

TALKING POLLS AND BEYOND

'For free and fair elections, you must uphold the constitution and the law'

A senior advocate of the Supreme Court, **Dr. Kamal Hossain** received Barrister at Law degree from Lincoln's Inn, London in 1959. He obtained his BA Honours in Jurisprudence in 1957, Bachelor of Civil Law in 1958 and Doctor of Philosophy in 1964 from University of Oxford. Member of the parliament from 1972 to 1975, he was the chairman of the constitution drafting committee. He served as law minister in 1972, foreign minister (1973-1975), and minister of petroleum and minerals (1974-75). Dr. Kamal also served as vice-chairman of Bangladesh Bar Council, president of Supreme Court Bar Association, chairman of the advisory council of Transparency International, chairperson of Commonwealth Human Rights Advisory Commission and UN Special Rapporteur on Afghanistan. He is the vice-chairman of International Law Association and has been serving as the chairman of Bangladesh Legal Aid and Service Trust since 1993. He formed Gono Forum in 1993. **Shamim Ashraf** and **Hasan Jahid Tusher** took the interview.

TODAY the entire country is keenly looking forward to participating in a free and fair election. The election date has already been announced and the schedule is expected within a few weeks. It is at this time that some of the parties have started to raise questions regarding the reform measures which have been on the national agenda for over two years and which have wide support, not only from political parties but also civil society and conscious citizens.

The aim of these reform measures has been to ensure that honest and competent candidates are nominated and that black money in crores does not undermine the election process. There was no need to give the impression that there would be bargaining or wheeling and dealing over the reform measures. This impression was unfortunately conveyed by the moves of the adviser concerned.

The EC and the CTG just needed to say: "We have heard your opinions and will take our next steps." The EC might have asked them to come after complying with the rules. The EC is not expected to carry on an unending dialogue, thus delaying the elections, nor is the CTG in any way expected also to "interminably" prolong the so-called dialogue process. Democratic consultation is intended to provide an opportunity for views of all concerned to be heard, but the EC and the CTG have to take decisions in the light of the constitution and the law.

Have taken exception to the role of an adviser who is seen to be carrying on negotiations which are

not transparent, where it is not clear that these are even authorised by the council of advisers or the chief adviser, and on which no statement has yet emerged from the CA or the council, nor has any report been made public of what has been the subject matter of such negotiations.

This gives rise to speculation and uncertainty, and it is quite undesirable at this juncture, as it gives rise to suspicion. Such an impression must be avoided at all cost, just as we must avoid statements from responsible quarters that certain parties must be brought into the election "at any cost" because that cost cannot be by not complying with rules aimed to ensure free and fair elections, nor by complying with demands which involve violating the law or allowing persons who would be disqualified under the law from seeking election. Absolute impunity has in the past led to rampant corruption and subversion of free and fair elections.

You said that granting 206 bails in 100 minutes is not possible through legal procedures. How did it happen then? That's why I have demanded an inquiry and will keep on pressing for this so that it is found out who were responsible for undermining the judicial process. This matter has been drawn to the attention of the chief justice. Effective corrective action must be taken to protect the judiciary, the judicial process, the rule of law, and citizens, whose rights are to be protected by an independent judiciary. What conclusive result of the

reform exercises do you see?

The EC has prepared a credible voter list and declared an election date within the declared time-frame. This is a solid achievement. The delay for implementing the remaining reforms can be avoided even now by not treating the dialogue process as endless and by curbing endless negotiations which give the impression that the EC may be subjected to pressure to weaken its commitment to ensure a truly free and fair election.

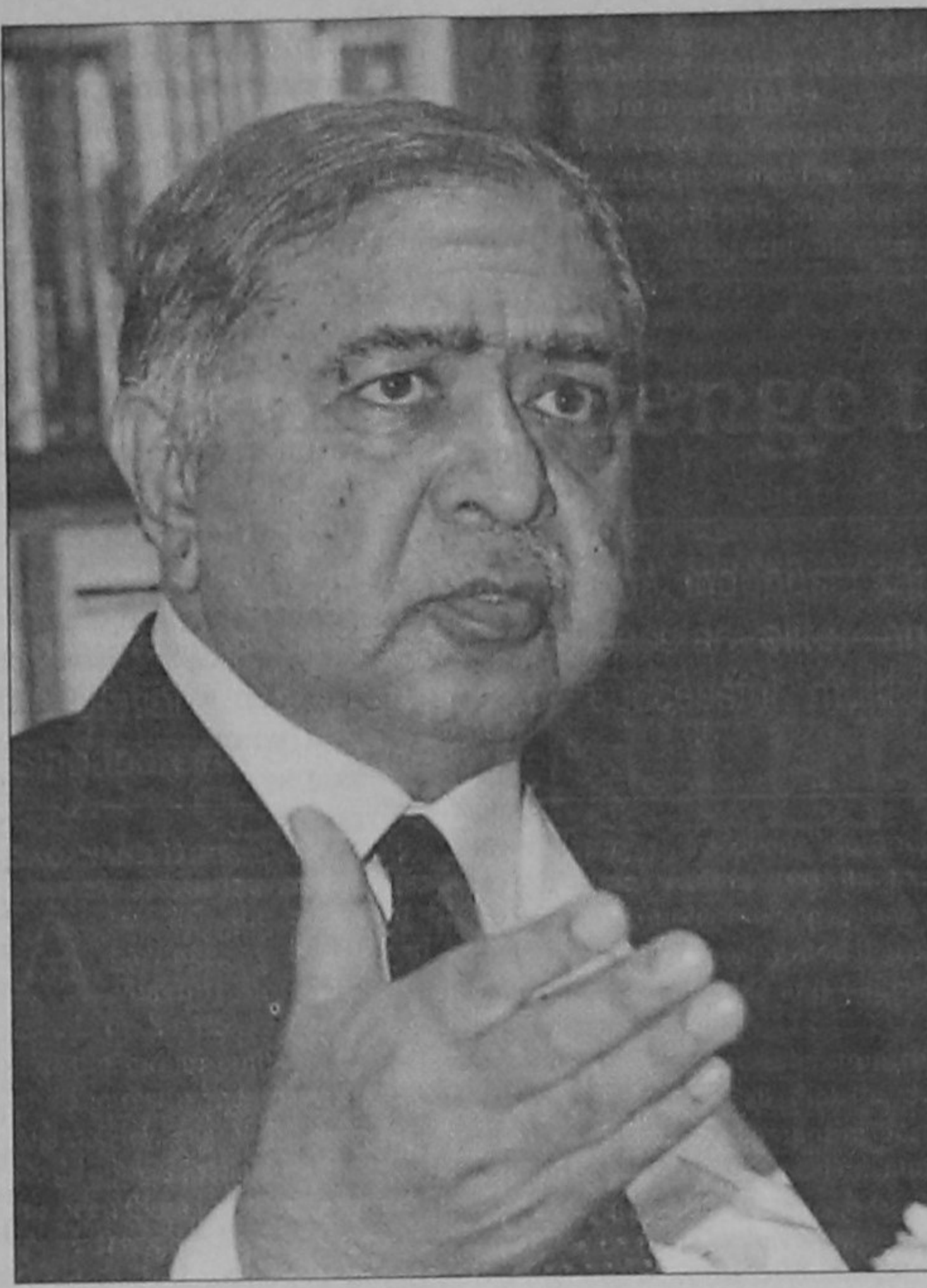
It is not permissible for the CTG, which is oath-bound to discharge its functions in accordance with the constitution and the law, to be seen to be condoning crimes and manifesting weakness in the face of lawlessness. When a person who is wanted by the law appears in public and no action is taken and no explanation is provided, serious questions arise as to whether the rule of law is not being undermined.

Do you think the government kept off from arresting Jamaat Secretary General Mojahid willingly?

I want to raise such questions. I don't want to see the government showing any leniency to any party in the matter of upholding the rule of law.

This incident frustrated many who questioned whether they are better off with the CTG than a corrupt elected government...

What could you do during these two years other than support the caretaker government to fulfill its constitutional duty to ensure a free and fair election? The CTG cannot weaken in the face of pressure to



Dr. Kamal Hossain

allow the law to be evaded and effective law enforcement to be undermined.

We want to rescue ourselves from the destructive activities of those elements who have in the past enjoyed immunity and evaded law enforcement. If the law fails to do it, if the CTG also fails, the national goal of moving forward will be subverted. We should have learnt lessons from the experience of local elections where delay in disposing of the pending cases enabled those who were being prosecuted to contest.

Is there any fear of major graft suspects participating in the elections?

The right of political parties to be consulted on electoral reforms is valuable, but it can't be used as a means of obstructing the holding of timely elections. No one can be allowed to insist on the release of those who are convicted or for wholesale withdrawal of cases as a condition of participation in elections. Strong and effective actions against corrupt persons should not be compromised under pressure from those who would like to pro-

tect such elements and unleash them again in a society which has suffered from the predatory activities of those who enjoyed absolute impunity.

Do you think government is being blackmailed to sit with the parties? The government must demonstrate firmness in protecting the people and state institutions from the destructive activities of those who have undermined both our democratic institutions and national economy.

Are the parliamentary elections going to take place on December 18?

We want this. The whole nation wants it. I hope and I expect that it will happen. Because there is a constitutional duty to hold such elections and the whole nation has made a contribution -- time, energy, and resources. We have every right to expect that it should happen.

What could be the consequences if the elections are not held?

I don't want to speculate on something which is six weeks away. With a united effort, people could overcome those who want to create

obstacles and barriers.

Many see uncertainty over holding of the parliamentary elections on December 18. How to remove this? I don't want to be in uncertainty. I want it to be done. I am rather in uncertainty about those who are creating confusion and raising doubts. They seem to want to obstruct the election. They will be in trouble if a government of honest people is elected through a fair election. To achieve this, we need unity. The media should be very active. Radio and television should project opinion for a truly free and fair election throughout the country, there should be citizens' rallies for honest clean elections and for the government to move forward and to protect honest citizens from the activities of those trying to obstruct elections.

Can the elections be held if the emergency is withdrawn?

So long as the law can be effectively enforced, yes, we can do it without emergency. If you can ensure that, we may not need to have emergency. The EC should be the judge of this.

Some parties opposed holding upazilla elections five days after parliamentary elections...

I leave this question to the EC. From the very earliest stage, we have said it is up to the EC as to whether they would go by the original roadmap. It has decided to make some alteration. And I don't see why some parties oppose this, because upazilla election is not political.

You said recently that there should be post-election unity...

Elections should be able to strengthen a national consensus and to see that the government formed by the majority can find it possible to involve those who could be in the opposition to come into a government of national unity. It is necessary in order to meet the challenge of strengthening institutions and adopting policies which require a sustained national effort, particularly in the face of the global economic situation.

The 14-party and four-party alliances have said they won't participate in polls without Khaleda Zia and Sheikh Hasina and if there is emergency.

We need constructive thoughts. No one, no party, big or small, should take a position that will obstruct the holding of free and fair elections.

How acceptable would an election be if held under emergency?

That depends on the entire circumstances. If a view is taken by people that in this situation it is not necessary and that under cover of emergency, people's rights are restricted, then holding elections under emergency will raise questions.

What should be the army's role during election?

The EC and the CTG upon a mandate from the constitution are to ensure congenial conditions for elections. So, the police aided by the military, where the authorities consider it necessary, are required to play their role in ensuring that all voters can vote without fear, intimidation, and being terrorised.

What's your opinion about the so-called Minus-2 formula?

This is a past issue; historians can debate about it.

Would party registration bring qualitative change in politics?

That's the aim of the whole process. A national consensus has identified this as a major reform measure through which better elections can be ensured and better democratic institutions built. We know how democratic institutions have suffered due to lack of good elections and sick politics. The real aim for this is to generate healthy and clean politics and through that to make democratic institutions function in the interest of the people, and to build a brighter future.

The RPO has been relaxed. Do you see this as a compromise?

Those having the responsibility for this have to strike a balance, accept some suggestions, or not accept others, after listening to all views. At the end of the day, one should basically accept what is considered to be a national consensus. That's what we all should strive for.

Would Gono Forum compete in the elections with the 14-party alliance, or separately?

We'll have to see. My basic point is a broad unity of all like-minded parties. Besides the 23 points of the 14-party alliance, we may have a common minimum program on national economy, stability, democracy, education, and the all-important national issues. We've made our position clear that we would like to see unity of all like-minded parties together. It's not for us to impose this.

There was nomination trade in the 14-party alliance for January 22

election. Did you protest then?

Yes, I protested that at that time. If any of the like-minded parties break the rules against nomination trading, we'll have to protest again. Will you quit the 14-party alliance if it does the same again?

Wait and see. No one will say I'll just accept that. When an honest person says I support a position and someone acts against it, he is then expected no longer to remain there unless there are some compelling reasons.

Do the "procession of balls" and meetings by "Mini Kissinger" mean that the government failed in its fight against corruption?

I don't want to say yet that the government has failed in this. Certainly, we have seen some weakening. And that's because we feel that some have expressed the view that you should bring in the parties "at any cost." I have made my position clear that this shouldn't be the case. Not "at any cost." For free and fair elections, you must uphold the constitution and the law. We won't get such an election if we allow the law and constitution to be violated.

The parties have said that they would legalise the good steps of the CTG. In what form is that possible?

There is no question of "legalising," as this is not a martial law government. It is a government that has come within the umbrella of constitution. Any government when it follows another, normally you assume that it will maintain continuity, and if it does not, it means problem for the government that comes, not the one that has gone. The government that follows is expected to maintain continuity and stability.

When there is no emergency or CTG what will be the fate of the anti-graft drive since the main parties are against it?

I agree that the people who are opposing it have some influence on party policy-making. But we can in a body raise our voices to corner them and fight them. The anti-corruption campaign must remain strong and effective and be protected from partisan interference.

Do you think too many arrests weakened the anti-corruption drive?

Definitely. It should have been more targeted.

Reason to worry, none to panic

We would be well-advised to look closely at the home ground: let's make sure that the boost to agriculture is not jeopardised, let us ensure that credit flows to agriculture, industry and SMEs are sustained, let us remain guarded in our response to lobbies, and above all let us keep our cool until the storm lifts.

K.A.S. MURSHID

THE world is in trouble, from Wall Street to Dalal Street, from Karachi, Tokyo and Singapore to Sao Paulo and Caracas. When the malaise is so widespread, it is unlikely that anyone will go unscathed, whether you are in Timbuktoo or in Dhaka.

I have never been to Timbuktoo, so let me address the question of what all this may mean for us here in Bangladesh. First of all, let us examine the two main positions that have surfaced so far:

The optimistic view

Bangladesh is a pretty much closed economy with rather limited exposure to the world financial markets. Portfolio capital (i.e. investments in our stock market) from abroad is tiny (under 5%) so that its potential flight would pose no danger. Nor has Bangladesh invested heavily in the U.S. bond/securities market (unlike China), eliminating another serious source of worry.

Capital flight could still occur if Bangladeshis thought it would be less risky to park their money elsewhere. Under the current circumstances, keeping your money parked in Bangladesh would appear to be the wiser decision.

There are a number of other factors that are in our favour: our balance of payments is in good shape, world commodity prices especially of fuel and food have come down substantially, our domestic food economy is stable and immediate prospects for the next harvest is looking good. All

together a comforting situation to be in right now.

There is nothing wrong with the above analysis at all. The main weakness, however, relates to the depth and length of the crisis and what could be happening down the line, say in one or two years. This is where we may need to shed some of our optimism.

The pessimistic view

Fortunately, our economic structure is so simple that we don't have to look far to find probable areas of concern: the garments industry and remittance flows. My own view is that on both counts we are pretty safe. Our exports are low-end products (as opposed to luxuries) and, therefore, have a low "income elasticity" (demand will fall slowly in the face of income reduction).

This segment of the garments market would be one of the last to fall -- let us pray that the recession will have been reversed before that point is reached. Similarly, the Middle East has just reaped a huge bonanza due to the unprecedented oil price hike, some of which could now usefully be used to prop up their economies in the face of a full-blown recession. Thus, remittance flows are likely to keep coming.

Concerns have been aired about the flow of foreign aid. This is, of course, a real concern and the antidote to it would be more vigorous revenue generation. We must remember, of course, that real aid flows have been in decline now for years and our dependence has had to be scaled down although it still remains significant.

The most likely impact

The real concern in my mind is that we may not now be able to move out of the 6% growth rate range to the 8% growth rate zone for years to come. This will have a strong adverse impact on all our major goals, including the MDGs and eradication of extreme poverty.

The key to growth will be FDI flows, domestic credit expansion and investments -- these will be difficult to ensure in a climate of global uncertainty. At the same time, there will be intense lobbying to get concessions from the government by the usual culprits -- who would want to lose this God-sent opportunity to make a fast buck at the expense of the public exchequer?

I would hasten to add at this point that the request to keep energy tariffs on hold is completely justified until we have a clearer picture of how this crisis unfolds. The argument that we need help to compete with other countries (India, China, Vietnam) needs to be closely evaluated. After all, our competitors are even more adversely affected, or likely to be affected, than ourselves, suggesting that our relative position may even improve.

This is, however, something that needs close monitoring with intent to intervene positively if needed. We should certainly not allow our factories to close down because of the greed of the rich in the rich world.

What should we do?

We would be well-advised to look closely at the home ground: let's make sure that the boost to agriculture is not jeopardised, let us ensure that credit flows to agriculture, industry and SMEs are sustained, let us remain guarded in our response to lobbies, and above all let us keep our cool until the storm lifts.

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Islamic challenge to Indonesia's democracy

Unlike most Muslim-majority nations, Indonesia can draw on the strengths of a non-sectarian constitution, a secular elite, an essentially open-minded population and examples of successful multicultural neighbors such as Singapore and Australia.

SADANAND DHUME

AGAINST the backdrop of carnage at Islamabad's Marriott hotel, terrorist attacks on the US embassy in San'a and the Indian embassy in Kabul, and the resurgence of Al Qaeda in Algeria, few places in the Muslim world appear as placid as Indonesia. It's been three years since the country's last major terrorist bombing: Al Qaeda's local affiliate, Jamaah Islamiyah, is on the run. Democracy has blossomed: Parliamentary and presidential elections scheduled for 2009 will be the third consecutive free ballot since the end of General Suharto's 32-year reign in 1998.

Both the president, Susilo Bambang Yudhoyono, and the principal opposition leader, Megawati Sukarnoputri, reflect the principles of tolerance and inclusiveness bequeathed to the country by its founding fathers at independence. The Indonesian press is Southeast Asia's freest, its cinema the region's most vibrant.

Beneath the surface, though, Indonesian society is in ferment. Earlier this year, clerical dictats and repeated mob violence forced the government to effectively ban the Ahmadiyya, a beleaguered Islamic sect considered "heretical" by some Muslims for revering its founder alongside the prophet Mohammed.

In June, in an incident rich with irony, members of the vigilante group Islamic Defenders Front, wielding bamboo staves, attacked peaceful demonstrators rallying for religious freedom at the National Monument, an iconic symbol of Indonesian unity. Dozens of district governments have enacted sharia-inspired regulations, including

mandatory dress codes, compulsory Koran reading tests for students and couples seeking to marry, and vice squads loosely modeled on those in Saudi Arabia and Taliban-era Afghanistan.

In September, protesters from the Hindu island of Bali took to the streets to force parliament to postpone passage of a so-called anti-pornography bill whose broadly worded restrictions on clothing and artistic expression could potentially penalise Balinese culture and jeopardise its tourism-dependent economy. Bali contributes the lion's share of Indonesia's tourism earnings, estimated at \$5.3 billion in 2007.

Behind the anti-pornography bill stands the fundamentalist Prosperous Justice Party (PKS), the dark bloom at the heart of Indonesia's democratic flowering. Modeled on Egypt's Muslim Brotherhood and fired by the same utopian dream of bringing all aspects of society and the state in line with the allegedly God-given commands of sharia law, the party subscribes to an assertive credo increasingly visible from Morocco to Mindanao: Islam is the solution.

Powered by highly motivated cadres, aided by an image of sea-green incorruptibility and helped along by the disunity and ideological incoherence of mainstream parties, the PKS has taken just 10 years to transform itself from a bit player to a major force in national politics. Currently it's the seventh largest party in parliament and holds three seats in President Yudhoyono's cabinet. Trained party cadres multiplied twelvefold from 60,000 in 1999 to 720,000 in 2007. Earlier this year, the PKS capped a run of local and provincial electoral victories by

claiming the governorships of populous West Java and North Sumatra. Armed with this momentum, it stands poised to become the third or fourth largest party in next year's parliamentary elections.

The PKS juggernaut raises questions about the ability of Indonesia's moderate mainstream to contain a strident minority whose ultimate goals are at odds with the nation's founding principles and with the respect for individual rights at the heart of liberal democracy. To be sure, many PKS supporters exhibit a certain idealism; they're usually more concerned with ending graft in government than with stoning adulterers.

Nonetheless, party cadres and top leaders -- often educated in Middle Eastern or Pakistani institutions -- hew to the harsh vision of Egyptian Islamists Sayyid Qutb and Hassan al-Banna and their Pakistani contemporary Abul Ala Maududi. To them, the faith makes no distinction between religion and politics.

It's a complete belief system that concerns itself not merely with prayer, fasting, alms for the poor and the Hajj pilgrimage, but also with elections, governance, commerce and diplomacy. At an individual level, personal decisions are surrendered to the collective: All women must don the headscarf and embrace segregation. Men are forbidden gold, silk, cigarettes and alcohol.

PKS leaders, aware that their imported ideology goes against the grain of Indonesia's traditionally open and inclusive ethos, downplay their pedigree by emphasising their anti-corruption credentials. Nonetheless, the party's claims of moderation are belied by its record.

It has been full-throated in support for Jamaah Islamiyah kingpin

Abu Bakar Bashir, who spent 26 months in jail for involvement in the 2002 Bali bombings. It consistently backs sharia values over human rights, supporting the persecution of the Ahmadiyya and stoutly opposing attempts to have sharia-inspired bylaws declared unconstitutional.

It displays a self-conscious attachment to pan-Islamic causes from Palestine to the southern Philippines. In Indonesia, the PKS project sends a disquieting signal to religious minorities, non-conformist women, and secular and heterodox Muslims. For the region more broadly, where economic development has long been based upon political predictability and a pro-Western outlook, it signals a period of uncertainty and flux.

Nor does the PKS need to claim formal power to diminish Indonesia's prospects. The examples of Egypt and Pakistan, where the Islamist movement has gained social and political clout over the past 35 years without ever taking office, serve as a caution.

In both countries, as in Indonesia, Islamists consistently stoke anti-Western sentiment. Scriptural certainty has gradually stifled science and the spirit of inquiry. Foreign investors shy away from long-term commitments, especially in manufacturing. Non-Muslims live circumscribed and, at times perilous, lives. Terrorism and periodic outbreaks of religious violence are facts of life, and the state's response is often ineffectual.

The crux of the problem lies in Islamism's incompatibility with modernity. In the PKS version of women's rights, for instance, the decision whether or not to wear the headscarf is made by society or the state rather than the individual. Similarly, when it comes to minorities, the party ideology replaces the modern ideal of equality for all with the medieval concept of de facto second-class status as "protected peoples."

Though the party, packed with engineers and doctors, cultivates a technology-savvy image, its ethos is

in fact antithetical to scientific advancement. PKS cadres show not the slightest skepticism toward the unverifiable claims of religion. They overwhelmingly reject the theory of evolution in favor of the crackpot creationism espoused by the Turkish pamphleteer Harun Yahya.

In economics, though the party leadership makes the right noises about free markets, the rank and file is overwhelmingly suspicious of the largely non-Muslim ethnic Chinese business community. In foreign policy, the rise of PKS signals a shift of focus from Southeast Asia toward largely symbolic pan-Islamic concerns.

The early signs are already visible in high profile visits to Jakarta by Mahmoud Ahmadinejad and the Muslim Brotherhood's spiritual leader Yusuf al-Qaradawi, and the use of Indonesia's place on the UN Security Council to water down criticism of Iran's rogue nuclear program.

The jury is still out on whether Indonesia will evolve into a benign liberal democracy or an Islamist-dominated state that permits elections but suppresses individual rights, whether it will regain its focus on the economic betterment of its people or dissipate its energies on the emotive politics of pan-Islamism, whether it will emulate manufacturing-driven Vietnam or commodities-dependent Nigeria.

Unlike most Muslim-majority nations, Indonesia can draw on the strengths of a non-sectarian constitution, a secular elite, an essentially open-minded population and examples of successful multicultural neighbors such as Singapore and Australia. Unfortunately, as recent history shows, these may not be enough to blunt the rise of a shrewd and disciplined movement determined to remake the nation in its image.

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