

Is 90 days written in stone?



To conveniently argue that parliamentary elections must be held within 90 days of the dissolution of the Parliament to uphold the Constitution tells only part of the truth. The Constitution further mandates the EC to make the elections peaceful, fair and impartial. It also enjoins EC to delimit constituencies. The relevant law requires that constituencies be delimited after every census. The court directed the Commission to disclose information about candidates. Thus, to fully meet its constitutional obligations, the EC must create the enabling conditions for peaceful, fair and impartial elections, prepare a reasonably accurate electoral roll, delimit the constituencies and also disclose accurate information about candidates running for elections. We hope that the members of the Election Commission will read the Constitution in its entirety rather than only part of it.

BADIUL ALAM MAJUMDAR

ARTICLE 123(3) of the Constitution mandates: "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."

This is clearly a constitutional mandate to hold elections within 90 days. However, is the mandate absolute? In other words, must it be adhered to no matter what? Must the elections be held irrespective of the conditions prevailing in the country? Must they take place ignoring other constitutional provisions and legal constraints? In our opinion, it is a conditional constitutional mandate.

Article 123(3) is not the only constitutional provision relating to elections. There are other such provisions and they must be read together. Thus, in our view, 123(3) of the Constitution must be read in conjunction with Article 119(1)(b), Article 58D(2) and Article 119(1)(d), which are other relevant constitutional provisions.

Article 119(1)(b) empowers the Election Commission (EC) to hold parliamentary elections. But what kind of elections should they be? Article 58D(2) answers that question. It requires that those elections are held "peacefully, fairly and impartially." That is, the EC must hold parliamentary elections in 90 days and that they are peaceful, fair and impartial. In other words, mere holding elections within the 90-day time limit is not enough, they must meet the peacefulness, fairness

and impartiality criteria.

Let us examine the fairness and impartiality criteria. The 1991 parliamentary elections are widely viewed to be the fairest of all elections held in independent Bangladesh and it may therefore be instructive to examine them. What were the enabling conditions prevailing during that time? Do they exist now?

It seems that there were seven major factors that contributed positively to making the 1991 elections fair: (1) absolute neutrality of the caretaker government (CTG); (2) credibility of the EC; (3) impartiality of the bureaucracy; (4) even-handedness of the law enforcement agencies; (5) unity among the people of all walks of life against autocracy; (6) insignificant presence, if any, of criminal elements -- owners of black money

and muscle power -- in politics; and (7) commitment of political parties to democracy, particularly to fair elections. Do we have the same objective conditions present at this time?

The credibility and impartiality of the CTG is now in serious question. In fact, because of the questionable actions of the Chief Adviser and President Dr. Iajuddin Ahmed, the "non-party" character of the CTG is now seriously compromised. Most citizens have also lost confidence in the EC because of all its controversial actions of the past year and a half and its flouting of the relevant electoral laws and court directives. Two recent controversial appointments to the Commission only destroyed its credibility further. Thus, two most important institutions -- CTG and EC -- directly and indirectly connected to parliamentary elections have now lost confidence of a large segment of the population and have become the biggest stumbling block to acceptable elections.

Thanks to the widespread use of "clientelism" of the successive governments of the past decade, the impartiality and even-handedness of our bureaucracy and law enforcement agencies are now in serious question. In fact, over the years they have become the instruments for aiding and protecting the interests of the ruling elites. Patronage politics has managed to divide our entire nation, including teachers, journal-

ists, trade union activists, students and the like, into confronting camps. Thus, the unity among people that existed in the late 1990s is now absent due to the divisiveness of our politics.

Criminalization of politics and politicization of crimes are now common phenomena in Bangladesh. Political parties, in all practical purposes, have become dens of criminals. In addition, instead of being united against autocracy, they are now committed to winning elections at any costs to perpetuate their "rights" -- rights bestowed through elections -- to loot and plunder. Consequently, confronting political parties have also become serious barriers to fair elections. Thus, it is our judgment that the enabling conditions for fair and impartial elections do not appear to prevail in Bangladesh at this time.

Fair elections also require a reasonably accurate electoral roll. The Constitution (Article 119(1)(d)) enjoins the EC to prepare the electoral roll for parliamentary elections. Citizens' right to franchise would be impeded if they are left out of the electoral roll because of the ineptness or evil intentions of the EC functionaries. If fictitious names are in the roll, the fairness of the elections would be seriously compromised. Thus, if the Commission tries to hold elections without preparing a dependable electoral roll, it will only meet a part of its constitutional obligations with

regard to parliamentary elections. There are now widespread accusations that our EC has so far failed to prepare a reasonably reliable electoral roll for the coming parliamentary elections.

In addition, fair elections require delimitation of constituencies after regular intervals. Article 119(1)(c) of the Constitution entrusts EC with this responsibility. *The Delimitation of Constituencies Ordinance, 1976* requires that: "The territorial constituencies shall be delimited afresh upon the completion of each census, for the purpose of general election to Parliament to be held following each census." But our EC has failed to perform this constitutional obligation even though more than five years have elapsed since the last population census held in 2001. Thus, there is now wide variance in the number of voters in different constituencies. For instance, the number of voters, based on the latest available information, vary from the highest 847,000 in Dhaka-11 to the lowest 166,000 in Moulovibazar-1. Even in Dhaka district itself, the difference is stark. For example, compared to Dhaka-11, the number of voters is Dhaka-1 is only 167,000. Such wide variations are not consistent with the concept of fairness.

Furthermore, clean and efficient government through fair elections is the right of every citizen. Thus, the Commission has the obligation to make the elections meaningful in that honest and competent candidates have the fair opportunity to get elected. This requires disclosures of accurate information about the antecedents of candidates running for office.

The High Court Division of the Bangladesh Supreme Court in *Abdul Momen Chowdhury and others vs Bangladesh and Others* (Writ Petition No. 2561 of 2005) has provided directives for disclosures. However, our EC has so far taken no effective steps to fully and completely disclose the necessary information regarding candidates who will contest in the coming elections. In fact, our repeated efforts on behalf of Shujan to ensure such disclosures have faced only non-cooperation from the EC.

One must also ask -- is the present condition prevailing in the country congenial for peaceful elections? More specifically, has the EC taken the initiative to intern the criminal elements who can threaten peace during elections. Has it taken any effective steps to recover illegal arms which may be used by the criminals? It may be instructive to note that the Indian EC compelled their law enforcement agencies to put behind bars 140,000 criminals during the last assembly elections in Bihar, as a result of which fair elections were held for the first time in that state.

To conclude, the EC is the constitutional body responsible for holding parliamentary elections and it is obliged, under Article 123(3) of the

Constitution, to do so within 90 days of the dissolution of the Parliament. However, Article 123(3) is not the only constitutional provision relating to holding parliamentary elections. Thus, the requirement of the article is not absolute, rather conditional, and to conveniently argue that parliamentary elections must be held within 90 days of the dissolution of the Parliament to uphold the Constitution tells only part of the truth.

The Constitution further mandates the EC to make the elections peaceful, fair and impartial. It also enjoins EC to delimit constituencies. The relevant law requires that constituencies be delimited after every census. The court directed the Commission to disclose information about candidates. Thus, to fully meet its constitutional obligations, the EC must create the enabling conditions for peaceful, fair and impartial elections, prepare a reasonably accurate electoral roll, delimit the constituencies and also disclose accurate information about candidates running for elections.

We hope that the members of the Election Commission will read the Constitution in its entirety rather than only part of it.

Dr. Badul Alam Majumdar, Secretary, Shujan (Citizens for Good Governance).

'There are many more miles to go'

Mark Tully, a great friend of Bangladesh, wants people to be ignited with the spirit of the liberation war. From his own point of view, the Bangladeshis have miles to go for the construction of "Sonar Bangla" (the golden Bengal). In his recent five-day visit to Bangladesh, Mark Tully shared his 1971 experience apart from discussing other issues with The Daily Star's Sheikh Sabiha Alam.

Sheikh Sabiha Alam: We understand that you have been very close to Bangladesh and it feels good to have you back.

Mark Tully: All credit goes to the Liberation War museum, they have brought me here and I am spending hectic days, you see, I have talked a lot...

And we want to listen more, especially about your experiences during the liberation war.

Well, in 1971, I was working for the BBC and mainly from London. I came to Bangladesh as the first party of journalists who were allowed to come. At that time only one or two journalists managed to survive for one night and then they were thrown out. The only reports available were the big reports by Anthony Masearenas who had come here as a Pakistani journalist and was expected to write the army story. But he had later shifted to Sunday Times and portrayed the actual happenings in the country.

What moved you most at that time?

I just tried to depict the truth and at that time BBC was critical on the brutal issues and thus the whole world became aware of what was then happening in East Pakistan. In fact, I witnessed widespread destruction by the army. Driving through the Aricha ghat, one after another. Some people told me their

stories, so basically I confirmed the story put out by Masearenas. It was correct, great brutalities had been committed. I saw the buildings that have been destroyed.

When did you come after the liberation war?

Quite soon, I interviewed Sheikh Sahib and he gave me a picture that I still have. You are not meant to accept presents when you work with the BBC but when Sheikh Sahib gave me a present I just couldn't be rude. I kept the picture and treasured it and I will never sell it.

When did you come last before this visit?

Last time since I left the BBC I haven't been here very often. Last time I came was when the Jamuna Bridge was opened. I was very keen on railways and there was controversy on whether it would be a road bridge or a railway bridge. So what I could do was exert a little influence. I spoke to World Bank and ADB and said you must put the railway on and I came to see the railway actually on.

Did you find any change this time?

Several changes, absolute and obvious changes. Dhaka has grown hugely, many more building but it was quite a small place before. And in your field media has expanded tremendously and as a result of this I think, to some extent, what I may call the dead hand of the

government has been removed a bit. With Bangladesh television and radio, which are very sarkari -- very government oriented. So it's a very big change.

Does it seem positive to you?

What I would love to do which I haven't done though I was near the Jamuna Bridge countryside, I want to see what changes were there in the rural areas. Because, I think capital city is always very misleading and one of the funny thing, which I believe strongly is that there is something going wrong with the developments.

Can you please explain a bit further?

Everything is getting concentrated in one place, wealth is not going down in the rural areas and as a crowded country in Bangladesh you cannot allow simply Dhaka or Chittagong to become bigger than the others. Wealth has to go down in other places as well. I would like to go and see how much progress or changes have been made there.

But a group of people boost about the GDP growth.

Measuring a country's development though GDP is quite the wrong way. An Indian economist said to me the other day, which I think is very true about the growth and market in particular which is the engine of growth people believe

now -- the market is like a donkey, it's fine if you ride it or lead it but if you just get led by it you would get kicked. If you just go for GDP blindly you are following the country and would get kicked. If you still have such a low growth in human development index then what is the meaning of all this growth?

Then you are going to the countryside this time to see the changes?

No, not this time, I am now busy with writing a book and the publisher is now at my back. I wrote many books on India, but this time it would be something very important for Bangladesh as well.

What will the book be about?

This book in a way is about my experiences in the sub-continent - its tradition or pluralism. This part

of the world is the historic home of every great work and religion. In case of Christianity, which is my religion, we believe Saint Thomas came here for preaching. Muslims, even during the time of the Prophet of Islam, believed that saints came here. There have been Hindu rulers, Muslim rulers, British rulers but this lovely multi-religious nature has survived and that's what I want to write about in this book.

Is it concentrating on the sub-continent only or will have an impact on the West?

In the West, you will see controversies even now on whether a Muslim woman can wear a headscarf or not. It is quite clear in the west that they do not understand religious pluralism. Pluralism in this part of the world may hopefully help them understand this.

And Bangladesh is already a haven of pluralism?

Absolutely, this pluralism is very much part of your Bengali culture as well and one of the great news for

the Liberation War Museum is that tremendous emphasis is put on in this pluralistic tradition of Bengal -- of both sides of Bengal. I believe one religion should not be dominating rather giving space to every one.

How does the present day of politics differ from the politics just after the liberation war?

Actually there are big changes in politics. When I first came to Bangladesh, Awami League was the all powerful and unchallenged, we knew Awami League will win and never bothered to report on election. Now there is of course a much more balanced electoral scene. I think one big dominant party is not good for democracy.

What should be the gateway now for Bangladesh regarding democracy?

The key is that you should have a free and fair election, and the party which is defeated should accept defeat, and I am sure it will happen this time in Bangladesh.

You have been in Delhi for a pretty long time, what do you think of the bilateral relation between the two countries?

Unfortunately, the whole subcontinent is still living with the mentality of partition with every country looking for certain element of hostility, certain element of rivalry at each other. And I think this is tragic when the rest of the world is moving towards regionalism and you have a body that is impotent and powerless like SAARC.

What should be the means to dissolve the crisis?

Both countries should realize that, like you live with neighbors or other members of your family, no man is ever an island by himself and no nation is an island by itself. What happens in Bangladesh affects India and vice versa.

But Bangladesh experienced water crisis due to Farakka.

On the Indian side, I believe, they have at last realized that Farakka was ill-advised.

And there is tremendous trade gap.

Yes, you have a very adverse balance trade with India but India is your historical partner. India should say to Bangladesh that you can have a duty free access.

And what if that damages the economy?

It would not damage the Indian economy; it would be hugely beneficial for India and its politics in this country. All the business interest will lay on good relation with India and the whole attempt to build politics on an anti-Indian front would actually collapse.

Should it be done unilaterally by India?

Bangladesh too should take responsibility. But, what India should remember is that India is a large country with a huge economy. And naturally due to the heavy trade imbalance, Bangladesh fears that Indian goods can swamp it.

You mean the transit will facilitate our economy?

Think of Asian Highway, what Bangladesh did was all after the mutual suspicion. Economic development would come with that highway and think of both these things-trade and highway, and transit; these are examples of this attitude of mutual suspicion and submerged hostility.

Can you define what would be an ideal bilateral relation?

Look, we have four or five flights from Dhaka to Delhi; I would love to have that sort of transport facility for rails or roads I would love to catch a train and go to Delhi. With proper transportation, water system and a joint campaign, eradicating dis-

eases can be done on regional basis.

What is your message for Bangladesh?

I don't think I am the right person to give a message. I would just say that this museum has asked me to come here and the whole point of it is the maintenance of the spirit of the Liberation War. I think Bangladesh must continue to

remember that the independence has just been achieved and there are many more miles to go. I would hope, the spirit of liberation will inspire Bangladesh and the nation will go on with its spirit until they do construct what all Bangladeshis have in their dreams -- a "Sonar Bangla" -- the golden Bangladesh.

The battle of Baghdad



America indeed could have become the saviour for Iraq by putting pressure on Saddam for popular participation. Instead America's mission for the destruction of weapons of mass destruction has turned out to be a 21st century scourge for the Iraqis. Now that the ethnic and sectarian compact has broken down, the rage will have no master. The battle of Baghdad, if it starts, will definitely take a heavier toll, for it will not stop at anything. The message of the American misadventure in Iraq is that the greatest good for a people is best served when it is left to them to build it.

SYED MAQSUD JAMIL

Tis a winter of despair for President Bush. The Democrats have taken control of Congress. Baghdad is bleeding. America's verdict is clear: find the way out of Iraq. A 21st century army has lost 3,000 soldiers in the last three years. The toll is much worse for the innocent Iraqis. Over 150,000 have been killed. A mission that vowed of a grandiose goal has descended into a pestilence that threatens to lay waste to a land

that used to glitter. Iraq is a lesson the world should learn. Even the best of jackets do not fit.

The Americans have let the genie out of the bottle. Iraq is paying the wages of an inequitable ethnic order. It is the age-old Shia-Sunni bug and the pride of the blue-blooded Arabs. There is, in principle, little to divide the Shias and Sunnis except the legacy of Imams and the supremacy of the Shiite clergy.

The Shias will naturally be resolved to maintain a strong presence in Baghdad and strengthen their hold on the holy

places. They may find it necessary to clip the Sunnis in their own land. For that they have the men and arms. The Islamic Army, the Jihad Army and the Mahdi Army and fierce clerics and warlords like Muqtada al-Sadr, Abdul Aziz al-Hakim, and Abu Derra. The Sunnis will more than make up their apparent weakness in numbers with Jihadist volunteers from Jordan and other Sunnite Arab countries.