

# Challenges before the Caretaker Government

## Opening remarks

Mr. Mahfuz Anam  
I am truly honored by your presence this morning. We feel that it is very important at the moment for the nation to get a direction of how we want to move forward. I think there are some points where there is no scope for compromise - which is democracy, upholding people's rights, getting a truly representative government, our prospects of moving forward as a democratic country, as a country that is giving some economic benefits to our people. So, these are non-negotiable; we cannot negotiate with our freedom, with people's rights. We cannot negotiate with our desire to give more economic rights to our people and some benefits of a modern state.

So given these non-negotiables, I think we at the moment face a very interesting phase in our history. It is true that Bangladesh is a proud democratic country but it is also true that we have stumbled in implementing democracy in many ways. Now after fifteen years of uninterrupted democracy, or flawed democracy if you like, we have come to a point where we have been given a window of opportunity. Whether it is a window of opportunity or whether it is a disaster or misfortune - I think the succeeding events will tell. But the future will also depend on what we do, what vision we give to the nation, what direction we are able to bring out.

To be very honest, there are two distinct thinking processes that we are as journalists seem to sense in the public. One sentiment is - well we were about to have an election but that election was in many ways initiated, now let us have a good election under this caretaker government as soon as possible and we move forward. There is another very strong trend of thought, which is that, well now that we have stumbled and have a caretaker govt, now we have a chance to go for some fundamental reforms, which the political parties refused to do. After 15 years of uninterrupted democracy they refused to do some fundamental reforms. Therefore, this is a chance we do some basic changes, set democracy on a firmer ground and then move on. So, we would like this august gathering here to share their thoughts and give us a sense of direction on how to move forward. All of you will see that we have provided a small list of discussion points. We have identified five major themes under which we would like to discuss. If any of you would like to bring up other points you are most welcome. But the number one category is holding a free and fair election, under that we have authentic voter list, EC reform, EC autonomy, structure, budget, election expenses and election tribunal reform. This is one cluster of thoughts.

Second is, reform of the political parties. Third is, depoliticising the administration. Fourth, anti-corruption drive. Five, law and order. Then we have others where we have pointed out appointment to constitutional posts. Can we think of like election commission chairman or the public service commission chairman or the anti-corruption commission? Now, basically it is the decision of the prime minister of the day and it has become more and more politicised. We would request you to go straight to the points and give your suggestions. One approach is to talk about all the points in one go. The other is to take one point at a time and spend half an hour or forty minutes on each. May I request Mr. Akbar Ali Khan to set the ball rolling?

## Discussion

### Akbar Ali Khan

It is very difficult to start on a difficult issue like free and fair election. We have to remember that in no country of the world election system is perfect. There will always be some deficiencies. So how many reforms will be undertaken and how deep will be the reforms will depend on a time horizon, that is, how much time we have. Are we willing to give any length of time needed to do these reforms or do we want an election, which is reasonably fair? For example, this is not the first time we are going to hold an election. We had election before. But do we want an election, which is similar to those elections? Or do we want an election, which is significantly better than those elections. So it depends on the time horizon.

If we want to have a prolonged Caretaker Government then it will have to take vital decisions regarding budget and economic management. Will it be safe to do so? That is an issue we have to confront. Another issue is, how the term of the caretaker government should be defined. We have exceeded the 90 days of election schedule. How will the caretaker government decide on this? One way would be to seek advice from the courts to find a time frame. Another way could be to constitute an independent election commission, which should tell us how much time is required to hold a free and fair election.

That should be the basis of the tenure of the present government. But assuming that we want an election comparable to 1991 or 1996 or 2001 and we are not going for any permanent solution then I can give some suggestions on topics listed here. For example, an authentic voter list. The main problem is preparing this list. EC violated the directives of the Supreme Court, and also that of the Constitution. The Constitution says you will have one voter list, the EC created three voter lists. However, I must say that throughout the years we have been violating the directives of the constitution while preparing the voter list. We have separate voter lists but the constitution says you cannot differentiate on the basis of sex or anything. So, we need to have one voter list and it should be printed before the poll schedules are announced.

Another directive of the Supreme Court has been violated by the EC. It was said that voter list should be prepared on the basis of the database of the electorates. But they prepared a list by striking out names as per their assessment. They included some names in the supplementary voter list. But you cannot just cross out names from a voter list. There is the database where all the records are kept. Though there is no national database, there is at district level. If we really want a perfect voter list then we should have a national database. If someone's name is included in three places then the database will find it out. This is the reason why we have more voters of people over 18 years.

I went to SUJAN office and asked them to find out if my name was there

## LIST OF PARTICIPANTS

1. Barrister Maudud Ahmed, Former Minister for Law
2. Mr. Tofael Ahmed, Former Minister for Commerce
3. Barrister Anisul Islam Mahmood, Former Minister for Foreign Affairs
4. Barrister Kamal Hussein
5. Barrister Tanjibul Alam
6. Dr. Ali Akbar Khan, Former Advisor to the Caretaker Government
7. Mr. Shafi Shami, Former Advisor to the Caretaker Government
8. Dr. Rehman Sobhan, Chairman, CPD
9. Prof. Muzaffar Ahmed, Chairman, TIB
10. Dr. Mustafizur Rahman, Chairman, IDS
11. Ms. Sultana Kamal, Executive Director, Ain-O-Shalish Kendro
12. Ms. Yasmeen Murshed, Chairperson of Scholastica Group
13. Ms. Sharmeen Murshid, CEO, Brotee
14. Mr. Hafizuddin Khan, former Advisor to the Caretaker Government
15. Dr. Atiur Rahman, Chairman, Unnayan Shommonoy
16. Dr. Asif Nazrul, Department of Law, DU
17. Lt. Gen Hasan Mashuud Choudhury, former Chief of Army staff
18. Lt. Gen Harun-ur-Rashid, former Chief of Army staff

A Roundtable on Challenges before the Caretaker Government organised by The Daily Star on 27 January, 2007. It was participated by politicians, professionals and members of the civil society. The proceedings of the Roundtable is printed below.

on the database. Yes, it was there at my village address. The name was same as mine, the father's name was also same as mine but the date of birth was different. It can be possible that the date of birth is also same, that's why you have to give mother's name. The EC database does not have sufficient information. As a result probably this time we shall have to go without a national database. But at least on the basis of district database the voter list should be prepared by the election commission.

On election commission reform my suggestion is - appoint good election commissioners and leave it to them. Because if the government starts micromanaging then they will not be able to function. EC has failed but that does not give the govt. the right to usurp the rights of election commission. The government should try to build up on EC that is autonomous and independent. The government should reconstitute the election commission. The real issues lies in having the right type of commissioners.

On the budgetary issue there are arguments on both sides. We have seen conflict between the CEC and former finance minister because he did not want to give money for preparing a fresh voter list. He was right because the EC had wasted Tk. 70 crore preparing a voter list that was not used by anyone. Is there no accountability of the election commission? I do not know of any other institution in Bangladesh, which has wasted money like the election commission did. I was a finance secretary for one and half years and I can tell you that whenever there was a proposal from the EC for money I used to get worried because I knew that most of the money would be wasted. One of the reasons is they work in a hurry and when you work in a hurry, when you have to buy so many things in 3 days or 5 days time and you don't comply with many of the government procedures there is wastage.

Regarding black money my point is that the front agencies for elimination of black money are not working. The front agencies are the EC and the National Board of Revenue. Now that is the first line of defence. If people get away by making black money and if the anti-corruption commission does not go after the candidates then the problems will remain.

About election expenses, we may reduce the amount but there are also ways to bypass the regulation. We shall have to be very specific. My suggestion would be that we should not aim at something impossible but we should aim at something that can be done. If we can even eliminate 10 per cent of the bad people then that will be the first step then we should build on them.

### Prof. Muzaffar Ahmed

What SUJAN has done was it took the CDs from the election commission. The CDs were prepared in a hurry and the format was not right. So we had to change and make a uniform. There were 7.5 crore voters in 2000, there is no server in Bangladesh that can take the information that is there. So we had to hire a server in the United States. That means United States has information on 7.5 crore people in its server and they can have easy access to it. But that was the only route open to us. As Mr. Akbar Ali mentioned, yes we have prepared the software, one can check how many names are common. For example, we put the name Akbar and in Nabinagar we found 200 Akbars. By putting in other information it came down to 30. Even at the upazila level such type of checks can be done.

### Mahfuz Anam

The list that SUJAN has now, can that be used as a reference?

### Prof. Muzaffar Ahmed

This is what was mentioned in the Supreme Court as the database. This is EC data and we have put it on the website. We wanted to work with the EC and requested them to give us the supplementary list prepared by them so that we could put that up in the website and see how many duplicate names were there. Then they could come up with a list, which should be generally acceptable. We know from our experience that most problems are with the mega-cities, Dhaka and Chittagong. We had also suggested that if you have to prepare a new list these are the two cities where the new list can be attempted. In other areas if you involve the local government it is possible to identify people who may have gone somewhere for work.

But during the local government election the voter list is not updated. Though it is said it is a continuous process, if the updating was done during the local government election then lot of controversy wouldn't have been there. We think we have a technology, which can help the EC to prepare an authentic voter list. The other point is - this time EC did not follow the rules that are there in the RPO for preparing a voter list, even in revising the voter list. They are supposed to go house to house, see the applicant in person and someone has to sign that the information is correct. I know they did not go in many of the houses including my own house. The teacher who was given the duty had sent some students belonging to one political party. And in my house there are ten eligible voters but they gave us six forms so four were automatically eliminated. I asked the official and he said they did not have enough forms. I told him I could photocopy this but he said no. So, this sort of problems were there this time.

There should be a supervisor to check the work but this supervision was never done. After that the election official has to sign it as correct information. These steps for preparation of the voter list were not taken at all. The forms for inclusion or exclusion of names were not available with the EC. Therefore, this time transparency in preparation of the voter list or following the direction of the Supreme Court was totally violated. The law was violated therefore the list was not acceptable. So far as the EC reform is concerned, I entirely agree - the right person in the right place. We never had this kind of person there. But there were some people in the last three occasions who performed with the help of the caretaker govt.

Bi-partisanship in selecting people in EC has always been avoided in our decision making. Our suggestion from SUJAN was that while appointing people to the constitutional posts a hearing in the parliament committee should be held. The committee on law and parliamentary affairs should have a public hearing and the antecedents of the people should be known. We should not have people who have been accused of corruption in their earlier posting.

I think no one cares to know about what is there in the constitution or in the electoral roll. Nobody reads it. We have seen in earlier elections there was reforms of the Representation of the People's Order (RPO). This time, the first caretaker government made no attempt to look into this. We had gone to some people with suggestions that these are the areas where there are problems and these issues should be addressed. We had prepared a bill for consideration. These reforms are needed. Therefore, the caretaker government or EC should be open to civil society's suggestions for reforms. There should be autonomy but I do not know what is meant by structural change. The recruitment process of the EC officials in the districts and sub-districts is questionable. That is one issue that has come up this time.

The other is - actually the election is not conducted by the election commission. It is done by the administration. So the returning officer, the presiding officer, the polling officer - their selection is very important. Last time in 2001, there was allegation that at the polling officer level disproportionate selection was made from the Islamic Bank. So, what kind of balance we bring there? This time teachers refused to join because of the controversy and risk. So, in selecting polling officer, returning officer and presiding officer their antecedents need to be looked into. Their names should be published and their antecedents made known to the electorates of the area. That is very important if you talk about structural reform.

I entirely agree with Mr. Akbar Ali Khan that there should be special audits for the expenses made by the EC. They should be accountable. We know in preparing ID card on two occasions they have wasted nearly 200 crore taka. And the last time when the ID was prepared I had an ID card in which the photo could not be identified. My father's name was wrong and

### Sharmin Murshid

My organisation is called Broti. It undertook took studies - 10 per cent of the constituencies, which is 30, constituencies and we did this with the support of PPRC, Unnayan Shommonoy and the Hunger Project. We shared the findings of the six constituencies and we hope to share all 30 with you on



the age was wrong. So if I had used that the presiding officer could have refused me to cast my vote saying you are not the same person. Preparing ID is a constitutional requirement but we need to be careful how we make it.

Regarding black money, I want to say that if Ant-corruption Commission, NBR and the EC work together on this issue then you can find a solution. Look at the nominations accepted by the EC for the 22 January election. Regarding the date for submission of information under section 44 A, BB of the RPO you had a news item published in The Daily Star which said that former prime minister did not submit her income tax returns and some others did not submit the wealth statement. If the information as per RPO is not given then not only that particular nomination has to be cancelled, they are also liable to be punished by law. The EC has never applied the RPO in the last 35 years. And if the RPO can be applied properly then black money can be eliminated to some extent.

Election tribunal issue has to be properly addressed. The law says that it should be decided within 6 months. This time frame must be addressed properly and the High Court must form that many benches, which should listen to the cases without interruption for the time period.

### Mr. Mahfuz Anam

What Mr. Akbar Ali Khan and Prof. Muzaffar Ahmed said is what we desire. Now the fact that we have an election to hold should the caretaker government or the reconstituted election commission take up all these issues or should there be prioritisation. Dr. Kamal Hossain, being aware of the realities of our political situation would you like to comment on that?

### Dr. Kamal Hossain

Authentic voter list is a legal requirement. The question is how to do it. Election commission is mandated to do it. They will prepare the electoral roll and they must prepare it in accordance with the law. The law is - the electoral ordinance 82 and there are very specific directions. Now the question is, in the light of our experience whether we can improve or amend some of it. The real problem is human agency, that is, who does this. It's a human being that goes door to door. That is a problem. And I do not have a simple answer. We have certain formalities for recruitment of people but the recruitment process has been massively defective. How do you correct that? The EC secretary once had said he did something under the authority from the prime minister's office. It was a foolish answer. Why he should not be retrospectively dealt with. Election commission should recruit people who are not patently partisan. Local government can have a role in this. Why not take a person who has been elected at the local level and also the one who was the runner up so that the two of them check each other out to see that the electoral roll at the local level is validated.

### Mahfuz Anam

Sir, there is always this question about EC having an independent secretariat which does not report to the PMO.

### Dr. Kamal Hossain

Historically, when you depose someone to Election Commission you sever your relations with that person. The Establishment Ministry may be under the prime minister but once you depose someone for one or two years that should be the last time you see him for two years. The fact of the matter is, instruction continuously go to the EC, to the secretary. The last secretary has admitted that under oath.

Black money and election expenses. This is a very big subject. Exceeding the election expenses is an offence. But it is not as gross an offence as bribing an OC, as paying the returning officer, as paying the presiding officer, as paying my polling agent to go away. There is another use of black money. You negotiate with the whole lot of local people, it is known as block votes. In the slums it is the sardars with whom you transact through cash payment. Fifty per cent of the money is paid upfront and the rest after voting is done. This means that the criminal law has to be effectively applied. I think there is no member of parliament in the last few election who could swear that they have spent only Tk 5 lakh as election expense. This is something systemic. Raise it to ten, raise it to twenty, raise it to twenty-five, but somewhere you have to draw the line.

In Dhaka city multiple crores are spent by politicians. What do you do about that? The law says 5 lakh but the practice is 5 crore. How do you close gap? I have no easy answer. You need combination of civil society, then you need the law to come back but the law in the regard has just ceased to operate.

### Mahfuz Anam

Would you like to suggest a figure, which we should aim at?

### Dr. Kamal Hossain

To take opinions you may send the form to all members of last three parliaments and ask them to give the figure in confidence and then average it out.

### Mahfuz Anam

Dr. Kamal Hossain, what should the caretaker government take on its plate and what it should not?

### Dr. Kamal Hossain

You cannot allow election expenses to go up to one crore. Black money disenfranchises the people. If you can neutralise black money people can come and vote. Voters can vote for honest people. Honest people can contest elections meaningfully. This is the crisis of the constitution. This is the crisis of democracy.

### Sharmin Murshid

Our experience says maximum of three months is needed for a voter list.

About election expenses, I would like to say that if it was possible in many other countries then why not here? This money will be given by the state. This will contain corruption linked with black money. This is absolutely possible because many countries in Europe have done it. Can this not be a state funded exercise?

### Anisul Islam Mahmud

There is no reason to think that the 2001 voter list was authentic. There are lots of anomalies there. Now there is a caretaker government in place under very different circumstances. We may think about whether we can prepare a new database. I think it would be better that way. Correction of the list is difficult. Secondly, sometimes political parties are under pressure to nominate people with black money. Because, the major parties need Tk 500 to Tk 1000 crore to contest the elections. This is hard fact of life. Now from where can you get that kind of money? To collect this kind of money they have to go to the owners of black money. Many bank defaulters are getting nomination. If political parties did not have to go to these people for money then there would have been a marked improvement in the situation. I know of one candidate who offered 50 crore taka, 30 crore as down payment and 20 crore after nomination. So this is the state of affairs in the nomination process. Therefore, if we keep aside Tk. 200 crore every year, then we shall have Tk 1000 crore in five years. Tk. 200 crore in the national budget for this purpose is absolutely nothing. We can strengthen democracy and we can get a proactive parliament.

About election expenses I can say that in the last election, instruction was to print one colour posters and its size was also reduced. This time, I know, just to submit nomination paper some people spent 20 to 50 lakh taka. This can be stopped. Put a ban on truck processions. There should be one public meeting, no gates. Hold meetings indoor. Through controlling these activities election expenses can be minimised.

### Prof. Rehman Sobhan

I want to give a concrete suggestion regarding black money. This is for the caretaker govt. Let them in fact give a proclamation that candidates who seek nomination in the forthcoming election should give a declaration of their income and wealth statement to be put on public record in advance and then within the election commission a special division should be constituted to check it.

CONTINUED ON PAGE 17