

## Election dynamics

*The requirements are not mutually exclusive*

WE are a little bit surprised to notice the partisan emphasis on the issue of fulfilling certain prerequisites for holding the next parliamentary election.

The 4-party alliance feels that election must be held at any cost come hell or high water. It is of very little concern to them whether others participate or not, as long as the election is held within the time frame laid down in the constitution. What they imply in fact is participation of the 14-party is of no consequence to them, only holding of the election is what matters.

The 14-party alliance on the other hand is insisting on a free and fair election implying that the relevant constitutional provisions that binds all the activities related to the election including holding of elections within a specific time limit don't really matter.

We believe that while both have merit in their arguments, emphasis only on the points that suit them is hardly acceptable, particularly because their demands ignore the need to ensure that the conditions that will guarantee the holding of a free and fair elections within the period laid down by the constitution have to be satisfied.

We feel that both the alliances realise the merit of the other's argument on the essential conditions for holding the elections yet pursue their own line for political benefits and not on greater national interest. This has made resolution of the impasse difficult and holding of the election uncertain.

Free and fair election is what we need and this is exactly what is the concern of the Bangladeshis at this time. Therefore, why should the political parties emphasise purely on the basis of convenience? These are not mutually exclusive but complementary matters that cannot be treated in isolation.

We would like to emphasise on two very important points. We would like the elections to be held as per the constitutional provisions, but at the same time, in order to hold it within the time frame, other essential requirements will have to be fulfilled too. These are essential issues which also our development partners and foreign friends feel must be addressed satisfactorily to make the election credible.

What is the need of the time is a coalescent approach bereft of parochialism. Only then can a free and fair election, to the satisfaction of the people, is possible.

## Arrear bills & MPs

*Lawmakers becoming lawbreakers*

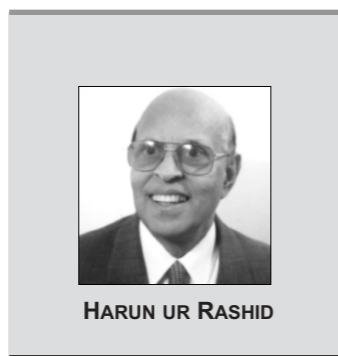
FINALLY, in a bid to establish accountability, Bangladesh Telegraph and Telephone (BTTB) has filed cases against a number of former BNP lawmakers for not paying arrear telephone bills since as far back as 1991. Seven lawmakers owe BTTB the sum of Tk. 23 lakh and two more owe the same organisation the sum of Tk. 57, 000. This in spite of the fact that the MPs are paid telephone allowances as one of their perks to defray the costs. In response to the specific cases a magistrate of the Chief Metropolitan Magistrate's court has asked the defaulters to explain why action should not be taken against them for not paying the arrear bills. The defaulting former lawmakers were asked to submit a suitable answer by 14 December.

While we appreciate such astute step taken by the administration, we cannot but ask the question to them as to why the same step was not taken during the tenure of the immediate past 4-party alliance government. That sure would have set an example of uprightness on the part of the administration, which is supposed to remain above any political consideration. But, unfortunately, BTTB failed to come up to our expectation.

That lawmakers in this country more often than not try to bypass, misuse and violate their short-lived power is an old but discreditable story. Most of them conveniently miss the deadline to pay their personal utility bills, as they remain busy with either their business or business. A good number of times authentic accounts of unpaid arrear bills of the lawmakers have been published in the print media in the past, which followed editorials and post-editorials. Even if some relatively conscientious public representatives paid any heed to such reports, many chose to turn a blind eye to them. This unwholesome culture of lawmakers becoming lawbreakers has to stop to ensure good governance in the future.

Though late, we hope the long arm of the law would now be able to realise the huge sums from the defaulters and deposit the money in public exchequer for better use.

## Advice for the chief adviser



HARUN UR RASHID

IN terms of the constitution, advisers have a direct involvement and input in running the interim non-party caretaker government. However, many of the advisers publicly admitted in the media that either they did not know of the decisions made by the chief adviser or knew them only from newspapers.

Such communication gap between the chief adviser and advisers of the non-party caretaker government is arguably beyond the scheme contemplated by the provisions of the constitution.

### Structure of the non-party caretaker government

Let us examine carefully the construct of the non-party caretaker government. The president is the head of the state and the non-party caretaker government consists of the following:

(a) The Chief Adviser and

**It is strongly argued that in terms of the Article 58B (3) of the constitution, the chief adviser shall act in accordance with the advice of the council of advisers. This means that the chief adviser cannot decide alone. He has no option but to seek advice from the advisers in making the decision on behalf of the interim government in terms of the constitution. Since the advisers are integral part of the interim non-party caretaker government, they cannot reasonably argue that they are not responsible for decisions of the interim government. Such position is arguably against the explicit provision of the constitution.**

### (b) The Advisers

The non-party caretaker government literally means the council of advisers, led by the chief adviser, according to writer Dr. Nizam Ahmed (Non-Party Caretaker Government in Bangladesh: 2004)

The non-party caretaker government is an interim one and all decisions of the government must be attributed to the council of advisers, led by the chief adviser.

It is noted that the chief adviser and advisers are un-elected persons and therefore the chief adviser has not the same freedom to take decisions as that of the prime minister under an elected government.

The interim caretaker government, under Article 58B (2) of the constitution, is collectively responsible to the president and this is

because there is no elected parliament.

The word "collectively" has been used in the above article. The reasonable interpretation is that collegial and collective spirit must remain between the chief adviser and advisers and they make decisions collectively running the government.

### Article 58B(3)

An important article relating to the role of the advisers is 58B (3) and let us consider at the language employed in this article. The operative part of this article is quoted below for ready reference:

"The executive power of the Republic ... shall be exercised in accordance with the Constitution by or on authority of the Chief Adviser and shall be exercised by him in accordance with the advice

of the Non-Party Care-taker Government." (italics mine)

First, in the above Article 58B(3), the word "shall," and not "may," has been used in seeking the advice of the council of advisers by the chief adviser. This means seeking advice from advisers by the chief adviser is mandatory.

Second, the chief adviser is the first among the eleven advisers (for example, in the Westminster parliament system, the prime minister is the first among the equals).

Third, the president is not to exercise the executive powers except in matters of defence portfolio.

Under this article, most constitutional experts strongly argue that there is no scope for the chief adviser to take decision without the advice from the advisers, which is

## A critique of the present crisis



KAZI ANWARUL MASUD

DEMOCRACY and civilization will always be in danger, wrote a political scientist, unless the liberals face the fact that "the people" are not exempt from the Christian doctrine of the original sin, from the natural tendency of men to obey anti-social, sadistic impulses unless restrained by a culture of superior values and tradition which becomes inherent in the character of the great majority of the people to subdue the bad impulses of some.

The Hobbesian scenario of life becoming brutish and short because the laws of nature do not allow "without the terror of some power" to implement justice and equity does not necessarily have to be translated into reality if the "last hope," the honourable president in the case of Bangladesh, were to implement the will of the people without fear or favour of either contestants in the forthcoming general elections.

In the exercise of the powers vested in the CTG it would be prudent to remember Harold Laski's words that "underlying the doctrine of collective responsibility

is that the government should be held continuously accountable for its actions, so that it always faces the possibility that a major mistake may result in a withdrawal of parliamentary support."

Since the CTG concept had not been invented during Laski's lifetime the parliamentary support he has spoken of may be translated as support of the people. It is crystal clear that Machiavellian manipulation earlier put in place by the immediate past government has been found out and some of the major political parties will not participate in the elections unless the demands put forward for enabling conditions to hold a free and fair election are met. It is unwise to resort to midnight manipulation and consequently widen the gap between the CTG and his advisors because of an erroneous belief that South Asia has become accustomed to family rule -- Bandemaiks in Sri Lanka, Nehrus in India, Bhuttos in Pakistan -- without considering the fact that like John Adams and John Quincy Adams and George H Bush and George W Bush the South Asian families were elected through free and fair elections.

In India when the then prime minister imposed emergency and sent her opponents to prison the people in turn sent her to the political wilderness for a while. These are finer moments of democracy in practice. The ruler, even if appointed for a short period, must listen to the voice of the people because ultimately the people is sovereign and their representative only rules in their name.

Time has come for Bangladeshis to declare that the baton of power cannot be passed to an incompetent son as a family legacy without people's approval.

We have matured to claim our place in the sun, to celebrate Kansat, Shanir Ankhra, Barapukuria revolt by the people for water and electricity, to demand accountability from the people in power who are unable to account for their misdeeds, to deny money and muscle as the key to gaining power and looting state treasury because muscle will bring in criminals and money is likely to represent the interests of the business community.

One cannot but wonder as to why in the affluent residential sections of Dhaka city cars and buses ply during hartal and siege when the rest of the country is shut down. Without going into the merits of hartal/aboroth one wonders whether the people residing in those islands of affluence are not the beneficiaries of the widening gap between the rich and the poor.

No less importantly we have to guard against the rise of militants who by all accounts still have a strong foothold in the country. How else can one explain the European Parliament's anxious query about the Bangladesh Election Commission, London meeting on the Rise of Political Islam in Bangladesh, frequent visits of US Assistant Secretary of State Richard Boucher to Dhaka and the concern expressed by Nicholas Burns in a speech to the Asia Society: "The people of Bangladesh deserve free, fair, non-violent and credible elections. Toward that end, we urge the country's political parties to resolve their differences through dialogue," and the just concluded visit by Craig Jennes as special envoy of Kofi Annan and continuing observation of our election process by the representatives in Dhaka of established democracies?

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Meanwhile BNP has also taken steps to save their partisan bureaucrats, arguing that similar events in the past still remained unaccountable. Begum Khaleda Zia spoke on November 29 publicly in favour of the bureaucrats who joined the clandestine meeting at Uttara. BNP also sent a delegation that met two outspoken advisers urging them not to single out the Uttara meeting.

The BNP-led coalition government at the very fag end of its tenure gave mass promotion to civil servants entirely on political considerations, apparently for taking them on its side during the election. According to a source in the Establishment Ministry, a total number of 2,380 officials were promoted in the different tiers of bureaucracy during its tenure, resulting in the record number of officers getting OSD status due to lack of vacancies. Civil bureaucracy has come under keen public scrutiny due to such promotions.

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The concept of bureaucracy, which means the rules of the officialdom, came into use shortly before the French Revolution of 1789 and from there rapidly spread to other countries. Bangladesh

inherited this bureaucratic system introduced by the British. The civil service in this sub-continent under the British regime was regulated as per the terms and conditions laid down in the India Act, 1935, which contained fair and beneficial provisions aiming to protect the interest of civil servants for performing their duties neutrally.

The bureaucracy in Bangladesh, unlike in the neighbouring countries like India, Pakistan and Sri Lanka, has failed to maintain the political neutrality, though it is reinforced by rules restricting their political activities. Section 30 of the Government Servants Conduct Rules of 1979 states: "No government servant shall bring, or attempt to bring political or other outside influence, directly or indirectly, to bear on the government or any government servant in support of any claim arising in connection with his employment."

Section 32 of the said rules adds: "Contravention of any of these rules shall be construed as misconduct within the meaning of the Government Servants (Discipline and Appeal) Rules, 1985 and a government servant found guilty of such contravention shall render himself liable to disciplinary action under the aforesaid rules."

But sections 30 and 32 of the Government Servants Conduct Rules are honoured more in breach than in observance. Not a single instance, however, can be cited in which a civil servant was awarded punishment for breach of conduct in his involvement in political activities. Many of the high government officers are now found to be engaged in extra-official activities that are quite political in nature and neutrality of bureaucracy is spoiled in these ways.

Bangladesh does not have as yet any civil service act or any other law regulating the civil service. The Government Servants Conduct Rules of 1979, the Government Servants (Special Provisions) Ordinance 1979, the Government Servants (Discipline and Appeal) Rules 1985, and the Public Servants Dismissed on Conviction Ordinance 1985 contain the important rules regulating the civil service. But these rules and ordinances do not provide protection to the civil servants from being repressed by the political party in power. This is also a reason of the bureaucrats becoming partisans.

There is a good-enough reason for the nation to be worried with increasing politicization of bureaucracy, as it is the most stable and

actions to create an environment of peaceful, fair, and credible election.

The important point is that impartiality is to be perceived by stakeholders and not by the decision makers, similar to the doctrine that justice must not only be done but also seen to be done. It is the perception by all stakeholders who have an interest in election that is important.

In general, in the past the successive non-party caretaker governments worked within the limits of the constitution.

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Since the advisers are integral part of the interim non-party caretaker government, they cannot reasonably argue that they are not responsible for decisions of the interim government. Such position is arguably against the explicit provision of the constitution.

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similar to the provision that the president shall act (except only in the appointment of the prime minister and the chief justice) in accordance with the advice of the prime minister (Article 48.3) during the tenure of an elected government.

### Responsibility in election matters

Article 58D (2) provides that: "The Non-Party Care-Taker Government shall give the Election Commission all possible aid and assistance that may be required for holding the general election of members of Parliament peacefully, fairly and impartially."

Here the words "the Non-party Care taker government" have been employed. This means it is the interim government that takes decisions in election related matters and not the chief adviser alone.

The phrase "peacefully, fairly and impartially" used in this article of the constitution in relation to holding the election is to be given full meaning.

The word "impartiality" has been defined in a dictionary as "not prejudiced towards or against any particular side or party; fair; unbiased." Again the word "prejudice" means "an opinion formed before hand; the act or condition of holding such opinions." Impartiality is not to be interpreted as passivity but is to be achieved through pro-active

Despite the Supreme Court's upholding of the death sentences passed on the Islamic militants, one has to take cognizance of Brussels-based International Crisis Group's report on Bangladesh, expressing major concern about links between legitimate Islamist parties and underground organizations providing cover for the latter. ICJ quoted a Dhaka based diplomat as saying "the sheer weight of Jamat-related circumstantial evidence can't be overlooked." The report states that Islamic militant outfits were quite openly cultivated in certain quarters as a counter-balance to leftist groups. The police and then government were happy to encourage the now-banned JMJB in this venture. Though ICG report was not the only one on Islamist revival in Bangladesh, the organization headed by Gareth Evans, former Australian foreign minister, takes great pains in preparing its reports and these are to be taken seriously.

Even if Samuel Huntington's Clash of Civilizations is disputed by many and Barnard Lewis' millennial rivalry between Islam and Judeo-Christian is dismissed by the Islamic world as an attempt in advancing a personal agenda under the cloak of scholarship, there is no denying the facts that the Danish cartoon controversy involving Prophet Mohammed (pbuh), the race riots in France, and Pope Benedict XVI's regrettable speech denigrating Islam at Regensburg University are reflective of deep division between the Islam and Christianity.

Such distance between the two cultures, more recently accentu-

ated by former British Foreign Secretary Jack Straw criticizing the wearing of veils in public by British Muslim women, cannot be ignored by the individual Muslim countries. Globalization that invariably means international connectivity can only be fruitful among countries that do not have contesting cultures. The current political situation and its evolution cannot, therefore, be totally dissociated from the surrounding environment and the world at large.

The world may not care very much which political party wins the elections in Bangladesh if the election process remains transparent and credible. But if the process is fraught with dissent by any of the major contestants resulting in political violence and anarchy, then the international community may not rest until a peaceful situation is established.

One must also consider President Bush's missionary zeal to spread democracy throughout the Islamic world and the US description of Bangladesh as a moderate Muslim country practicing democracy, albeit imperfectly. In this chess board game of power, if determination of destiny of 140 million people is to be considered as a game, then the king remains the people who should not be made fool of through a charade called elections. Sooner our "last hope" realizes this axiom the better it will be for the poverty-stricken people of Bangladesh.

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ANM Nurul Haque is a columnist of The Daily Star.

## Bureaucracy in disarray



ANM NURUL HAQUE

A group of retired and in-service bureaucrats, who joined a clandestine meeting hosted by former energy adviser Mahmudur Rahman at his Uttara business office in the night on November 24, and left the venue hurriedly sensing the presence of journalists, has triggered widespread criticism at different levels.

According to media reports, some 40 present and past bureaucrats attended that secret meeting and as the photo-journalists gathered in front of the office, having learned about the nocturnal meeting, Mahmudur Rahman came out and tried to veer them away from the gate of the house.

Meanwhile lights in the building had been turned off and the partici-

**BY THE NUMBERS**

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promoting officials were frantically trying to hide their faces with their hands or pulling up jackets, while making their escape. But it did not help the fleeing bureaucrats from the fast clicking cameras of the inquisitive journalists. Next day, the national dailies printed the photographs of fleeing bureaucrats on their front page, creating a commotion across the country.

Mahmudur Rahman, who is now a devoted camp follower of BNP, tried to deny having engaged in any sort of conspiracy. But his waffling failed to satisfy anybody and the people at large took it yet one more brazen attempt to rig the upcoming election.

Some advisers to the caretaker government expressed deep

concern over the participation of government officials in such a secret meeting at this crucial moment of the nation. "As a former government employee, I am shocked by their behaviour. Government officers cannot escape like thieves," said Finance Adviser Akbar Ali Khan.

"None other than offenders hide their faces the way they did," commented the establishment secretary. Conscious citizens of the country termed this secret meeting to be a part of BNP and its allies' election engineering attempt as the bureaucrats and some UNOs will play important roles during the election scheduled to be held on January 21.

The council of advisers formed a

three-member probe committee headed by agriculture secretary on November 27 to investigate the bureaucrats' secret meeting at Uttara. But an establishment ministry circular issued on the same day, said that under presidential directives, the probe committee will not only investigate the incident of Uttara, but also officials' involvement in the 1996 "Janatar Mancha" and similar meeting held at Panda Garden in 2001.

The probe committee has also been asked to identify the government officials who visit Hawa Bhaban of BNP, Sudha Sadhan of AL and other political party offices and submit report by December 3. It appears that this circular has been issued with a view to save the