

## After AG's resignation

### A fresh start may be made

WE welcome the resignation of Attorney General A.J. Mohammad Ali. Though belated, it will surely make matters easier for the country. All the questions that have of late pushed the AG's office into a deplorable state of controversy will now hopefully be behind us. However, for truly proper and therefore acceptable new modalities of work to be initiated at the AG's office, it is important that a number of other officials follow Mohammad Ali out of the department. The various law officers, ranging from the deputy attorney general and public prosecutors to others lower down the list, must of their own volition depart if the office is to regain the trust and confidence of the nation. The Attorney General has, we believe, upheld his self-esteem by deciding to quit. We now expect the same measure of self-esteem to be demonstrated by those who have so long worked under him.

The departure of A.J. Mohammad Ali should be seen as an opportunity for the caretaker administration to delve into the uncomfortable details of all politically motivated appointments at the Attorney General's office. Such a move becomes an absolute necessity considering the general feeling that the beneficiaries of such appointments have in the last few years given the office a badly partisan colour. The degree of political loyalty, as opposed to the concept of public service, which affected the professionalism of those who have occupied the office at various levels now calls for a through, proper investigation. Such inquiries become a necessity if the dignity and stature of the AG's office is to be restored and upheld in future. Let it be made clear, though, that the investigations we ask for should not degenerate into a witch hunt. If they do, the bigger goal of an effective, healthy legal administration being in place will be defeated. Nothing can be more debilitating for a political system than priorities running aground through a wrong or misplaced approach.

The bottomline is that a process of detoxification must be inaugurated at the Attorney General's office. But such action must be undertaken with caution. We at this newspaper have argued all along against a politicisation of the legal system. Similarly, we expect that the process of de-politicisation will not lead to a situation where reverse discrimination can damage the whole exercise. In other words, a fresh new set-up which can carry out its responsibilities without fear or favour must take over at the AG's office.

## Eviction without rehabilitation self-defeating

### The destitute must have roof overhead

PUBLIC in general have welcomed the ongoing drive against illegal structures under the directive of the present caretaker government being carried out in the Metropolitan cities and elsewhere in the country.

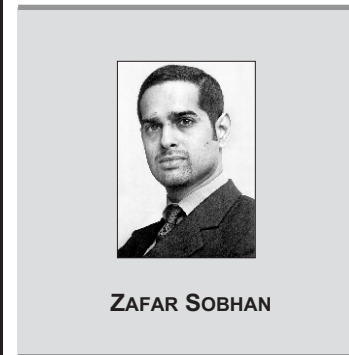
In the past we have witnessed such eviction and demolition exercises undertaken during the tenure of previous governments in a half-hearted manner that failed to achieve the desired goal. We thus hope that the current drive will yield better results provided it is linked to a rehabilitation program.

As much as we would like to see the demolition and the eviction drive succeed, it should be borne in mind, particularly in the case of the shanties of the slums, that the burden of guilt in settlement and sprouting of the shanties lies on some toll collectors and musclemen of respective localities. It is primarily they who have helped these shanties to flourish for years, if not decades. It is, therefore, our view that at the time of tearing down these shanties, those behind the scene are also hauled up and taken to task.

In the case of removal of structures of a more permanent nature alongside both banks of the river the administration in the past had failed to adopt an even handed policy. Often structures belonging to influential people were allowed to remain whereas those built by people of lesser consequence were razed to the ground. These illegal structures on the river banks would have long term negative impact on our environment by narrowing down the passage of our waterways including the very course of rivers.

Once again while welcoming the drive we also wish to call for prudence to put a humane face to the campaign as far as the slum areas are concerned, so that the affected have some alternative accommodation.

# Hide and seek



ZAFAR SOBHAN

TWO weeks into the new dispensation, affairs of state in Bangladesh are still shrouded in mystery and secrecy. The principle short-coming of the current administration is that there has been very little transparency with respect to how it came to power and with respect to how plans and decisions are made by it.

This lack of transparency is specially problematic given the fact that for years transparency and accountability have been the rallying cries of those arguing for healthier politics and better governance in the country.

Who exactly is accountable? Where does the buck stop? What is the legal, constitutional basis for the current administration's exercise of power? Most importantly, how long does the current administration plan to remain in office and what does it hope to accomplish, in concrete terms, during its tenure?

These are all questions that remain unanswered. General statements of noble

Right now there seems to be some degree of consensus, which has papered over the differences. But to the extent that this consensus is likely to fray in the coming weeks and months, the big question is who is then going to be calling the shots. And on the answer to this question depends the direction the coming year is going to take.

intention and vague five-point plans without any specifics of modality and implementation are not enough. People need to know on what basis and by whom decisions are being made and power exercised. For instance: why it was that it took so long for the attorney general to be changed, on whose authority and with what justification there have been illegal slum evictions and drives to clear the markets and pavements of unlicensed peddlers and hawkers.

In essence: who is calling the shots and what is their agenda?

Everything, it seems to me, ultimately boils down to the question of when elections will be held. The most disquieting aspect of the current situation is the uncertainty as to how long it will last.

Simply put: we are going to need elections at some point in the future, it goes without saying, and things in Bangladesh are not so bad, nor have they ever been, that we would require some kind of lengthy non-democratic interregnum to sort things out. In fact, make no

mistake, lengthy non-democratic interregnums rarely usher in good democracy and are invariably cover for prolonged non-democratic rule.

This is not to say that a short interregnum would necessarily be a bad idea. Either way, like it or not, a short interregnum (and what else is a caretaker government?), at the very least, is a fait accompli, and if it stays short there is no reason why it cannot have a salutary effect on our polity and politics.

But, and you can take this to the bank, the chances of anything good coming out of the current caretaker period are in exact inverse relation to the length of time that the current administration sticks around. The length of time between now and elections will tell us everything we need to know about the intentions of those calling the shots.

Essentially, the debate can boil down to the question of short-term or long-term. At this point, short-term doesn't look like it means elections much before six months and may even extend to the end of they

year, since it has been opined that it would not be possible to hold elections from July to October due to the rainy season and Ramadan.

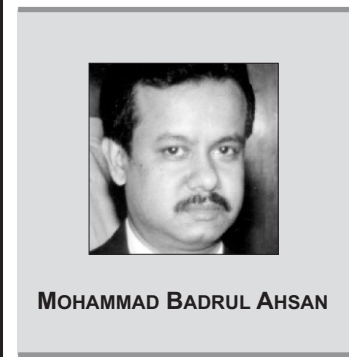
Long-term would be, perhaps 18 months to two years, or, worst case scenario, and we need to be realistic enough to acknowledge this unhappy possibility, several years.

The most important consideration, even in these non-democratic times, is public opinion. There is no way that an unelected government can stick around for an indefinite period of time without support from the public.

My best guess is that if a date for elections is set that the public may even be content to wait until the end of the year, but that it would be a tall order to persuade it to wait any longer, and that without a date set, the public would likely get restive much quicker.

Much depends on the political parties' ability to organise. Right now that ability is being decimated through the widespread arrests of party cadres and organisers, and if there is a

# Aim in life



MOHAMMAD BADRUL AHSAN

I don't know if students still write essays on aim in life. We used to do it until we passed the tenth grade and went to college. Well, I don't remember writing about aim in life in college. But anyway, let's not kid ourselves. Most of us did it without knowing what it was. We memorized essays written by others and then regurgitated those in the exams.

The aim was to pass one more grade to finish up school. Life would actually come much later.

Still, I would say, it was a useful exercise for the growing minds. It helped us think even in our unthinking moments, and made us aware that a journey wasn't meaningful without some direction. Many of us wrote that our aim was to become doctors because relatives, mostly parents, died in absence of proper medical attention. Others wanted to become engineers and lawyers. Only a few wanted to take up teaching for living.

Almost all of us had standard reasons. In our aims, we wanted to commit our lives to the country and its people.

The spirit of the time also influenced our minds. A couple of generations before us there was a fad for physics, many students hoping to land big jobs in Nasa. My time was mostly dominated by the doctors, and parents were eager to give their daughters in marriage to "those" suitable boys. Then, by the time my generation got to college, MBA was becoming popular. Many of us changed course and headed for business schools instead.

But then some of us learned to aim much later. That is when we realized that to aim was also to miss. The journey of life is not quite as surefooted as buying a ticket, getting on the bus and dozing, confident that someone would wake you up once you arrived.

As a matter of fact, the success of an aim depends on luck. Fifteen percent of girl students in

Zimbabwe engage in prostitution so that they can pay for their university education. Their aim is to graduate and find a job so that one day they can return to a decent life. Sadly, many drop out along the way. More than half perish with AIDS.

So luck brings upsets from time to time. People miss the aim and hit the wrong targets. Doctors become magistrates, students of literature join banks, science students study law, physicists become businessmen, and bright ones don't do well in life. Sometimes it is like shooting at moving targets. Every time you aim, you miss. We all know people who fail at everything and then, finally, give up on life.

Then there are always some lucky duckies who get more than what they deserve. Some of them are born with silver spoons, royalties and scions of aristocracy being amongst them. Others are born with the Midas touch; everything they aim hits bull's eye. These folks include

tycoons, charismatic leaders, movie idols, people who become larger than life.

In some cases that enlargement of life comes as a shot of fluke in the arm of luck. Lawrence of Arabia believed that history was nothing but a series of accepted lies. So he found a journalist named Lowell Thomas, and together they turned a confused and historically negligible "Arab Revolt" into one of the greatest romances of the twentieth century. Further aggrandizement would come when David Lean created the film Lawrence of Arabia, with a six-foot-three-inch actor, Peter O'Toole, playing the five-foot-four-inch Lawrence.

Often that enlargement turns into a fierce battle. Stephen Hawking knew what he wanted when he was eight years old. His parents wanted him to study medicine, but he was interested in studying the universe. At the age of 21, he would be attacked by Lou Gehrig's disease, which confined him to a wheelchair.

## BOTTOM LINE

The president can remove or replace election commissioners (including the chief election commissioner) through engaging in a process involving the Supreme Judicial Council, which comprises of the present chief justice and the next two senior judges [Article 96, sub-clause 3], if the president has reason to apprehend that an election commissioner may have been guilty of gross misconduct.

behalf, be made by the president. However, no law seems to be have been made, as provided by the constitution.

Accordingly, the government has unfettered power to appoint as many election commissioners as it deems fit, because of the absence of specific number for commissioners in the constitution or under law.

Once a person is appointed as election commissioner he cannot be removed, except by the procedure specified the constitution. The post of election commissioner is a quasi-judicial one, and that is why the constitution states that an election commissioner "shall not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court."

## The Election Commission & the general election

The functions of the Election Commission are enumerated in Article 119 of the constitution.

With regard to the general election, Article 58D(2) of the constitution provides that the non-party caretaker government "shall give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of parliament peacefully, fairly and impartially."

I emphasize the words "peacefully, fairly, and impartially." It is the responsibility of the non-party caretaker government to create an environment so that the Election Commission can discharge its constitutional obligation in holding the general election "peacefully,

fairly and impartially."

"Peaceful" means that there must not be any muscle-men with unauthorized weapons to influence voting, "fairly" means that it must be perceived as being free from dishonesty, or seen to be in conformity with rules and standards. "Impartially" means unbiased, or not prejudiced against any particular side. Therefore, conditions on the ground must be created prior to a fair and acceptable election

Under Article 121of the constitution, there shall be one electoral roll for each constituency for the purposes of elections to parliament, and no special electoral roll shall be prepared so as to classify electors according to religion, race, caste or sex.

Article 122(2) provides that a citizen of Bangladesh of 18 years of age is entitled to vote, unless

that person is declared by a competent court to be of unsound mind. Therefore, an eligible voter must be in the voter's list, and a voter must be able to check whether his/her name has been enlisted or not.

## Tenure of election commissioners

Article 118.4 of the constitution provides that the Election Commission shall be independent in the exercise of its functions, subject only to the constitution and any other law. Independence means that it shall not be under any direct or indirect control or influence of the executive, i.e. the government.

Election commissioners know that they have a fixed term of tenure during which they cannot be removed. The certainty of their tenure gives them their independence to perform their functions without fear or favour.

The removal or replacement of election commissioners is not an easy process. Such a procedure to make it difficult was deliberately incorporated in the constitution so that they could perform their functions independently of the government, or of any other outside pressure.

That is why Article 118(5) of the

constitution provides that an election commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court.

## Reconstitution of Election Commission

Regrettably, the current Election Commission has become the subject of controversy. Ordinarily the election commissioners are above controversy.

Many constitutional experts hold the view that the controversy is partly because the constitution is silent on the qualification and experience required to hold the post of election commissioner.

Election commissioners are comparable to an umpire. If players do not perceive the umpire's impartiality, it is desirable that an umpire resign voluntarily for a just and fair game.

## Judicial council

While the removal of an election commissioner can only be through a procedure applicable to Supreme Court judges, there exist no qualifications required for the appointment of election commissioners. This is in contrast to the case of appointment of judges of the Supreme Court. Article 95.2

serious anti-corruption drive that nets more senior political leaders, the parties could be compromised further still.

Next, we have to look at the international community. My understanding is that the general consensus among the international community is to give the current administration up to a year, but by no means can it expect a blank check.

The main variable that may decide everything is how the country is to be governed. Right now, we have an eleven-strong caretaker cabinet -- a system that was that conceived initially for the sole purpose of administering elections. It is not contemplated that the caretaker administration take big policy decisions and I do not expect that this caretaker administration has any great desire to do so. But what happens when the big decisions come to the table?

The other thing to look at is the balance of power between the army and the caretaker government. So far, the army seems to be running things. The caretaker cabinet is of its selection. Despite appearances to the contrary, it is not the chief adviser (and certainly not the president) who has selected those to serve alongside him.

Right now the army is enjoying a free hand. When it comes to the lists that have been drawn up for apprehension and the thousands who are now behind bars, these are fully army initiatives, and the caretaker government does not know much about

it. Indeed, the caretaker cabinet has barely even met together as a group and the pace of change when it comes to matters under its authority appears to be glacial.

But at some point the caretaker government is going to have to make a decision as to whether it is on the same page as the armed forces. So far there have been no major conflicts and so any kind of confrontation has been averted. But this may not continue indefinitely.

The main lever when it comes to the army is that it wants to maintain the constitutional imprimatur under which authority is currently being exercised and that it has no desire to call martial law (nor would martial law be acceptable either inside or outside the country). So that means that the caretaker government and the political parties and the media and anyone else, and the international community, can operate as a moderating influence.

Right now there seems to be some degree of consensus, which has papered over the differences. But to the extent that this consensus is likely to fray in the coming weeks and months, the big question is who is then going to be calling the shots. And on the answer to this question depends the direction the coming year is going to take.

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Unable to hold his head up, and speaking through an electronic voice-machine, Stephen became a scientist, wrote a bestseller book and earned worldwide fame. He refused to give up his aim against the odds of life.

Goethe once wrote that what was important in life was life itself, not a result of life. Perhaps life is as good as it gets with or without an aim. Perhaps the aim is nothing but an illusion that we can achieve what is already given, that we can make what is made, do what is done. It is like heating up a TV dinner in the microwave, thinking that one has become a chef.

In school we had learned a great deal about that illusion, practicing to aim without knowledge of the target. We grew up fed on the diet of aspirations, busy with rules, forgetting the game. It took us a long time to understand how that illusion worked through us, its abiding influence interfering with every step of life. For some of us, the illusion stuck like an overweight rudder which sank the boat.

These days, again, aim is influenced by time. Young men and women mostly want to grow up to become computer engineers, investment bankers, musicians, and performers, anything that brings either money or fame, even better, both at the same time. The

influence stems from the new reality that cash is the ultimate thing in life. Let us be honest, aim in life in the old days was the same. But it was connected to remunerations with an idealistic gloss. Somehow it worked like insulating a high-voltage wire. Modern ambition is shocking because the live wire is exposed.

Do the students still write about aim in life? If they do, I don't know why. What is there to aim when the target is fixed, when you can shoot at it from more than one direction? One doesn't have to be in a particular profession to earn money. From teacher to cheater, from lawyer to liar, doctor to dictator, musician to musclemann, traders to traitors, life is now committed to target. Aim is just a redundant step.

George Santayana, a Spanish-born philosopher, writes in The Life of Reason, "Fanaticism consists of redoubling your effort when you have forgotten your aim." For God's sake, someone should caution the students that they can't concentrate too much on the target without learning to aim.

Why? Because, it will give them extreme and uncritical zeal for life and they will grow up to be fanatics, with or without religion.

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# Reconstitution of the Election Commission



HARUN UR RASHID

THE establishment of an independent Election Commission is a very important part of the implementation of the principle of participatory democracy. That is why, in the Bangladesh constitution, there is a separate Part VII that deals with the appointment and functions of the Election Commission.

Under Article 118 of the constitution, the chief election commissioner and the election commissioners constitute the Election Commission.

## Appointment of election commissioners

Article 118 (1) provides that the appointment of the chief election commissioner and other election commissioners shall, subject to the provisions of law made in that

prescribes the qualifications required for judges. An anomaly exists in the constitution.

The president can remove or replace election commissioners (including the chief election commissioner) through engaging in a process involving the Supreme Judicial Council, which comprises of the present chief justice and the next two senior judges [Article 96, sub-clause 3], if the president has reason to apprehend that an election commissioner may have been guilty of gross misconduct.

Under the above circumstances, the president can direct the Supreme Judicial Council to inquire into the matter and report its finding to him. If the finding of the inquiry goes against the election commissioner, the president "shall, by order, remove the functionary." (Article 118.6 of the constitution) This process is rather time-consuming.

## Suggested quick way

Many legal experts suggest a quick way to deal with the reconstitution of the Election Commission.

It is noted that the Supreme Court Judges, Remuneration and Privileges Act of 1982, as amended from time to time, governs the terms and conditions of

election commissioners.

That means that their remuneration, privileges, amenities and leave are regulated by the Act. The Act provides for, among other things, extraordinary leave, if asked for by the functionary, but not "forced leave" at the instance of the government.

Many constitutional experts suggest that the president can amend the 1982 law by incorporating a provision of "forced leave" through promulgating an Ordinance under Article 93 of the constitution.

Under the amended Act, the president may ask any election commissioner to go on leave for a period of time as deemed necessary by the government, thereby virtually reconstituting the Election Commission, if they do not resign voluntarily ( the chief election commissioner has resigned recently).

Under the relevant order made in terms of Article 141C, this ordinance arguably cannot be challenged in the High Court Division for the enforcement of any right during the operation of emergency.

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