

## Empowering the President

M. ABDUL LATIF MONDAL

It is learnt from the newspaper reports that some distinguished discussants including one Adviser to the immediate past non-party caretaker government and a former cabinet secretary at a seminar on *Public Administration Reforms in Bangladesh: Exploring Implementable Action Agenda* held on 8 November, 2004 at CIRDAP auditorium, Dhaka, suggested that (i) to ensure check and balance in the parliamentary system of government, the office of the President needs to be empowered, breaking the concentration of power in the hands of the Prime Minister; and (ii) the President should be elected through an electoral college consisting of about one hundred thousand representatives of local government bodies instead of the current system of election by 300 lawmakers only. This article makes an attempt to examine as to what extent it is possible to go by the aforesaid suggestions.

The Constitution of Bangladesh, as amended from time to time, provides for a parliamentary system of government. In this system, the Prime Minister occupies the central position. The executive power of the Republic is vested in the Prime Minister. In the exercise of his functions, the President acts in accordance with the advice of the Prime Minister. The Prime Minister heads the Cabinet. The Ministers hold office during the pleasure of the Prime Minister in the sense that he/she may at any time request a Minister to resign, and if such Minister fails to comply with the request, may advise the President to terminate the appointment of such Minister. With the executive power vested in the Prime Minister, he / she controls the entire administrative machinery of the government. As the leader of the House, he / she exercises enormous influence on the functioning of Parliament. He / she advises the President for appointing judges of the Supreme Court. To sum up, the entire constitutional machinery revolves round the Prime Minister and he / she wields great power, influence and prestige.

In the parliamentary system of government that we have, the President is mere a constitutional head of state. In the exercise and discharge of powers and duties the President has to act according to Article 48(3) of the Constitution which provides that "in the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of Article 56 and the Chief Justice pursuant to clause (1) of Article 95, the President shall act in accordance with the advice of

the Prime Minister." It may be noted that even in these two cases the President is left with very little choice to act independently. The President has to appoint as Prime Minister the member of Parliament (MP) who is elected as their leader by the MPs of the major party in Parliament. Similarly, the President has to normally go by the suggestion made by the Ministry of Law, Justice and Parliamentary Affairs in the appointment of the Chief Justice, and it needs no explanation that the ministry makes such suggestion only after consultation with the Prime Minister.

Now, we may have a look into the British Constitution and the Indian Constitution. Britain is known as the birthplace of parliamentary democracy. Though in form the British

General for Bangladesh, in his *Constitutional Law of Bangladesh* thus says, "In the form of government that we have, the President is normally vested with the executive power of the State which, in fact, is to be exercised by the Council of Ministers and the President is to act on the advice of the Ministers." It thus appears that there is room for vesting the executive authority of the Republic in the President in our parliamentary system of government.

Parliament is one of the three basic pillars of Bangladesh, the other two being executive and judiciary. Legislative power is vested in Parliament. The President is not a part of Parliament although he enjoys the privilege of addressing

Supreme Court. But this provision was omitted by the Constitution (Fourth amendment) Act, 1975. Although there is a convention of consultation with the Chief Justice, but such a consultation may not be a formal one and the recommendation, if any, of the Chief Justice is not binding on the executive. As a result, during the last three decades or so, there has been continuous allegation of politicisation of appointments in the higher judiciary. Not that the allegation is totally baseless.

The Indian Constitution provides that in the case of appointment of a Judge to a High Court and to the Supreme Court, the Chief Justice of India shall always be consulted. If any question arises as to the age of a Judge of a High Court, the question is

provided for direct election of the President. By Act No. 27 of 1991, provisions have been made for election of the President through the MPs by open ballot.

I am not aware whether in any country practising a parliamentary system of government the President is elected by an electoral college consisting of representatives of local government bodies. The President of India is elected by the members of an electoral college consisting of (a) the elected members of both Houses of Parliament; and (b) the elected members of the Legislative Assemblies of the States. The voting takes place by secret ballot. (Articles 54 and 55).

The suggestions made in the aforesaid seminar on the election of the President of Bangladesh reminds us of the Basic Democracies introduced in 1959 by Field Marshal Mohammad Ayub Khan, the President and Chief Martial Law Administrator of Pakistan. Under the 1962 Constitution, which provided for a presidential system of government, the elected members of the union councils formed an electoral college to elect the President, the national assembly, and the provincial assemblies. In the election of 2 January, 1965 for the presidency of Pakistan, the 80,000 basic democrats acted as the electoral college.

In the parliamentary form of government, the Cabinet headed by the Prime Minister is collectively responsible to Parliament. Presently, Zila Parishad (district council) and Upazila Parishad (sub-district council) at the zila level and upazila level, the two important tiers of local government are not functional. Even if BNP-led alliance government revives these two bodies as per BNP's election pledge of 2001, yet it may not be feasible to elect the President by an electoral college comprising representatives of local government bodies under parliamentary form of government.

It appears from the above discussion that there is scope for empowering the President of Bangladesh in the existing parliamentary system of government. Implementation requires a strong political will, particularly of the political party / alliance in power. On the other hand, election of the President by an electoral college comprising representatives of local government bodies instead of the current system of election by lawmakers does not appear to be an implementable proposition in parliamentary system of government.

Let me now discuss the second suggestion regarding election of the President. The Constitution of Bangladesh adopted on 4 November, 1972 provided for election of the President by members of Parliament (MPs) in the manner prescribed in the second schedule of the Constitution. The second schedule, *inter alia*, provided for election of the President by the MPs by secret ballot. The Constitution (Fourth Amendment) Act, 1975, among others, omitted the second schedule and

decided by the President after consultation with the Chief Justice of India and the decision of the President is final (Articles 124 and 217). In our case, revival of the provision of the original Constitution requiring consultation with the Chief Justice for appointing Judges of both the divisions of the Supreme Court has become a dire necessity. Revival of the provision and empowerment of the President to appoint Additional Judges and other Judges in both the divisions of the Supreme Court in consultation only with the Chief Justice, and remove a Judge as per opinion of the Supreme Judicial Council only, will help reduce to the maximum extent the politicisation of the higher judiciary. This will require amendment(s) in clause (3) of Article 48 in 'Part IV- The Executive' of the Constitution. It has also to be examined whether this will require amendment(s) in any Article(s) in 'Part VI- The Judiciary' of the Constitution.

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**It appears that there is scope for empowering the President of Bangladesh in the existing parliamentary system of government. Implementation requires a strong political will, particularly of the political party / alliance in power. But, election of the President by an electoral college comprising representatives of local government bodies instead of the current system of election by lawmakers does not appear to be an implementable proposition in parliamentary system of government.**

Constitution is a monarchy yet in fact it is democratic. This democratic characteristic of the British Constitution is the outcome of the growth of conventions. In the British Constitution the Crown (the Crown is an institution which never dies, and the King or the Queen is the individual who holds the institution) is the supreme executive authority and its powers are exercised by the King or the Queen as advised by the Ministers. The Crown has the right to be kept informed of the political situation at home as well as abroad. Its signature is necessary for all statutes and many official documents. It can raise objections, offer suggestions, although it cannot obstruct the course of administration. We know that India has a long tradition of parliamentary system of government. The Constitution of India has vested the executive power of the Union in the President (Article 53). The Council of Ministers with the Prime Minister at its head aids and advises the President and he, in the exercise of his functions, acts in accordance with such advice. But the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration (Article 74).

But the Constitution of Bangladesh has not given any power to the President to ask the Cabinet to reconsider its any advice or decision. Mahmudul Islam, a former Attorney-

Parliament at the commencement of the first session after a general election and at the commencement of the first session of each year. The Cabinet-approved speech that the President delivers to Parliament is primarily an elaboration of the achievements of the government in power. In the greater international interest of the President, as the head of state, should have the authority to speak his mind in Parliament. Further, Parliament of India consists of the President and two Houses known respectively as the Council of States and the House of People (Article 79). In the British Constitution, Parliament consists of the King (or Queen), the House of Lords and the House of Commons. Making the President of Bangladesh a part of Parliament will thus be in conformity with the practice followed in other countries having a long tradition of parliamentary system of government.

The framers of our Constitution were conscious of the need of the independence of the judiciary in the country and to this end incorporated an Article that provides for the separation of the judiciary from the executive organs of the State (Article 22). But this constitutional obligation is yet to be implemented. The Constitution, as originally framed, contained a provision requiring the President to consult the Chief Justice in the matter of appointment of the Judges in the High Court Division and the Appellate Division of the

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## Let Bush's second term be opposite to his first

DR. FAKHRUDDIN AHMED writes from Princeton

I should like to congratulate Mr. Zafar Sobhan, Assistant Editor of *The Daily Star* for his masterly analysis of the November 2 US presidential election (DS, November 5). Any unbiased US newspaper would have been proud to publish his insightful dissection of the American electoral process.

The *Washington Post*'s respected columnist Richard Cohen captioned his October 28 piece, "Impeach George Bush." He noted: "Of course I realise there's no chance (Republican) Congress would impeach the president at this point or under almost any circumstance. It somehow reserves its outrage for lying about sex under oath and not, as now seems clear, the making of war under false pretences. Say what you will about Bill Clinton, one died in the White House pantry." Cohen continued, "By the time Bush had firmly decided to go to war, all in Washington knew Saddam's nuclear weapons consisted of a wish. You will remember that early on Bush referred to the war against terrorism as a 'crusade.' He was speaking the truth. Just as the original crusades were a form of mass madness, so was this one when extended to Iraq. It came as did the original one, out of the bonnet of a leader: Bush this time, Pope Urban II in 1095 -- and it swept everything before it. Congress lent its approval and so, significantly, did the media (myself included). The failure of the leadership was across the board. The events of 9/11 were as emotionally wrenching to us as had been the Muslim capture of Jerusalem to medieval Christians."

Cohen concludes: "72 per cent of Bush supporters believe that Iraq did in fact possess WMD and that 75 per cent believed that Saddam gave al-Qaeda 'substantial support.' These beliefs are a direct consequence of the administration's lies of omission, the appalling failure to correct wrongly held views. We embarked, truly and regrettably, on a crusade. Still from Bush comes not a bleep of regret, not to mention apology. If the man were commanding a ship, he would be relieved of command. If he were the CEO of some big company, the board would offer him a golden parachute -- and force him to jump. But in government, it's the people who make those decisions. We get our chance on Tuesday. Impeach Bush."

Of course the American people did not vote to impeach George Bush on November 2; they endorsed him for a

second term. Unlike his US Supreme Court-engineered presidential election victory in 2000, this time George Bush won fair and square. Supported by 51 per cent of the electorate, Mr. Bush has earned the right to govern America for the next four years. Good luck to him and America. This does not mean that the 48 per cent of Americans who vehemently opposed Mr. Bush's ill-conceived policies at home and abroad should stop criticising him and start loving him! Bush supporters have as much right to gloat over Bush's victory as Bush detractors have of loathing his disastrous policies. In a democracy, Einstein's vote and "Six-pack Joe's" vote are equally valid. This does not mean that "Six-pack Joe's" opinions are as enlightened as Einstein's. If a nation has many more "Six-pack Joe's"

were voting for what team they were on. This was not an election. This was station identification. I'd bet anything that if the election ballots hadn't had the names Bush and Kerry on them but simply asked instead, "Do you watch Fox TV or read *The New York Times*?" the Electoral College would have broken the exact same way."

Unlike Al Gore, John Kerry did everything he needed to do, including using a coalescing Bill Clinton to fire up African-American voters. At the end nothing mattered. Americans were going to elect Bush come hell or high water. Ellen Goodman of *Boston Globe* summed it up: "John E. Kerry was a Vietnam vet and the 'Swift Boat veterans' wounded him any way. John F. Kerry came out against gay marriage and got tarred with it anyway. He shot a goose and the NRA

mit ourselves to wrong policies. We are the most powerful nation on earth. No external power, no terrorist organisation can defeat us. But we can defeat ourselves by getting caught in a quagmire. Leaders who claim to be in the possession of the ultimate truth offer an escape from uncertainty. But that is a snare, because those leaders are bound to be wrong."

President Bush's election victories in 2000 and 2004 were engineered by Karl Rove, "Bush's Brain." According to Wayne Slater and James Moore, authors of "Bush's Brain," even as a high school debater, "Rove just didn't want to win; he wanted the opponents destroyed. He would defeat them, slaughter them and humiliate them." That is exactly what he did to Kerry. No blow was too low, no truth was beyond his ability to distort, no fact was unworthy of falsification and no dirty trick was beneath their dignity to discredit Kerry. And all of these were carried out in the name of "moral values." Everyone who opposed George Bush -- be that John Kerry or the Iraqis of Fallujah who had nothing to do with 9/11 -- were marked for destruction! In the aftermath of the election campaign savagery displayed by the Bush team it is comical for the President to now claim he wants to unite the country!

American president can make a difference in the world. I felt the idealism of President Kennedy when a Peace Corps volunteer ended up in a hostel next to our house in Feni in the 1960s. As Maureen Dowd of *The New York Times* recalled in her November 7 column: "Even as a child, I could feel the rush of JFK's presidency racing forward, opening up a thrilling world of possibilities and modernity. We were going to the moon. We were confronting racial intolerance. We were paying any price and bearing any burden for freedom. We were respecting faith but keeping it out of politics. Our president was inspiring much of the world. Our first lady was setting the pace in style and culture."

"George W. Bush's presidency rushes backwards, stifling possibilities, stirring intolerance, confusing church and state, blowing off the world, replacing science with religion, and facts with faith. We're entering another dark age, more creationist than cutting edge, more premodern than postmodern. Instead of leading America into an exciting new reality, the Bushies cocoon in a scary, paranoid, regressive reality." For the sake of America, here's wishing that George Bush's second term is diametrically opposite to his disastrous first term.

## LETTER FROM AMERICA

**"George W. Bush's presidency rushes backwards, stifling possibilities, stirring intolerance, confusing church and state, blowing off the world, replacing science with religion, and facts with faith. We're entering another dark age, more creationist than cutting edge, more premodern than postmodern." For the sake of America, here's wishing that George Bush's second term is diametrically opposite to his disastrous first term.**

types than Einstein-types naturally their candidate will win. While "Six-pack Joe's" choice clearly has the right to rule, the Einstein-types have the equal right to lament what they see as the horrendous consequences of that disastrous choice. It is a mistake to be condescending and say that the average American was duped by the Republicans into voting against their interests. The average Americans knew exactly what they were doing. All one can surmise is that it is more likely that the judgment of the average American is wrong and that of the (for the lack of a better word) Einstein-types is right.

In his November 3 column, *The New York Times'* multiple Pulitzer Prize-winning columnist Tom Friedman summed up the feeling of the 48 per cent America: "Why did I wake up feeling deeply troubled? At one level this election was about nothing. None of the real problems facing the nation were discussed. Despite an utterly incompetent war performance in Iraq and a stagnant economy, Bush held on to the same core states that he won four years ago -- as if nothing had happened. It seemed as if people were not voting on his performance. It seemed as if they

are matters of economic justice; and that infringement of our rights on the basis of fearmongering is fascist."

President Bush has demonstrated that while he is good at winning elections, if the last four years are any guide, he is very bad at governing. Two of the reasons are President Bush's obsession with faith-based politics and his inability to admit mistakes, according to an article written by financier George Soros in *The Independent*: "Faith plays an important role in an open society. Exactly because our understanding is imperfect, we cannot base our decisions on knowledge alone. We need to rely on beliefs, religious or otherwise, to help us make decisions. But we must remain open to the possibility that we may be wrong so that we can correct our mistakes. Otherwise we are bound to be wrong. President Bush has shown he is incapable of recognising his mistakes. He insists on making reality conform to his beliefs even at the cost of deceiving himself and deliberately deceiving the public. There is something appealing in the strength of his faith, especially in our troubled time. But the cost is too high. By putting our faith in a president who cannot admit his mistakes, we com-

## Hearts, minds and Fallujah

FAREED ZAKARIA  
writes from Washington

**Fallujah will be a turning point for Allawi. If it succeeds, he will look like a winner and be magnanimous in victory. If it does not, his credibility and popularity, which are already dropping, are likely to plummet. He will be seen as an American puppet, unloved, ineffective and unable to stem the violence. And then we will be in real trouble in Iraq.**

Council under Paul Bremer, has withdrawn support for interim Prime Minister Ayad Allawi's government.

Keep in mind that the overall objective during a counterinsurgency (which is what the United States is currently fighting in Iraq) is to win the battle of ideas and the politico-military struggle for power. The center of gravity in counterinsurgency operations is the local population.

Winning and maintaining their support is crucial. Gaining territory is less important than eliminating support for the insurgents. Now if all this sounds like drippy analysis, it's not my own. All of the sentences above are taken from the Army's most recent manual on counterinsurgency operations (FMI 3-07.22), classified but now widely available on the Internet.

Translating these objectives more concretely, the goal of the operation in Fallujah is to make elections in the Sunni areas possible, so that the government formed after those elections has the support of the entire population, including Sunnis. If Fallujah is more likely to lead to a Sunni boycott of elections, what exactly has it accomplished? If it intensifies anti-Americanism within the population, will it have been worth the costs? If Fallujah generates greater sympathy and support for the insurgents, it will have created new safe havens even as it destroyed an old one.

Iraq's elections look increasingly unlikely to take place on schedule. The security situation in the rest of the country is getting worse. Doctors Without Borders, CARE, and the International Rescue Committee, three respected humanitarian agencies, are leaving

Poland, Hungary, Singapore, and Thailand are all reducing their troop levels.

The political problem in Iraq, I have long argued, is the lack of a Sunni strategy. The United States has had a Shi'ite strategy for Iraq's majority, and a Kurdish strategy for that group. But to the extent it had a Sunni strategy, it was to demolish all structures of power that Sunnis dominated -- the Army, police, bureaucracy -- and speak of the inevitability of Shi'ite rule. "The Sunnis will have to accept the new rules," an administration official once told me. Well, they didn't. Without a political strategy to deal with them, the best military tactics will not work.

Allawi, a tough, wise man, understands the need for this political approach. He has reached out to Sunni leaders. He has offered them de facto amnesties, even though the United States foolishly tried to derail such a programme. But he has had limited success. Perhaps things are too far gone and what he could offer was too little, too late. That is why he agreed to the Fallujah attack, in the hope that it might change the dynamic.

Fallujah will also be a turning point for Allawi. If it succeeds, he will look like a winner and be magnanimous in victory. If it does not, his credibility and popularity, which are already dropping, are likely to plummet. He will be seen as an American puppet, unloved, ineffective and unable to stem the violence. And then we will be in real trouble in Iraq.

Fareed Zakaria is Editor of *Newsweek International*.

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