Bengal Legislative was held on 9 June 1962 and the last session for the Pakistan regime of the Constituent Assembly was held on 10 April, 1971, after long nine years.

The fact is, Awami League, headed by Bangabandhu Sheikh Mujibur Rahman won a massive electoral victory in December 1970, winning all but two seats in the National Assembly in East Pakistan and gained an overall majority in the whole of Pakistan. But the West Pakistani military government refused to hand over power to the East Pakistani majority representatives, and announced an indefinite postponement of the newly elected National Assembly, which ultimately led to liberation war of Bangladesh. Democracy and Parliament of the then Pakistan were finally fell in the hands of systematic butchery. Again, such a crackdown was the result of drastic failure of fair practice of the Provincial and Central

Parliaments of the then Pakistan.

Even after sacrificing millions of lives and wading a sea of blood from the language to independence movements and liberation war, we haven't learned the lesson of running effective parliaments, rather followed almost the same path, resulting in a situation where we still live in a fool's paradise without accountability and transparency on the part of most of the politicians and especially the Members of Parliaments.

The first session of the first Bangladesh Parliament took place on 7 April, 1973 following the General Election held on 7 March 1973, and the second, third and fourth parliaments were held under military rulers. General Election for the fifth parliament was held on 27 February 1991 and the first session of the fifth parliament commenced on 5 April, 1991. General Election for the sixth parliament took place on 15 February 1996 (without participation of the major political parties), the first session of the sixth parliament took place on 29 March 1996. Seventh Parliament election was held on 12 June 1996, the first session of the seventh parliament took place on 14 July 1996; and finally the General Election of the eighth parliament was held on 1 October 2001 and on 28 October 2001 the eighth parliament had its first session. It looks good that the people of Bangladesh elected their representatives at least in three among four consecutive elections since 1991.

But the question is, whether the elected representatives have the right to freedom of opinion and expression without interference as ensured in Article 19 of the Universal Declaration of Human Rights 1948, also as per the Article 39(2)(a) of the Constitution of the People's Republic of Bangladesh. The fact is, under the Article 70 of the Bangladesh Constitution, a Member of the Parliament elected with nomination from a political party shall vacate his seat if he resigns from that party or votes in Parliament against that party. It



goes further, if even a member of the parliament is absent or abstains from voting, it will still be counted as if he has voted against his own party. The Article 70 was substituted by the Constitution Act 1991. This is highly contradictory amendment (12th) and subject to right to fundamental freedom of a citizen and to be a member of the parliament s/he must be a citizen first. This is why, the civil society activists are constantly demanding to make a member of the parliament a true representative of the people rather than his own party.

In addition to this, unscrupulous persons have hardly allowed the Parliaments to function democratically from 1947 till to-date. They were elected hoodwinking the people and had no attributes to leadership; also paved the way for

coup, counter coup and bloodshed. Fair candidates for fair parliament have always been felt short in every election.

In every Parliament, series of sessions did take place but almost in all sessions the main opposition parties remained absent. All the Parliamentary decisions and legislations passed were with majority consent but without any participation of the opposition except only one or two occasions. Two major party politicians so far came to power since 1991 rather divided the country into two parts. There has been no co-operation from either side in administering the country, and jealousy and enmity dominated their actions. As a result, healthy politics is remarkably replaced by political terrorism. Although claimed democratically

electd, all these three consecutive governments failed to govern the country efficiently and effectively to the satisfaction of the electorate -- to establish law and order and justice, increase productivity and take direct economic measures to eradicate poverty and corruption.

Poor or ineffective performance of the peoples' representatives in the Parliament simply proved that they have had hardly any vision, on the basis of which they could undertake missions to benefit of the general members of public. The plain truth is, both the major political parties only worked against each other, seriously hampered national interests and development in the country.

Realising the seriousness and consequences of such repeated failure of the Parliaments, a number

of committed social workers and political activists and advocates like Abdul Momen Chowdhury, K M Zabir and Zahurul Islam, later joined by Dr Kamal Hossain, filed a writ petition with the High Court Division of the Supreme Court on 24 May 2005, in the form of public interest litigation, seeking direction upon the Election Commission to ensure disclosure of information on antecedents and past performance of candidates necessary for making correct choice by the voters.

The petitioners argued that the Members of the JS to be elected by the people must have qualification and suitability to hold such public position. The petitioners emphasized that 'evil doers and those with evil motive should be prevented from coming in the legislature, law breakers should not be allowed to become law makers' and also added with serious concern that 'most of the people of the country are illiterate and lack understanding and so they are hoodwinked by the selfish representatives who build their future at the cost of the people'. The petitioners respectfully reminded that 'for the blatant betrayal by the leaders and evil attempt to cling to power by fraudulent and illegal means the people had to demand for caretaker government to conduct elections.

Likewise, the decision making process of the voters would include their rights to know about public functionaries who are required to be elected by them; and accordingly, the Election Commission should make necessary provisions to allow the people know the following from an intending candidate in the election to the parliament: (a) Academic qualification with certificate from the Board or University if any; (b) Whether accused in any criminal case at present; (c) whether there was any past record of criminal case and the result; (d) profession/occupation; (e) source or sources of income; (f) whether was a member of parliament earlier and the role played individually and collectively in fulfilling the commitment to the people; (g) description

of assets and liabilities and dependent members; (h) particulars and amount of loan taken from bank and financial institutions dealing with public money personally, jointly or by dependent member or loan taken by any company from bank where the candidate is Chairman, or Managing Director or Director etc.

Upon hearing the above writ petition, Mr Justice Md Abdul Matin and Mr Justice AF MAbdur Rahman issued a rule calling upon the respondents (1) Bangladesh govt and (2) Bangladesh Election Commission to show cause as to why they should not be directed to secure to the voters particulars from the candidates for the election to the parliament in the form of information disclosing the past of the candidates including certain facts necessary for making correct choice by candidates. This rule was not opposed by any respondent. The Hon'ble Justices mentioned that it had been asserted that the Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission.

Giving due reference to Article 119 of the Bangladesh Constitution, the Hon'ble Justices held that it was permissible for their Court to set down guidelines as prayed for. The question of right to know was also examined in the said judgment and it was held that people's right to know is inclusive of their right to vote, and the rule was made absolute. At the same time, the Hon'ble Justices directed the Election Commission to disseminate the information amongst the voters about the candidates through mass media and the State was directed to provide necessary logistic support for the purpose.

In search of fair candidates for fair parliament, the above initiatives of the petitioners and the judgment were imperative to get rid of muscle-men, black marketeers, bank defaulters, uneducated and corrupt persons from the House of the Nation. Now, the next steps are left with the people of the individual

constituency to check and come up with the facts about their intending candidates, whether the affidavits made by the candidates are true or false. In case of false statements given by any candidate, the voters of the respective constituency have every right to bring the matter to the attention of the Election Commission for necessary action and/or corrective measures or failing which, the matter will remain open to be challenged in the Court of Law, and such candidates may be ordered to withdraw their nominations or face legal consequences, like six-month imprisonment under Affidavit Act and/or punishments under penal clauses of the election rules and laws.

Finally, professionals like lawyers, civil right personalities and societies or even NGOs may undertake this challenging venture to help the voters to choose their right candidates, if needed, in preparing the complaints and cases; monitor the commitments made by the candidates, during their election campaigns, for the whole period of their offices in the Parliament once elected; and to help the Election Commission in disseminating candidates' antecedents and other relevant information and providing logistic support on behalf of the government to uphold the direction given by the High Court Division of the Supreme Court of Bangladesh in the above landmark case. Such responsibilities are just not to act as election observers on the day, but to act for fair candidates for fair parliaments all times.

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## LAW opinion

# Internet should not become tool of repression

CHRIS SMITH

**A**MERICAN people are deeply troubled to see U.S. technology and know-how used by repressive regimes in China and elsewhere in the world to cruelly exploit and abuse the citizens of those countries. While the Internet has opened up commercial opportunities and provided people

government responded with an immediate crackdown. To date, an estimated 49 cyber-dissidents and 32 journalists have been imprisoned merely for using the Internet to spread information critical of the Chinese government.

I was recently on a news program talking about Google and China and was asked, "Should businesses be tasked with promoting democracy

brutally oppressive regime in decapitating the voice of its dissidents. In 2005, Yahoo's cooperation with Chinese secret police led to the imprisonment of cyber-dissident Shi Tao. This was not the first time something like this had happened. Yahoo also handed over information to Chinese authorities on another of its users, Li Zhi - who was later sentenced to eight years in prison for "inciting subversion." His only "crime" was to use online discussion groups and articles to criticize official corruption.

By using a combination of technology and an estimated force of 30,000 cyber-police to monitor, filter, and block critical content the Chinese government prevents its people from having access to uncensored information on political and human-rights topics. They only see what Big Brother allows them to see. Women and men are going to the gulag and being tortured as a direct result of information handed over to Chinese officials. These are not victimless crimes. We must stand with the oppressed, not the oppressors.

On February 15, as chairman of the committee in the U.S. House of Representatives that oversees global human rights and international operations, I led a hearing to examine this problem. The hearing, which lasted more than seven hours, raised more questions than it answered. I was surprised when Yahoo's witness wouldn't reveal how often or under what circumstances the company provides private information about its customers to the secret police and whether any effort is made to ascertain what actions are taken by police based on this information. Yahoo didn't even seem to be curious whether any of the many journalists and other cyber-activists incarcerated in the laogai (Chinese prison camps) are there on account of information the company provided

to the dictatorship.

Similarly, Cisco's witness failed to provide any real insight as to how Cisco's incredible technology is being used by Chinese police thugs to find, capture, convict, jail and torture both religious believers and human-rights advocates. My committee then heard from Harry Wu, a 19-year survivor of the laogai, who told us that Cisco was training the secret police in how to use its technology to identify dissidents -- so making it even harder for those who criticize the Chinese government to evade capture.

I have been a pro-business member of the U.S. Congress for 25 years and strongly believe that Internet companies like Google, Yahoo, Cisco and Microsoft attract some of the best and brightest minds. They have developed cutting-edge technology. But it is technology that should be used to encourage and empower the oppressed and help those yearning for freedom to make their voices heard -- instead of serving as a tool of repression.

Therefore I have introduced the Global Online Freedom Act of 2006, in response to requests from several American information-technology companies that the U.S. government actively protect a free Internet and ensure that American companies operating in repressive regimes have the support of their government as they strive to respect the universal rights of freedom of speech and press. This act establishes U.S. policy regarding the free flow of information on the Internet, minimum corporate standards, and the right of redress for individuals who are persecuted by repressive regimes in violation of this act.

The act would require the U.S. president to annually designate any nation whose government has systematically restricted Internet freedom during the previous year as an "Internet-Restricting Country,"

and establish an office of Global Internet Freedom within the U.S. State Department to report to Congress on its assessment on the state of the freedom of electronic information in every foreign country.

In addition, my bill would ensure that U.S. businesses are not put in the difficult position of complying with local laws, or forced to turn over personal information on their account users. It would achieve this by preventing companies from hosting email servers or search engines within Internet-Restricting Countries, or establishing any kind of presence in such countries that would make it liable to political censorship and require it to hand over personal information on its users.

We are at a point where leading U.S. companies like Google, Yahoo, Cisco and Microsoft have compromised both the integrity of their product and their duties as responsible corporate citizens in order to compete in the world's largest market. The ability to communicate openly is the key to unlock the doors to freedom for those who cannot feel its touch, and IT companies can help to provide that. As Americans, we need to empower those who seek the path of democracy, not stifle their ability to speak out.

The author is Chairman, House Committee on International Relations Subcommittee on Africa, Global Human Rights, and International Operations.

Source: Bureau of International Information Programs, U.S. Department of State

## HUMAN RIGHTS advocacy



# Arms traffickers enjoy impunity

UN arms embargoes are systematically violated and must be urgently strengthened if they are to stop weapons fuelling human rights abuses, according to a report being presented to the UN Security Council.

According to the Control Arms Campaign, every one of the 13 UN arms embargoes imposed in the last decade has been repeatedly violated. And despite hundreds of embargo breakers being named in UN reports, only a handful have been successfully prosecuted.

"Over the past ten years systematic violations of United Nations arms embargoes have met with almost no successful prosecutions. Unscrupulous arms dealers continue to get away with grave human rights abuses and make a mockery of the UN Security Council's efforts," said Irene Khan, Amnesty International's Secretary General.

Control Arms campaigners will today appeal to the UN Security Council for states to strengthen the enforcement of UN embargoes. They will argue for a raft of new measures, including the urgent agreement of an International Arms Trade Treaty.

This Treaty would enable governments to act in unison to strictly control conventional arms transfers, thereby creating the conditions for UN arms embargoes to be properly respected. Since the Campaign began in October 2003, over 45 countries have stated their support for such a treaty.

### According to the report:

- UN investigative teams tasked with monitoring the embargoes are given woefully inadequate resources and time;
- Despite UN mandatory arms embargoes being legally binding under international law, many states have not even made violating an embargo a criminal offence;
- Arms export, import and freight documents are routinely faked and state officials often cover up arms transfers;
- UN peacekeepers are sometimes not trained to adequately record markings on weapons, while UN missions do not have adequate means to monitor ports of entry in embargoed zones.

"Illegal arms dealers are getting away with murder on a daily basis. Embargoes must be strengthened but even then they will remain a blunt instrument. They are often imposed by the UN Security Council on the basis of politics rather than principles and are usually deployed too late to save lives. The world urgently needs an Arms Trade Treaty if we're to stop weapons getting into the wrong hands," said Barbara Stocking, Oxfam's Director.

According to campaigners, between 1990 and 2001 only 8 of 57 conflicts had UN arms embargoes imposed. Even when UN embargoes were agreed, it was generally only once a conflict had begun. An Arms Trade Treaty would provide a broader framework to prevent weapons being sold before wars start or human rights abuses reach their peak. This would also enable tougher enforcement of UN embargoes according to



common standards based on international law.

Today, Control Arms campaigners from around the world will also be marking 100 days to go until the UN world conference on small arms in June. During the next 100 days, campaigners in 110 countries will be holding marches, concerts and stunts to put pressure on their leaders to support an Arms Trade Treaty.

"In the 100 days until the UN world conference on small arms starts, an estimated 100,000 people will be killed with arms and many more will be injured and suffer severely in other ways from armed violence. Today, people from Kenya to Canada to Chile will be calling on their leaders to demand global controls to stop weapons falling into the wrong hands," said Rebecca Peters, Director of the International Action Network on Small Arms.

Over 800,000 people in 160 countries have already given their photographs to the Million Faces Petition, which is the world's largest photo petition, calling on leaders to back stricter controls on the arms trade. It will be delivered at the June conference, representing the million people who have been killed by arms since the last UN conference on small arms in 2001.

This is the abstract of the report from the Control Arms Campaign

Source: Amnesty International.



Internet  
Today and Tomorrow

all over the world with access to vast amounts of information, in China it has also become a malicious tool -- a cyber-sledgehammer of repression in the hands of the government.

When Internet use started to become widespread in China, brave citizens took advantage of this new method of communication to spread information by email about human rights abuses issues and government corruption. The Chinese

around the globe?" My response is that we are asking the wrong question. We ought to be asking whether businesses should help repressive dictatorships by partnering with, and providing tools to, a corrupt and cruel secret police, and by cooperating with laws that violate basic human rights.

In the case of China, there's clear evidence that U.S. technology companies are collaborating with a