

'Election' and After

Prime Minister Begum Khaleda Zia gave us to understand through her speech over radio and television that she is seized with the problem of a non-participatory election scheduled for tomorrow.

Basically, however, she has made no mistake about her electoral strategy which is to see the voters cast their ballots in a number that might enable her to claim that things had gone her way.

Nevertheless, the Prime Minister did not sound like opposing the principle of caretaker government either in her speech or over her discussions with the Editors on Monday.

So, our considered suggestion is that as soon as the election is over, leaving behind the question of constitutional obligation, Begum Khaleda Zia, without pressing her luck on a relaxed atmosphere, should come forward with such updated and specific proposals as would really cut corners with the opposition's views on a neutral caretaker arrangement.

This is Vandalism

During the opposition political parties' programme on Saturday two banks, five petrol pumps and a number of shops, restaurants and vehicles were burnt or damaged in the city.

The indication, therefore, is that political violence is getting intensified to a point where it is dangerously spilling over to new areas.

There is no mistaking about the opposition political programmes taking a hold but their leadership should be clear about the means to achieve that goal.

Excesses on the part of both the police and political activists reduce into tatters the very basics of democracy because they are an infringement or clear violation of the rights or both of other members of society.

The top leadership of the opposition political parties must make it a point that their cadres do not cross certain limits even in the face of extreme provocations.

Homeward Journey

No surprise that home-bound people have put all modes of long-route transportation under a severe pressure. The celebrated Eid-ul-Fitr vacation has not really begun but the volatile political situation has helped the cause of holiday-makers.

It will ease the pressure of crowds on vehicles and vessels alike in the coming days till the festival proper. What is, however, likely to be less celebrated is the loss of work and productivity prior to and in the immediate aftermath of the Eid festival.

However, the greatest concern this time is centred on the return journey. Will they be any calmer or more peaceful when they are back to cities? More people will perhaps leave Dhaka for their village homes than were likely in a normal situation.

Constitutional Imbroglio, or Lack of Political Sagacity?

by Dr K M Saiful Islam

FOLLOWING the alleged irregularities in the Magura and Mirpur elections the opposition parties, losing confidence in the sincerity of the government, have been agitating for the last 22 months for fair and free elections under a non-party neutral caretaker government so that any probable irregularities could be checked.

At one stage of the agitation all the 147 MPs of the opposition resigned to paralyse the parliament and intensify their movement. The PM offered for resignation a month before the date of election and after hectic party meetings, exchange of letters and negotiations, the BNP government made further concessions to constitute a form of 'neutral government' under the present President to administer the polls.

The opposition parties maintain that such concession is meaningless in that the chief remains to be a BNP personality and hence it could not be 'neutral' in the real sense, so there is no possibility of the much talked-about and avowed fair and free elections.

Hence the talks failed, and the government went ahead for holding the elections on the pre-scheduled date (although shifted twice earlier) February 15 without the mainstream opposition parties — AL, JP and JI.

Now the political scenario has come to such a pass that it seems there are almost two parallel governments in the country, each challenging the other, and determined to exercise the strength of power. Covertly, the government in power has challenged the strength of the opposition to hold the polls 'withholding the constitution' with the strength of the state police and security forces — come what may, whilst the opposition parties have resorted to strike or hartal tinged with violence thereby culminating in widespread destruction of national property, resources and lives.

miserably failed to prove their patriotic commitment to the nation, and to lead the country for people's welfare and prosperity.

As a result of the present confrontation, relationship between the government and the opposition members had been embittering day by day and now perhaps reached a point of no-return meaning total destruction of the fabrics of their probable reconciliation in future which ultimately negates their capabilities to govern this unfortunate nation.

Together with this, mass-tam and toll-collectors have alarmingly grown in various localities who are not only making the lives of innocent people miserable, but are also eroding the moral values of the youths in the society.

Unfortunately, today, the whole nation has become hostage in the hands of incompetent political leaders... The people who vote for these "leaders" do become hapless pawns in their hands. Violence and destruction have become the order of the day...

The other day, in Dhaka, Ward Commissioner Haji Abdul Alim of AL has been killed. This casts ominous shadows to believe that many more important "leaders" and lives are in the pipeline of elimination giving vent to a total anarchy in the society, which, otherwise means pushing the country backward for an indefinite period instead of leading it to prosperity — the aspiration of the toiling masses.

According to international media, three million US dollars are wasted or destroyed in one-day strike apart from administrative and academic losses. If you call six days' hartal, what remains of a poor nation? Our "leaders" shorn of patriotic zeal fail to realise the significance and consequence of these grievous losses emerging from internecine conflict for power in the backdrop of wanton destruction of national properties and lives, and fast decadence of moral values in the society, it is only a feminine nuisance to

hold the country as the property of one's father or husband. Nation does not belong to an individual; it belongs to the people who fought the liberation war, and Bangladesh emerged in the world map as an independent state with the unprecedented sacrifice and blood of the people. The people cannot allow these disgruntled "leaders" to destroy the nation any more. They have tolerated much.

Foreign diplomats' participation in our internal affair firstly reveals that both the parties are incapable of governing the state, and secondly, it is disgraceful for a sovereign state to allow foreign countries to determine the courses of holding polls and future administration, and the brand of democracy we should have!

Is it not essential for a poor country like Bangladesh firstly to develop its infrastructures for industries, agriculture and education through a stable government to attain certain minimum

standards which could be able to accept or contain the virtues of democracy? If democracy means senseless destruction of property through the 'rights of strikes' and giving slogans demanding resignation of the employer everywhere without working, let us not have it at the moment.

ways for violence and destruction? Conversely, why the opposition parties could not take patience to allow a legally elected government to fulfil its term, and resorted to violence and destruction for holding elections immediately to go to power?

Another prominent question: Had the AL been in power, would it go too far to resign along with the Cabinet members one month ahead of the polls which the BNP government promised to do? The answer might be an emphatic NO. So why the opposition parties failed to take the advantage of the offer they got?

The PM and other ministers having no other weapons left had started fabricating the thesis in a hackneyed manner that the government cannot take any step beyond the constitutional ambit, and since the provision of such a caretaker government does not fall within the province of the constitution, it would be a violation of the constitution to meet the de-

mands of the opposition, by being conveniently oblivious of the fact that the present government came to power through the same process, of course, it must be admitted, the earlier government (of Gen Ershad) was not legally elected one. It must be emphasised here that the constitution is for the people, while the people may not be necessarily for the constitution. If the present government could amend the constitution so many times to suit its own requirements, what is the harm in amending it to hold all other successive polls under a non-party neutral caretaker government?

What does the opposition want? — Polls under a neutral caretaker government. — Why? — Is it good or bad for the nation?

Dear reader, please answer. If the ultimate objective is good, why don't we go for it? We may not agree with the policies of Awami League or Jamaat-e-Islami on many grounds, but candidly speaking, we cannot but agree with the rationale that there is certainly a merit inherent in the spirit and outcome of polls under a neutral government since in the developing countries there exists always the threat of vote rigging that can be largely curbed through such an arrangement which should henceforth be made a written provision in the constitution.

This would also work as a deterrent to corruption which has unfortunately eaten away the fabrics of our society.

Contesting an election must not mean that an individual or a party must have to win at any cost. It may go in one's favour or against. Contestants must be broad-hearted and sincere enough to take it in sportsman's spirit, and herein lies your honesty of purpose.

We must remember that one cannot stay in power by force. Gen Ershad had a powerful army, and he himself belonged to the army, but he could neither stay in power nor even transfer power to

the army at the time of his resignation. Our leaders unfortunately refuse to draw lessons from history.

Unlike Pakistan and India, Bangladesh is ethnically more prospective and sound. Its peoples are more liberal and generous. All find it a more tolerant society to live in harmony and peace. A very resourceful and beautiful country, Bangladesh is a bounty of God. It has enormous resources.

But we lack initiative for mobilisation of resources to activate them to people's welfare. What we need at this moment is political stability, so a stable government could quickly implement the development plans following the advanced technologies of the West and develop its economy, industry, agriculture and education with giant strides.

Unfortunately, today, the whole nation has become hostage in the hands of incompetent and disgruntled political leaders, and hence it is not developing. The people who vote for these "leaders" do become hapless pawns in their hands. Violence and destruction have become the order of the day. Nobody seems to be responsible. Nobody repents, nobody counteracts. There must be a provision in the constitution requiring any government coming to power to publish a white paper or chronicle of losses during the previous regime to be compensated by the parties involved, or the defaulting parties must be banned, and their members sent to detention camps.

Such a resourceful, prospective nation as Bangladesh is not developing mainly due to the unholy narrow designs of the so-called political leaders. Rabindranath Tagore's 'Sonar Bangla' (golden Bengal) is burning. We cannot allow such a nation to be burnt any more. The government and opposition must arrive at an amicable settlement to go for polls allowing the majority people to exercise their franchise before it is too late.

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Thoughts on Constitution of Bangladesh — VII Power and Function of the President

by Mustafizur Rahman

Executive Power of President (Part IV Chapter II, article 55(4), (5), (6))

The above clause (4) which reads "All executive actions of the Government shall be expressed to be taken in the name of the President"; (5) which reads "The President shall, by rules specify the manner in which orders and other instruments made in his name shall be attested or authenticated, and the validity of any order or instrument so attested or authenticated shall not be questioned in any court on the ground that it was not made or executed"; and (6) which reads "The President shall make rule for the allocation and transaction of the business of Government were some of the clauses of executive authority under presidential system.

The President should not be dragged in for shouldering the responsibility of routine executive job which is to be and should be done at the responsibility of the chief executive of the government, i.e. the Prime Minister and the cabinet as also mentioned in Article 55, section (2) and (3) which respectively reads as "The executive power of the Republic shall, in accordance with this constitution, be exercised by or on the authority of the Prime Minister," and "The Cabinet shall be collectively responsible to Parliament."

So, in the above 3 clauses, the word "President" should be substituted by "The Prime Minister, Government of Bangladesh" except in case of international treaty ratified by the people in a referendum, act duly passed by Parliament, dissolution of Par-

liament on the recommendation of the Cabinet on the approval of the majority of the parliament members, and in other cases required by law or provisions of this constitution.

The President shall represent the state as its head abroad and receive, accept diplomatic credentials, advise the Prime Minister and his cabinet if any of government's actions is apprehended to violate the constitution or any law.

Function of the President

- (1) (a) The President shall appoint the Prime Minister designated by the Parliament. (b) The President shall appoint the chief justice of the supreme court and other judges thereof, as designated by the cabinet. (c) The President shall appoint the chiefs of staff of all the three armed services designated by the cabinet. (2) The President shall call and conduct the meeting of the National Security Council. (3) The President with the advise and approval of the cabinet, shall perform the behalf of the people — a) Convocation of the Parliament; b) Dissolution of the Parliament subject to approval of the National Security Council, if the dissolution is not in preparation of general election on expiry of term of the members of the Parliament;

c) Proclamation of general election of members of the Parliament. d) Attestation of the appointment and dismissal of cabinet ministers and other officials as provided by law, and of full powers and credentials of ambassadors and ministers.

e) Appointment of the Ombudsman and the attestation of the deputies designated and appointed by the cabinet. f) Appointment of the chairman of the Public service commission, the attorney general of Bangladesh, and the auditor general of Bangladesh as designated by the cabinet.

g) Attestation of general and special amnesty, commutation of punishment, reprieve and restoration of rights. h) Awarding honors. i) Attestation of instruments of ratification and other diplomatic documents as provided for by law. j) Receiving foreign ambassadors and ministers, and visiting state guests who are heads of the state of their country or as may be decided by the cabinet.

k) Performance of ceremonial functions. l) Representation of the state as and when necessary in formal cases decided by the cabinet within the provisions of law. (4) Subject to the Provision of this constitution and law, the President shall sign and proclaim Parliament acts, amendment of the constitution on ratification in a referendum. (5) The president shall perform other functions as provided by this constitution or any law.

Qualification of President (Part IV, Chapter I, article 48(4))

The party which controls majority in the parliament may find it difficult to think of a president coming from outside of its party. But the neutrality of a president as a head of state is comfortable for the parliament members as a whole and the people at large. The public reaction in the last election is a living proof of the argument in its favor. If possible, we would request the members concerned to think a little unconventionally and show a greatness by adding a small clause in the qualification for president so that the clause (4) reads —

- (a) is less than thirty-five/fifty years) or more than 70 years of age; or (b) is not qualified for election as a member of Parliament; or (c) has been removed from the office of President by impeachment under this constitution; or (d) is or has been a member of any political party, or is a person who is or has been in the service of the state within a period of not

less than 24 months from the date of election.

Term of Office of the President (article 50)

To give further flexibility and fresh vigor to the position, the term of office may be three years instead of present five years. He may be allowed to hold office for not more than three terms instead of two terms proposed under 12th amendment bill.

Presidential Immunity (Article 52 (2))

No one should be above law. Deliberate commission of crime cannot go unpunished. This shall violate the equality provision. This provision has already been proposed (12th amendment bill) to be revised. While Article 52(1) can permit the president to discharge his duty without constraint other than that of constitution and the Laws, the clause 52 (2) shall involve his person. The article 52(2) which reads as "During his term of office no criminal

proceeding whatsoever shall be instituted or continued against a president, and no process for his arrest or imprisonment shall issue from any court" may be totally repealed or the following clause may be added before the full stop with a "comma"; "without first notifying the speaker of the nature of crime and allowing the president to clarify and possibly correct the crime involved within not more than fifteen days."

Filling of Vacancy of the Office of the President (article 123)

The Article 123(1) and (2) The recommended period of 90 days may be made "within 60 days" if parliament has not already been dissolved, in which case within 15 days of first meeting of the Parliament after election. As the election is proposed to be by the Parliament members, a period of sixty days is also too long.

Tomorrow: Constitutional Guidance to the Government on Health Economy and Responsible Governance

OPINION

The March of Folly: A Contrary View

Gholam Kibria

Professor Rehman Sobhan's article on the election published in The Daily Star on February 11 is a hilarious dissertation on the doctrine of civil necessity. This doctrine has served rules of various stripes in Pakistan, Bangladesh and elsewhere very well indeed whenever they found it necessary "in the interest of the people," to abrogate or "adjust" the prevailing constitutions through oligarchic consent of coercion rather than amendments in Parliament.

It is possible that the two lengthy quotations from Barbara Tuchman in the opening paragraphs of Professor Sobhan's article will immensely impress the upper levels of the intelligentsia in Bangladesh. However, the link between these quotations and his central thesis is somewhat convoluted and tenuous. Should he or anyone else decide to expatiate on this noble theme in future, may I suggest two more direct and digestible essays on the subject must indeed commence with quotations:

Quotation I: "The law is mighty, mightier necessity" (From Goethe's Faust. The Second Part: a line from Plutus' remark on the advancing crowd). This quotation should go down well with the middle ranks of our intelligentsia.

Quotation II: "What's the constitution between friends? — a very useful remark attributed to a friend of President Cleveland of the USA, intended to persuade the President to support a bill that he found unconstitutional. The President did not, however, support the bill despite this persuasive remark. Future advocates of 'civil necessity' in the context of our circumstances might also consider admitting a qualitative difference between (a) an election in which the electorate is deprived of a real choice because of group or groups of possible contestants staying out by design and physically obstructing the electoral process, to put it as euphemistically as possible and be an election in which this happens because of the ruling party keeping rivals out coercion or more drastic measures.

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The polls and the crisis

Sir, in a few days' time we are going to have the much awaited and controversial election. The sad aspect is that the opposition and the ruling party have failed to reach an agreement on the caretaker government issue.

One thing I firmly believe in is that the opposition should have participated in the upcoming elections whether they thought it to be fair or not. Since the ruling party has promised time and again that the upcoming elections would be fair, the opposition could at least trust them for the sake of the nation. Mutual trust and respect is totally absent in our political arena.

The outcome of the election might not be as obvious as it may seem to the opposition. What if they won? How did they know that they would lose miserably? For arguments' sake, let's say they failed to win majority of the seats. They would have then two options: either they could continue what they are doing now trying to oust the

government (and making our lives a living hell) or be brave enough to sit in the parliament and do something so that the future elections could be held under a neutral caretaker government. May be it would take a couple of years or even a decade but in the long run it would be better than what the political leaders are doing now.

They must try to understand that the nation as a whole cannot progress if they continue to be stubborn and so egotistic. Our country is not anybody's private property. The citizens of this country demand that the leaders stop their destructive politics and once in their life think about doing something constructive — stamping out their habit of burning cars would be a good start.

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Height of it

Sir, Our leaders and politicians seem to have crossed all limits, in their greed for

power. Shamefully, the holy month of Ramadan, the auspicious Ekushey Boi Mela and the much awaited Eid bazar could not restrain them in their desperate race. Unfortunately, the entire nation has fallen at the mercy of this lot! Logically, the innocent people would not dare resist this bunch of politicians and leaders. With all those armed goons on their side, who would dare come forward? At the same time, for how long and why must we keep sitting like wet ducks and allow them to suck our blood? I suppose the innocent people, young and old, irrespective of colour, creed and class should come out of the houses and start a non-cooperation movement to "stop politics of hartal, anarchy and destructions".

Never mind, whoever comes in power, we are aware of the consequences. They have no right to play with our lives. We too have the right to exist. The country also belongs to us, the innocent people.

An annoyed citizen Dhaka

Voter registration slip and ID card

Sir, I reside in my own house at Dhanmodi Residential Area (Road No 5, House No 54), in Dhaka city. Last year, at the start of voters' registration all over Bangladesh, I registered myself as a voter at my said residence. But, regrettably, my due counterfoiled slip of the registration book has not been returned to me as yet. Sadly enough, none from the Election Commission authorities has ever ventured to come to my house for photograph in view of giving me the voter's identity card, in spite of my intimations time and again.

Therefore, I earnestly request the honourable Election Commissioner to take immediate steps in this regard.

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