

Khaleda's address

No direction towards solving the problem

BNP chairperson Begum Khaleda Zia, while addressing a press conference in a city hotel, squarely blamed, as was expected, the grand alliance for boycotting the election and went to the extent of saying that the alliance would be responsible if the polls lose acceptability.

Her address came as a bit of a disappointment as it contained little that would help ease the current political stalemate. As the immediate past prime minister, who led the nation for 5 years and aspires to do so once again, she was expected to go beyond merely rehashing what we already know. She supported the caretaker government in the same unequivocal language that she has always used about it, though it has suffered loss of credibility in the public eye.

Begum Zia continued the blame game, as did Sheikh Hasina in her latest press briefing, that people have become so familiar and disenchanted with. There was no deviation from the usual course, which includes grilling the opposition for all that has gone wrong, going wrong at the moment, or may go wrong in the future! As though the BNP has had no faults. Even when talking about the possible legal recourse to extend the 90-day time limit for holding the election, as stipulated by the constitution, the former prime minister said, "The Supreme Court cannot issue any directive beyond the constitution." That's a clear indication that the BNP has taken a very rigid stand on the inviolability of the 90-day rule, regardless of the ground reality. It seems the letter of the constitution is the only concern of the party. On the other hand, the grand alliance leaders never felt the need for making even a passing reference to the 90-day issue and possible ways of resolving it.

The lack of flexibility demonstrated by the major parties is doing a great disservice to the political future of the country. They seem to be totally oblivious of the people, the ultimate arbiters in the power game, and are trying to have everything on their own terms and conditions.

The top leaders have to come up with, and quickly at that, something more concrete and mutually acceptable if they don't want the nation to brace for another long period of political uncertainty.

Stop preemptive arrests

This is against the rule of law

WITH hundreds of anticipatory arrests on the eve of the siege programme of the 14-party alliance it seems that popular apprehensions of the caretaker government being not so neutral may have been proved correct. This is also ironical and least expected of a caretaker government which is supposed to be non-political and neutral in character.

While we fully share the concern of the government to maintain law and order and undertake measures to ensure that the security of the people is guaranteed, actions that reek of arbitrariness on the part of the administration must not be allowed to happen.

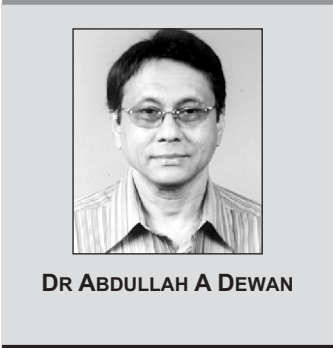
Much as the administration and its police would want us to believe that these are routine arrests, their arguments cut no ice at all, since this is a replication of the former political government's policy to go for preemptive arrests to thwart opposition's political programme.

In this not only party activist but also thousands of innocents fall victim to the whimsical actions of the law enforcing agencies. Reportedly, innocent bystanders, and in many cases lone bread earners of the family, have been taken into custody, putting these families in great hardship. With very little to eke out a living, these indigents have even lesser means to endure the legal process which in our case can be costly in terms of money and time. But not only that, it also allows the police to harass the public and resort to corrupt practices by demanding money in exchange of freedom, from the innocent victims.

We would like to think that the government is aware of the fact that these arrests are in gross violation of human rights and the rule of law. It is our hope that the caretaker government will do everything to uphold the rule of law and the fundamental human rights of the citizen, which is being violated by the mass arbitrary arrest resorted to by the police.

The indiscriminate arrests must stop forthwith and a more mature approach taken by the caretaker government to its law and order concerns.

Forgetting freedom fighters



DR ABDULLAH A DEWAN

THE politicians who disavow the architect and creator of their nation and its freedom fighters will be trashed and rotting in history – that's for sure.

Don't forget that on December 14, 1971, faced with impending debacle, the Pakistani invaders and their collaborators systematically butchered university professors, writers, journalists, doctors, etc. The blueprint that was unearthed after the war confirmed their plan to transform Bangladesh into a "brainless land" by eradicating all intellectuals.

With God's blessings, the liberators (freedom fighters) arrived before the butchery could be executed as planned. Today, those liberators are increasingly being ignored from the national stage while our politicians are courting the traitors and their surrogates. Yesteryear's traitors have become today's political partners, while the patriots are becoming relics of yesteryear.

Speaking at a program held on October 28, 2004 at the Bangladesh Liberation War Museum, the US Ambassador of the time, Harry Thomas commented: "Standing up for what you

believe in sometimes exacts a terrible price. The Liberation War was a crucible, an event that severely tested the people's courage and commitment to their ideals."

During his tenure (until July 2, 2005), Ambassador Thomas championed the struggle for the ideals of secular democracy, rule of law, media freedom, and social justice. Progressively, we are enjoying a reasonable degree of media freedom today, notwithstanding the continued persecutions of journalists. Unfortunately, we are gradually being removed from the realization of all other ideals because of the incorrigible greed of our politicians.

The ideals of secular democracy, one of the most cherished dreams of Bangabandhu, for which the Bengali nation fought the liberation war, seems to have become a "sacrificial goat" for today's political parties. Both the BNP and AL are courting the fast growing fundamentalist parties and the infamous rajakars and forming comfy alliances with them.

In 2001, BNP, Jamaat and JP competed in the election as the 4-

NO NONSENSE

Such a party, if organized with the ideals of the liberation war, would capture the imaginations of the families of the freedom fighters, their extended families, their friends and neighbours, and the entire nation. To liberate the country from the clutches of the repressors, we needed the freedom fighters once. To free the country now from the grips of thugs and thieves, a different kind of liberation war -- a renaissance for political and economic reformation fortified with the ideals of the martyrs, will have to be waged by people of all stripes, before time runs out.

party alliance (FPA) while AL and all other political parties competed separately. In that election, AL won 40% of the votes cast but bagged only 62 seats, while BNP and its allies won two-thirds majority with 46% votes.

There were three major factors behind AL's 2001 election setback: (a) Strength of BNP's alliance with Jamaat, (b) vote rigging by the alliance (only 54% of a survey of 2,252 thought the election was free and fair), and (c) AL's lax attitude towards enforcing law and order during its 1996-2001 governance.

BNP's 2001 election success with alliance partner Jamaat (BJA) became a blueprint, which the AL followed for the 2007 election. In other words, the BJA showed how to compromise principles to ensure election victory. This time the AL formed a grand electoral alliance (GEA) with whichever parties it could get, including some Islamic parties.

Election watchers and political pundits predict that the GEA will reverse the 2001 electoral outcome of the BJA with a larger landslide. However, the total num-

ber of nominations from both parties stands at only 11 women (including Hasina and Khaleda) and 17 members of religious minorities -- a disappointing statistics considering their representations in the population.

The BJA has nominated four Hindus and a Buddhist. The GEA nominated (before it withdrew from the elections) nine Hindus and two Buddhists. Although religious minorities comprise 17% of the population, an election winning strategy, argued by politicians, was the overriding consideration when the candidates were chosen.

Many election watchers were shocked to find that AL nominated the notorious Zainal Hazari's sister, a woman who did not even reach grade eight in junior high school. Maybe she has been picked by AL to become prime minister one day.

Also inexplicable is why Khaleda would allow so many of her blood-line family members to compete in parliamentary elections unless to reinforce the claim by some former BNP lawmakers that "BNP means Zia family."

As outrageous as it may look, our

Is the caretaker government unconstitutional?



HARUN UR RASHID

ON January 3, the grand alliance led by Awami League announced that it would boycott the January 22 election. One of the demands is the resignation of the president from the position of the chief adviser of the caretaker government.

Liberal Democratic Party (LDP) president, Professor Dr. Badruddoza Chowdhury, a former president of Bangladesh, reportedly pointed out another vital reason for boycotting the election by saying: "The effect to legalize an illegal election by an illegal government will not be accepted. We, as the grand alliance, will not be a part of legitimizing such an election."

The statement of the president of LDP seems to raise a significant point of the legitimacy or constitutionality of the caretaker government.

Let us examine the probable basis of such statement. There could be several arguments that are described below:

First, it has been argued that the president has assumed the office of the chief adviser under the last sub-clause (6) of the Article 58C, without exhausting the three other options, specified in sub-clauses (3), (4), and (5) of Article 58C.

Briefly under the three options, the eligible persons are: (a) a retired chief justice, (b) a retired judge of the Appellate Division of the Supreme Court and (c) a non-partisan citizen of Bangladesh. When all these options are fully exhausted, it is argued that the president can only resort to the last option.

It has been strongly canvassed by many constitutional experts that since these options (a), (b), and (c), available to the president, have not been fully exhausted by the president, his assumption of office concurrently as the chief adviser is unconstitutional.

Second, prior to assumption of the office of the chief adviser, many lawyers argue that it was desirable

that the president, on such important legal issue of public importance, should have referred the matter, under Article 106 of the Constitution, to the Appellate Division of the Supreme Court, for its opinion, as to whether the president could take charge of the office of the chief adviser. The controversy remains because the president reportedly did not seek the opinion from the Appellate Division.

Third, the current president was elected by the majority party in the Parliament and not on the basis of a consensus of other political parties represented in Parliament. This being the case, the president arguably cannot be a "non-party" person.

If a "party" person heads the "Non-Party Care-taker Government," it takes the heart out of the objective of installing the non-party government under Chapter IIA of the Constitution. Accordingly, the assumption of the office of the chief adviser by the

president is argued to be inconsistent with the provisions of the Constitution and therefore is unconstitutional.

Fourth, it has been argued that the office of the president is separate from that of the chief adviser. The former is the head of the state (state has three organs, government, parliament and judiciary), the chief adviser is only the head of the government under Article 58B(3), the speaker remains as the head of the Parliament, even dissolved and the chief justice is the head of the judiciary and that is why, each institution has separate emblems. Accordingly, only the head of the state, the president, is entitled to use the national emblem of the state, Shapla flower and others cannot.

Article 58B(2), therefore acknowledges, the two high separate offices and provides clearly that: "The Non-Party Care Taker Government shall be collectively responsible to the President." That

war heroes liberated the country from the Pakistani thugs and exploiters only to be replaced by home-grown equivalents. Today both major parties are flirting with the anti-liberation forces that are slowly neutralizing the ideals of secular democracy. If the progression of their efforts is not reversed, the country will turn into a fortress of fundamentalist rule by "fatwa" in just a matter of a few election cycles.

While the two major parties' obsequious patronizing of anti-liberation forces in national politics has become disconcerting, what is most distressing is the abandoning of those who gave the nation its political entity -- a liberated Bangladesh. Our much forgotten "freedom fighters" and their desolated family members' pent-up grievances and crisis de coeur are now completely trampled by all political parties, to the indifference and ingratitude of the nation.

We would like to know how many freedom fighters received nominations from either political party. Having National Martyrs' Monument and Mukti Juddha Museum are magnificent gestures for the bereaved souls. But what about those who are still living and able bodied? What has the nation done for education of their children?

Paying homage annually by politicians to the consecrated places of reminiscence and occasional lip services do not feed, clothe, or educate the children. One wonders why the history and ideals of the liberation war has not yet been formally incorporated into the curriculum of our academic

institutions at appropriate levels.

Where are our war heroes? With the exception of Oli Ahmed, we hardly hear about any of them. For example, Jafar Imam, Ameen Chowdhury, Tafi Elahi, Matin Chowdhury, Aminul Huq, Mohammed Ibrahim, Gaffar Hawlader, Helal Morshed, Rafiqul Islam, Tajul Islam, just to name a few of the decorated war heroes are, by any standard, more deserving and qualified than Hazari's uneducated sister to occupy a seat in the Parliament. Her nomination, I am sure, as well as many others by both alliances, seem like a slap in the faces of those striving to nominate "honest and competent" candidates.

Oli Ahmed has created a political party and named it Liberal Democratic Party. Could this new party under his leadership have been more appropriately named "Liberator's Democratic Party" instead?

Such a party, if organized with the ideals of the liberation war, would capture the imaginations of the families of the freedom fighters, their extended families, their friends and neighbours, and the entire nation.

To liberate the country from the clutches of the repressors, we needed the freedom fighters once. To free the country now from the grips of thugs and thieves, a different kind of liberation war -- a renaissance for political and economic reformation fortified with the ideals of the martyrs, will have to be waged by people of all stripes, before time runs out.

Dr Abdullah A Dewan is Professor of Economics at Eastern Michigan University.

means that the council of advisers headed by the chief adviser would be accountable to the president. This provision is important because advisers including the chief adviser are non-elected persons and in the absence of the Parliament, they would be responsible to the president.

Fifth, under this Article 58B (2), it is argued that unfettered powers of the caretaker government are checked because in the case of issuing ordinance or amending a law by the interim government, the consent of the separate institution, i.e. the president, is necessary.

For instance, under the Latifur Rahman caretaker government in 2001, the chief adviser with the agreement of all advisers wanted to amend by ordinance the Criminal Penal Code, but the president did not agree and the ordinance could not be issued. This demonstrates palpably how the powers of the caretaker government are curbed under the Constitution so as to retain checks and balances on each other's powers in a democratic country.

It has been argued that since the president has been concurrently holding the office of the chief adviser, the two high offices have been merged and as such no checks and balances exist on the activities of the current caretaker government. Under the current situation, it is argued that the spirit of the Constitution is violated and

the merging of two high offices in one person is unconstitutional.

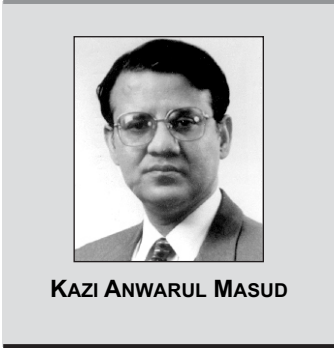
The unconstitutionality or otherwise of the caretaker government would have been taken care of, if the writ petition lodged on November 20, with the High Court Division, challenging the constitutionality of holding concurrently the office of the chief adviser by the president, would have been disposed by the High Court but on November 30, it was stayed before a rule nisi could be issued.

A word about rule nisi is necessary for the understanding of the readers. It simply means "please explain" to the other party and empirical records suggest that 60% per cent of case where rule nisi was issued by the High Court was finally dismissed after hearing explanations by the other party.

Since the High Court could not dispose of the writ petition, a strong case can be argued that the president is holding unconstitutionally the office of the chief adviser and the corollary is that it taints the caretaker government from illegality. This is what the LDP President Professor Dr Badruddoza Chowdhury underscored when he supported the boycott of the ensuing election because the outcome of the election could be challenged as illegal.

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Execution of Saddam Hussein



KAZI ANWARUL MASUD

FINALLY President Bush and the aggrieved Iraqi Shiites and Kurds who were primary victims of Saddam's brutality got their revenge. Saddam Hussein had to be executed on Eid day -- an important religious day for Muslims.

The revenge seekers deliberately ignored this fact and perhaps feared that delay in execution might flood the Iraqi authorities (and, more importantly, the US) with pleas for clemency that they were not prepared to grant.

One wonders whether this inhumane action taken in the name of law (capital punishment has been abolished in most parts of the developed world) as an answer to past brutalities committed by Saddam regime has not firmly established the jungle rule that might is right.

GOING DEEPER

Perhaps on the military plane continuance of anti-US sentiment is absurd because it is not tenable. But forcible occupation of another country and execution of its head of state, however reprehensible his rule might have been seen through the prism of dictatorship and human rights abuses, cannot be acquiesced with unless the change comes from within.

And also that the doctrine of pre-emption has replaced the UN Charter guaranteeing inviolability of territorial integrity and the rule of international law in the conduct of inter-state affairs, notwithstanding the "new sovereigntists" claim of international law being too amorphous to merit US consent.

The duration of the Bush national security strategy of subordination of international law and institutions to US perceived threats and consequent actions like that of the Roman Empire without the US formally taking up historian Niall Ferguson's entreaty to become the global hegemony.

It is regrettable that flawed Saddam trial criticized by conscientious people throughout the world has missed a "Grotian Moment" -- a legal development so significant

that it could create new customary international law or provide fresh interpretation of treaty based laws.

It has also given rise to the unavoidable comparison between the Milosovic trial at The Hague and Saddam's trial at the hands of Iraqis, steeped in primordial loyalties inherent in tribalism which had condemned Saddam Hussein to the gallows from the day he was handed over to the Iraqi justice system as having racial and, perhaps, religious overtones.

Though the trial of Saddam Hussein and his associates by the Iraqis has spared the international legal system the "paradox of inversion" (e.g. the most culpable tried by Rwanda Tribunal escaped death penalty as opposed to lesser mortals tried by Rwandan courts

awarded summary execution) it is difficult to accept the Anglo-US argument that the Iraqis would be the most competent authority to try Saddam Hussein as his crimes.

Monstrous they might have been, but they were committed on Iraqis and foreigners alike, while the Nuremberg and Tokyo trials were not conducted by the Germans and the Japanese, and the Rwanda trials are being held under international supervision.

The Americans, more than anyone else (actions of CPA chief Paul Bremer in excluding the Sunnis on the ground of alleged allegiance to Saddam Hussein and Baathism is a case in point) knew the intractable Shia-Sunni division that has caused and continues to cause increasing death and destruction in Iraq.

The difference between the two sects, as Professor Yitzhak Nakash points out are "primarily political rather than ethnic or cultural, and reflect the competition between the two groups over the right to rule and define the meaning of nationalism in the country."

Albeit, Iraqi Shiite religious leadership suffer the tension within itself between quietism and activism whether the clerics should seek a role in politics or confine their activities to religious affairs.

But Saddam's Baathism was not driven by religion but by politics. He had Christian, Shiias, Sunnis, and Kurds in his government. Though the Sunnis accounting for only a fifth of the Iraqi population held more responsible positions the reason could be found more in tribal loyalty than in subordination of the Shiites as a sect. Saddam's brutalities compared to Hitler's and Stalin's, in nature but not in magnitude were dictated by threats to his absolute rule.

No one would carry any grief for Saddam Hussein and his monstrosity. The murder, torture, and mass graves were inexcusable. But then so were Abu Ghraib, Guantanamo Bay, and secret prisons in Europe operated by CIA. So is the progressive alienation of Muslim diaspora in

the West fuelled by a Goebellian governmental and media campaign in the West about Islamic extremism.

In effect, this threatens more the moderate Muslim countries, regarded as "soft targets" and walking a tight rope between modernity and return to the fundamentals of Islam, than the well fortified Europe and the Americas.

Saddam's execution is more likely to give sustenance to Robert Kagan's thesis that "Americans generally favour policies of coercion rather than persuasion, they want problems solved, threats eliminated. And increasingly tend towards unilateralism in international affairs."

While some in the West, particularly the Europeans housing large number of Muslims, are generally convinced of the superiority of subjecting inter-state relations to the rule of law, insular Americans may tend to believe the preaching of Bernard

Lewis that Islam was never prepared to accept Christianity or any other religion as equals, or Samuel Huntington's central questions: whether institutions of modernity like democracy and capitalism are peculiar to the West or have a broader appeal.

British Prime Minister Tony Blair

(Foreign Affairs, Jan/Feb 2007) is up in arms against Islam-haters. He has proclaimed the Holy Quran as "progressive and inclusive, practical and far ahead of its time in attitude towards marriage, women and governance." Blair emphasizes that the battle against global extremism has to be fought at the level of values as much as that of force.

And, perhaps, for the first time a major player in the so-called war on terror has termed the interventions "were not just about changing regimes but about changing the non-value system governing the nations concerned. The banner was not actually regime change; it was value change."

Admitting mistakes and unacceptable abuses of human rights by the interventionist powers, Blair asserts that the attitude of the Islamic radicals towards the US "is absurd, their concept of governance pre-feudal, their position on women and other faiths reactionary."

Perhaps on the military plane continuance of anti-US sentiment is absurd because it is not tenable. But forcible occupation of another country and execution of its head of state, however reprehensible his rule might have been seen through the prism of dictatorship and human rights abuses, cannot be acquiesced with unless the change comes from within.

Blair's conclusion that the continuing insurgency in Iraq is being committed by a mixture of foreign "jihadists," former "Saddamists," and "rejectionists" and in Afghanistan by a combination of drug barons, the Taliban, and al-Qaeda, appears to be too simplistic and skirts the central issue that countries, however tribal-like and underdeveloped they may be, and ripe for humanitarian intervention seen from the point of view of non-compliance of internationally accepted code of conduct, without popular support such intervention ending in episodes like Saddam's hurried execution are unlikely to be the last word in the Islamic world.

And the turmoil, which is bound to follow, may ultimately end up with an Iraq divided into three separate Shia, Sunni and Kurdish regions, which will be fully autonomous and loosely federated. In the worst-case scenario, Iraq may disintegrate into three separate states with incalculable effects on the Kurdish problem involving Turkey, Iran, and Syria. The west might have made a mistake of gigantic proportions after all.

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