

For an inclusive national election



STRAIGHT LINE

MUHAMMAD NURUL HUDA

VERY recently, a think tank in association with electronic media arranged an animated discussion under the title "Political process and participatory election", in a roundtable format at a local hotel. The speakers represented a cross-section of society that included, amongst others, journalists, rights-body activists, lawyers, election monitors, NGO personalities, cultural activists, academics, business leaders and public representatives like the City Mayor and prominent civil society members. They all agreed on the imperative of an inclusive and broadly participatory election in the interest of democratic and developmental progression of our polity.

Election, in essence, presupposes the participation of all recognised stakeholders and thus the prefix of 'participatory' in the title of the aforementioned discussion sounded significant. The significance obviously relates to the implicit realisation that the national election of the recent past was not, unfortunately, a desirably participatory one. Consequently, it was felt that the body politic has been in an uneasy state. This realisation may have prompted the think tank to organise a broad based discussion with a view to finding ways and means to ensure a constitutionally and morally correct election in the interest of a healthy democratic polity.

The speakers in the meet were quite eloquent in pointing to the primacy of election in our political progression dating back to the pre-1947 period and culminating in the historic 1970 election that decided our national identity and destiny. They were of the view that our people never faltered to give their reasoned judgment when the situation so demanded and that our democratic existence demands the holding of politically correct and credible election.

The crux of the matter lies in the trust factor. As such, cynics cannot be faulted when they say that the caretaker system is, in fact, a scathing indictment on the unreliability of our political class. To them the situation appeared ludicrous because although a five-year tenure could be run on a democratic system characterised by the primacy of politicians, elections were managed by a clearly non-democratic arrangement.

The question is, how have we created the apparently unbridled trust deficit? Is it the result of cumulative deficiencies of the regulatory institutions that we have allowed to grow willy-

nilly at our own peril? A circumspect view would be that multiple institutions have not displayed the courage, fairness and firmness expected of them in ensuring propriety in conducting elections.

No matter under what arrangement—caretaker or party government—the elections are held, the determination and firmness of the executive branch has an overarching role in ensuring reasonably fair elections. Experience shows that the conduction of election is pre-eminently an executive function. The skipper, the National Election Commission, performs some judicial and quasi-judicial functions with regard to election matters but it is the unstinted support and loyalty of the district and police administrations coupled with the deterrent

officers under the direction of the EC acts against electoral malpractices, but again, it is the executive branch that, on account of their full-time presence on the ground, can play an effective deterrent role in preventing and punishing electoral malpractices of all descriptions.

In most democracies the incumbent political government oversees the election after reducing its size to the bare minimum necessary for carrying out routine work. Constitutional bodies, the services and regulatory institutions do their mandated job to smoothly conduct the election. Everything operates normally, as has been the case in the recently conducted general election in the neighbouring West Bengal State of India.

In Bangladesh, however, owing to reasons that

required to serve in some future administration. The above is the desirable course, but the ground reality is the steady erosion of bureaucratic ethos and politicisation of the service. Professionalism, competence and honesty, the hallmarks of a hallowed system, are allegedly giving way to cronyism and pliability. Favours are being given to so-called loyal and partisan officials who unlawfully please their superiors. In such a situation it is becoming increasingly difficult to keep faith in the impartiality and integrity of public servants who are crucial in ensuring fair election.

The need, however, is to ensure that public servants are not preoccupied with inconsequential matters to the detriment of national interests. This is paramount, because in our situation public leaders are publicly expressing doubts about the neutrality and integrity of vital organs of the state whose functions can neither be arrogated to others nor be privatised. Therefore, fears about whether the election would be fair needs to be allayed.

Morbidity and mordant behaviour will only paralyse the nation. Therefore, our conscientious mandarins, of present and yesteryears, howsoever small they may be in numbers, in their responsibilities as appointed representatives of our republic, need to rise to the occasion and sustain our fledgling democracy.

For our democracy deficits to gradually lessen and disappear, the political parties have to make the crucial choice between absolute power on the one hand and the restraints of legality and the authority of tradition on the other. They have to decide on whether to constitute a moral association maintained by duty or a physical one kept together by force. They have to decide whether executive action that violate the rule of law has to be tolerated and if the balance between legislature, executive and the judiciary has to be rudely shaken.

The fundamental problem of constitutionalism in our situation has been that the key players have not accepted the rules of constitutionalism. In fact, the credibility of the entire structure has been called into question because the most influential actors who operate the levers of power have disturbingly breached the rules. There have been unsure attempts to engage the accountability mechanisms, but in the process, the authority of the constitution has sadly been dissipated.



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presence of the armed forces that largely determine the course of the election.

As per constitutional provision and administrative directives the Election Commission (EC), a constitutional body, enjoys complete command and control over the executive branch, including the armed forces in so far as it relates to the conduction of election. Therefore, the Commission can effectively energise field-level executive magistracy and law enforcement functionaries. On the ground it is the magistracy and police who deal with the specifics of election management like the selection of polling agents, safety and security of ballot boxes and polling centres and ensuring a peaceful environment.

Before and during election, some judicial

are well-known, we cannot put our faith in the normal arrangement. The suspicion, therefore, is, have those institutions that ensure fair election been adversely incapacitated? If that is so, how did it happen? Additionally pertinent is the question as to whether the proposed strengthening of the EC would guarantee fair election.

It is relevant to note that the civil service of the republic owes its loyalty to the government of the day, irrespective of political party, and it is imperative that it avoids creating the impression of being politically biased. The civil servants are expected to conduct themselves in such a manner that they deserve and retain the confidence of ministers and are able to establish the same relationship with those whom they may be

Protection of enforced disappearance victims: Bangladesh needs legal reforms

MD SAIMUM REZA TALUKDER

ONCE again Bangladesh has come under the spotlight in international media, unfortunately not in a positive way. On July 6 2017, the Human Rights Watch report ("We Don't Have Him": Secret Detentions and Enforced Disappearances in Bangladesh") published that at least 90 people were victims of enforced disappearance in 2016 alone with 48 disappearances reported in the first five months of 2017. The next day, Swedish newspaper Expressen published its report stating that since 2009, more than 400 dissidents have been killed in extrajudicial executions in Bangladesh and at least 384 people have disappeared, most of them being dissidents, activists or members of opposition parties.

Both the reports coincide with 'enforced-disappearance' (or abduction) of Farhad Mazhar, the prominent and controversial Bangladeshi writer and social activist. On July 3, 2017, Farhad Mazhar was abducted early morning from in front of his residence at Shyamoli, Dhaka. After a day of conflicting reports and rumours in the news as well as social media, Mazhar was rescued in Jessore by Bangladesh police in the evening while travelling alone on a Dhaka bound bus.

Mazhar's abduction can be used to illustrate the unanswered questions that are often associated with such 'disappearances' and the fact that we do not have proper laws in this country to deal with such situations. First of all, was Farhad Mazhar a victim of 'enforced disappearance' or a victim of 'abduction'? Moreover, some newspapers and online



PHOTO: STAR

Was Farhad Mazhar a victim of 'enforced disappearance' or a victim of 'abduction'?

media initially termed him as 'missing'. Unfortunately, there is no such Bangladeshi law that clearly differentiates between 'abduction', 'missing' and 'enforced disappearance'. This is a major loophole in our laws. Therefore, we should make a new law which will determine the status of the victim according to the claim of the victim's family in the first instance and law enforcement agencies should consider this as prima facie evidence which can be changed according to further investigation.

Second, was the role of law enforcement agencies in accordance with the law? When

finally Mazhar was rescued from a Dhaka bound bus it was not also clear whether he was offered any medical treatment or legal assistance from the advocate while he was in police custody in Khulna overnight. If not, then it is a clear violation of fundamental rights under Article 31 and Article 33 of our Constitution. Also, there seems to be discrepancies with 'due process of law'. Was he 'arrested' or 'detained' or 'rescued'? If he was rescued after abduction, why did Khulna police keep him in police custody instead of taking him to the hospital or bringing him back to Dhaka immediately? Can police keep

a seventy plus year old person, traumatised and in need of immediate medical treatment, the whole night? Moreover, Didar Ahmed, the DIG of Khulna Range in a press conference after Farhad Mazhar's rescue, claimed that they believe the poet-columnist 'staged a drama' citing the circumstances. How did police come to such conclusion without conducting any investigation? Do our laws permit such media trial without the actual trial happening before the court? Moreover, the press conference next day by Dhaka Metropolitan Police in this regard is contradictory to DIG Didar Ahmed's first statement.

Third, what was the legal basis for Mazhar's interrogation in Detective Branch police office when he was brought back to Dhaka? DB interrogated him there for several hours and then took him to CMM Court for giving a statement under Section 164 of CrPC. It is not clear whether Mazhar was detained under Section 54 and interrogated under Section 167 of CrPC. Was there enough suspicious activity to warrant interrogation by DB? If interrogated under Section 167, did DB take the magistrate's permission before interrogation? Also, was Mazhar compelled to give statement at court under Section 164 or was it voluntary? If he was compelled to give a statement at court, was he a suspect of a crime? If so, then what was the ground of suspicion? Moreover, according to the verdict by Appellate Division of the Supreme Court of Bangladesh on the application of Section 54 and 167 last year, the total treatment by law enforcement agencies against Farhad

Mazhar was not in accordance with law. Because, the judgment says: 1. Law enforcers must not arrest anyone under Section 54 to put him/her into detention, 2. The detainee shall be allowed to meet lawyers and relatives for legal assistance, 3. The detainee must be checked by a doctor before and after the interrogation. So, it seems that the law enforcement agencies treated Mazhar as a 'suspect' or 'accused' of a crime instead of treating him as a 'victim', which was not in accordance with the Supreme Court's Judgment on Section 54 and Section 167. Also, it was not clear why the CMM Court released him on his own custody after recording his statement under Section 164 and made him sign a Tk 10,000 bond. If CMM Court treated Mazhar as a victim, then why would he need any bond to get a release? The whole scenario remains unclear due to lack of further clarification from the government.

Therefore, it is high time for Bangladesh to legislate a proper 'Victim Support Act', and ratify the 'International Convention for the Protection of All Persons from Enforced Disappearance'. It should respect the 'UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials'. We hope that soon Bangladesh will bring these legal reforms along with other administrative and executive reforms to ensure and protect fundamental rights of the people.

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A WORD A DAY

KEN
noun

Range of what one can know or understand

CROSSWORD BY THOMAS JOSEPH

ACROSS	28 "Chandelier" singer	6 Fill with joy
1 Not naked	29 Detectives	7 Designer Claiborne
5 Honey-dew, for one Celtic letter	33 Cruise in the movies	8 Comprehensive
11 Twist of fiction	34 Cry	9 Interstellar clouds
13 Singer/songwriter Paul	35 Craps "natural"	12 Spring signs
14 Garden pavilion	37 Jane Austen novel	16 Bassoon's kin
15 Undesirable consequences	38 Take offense at	21 Juliet's family
17 Message	39 Rip	22 Court cutup
18 Quake	40 Sides in an ongoing battle	23 Baltimore team
19 Ring great	41 Kitchen fixture	24 Elegant cat
20 Dawn goddess		25 Banana leftover
21 Highlands family	DOWN	27 Flora
22 Leader of the Pussycats	1 Vessel	29 Play part
25 Loses color	2 Moon-based	30 Marisa of "My Cousin Vinnie"
26 "—go brag!"	3 Low joint	31 One of the primates
27 Energy	4 Request for a hand	32 Unadorned
	5 Tycoons	36 Torment

YESTERDAY'S ANSWER

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BEETLE BAILEY

3-31

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BABY BLUES

BY KIRKMAN & SCOTT

BABY BLUES