

Police brutality on the street

Right to demonstrate under attack in a democracy?

THE barbaric police action on the grand alliance leaders on Tuesday has once again raised the harsh question: do we still have the right to organise peaceful rallies in the country? Or is it slowly turning into a land where political dissent is ruthlessly muffled on the slightest or no pretext?

The police action on the political leaders can by no means be justified on the grounds of maintaining law and order -- the prime task of any law enforcement agency. The police can go into action only when a rally or procession becomes violent. It is the demonstrators whose provocative actions usually force the police to take an aggressive stance all over the world, but what we observe here is a sad role reversal.

Let's look at the situation from the caretaker government's point of view. It is hell bent on holding the election on January 22-- despite the grand alliance, the only worthwhile opposition to the BNP-led alliance -- boycotting it. The government is supposed to concentrate on holding the election peacefully. So attacks on rallies and meetings by the law enforcers are absolutely uncalled for and could only be construed as a reflection of the administration's hostile attitude to the parties boycotting the election. This attitude is not only unexpected but also highly undesirable, since the caretaker government's only concern should be maintenance of law and order and peaceful holding of the election. That goal, we believe, cannot be achieved when police pounce on those boycotting the election or are trying to drum up popular support for their cause.

The caretaker government has to realise that it cannot, morally or legally, apply force against the boycotters which would indeed amount to siding with the proponents of the election, the credibility of which is being questioned by neutral observers also. The parties that are opposing election are perfectly within their democratic right as long as they remain peaceful and don't resort to any coercive tactic to prevent people from voting.

We condemn the police excesses and appeal to the government to take a more constructive view of the situation, instead of treating right to dissent as something warranting severe punishment.

Army's extended role

Soldiers must be kept above all controversy

WE can see the rationale that if the army were given any task to perform, they must be equipped with concomitant power to be able to accomplish it.

However, the question that cannot but exercise the public mind is: in what ways the circumstances in the present election are so different with those of the previous ones that the army is now being given the power of blanket arrest and over such an extended period of time? In no previous election did we see such a use of our armed forces

In 2001 they were authorised to arrest anyone without warrant within 400-yard radius of a polling station, but now this power has been extended to include not just the polling day but for 20 days as from yesterday -- and with a wider jurisdiction.

That the army is pressed into service in aid of civil authority in case of need has been an established fact. We also endorse the army's role in the collection of illegal weapons and in complementing civil authority in extraordinary situations. But in the present case, to our mind, without any plausible reason, the army is being deployed with additional powers in a law enforcement role to be able to act on its own.

Let's not forget, the army by its track record since Ershad's downfall has played a significant role in defence of democracy and continuity of constitutional rule. Its national and international image stands vastly enhanced for its role at times of natural disaster and particularly through its wonderful association with peace keeping missions abroad. Given the army's credibility and image, both national and international, it is only desirable that they even unwittingly do not get involved in anything that might even remotely be suggestive of a controversy.

Has the law and order situation deteriorated so much that the army had to be deployed for full 12 days ahead of the election? The caretaker government chief has shown a proclivity towards utilizing the army's services, even though the level of present political violence is nothing beyond what we have seen on many earlier occasions. After all, there has been nothing of the likes of Kansat or Shanir Akhra lately, and there the army was not called.

We are talking of an election where different views are likely to be aired by different quarters in pursuit of their campaign or political lines. A political party or an alliance has just as much a right to boycott an election as it has a right to participate in it. But of course it cannot forcibly prevent others from participating. It can try to persuade, but it cannot force.

MAHMUDUL ISLAM

RECENTLY, one of the advisers to the present caretaker government stated that I, in my book, Constitutional Law of Bangladesh, wrote that election must be held within the time frame of 90 days, and he contended that there is no scope of holding the general election beyond 90 days.

Yes, such a statement was made in the book. The underlying assumption in making the statement was that the process of holding the election was all right.

There was no difficulty in holding a free and fair election and in such normal circumstance.

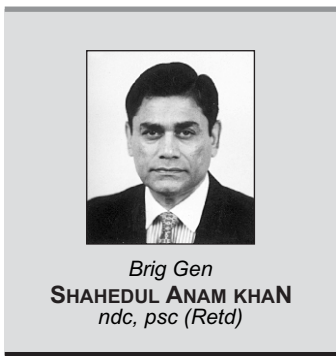
The election should be held within the time frame of 90 days as the provisions of the Constitution are generally to be complied with. The question arises whether the provisions relating to the manner in which and the time within which the election is to be held are mandatory or directory.

If a thing is required to be done in specified manner and within a specified time and the provision thereof is held to be mandatory, the thing must be done strictly in

the manner and within the time as prescribed and doing of the thing in any other manner or in any other time will be nullity.

Thus, if the time frame of 90 days is held to be mandatory, an election held beyond 90 days will be nullity. Now, if a date of holding poll is fixed on a day within the period of 90 days and the poll cannot be held within the time frame of 90 days because of a severe earthquake on the day preceding the day fixed for holding poll and the election cannot be completed within the time frame of 90 days, there cannot be any

The accessory is hanged



FOR the greater part of his dictatorship, Saddam Hussein was a US accomplice in war crimes, when, in serving the cause of the interest of the West, his crimes against his people and against Iran had gone deliberately unnoticed by those who are now pretending to be the upholders of democracy and freedom and human rights all over the world. And Saddam was well-served in his actions with their support, the tools of his crime being provided by the West, particularly the US and Britain.

Thus, in punishing a "perpetrator of crime against humanity" -- justice seems to have been half-done, only. Trying Saddam for Dujail was a way out, for the US and Britain, of the possible legal snare that they might have been dragged into because Saddam, their accomplice, is history now.

It was a theatrical comedy as one commentator put it, written by the Americans to put Saddam, whose words could be used as evidence of the West's complicity in his crime against humanity, away.

Many stoics would like to see Saddam's death merely as an addition to the more than half a million civilians killed in the aftermath of the invasion and occupation of Iraq by the US and its allies in March 2003, dubbed illegal by then UN Secretary General Kofi Annan. President Bush has now the blood of

STRATEGICALLY SPEAKING

With the Shia militias also proving to be a thorn in the side of the occupation forces, the compulsions of a phased withdrawal by the US are strong. That will have two likely effects. One, it will no longer provide the Shia majority government the excuse of inaction, or the force to bail it out, compelling it to go for an understanding with the Sunnis. Two, it will deprive the insurgents of the cause for their actions. On both counts there is a strong rationale for the occupation forces to get out of Iraq quickly and leave the Iraqis to sort out their own problems.

Saddam on his hands also, and much as he tries, neither will all his explanations nor all the waters of the Potomac help in wiping his hands clean of the blood of the 660,000 innocent victims, nor absolve him of the responsibility for the Iraqi sufferings as a consequence of his Iraq policy.

Saddam's fate was decided not after 9/11, or the fall of Baghdad, or the occupation of Iraq, or, indeed, on the day he was captured. It was decided well before 9/11. It was decided soon after Bush junior came to power, when he learnt that a one-time ally in the Middle East had allegedly planned to have his father killed after Saddam's forces were drubbed in Kuwait, to avenge his defeat. And Saddam had also begun to question US authority. He had to be done away with. Thus, the Iraqi venture by GW to finish the job, which his father GHW had left unfinished, deliberately some felt.

But while one may explain the jubilation of the Shias in Iraq and also outside it, it was perhaps their pent-up anger ventilated against a person whose cruelty had touched the Shias the Sunnis and the Kurds alike, it is difficult to understand how some Western governments could celebrate injustice, as the comments emanating from the West, particularly from the US and British governments, made it appear so, since they were in full knowledge of

the lapses in the trial.

Saddam is not the first US accomplice to be punished (remember Noreiga, picked up by the US marines from his country after having fallen out with the US), but is certainly the first to be sent to the gallows. In this, again, there is a double-standard displayed by the US.

Copious writings have appeared in the press about how another mass murderer, a Chilean despot put in power by the US after helping him to remove an elected government, survived seventeen years in power and avoided being tried for crimes against humanity, thanks to the help of some of his Western supporters. Pinochet was sought for crimes against humanity by almost half a dozen countries. He was lionized by the US, and Baroness Thatcher lamented the death of a killer whom the US described as "a visionary responsible for Chile's resurgence." That was not unexpected, since she had pleaded Pinochet's case and protested the "callous and unjust treatment of Senator Pinochet" in 1996. And all this support for the mass murderer was in return for Chile's help to Britain in the Falklands War.

But Saddam is history now. We must be concerned with the more immediate fallout of his killing.

Surely his death will not change the daily life of the Iraqis a bit. And



reporter was grossly ignorant about the Islamic festivity, or it was a deliberate attempt to rouse Sunni passions).

We must be aware that a full-fledged civil war has been raging in Iraq for the last two years, although the US administration is loathe to accept that argument. It is no longer insurgency, but a phase known in revolutionary warfare parlance as "open hostility." It was in evidence in the clash inside Baghdad last Tuesday, where the US forces had to use air-power to subdue the enemy fighters. The conflict will heighten.

While some experts feel that the Kurds may eventually break away, both the Shias and Sunnis are for an un-truncated Iraq with a strong centralized government in Baghdad. Therefore, what is needed of the Shia-dominated government in Iraq, led by Maliki, is to demonstrate its willingness to work with the Sunnis, which it has failed to do so far.

And with the new US plans for Iraq on the anvil, the Bush administration is under tremendous pressure not to enhance troop level without being sure of the positive effect of an increase in force level. With the Shia militias also proving to be a thorn in the side of the occupation forces, the compulsions of a phased withdrawal by the US are strong. That will have two likely effects.

One, it will no longer provide the Shia majority government the excuse of inaction, or the force to bail it out, compelling it to go for an understanding with the Sunnis. Two, it will deprive the insurgents of the cause for their actions. On both counts there is a strong rationale for the occupation forces to get out of Iraq quickly and leave the Iraqis to sort out their own problems.

The author is Editor, Defence & Strategic Affairs, The Daily Star.

Don't vote

Either boycotting or participating in election is simply an elite-game. If the people are really the power in politics and election, why should they participate in this game? Rather, I propose, the people should resist the entire manipulation of electoral-dynamism by boycotting this election. Not necessarily to support GA, but to keep the spirit of upholding public interest. Anthropologist James C Scott terms such action "weapons of the weak." The people have the weapon, and now it is high time to use it. Just don't vote. Now, this is a real weapon.

RAHMAN NASIR UDDIN

THE world is watching a very unusual and attractive game being orchestrated in Bangladesh, with the national parliamentary election at the centre. The Awami League-led grand alliance (GA) has boycotted the 9th parliamentary election scheduled to be held on January 22.

The BNP-led four-party alliance (FPA), on the contrary, is going to participate in this one-sided election. GA has not only boycotted this election, but has also vowed to resist this electoral game because of the president-cum-caretaker chief. I'm disturbed, thinking about the role, and the plight, of the people in this arranged game.

Undoubtedly, the present political catastrophe, which is turning into a constitutional crisis, will impact negatively on the constantly declining political culture of Bangladesh. It is very easy to postulate that the two alliances are doing all these things to get back to power. Rather, we need to look critically at the matter around the event.

It is more sensible to look at the issue from the people's perspective.

I intend to locate this event on an "integrated-premise" of dynamics of parliamentary politics, politics of vote-bank, and strategies of holding power in Bangladesh politics.

Dynamics of parliamentary politics is a process where three inter-related components -- the interim government, the regular administration including the EC, and the political parties -- function together towards establishing a legitimate body of the elite, now mostly businessmen, to run the state for the next five years.

One always ignored section is the people, though the political parties always talk of them, reciting the popular myth: "The people are the source of all power." In practice, the people are always used in the process of establishing this legitimate body of the elite.

In the dynamics of parliamentary politics, two sections -- the interim government and the regular administration including the EC -- have already lost public confidence and acceptance of majority political parties, except for the four-party alliance, for their non-sensible deeds and apparent partisan affiliation.

The third section -- the political

parties -- are the key players in the dynamics of parliamentary politics. This section always thinks of, and acts for, regulating the dynamics of parliamentary politics, and components of this dynamism, to create favourable space for being included in the legitimate body at any cost.

In this context, the FPA is much more advanced than the GA in many respects. The FPA, the immediate erstwhile ruling alliance, left a set of submissive personnel in every department of the state, including the caretaker government and EC. The FPA is, very likely, eager to have the election held as soon as possible as it is sure of coming back to power. The GA, from the very beginning, pressed a charter of demands before the interim government, regulated by FPA, with the intention of creating minimum space for themselves.

The GA believe that they deserve the full space in the other two components of the "integrated premise" of parliamentary politics. Apparently, GA failed in creating adequate space in the dynamics of parliamentary politics, but because of strong belief of holding the other two components favourably -- politics of vote-bank

and power of election -- they, at a certain moment in their movement, decided to take part in the parliamentary election.

Politics of vote-bank is another regulatory component for better understanding the recurrent political events of Bangladesh. The GA ensured the majority vote-bank by welcoming Ershad into the coalition, signing a pledge with Islamist parties, and adopting the LDP, the Adivasi Forum, and other smaller political groups. Besides, there is an established perception that all minority and all secular voters will be reserved for AL and its alliance.

It is to be mentioned here that, after the signing of the pledge with the little-known Islamists, the intellectuals, civil society, entire media world, and secular sections of society started raising their voices proclaiming that the AL had damaged the image of its more than 50-year political history, glory, and heritage.

It is being frequently said by those sections that the AL has violated the foundation of secularism in the political and state history of Bangladesh. I don't find any sensible reason to blame the AL because such desire is not necessarily linked with the AL action only. However, signing the pledge was nothing but simply the politics of vote-bank. Whether AL will be benefited or not is a different question, but the AL wanted to ensure an Islamic vote-bank.

It is often said that Bangladesh has a big Islamic vote-bank in rural and semi-urban areas. Nevertheless, the GA tried to ensure the whole space for themselves in the politics of vote-bank. On the

contrary, FPA has minimum space in the politics of vote-bank.

The only way for them to foil this calculation is to use the caretaker chief, EC, and administrative set up that is still allegedly devoted to four-party. That's why the BNP is so enthusiastic in "upholding the constitution."

The power in Bangladesh politics, especially in the politics of parliamentary election, is absolutely the people whom I'm thinking about.

In fact, every five years, the people have the only chance to utilize their power to participate in state-management, engaging in the process towards establishing a legitimate body through parliamentary election. This power is an integral part of dynamism in the politics of parliamentary election. Truly speaking, this power is key to reshuffling the entire political arrangement for the country. However, it is always used, largely misused, by political parties.

Despite this, the people play a vital role in changing the regime of political parties, though there has been no remarkable change in their lives. In contemporary Bangladesh, the people, the powerhouse, are totally fed-up and disappointed by the rule of FPA government for three notable reasons -- complete failure in power sector, uncontrolled price-hike, and rampant corruption and nepotism in every department of the state.

This disappointment, GA actually think, will turn into the rejection of BNP and its alliance in the forthcoming election. The people, therefore, GA thinks, will support them in the 9th parliamentary election. Nevertheless, GA is out of this election. Now, what should the people do?

The demands of GA -- removal of caretaker chief, preparing updated voter list, neutralization of EC, depoliticization of administration, etc -- are no longer their political demand. It has turned into a public demand. However, BNP is impatiently moving towards being back in power, without considering any demand of the people.

It is clear that whatever the caretaker chief and EC are doing is just to bring FPA back to power. The power-seeking political culture of Bangladesh always ignores public-interest. If the election is held, it will, unfortunately, unveil the ugly face of political manipulation of the caretaker chief, EC, and the entire election mechanism of Bangladesh.

Finally, I would like to conclude by saying that either boycotting or participating in election is simply an elite-game. If the people are really the power in politics and election, why should they participate in this game?

Rather, I propose, the people should resist the entire manipulation of electoral-dynamism by boycotting this election. Not necessarily to support GA, but to keep the spirit of upholding public interest.

Anthropologist James C Scott terms such action "weapons of the weak." The people have the weapon, and now it is high time to use it. Just don't vote. Now, this is a real weapon.

Rahman Nasir Uddin is a PhD candidate, Kyoto University and Assistant Professor, Department of Anthropology, University of Chittagong.

90 days is directory

There are other reasons why the provision in question cannot be held to be mandatory. When no consequence is provided for non-compliance of a provision, that provision is generally taken to be directory. When a provision is directory, it does not mean that it need not be complied with. A directory provision need not be complied with strictly in terms provided -- and substantial compliance is sufficient to satisfy the requirement of law.

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RECENTLY, one of the advisers to the present caretaker government stated that I, in my book, Constitutional Law of Bangladesh, wrote that election must be held within the time frame of 90 days, and he contended that there is no scope of holding the general election beyond 90 days.

Yes, such a statement was made in the book. The underlying assumption in making the statement was that the process of holding the election was all right.

There was no difficulty in holding a free and fair election and in such normal circumstance.

The election should be held within the time frame of 90 days as the provisions of the Constitution are generally to be complied with. The question arises whether the provisions relating to the manner in which and the time within which the election is to be held are mandatory or directory.

If a thing is required to be done in specified manner and within a specified time and the provision thereof is held to be mandatory, the thing must be done strictly in

election held beyond 90 days as such holding of election will be nullity and there cannot be any election at all thereafter.

Thus, entire constitutional process will come to a halt and the legal order established by the Constitution will cease to exist. It is a cardinal principle of interpretation of the Constitution that its provisions cannot be interpreted in a manner which will be an obstacle to smooth and unhindered operation of the Constitution.

Accordingly, the time frame of 90 days will have to be complied with generally, but if situation so arises in which the compliance of the time frame is not possible, election held beyond 90 days will not be illegal or nullity.

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directory. When a provision is directory, it does not mean that it need not be complied with.

A directory provision need not be complied with strictly in terms provided -- and substantial compliance is sufficient to satisfy the requirement of law.

There is another principle to the effect that when a particular provision relates to performance of a public duty, and the case is such that to hold null and void acts done in respect of such duty would work serious injustice to people who have no control over those entrusted with the duty and at the same time would not promote the main object of the provision, such provision should be held to be directory only, the neglect of which does not affect the validity of the acts done.

This principle was stated by the Judicial Committee of the Privy Council in *Montreal Street Railway v. Normandin*, reported in AIR 1917 Privy Council 142 and

this principle has been followed in our jurisdiction as well as in Indian jurisdiction.

The election contemplated by the Constitution is nothing less than a free and fair election to be held by the Election Commission. The irreducible minimum for holding a free and fair election is the existence of a reasonably fault-free voter list.

The High Court Division passed a judgment in this regard and on appeal the Appellate Division modified the directions given by the High Court Division. The Election Commission, however, dragged its feet in complying with the directions, with the result that we don't have a credible voter list and the ground reality is that no election can be held within the time frame of 90 days with a voter list prepared fully complying with the directions given by the Supreme Court.

Under no circumstances the Constitution contemplates an

election on the basis of a flawed voter list. In this situation, if election is held with the voter list as existing today, it will not be an election contemplated by the Constitution.

On the other hand, if it is held that the time frame is mandatory, there cannot be any election beyond that period, a situation that cannot be accepted as it may destroy the legal order established by the Constitution.

There is another aspect, which should be dealt with. This relates to the question as to who can order extension of time for holding the election. One may be prompt in saying that there is no authority under the Constitution, which can extend the time for holding the election.

The simple answer is that though apparently the power of the president is confined to appointment of the prime minister and the chief justice, the oath taken by the president to pre-

serve, protect and defend the Constitution imposes on him a duty to take any measure to protect the polity and the Constitution.

It is the very necessity of continuity of the Constitution and the democracy that the president should be conceded this power to act in case of national crisis. This was so held by the Indian Supreme Court in *Shamser Singh v. Punjab*, AIR 1974 Supreme Council 2192, in respect of the power of the Indian president whose position is almost similar to the position of the president under our Constitution.

The question is whether the president considers that a general election with a flawed voter list can be said to be an election within the contemplation of the Constitution.

Mahmudul Islam is a former Attorney General of Bangladesh and the author of "Constitutional Law of Bangladesh."