

The Election Commission in the Non-Party Caretaker Government Regime Need for an Independent Election Commission Secretariat

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THE preamble of the Constitution of Bangladesh chooses 'high ideals of democracy' as one of the fundamental principles of the Constitution. Later in article 11, the

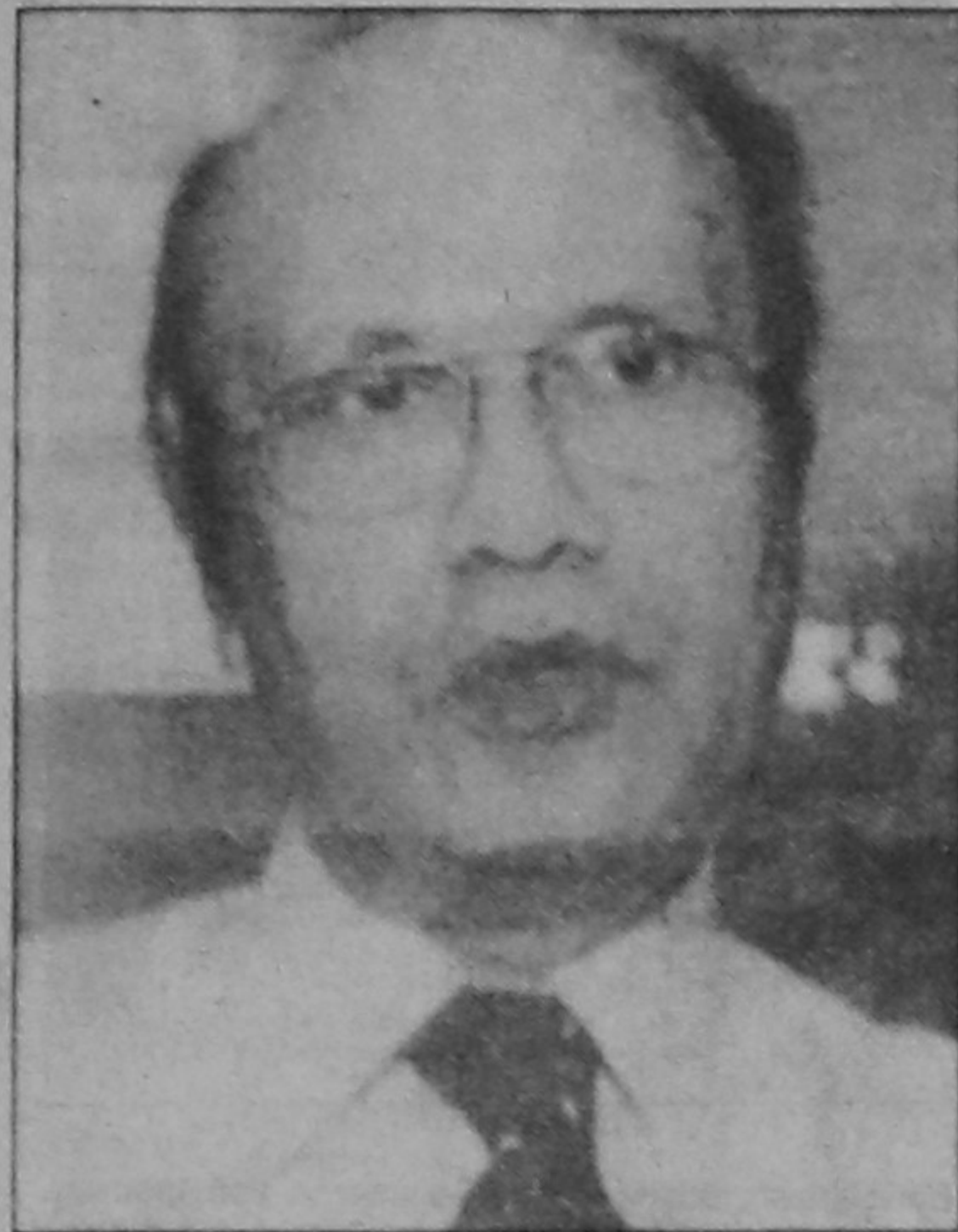
rights and responsibilities. Undoubtedly the Election Commission is one of the most important constitutional institutions with a wide mandate of conducting local and national elections. The 13th Amendment to the Constitution provides for a unique constitutional arrangement in Bangladesh whereby a Non-Party technocrat Government will take over the state power from an elected government for a period of not more than 90 days. And the purpose is to assist the Election Commission for holding a peaceful, free and fair general election of members of parliament. It is interesting to observe some of the dynamics of such temporary election arrangement and its impact on the role of

Caretaker Government shall not take any policy decision. The most significant mandate of the Caretaker Government is to furnish the Election Commission with all possible aid and assistance that may be required for holding the parliamentary election peacefully.

If, in the opinion of the Chief Election Commissioner, it is not possible, for reasons of an act of god, to hold an election to fill the seat of Parliament which falls vacant otherwise than by reason of the dissolution of Parliament within the period of ninety days, such election,

even without any consultation with the Chief Election Commissioner. Recently the Parliament enacted the Upazila Parishad (Amendment) Act 2001, which abruptly took away the power of the Election Commission to fix a date for the Upazila Parishad Election. The Prime Minister

state of governance of the country. The Chief Election Commissioner should take the opportunity to create an enabling environment for holding a free and fair election. During the Caretaker regime, the Election Commission virtually turns into the principal constitutional



Chief Election Commissioner M A Sayeed

People's Republic of Bangladesh has been declared as a "democracy", where among others, "effective participation by the people through their elected representatives in administrations at all levels" would be ensured.

Election Commission. **Mandate of the Caretaker Government**
Taking care of the national parliamentary election is the sole agenda of the Non-Party Caretaker Government. It is, in fact, an interim government for carrying out the routine functions of that stipulated period. Article 58D (1) specifically provides that except in case of necessity for the discharge of such functions, the

The posts of Election Commission Secretary, Additional Secretary and Joint Secretary have been filled up routinely according to the dictates of the Prime Minister's Secretariat even without any consultation with the Chief Election Commissioner. Recently the Parliament enacted the Upazila Parishad (Amendment) Act 2001, which abruptly took away the power of the Election Commission to fix a date for the Upazila Parishad Election. The Prime Minister ignored the repeated pleas of the Chief Election Commissioner against such attempt.

fairly and impartially (Article 58D(2)).

The term of the Caretaker Government is three months within which it will have to hold the general election of Parliament. Clause (3) of Article 123 plainly states: "A general election of members of Parliament shall be held within ninety days after Parliament is dissolved, whether by reason of the expiration of its term or otherwise than by reason of such expiration."

Act of God?
The Caretaker Government cannot extend its term. But what will happen in case of act of god (a sudden and inevitable occurrence caused by natural forces and not by the agency of man, such as a flood, earthquake, or a similar catastrophe)? The Constitution (Thirteenth Amendment) Act, 1996 does not deal with the situation. The Caretaker government established under this amendment has nothing to do with this type of 'extra-ordinary emergency'. The 'act of god like situation' has been recognised in the Constitution through the Constitution (12th Amendment) Act, 1991 with limited application.

according to article 123(4) shall be held within ninety days following next after the last day of previous period. The provision applies to the case of by-election only. Clearly only the Election Commission can decide whether a particular situation amounts to "acts of god".

Urgency for an Independent Election Commission Secretariat

Article 118(4) of the Constitution dictates that the Election Commission is independent in the exercise of its functions and subject only to the Constitution and any other law. The provision has not yet been implemented. In fact the issue of an independent Election Commission has become a political rhetoric. After thirty years of independence, the Election Commission is still dependent on other ministries including Ministry of Establishment and the Prime Minister's Secretariat for any vital appointment. The posts of Election Commission Secretary, Additional Secretary and Joint Secretary have been filled up routinely according to the dictates of the Prime Minister's Secretariat

ignored the repeated pleas of the Chief Election Commissioner against such attempt.

The Election Commission remains functional at local level and plays important role including selecting venues for polling stations, preparing electoral rolls through the District Election Officers (DEOs). Frequently the DEOs have to face severe pressure by the local ruling party stalwarts, sitting MPs and ministers. They are dictated to select some particular place as polling centres according to the convenience of those elements. This unfortunate trend of harassing the DEOs intensifies in the period prior to elections. Sometimes the DEOs are threatened of dire consequences including physical assault if they do not obey the directives of the political goons. This is, indeed, a grave situation, which the Election Commission miserably fails to resist. The Election Commission must empower the DEOs with adequate logistics and administrative sanction to overcome this ground reality.

Under the changed arrangement of Caretaker Government, the Election Commission will have more influence and dominance over the

agency of the state with specific constitutional sanction. The Caretaker Government is constitutionally duty bound to provide all possible aid and assistance in the interest of a credible election and such functions will not be deemed as "policy decision" as propagated by a vested quarter. The future Caretaker Government should take necessary steps to make the Election Commission Secretariat independent and effective.

It is for democratic institutions to mediate tensions and maintain equilibrium between the competing claims of diversity and uniformity, individuality and collectivity, in order to enhance social cohesion and solidarity. The Election Commission is one such key constitutional institution entrusted with immense social responsibilities. The need of the hour is a vigilant Election Commission led by a decisive, strong and non-partisan Chief Election Commissioner. The Commission must accommodate the participation of all people in order to safeguard diversity, pluralism and the right to be different in a climate of tolerance.

LAWSCAPE

The sisterhood of South Asia

LAW DESK SPECIAL

WHAT do Alys Faiz, Tahira Mazhar Ali Khan and Farrukh Nigar Aziz have in common? They are all women activists who have spent a lifetime in the struggle. They had gathered at the ASR Institute of Women's Studies in Lahore in the last week of March to inaugurate the Second Trans-disciplinary Women's Studies conference. 160 participants from all over Pakistan, and 22 participants from South Asia, France and the US attended this conference. Five broad themes were chosen for this particular conference. First there was women's studies, "the personal is political". The second was "woman constructed, woman reconstructed". The third was "women and art, rethinking the boundaries". Next came "a voice of her own, cultural representation and literature/poetry. Finally, there was "women and peace, women and conflict: the relationship of women's studies and the women's movement". Speaking on the occasion Nighat Said Khan, dean of the ASR Institute spoke about the organisation which was born in 1983. ASR, she said, is a multidisciplinary, multidimensional development enterprise to assist, support and initiate organisations, groups and individuals working on or interested in the transformation of society. ASR is an Urdu word, the meaning of which is 'impact'. ASR has been involved in research, training, conducting academic courses, community work, starting the first feminist press in Pakistan, in documentary film production, assisting theatre and art groups, holding National Women's Studies Conferences in Pakistan and is consistently involved in activism at all levels. Khan further said the Institute of Women's Studies Lahore (IWSL) is an initiative of the ASR Resource Centre.

The IWSL has designed courses that facilitate rigorous academic study.

"we, the participants of the ASR/IWSL conference on women's studies honour our sisters in Bangladesh for their courage and resistance to tyranny in those traumatic times (1971) and we condemn the use of rape and violence against women as a deliberate strategy of war. The women's movement in Pakistan has acknowledged and apologised for the rapes in Bangladesh and has repeatedly called upon the government to do so..."

that encourage activism, and which concentrate on the specificity of women's realities, experiences and movements. The Institute also introduces the student to many dimensions of research, to analytical skills, and encourages creative and academic writing. All courses are conducted in a familiar context, but with the course contents, standards and level of interaction comparable to similar courses anywhere in the world. The purpose is to make quality education, training and research accessible to large numbers within Pakistan, in Asia and the South generally.

The objectives of the conference were (a) to discuss the core issues at the South Asia level in detail, especially with reference to women (b) to identify potential faculty members in Pakistan (c) to develop and strengthen the links of ASR and other NGOs at the South Asia level. The main purpose behind this conference was to bring together progressive movements for the emancipation and empowerment of women in South Asia. The participants urged women activists to work collectively for each other against all forms of patriarchy. The important events that took place during the conference were the launching of an Indian magazine 'Gallerie' with a special issue on Pakistan by Bina Sarkar.

This issue, the seventh, is much needed especially with reference to the Pakistan-India friendship issue. It is a reaching out to people across the two borders, to know a little more about each other, beyond cliché-ridden assumptions. Then there was an exhibition of works by Vanessa Beganovich from Bosnia. There was a dance presentation by Sheema Kirmani in which she tried to bring to light the plight of women as daughters, sisters, mothers and wives and their oppression in the name of religion, culture and tradition. There was a prose and poetry reading session in which eminent women poets and writers read from their works. The conference was unique in the sense that it was not the mere reading of papers or reiterations of slogans that were its hallmarks. There was a palpable enthusiasm about the event and a commonality of purpose among the participants was so clear as to be a great reinforcement. The events of the conference were conducted in an orderly fashion - there was much sisterhood in evidence. The important recommendations and findings of the conference were the two resolutions passed unanimously by the participants. The gist of the resolution passed on the second day of the conference was: "we, the participants of the ASR/IWSL conference on women's studies honour our sisters in Bangladesh for their courage and resistance to tyranny in those traumatic times (1971) and we condemn the use of rape and violence against women as a deliberate strategy of war. The women's movement in Pakistan has acknowledged and apologised for the rapes in Bangladesh and has repeatedly called upon the government to do so. Although an apology and reparations do not, in any way, compensate for the violence against a people, nonetheless, we demand that these gestures be made in the interests of our own community".

Excerpts from the resolution passed on the final day of the conference: "We, representing women's organisations from Afghanistan, Bangladesh, Nepal, India, Sri Lanka and Pakistan, express solidarity with our sisters in Afghanistan, and salute their courage and resistance against the unprecedented and brutal violations of human rights, which have caused the devastation of the entire country and genocide of its people. We condemn the savage policies of the Taliban regime and, before them, the Rabbani government, in which, women in particular have been targeted and subjected to the most inhuman treatment in the name of religion. We call upon Muslim states to conduct an impartial and credible inquiry to investigate the present condition of the people of Afghanistan and recommend the return to a just, democratic and secular society".

In her summing up and future strategies for women activists Nighat Said Khan said that people from South Asia are linked to each other and in many ways construct the other. The political, economic and social issues of South Asian countries are the same and their ideologies are also more or less the same. She stressed that the people of South Asia need to work in harmony and resolve the major issues they are confronted with through dialogue in an amicable manner. By condemning the military action in Bangladesh, Khan said that we should ponder the reasons behind the 1971 disaster and make sure that such things are not repeated in the future.

This is the closest the activists in Pakistan have ever come to apologising to Bangladesh for crimes committed there in 1971. The ASR conference concluded on these brave and uncompromising words from brave and uncompromising women.

Bangladesh - The Vested Properties Return Act, 2001

HUMAN RIGHTS FEATURES

ON 9 April 2001, the Parliament of Bangladesh passed the Vested Properties Return Act, 2001. In December 1998, the Government had set up a Parliamentary Sub-Committee under the Ministry of Land, to repeal the Vested Property Act and restore vested properties to original owners. The Draft Bill came under severe criticism by civil society.

Comments on the statement by the South Asia Human Rights Documentation Centre (SAHRDC) contained in document E/CN.4/2001/18 at the ongoing 57th Session of the Commission on Human Rights in Geneva.

The Government of Bangladesh uses language such as "baseless, seemingly tendentious, factually inaccurate" to describe SAHRDC's written statement. SAHRDC is proud of its credibility including its reputation for reliable and objective human rights documentation. Facts are sacred while comments are free. In our considered view, a closer study of our written statement

Bangladesh. The Government of Bangladesh also asserts that "No property of any bonafide Bangladeshi Hindu National has been enlisted as vested property since independence of Bangladesh till date". The *Ain-O-Salish Kendra (Law and Arbitration Centre)*, a leading Bangladeshi NGO, in its report *Power, Safety and the Minorities: A Brief Report* states: "In 1999, about 29 cases of forcible occupation of land and property of the Hindu community have been reported in different newspapers. These include their homesteads, farmlands and religious places

direction of the Law Ministry of Bangladesh Memo No. Bhu, Ma/75/Arpita (Nitimala)/117/42 (Angsha)/638 (61) dated 4 November 1993.

In this case, the Government of Bangladesh commented: "The affected persons may also seek redress in the courts of Bangladesh". This is little solace especially when the wheels of justice move so slowly in Bangladesh. In fact, the Honourable Latifur Rahman, Chief Justice of the Supreme Court of Bangladesh, has repeatedly, openly criticized the slow disposal and heavy backlog of cases. (See, for example, Latifur Rahman, *Democracy Cannot Work*

Cannot Work...", The Daily Star, Dhaka, 8 Jan. 2000).

With regard to the specific direction of the Law Ministry SAHRDC raised, the Government of Bangladesh further referred to "wrong enlistment of properties and illegal possession thereof. The verification was not intended to put the Hindu minority community to harassment". This is factually incorrect. The above order clearly states that it was also to "determine whether there are other enemy properties". The Order further states "If the Committees find out any concealed properties it will investigate into the matter and bring it to the notice of

property after 16 February 1969 will not be considered as vested property after the said period. Most Hindu property, however, was declared vested property after that date. The bill also states that the proprietorship status of the vested property will not be challenged if the property was transferred to the Government, a government institution, or to a private individual, has been sold or has been handed over permanently by the Government at the directives of a court. It will not even be possible to challenge such cases in court.

According to the non-governmental organizations consulted, these provisions are contrary to the spirit and objectives of the bill. The bill also provides that if the original owners do not submit their ownership documents to a court within 180 days following promulgation of the law, the Government will acquire their property. The Hindu community considers this time period too short.

Lastly, the bill provides that in the event of the decease of the original owner, rights of inheritance shall apply in accordance with Hindu religious personal laws. Hindu women would therefore be automatically excluded from inheritance, since Hindu religious personal laws do not accord any rights of inheritance to women. (A/55/280/Add.2, at para. 33 (9 Aug. 2000)).

The Vested Properties Return Act, 2001 is not only tokenism. It may well be the beginning of legalising the omissions and commissions committed under a patently discriminatory law.

Human Rights Features is a Joint Initiative of SAHRDC and HRDC

It appears, however, that this bill would present serious problems. According to the non-governmental sources, the bill provides that properties legally vested under the ownership of the Government and those declared to be enemy or vested property after 16 February 1969 will not be considered as vested property after the said period. Most Hindu property, however, was declared vested property after that date. The bill also states that the proprietorship status of the vested property will not be challenged if the property was transferred to the Government, a government institution, or to a private individual, has been sold or has been handed over permanently by the Government at the directives of a court. It will not even be possible to challenge such cases in court.

would have provided for a more constructive debate. If the Government of Bangladesh's reply to SAHRDC's written statement is any indication, the status of the Vested Properties Return Act, 2001 is a serious cause for worry.

The Government of Bangladesh in its reply stated "there is no legally identified enemies of Bangladesh, legally or otherwise." However, "legally identified enemies" are implicit in the very title of the Enemy Properties Act passed by the then Government of Pakistan and in the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 of the Government of Bangladesh.

Consider also the following statement of the United Nations Special Rapporteur on Religious Intolerance, Mr. Abdelfattah Amor, in his Interim Report to the Millennium Session of the General Assembly after his visit to Bangladesh from 15-24 May 2000: "After Bangladesh won independence from Pakistan, the President of Bangladesh, in his Order No. E29 of 1972, changed the nomenclature to Vested Property Act, without altering the content of the law." (A/55/280/Add.2, at para. 31, (9 Aug. 2000)).

Section 3(b)(i) of the "Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 (Act XIV of 1974) defines "enemy property" and "enemy firms"; "enemy property and enemy firms shall have the same meaning as are respectively assigned to them in the Defence of Pakistan Rules continued in force by the said Ordinance". Therefore, the definition of "enemy" as provided in the Defence of Pakistan Rules is applicable and "legally identified enemies" do exist in

Influential political forces and their goons have also occupied many of the properties listed as vested property. In 1999 in the Sunamgonj district out of 21,000 acres of vested property land 16,000 acres have been illegally occupied (Bhorer Kagoj, 17.5.1999); likewise in the Mymensingh district out of 29,722 acres of vested property land, 28,000 acres of land and 300 houses (vested property) have been occupied by one influential person (Bhorer Kagoj, 12.5.1999). People with political backgrounds commit the abovesaid either as members of political parties or as supporters. It matters little if the party is in power or in opposition. Statistics as cited in the ASK Human Rights Report (p.193-194) show that in 1995, 72 per cent of all vested property was acquired by members of Bangladesh National Party (BNP); and in 1998, 44 per cent was acquired by the Awami League and 32 per cent by the BNP.

(The Daily Star, Dhaka, 26 May 2000). The UN Special Rapporteur on Religious Intolerance has also confirmed this process of appropriation of the lands of the Hindus. The UN Special Rapporteur referred to "the insecurity felt by Hindus, due partly to the Vested Property Act, which was used for the illegal appropriation of their land, especially by Mafia-like groups enjoying political protection." (A/55/280/Add.2, para. 67).

In its written statement, SAHRDC referred to a specific case: The property belonging to 61 Hindu minority families in Ashelpur and Chawkjara village of 14 Ashelpur Union and in Ganda Gram of 10 Sultanganj Union under Bogra Sadar Police station were identified as Enemy Properties under the

without Rule of Law, The Daily Star, Dhaka, 4 Jan. 2000). In a recent editorial, the former Foreign Minister and Ambassador of Bangladesh, Mr. Manzoor A Choudhury, applauded the Chief Justice's candour: "The Chief Justice touched the heart of the matter when he said that one of the most critical problems for our legal system is that of delay in disposal of cases. The vast majority of people who unfortunately seek the protection of law and go to courts for justice would wholeheartedly agree with the Chief Justice". (Manzoor A Choudhury, *Democ-*

the Government...." It was under these clauses that the properties of 61 Hindu minority families were seized.

The Vested Property Return Act does not adequately address the catastrophe. The UN Special Rapporteur on Religious Intolerance raised several criticisms:

It appears, however, that this bill would present serious problems. According to the non-governmental sources, the bill provides that properties legally vested under the ownership of the Government and those declared to be enemy or vested



Many Hindus were deprived of their property when those were declared to be enemy property after 16th February 1969

READERS' QUERIES

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