

Uphold the spirit of the constitution

De-emphasise specificities

THE nation has been waiting for election for the last five years. And holding of a free, fair and credible election within 90 days of the expiry of the tenure of a government in office is mandated by our constitution. Our unequivocal preference shall be to follow the constitution both in its letter and spirit. But, under the prevailing circumstances in the country questions are being raised as to whether we have an election with the unresolved anomalies or have a good election that might need us to go marginally beyond the time frame.

The option of meeting the election deadline leaving many loose ends raises questions whether such steps would be in the best interest of the future government since a government elected through a flawed election will not have the required credibility or the moral authority. The constitution is for the protection and augmentation of the best interest of the people and not the other way round. Specificities and the spirit have to converge on a certain point to be of any good to the people. Together they constitute the totality of the constitution and definitely not in isolation or in negation of one another.

At the moment, the major contention centers round the authenticity of the voter list. Therefore, how credible the election will be if it is held within 90 days keeping the flaws in place? Maybe by doing so the specificities of the constitution would be complied with, but will it reflect the judgement or will of the people whose verdict may be distorted by a faulty voter list. Will it uphold the spirit of the constitution, which envisages the national election as an authentic expression of people's will?

This editorial is predicated on the assumption that the two major alliances would have by now come to a mutual agreement to participate in the election. In that case the essential aspect of it would be to ensure a free and fair election keeping both the spirit and the substance of the constitution alive.

However, in suggesting that the caveat of time may be slightly relaxed in marginally postponing the elections, such a postponement must not be beyond four to six weeks. This we suggest only if both sides commit not to raise any further obstacles for holding the election.

Keep Chittagong Port out of politics

Enough is enough

WE are concerned at the disruption of the operations of the Chittagong Port. It was already limping from as early as October due to the dock-workers' opposition to the idea of leasing out the sophisticated gantry crane operations to a private company. And since end Nov its operation has been coming to a complete standstill during the period of the 14-party blockade. Currently, as many as 70 ships are waiting at the jetty and outer anchorage for loading and unloading. To add to all this around 18000 containers are stockpiled in the container yard.

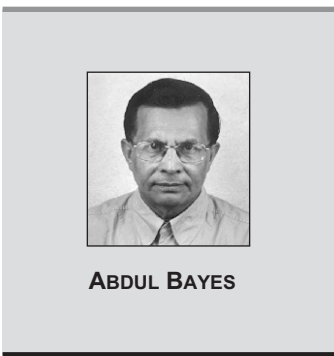
Needless to say, the blockade has already caused enormous harm to the country's economy. Our exports and imports are badly hit. The most important segment of our economy namely the RMG sector is the worst hit, the consequences of which will be certainly disastrous for the country's economy. Its effect may not be apparent immediately but will tell on our economy not in the very distant future.

The role played by the Mayor of the port city in the strangulation of the port cannot escape ones notice. It seems that Chittagong port has become his private backyard being used to wield political pressure. He is a man of virtue and popular too, but exploiting the port for political mileage is reprehensible. We therefore urge all concerned to come forward and help create the conditions so that the Chittagong Port can go into full and uninterrupted operations from here onwards.

Given the current political state of the country none other than the political parties have to take the lead in this regard. At the same time the administration too has to use all its resources and wisdom to the fullest and make the port fully operational without any further loss of time. It may be emphasized once aging that whatever may be at stake for the politicians and the political parties nothing can be bigger than the country. Finding alternate means of protests lie squarely on the shoulders of the political parties.

Holding national resources hostage to gain partisan political objectives cannot be endorsed.

Conundrum in the court



ABDUL BAYES

VERY sadly, the chief justice (CJ) of the Supreme Court seems to have entangled himself in controversy. Allegedly, the CJ also contributed to the consequent conundrums that took place very recently in the highest court of the country. We have long been hearing complaints that the CJ is not neutral, as he is supposed to be, in his power to allocate benches in the court. Adversely or inadvertently he embraced another controversial role this time. Just few moments before the judgments on three writ petitions could be delivered by the High Court (HC) bench, the CJ issued a unique stay order.

Such a judgment has been termed as unprecedented in the history of Bangladesh's judicial journey by eminent jurists of the country. To be specific and non-partisan on this point, the views of former CJ Mostafa Kamal, Justice (retired) Golam Rabbani, and eminent lawyer Dr M Johir could be counted. They hold that in their almost three decades of practices in courts, they have never come

We presume that the 14-party alliance went to the court for justice, after having failed to arrest the favour the CTG was planning to provide to a particular party. Quite logically, had there been a neutral person as the chief of CTG, much of the rot could have been stemmed. If the CTG means to man a neutral, free, and fair election, then the chief of the CTG must rise above political bias. Still there is scope to heal the wounds inflicted by the partisan roles pursued so far. In the absence of that we only foresee a fire, and a credible election will be a forlorn hope. Let the CTG act as fire brigade not as fire-lighter.

across such postponement of judgment by a CJ. Critics also contend that the CJ has been politically pushed to be partisan. We shall not argue, as some quarters have, that the two year extension of his tenure made all the difference since, true or false, such a view would amount to an aspersions on the chair of the CJ.

The CJ is believed to be the torch-bearer of justice, and the last pillar to lean on during any constitutional crisis. As a central bank is the lender in the last resort, so is the CJ the last hope for justice. Nevertheless, we cannot be oblivious to the fact that the last resort of the people's prayer for justice has been muddled and maligned, adversely or inadvertently, by the very recent immature initiatives of the CJ.

We shall, in this column, try to read the whole story of the "court-conspiracy" from a common citizen's corner. First, we fail to understand why and how an attorney general (AG) appointed by the

previous political government continues to serve a caretaker government that claims to be neutral. We think that the very first attack on the neutral character of the present caretaker government came, inter alia, from the continuation of appointment of a political person as AG. Of course the dignity and honesty of the AG should have led him to resign the moment the caretaker government took oath of office. However, that kind of decency is a scarce commodity in the country. Second, we also noticed with grave concern that the whole show was performed by the barristers-turned ministers of the previous government.

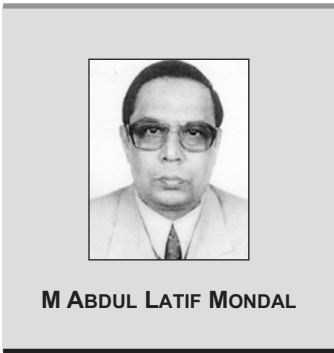
It was as if the previous government of Begum Khaleda Zia was engaged in a legal battle. The impression was clearly brought to picture in the press conference by Barrister Moudud Ahmed, et al, on behalf of the AG. In other words, the government led by Begum Khaleda Zia and Professor lazuddin sadly appear to be synon-

ymous. Third, if the hearing of such a sensitive issue should be held by a greater bench -- as has been the argument -- then the moot question is why was the HC bench allowed to continue the deliberations for three days, keeping the whole nation anxious?

And along with that is it the fact that a rule nisi on the caretaker chief, or president, was in the offing. Was the bench banned to negate that? Fourth, instead of following the normal rules of procedure in such cases, how could the AG hand over the papers of postponement to the bench? And finally, suppose the bench had issued a rule nisi asking for a clarification of the position of the president about his assumption of the post of caretaker chief? Wouldn't it be legal and ethical to wait for a reply, or to appeal to the appellate division for a hearing?

However, the good thing is that people in general have already grasped the gravity of the situation. It is that the assumption of the

Do we need such a large Election Commission?



M ABDUL LATIF MONDAL

AT present, we have a six-member Election Commission (EC), including the chief election commissioner (CEC) MA Aziz who is on a 90-day leave since November 22. Election Commissioner Mahfuzur Rahman's declaring himself the acting CEC and the president's unilateral appointment of two controversial persons to the post of election commissioner to increase their number, have seemingly destroyed all hope for reconstituting the EC with neutral persons for holding the ensuing general election peacefully, fairly, and impartially.

The above move, vehemently opposed by Awami League (AL)-led 14-party coalition and other political parties, excepting Bangladesh Nationalist Party (BNP), has thus led to the worsening of the political crisis further. The media reports suggest that the president is thinking to appoint one more election commissioner. In that case, Bangladesh will probably have the highest number of members in the Election Commission of the democratic countries in the world.

According to our constitution,

It is equally important to free the EC secretariat from the control of the executive, particularly of the office of the prime minister. The EC must enjoy sufficient administrative, legal, and financial powers to work independently, as envisaged in the constitution. The next government(s) should take these points into consideration, failing which the crisis in the EC will continue to exist.

the functions of the EC are: (a) holding elections to the office of the president; (b) holding elections of members of Parliament; (c) delimiting the constituencies for the purpose of elections to Parliament; and (d) preparing electoral rolls for the purpose of elections to the office of president and Parliament. The EC shall also perform such other functions as may be prescribed by the constitution or by any other law.

The EC has a full-fledged secretariat under it to render all assistance to execute the decisions and orders of the commission. Headed by a secretary, the EC secretariat has got one additional secretary, joint secretaries, deputy secretaries, assistant secretaries, research officers, public relation officer and necessary supporting staff. The EC secretariat has also field offices at the division, district and upazila (sub-district) levels headed respectively by the deputy election commissioners, district election officers, and upazila/ thana election officers.

What is important to note is that all executive authorities assist the EC in the discharge of its functions.

Now the question that has arisen is: do we need such a large EC to perform its assigned functions?

In order to answer this question, let us have a look at the composition of the ECs of some countries, including our neighbouring countries.

India is the largest democracy in the world. The superintendence, direction and control of the preparation of the electorate rolls for, and the conduct of, all elections to Parliament and to the Legislature of every state and of elections to the offices of president and vice-president are vested in the EC. Although the constitution of India has provided that the EC shall consist of the CEC and such number of other election commissioners, if any, as the president may from time to time fix, yet the EC of India originally had only a CEC. It currently consists of the CEC and two election commissioners. The concept of multi-member commission has been in operation since 1993, with decision making power by majority vote.

According to the constitution of Pakistan, for the purpose of election to both Houses of Majlis-e-Shoor (Parliament), Provincial Assemblies, and for election of such other public offices as may be specified by law or until such law is made by the Majlis-e-Shoor by order of the president, the EC shall

consist of the CEC and four members, each of whom shall be a Judge of a High Court from each province appointed by the president after consultation with the chief justice of the High Court concerned and with the CEC.

According to the 17th amendment of the constitution of Sri Lanka, the election commissioners shall be appointed by the president on the recommendation of the Constitutional Council composed of the prime minister, the speaker, leader of the opposition in parliament, one person appointed by the president, five persons appointed by the president, on the nominations of both the prime minister, the leader of the opposition, one person nominated by the majority of the members of parliament belonging to political parties or independent groups other than the respective political parties or independent groups to which the prime minister or the leader of the opposition belong. The president shall appoint one of the five election commissioners as its chairperson. The principle objective of the EC is to conduct presidential, parliamentary, and local elections and the holding of referendum in a free and fair manner.

The Australian Electoral

position of the caretaker chief by the president has not been legal. Otherwise, why should there be a hurried move to arrange a stay order on the judgment? Common citizens like us barely understand the legal dynamics. What we simply understand is that there was something which hit the supporters of the erstwhile government below the belt: the illegal possession of the chair of the caretaker chief by the president himself.

Just that move by the CJ caused havoc in the court premises. Disconcertingly, rampant vandalism swept through the court premises. In the past, we had heard about lawyers kicking at the doors of the CJ's room, or how political parties had marched against judgments. In fact, there should be very little disagreement on the fact that such vandalism should be condemned. We, therefore, strongly condemn such heinous attempts at the highest citadel of justice. But more so, we equally hate any act which invites such atrocities, or provokes people to take the law in their own hands. One should look seriously before one leaps -- be it as chief justice or as chief of the caretaker government.

In this connection, we would also like to talk on the activities of the caretaker government (CTG) for the last 35 days. The recent happenings in the court building have a direct connection with the behaviour of the CTG. It is unfortunate that, unlike the previous CTGs, the present CTG has become pitifully partisan. There are many points to back that premise, but allow us to

submit only three.

First, two additional commissioners with strong allegiance to a particular political party were appointed to the EC. In fact, one of them sought nomination from BNP, and the other allegedly campaigned for a BNP candidate. Second, while the previous CTG overhauled the administrative echelon within 24 hours through transfers, postings etc., the present CTG seems to be clinging to the administrative arrangements of the previous government. And third according to NDI, about 13 per cent of the voters -- that is 1.33 crores voters -- are fake or overlapped voters. Without correction of the voter list any drive for a fair election would be doomed to fail.

We presume that the 14-party alliance went to the court for justice, after having failed to arrest the favour the CTG was planning to provide to a particular party. Quite logically, had there been a neutral person as the chief of CTG, much of the rot could have been stemmed.

If the CTG means to man a neutral, free, and fair election, then the chief of the CTG must rise above political bias. Still there is scope to heal the wounds inflicted by the partisan roles pursued so far. In the absence of that we only foresee a fire, and a credible election will be a forlorn hope. Let the CTG act as fire brigade not as fire-lighter.

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Commission consists of the chairperson (who must be a judge or a retired judge of the Federal Court), the electoral commissioner (who performs the functions of the chief executive officer), and one part-time non-judicial member.

The Electoral Commission Act, 1996 of the Republic of South Africa provides that the commission shall consist of five members, one of whom shall be a judge, appointed by the president on the nomination by a committee of the National Assembly proportionately composed of all parties in the National Assembly and recommended by a majority members of the National Assembly. The objects of the commission are "to strengthen constitutional democracy and promote democratic electoral processes." The commission has been mandated to manage national, provincial and municipal elections and referendums.

The Federal Election commission of the US is an independent regulatory agency to administer and enforce campaign finance legislation. It describes its duties as "to disclose campaign finance information, to enforce the provisions of the law such as the limits and prohibitions on contributions, and to oversee the public funding of presidential elections." The commission is made up of six members, who are appointed by the president and confirmed by the US Senate.

It thus appears from the above that big countries such as India and Australia have got Election Commission consisting of three commissioners including the chairperson. On the other hand,

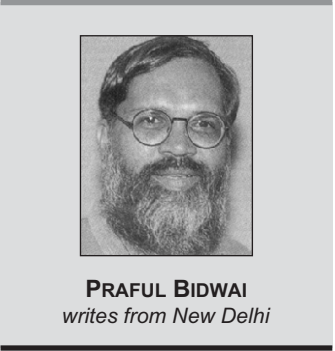
Bangladesh, a small country of 147,570 sq km, has got a large EC. This has been done purely on political whim without examining the requirement. The nation cannot afford to bear the costs of maintaining such a large EC. Tax-payers' money must not be unnecessarily spent. For Bangladesh, a three-member EC, including the CEC, would be enough to discharge its assigned responsibilities. Further, a six/seven-member EC is likely to create problems sometimes in the working of the EC. Available information suggests that the EC of Bangladesh had never before more than four commissioners, including the CEC.

Besides making the EC a three-member body, a mechanism has to be found out to appoint non-partisan and competent persons CEC and election commissioners. Making provision for the Constitutional Council, following the Sri Lankan model to the extent possible, in the constitution to regulate appointments in the constitutional bodies, including the EC, may well serve the purpose.

Further, it is equally important to free the EC secretariat from the control of the executive, particularly of the office of the prime minister. The EC must enjoy sufficient administrative, legal, and financial powers to work independently, as envisaged in the constitution. The next government(s) should take these points into consideration, failing which the crisis in the EC will continue to exist.

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New turn in China-India relations



PRAFUL BIDWAI
writes from New Delhi

CHINESE President Hu Jintao's visit to India surpassed some of the upbeat expectations it had raised. The true measure of its success does not lie in the China-India commitment to doubling bilateral trade to \$40 billion by 2010, nor even in the large number (13) of agreements signed on various issues.

Rather, it lies in the fact that the two countries resolved to build a broad-horizon relationship in a remarkably relaxed manner.

Mr Hu came here against the unfortunate reiteration of China's claim to Arunachal Pradesh. But the negative effect of this undiplo-

India should choose a radically different approach. It can leverage its great strengths: as a long, continuous civilisation; as the world's largest democracy; as one of its most plural societies; its history as a campaigner for great causes like decolonisation, nuclear disarmament and opposition to hegemonism, and an advocate of North-South equality. This will impart a moral edge to India's policy and contribute to making the world a better place.

matic repetition of Beijing's old position was soon wiped out.

Mr Hu assured India that the China-India relationship is not merely a bilateral matter, nor defined by political expediency. China views it "from a strategic and long-term perspective" -- the very words it uses to describe traditionally close China-Pakistan relations.

India had four major concerns: China's position on sharing rivers, especially the Brahmaputra, which it is allegedly diverting; Beijing's commitment to de-linking its relations with Pakistan from those with India; its likely stand on Asian-level cooperation involving India; and China's attitude to the United States-India nuclear deal and to India's claim to a permanent seat

on the United Nations Security Council.

India and China agreed to establish an expert-level committee on rivers. Mr Hu emphasised the principle of separation in China's relations with India and Pakistan, first enunciated 10 years ago.

China also supported India's proposals for greater coordination between the "BCIM countries" (Bangladesh, China, India, Myanmar).

Most important, Mr Hu said China wouldn't stand in the way of approval of the US-India nuclear deal by the Nuclear Suppliers' Group. Nor will it oppose India's Security Council bid.

It'd be naive to expect China to proactively recommend the nuclear deal to the NSG. It'll wait to

see other members' reaction. But China probably won't lead the opposition to India -- as it did after the 1998 nuclear tests.

This, like the signing of a Sino-Indian nuclear cooperation agreement, suggests that China has changed its strategy towards India because it recognises India's growing global importance.

It's in this light that we must see Mr Hu's Vigyan Bhavan address. "The course we chart and the pace of our development have major implications for peace and development of Asia and beyond," he said, stressing India and China's "common interests" in "developing multilateral cooperation for creating a multi-polar world."

Mr Hu said China doesn't seek "selfish gains" in South Asia, but

wants to play "a constructive role" in promoting peace and development there.

He also said: "China sincerely welcomes India's development, supports a greater role for India in international affairs, and sincerely wishes India even greater achievements in the years to come."

It's hard to dismiss this as rhetoric calculated to deceive India. Mr Hu must be acutely aware that the world is watching China and India as emerging Great Powers and home to two-fifths of humanity.

How China conducts its actual diplomacy with India remains to be seen. But its policy stance has already shifted.

This opens a historic opportunity for India and China to build a fruitful partnership. India must not play a hostile "balance-of-power game" with China, as urged by our pitifully pro-US strategic experts who want India to become Washington's junior partner.

This doesn't argue that all's well with China-India relations. Several disputes and disagreements remain. The border dispute cannot be wished away. But India and

China are closer than ever to resolving it.

At any rate, India shouldn't allow the dispute to impede growing relations with China in trade, investment, cultural exchanges, science and technology, and people-to-people interaction.

India shouldn't be overly concerned at deepening Sino-Pakistan relations. China and Pakistan have long been strategic partners. Their special military relationship is now reflected in China's offer to sell airborne warning and control systems (AWACS) to Pakistan, to help it match India's capacities, aided by Israel and the US. India too has its supporters and arms providers.

We're often told China probably transferred clandestine nuclear technology to Pakistan. But China also sold heavy water and enriched uranium to India.

It's unlikely that today's China, keen to appear "responsible," will behave the way it earlier did.

We shouldn't let past perceptions veto a cooperative relationship with China on normal, honourable terms. India must discount the

propaganda that China is "encircling" India, by building Gwadar port in Balochistan.

India has too much military strength to feel intimidated by this.

Ironically, those who promote hostility with China demand that India should follow an amoral, real-politik-based foreign policy approach, exactly like China's! India should adopt the "enemy's enemy is a friend" premise and emulate China's cynicism -- blatantly visible when Beijing allied with the US against the USSR.

This is a recipe for removing the moral backbone from foreign policy-making altogether. It'll reduce India's broad-horizon policy to a petty exercise. India won't earn the world's respect if it behaves parochially, without reference to universal principles. Indeed, it will damage its own standing.

India should choose a radically different approach. It can leverage its great strengths: as a long, continuous civilisation; as the world's largest democracy; as one of its most plural societies; its history as a campaigner for great causes like

decolonisation, nuclear disarmament and opposition to hegemonism, and an advocate of North-South equality.

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If Indian leaders join hands with China to demand alternative approaches to economic policy and management of the international order, that could open up avenues of non-market-based development appropriate to the needs of underprivileged peoples and voiceless countries.

But this demands a radical change in domestic policies, including rejection of market fundamentalism, pursuit of people-centred development, principled secularism, and extension of human rights.

China's rulers are probably too devoted to market-based strategies to summon up the will to do any of this. But are India's rulers ready?

Praful Bidwai is an eminent Indian columnist.