

Reforms must for fair and meaningful elections

BADIUL ALAM MAJUMDAR

IN his maiden speech to the nation on January 20, Dr Fakhruddin Ahmed expressed his determination to create conducive environment for making the next elections free, fair and credible. He was unequivocal about ending the influence of black money and muscle power on elections. He specifically promised reforms to ensure that all candidates provide details of their income and assets, and authenticate the sources of their finances. Such a stand of the chief adviser, which he subsequently reiterated time and again, will help make the 9th parliamentary elections meaningful, as it is likely to enhance the quality of our elected representatives.

Fortunately, these reforms, which reflect the views of the ordinary citizens of the country, can be implemented through an ordinance amending the "Representation of People Order, 1972" (RPO) – they will not require constitutional amendment. The president can promulgate such an ordinance, which should, among others, include:

Independence and strengthening of the EC: True strengthening of the EC and making it independent will require decoupling of the secretariat of the Commission from the prime minister's office. The secretariat of the Commission is now viewed separately from the Commission itself. Redressing this will require changing the definition of the Commission in Article 2 of the RPO stating that the Commission shall include its secretariat. Subsequently, a law will have to be enacted and rules framed for governing the actual working of the Commission.

We propose that the Commission takes its decisions unanimously, or

by majority opinion, as per last January's High Court judgment. There must also be provisions for the transparency and accountability of the Commission's decisions. We propose the amendment of Article 3 of the RPO to limit the number of commissioners to 3. We further recommend that the president issue an order, as per Article 118 of the Constitution, specifying the qualifications of the chief election commissioner and the commissioners, and the procedure and terms of their appointment.

A panel of qualified nominees, from which the president will make the appointment, may be identified by a committee. There may also be provisions for public hearing before the relevant parliamentary standing committee prior to the confirmation of the appointment. To ensure that the political parties, the contesting candidates and the government functionaries, directly or indirectly involved with elections, abide by the electoral laws and rules, we recommend a legal provision for debarment of candidates, cancellation of election results and the postponement of elections for violations of serious nature.

In order to implement such a legal provision, we propose the formation of six "Elections Misconduct and Disqualifications Commissions" (EMDC) in the six divisions. Appeal against the decisions of the EMDC may be made to the EC, whose decisions shall be final and binding on all concerned. Giving such powers to the EC will require re-inclusion of an expanded Article 91D in the RPO, which was removed by the president, under pressure from political parties, before the 2001 elections.

Under Article 88(b) and (c) of the constitution, the administrative expenses of the EC, and the salaries and benefits of the commissioners, are treated as charges on the con-

The historic judgment of the High Court, in May 2005, requiring the disclosure of antecedents of candidates running for parliamentary elections must be included in the RPO. The law must also require submission of affidavits by candidates, along with their nomination papers, disclosing their business relationship with the government, their tax returns and statements of life style. Affidavits and statements must be posted on the EC website, and arrangements made to disclose them to the public, using the news media.

solidated funds of the government. We recommend the amendment of Article 3 of the RPO, as per the authority given in Article 88(f) of the constitution, allowing all expenses of the EC to be charges on the consolidated fund. However, there must be provisions for special audit of the expenses of the Commission.

Preparing an error-free electoral roll: Last April, the Supreme Court directed the EC to prepare the electoral roll for the 9th parliamentary elections by taking into account the existing roll prepared in 2000. The Court also directed the preparation of a database to solve this problem once and for all. In order to comply with the court judgment, we propose the preparation of an electoral roll with photos of voters affixed, which will prevent duplicate registration and fake voting and also make the roll error-free.

We recommend the inclusion of a sub-clause in Article 31 of the RPO to make this possible. In order to make an electoral roll with photos affixed, the Electoral Roll Ordinance, 1982, will have to be amended. It may be pointed out that Shujan has converted the CDs of the 2000 electoral roll, turning it into a database, and put it online (www.shujan.org). This may be used as the basis for the new database.

Compulsory registration of political parties and their reforms: The misconduct of political parties and their nominees is currently the biggest barrier to fair elections. We,

therefore, recommend the amendment of Article 90 of the RPO to make the registration of political parties compulsory. Only the registered political parties under the EC will be recognized as political parties. The nominees of non-registered parties will be considered as independent candidates.

Requirements for registration of political parties should include: practice of internal democracy, financial transparency (carrying out financial transactions through bank accounts and publishing audited statements), publication of annual reports, publication of the state of implementation of election manifestos, elimination of all their affiliated bodies (such as their student wings), not nominating anyone without active membership for three years, giving primary members clear say in the nomination process (for example, holding party primaries) etc. We feel that it may even be more appropriate to enact a separate law for political parties.

Qualifications for parliamentary candidates: We propose the amendment of Article 12(1) of the RPO to prevent the convicted criminals, loan and bill defaulters, and retired government officials (for three years after their retirement) and government functionaries retrenched or retired for corruption, from contesting in parliamentary elections. At the same time, we strongly recommend the strict enforcement of the existing restric-

tions in the RPO on the participation of those businessmen who have business relationship with the government.

We also recommend that the plunderers of government exchequer and godfathers of musclemen be declared ineligible for public offices. No one should be allowed to contest in more than one parliamentary seat, or simultaneously hold more than one elective office.

Provisions for negative voting: We propose the inclusion of negative voting in the RPO in order to redress the problem of undesirable candidates being nominated by political parties due to their "nomination trade." Provisions must be made, by including a clause in Article 31 of the RPO, so that if the negative vote wins the election there shall be new elections with new candidates. We must also consider imposing term limits for elective offices.

In addition, we recommend the inclusion of the photographs of the candidates along with their party symbols in ballot papers, so that voters take into consideration their personal qualities.

Voters' right to get information about candidates: The historic judgment of the High Court, in May 2005, requiring the disclosure of antecedents of candidates running for parliamentary elections must be included in the RPO. The law must also require submission of affidavits by candidates, along with their nomination papers, disclosing their

business relationship with the government, their tax returns and statements of life style. Affidavits and statements must be posted on the EC website, and arrangements made to disclose them to the public, using the news media.

Article 12(2) of the RPO must be amended to provide for stern actions, including the institution of criminal proceedings and the cancellation of candidature or election results, against those who do not submit affidavits and statements or hide or provide misleading information. We are in favour of requiring elected MPs to disclose each year the details of their incomes, expenditures, assets, liabilities and their tax returns.

Reducing election expenses: Fair and meaningful elections require reduction of election expenses. Thus, the existing limit on election expenses of Tk 5 lac must be strictly enforced. To achieve this, we recommend the printing of posters by Returning Officers (ROs) on the basis of the information provided by candidates in their affidavits. We also recommend arrangement of projection meetings by the ROs.

Similarly, in order to reduce election expenses, we further recommend strict monitoring of election expenses, including the enforcement of the existing ban on the erection of gates, setting up of booths on election days and wall writings etc. We propose the amendment of Article 44 of the RPO to

reduce election expenses. We further recommend the reduction of facilities and benefits for MPs, including the elimination of the benefits of tax-free cars and residential plots etc.

Quick resolution of election disputes: Expeditious resolution of election disputes, preventing the wrong doers from getting away by indulging in unfair practices and committing electoral misconduct, is a prerequisite for meaningful elections. We, therefore, recommend the formation of an adequate number of High Court benches, continuous hearing of cases and disallowing more than two continuations of hearings, so that all disputes relating to parliamentary elections, including the appeals may be resolved within six months. This will require, among other things, doing away with some privileges of MPs, such as the exemption they enjoy from participating in judicial proceedings when the parliament is in session.

In order to expeditiously complete the appeal process, we recommend the amendment of Articles 57 and 62 of the RPO. At present the parliamentary constituencies are of unequal size. For example, Dhaka-11 has nearly 8,50,000 voters while the number of voters in Dhaka-1 are about 1,61,000, which defies the principle of equal representation for all voters. To remedy this, the constitution gives the EC responsibility to delimit constituencies. The "Delimitation of Constituencies Ordinance, 1976," requires the delimitation of constituencies after each population census, although no such step was taken after the completion of the 2001 census. Thus, we recommend that the reconstituted EC forthwith take up this constitutional responsibility.

Holding local body elections: Article 59 of the constitution requires elected local bodies at each administrative unit. The Appellate Division

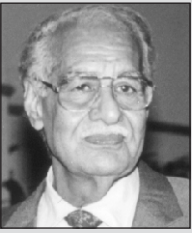
of the Bangladesh Supreme Court, in a unanimous decision in 1992, directed the government to hold all local body elections in six months, which has, unfortunately, not been implemented during the last 15 years. Thus, in order to abide by both, the constitutional mandate and the Supreme Court directives, we recommend that the government give back the responsibility to hold Upazila elections to the EC, and actually hold the Upazila elections with the parliamentary elections. This will reduce election expenses and will also be attractive to political parties. However, it must be made sure that the local body elections are held on a non-party basis.

We, on behalf of Shujan, are of the opinion that if the above reforms are implemented, the EC will be strengthened and will gain operational independence, making possible free, fair and impartial elections. This will also make the coming elections meaningful by freeing them from the influence of money and muscle power, thus bringing qualitative changes in our leadership. We have already given a draft ordinance to the authorities incorporating these reforms.

We hope that the reconstituted EC will be bold and courageous enough to take advantage of the present opportunity and initiate the process of implementation of the reforms to protect and promote public interest, which must be its utmost priority. Missing this opportunity will be a tragedy of monumental proportions.

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The unimportance of being tainted



KULDIP NAYAR
writes from New Delhi

IT is an open secret that governments go to any extent to stay in office. But when they do so by trampling upon the principles of morality, they look ugly and power-crazy. The Manmohan Singh coalition damaged its image when it told the Supreme Court a few days ago that the government did not favour moving against the tainted ministers because the coalition governments would become unstable.

In other words, the corrupt or the criminal are an integral part of the Indian system, even though it is democratic and transparent. The government's affidavit before the court did not spell out which of the coalitions the centre had in mind. But it was apparent that the Manmohan Singh government, a coalition of 20-odd parties, was the prime consideration.

Law Minister H.R. Bhardwaj is said to have sent the relevant file to the PMO, which must have cleared it with the prime minister. The stand taken is too important to be approved without his knowledge.

Both Manmohan Singh and the ruling Congress party may rue the day. They may have to live down the damage they have caused to their reputations. Including tainted MPs and MLAs in government is bad enough. But defending their inclusion is the worst kind of political chicanery. Corrupt bureaucrats, cheaper by the dozen, will use the example of tainted ministers in defense. Even the Supreme Court was reportedly amazed over the government's affidavit.

Reacting to a public interest litigation (PIL) the court had asked the government at the centre and in the states: one, whether a minister charged with a serious offence by a law court should resign; two, whether charge-sheeted persons can be appointed ministers; three, whether the president at the center, and the

BETWEEN THE LINES

Scams and scandals, no doubt, shock the nation. But what shocks it more is the government's nonchalant attitude towards the corrupt, or its defence of the tainted. People do not expect Manmohan Singh to take such a stance. The Congress, once led by Mahatma Gandhi and Jawaharlal Nehru, should ask itself whether the two would have approved what the Manmohan Singh-led government has said in its affidavit.

governor in the states, could advise the prime minister or the chief minister to drop such ministers.

There was commotion in the courtroom when the government defense was known. Strange, the centre's reply was given out, but not that of the states. Maybe they were waiting for the central government's reaction before filing their own.

The legal position is that a legislator is disqualified if sentenced to more than two years. But he can stay on if his appeal is admitted in a high court. The PIL had prayed that the conviction was enough to disqualify a member, not the high court's admission of his appeal.

The PIL prayed to follow the Election Commission's procedure, rejecting straightaway the nomination papers of a candidate convicted for two or more years, even when the high court had admitted his appeal.

In its affidavit, the centre has argued that the removal of anomaly may rock the governments "surviving on slender majorities." The Congress probably has in mind the governments it has managed to form in some states. Manipur must have been in the party's reckoning because the Congress has just formed the government with a majority of one or two members.

Whatever its considerations, the Congress has preferred politics to principles. The fallout of its stand will help the opposition more than the Congress. The BJP has a precarious majority in several states, particularly Uttarakhand and Jharkhand. Understandably, the BJP, which reacts at the drop of a hat, has kept quiet.

When it comes to violation of morals, there is no difference between the two main parties. Not long ago, party top leader L.K. Advani was charge-sheeted over the demolition of the Babri masjid. But he did not resign. In defense, he said it was not "that

kind" of a charge.

For many, it was the biggest crime he had committed. Apart from the demolition, there were communal riots and unseemly repercussions in Pakistan and Bangladesh. The case is still pending. Initially, Advani was discharged on technical grounds.

The CBI did not appeal against the judgment because Advani was then the home minister. He rewarded the CBI director who let him off by appointing him a member of the National Human Rights Commission.

The CBI, after the government's affidavit, may drag its feet in cases where the parties in a coalition are involved. When the centre itself is opposed to disqualifying a tainted minister, why should the CBI, a government department which is politicised, stick its neck out? The Manmohan Singh cabinet has a few tainted ministers. One of them has already been convicted, and his appeal has been admitted by the court. The CBI might not pursue the case vigorously in the light of the government's stand.

UP chief minister, Mulayam Singh Yadav, is justified in doubting the bona-fides of the CBI. His preference for a judicial inquiry by a sitting High Court judge makes sense. It is unfortunate that the Supreme Court has asked the CBI to look into his assets.

A similar PIL in the case of Railway Minister Lalu Prasad Yadav was rejected on the plea that a PIL could not be used in such cases. The most charitable explanation in the case of Mulayam Singh Yadav is that the Supreme Court believes the CBI to be independent, as trustworthy as the court.

The same sort of confidence is required to pin hopes on the statement by Manmohan Singh that his government would not interfere in the CBI's working in the case of Quatroochi, an Italian who has made a mockery of

Indian agencies, whether it was the law minister, the CBI or the Intelligence Bureau. He, evading justice in the Bofors gun scandal, has been caught in Argentina in response to the red alert that New Delhi had issued during the non-Congress government's tenure some years ago.

Even if one were to have faith in the assurance of Manmohan Singh, whose integrity is beyond reproach, one would not trust most ministers in his cabinet. But then, he does not constitute the entire government. There are so many hands, and all of them are not under his control. The prime minister, for example, did not know when the frozen accounts of Quatroochi were unfrozen, and when he was allowed to go out of India despite instructions to the contrary.

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The Congress, once led by Mahatma Gandhi and Jawaharlal Nehru, should ask itself whether the two would have approved what the Manmohan Singh-led government has said in its affidavit. Both of them said: "Wrong means will not lead to right results." There is something called morality. Of all the parties, that the Congress should forget this in the race for power is, indeed, sad.

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ABMS ZAHUR

THE CG has completed a month of its tenure. Its performance has been appreciated by all (nationally and internationally). Among its achievements are, (a) start of the process of separation of judiciary from executive, (b) reconstitution of EC, (c) resignation by commissioners of ACC and (d) arrest of some top level politicians (reported to be corrupt). Among actions not fully appreciated are (i) demolition of illegal structures causing suffering to small traders and (ii) driving out the hawkers from the pavements. However, the unappreciated actions have mixed reaction because the ordinary people want free pavement and genuine traders in right places. Thus they are not unhappy about this action.

On the other hand, the affected shanty town dwellers are used by political parties for various jobs like participation in processions, meetings, damaging or destroying public or private properties like cars, taxis, buses etc. Some of the shanties are built on government lands by powerful political leaders or influential political activists. The dwellers of these houses usually do not pay any charge for consuming water or electricity to the government. Whatever they pay for these facilities are paid to the junior employees of WASA, DESA and PDB. These houses are reported to be used also for storing illegal arms (even grenades), drugs and stolen properties. Local thugs of these places maintain connection with the political leaders and police. Thus simple police drives cannot be successful. The neutral police personnel dare not catching culprits because of fear of their harassment by the influential political leaders. Thus ultimately common

people suffer. The police have to obey the dictates of the political party/ parties in position. No longer they are public servants. They are, instead, party servants.

Some observations are made about taking policy decisions by the CG. As per 58D of the constitution of Bangladesh the CG "...shall carry on the routine functions of the government" and "except in the case of necessity for the discharge of functions it shall not make any policy decision". We know that the present CG has some distinct features compared to other CGs. They are, (a) it has started its operation after proclamation of emergency, (b) its tenure is not restricted to 90 days, (c) full unflinching support of the armed forces is available to the CG, (d) its job is not confined to holding an election only. Its job includes leveling of the field for the contestants of the parties for a free, fair, neutral and credible election participated by all parties. To hold such an election the

existing EC would have to be reconstituted and reformed to make it really strong, efficient and effective, (e) the unprecedented corruption has to be eradicated through a strong, efficient and effective ACC and enactment of requisite laws, (f) reconstitution and reform of PSC, and (g) taking adequate punitive measures against corrupt politicians and public servants. In addition, the CG will have to continue development projects so that the donors do not discontinue their support.

Both the grand alliance and the 4-party alliance gave public statements that election should not be delayed indefinitely because people may become restless in an uncertain situation. In fact CG's recent drive against corrupt politicians has tarnished the image of the political parties. Continuation of the drive will further expose the misdeeds of the "so called public representatives". Furthermore, CG's various steps to stop huge black money holders,

defaulters to participate in the election is praiseworthy.

The common people, on the other hand, are aware of the fact that they are having best of time (except high prices of certain essential items). They do not appear to bother much about early election because of their unhappy experience during the so called democratic rule.

The civil society knows well that politically sensitive reforms can only be successfully undertaken by the CG because of its non-accountability and strong support from the armed forces. They concede that date for election can be announced after completing or starting the required jobs.

The CG is working hard. Even the EU delegates think that time is not yet proper for announcing election schedule. Considering the huge and urgent tasks of completing flawless updated voter list, providing ID cards, barring defaulters and corrupt politicians from participation in election by a reconstituted and reformed EC, reconstitution of ACC and PSC, depoliticisation of civil administration including police administration, separation of judiciary, taking strong punitive measures against corrupt politicians and bureaucrats and decriminalization of politics and civil administration we may try to hold our patience for some more time so that this government may complete its tasks for holding a truly democratic election successfully.

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Reducing poverty, boosting economy

ABDUL KADER

THE year 1991 appeared as end of autocracy and start of democracy. People heaved ease and thought this time the journey towards establishment of democracy in the society itself would be real and effective. Many started to talk about institutionalisation of democracy. In fact, many had realised that without institutionalisation the practice of democracy wouldn't be effective.

As a democratic process, elections were held and successive governments constituted. In the more than one and a half decades of democratic dispensation three cabinets took oath of administration but could not build that envisaged democratic institution in real term. In fact, the establishment of democratic institution remains elusive till date.

In such a situation anything devoid of any ideal, morality, logic or legality can take place without any abeyance or abatement. And it did. Lastly we remained the world's most corrupt nation for consecutive five years. All this didn't help other social institutions to grow, nor could remove already rooted vices to allow justice prevail in society. Only consumerism of the privileged section of people has grown at its worst seemingly at the cost of democracy, diminishing rights of the majority.

But such a situation cannot be allowed to continue. Because without establishment of right of the deprived no society, democratic or

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otherwise, can be called just, or have a semblance of justice. And in such a state of affairs state of emergency almost appeared as imperative. Perhaps there was no other way but 'emergency' to cope with the rot. Now the interim government is working to free finance, real estate, land, water bodies, roads and other public properties so far grabbed by the influentials under political protections. Naturally, an administration keeping its fight on against corruption earns unfettered praise of the people. People wish the government godspeed in its effort towards freeing public property from illegal occupation and eradication of corruption.

As the drive against encroachment on river banks and roadsides is on, we feel its wider application will boost the economy enormously. The point here is made of the 'khas' land and khas resources, including water bodies, that belong to the state. In total these amount to about a crore acres. But little of it is in

actual possession of government. Illegal occupiers are enjoying these to their selfish end without going into optimum utilisation and depriving the actually deserving of their right. This happened and continues as such mainly because of party political support without paying heed to the greater national requirement.

This government may take an initiative to free the khas lands and other public resources from illegal occupiers and distribute the same among the landless but genuine peasants and fishermen for optimum utilisation and maximum production. This augmented national yield will obviously be a booster to the economy which is still an agrarian one. In this connection an example from our immediate neighbour the West Bengal state of India may be cited.

The then provincial United Front government in West Bengal first took the initiative to distribute government land among the land-

less in 1967 as a land reform measure. The government took possession of all public lands and water bodies as well as ceiling exceeded such resources and fast distributed about six lakh acres among the actual landless farmers. But after the fall of the UP government, the vested quarters tried to drive the peasants out of those lands but the CPM kept the movement on and the vested quarters at bay.

When the CPM came to power in 1977, they considered the farmers' interest first. They provided them prudence and established their rights. By now they have distributed about 20 lakh acres among the landless and freed them from the vicious cycle of poverty. And the land being in the hands of actual farmers, production has increased by leaps and bounds. It was 75 lakh tons in the eighties and now it is about 200 lakh tons -- a seven-fold increase! They have also passed appropriate laws safeguarding the farmers' rights and basis of production.

Like them in West Bengal we can cause wonder, may be in a bigger scale because of possessing more khas resources. We need a commitment to do this. To recover and distribute government lands and water bodies. To recover the resources from illegal occupation and distribute among the actual landless farmers and fishermen for achieving maximum yield. And also to ensure farmers' right to the land to keep their spirit up.

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