

Is the Grand Alliance decision to boycott the election proper?

The president, almost by definition, is the last bastion of power to defend the Constitution and the country. He should rise above his so-far-displayed mindset of a skewed interpretation of it, and show true statesmanship to bring all the major contestants to the electoral battle by ensuring a level playing field. If it means re-scheduling the whole process of election, which it will surely do, he must do so extending the time for election.

ALI AHMED

ELECTIONS may well be compared to fuels and lubricants that keep the engine of democracy going. And democracy, admittedly not an end in itself, is just a means of running a statecraft to attain the maximum possible welfare of the citizens of a country.

Democracy, as a system of governance, is acknowledged to have many flaws, but is still credited to be the best available system of running a statecraft, at least till the present times. And we, as a nation, after quite a long struggle and enormous sacrifice in man and material, have established that this country will run in a democratic, and not in any other, manner.

Why, then, have the Awami League and its partners in the Grand Alliance, professing democracy as their ideal for running the statecraft, suddenly decided to boycott the upcoming general

elections? The matter definitely calls for a dispassionate analysis.

The considerably prolonged periods of stultifying authoritarian rule this nation went through, and the enormous sacrifices she made to restore democracy, qualify her for nothing short of an unadulterated democratic system of government at every sphere of the national life. Yet it was not to be.

The mass upsurge of the early nineties of the last century throwing off the military dictatorship of General Ershad, we thought, would establish a democratic order, and the start, despite some occasional hiccups, appeared quite well. But, unfortunately, it did not take our volatile politics long to sink into uncertainties, and at certain point of time, it appeared that the demise of our nascent democracy might as well be just around the corner.

The emergence of two major parties, or rather blocs, after the fall of the latest round of military dictatorship, gave rise to the hope that we would henceforth have an

uninterrupted democratic system of government under a two-party system, the latter being a rarity in undeveloped countries.

The initial bickering between the two parties was assumed to be the teething problems of a fledgling democracy. But the bickering soon degenerated into an unfortunate war of attrition of sorts and the basic rules of democracy, i.e., treating the other with respect as a past and future ruler was thrown to the four winds. The winner-takes-it-all mentality engulfed all strata of the major parties, including their highest leadership, and an ambience of complete distrust swallowed the body-politic of the nation.

Fair and credible elections, so vital to democratic dispensation, naturally became a victim. It was sought to be salvaged, after a bitter political struggle, by means of institutionalising a system of caretaker government, through a constitutional amendment, under which a sufficiently elaborate system was put in place.

Under this system, hitherto untried anywhere else in the democratic world, the last retired chief justice of the Supreme Court would head such a caretaker government. He would be assisted by a ten-member council of advisers to be picked up from amongst the non-partisan people of hopefully impeccable track records.

The first two such elections won a large measure of acceptability, both nationally and internationally, owing to the genuine neutrality and administrative competence of the then presidents and the chief advisers. The present set-up, however, they may lay claims to, unfortunately does not qualify on either of those two essential counts, causing this present stalemate threatening the very continuation of a democratic system of government in the country.

Since politics, after all, is a contest for attaining and retaining power of running the statecraft, whether for welfare of the people or for feathering the rulers' own nests, it is only natural that the political party finding itself at any given time in power will try to prolong, if not perpetuate, its hold onto it by employing all available means at its disposal, subject of course to the rules of the game, and the electorate's acceptance or otherwise of what it employs for such a game. In a society with undeveloped state institutions and a largely unedu-

cated electorate, some such political parties tend to venture too far out in its attempts to hold onto power.

Although the previous BNP and Awami League governments can hardly be credited to have fully followed the rules of the game, the latest spate of rule by Jamaat-BNP combine, has obviously exceeded all limits, whether in the areas of corruption, incompetence, or breaking of the rules of the game, or all. Politicisation of the bureaucracy, judiciary and almost all other state institutions has so much cornered its opponents that they find the political playing field of electioneering not only not level, but insurmountably steep for them to run. The litany of naming the disadvantages against them is perhaps too well-known to need any repetition here.

It was expected that the present caretaker government, although headed by a partisan president who has also not-too-subtly manoeuvred to land on the vital post of the chief adviser in addition, not to mention many other very important functions of the state, would rise to the occasion to ensure a level playing field to the major contestants, ensuring a smooth transition through a fair and credible election.

But the steps he has so far taken, and those not taken despite urgings to do so from all sensible quarters, appear to have forced the

Grand Alliance to opt for an apparently self-defeating course of boycotting the election. Whatever the BNP-Jamaat combine says, it portends danger to democracy and an irreparable damage to the nation. The boycotting parties will most likely not sit idle while the president hands over the reins of power to BNP on a platter, but will go for a severe agitation, which is feared to be long enough to severely damage the economy and the polity of the country.

The president, almost by definition, is the last bastion of power to defend the Constitution and the country. He should rise above his so-far-displayed mindset of a skewed interpretation of it, and show true statesmanship to bring all the major contestants to the electoral battle by ensuring a level playing field. If it means re-scheduling the whole process of election, which it will surely do, he must do so extending the time for election. We would humbly remind the president that history remembers both its heroes and its villains. The situation, no doubt, is complicated enough, but not too complicated for the president not to see which way is heroic, and which is villainous.

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The perfect storm

These events have not happened overnight and as we warmly greet the new year we can only be encouraged by the storm that have gathered over our cultural world. But unlike the dreaded monsoon where the country is flooded disastrously, this is one storm that we look forward to welcoming with open arms.

SADYA AFREEN MALLICK

LIKE pre-monsoon droplets, a number of separate events seem to have converged into a powerful torrent in Bangladesh's cultural world. In performing arts, music, cinema, fashion and media in general "returning to our roots" is back with a bang.

One bell-weather of this revivalism is the wedding ceremonies where most of the Bollywood songs seems to have made way for the folk, fusion and romantic classics of the 60s and 70s. Young composers have drawn both praise and cynicism for fusion, but its popularity has been unstoppable. Supported by recent launches of private radio stations, it has won back the youth, now humming home-grown tunes. And no one failed to notice the heavy emphasis on nationalism on the vastly successful *Close-Up-1*, where judges, contestants, and audience were regularly moved to

tears listening to the "lost" songs of yesteryears.

The recent concert organized by Transparency International Bangladesh to highlight fight against corruption drew a big audience and is perhaps one example of how culture is being increasingly used to get messages across to the future leaders of the country.

In fashion, local craft has mushroomed across the country and beyond. What started as hobbies for many, have grown into fashion houses catering to local designs and material. There will perhaps always be an allure for the foreign-designer brands, but side-by-side the appeal amongst consumers for local designer brands is a much welcome dimension. Hats off also to the stars and fashion models who have used popular means of bringing these designs to the national platform.

The private channels have also caught on this national sentiment.

Smartly directed documentaries, talk shows, musical programs are geared to promoting a host of ideas that are considered an important part of our heritage. Interviews and shows on topics such as bauls, instrumentalists, and craftsmen are slowly but surely finding a growing audience.

The widespread acceptance of this trend seems to have shot a dose of confidence into the minds of today's youth. They are increasingly becoming more vocal on fundamental issues and ways to promote traditional values. Young reporters are breaking boundaries in terms of quality investigative reporting. Talk shows with live audiences are discussing issues ranging from corruption to HIV to political ethics. At the same time the international transmission of the private channels seems to have knitted the expatriates to home. Across Middle East, UK, and North America, these channels have been magnets to Bangladeshis



starved for quality programs.

Film-makers have joined the wave. People have flocked to the cinema halls to see movies on our independence war, movies that have challenged folk-superstition

and more recently movies on the political/economic stalemates.

These events have not happened overnight and as we warmly greet the new year we can only be encouraged by the storm that have gathered over our cultural world.

But unlike the dreaded monsoon where the country is flooded disastrously, this is one storm that we look forward to welcoming with open arms.

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Highest judiciary victim of a blatant fraud?

Ensuring justice is important because, as the old adage goes, where justice ends, anarchy begins. These will also prevent our democracy from becoming a total monocracy. If the Court intervenes, suo moto, it will be a unique display of the judiciary's commitment to the protection of the public interest.

BADIUL ALAM MAJUMDAR

DECEMBER 19, 2006 -- a day that will live in infamy in the judicial history of Bangladesh. That was the day when a blatant fraud was perpetrated on the highest judiciary of the land by a vested quarter. That was the day when false and fabricated information was submitted before Justice Md. Joydul Abedin, the Chamber Judge of the Appellate Division, to obtain stay of an historic judgment on disclosures passed in May 2005 by the High Court (Abdul Momen Chowdhury and others vs. Bangladesh and others, Writ Petition No. 2561 of 2005).

As a result of the unfortunate stay, the voters will be denied of the right to know the antecedents and financial backgrounds of the candidates running in the coming parliamentary elections. The voters' right to information about candidates is important because it is part of their fundamental right.

The background of the unfortunate incident is as follows. The High Court Division of the Bangladesh Supreme Court, in a seminal judgment delivered on May 24, 2005, directed the Election Commission (EC) to collect, with the nomination papers of each candidate in parliamentary elections, the following information in the form of an affidavit to be sworn

by each of them: (a) academic qualifications with certificates; (b) any pending criminal accusations; (c) any record of past criminal cases and the results; (d) the candidate's profession/occupation; (e) sources of the candidate's income; (f) description of the role he/she played in fulfilling his/her commitment to the people, if the candidate was a parliament member before; (g) description of assets and liabilities of the candidate and his/her dependents; and (h) particulars and amounts of loans taken from banks and financial institutions personally, jointly or by a dependent, or bank loans taken by companies from banks where the candidate is the chairman/managing director/director.

The Court further directed the EC to disseminate the information thus collected by using the media.

On April 6, 2006, a three-judge bench of the Appellate Division, comprising of the Chief Justice and two other justices, granted leave to appeal filed by one Mr. Abu Safa against the above judgment.

There was something unusual about the appeal. Mr. Safa was not a party to the original writ -- he was a third party. In addition, the original petitioners and their lawyers were not present at the hearing -- they were not informed of it.

In granting the leave to appeal, the bench of the Appellate Division refused to stay the High Court

judgment. Instead, the Court directed that the matter be heard in the regular bench on a priority basis. Accordingly, during the last regular session of the Court, the case appeared in the cause list everyday bearing the serial number 186 and case number CA5706. In a normal situation, it would take a few months before the case would come for hearing.

In his leave to appeal petition, Mr. Safa stated that because of poverty he could not pursue his education beyond class eight. However, by dint of his own effort, he became a self-educated person, and he is involved with many schools and colleges in his area in Sandwip. He is a dedicated politician and a social worker.

Although he came from a poor family, he made his fortune, and he was now a philanthropist in the locality. Mr. Safa also claimed that he was a very popular, credible and important leader in his area, and that he was a potential candidate in the coming parliamentary elections.

He further contended that disclosure of his educational qualifications by means of an affidavit would be discriminatory against him. In addition, he argued that the High Court judgment was against the basic structure of democracy -- whatever that means -- and it violated Article 66 of the Constitution. Thus, he filed the appeal in public interest.

After learning of the appeal the original petitioners, through their advocate-on-record, Syed Mahbubur Rahman, filed caveat and made the necessary preparations for the hearing before the full bench of the Appellate Division.

Representatives of the petitioners were present at the Court, in case the matter came up for hearing, until the last day of its last regular session. But none from Mr. Safa's side brought the case to the Court's attention for emergency hearing.

After the Court went on winter recess the Chamber Judge, Justice Md. Joydul Abedin, suddenly stayed the High Court judgment on December 19 in a rather unusual manner. In the petition for the stay, Mr. Safa repeated the same untrue claims about his background and popularity.

He also claimed that he had already bought the nomination paper for the forthcoming parliamentary elections to be held on January 22. As a result of the petition, Justice Abedin directed the EC to accept nomination papers without affidavits. In unusual and uncharacteristic haste, the EC implemented the Court's directives on the same day.

The decision by Justice Md. Joydul Abedin involving an issue of monumental public interest begs many serious questions.

First, while a bench of three of his senior colleagues, including the Chief Justice, refused to stay the High Court judgment, on what basis did Justice Abedin see it fit to reverse their decision?

Second, as far as we are aware, when a caveat is filed, the lawful means is to ensure the presence of

all interested parties at the proceeding and hear their arguments. Why did Justice Abedin not do this?

Third, instead of raising the issue during the regular session of the Court, Mr. Safa's lawyers petitioned for the stay four days after the Court went on winter recess. Why did not Justice Abedin raise any question about this suspicious move?

Fourth, even though Mr. Safa raised objections to disclosing his educational qualifications, the Court stayed the entire judgment.

Justice Abedin could easily stay the disclosure of educational qualifications while allowing the implementation of the rest of the judgment. In addition, instead of ordering a blanket stay, the Court could prevent the disclosure of only Mr. Safa's antecedents.

Finally, Justice Abedin must be aware that candidates in parliamentary elections are required to submit similar types of sensitive financial information, although not their criminal records, under Article 44AA(2) of The Representation of the People Order, 1972 and the High Court judgment only ensured their mandatory disclosures by using the media.

Why did the Honourable Court become an unwitting party to the unholy alliance against people's right to know, thereby allowing criminal elements to run in the coming parliamentary elections?

Justice Md. Joydul Abedin, unfortunately, was perhaps misled by the cooked-up information submitted by Mr. Safa's lawyers. Almost all the information about Mr. Safa in the original leave to appeal petition, as well as in the petition for the stay, is totally false.

In addition, pertinent information about Mr. Safa's background was concealed. Based on newspaper stories and other sources, Mr. Safa is an ordinary soldier expatriated from Pakistan. Although he used the address of his ancestral home in Sandwip, he does not live there. In fact, he was not there for the last five years.

He had already sold his share of his ancestral homestead in Kalapania village -- not Kalapahia, as written in the petition -- and he did not even attend his mother's funeral.

The claims that he is a philanthropist, a social worker, a political activist, and that he is a patron of local educational institutions, are utterly baseless. In fact, according to local people, Mr. Safa is a cheat and an unsavoury character.

According to his first wife, children, and neighbours, he married more than once without spousal permission, and he then abandoned them. His wife and children do not even know where he lives, even though their speculation is that he works as a security guard somewhere in Dhaka.

That Mr. Safa is a popular political leader in his area, and that he is a contestant in the next parliamentary election is utterly false. His claim that he bought the nomination paper for the coming election is, according to newspaper reports, a total fabrication. In fact, his family and neighbors laughed at the news.

Furthermore, although he filed the appeal in public interest, Mr. Safa does not have any track record whatsoever of public service. In addition, if he was a well-known and popular leader in his

Heading for another ungainly election?

KAZI SM KHASRUL ALAM QUDDUSI

SO far as strict ideological adherence is concerned, no major political party in the country stands upright any more. There can be a healthy debate as to tangible benefits upon return of democracy in 1991.

Yes, democracy has rather been turned into a passport to being awfully rich overnight. Even so, democracy is still treated as the best option available for a respectable living in the world community which is not less relevant to the Bangladesh case despite its real potentials are yet to be explored, let alone given effect.

Concurrently, election is the only viable mechanism for giving democracy sustainability. That very election is, however, in jeopardy in the country following vicissitudes of sorts. I will, perhaps, not go overboard if I claim that a level playing field is sine qua non for a successful election.

I reckon many would agree with me that a playing field, not to speak of a level playing field has been elusive throughout the already gone nearly 70-day period of the current caretaker government (CTG).

Many thus rightly imply that boycott of 9th general election to the parliament scheduled to be held on January 22, 2007 by major political parties -- other than BNP-led 4-party alliance which is believed to be the behind the scenes driving force of the current CTG -- was just inevitability.

There is no denying the fact that the Awami League (AL)-led alliance's movement for electoral and CTG reforms were rather inconsistent. Narrowing down of demand points from 31 to 11 and then only to removing a few persons seemed to lack definite purpose.

Notwithstanding that fact, it would be too harsh on it to say that it decided to pull out of the election process without cogent reasons. Many were rather surprised at its abrupt decision to take part in the elections despite no concrete effort barring a few piecemeal cosmetic changes was taken by the CTG to create an enabling atmosphere for the election.

Though AL's peculiar pact with Khelafat Majlish as well as seat sharing with militants earned it substantial infamy, its u-turn to join the election process revealed its penchant for election.

Meanwhile, the fallen dictator Ershad continues to become the plaything. Though the concerned officials referred to legal requirements for cancellation of his nomination papers, there is ample room to believe that the scenario must have been different had Ershad teamed up with 4-party alliance.

Admittedly, the law should be applied equally to all persons under all circumstances. Painfully, though, law is being increasingly manipulated these days for sheer political purposes, thereby constantly putting judiciary on the line.

Now that the AL-led grand alliance has opted out -- the election results are in BNP-alliance's bag. Though the skeptics reckon that the results would be the same -- under the current set-up of the whole administrative machinery adroitly founded by the outgoing BNP-alliance government and literally reinforced by the 4-party nominated chief adviser Iajuddin Ahmed's CTG that has never been able to be free itself from the phantom of 4-party alliance -- even if the grand alliance took part in it.

Thus it naturally follows, why the BNP-led alliance would hesitate to manipulate things when everything will be at stake on the Election Day and when it already has the wherewithal. And, the anticipation gathers renewed significance in view of the synchronized handling of the Ershad case by various tiers of the administration and judiciary.

Though there is a 90-day stipulation, there is the option to get it reconsidered -- preferably through a reference to Supreme Court -- given the haphazard condition of the all important voter roll, if not anything else.

Notably, legal experts -- including Justice Naimuddin Ahmed -- are pretty convinced that any election under the latest updated yet faulty voter list would be faced with serious questions in law courts. However, deferment of election could have been done had the current CTG sincerity and integrity to hold a fair rather than a timely election.

Admittedly, many very rightly opine that Bangladesh needs a fair election a lot more than a timely yet flawed election.

Moreover, AL-led alliance veered away from a rigid anti-Iajuddin movement time and again, lest it hampered the electoral process. Anyway, however, from the 4-party alliance's recent hue and cry for election, democracy and constitutional process, it seems it is the professed champion of democracy.

However, if it had real fondness for democracy, it would have let the CTG make a congenial election environment for all by freeing it from its stranglehold.

After all, democracy is not anything about one group's manipulation and another one's capitulation, rather it sustains in an ambience where all are allowed to play on an even ground.

But did the current CTG -- brazenly monopolised by Presidentcum-CA Prof Iajuddin Ahmed and deftly dictated to by 4-party alliance -- really go for an even field? Now it remains to be seen whether the CTG will go for staging an (February 1996 type or worse) ungainly and untenable election.

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mum level of educational qualification for MP candidates. However, even if it did, it would not violate the Constitution. Article 66(6) authorises the imposition by law of additional disqualifications for MP candidates. Thus, bank defaulters are disqualified from becoming MPs, even though such restrictions are not in the Constitution.

Furthermore, the argument that the High Court judgment violates the basic structure of democracy is utterly ill conceived. We are not sure what this term means -- online legal dictionary does not contain such a concept.

However, democracy is a part of the basic structure of our Constitution, and fair elections based on adult franchise are basic features of democracy. An essential condition for fair and meaningful elections is that voters should be able to make informed choices.

Given the above, we fervently hope that the Appellate Division will immediately vacate the stay on the High Court judgment so that it can take effect in the coming parliamentary elections. We further hope that the Court will dismiss the appeal as it was granted on the basis of false submissions. These actions will ensure justice and protect public interest.

Ensuring justice is important because, as the old adage goes, where justice ends, anarchy begins. These will also prevent our democracy from becoming a total monocracy. If the Court intervenes, suo moto, it will be a unique display of the judiciary's commitment to the protection of the public interest.

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