

## General election and non-party caretaker government



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### BOTTOM LINE

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#### General remarks

Two issues that have been lately raised by some political parties are:

- How long can the non-party caretaker government (CTG) continue when the constitution says that an elected government ought to run the country,
- It is desirable that the Election Commission should announce a specific date for holding the general election by June.

It appears that the chief adviser had dealt with the two issues by making a simple statement earlier, that it was not possible to give a specific timeframe for elections as reforms were still being carried out for a free, fair and credible polls (DS/February 28).

He added that the government was determined to hold election "as soon as possible" after necessary reforms. Furthermore, a poll in a widely circulated Bangla daily revealed on March 2 that more than 98% percent do not support the holding of election by June.

Before I discuss the above two issues regarding holding elections, let me provide some general remarks in the context of which the two issues need to be considered.

against corruption that had eaten up the vitals of the nation (Daily Star, February 14).

The actions of CTG, so far, have been welcomed and appreciated by the people. The steps so far have amply demonstrated the resolve and firm determination of the CTG to eradicate some of the social ills, including large-scale corruption and abuse of power that had permeated society and politics for a great length of time.

Another fact that I wish to flag is that it appears that many of the public servants forgot the underlying meaning of public servants, thinking that they were "government servants" and not public servants or servants of the republic.

It is noted that nowhere in the Constitution has the term "government servant" been used. Part IX of the Constitution deals with appointments, conditions and dismissal of civil public officers, not government servants.

Public officer is defined as a "person holding or acting in any office of emolument in the service of Bangladesh" (Article 152 of the Constitution). That is why the chief adviser reportedly had to remind the public/civil servants that "as officials of the republic, you have to be com-

pletely free of individual group or political influence" (DS/February 16th).

#### Constitutional pre-conditions of general election

Let me consider now the two specific issues raised at the beginning in the light of the functions of the CTG as per Constitution.

Among other functions, one core function of the CTG has been specified in Article 58D (2) of the Constitution in the context of the national election.

For ready reference, the Article is quoted below:

"58D (2): The Non-Party Care-taker 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."

Let us examine carefully the language used in this Article. There are four elements in it, and they are:

- All possible aid and assistance to the Election Commission that are required to hold a peaceful, fair and impartial election,
- The words used "peacefully, fairly and impartially" are pre-conditions to holding an election,
- Until an environment of peace,

fair and impartiality is created, the Election Commission cannot hold an election and

- An election without satisfying these criteria is not an election within the meaning of the constitution.

Let us further scrutinize the meaning of the words "peacefully, fairly and impartially" used in the Constitution. These words are loaded in the sense that they have significant meanings in holding the election.

Peaceful means absence of violence. This implies the collection of all unauthorized and authorized arms during the election period. It also means that organized criminal and mercenary gangs must be arrested and punished so that the election is held in an environment free from the influence of black money and muscle power.

The much-publicized link between certain politicians and criminal gangs must be unearthed and dismantled. Obviously it takes time to eradicate what has been built in, and tolerated for, at least 16 years.

Fair is a moral and perceptive concept. It means that fairness of an action must be perceived by every one. Fair implies action without discrimination, without bias and without prejudice.

Impartial means absence of partisanship. Partisanship includes nepotism, favoritism and bias. In this term what is important is the perception of impartiality. This means that no one should suffer for a decision that has been tainted by partiality or bias. Both the concepts of fairness and impartiality involve behavior and conduct of persons entrusted with a duty or task. This means that the officials who are connected directly

and indirectly with the election process (such as district and upazilla administrators and police officers) need to be in place, removing partisans.

It is argued that this onerous responsibility of creating a peaceful, fair and impartial environment for election means:

- Reconstitution of the Election Commission,
- De-politicisation of the administration, including state law officers at all levels
- Preparation of correct voters list with either photo or ID cards, and
- Amendment of the P.R. Order 1972 that will deal with empowerment of the Election Commission and criteria for ineligibility of candidates.

All the above issues are inter-related, and cannot be separated from each other. It is argued that mere reconstitution of the Election Commission and reshuffling of some public servants are not enough for holding a fair election in terms of the Constitution.

#### Election and democracy

Mere holding of periodic election is not enough for democracy, although the election is one of the principal means to achieve participatory democracy. The other criteria for democracy are

- a robust opposition party,
- freedom of press,
- rule of law,
- good governance,
- respect for human rights, and
- equitable distribution of national wealth.

One can reasonably acknowledge that the 1991, 1996 and 2001 elected governments had not adhered to the

above criteria of participatory democracy. The governments are characterized by a persistent tendency for leaders to disregard the necessity and relevance of morality in their actions and conduct.

No ruling party had implemented what they had promised in their manifestos. The public had been disappointed and felt helpless, when ruling parties, one after another, calmly reneged on their election commitments without any explanation to the public. The accumulated mess of 16 years cannot be removed easily and quickly by the CTG.

#### Tenure of CTG

With regard to the second issue on how long the CTG can continue, the Constitution provides the answer. Article 58 B (1) states that the tenure of the CTG expires on the "date on which a new prime minister enters upon his office after the constitution of Parliament." This means, first, the constitution of the ninth Parliament through elections and, secondly, when the majority of MPs elect their leader as prime minister.

It is a constitutional obligation that when the CTG has completed the tasks, the Election Commission can hold the election. In this context, the adviser for foreign affairs reportedly indicated that polls would be held after all tasks needed to create "a level playing field" were completed.

phrase after the word "consultation" in Article 58C (5).

It is noted that the chief adviser was appointed during a grave national crisis which warranted the promulgation of emergency (Article 141 A of the Constitution), and the president deemed it not practicable to consult the major parties at the time of appointing the chief adviser, and such decision is perfectly legal within the ambit of the Constitution.

It is a constitutional obligation, both for the CTG and the Election Commission, to hold a fair, peaceful, impartial national election. It is argued that election without creating a congenial environment does not constitute an election within the Constitutional framework.

It is reasonable to assume that when the CTG has completed the tasks, the Election Commission can hold the election. In this context, the adviser for foreign affairs reportedly indicated that polls would be held after all tasks needed to create "a level playing field" were completed.

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## Multiple candidature



Finally, what is the rationale of choosing the number 3? It is as arbitrary and judgemental as any other number except 1. Thus, if the EC wants to bring about right reform and avoid introducing arbitrariness and judgement in the election law, it should restrict candidature in national polls to only one constituency.

#### KHANDAKAR QUDRAT-I ELAHI

The Election Commission (EC) has prepared a draft containing several changes in the Representation of people Order, 1972 (RPO, 1972), which will be discussed soon in an inter-ministerial meeting. The EC will then exchange views with political parties and civil society about the reform proposals.

This paper is interested in only one of these reforms: confining a candidate's right to contest in general elections from a maximum of 3 constituencies. According to the existing electoral law, a candidate can contest from a maximum of 5 constituencies.

To examine the rationality of this proposal, let's refer to the relevant portions of the Constitution, i.e., Sections 65 (2) and 71 (1,2) in Chapter 1, Part 5.

Section 65, Clause (2) states: "Parliament shall consist of three hundred members to be elected in accordance with law from single territorial constituencies by direct election." Then Section 71, titled, "bar Against Double Membership" declares: "(1) No person shall at the same time be a member of Parliament in respect of two or more constituencies. (2) Nothing in Clause (1) shall prevent a person from being at the same time a candidate for two or more constituencies, but in the event of his being elected for more than one:

(a) within thirty days after his last election the person elected shall deliver to the Chief Election Commissioner a signed declaration specifying the constituency which he wishes to represent, and the seats of the other constituencies for which he was elected shall thereupon fall vacant."

Two interesting points emerge from the above citations.

First, the Constitution clearly contradicts itself. If an MP cannot represent more than one constituency, why should he/she be allowed to contest from two or more constituencies? Besides this question of consistency or contradiction, there are more serious and practical issues involved here.

Firstly, it burdens the voters for the second time. If a candidate wins from more than one constituency, he/she must choose one electoral area. This means that the voters of other constituencies must come to the polling booths again to choose their representative(s). Consequently, voters must spend their time, labour and/or lose income for the second time. Thus, from the voters' perspective, a question naturally arises: Why should they expend their time and resources a second time to perform their civic duty?

Secondly, the Election Commission has to hold by-election (s) in the vacant seat(s),

meaning that public money and resources will be employed a second time for the same purpose.

These are serious and practical questions. The EC must justify why the voters should bear extra burden in performing their civic duty, and spending public money and resources a second time for the same purpose.

Second, the Constitution does not put any limit on the number of constituencies from which a candidate can contest, meaning that any lateral limitation would be unconstitutional. Sections 124 and 125 in Part VII solve this legal problem. Section 124, titled, "parliament May Make Provision As To Elections," states: "Subject to the provisions of this Constitution, parliament may by law make provision with respect to all matters relating to or in connection with election to parliament, including the delimitation of constituencies, the preparation of electoral rolls, the holding of elections, and all other matters necessary for securing the due Constitution of parliament."

And Section 125 titled, "validity Of Election Law And Elections," states: "Notwithstanding anything in this Constitution: (a) the validity of any law relating to the delimitation of constituencies, or the allotment of seats to such constituencies, made or purporting to be made under article 124, shall not be called in question in any court."

These provisions are highly undemocratic, because they give the government power and authority to use the constitution as fits its interests. In other words, these provisions give the government the opportunity to manipulate the election laws in their favour. This has happened in the past.

The above analysis suggests that the existing electoral law concerning candidature in national polls is both, unsound and undemocratic. Since one MP can represent only one constituency, he/she must not be allowed to contest from more than one constituency.

In other words, the right reform proposal is: a voter

entitled to run from one constituency only. This reform will correct all anomalies regarding candidature in the election law: (i) make the constitution consistent, (ii) relieve voters from extra burdens and help to choose

their representative properly, (iii) eliminate the wastage of public money and resources and (iv) prevent the government from manipulating the election law.

Finally, what is the rationale of choosing the number 3? It is as arbitrary and judgemental as any other number except 1. Thus, if the EC wants to bring about right reform and avoid introducing arbitrariness and judgement in the election law, it should restrict candidature in national polls to only one constituency.

The author, who used to teach at the Bangladesh Agricultural University and the BRAC University, lives in Guelph, Ontario, Canada.

his party planned to handle the situation, he was not a happy man. His people expected him to free Bangladesh that very afternoon. On the other hand, the army waited, in the event a UDI came, to pounce with all its firepower on the population.

In the end, it was a measured, politically proper address that Bangabandhu delivered at the Race Course. He mounted the dais in a pensive mood. It was clear that he carried the burden of history on his shoulders. His colleagues in the Awami League, and the student leaders who had over the past week played a direct role in radicalizing Bengalis, were all gathered there.

The world's media were present, a sign that Mujib was being watched from everywhere, for what could turn out to be a momentous day. The Dhaka

station of Radio Pakistan, now called Dhaka Betar, stood ready to broadcast his speech live. Soon, however, word came that the military authorities had decreed that the radio not broadcast the speech.

All Bengali personnel at the station walked out in protest. Overhead, a helicopter flew in circles, an indication that the military authorities were watching. In distant West Pakistan, President Yahya Khan, Zulfikar Ali Bhutto, other politicians and common people waited to know what fate awaited Pakistan once Mujib began and finished his speech.

Sheikh Mujibur Rahman began his address through briefly tracing the history of politics in Pakistan over the previous twenty-four years. He then proceeded to narrate the sequence of events as

they had occurred since the December general elections.

Zulfikar Ali Bhutto, he told the million-strong crowd, had come to Dhaka, held talks with him and on his way back had said that the door to further talks remained open.

Mujib vented his anger on Yahya Khan who, he said, had held him and the entire Bengali nation responsible for everything that had happened since the postponement of the National Assembly session. "I told him, Mr. Yahya Khan, you are Pakistan's president. Come and see how my people have been killed, how mothers have been deprived of their children. He did not listen to me. He listened to Bhutto," declared the Awami League leader.

He said he could not attend the round table conference called by

the president for March 10 because it would be a betrayal of those who had already shed blood for the democratic cause.

As the cheers reached a crescendo, Bangabandhu spelt out his demands. There were four in all. Martial law, he roared, would have to be withdrawn as part of any political settlement.

He then moved on, to demand that the soldiers who had been shooting Bengalis on the streets be taken back to their barracks. His third demand was for a full, thorough inquiry to be made into the actions of the army.

The climax of his arguments arrived when Mujib, after a dramatic pause, declared that power must be transferred to the elected representatives of the people. Only after these demands were met would he consider

whether or not to take part in the National Assembly session now rescheduled for March 25.

Bangabandhu Sheikh Mujibur Rahman did not declare Bangladesh's independence on March 7, 1971. But he did point out the road to independence as he reached the end of his speech. "Ebarer shongram muktir shongram -- ebarer shongram shwadhinotar shongram." The struggle this time is the struggle for emancipation. The struggle this time is the struggle for independence.

As deafening cries of approval rent the skies, Bengal's undisputed leader drew an end to the day. Jai Bangla! he roared. The militant, ecstatic crowd then began to go home.

## Notes From History

### Bangabandhu maps out road to freedom

#### EDITORIAL DESK

March 7 dawned in 1971, the gaze of the whole world was on Dhaka, the restive capital of East Pakistan where Bengali discontent had, for the past week, transformed itself into a non-violent non-cooperation movement against the military junta of General Yahya Khan.

Attention was focused especially on Bangabandhu Sheikh Mujibur Rahman, chief of the Awami League and leader, by virtue of his party's sweeping triumph in the general elections in December 1970, of the majority party in the yet to be convened National Assembly.

It was a brash postponement of the assembly session, scheduled for March 3, by President Yahya Khan on March 1 that had quickly

arrived when Mujib, after a dramatic pause, declared that power must be transferred to the elected representatives of the people. Only after these demands were met would he consider

whether or not to take part in the National Assembly session now rescheduled for March 25.

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