

## Election and representative democracy

The fragile basis of the interim government will affect the effectiveness of whatever course it chooses. A government rules on the basis of constitutional sanction and people's vote, or by the coercive power of an overt military regime. The interim government has none. In terms of Dieter Conrad's dichotomy, the interim government is a commissarial dictatorship, which pledges to restore the existing constitutional structure, and will be judged by its standards, though not bound by it temporarily.

MASIHUR RAHMAN

THE election scheduled for January 22, aborted by the president's action, raises issues about the legitimacy of the election if deferred beyond ninety days after dissolution of Parliament, the tenure of the interim caretaker government, and about how to legitimize the extra-ordinary measures.

The president took the measure to ward off the deteriorating law and order situation, and to ensure a proper election in due course to restore democracy as well as the political and civil rights of the citizens.

The claim to legitimacy will depend on performance on these scores in terms of both time and quality.

Bangladesh is a constitutional representative democracy. All powers of the Republic – i.e. sovereignty – are vested in the people, and are exercised on their behalf and by the authority of the constitution.

The state follows democratic processes to realize its goals. Fundamental human rights and freedoms, equality and justice, and a socialist society free from exploitation are the goals of the state, and the substance of democracy.

Freedom from exploitation is integral to equality and justice, though not socialism in the form of authoritarian communism. Constitutionalism defines the limits of the powers of the state and its organs [Preamble, Art. 7(1) & (2)].

The electoral system is based on

universal suffrage, simple majority and single member territorial constituency – also called first-past-the-post (FPTP) system. All citizens not less than 18 years of age are "entitled to be enrolled in the electoral roll of a constituency" (except those judicially declared to be of unsound mind).

The expression "entitlement" imposes on the Election Commission the responsibility to ensure that all eligible voters are registered. The Commission failed miserably in this task – and does not recognize the injustice done to the citizens. [Art 121-2].

Election in a representative democracy performs three functions: mandate to represent the people in government and opposition; accountability of the government; and a citizen's obligation or obedience to the state and government.

The population of a country is not an undifferentiated mass; it is divided by objective cleavages (e.g. religion, ethnicity, culture), as well as divergent interests and opinions. There is no uniquely determined right public policy.

The policies emerge from contestation and change over time, and are validated by election. If there were no plurality of choice, or if the ruler's preference could be imposed on the people, election would not be necessary.

If an election generates only the government, it fails the democratic imperative. Robert Dahl observes that participation loses its significance in large part if there is no contestation.

Yet, until the 18th century or even

later, "political opposition lacked legitimacy and legality, political parties were widely condemned as dangerous and undesirable, and elections were notoriously manipulated by the agents of the Crown." Read contemporary Bangladesh for Dahl's description [Polyarchy, p. 5; On Democracy, p. 24].

There are no permanent majority or minority parties in democracy; they alternate between government and opposition. Any attempt to suppress the temporary minority party requires use of coercion, including unlawful methods. Bernard Mannin warns insightfully:

"In order to avoid the risk of violent confrontation, the majority camp has only one solution: to strike a compromise with the minority, that is, to refrain from subjecting it unnecessarily to its will. Party democracy is a viable form of government only if the opposing interests deliberately accept the principle of political compromise" [The Principles of Representative Government, p. 12-3].

Election makes the government accountable to the people. The parties offer alternative policies and programs, which win them votes.

If the winners fail to fulfill the promises, the voters can throw them in the next election. However, an election is contested also on leadership appeal and social differences.

In single-seat, simple majority systems, a candidate's appeal to the constituency's people also matters. Redeeming promises should not be taken mechanically: the government is expected to modify those promises, which are harmful, and to successfully cope with contingencies.

cies.

The effectiveness of election as an instrument of accountability depends largely on the quality and symmetry of information flow.

The idea that consent is the basis of obligation of the subjects to the state and government was developed by Grotius, Pufendorf, Rousseau, and Locke most prominently.

Locke also derived the radical conclusion that a government which lacks consent can be overthrown. Authority, obligation and accountability are joined organically. The declaration of American independence, which reflected these principles, asserted that "governments derive their just powers from the consent of the governed."

Likewise, the French Revolution declared that "the citizens submit only to those laws to whose formation they have freely consented individually or through their representatives." It is an article of democratic faith [Principles, p. 83-85].

Electoral freedom is not free, fair and frequent, is sham; it lacks democratic substance. Dahl observes that: "To be free means that citizens can go to the polls without fear of reprisal; to be fair, all votes must be counted as equal; to retain control over the agenda and the elected officials, elections must be frequent." Annual elections for the legislature are too frequent, and intervals longer than five years too long [On Democracy, p. 37-8, 95-96].

Hannah Pitkin puts emphasis on motivation and institution of representation. The parties try hard to win sufficient seats so that they can influence policies as government or as opposition.

The representatives work in an institutional framework, and interact with other groups and persons, who temper their personal ambitions, moderate opinions and interests, and stabilize governance across time and individuals. "Representation without institutionalization is an

empty dream" [The Concept of Representation, p. 220-5].

Absence of a major party from election (boycott) denies a large proportion of the people the opportunity to vote for their preferred party, policies and leaders – i.e. effective participation. If Nazim Kamran Choudhury's survey is an indication, voter turnout could be about 16 percent – the level to which hard-core support of BNP-Jamat had fallen (compared with AL's 23 percent). The actual turnout could swing either way but modestly depending on some indecisive persons turning out or some core BNP-alliance staying home, sure of success in an uncontested election.

Low turnout and absence of alternative choices cannot generate a valid mandate. The mess at the Election Commission, and the failure of the president-chief adviser provided the justification for boycott.

Interim, or caretaker, government is common to democratic states. The elected government continues in office after dissolution of parliament, with all the legal powers as before; it does not use any power, take policy decisions, or make new financial commitments or levies.

The prohibitions are "binding conventions." The rationale is that dissolution of parliament signifies exhaustion of the mandate, requiring the parties to seek fresh mandate. The powers are retained for routine administration, and for meeting contingencies [Michael Gallagher et al, Representative Government in Europe, p. 65].

The caretaker government derives legitimacy from the Constitution, which created it for extremely limited functions and time in office. The caretaker government supports the Election Commission in holding a free, fair and peaceful general election, and discharges the routine functions of an interim government.

There is deliberate emphasis on the interim nature of the caretaker

government. The constitutional prescription as regards the interim functions should be read in the light of the binding conventions [Art. 58D].

How long can the caretaker government created by the constitution legitimately remain in office? First, the general election has to be held within 90 days from dissolution of Parliament; second, the caretaker government remains in office from the day Parliament is dissolved, until the day an elected prime minister takes over.

The two provisions have to be read together to derive a logical and consistent meaning. They are connected by the concept of mandate – political mandate of the prime minister through election, and the narrow mandate of the caretaker government from the Constitution.

The caretaker government may remain in office for a few days after election to meet contingencies – e.g. election of the prime minister in a hung parliament. The time for contingency may be 10-20 days, which allows the caretaker government a legitimate tenure of some 100 days, or slightly longer.

The caretaker government cannot postpone election for an undefined period and remain in office, which is destructive of constitutional democracy and contrary to the intention of the Constitution.

The strict interpretation overlooks the reality of the present situation – i.e. free and fair election was not held within ninety days, and cannot be held without substantial reforms of the electoral and government institutions.

It is obvious that the present caretaker, or interim government, will exceed the constitutional limits on functions as well as time, which makes it unconstitutional – not necessarily unconstitutional.

How much it will try to do and for how long are moot questions. The primary task of the interim government is to hold a proper election

within the time, which can be derived from the Constitution.

The prescription that election be held within 90 days after dissolution of parliament evidences the intention of the framers of the Constitution that it is the longest period (90 days) for which there may not be an elected parliament, and their judgment that election can be held within that period.

Therefore, the election should be held by April 12 or 25 – give or take a few days – counting from oath-taking of the chief adviser, or expiry of the constitutionally permitted 90 days.

The interim government may be tempted or urged by many to address broad reforms agenda which are not germane to election, or justifiable on grounds of necessity.

The zeal for reforms takes on perpetual Newtonian motion when not impeded by constitutional limitations and inviolability of the fundamental human rights and freedoms. It is worth noting that elite opinion, though useful, is not sufficient ground for durable reforms without public participation.

Successful professionals often have tried in vain to fix the problems of their countries, but turned out to be masks or harbingers of regimes destructive of constitution and democracy.

The fragile basis of the interim government will affect the effectiveness of whatever course it chooses. A government rules on the basis of constitutional sanction and people's vote, or by the coercive power of an overt military regime.

The interim government enjoys enormous public good will that should be used to address the pressing problems on hand, and to return the state to the rights-bearing citizens. We wish them well.

ship overthrows the existing constitution and is judged by whatever constitutional standard it sets up at a time of its choice. A commissarial dictatorship is constitutionally constrained [Mahmudul Islam, Constitutional Law of Bangladesh, p. 78.]

The president may seek the advice of the Supreme Court for legitimizing the unconstitutional government. However, the Appellate Division may decline to give an opinion; besides, it is not binding on either party, and the Court may contradict it in other cases.

An approval for departures from the clear constitutional provisions, without binding/enforceable specification of time-bound commitments, amounts to a blank cheque to an extra-constitutional executive.

The Court also circumspectly restricts itself to constitutional/legal issues and leaves out the political issues, unless they are related to juristic considerations. But now politics is the heart of darkness.

The alternative is to seek retroactive parliamentary legislation, which reflects public endorsement and can conveniently cover the actions the interim government is required to take. The scope of the retroactive legislation will be proposed by the parties in Parliament, since the advisers will not participate in election directly or by proxy.

To facilitate the retroactive legitimization, the interim government may establish consultations with the major parties – a process which has already commenced while choosing the chief adviser [Art. F3C(5)].

The interim government enjoys enormous public good will that should be used to address the pressing problems on hand, and to return the state to the rights-bearing citizens. We wish them well.

Dr Masihur Rahman is a freelance contributor to The Daily Star.

## Blankets and poverty

The government, which has more resources, a nationwide network, and an obligation to serve the people, is in an accountable state to curb preventable cold-related deaths and diseases and provide the necessary services. And this is to include fighting poverty and corruption for which the country is famous. In this manner, a family who are economically able can easily buy a basic need such as a blanket.

GINA DIZON

POVERTY talks about cold facts and the cold wave is one to reckon with.

Nearly a hundred thousand blankets (1 lakh) were estimated handed out to cold-hit victims all over the country by well-meaning organizations and commercial firms. Private companies can only serve limitedly and millions more living below the poverty line are in need of blankets and winter clothes to fight the cold.

This cry for blankets just speaks of one thing – Poverty. It speaks of people who are unable to buy the basic needs in order to survive during such recurring climatic change.

This leaves the government to consider what responsive pro-

grams it can do to curb cold-related deaths and sicknesses, directly and in its long-term poverty alleviation programs since its 140 million people where an estimated 50% live below the poverty line.

Similarly, the cold wave sends a message to organizations as well to come up with disaster management plans and relief missions to be done earlier to avert preventable deaths and diseases such as those aggravated by the cold.

The cold wave which registered its lowest at 6.5 Celsius has hit hundreds of people in the country especially in the north. It is a recurring phenomenon year after year. And annually, people, especially young children and the elderly are most struck with this climatic change. Reports say that already nearly 200 persons died of cold-

related causes while hundreds are being admitted in hospitals due to cold-linked illness.

Health complexes are filled with victims of the cold wave especially children with respiratory related diseases such as pneumonia while the elderly are mostly hit by hypertension and heart diseases.

Here in Rajshahi Medical Hospital, The Daily Star reports say that more than 300 patients are undergoing treatment and the number of admission exceeded last 3 year's records. The situation is getting worse as more patients from the northern districts are arriving for their admission.

Organizations, it has been noted, have conducted their own relief missions for their own beneficiaries while other commercial firms have responded in wider

scale to this call for blankets and winter clothes.

Dutch Bangla Bank Limited distributed 20,000 blankets to those struggling with the cold in the northern districts of Panchagarh, Thakurgaon, Dinajpur, Lalmonirhat, Kurigram, Nilphamari, Gaibandha, Joypurhat, Bogra and Sirajganj. Grameen Phone also recently distributed winter clothes and blankets to indigent people of Kamrangir Char in Dhaka.

The NGOs could only respond with whatever resources they have for their respective beneficiaries. And NGOs, which could only rely on support from donors, could only provide based on programmed systems leaving a lot more people needing help.

In their limited capacities, some non-government organizations like Kakonhat upazila based Adibahi Sangkruti, Unnayan Sangstha (ASUS) and Rajshahi-based Adivasi Unnayan Songstha (AUS) also very recently distributed blankets and clothes for their beneficiaries who are mostly Adivasis living in Kakonhat, Godagari and Tanore

upazillas. While relief is not a programmed activity of said Adivasi-based NGOs, AUS for one went to seek the support of neighbors, relatives and friends. Staff of Dhaka-based Volunteer Service Overseas (VSO) donated cash to AUS and this utilized on blankets distributed last January 17 to AUS' Adivasi beneficiaries in Tanore upazila.

Some other charity organizations too, such as the Catholic Church distributed warm clothes and blankets to their own congregation. Fr Francis Soren and Fr Paolo Ciceri of Bagmara Cathedral here at Rajshahi City said that the church services its congregation mostly to Adivasis from 11 nearby villages. While the Christian Church does pre-primary and primary education for its beneficiaries, it also gives out warm clothes and blankets to its 4000 beneficiaries.

Also, Fr Arturo Spezziale of Mohammadpur-based St Christina Church gave blankets to Bagdi street dwellers in Guaria village of Daulatpur Upazila, with donations from some members of the congregation.

And one of the basic health facilities, aside from blankets, which government needs to provide immediately are nebulizers to ease breathing among asthmatic victims. Nebulizers were found to be greatly lacking in health complexes as cold-hit victims were admitted to the hospitals.

Reports also say Bangladesh Samajtantrik Dal (BSD) and Ichamoti Samaj Unnayan distributed blankets to Sirajganj and Shatkira and 30,000 pieces of warm clothes all over the country. This article intends to mention that all organizations and individuals listed above who extended their support to provide warm clothing to people in need.

While the private sector has responded to people in need of blankets and winter clothes with what they can, the government, apparently, is slow to respond. While reports say that 4,500 blankets were distributed in Gaibandha by the district administration, some other district officials reportedly, are on the process of asking the support of authorities to help out in providing the needed blankets and clothes for their constituencies.

And one of the basic health facilities, aside from blankets, which government needs to provide immediately are nebulizers to ease breathing among asthmatic victims. Nebulizers were found to be greatly lacking in health complexes as cold-hit victims were admitted to the hospitals.

The victims' political identities – most of them, ironically, were the workers of the party whose apex leader had initiated, and boldly supported, the extrajudicial killings – do not, in any way, lighten the responsibility of the state to stop this extreme act of violation of human rights.

The government, which has more resources, a nationwide network, and an obligation to serve the people, is in an accountable state to curb preventable cold-related deaths and diseases and provide the necessary services. And this is to include fighting poverty and corruption for which the country is famous. In this manner, a family who are economically able can easily buy a basic need such as a blanket.

Blankets and clothes are donations from friends, neighbors and staff of AUS and SASU including Rajshahi-based Star Craft Handicrafts and Caritas staff. Staff of Dhaka-based Volunteer Service Overseas (VSO) also donated cash, which was spent for blankets.

With the up coming elections, hope is sent out to would-be authorities in government to respond to the above concerns.

The following is a brief update of a siet bostro activity yesterday, January 17.

Blankets distributed to Adivasi-Santals

TANORE- Some 400 residents of 40 villages of Tanore upazila availed of blankets and clothes from Adivasi Unnayan Songstha (AUS) and Santal Students Union

(SASU) today, January 17, 2007. AUS Director Bhagbot Tudu and SASU officer Luis Murmu distributed the blankets to beneficiary Adivasi-Santals most of whom are elderly, disabled, women and children in response to the cold wave affecting most especially the northern part of the country.

Blankets and clothes are donations from friends, neighbors and staff of AUS and SASU including Rajshahi-based Star Craft Handicrafts and Caritas staff. Staff of Dhaka-based Volunteer Service Overseas (VSO) also donated cash, which was spent for blankets.

Where people have access to basic resources such as land, capital, education and employment, buying a basic need as a blanket and a warm jacket for a child does not come so difficult.

With the up coming elections, hope is sent out to would-be authorities in government to respond to the above concerns.

The following is a brief update of a siet bostro activity yesterday, January 17.

Blankets distributed to Adivasi-Santals

TANORE- Some 400 residents of 40 villages of Tanore upazila availed of blankets and clothes from Adivasi Unnayan Songstha (AUS) and Santal