

## EC reform will require more than reconstitution

**Because of the appointment of self-interested and incompetent individuals, our EC has now become an almost irrelevant and anti-people institution. In fact, the EC itself appears to have become the biggest hindrance to fair elections. To overcome this condition, we must urgently find ways to remove the incumbent commissioners. However, in order to make the EC a truly effective watchdog of our democratic polity, we must go beyond replacing the commissioners. We must remove its systemic weaknesses and enhance its institutional capacity. The reform of the political parties must also be instituted at the earliest.**

### DR BADIUL ALAM MAJUMDAR

THE demand for reform of the Election Commission (EC) has now become almost universal. However, the reform idea appears to have become confined to the proposed reconstitution of the EC -- that is, replacing the existing commissioners or appointing some additional ones. Even the caretaker government (CTG) is reported to have decided to nominate two more commissioners. However, we feel that there must be significant reform of the EC itself in conjunction with replacing the unwanted individuals.

### Problems with the EC

There is no denying the fact that a strong, independent, and effective EC is indispensable for free, fair, and impartial elections. According to many thoughtful observers, with a vigorous and vibrant EC, even the caretaker will become redundant. Nevertheless, our EC has now become an institution which is beset with many limitations. Problems with the EC are three fold: discredited individuals, systemic limitations, and lack of institutional capacity.

Because of their appointments on partisan considerations and their subsequent activities, serious questions are now being raised about the integrity, competence and impartiality of the chief election commissioner (CEC) and his three colleagues. In fact, the commission itself appears to have lost the respect and confidence of much of the population. It seems that a drama is now being regularly played out at the commission with the CEC as its villain, and an unknown quarter providing the script. In addition to the public ridicule of the commissioners,

serious concerns have been raised about the honesty and partisan behaviour of many of the EC functionaries.

The systemic deficiencies of the EC are primarily responsible for its present weakness. The commission is now under the control of the Prime Minister's secretariat. In addition, it has to depend on the decision of the government for its budgetary allocations. Thus, despite its indispensable role for free and fair elections, the EC has failed to become an independent and robust institution. In fact, the EC is now, in the words of Justice Aziz, a mere "post office" -- a toothless institution which is worth little.

A major problem of the EC arises from its lack of institutional capacity and also its unwillingness to use the powers and authorities it already enjoys. The existing laws give significant authorities to the EC, which it has miserably failed to exercise. For example, Article 12(1)(b) The Representation of People Order 1972 (RPO) empowers the EC to disqualify, on account of conflict of interests, the candidates to parliamentary elections who have business relationship with government. We are not aware of any efforts ever by the EC to use this power. In addition, the Commission's past actions to disqualify loan defaulters have been timid at best.

In order to limit election expenses, political parties and candidates are required to submit reports of their election expenses in prescribed forms. However, no major political party ever submitted their accounts. Of the 1,939 candidates in the 2001 elections, only 1,473 submitted their expense reports and those reports were also fictitious. The punishment for non-compliance of such reporting

requirements is rigorous imprisonment of 2-7 years. The commission failed to take any effective steps against defaulters or for submitting false reports. The EC also does not seem to have any headache about the big "money plays" that have now been going on even before the declaration of schedule for the coming elections. Similarly, the EC has been given the authority to delimit parliamentary constituencies. However, it has totally failed to take any step in this regard after the Population Census of 2001.

The commission, for the sake of fair and peaceful elections, has the power to intern criminal elements that could cause disturbances during elections. It may be pointed out that the Indian EC forcefully exercises this power. For example, 140,000 criminals were put behind bars prior to the last assemble elections in Bihar, as a result of which fair elections were held in Bihar for the first time.

A High Court judgment last year directed the EC to collect, in the form of affidavits, information about antecedents of candidates and make them available to the voters through the news media so that the voters could make informed choices. In addition, the RPO requires candidates to submit statements of their income and expenditures, assets and liabilities and even their income tax returns to Returning Officers. Unfortunately only 1,587, out of 1,939 candidates contesting the 8th parliamentary elections submitted such statements, but the commission has failed to take any effective steps against the defaulters.

The RPO also allows the commission to frame its own rules, which even the Indian EC does not have, and this authority gives the EC great leeway to be assertive.

More importantly, our constitution gives the commission enormous powers in the interest of holding fair elections. According to the Appellate Division of the Bangladesh Supreme Court: "Election Commission's inherent power under the provision of 'superintendence, control and direction' should be construed to mean the power to supplement the statutory rules with the sole purpose of ensuring free and fair elections" (45DLR(AD)(1993)). Unfortunately, our EC has so far failed to assert this power. The main reasons for such failure are the incompetence, partisan behaviour and most of all, the unwillingness of the EC personnel, which greatly reduced the commission's institutional capacity.

### Ways to strengthen EC

If we are to remedy the situation and strengthen the EC, obviously we must first of all find ways to remove the incumbent commissioners. For this purpose, the president may be asked to convene the Supreme Judicial Council under Article 96 of the constitution. The president is obliged to remove the commissioners if, after inquiry, the council reports to the president that in its opinion the commissioners have ceased to be capable of properly performing the functions of their office or are guilty of gross misconduct.

The following allegations may be made against the commissioners: (1) Ignoring Article 7(7) of the *Electoral Rolls Ordinance 1982*, the EC, under the leadership of Justice Aziz, has prepared a new electoral roll which was found illegal by the Bangladesh Supreme Court. (2) In preparing the new electoral roll, the EC defied the High Court judgment of January 4, 2006, in which the court directed the commission to prepare the electoral roll by taking the existing (2000) electoral roll as a major basis. (3) By wasting Tk 64 crores for the new electoral roll, which was found to be illegal by the court, the EC failed to perform its fiduciary responsibility. (4) Legal experts have voiced concerns that the EC, by not preparing a draft electoral roll, has violated the Supreme Court judgment of May 23, 2006. (5) According to newspapers reports, the revised electoral roll prepared by the EC last August

is full of serious errors, which amounts to its failure to perform its constitutional responsibility (Article 119) to prepare a reliable electoral roll. (6) By not revising the electoral roll before the forthcoming elections by sending enumerators to household to collect information, preparing the draft electoral roll using the information thus collected and preparing the final electoral roll after incorporating the objections and additions, the EC has disregarded Article 11(1) of the *Electoral Rolls Ordinance*. (7) By not fully and completely implementing the High Court judgment of May 24, 2005 on disclosures of antecedents of candidates, the EC has acted against public interests public interests being clean politics and honest government. (8) More seriously, Justice Aziz has failed to tell the truth about the president's requests for him to step down.

Clearly, the EC has consistently and willfully defied both the law and the court directives, and the CEC has indulged in falsehood. Legal experts can only interpret whether these alleged facts constitute gross misconduct on the part of the Commissioners or these have impaired their ability to properly perform the functions of their office by reasons of physical or mental incapacity. However, in the minds of the vast majority of the general public there appears to be grave doubts about their competence as well as the rationality of their conducts and judgments.

A serious constitutional question is also recently raised about the eligibility of the Justice MA Aziz and Justice Mahfuzur Rahman as members of the EC. According to Article 99(1) of our constitution: "A person who has held office as a Judge ... shall not, after his retirement or removal therefrom, ... hold any office of profit in the service of the Republic not being a judicial or quasi-judicial office or the office of Chief Adviser or Adviser."

According to Indian Supreme Court: "The functions of the Election Commission are essentially administrative but there are certain adjudicative and legislative functions as well." When Justice Mahfuzur Rahman was appointed as a commissioner, this author raised the validity of his appointment

in light of this constitutional provision (*The Daily Star*, June 8, 2006, *Ittefaq*, July 4, 2006). More recently, after the retirement of Justice Aziz as a judge of the Supreme Court, three legal experts -- Dr Shahdeen Malik, Dr Asif Nazrul, Dr Borhan Uddin Khan -- raised a similar question about the legality of his holding the position of the CEC. If the president has any doubts about the applicability of this constitutional provision in the cases of Justice Aziz and Justice Rahman, he can send a reference to Supreme Court before taking action against them. However, many jurists feel that the judges should not be eligible for any appointment after retirement, because such appointments have serious adverse impacts on the judiciary.

It is reported that the CTG is seriously considering to appoint two new commissioners to the EC as a means to breaking the present political deadlock. We are concerned that such appointments to bring a balance and break the deadlock may do just the opposite. This may once again turn the EC -- recall the experiences when Mr MM Munef Ali and Mr AK Mohammad Ali were commissioners -- into a dysfunctional institution beset with partisan bickering. Such bickering may further lower the image of this vital democratic institution in the estimation of the people. In addition, these appointments will not solve the problems of dishonesty and incompetence of the incumbents. Furthermore, no one can guarantee that a political impasse will not be created over the new appointments.

The issue of the process of appointment of the election commissioners also needs to be solved once for all. We propose that a committee comprised of the prime minister, the leaders of the opposition and the chief justice, and headed by the president, should finalize the nomination of all constitutional posts and the president should make the appointment. Furthermore, the number and the qualifications of the commissioners must be specified. These changes will require amending the constitution, for which we will have to wait until after the election.

In order to strengthen the EC, some serious systemic reforms must be instituted immediately. It must be brought out of the jurisdiction of the Prime Minister's secretariat. The commission must have its own independent secretariat and its own manpower. Article 88(d) of the constitution must be expanded to make all expenses of the EC charged upon the Consolidated Fund of the government. Legal provisions must be made for the EC to take its decisions -- decisions which involve public interests -- in open meetings to ensure its transparency. Its activities may also be discussed in the parliament to ensure its accountability. In addition, a code of conduct may be developed for the commissioners.

The most formidable threat to fair elections is undemocratic and criminalised behaviour of our political parties and their nominated candidates. Political parties are the engines of democracy. Without democratic, transparent and accountable political parties, democracy cannot be functional and effective. However, our political parties will not bring about the necessary changes on their own. Thus, like India and many other countries, the political parties must be required to register under the EC. Conditions for registration must be the practice of internal democracy, financial transparency and reform of the nomination process to keep the criminal and other unwelcome elements from the political process. In order to give the EC such powers to regulate the functioning of political parties, section 90A of the RPO will have to be amended.

The EC must be given another authority. One may recall that on August 8, 2001, the president, through an ordinance, empowered the EC, by inserting Article 91D to the RPO, to disqualify and debar candidates in parliamentary elections for illegal acts or gross misconduct. Unfortunately, the major political parties, on the eve of the elections, compelled the-then president to remove the article through the promulgation of another ordinance. This article must now be reinserted.

We believe that with the change of guards and the systemic reforms,

the institutional capacity of the EC will greatly increase. With the nomination of honest, competent, non-partisan and courageous individuals to the commission, it will become much more effective. The president can remove most of the systemic weaknesses of the commission through an ordinance. A draft of such an ordinance has already been prepared by Shujan, and we are awaiting an appointment to hand over the draft to the president. We have also identified the changes that must be made in the long-run.

To conclude, it is clear that the EC is a vitally important democratic institution. Its strengths, independence, neutrality, and effectiveness determine the success and the quality of democracy. Unfortunately, our democratic process is now under serious threat, pushing the country to a course of uncertain future. One main reason behind this state of affairs is the pathetic state of our EC. Because of the appointment of self-interested and incompetent individuals, our EC has now become an almost irrelevant and anti-people institution. In fact, the EC itself appears to have become the biggest hindrance to fair elections.

To overcome this condition, we must urgently find ways to remove the incumbent commissioners. However, in order to make the EC a truly effective watchdog of our democratic polity, we must go beyond replacing the commissioners. We must remove its systemic weaknesses and enhance its institutional capacity. The reform of the political parties must also be instituted at the earliest. In today's emotion-charged political atmosphere, all our efforts for ushering in better days ahead may go in vain unless we keep our focus on a comprehensive set of reforms. As our experiences of the last 35 years demonstrate, problems will repeat with more seriousness and ferocity unless they are solved once and for all.

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## The way forward

### DR MS HAQ

AN electoral reform for a free, fair and credible election particularly in light of the demands of the 14-party alliance and other relevant political parties would require, among other things: a structural reconfiguration of the election commission (EC); additional policy decisions -- for example, those connected with a thorough re-examination of the voter list; and streamlining operational modalities associated with holding the election in the manner that will be free, fair and credible.

The current effort of, say, the caretaker government and political parties towards the fulfillment of above requirements is being apparently hampered, in varying degrees though, by factors, such as and as appropriate, constitutional limitations, an absence of collective and constructive political will (particularly, AL/BNP), tunnel visions, conflicts of interest -- national level versus party level, a perceived lack of intra and inter-party trust, as well as confidence,

naïve realism, and inflexibilities (in relevant areas).

Interesting though, both BNP and AL reportedly want a free, fair and credible poll amid those and other barriers. But questions remain. For example: Whether or not AL would be ready to show flexibilities when it comes to address the matter of electoral reforms within the perimeter of existing constitutional means and opportunities? Whether or not BNP would change its present stand, facilitating the electoral reform through say, constitutional amendments in relevant areas?

If the parties continue to hold on to their respective stands on election matters, it will not be logical to assume that the caretaker government shall, among other things, evaluate -- in a more careful, realistic, neutral, objective and futuristic fashion -- election options available to it against the backdrop of say, risk and ramifications associated with each of those options. Government decisions on the matters mentioned should inter alia be based on the big picture, reflect-

ing the hope and expectation of Bangladeshis and other people of the world, perse.

If the government believes, the removal (used in a wider sense) of, for example, Justice Aziz, will serve the greater interest of Bangladesh and Bangladeshis, it should not then hesitate to do that -- unless Justice Aziz decides on his own to quit. On the other hand, if the government finds it difficult to removing him or others in light of existing constitutional provisions, the government should then bring in necessary amendments to the constitution again in the greater interest of Bangladeshis and others.

Again, if the government finds it difficult to do that, it could then seek the decision of the people of Bangladesh on the matter through a referendum or a sample poll (to be conducted by independent and experienced entities -- provided that the holding of such poll is acceptable to at least major political parties, per se). In such an event, the people of Bangladesh should decide, for example: Whether or not they want the elec-

tion to be held within the present tenure of the caretaker government and as per existing provisions of the constitution? Whether or not they want the election to be held under an amended constitution?

In any case, Bangladeshis and others want to see a people's government -- must be elected through a free, fair and credible poll -- in place, as soon as practicable. Bangladesh has to move on in an ever-competitive world -- it cannot afford to sit back and relax in the pretext of poll related political dispute.

In view of the above and other considerations, it now appears one of the key challenges of the caretaker government is: how to take the people, friends, and well wishers of Bangladesh into confidence in pursuit of a free, fair and credible election in the country.

Finally, it is hoped things like, in actions, in decisions, and delayed, as well as improper actions on the part of caretaker government will not result in an eventual military takeover, for example. Let us work towards making things better.

## The CEC and Superman

### OMAR KHASRU

THE chief election commissioner obviously has nerves of steel, sort of like the comic book Superman. Superman actually had a body of steel. The trailer of the old grainy black and white 1950s Superman TV series proclaimed: "Faster than a speeding bullet, more powerful than a locomotive, able to leap tall buildings in a single bound ..." etc. But Superman seemed to embody the usual altruistic human traits and emotions.

The CEC, unlike Superman, does not possess any of the leaping, breakneck speed, or physically rugged traits. He does not demonstrate the usual and customary human emotions, characteristics, and instincts either. He is tough as nail with a combination of strong resolve, steely nerves, rough mannerisms, and stubborn doggedness. The less uncharitable depiction and explanations abound in the media, among the intellectuals, civil society, and people of all classes and backgrounds, and diverse but rational

opinions.

The chief election commissioner does seem like a figure right out of the old style comic books of the Superman, Batman, and Spiderman genre; definitely not a hero but more like a villain.

Surely nobody in real life can be so indifferent, so unfazed, so uncarrying and of such devil-may-care attitude. Nobody can be so unfeeling about the plight of the people and tense uncertainty and miserable predicament of the country. No real person of flesh and blood can show such utter disregard and callous disdain for the fellow human beings, especially the struggling working poor, who live the life of "quite desperation" in the best of circumstances and whose misery has been enhanced many folds by the ongoing political crisis.

Some of the fictional and comic book rogue characters who could match the insensitive and coarse behaviour are the Joker, Penguin, and Catwoman in Batman; Lex Luthor, General Zod, Darkseid and Doomsday in Superman series; Dr No, Blofeld and Goldfinger in the super-spy James Bond movies.

Most of these fictional villains wanted to destroy the world or much of it to fulfill their heinous and sick desires to dominate the world. The obstinate and inflexible refusal of the CEC to budge, on the other hand, is devastating and damaging to only this little corner of the world.

Extreme and strong words of derision, dislike, revulsion, or disgust from so many do not seem to bother him the least bit. He seems to shake off the pressure, persuasion, coercion, and cajoling with consummate ease. All the unkind and unforgiving words in the press, in analysis, commentaries, and appraisals do not seem to concern him a teeny-weeny bit.

The spiteful and harsh, albeit understandable and even realistic, rationalization by many in the media and elsewhere primarily imply that: (a) he is mentally imbalanced, deranged if you like, and/or (b) he is single-mindedly determined to implement the blue-print of the immediate past 4-party regime and hoist the last ruling coterie back to power by hook or by crook, come hell or high-water. This whole thing seems baff-

lingly unreal and a bit surrealistic. It seems that the country is mired in a real bad horror movie. Somebody will soon wake us all from the collective nightmare and brighter days will dawn again. The frightening, nightmarish, and horrendous real life situation has been made for extremely selfish reasons by the politicians and their accomplices and co-conspirators. The country is held hostage at their whim.

One person who is so very unwanted and lacking in credibility, standing and rational behaviour can give us a little respite by bidding a hasty retreat. Perhaps we do not know and fully comprehend his side of the story or the personal perspectives of the CEC. But the people now have no patience or tolerance for that. The CEC can forthwith cease to act as a supervillain to perpetuate the misery and trauma of the Bangladeshi people. Nobody is impressed by his boorish and overbearing attitude and conduct.

People are getting mighty aggrieved with the dreadful and overwrought political impasse.

## Abolish the UN Security Council veto

### DR FAKHRUDDIN AHMED writes from Princeton

THE writer visited the United Nations headquarters in New York City with some students last week. As our young guide escorted us into the Security Council, I could not help recapitulating the enormous injustices that this most powerful UN body had inflicted upon the world's innocent and the weak over the last sixty years.

It was the Security Council that mandated the creation of Israel in 1948 out of Palestine, without consulting the wishes of the Palestinians who constituted the majority of people in Palestine. It was the former Soviet Union's repeated exercise of UN Security Council veto in favour of India that denied the Kashmiris the right to express their preference for either India or Pakistan through the plebiscite an earlier UN resolution had mandated.

Israel paid no compensation to Iraq for destroying Iraq's nuclear facilities through a sneak aerial attack in June 1981, violating Jordan's air space in the process.

Because of the threat of American veto, Israel paid no price whatsoever for destroying Lebanon's infrastructure to the tune of 12 billion dollars, destroying 15,000 Lebanese homes and killing 1,400 Lebanese civilians and maiming several thousands more last July-August. (Ignoring the UN peacekeepers, Israel continues to violate Lebanon's air space to this day).

On November 11, America vetoed the latest UN Security Council resolution, mildly critical of Israel for its recent massacre of Palestinian civilians in Gaza; a watered-down resolution that evens the European Union supported. The UN Security Council has become an instrument for the world's bullies and exists solely for the benefit of the bullies and their cohorts. And like an abused wife who is a glutton for punishment, it is astonishing why the rest of the world accepts the mandate of such morally-bankrupt dictatorial bullies. The permanent members must be laughing their heads off at the unquestioning docility with which their victims accept the unjust punishment.

The five veto-wielding permanent members of the UN Security Council protect and promote their own and that of their friends' interests while punishing the weak who has no permanent member patron. Four of the five permanent members of the United Nations Security Council -- the US, Russia, the UK and France -- are Christian nations, and the other, China, is Buddhist/Confucian. The US and other western nations have always protected Israel's interests, as has the former Soviet Union, and more recently western permanent members protected India's interests. Only Muslims do not have a permanent member patron. Consequently, although there are over 55 Muslim-majority nations on earth, 90% of the United Nations Security Council economic and military sanctions are against Muslim nations!

The latest country the UN Security Council is considering economic sanctions against, is, surprise, another Muslim country, Iran! Even Iran's detractors concede that Iran has done nothing

illegal; it is entitled to enriching uranium for peaceful purposes under the terms of the Nuclear Nonproliferation Treaty (NPT), to which Iran is a signatory. Israel and India have not signed the Nuclear Non-Proliferation Treaty; the US has. A signatory to the Nuclear Non-Proliferation Treaty is forbidden to share nuclear secrets with a country that has not signed it. Yet, the US has been aiding Israel's nuclear program since its inception; and on November 17, the US Senate passed a bill authorizing President Bush to share nuclear technology with India, violating the terms of the NPT. All this is done with a straight face, as though no one is noticing this violation of international law. All the while the rhetoric about punishing Iran for its intentions is getting shriller.

During his speech to the UN General Assembly last September, Iranian President Mahmoud Ahmadinejad made a devastating critique of the UN Security Council permanent members, which was largely ignored or ridiculed here. He posed the 64,000 dollar ques-

tion: if the permanent members of the Security Council commit crimes, what mechanism does the UN have to punish them? The answer is: "Absolutely None." And while lecturing the weaker members to behave themselves, the permanent members have been committing regular crimes and invading other countries at will with impunity, since the UN was founded in San Francisco in 1945.

As we entered the General Assembly, I asked our guide what purpose the General Assembly served when its opinion counts for zilch? He actually gave an intelligent answer. He said that over time, the moral weight of the lopsided votes in the General Assembly will exert enormous pressure on the permanent members to modify their behaviour. Good answer, but, oh so wrong!

Over the last sixty years, all the lopsided resolutions that ran contrary to the decision in the Security Council have not modified the behaviour of the permanent members one iota. Permanent members, usually as few as one,

routinely blast the overwhelming majority of the General Assembly members and thus the world's opinion, for their immaturity in voting for such "wrong" resolutions. (Some branches of the UN, such as, WHO, Unicef, do useful work; however, they can function just as well outside the UN umbrella.)

Several resolutions condemning Israel's atrocities on the Palestinians passed the 192-member UN by vote margins as large as 180-4, with only the US, Israel, Micronesia, and more and more, Australia, voting against. The decision by the General Assembly is not worth the paper it is written on. In the face that the United Nations has become, the opinion of 180 nations can be overturned by only one single nation that happens to be permanent member of the Security Council and that acts only in its own interest and the interest of its cronies, the rest of the world be damned! And the self-righteousness and the "moral" indignation expressed by Israel in the aftermath of such resolutions,

against the verdict of the 180 members who dares to criticize the atrocities that Israel regularly visits upon the hapless Palestinian civilians, is comical.

The mistake the US makes is to believe that the veto it exercises on behalf of Israel ends the discussion about Israeli atrocity. It does not. It makes America an accomplice of Israeli crimes not only in the Islamic world, but in many non-Muslim nations as well. It fuels anti-American sentiment everywhere. It makes Muslims more and more furious, not only at Israel, but also its patron, America. It makes the recruitment of anti-American jihadists by Muslim terrorists much easier. Fifty years of absolving Israeli crimes by America's veto has stretched Muslim anger at America to breaking point. America veto gives Israel temporary relief, but it does America permanent harm.

The Arab League placed the same Security Council resolution critical of the Israeli massacre of 82 Palestinian civilians in 6 days that was vetoed by the US on November

11, for a vote before the General Assembly on November 17. It passed by a vote of 156 for, 7 against. Although the European Union voted for it, as expected, the US, Israel, Micronesia, and Australia voted against the resolution.

Once again, one permanent member of the Security Council is enough to flout the will of the 156 members of the UN. How hypocritical to indulge in such craven, utterly undemocratic charade while singing the praise of and attempting to sell the panacea that supposedly democracy is, abroad! America is far better served by voting its conscience and protecting its own long-term interests.

The only way to engender peace, fairness and justice in the world through the United Nations is to abolish the United Nations Security Council permanent memberships and the exercise of the unethical and undemocratic veto. Matters of war, peace and economic sanctions should be decided by two-thirds majority in the General Assembly.