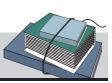


"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-Article 27 of the Constitution of the People's Republic of Bangladesh

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REVIEWING the views



Caretaker Government: Need for re-assessment

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ANY are concerned with regard to the constitutional arrangement that will guide the electoral process in Bangladesh in the last quarter of next year. The issue of caretaker government has assumed particular importance given the serious misunderstanding and polarisation that exists today between the leading political parties in this country.

Articles 7 (1) and 11 of our Constitution sets forth the ideal situation which will guarantee effective participation of the people in a free and fair democratic political process. There is almost an inspirational element in the idealistic nature of their wording.

Elections have always been considered as important in Bangladesh. The ordinary citizen, might sometimes be functionally illiterate, but does not hesitate to examine various factors related to the democratic process.

Most attach special significance to the various elements associated with elections. In this, they are consistent with conscious democracy.

Elections have always been crucial determinants in our history. In 1954 and 1970, they not only served to identify unacceptable factors in our national life, but also contributed towards an entirely new approach in the political horizon. The electoral arrangement, over time, has also served as a means for legitimising informal usurpation of power. Various coups have been followed by so-called multi-party elections to bring about a representation of legitimacy. The administrative machinery, on such occasions was shamelessly used to manufacture the desired result.

In 1986, during the Fifth Parliament, a general consensus had surfaced on the need for putting together a format whereby free and fair elections might be ensured. The eventual articulation of this concept had to wait however for another ten years. The post-Magura scenario and the February 1996 election laid bare the inabilities of the political party and the Election Commission in being able to ensure impartiality. The concept of the Caretaker Government which had been derided as being suitable only in the minds of innocent children and lunatics was born. The 13th Amendment of the Constitution introduced the Non-party Caretaker Government with a view to ensuring free and fair election to the Parliament. Two elections have since been held under the Caretaker principle in 1996 and 2001. The term Non-Party was used to connote composition of Advisors who are not connected or affiliated or associated with a political party.

The new arrangement also envisaged a scenario where the caretaker government would not initiate new policies or legislation or make commitment for new or large expenditures because it lacked the people's mandate. It was also connoted that conventionally, a caretaker government, despite having legal power, would not only desist from exploiting its position by implementing any controversial new policy, but also refrain from new and ad hoc appointments, redefining the character of the services and the duties of posts, changing the status and rank of Officials or deploying of Officials in a manner that might be construed as political patronage.

The primary and critical function of this new arrangement was to provide to the Election Commission "all possible aid and assistance.. for holding the general election of Members of Parliament peacefully, fairly and impartially". In this regard, the Election Commission would be dependent on the executive government for its conducting of the election.

This innovation within the institutional electoral process was seen as necessary because of the mistrust that existed within the system. It was viewed that such a step would be the best way to avoid situations whereby outgoing governments (in the period between the end of term of an elected government and elections) undertook steps and major policy decisions that

might result in future elections being in their favour

Flaws in the system however surfaced quite soon. President Abdur Rahman Biswas underlined the role of the Presidency and his control over the Armed Forces through the sacking of the Chief of Army Staff. This was done despite the presence of a Chief Advisor and a Council of Advisors belonging to a Caretaker Government. The evolving crisis was fortunately contained through the patience and the maturity of the Chief Advisor. The caretaker Government went on to demonstrate that free and fair elections could be held despite provocations, given full commitment of those charged with the responsibility of doing so. International observers and all Parties agreed that the election was a success.

This was also possible not only because of the neutrality of the Caretaker Government but also due to the responsible functioning of the Election Commission and its Returning Officers.

The whole approach towards neutrality was however greatly affected in 2001, with the undertaking of controversial administrative decisions by the Caretaker Administration. These were policy decisions and have been identified by some analysts as being beyond their mandate.

Since then, debate has continued as to whether the Constitution gives The Caretaker Government authority to overturn, review or annul orders and decisions of an outgoing elected government. Some jurists have claimed That the Caretaker principle permits such overhaul, if they feel that this will facilitate a fairer election. Others have pointed out such a decision contains potential for subjectivity which might in turn raise questions about objective

The election in 2001 also raised another significant issue- the role of the armed forces representatives employed on electoral duties. We have already seen Awami League allegations that their associates and workers were targeted as 'potential trouble makers' and consequently restrained from active participation and campaign on behalf of their political party.

They feel that this affected election results. Election observers also noted that in some cases representatives of the Armed Forces having been 'empowered with police and magisterial powers' also entered election centres. This generated unnecessary controversy with civilian Returning Officials.

This imbroglio has assumed further complications through the recent extension of the age limit of the judges of the Appellate Division.

This is being interpreted by the Opposition as part of the BNP agenda to ensure that a particular person heads the next Caretaker Government. Such a measure is being perceived not only as negative and predicated on presumptive neutrality but also as a source of erosion of confidence. Our general election is not very far away. We must accordingly take

necessary steps to ensure that the Caretaker process does not suffer from unnecessary debate. We must also remember that the Chief Advisor has to enjoy the confi-

dence of both the Treasury Bench as well as the principal Opposition Party in

I believe in the interest of national unity and compromise, the president should initiate a process where discussion can take place with regard to all possible alternatives as stated in the Constitution. This should be the first step to overcome any possible deadlock.

Similarly, consistent with the spirit of neutrality, the selection of the Advisors should be made on the basis of lists provided by different political parties to the Chief Advisor. These lists should include the names of those persons who are acknowledged as being genuinely neutral, not involved in any manner with any lobby or interest group that might benefit from the victory of any particular Party and not expect to be appointed to any high



Office during the term of the next Parliament. In such a situation, they will enjoy public confidence.

We must also examine how to ensure that the President remains above controversy. This is particularly necessary with regard to the existing division of executive powers as envisaged in Article 58 E.

There is also still time to consider whether some of the laws promulgated as Ordinances during the last Caretaker Government needs to continue. Lastly, measures must be adopted to strengthen the Election

As has been done in South Africa and India. The primary task of conducting election rests with them. The situation becomes that much more sensitive given the fact that a new Chief Election Commissioner will be appointed (on the retirement of the incumbent) within a few months. It is essential the person chosen is not identified with any special interest group. The independence of the Commission also needs to be strengthened by placing the services of all Officials in the Election Commission Secretariat directly under the Chief Election Commissioner. They must understand that they will report to him and that he is their administrative head, responsible for their future promotion or disciplinary action. Similarly, the Election Commission must enjoy budgetary independence.

I believe that time is of the essence. We must all approach this question without prejudice or pre-conceived notions. The Government should also refrain from making provocative statements that if necessary, through brute parliamentary force, they will rescind the Caretaker system and force the holding of the next election under the present Government's supervision. That

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RIGHT column



Lack of progress in bringing rapists to justice in Gujarat



Three years after several hundred women and girls were raped when violence erupted in the state of Gujarat in western India, the perpetrators of these crimes against humanity continue to walk free, says a report of the Amnesty International. The 107-page report, examines the breakdown at all levels of government in preventing grave human rights abuses against women, protecting victims and bringing perpetrators to justice.

The gross failure of the local police and the Bharatiya Janata Party-led Gujarat state government to protect Muslims especially women and girlsand the refusal of the central government to censure the state government in Gujarat is inexcusable," charged Dr. William F. Schulz, Executive Director of Amnesty International USA. "Adding insult to injury the authorities in Gujarat still refuse to admit failings and express regret. Both the central and state governments must take effective steps to bring justice, truth and reparations to the victims." According to the report, local police stood by or joined in the violence

during the attacks. When victims tried to file complaints, police often did not record them properly and failed to carry out investigations. Doctors did not complete medical records accurately. Bilqis Yakoob Rasool, a victim of gangrape who lost 14 family members, reported: "They started molesting the girls and tore off their clothes. Our naked girls were raped in front of the crowd. They killed my maternal uncle and my father's sister and her husband too. After raping the women they killed all of them... After raping me, one of the men kept a foot on my neck and hit me.

Rasool's case was closed because, police said, "the offence is true but undetected." in other words those responsible could not be located. After a new investigation by the Central Bureau of Investigation revealed that local police had attempted to cover up the crime, 12 persons accused of rape and murder were arrested; their trial began in September 2004. Rape laws in Gujarat state at the time of the violence were too narrow to cover the wide range of abuses women suffered. In many cases, judges and prosecutors did not protect witnesses from threats, sided with the accused and sometimes acquitted them.

"Little has been done to prevent such violence happening again," explained Director of AIUSA's Women's Human Rights program. "The Gujarat state government must rapidly make institutional changes, including gendersensitisation training for police, judges, and prosecutors. Those who deliberately hampered the prosecution of offenders should be held accountable." For many victims, justice, if it comes at all will come too late. "Many women were burned alive after they'd been raped, leaving no

trace of the crimes against them," said Dauer. "Scores of other women never filed rape complaintsthey were either prevented or were too afraid or ashamed to do so. These are the forgotten victims of the violence.'

Star LAV history

Agency of criminal justice system: A historical review

SHEIKH HAFIZUR RAHMAN

KARZON

HE history of organised police system is not a story of far back. It developed hand in hand with the development of urbanisation and industrialisation. Theoretically the police system is said to have originated for the wellbeing of the commoners, but in depth studies revealed that police, as a regimented force, always safequards the interests of upper echelon of society. The corruption of police is not normal phenomenon of the third world countries, once Edwin H Sutherland, famous sociologist, wrote 'politician-policecriminal' triumvirate were operative n the American states. The history of police in Bangladesh is inextricably related to the history of the police system of Indian sub-continent. In this write-up I try to focus the origin, and character of police in

History of Police System in Indian Sub-Continent and Bangladesh

Police was prevalent in the ancient India. In old epics like Ramavana and Mahabharata there are references as to the existence of police organisation. Manu said that people having good knowledge of local area should be appointed as police, who will better administer law and order situation. In India there were two different systems of police, one for rural areas, another for urban areas. During Maurya Gupta and Mughal period the duality of police system continued. Imperial powers did not take the direct responsibility of the rural areas to ensure law and order situation there. The local landowner or the village headman was entrusted to keep the village order. Theoretically they were made accountable to subordinate officers of the empire, but the authority was

not effectively practised. The imperial governments had

strong police system in cities where Kotwal was the head of the police administration. Although Kotwal started working from the Maurvan time, but description of their activities during Mughal period is available. During the Mughal period crime and disorder were kept under the control by the Village PanChayates. The urban centres had their own police set-up called the Kotwali system that functioned till the 19th century. Kotwal had to dispose of many fuctions of the modern police. Kotwal was to maintain night patrolling, serveillance over visitors, spies, and migrants, to arrest criminals, to see the prisons. and to eliminate prostitution and consumption of alcohol. The post of Kotwal was so powerful that it created wide opportunity to abuse power and take bribery. The Kotwal was pictured as oppressive, ruthless and arbitrary. It reminds typical character of police as being oppressive, which was so before 500 years ago and still it is the characteristic trait of police.

In addition to crime control and maintenance of order, Kotwal was chief intelligence officer of the monarch. As king's principal spy Kotwal held enormous power and when exercising the power arbitrarily tortured common people of

different strata. This torture was the first legacy of police. After coming to India and getting administrative power, British rulers were interested in collecting land revenue, and for that purpose started setting up police organisations. Crime control and maintenance of order was not the foremost task of police, their most important obligation was to help the revenue authorities to collect land revenue. For that reason police was controlled by the revenue authorities and functioned till today under the authority of Collector in the

districts. When extracting land revenue police widely practised torture. Thus torture became second legacy of police as an official

practice. The British Governor of Madras appointed a Torture Commission in 1854 and entrusted to look into the aggravated danger of torture and recommend ways how to eliminate it. As a result of the recommendations, torture by revenue officials diminished and gradually went away. The Commission was very spectacular in that it recommended to separate revenue and police functions, to make third degree (police torture) a criminal offence and to make a confessional statement to a police officer totally inadmissible as evidence. In spite of the recommendations of far reaching changes, police torture did not wither away. In addition to legacies of history, the excessive criminality of the 18th and 19th centuries

to 1792. Lord Cornwallis introduced a new police system in 1792 responsible to the Company. Under the dispensation of the new system a post of Darogha was created in every district and he was made responsible to the District Judge. Daroghas were entrusted to see the

seemed to have made torture

inevitable part of the police culture

touch the existing police system up

The East India Company did not

of Indian sub-continent.

landowners and headmen policing the villages. Darogha system failed to supervise the village police and it was abrogated in the three presidencies, Calcutta, Bombay and Madras, in 1814. This time indigenous village police system was reintroduced. Under the new system Collectors were made responsible for the law and order situation of the districts. In spite of the abolition of Darogha system the situation did not improve, rather the situation became chaotic gave rise to dacoity and insecurity of the citizens. Charles Napier conquered Sindh

in 1843. Following the Royal Irish constabulary as model he introduced a separate police organisation directed by its own officers. An Inspector General of Police was the chief of the whole province with a Superintendent of police in each district. Government had the responsibility of law and order through its Collectors, but police administration was entrusted to a new and specific department. The model was later on introduced in other provinces and it provides the basic structure of police in

Before 1857 this was the situation of police system in this subcontinent. After the great mutiny of 1857 the British Crown directly took the responsibility of India in 1858. The British rulers were bewildered at the wide-spread mutiny in 1857 in all over India. After controlling the mutiny they thought to reorganise the whole criminal justice system of Indian sub-continent. The British rulers enacted the Indian Penal Code in 1860 and the Criminal Procedure Code in 1861. With this two criminal Codes in their hands they, then, required a Police Code for the execution of the criminal law. The government appointed a Police Commission in 1860 and when implementing the recommendations of the Commission the govern-

ment enacted the Police Act, 1861. The organisation of police was established according to the provisions of this Act, which continues to regulate the police functions still today in Bangladesh, India and

Immediately after establishing police, British rulers realised that successive enquiries found the police incompetent, high-handed, and corrupt. In 1902, just about 40 years later, the Fraser Commission concluded that, the police system established by the British rulers had completely failed. It recorded that, "Everywhere they went, the Commission heard the most bitter complaints against the corruption of the police. These complaints were not made by non-officials only, but also by officials of all classes including Magistrates and Police Officers. both European and native." One may be surprised by seeing that even today after more than 100 years later corruption and police still go hand in hand!

spite of lot of criticism, alternative of police system is yet to be discovered. Though many pre-literate societies have existed without any formal police system, but it is an important agency of criminal justice system of any country having urban centres. It operates with a broad mandate of crime control and maintenance of order. The existing police system of Bangladesh should be vivisected for recasting a better law and order-maintaining agency suited with the needs of 21st cen-

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