

# Can Statesmanship Triumph over Folly?

by Rehman Sobhan

*Whilst it may be argued by many that constitutional continuity must be maintained, it is surely making a mockery of the constitutional process to do so by putting in place a parliament whose representative status is itself legally questionable. What confidence can a government basing its authority on such a parliament expect to enjoy not just with the people but in the exercise of its external relations?*

## Sad Days for Democracy

Many today may remember the celebratory atmosphere which greeted the conclusion of one of this region's freest and fairest elections at the end of February 1991. These polls, held under the interim non-party government of President Shahabuddin, brought Begum Khaleda Zia and her party to power. The nation's faith in a system of democratic elections was renewed at a time when we had almost forgotten what was a free and fair election. For all those of us who shared that moment in the renewal of our democratic experience, the spectacle of the same Khaleda Zia, a symbol of our democratic renaissance, almost five years later appearing before the national and global media, to defend the bonafides of the election of 15 February, was an occasion for sadness rather than anger. Her claim that a large number of people came to vote in the election, that the high vote counts declared by the Election Commission (EC) were accurate and that unusually high vote counts could be attributed to ballot stuffing by the opposition to discredit the election, appeared both self-contradictory and incredible at the same time.

The attempt by a party, which came to power five years ago with an unchallenged mandate, earned through an evenly contested, free and fair election, to seek a renewal of its mandate through an untested, largely unattended and manifestly fraudulent voting process, puts Bangladesh's political clock even further back than the electoral farces staged in the Ershad era. After all Ershad, came to power through force, stayed in power through fraud and went when his mandate for force was withdrawn. Nobody really expected any better from Ershad. The same cannot be said for a leader and a party whose entire political credibility today depends on the nature of their ascent to power. Perhaps unfairly, much higher standards are expected of such a party who are expected to renew their mandate through a no less credible process than the one which brought them to power or to surrender it through a similar process which can then set similar standards from their successor regime.

## The Source of Power?

In my article, *March of Folly: Can it be Averted*, which appeared in this paper just before the election, I had warned of the consequences arising out of the abdication of political legitimacy which threatened Khaleda Zia if she went through with an untested election on 15 February. She regrettably went through with the elections, perhaps in the expectation that if enough voters came out to reaffirm their support to the election process, this would establish some credibility for the election. In fact, very few people did vote on 15 February, whether out of fear of violence or because the election was devoid of a real choice remain

hypothetical questions. The objective facts relating to the election, witnessed by the national press, whose correspondents are located around the country, and not just in Dhaka, as well as the voters themselves, is that few people actually came out that day to vote. Whether these voters constituted 1 per cent or 5 per cent or even 15 per cent of the voting population, does not matter too much. The fact remains that the democratic mandate of Khaleda Zia and her party, which up to 15 February was unchallenged, has now become virtually non-existent. Lack of a democratic mandate was largely a matter of indifference to autocrats such as Ershad but to Khaleda Zia it provides the lifeblood for the political vitality of her party.

However, even more serious concern than the depreciated legitimacy of Khaleda Zia's authority to exercise power, is the possible illegality which now underlies even the tenuous claim to power provided by an unrepresentative election. Lack of opponents and even lack of voters raise questions of political legitimacy. Faked electoral returns, stuffed ballot boxes, feloniously stuffed with wrongly stamped votes by party henchmen, is plainly illegal. All those aiding and abetting this process of ballot tampering are, under the law of the land, liable to terms of imprisonment. In any civilised democratic society such polls would thus have been the subject of criminal investigation and would probably have been annulled by an Election Commissioner with a sense of responsibility to the public whose rights he is there to protect. Whilst it may be argued by many that constitutional continuity must be maintained, it is surely making a mockery of the constitutional process to do so by putting in place a parliament whose representative status is itself legally questionable. What confidence can a government basing its authority on such a parliament expect to enjoy not just with the people but in the exercise of its external relations?

## The Impotence of the Election Commission

The fact that the Chief Election Commissioner and his Commission, have not actually declared, without prompting, this election as null and void, merely confirms, the impotence and/or the pusillanimity of the EC. For all those, from the ruling party, to our naive diplomats and indeed many ordinary citizens, who believed that all that we needed to ensure a free and fair election, was a strong EC, the arguments of the Opposition have now been fully vindicated by the behaviour of such an EC. Had the Chief Election Commissioner not made such a spectacle of himself before the press and TV cameras, in the period just before the elections, displaying the full-power of the armed services and forces of law and order lined up behind him to force a free and fair election, his sub-

sequent confessions of impotence to act against vote fraud, would have been greeted with more sympathy. We are now left to understand that the EC had not even the power to question the credibility of any ballot in any voting centre, however, inflated its vote count may appear. It now appears that the EC has to accept any result sent to them by the Returning Officers, in charge of a constituency who in turn have to accept, without question, any result sent to them by the Polling Officer in each polling station!

This position now taken up by the Chief Election Commissioner contradicts assurances given to us by the same Chief Election Commissioner, when we called on him as members of the Group of 5. We were then assured that the Commission had assumed powers of direct intervention to challenge returns from any polling centre which indicated questionable results. We are now to understand that such an intervention can only originate either from a complaint by a concerned candidate or by the Polling Officers themselves. Since in most of the polling

centres there was no opposition party agent, the BNP had a free run of all the polling centres. However, in many such centres polling agents who are legally entitled to be in the booths, were joined by assorted riff-raff who, either with the connivance of the Polling Officer, or through intimidation of these officers, took over the centre and stuffed the ballot boxes to their hearts content. It seems that in an uncontested election, there was none to register any complaint with the Election Commission against such political vandalism. This means that a multi-party contested election remains a functional precondition for an Election Commission to do its job since the presence of the various contesting parties is the only guarantee that polling malpractices can be brought to the notice of the Commission.

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Commissioner were either a figment of his imagination or he was helpless to manage the election in the face of a determined ruling party. In either case, a person with minimal self-respect for his own dignity and, more important, concern for the integrity of his institution, should explain to the world why he was powerless to provide the nation with a minimally credible election, in contrast to the heroic performance of his predecessor in 1991.

## Re-establishing the Right to Govern

Given the melancholy background of this recent election, where do we go from here? There is no point in rushing history to establish blame or to singulantly proclaim 'I told you so'. The nation now faces a much more critical situation where, in the near future, the nation may be exposed to governance by a regime which is neither legitimate within the terms of reference of the democratic process or even legal within the provisions of the Constitution. Each act of such a government will now be open to challenge in courts of law in open challenges to their administrative authority and on the streets. All public officials who discharge their authority

in the name of such a government could now be made individually answerable, if they act in the name of a government whose authority is open to question. This is no way for any country to function, least of all one which constantly lives on the threshold of survival. In such an environment we cannot expect much development, or domestic, let alone foreign investment. In this situation hardly any improvement in the governance and hence the state of our economy is feasible, with the spectre of anarchy hovering around every corner, where authority will always be challenged and only force may prevail.

In these circumstances Begum Khaleda Zia, above all, must rectify the consequence of the 15 February election and its implications not just for her political future but for the future of democracy. It is her regime which holds the reins of state power or what little remains of it today. It is better for her to come to terms with her precarious situation and to act expeditiously to resolve the impasse by accepting the need for a new election, within the

representative status. As a political leader who depends for her political mandate to rule, on the freely given support of the electorate it is against her prestige to exercise power without a popular mandate and damaging to the future electability of her party to retain power without such a mandate. Once the election is annulled, Khaleda Zia should submit her resignation to the President and advise him to constitute an Advisory Council of neutral, non-partisan persons acceptable to both sides, to constitute an interim government which will hold fresh elections within the next two to three months. If there is any uncertainty over the legality of these actions the President should seek the opinion of the Appellate Division. Such a statesmanlike gesture by Khaleda Zia would raise her stature in the eyes of the public by at least one foot. Since she has lost about 9 inches in her stature by being trapped in an uncontested election, a net gain of 3 inches would be clearly to her political advantage in any forthcoming election.

the physical force she can deploy both from the official machinery of law and order and through party mastans on the streets. Such a dependence on force as a source of authority has been the time honoured resort of an autocratic regime. It cannot sustain a democratically inspired political party for long in office, since it will further delegitimise such a regime in the eyes of democratic opinion. In a democracy, a government's authority to govern, including the use of force, largely derives from a delicate moral compact with its citizens, who recognise their right to govern, because it is derived from the freely exercised choice of voters. Once this choice is not exercised, the compact breaks down and only the law of the jungle applies. No administration can rule without the respect of those whom it rules. Within a regime shorn of its moral authority, every act of oppression reinforces the political authority of the opposition. In a regime whose every act of authority is potentially challengeable, we may be opening up the floodgates of anarchy and only progressively, all forms of authority will come under challenge. The consequences of such a development will be no more comfortable for the opposition than it will for the government, whilst ordinary citizens may be left to contemplate an uncertain future. Khaleda Zia would thus be well advised to treat these recent arrests as political aberrations, release these arrested without delay and ensure that no further such favours are offered to the opposition, if her party is to retain minimal credibility to see us through this critical period.

Since this amendment would in fact then have to be ratified by a referendum, Sheikh Hasina could justify its legitimacy by claiming that it derives its authority from a public referendum and not just a parliament of questionable authority. She can however earn the undying gratitude of the public by sparing them days of turmoil leading to a dark and uncertain future, by tolerating this clearly blemished parliament long enough to perform its historic task of amending the Constitution. This act of statesmanship would provide for a peaceful and expeditious solution to this crisis of democracy. At the same time, Sheikh Hasina would hold Khaleda Zia in her political debt by getting her out of an embarrassing situation and in the process establish that she is willing to place the national interest above personal gain. This mature gesture would add many inches to Hasina's stature and serve her party well in a closely contested election.

## Guaranteeing a Settlement

So deep is the sense of mistrust dividing both parties that either of the two initiatives indicated above will need to be guaranteed by the parties. We suggest the guarantors for this may, for a change, come from a broad coalition assembled from within civil society. This will include leading functional bodies such as the business community, the professions, the NGOs, even bodies representing the bureaucracy. They would all commit themselves to come out in public demonstrations in support of the agreement and to participate in an ongoing movement against either party who dishonours the agreement. The possibility of seeking some judicial guarantee for such an agreement may also be explored by our lawyers.

## Moves in the Wrong Direction

Khaleda Zia's recent move to enforce the fragile authority of her unrepresentative government by arresting opposition leaders appears totally counter-productive to her own interest. Such a futile demonstration of coercive power can serve little purpose but to further enhance the political credit of the opposition and discredit her own regime. By such an act Khaleda Zia is proclaiming to the world that the only basis of her power will be

the physical force she can deploy both from the official machinery of law and order and through party mastans on the streets. Such a dependence on force as a source of authority has been the time honoured resort of an autocratic regime. It cannot sustain a democratically inspired political party for long in office, since it will further delegitimise such a regime in the eyes of democratic opinion. In a democracy, a government's authority to govern, including the use of force, largely derives from a delicate moral compact with its citizens, who recognise their right to govern, because it is derived from the freely exercised choice of voters. Once this choice is not exercised, the compact breaks down and only the law of the jungle applies. No administration can rule without the respect of those whom it rules. Within a regime shorn of its moral authority, every act of oppression reinforces the political authority of the opposition. In a regime whose every act of authority is potentially challengeable, we may be opening up the floodgates of anarchy and only progressively, all forms of authority will come under challenge. The consequences of such a development will be no more comfortable for the opposition than it will for the government, whilst ordinary citizens may be left to contemplate an uncertain future. Khaleda Zia would thus be well advised to treat these recent arrests as political aberrations, release these arrested without delay and ensure that no further such favours are offered to the opposition, if her party is to retain minimal credibility to see us through this critical period.

## The Hour for Statesmanship

In this moment of crisis it is no less mandatory for Sheikh Hasina, and the political opposition to exercise restraint and avoid the language of the victor. There are no victors from the melancholy experience of the last two years. Indeed the entire tribe of politicians and in the process, the parliamentary process itself, has reached its nadir, in the esteem of the population. Thus the opposition may well find themselves in the same position tomorrow as that of the incumbent regime. It is therefore important for Sheikh Hasina to reach out to the hand of cooperation to Khaleda Zia to collectively seek an early solution to a crisis which leaves the nation poised on the brink of anarchy and puts our democratic institutions under the double jeopardy of violence and extra-democratic usurpation. The nation now looks to both its leaders to rise above themselves and demonstrate some statesmanship, some charity and some compassion not just to each other but to the long-suffering people of Bangladesh. In this, the silver-jubilee year of our independence, our people would like to rediscover those very blessings of democracy, whose denial inspired our struggle for liberation.

## Political Crisis in Bangladesh: An Overview

by MA Mutaleb

THE 15 February elections in Bangladesh were held without resolving the stagnant political crisis. The political crisis and, especially, the recent elections have thrown politics almost in a blind alley reducing further the limited leeway available to the major political parties. Now, the ruling party has declared that it was entitled to form the government as it had bagged majority in the parliament. Mainstream opposition political parties say that as the election was farcical, the government so formed would be illegal. According to the civil society, pacification and normalisation of agitation are prerequisites to reverse the dangerously downward trend in the politics of Bangladesh. Otherwise, the society itself may degenerate triggering a more dangerous crisis.

Political climate was turbulent during the pre-poll period also. The Chief Election Commissioner said that elections should be held for constitutional continuity. Here he apparently became the self-proclaimed guardian of the Constitution. According to Article 7 of the constitution, 'all powers in the Republic belong to the people', and therefore, he should not have put 'the people' in an atmosphere of steadily increasing violence and insecurity in the name of elections. Some eminent legal experts said that holding of elec-

tions within 90 days from the dissolution of the parliament was merely 'directory' and not 'mandatory'. Supreme Court is the final interpreter of the Constitution and other laws. The President of Bangladesh could have referred the matter to the Supreme Court under Article 106 of the Constitution for its opinion. The Chief Election Commissioner of Bangladesh could have followed a recent Indian precedent. A few months ago, the Prime Minister of India said that election would be held in Kashmir very soon. The Chief Election Commissioner of India, Mr T N Sesan with his two colleagues travelled throughout Kashmir for assessment of the actual situation. On return to New Delhi he declared in a press conference, 'Holding of elections in Kashmir is not possible as extreme violence prevails there.' On account of the extreme political crisis, country-wide violence, and insecurity it was perhaps the duty of the Chief Election Commissioner not to hold the elections. The question of Constitutional continuity could have been considered by the government, the political parties and the Supreme Court when referred to it.

Political crisis can never be solved by force. In West Bengal, political murders reached a figure of 1,200 in 1970. Troops were called in to help the civil authorities in holding 'peaceful' elections. Despite extensive patrolling by the troops, 120 deaths occurred and thousands were injured during the election campaigning. Of course, the political crisis of West Bengal was quite different from that of Bangladesh. Yet that can be at least a distant example.

The Chief Election Commissioner was the most powerful man in Bangladesh as it appeared from his pre-poll pronouncements. Army was called to recover illegal arms and to hold peaceful elections. Arms recovery drive was not successful as it appeared from subsequent reports and incidents. Report from different sources said that on the election day voter turnout was extremely low, lowest in the history of elections in Bangladesh. There was allegation of ballot stuffing and other gross irregularities including absence of presiding officers or polling agents. So election was neither genuine nor meaningful being not reflective of the opinion of the major segments of the population. Meaningful elections could not be held in a peaceful manner in an atmosphere surcharged with violence, fear and insecurity in spite of deployment of huge number of members of law enforcing agencies includ-

ing the Army, unprecedented in Bangladesh elections. The whole electoral process did not comport with international standards for a truly electoral exercise because 'genuine elections' envisaged in Article 21 of the Universal Declaration of Human Rights cannot be held without participation of the major segments of population and major political parties.

In the light of experience gathered from the 1988 parliamentary elections, the psychological effect of an idea that induced people to feel that except BNP other parties taking part in the elections are not genuine in the political field while the mainstream opposition parties boycotted the elections, that BNP candidates including were elected uncontested and would be elected as well from others even with lowest voter turnout and that violence shall prevail resulting in chaos made people pessimistic about and kept them away from participating in the elections.

## The 15 February Election and the Aftermath

by Muhd M Huseyn

IN the backdrop of the failure by BNP government and the mainstream oppositions to settle the issue of holding the national election under a caretaker government, the Government of Begum Khaleda Zia decided to hold the 15 February election. Continuity of the leading opposition parties including the Awam League. It is really painful to believe that a party (BNP) elected through a neutral caretaker government should oppose the same idea after assuming power, and could hold a one-party election following the same line pursued by the autocratic regime of General Ershad!

The 15 February election has been held without any true challenger of BNP deploying 400,000 BDR, police and Ansar personnel throughout the country to ensure free and fair election. The credibility of the election has largely been tarnished due to very low turnout of voters (only 5-10 per cent), widespread rigging of votes by the supporters of BNP and many other gross irregularities. The above facts got wide publicity through different national and international media.

The Prime Minister, Begum Khaleda Zia expressed her satisfaction at the outcome of the election in her press conference on 18.2.96. She declared that she was given a mandate through the election. She accused the oppositions for creating anarchy during the election time. She further asserted that her party workers were not involved with the rigging at all. Very few have accepted her continuation as the allegations have been proved false by different sources.

Theoretically, the words regarding Begum Zia's claim for a MANDATE in her favour through the election may be relevant. As per Webster's School Dictionary, the word MANDATE means 1. a formal order from a superior court or official to an inferior one; 2. an authoritative command, instruction or approval given to a representative, etc.

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## Feb 15 Polls: An Analysis

by Abu Imran

THE holding of election for election's sake on February 15, 1996, at least has made one thing clear that election under sitting government, at least in Bangladesh, can hardly be free and fair, since it was not done so according to impartial observers' views both from inside and outside the country. Besides the lowest turnout, the possibility of massive rigging, since alleged, could also not be ruled out. There is apparent proof of this. The firsthand report on the election day by foreign observers, was a 2 per cent turnout of voters. Later, the German radio estimated the turnout figure to be around 15 per cent while the Indian radio said it to be 10 per cent. The mean average of the votes really cast thus stands at around 9 per cent.

Locally, even FEMA (Fair Election Monitoring Alliance) has said that the election was not free and fair. In brief, as apprehended and voiced by the mainstream opposition, perhaps the Magura 2 by-election situation had been replicated to make a land-slide victory for the BNP.

Whether this is a victory or a defeat of greatest dimension depends on how the rulers and the ruled take it. The rulers no doubt subscribe to the former view (victory) as manifested by their jubilation, celebration, street march etc. etc. The ruled, i.e. the mainstream opposition, and of course, the

people, generally, term this as defeat since they did not want to accept this stage managed election. This was already boycotted by the opposition who have further put forward non-cooperation programme after the Eid holidays. That being so, destabilisation of political system, unrest, chaos, economic instability can't be helped. And if these things are to continue, then what for the so-called election was held and what good would this exercise bring?

Already around Taka 300 crore has been spent for the farcical election, which if this election was not held, could be saved and used for a meaningful election participated by all parties and people as was done in 1991. Now the PM says that after constitutional amendment has been made inserting the concept of CTG (caretaker gov't), then maybe next election would be held according to people's will. Now if the Prime Minister was aware that nothing short of CTG system was acceptable to the people, then why she went for such an extensive exercise causing loss of money, life and further political impasse? She could have earlier agreed to hold election under caretaker government, even by referring the matter

to the Supreme Court or broadly agreeing on the point that any party or parties (coalition) forming the government following national election would arrange incorporation of CTG system in the constitution. This would have saved time and money and paved way for institutionalisation of democracy and credibility to the BNP government. But, regrettably reverse is the position now after election.

Now, possibly, the ball is in the court of the Hon'ble President. How he responds, the people here, and even abroad, perhaps are very keenly observing. Now the future course of action would naturally depend mainly on the decision of the head of the state. Let's hope, he takes correct decision.

We may take some lessons from the heritage of Islam. In the famous Treaty of Hudaibya, the Prophet of Allah agreed to delete the words 'Muhammad the Prophet of Allah' in the face of strong opposition of his associates. He did it as a measure of expediency and also to establish peace.