



Local Governance and  
Political Reform:  
*Keys to Poverty  
Reduction*

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## About the Author

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In 1993, he became the Country Director of The Hunger Project-Bangladesh. In 2003, he was made a Vice President of The Global Hunger Project. He also serves on the Advisory Board of Transparency International Bangladesh.

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Dr. Majumdar himself and the civil society organization he helped found – SHUJAN (Citizens for Good Governance) – have catalyzed a movement for major systemic and institutional reforms in order to help achieve clean and transparent governance in Bangladesh. He and his organization also articulated bold and specific reform ideas, including the disclosure of antecedents of candidates to facilitate the movement. In fact, he has played a pivotal role in the democratic transition that took place in Bangladesh through the national elections held in 2008.

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## INTRODUCTION

After much bloodshed and the sacrifice of millions of lives, Bangladesh was created with a vision to achieve a future free from hunger and poverty – a future where economic and social justice for all its citizens would be ensured. Such a future was to be achieved through democratic means.

The Constitution of Bangladesh enshrines bold promises for a democratic society with freedom and justice for all of our people. Article 11 of the Constitution clearly states, “The Republic shall be a democracy in which fundamental human rights and freedom and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.” Article 19 more clearly promises to “ensure equality of opportunity to all citizens ... (and) to remove social and economic inequality between man and man and to ensure equitable distribution of wealth among citizens ...” Article 26 prohibits all types of discrimination, including discrimination based on sex. It is thus clear that our valiant freedom fighters risked and even sacrificed their lives to create an egalitarian society in Bangladesh that was to be achieved through democratic means.

Democracy is a system of governance based on consent of the people, where fundamental freedoms – for example, freedom of expressions, movement, assembly, association, religion, profession etc. – are guaranteed. It also requires ensuring certain rights – for example, right to life, property, privacy, equality, equal opportunity etc. – for all citizens.

Democracy obviously requires elections – free, fair and impartial elections. Through elections, elected representatives are given “powers” to govern. However, unless “checks” are instituted and restrictions imposed on the exercise of powers, democracy may turn into elected autocracy, robbing the people of the very freedoms and fundamental rights it promised to protect. In fact, without such checks on powers, democracy may turn into a one day affair – a so-called “one-day democracy.” Unfortunately, that is exactly what has happened in Bangladesh: because of the failure of the system of checks and balances to function effectively, democracy was never consolidated in Bangladesh and unelected governments took over time and again replacing the elected ones.

The checks on powers vested in the elected executives (i.e., the executive branch) are instituted by a legal framework and by a set of institutions created to frame and enforce the laws and the regulations. Important such institutions include the Parliament and the Judiciary, which are part of the long-developed scheme of separation of powers. Other important governmental institutions include the Election Commission (EC), Public Service Commission (PSC), Ombudsman, Anti-Corruption Commission, Human Rights Commission, and the Information Commission. Political party and civil society are two other very important institutions coming from the non-government side.

One of the most important institutions for imposing checks on governmental powers is the elected Parliament. Parliament is empowered not only to frame laws, but

also to ensure that they are implemented honestly, faithfully and with due diligence. In doing so, Parliament, through its various committees, ensures the transparency and accountability of the government formed by representatives elected by the people. Unfortunately, our Parliament has historically not been effective as an institution, partly due to Article 70 of the Constitution, which made the Members of Parliament (MPs) accountable to the party higher-ups, rather than the other way around. In fact, instead of the cabinet being accountable to the Parliament, as mandated by Article 55 of the Constitution, the MPs now have to take orders from their respective party leaders.

Another most important institution of accountability is the Judiciary. The fundamental rights of the citizens are justiciable and the courts not only have to ensure the protection of the rights of citizens, but must also interpret laws and the Constitution. This important institution, which is the last resort of aggrieved citizens, has unfortunately been made partisan over the years by successive governments through judicial appointments.

Yet another very important institution critical to ensuring accountability of government is the political party. Political parties publish manifestos and field candidates in elections to implement their manifestos, and they are supposed to ensure the accountability of the government formed by representatives elected with their tickets. Unfortunately, our political parties perform no such role. Rather, they have largely been out of control and are responsible for “politicising” crime and “criminalising” politics in Bangladesh. In fact, they currently behave more like syndicates than constitutionally recognised democratic institutions. Their structures have also become dynastic and autocratic, and devoid of internal democracy and accountability.

Other important and constitutionally mandated institutions include the EC, PSC and Ombudsman. The EC has also been made partisan over the years, making it the biggest hindrance to free and fair elections. In order to redress this problem, a constitutionally mandated system of a Caretaker Government (CTG) was created in 1996, which was later nakedly manipulated by the last Four-party Alliance government. The PSC also did not escape partisan onslaught by different political parties over the years. The Ombudsman system, although enshrined in the Constitution, has not been implemented in the last 38 years.

The independent Anti-Corruption Commission is also an important institution, created in 2004 at the behest of donors, to combat graft and corruption. Unfortunately, the last Alliance government shackled the Commission and made it totally ineffective. Thus, the looting and plundering by public officials continued unabated.

The civil society – or citizens’ groups – is another very important institution necessary for promoting democracy, decentralization and development. Such groups can mobilize citizens to demand reforms and to serve as a pressure group to ensure their implementation. Civil society institutions can thus play significant roles in the socio-economic transformation of society. Their roles become even more important if other institutions are dysfunctional. Unfortunately, civil society activists have become a largely disappearing breed in Bangladesh over the years because of our patronage-based politics and the hostile attitudes of the rulers.

Other important institutions, such as the Human Rights Commission and the Information Commission, were not created until recently. Thus, our democratic system through the years has effectively evolved into an election-centred one-day affair, bestowing powers on elected representatives without a concurrent system of checks and balances effectively restricting powers. It has – in absence of an effective means of ensuring honesty, transparency and accountability – become the best system that money and muscle could “buy”. In fact, it has gone off the rails, turning democracy into a sort of “lootocracy.” In such a system, elections held every five years did little more than empower elected officials to loot and plunder by defying laws and regulations – which themselves were often arcane and inappropriate – until the next election.

Such looting and plundering is further facilitated by a centralised system of governance with few decision makers who are able to keep matters close to their vests. The centralisation necessarily means an ineffective local government system, which in turn weakens the democratic structure. For, the local government system, which ensures the rule of elected representatives at all administrative units, provides the very foundation of a democratic polity. Thus, the lack of local democracy leaves the democratic superstructure, centred around the elected Parliament, neither with the pillars or a foundation to make it sustainable.

Despite bold constitutional provisions, the local government system in our country has over the years reached a deplorable state. The Zila Parishad elections have never been held in the last 38 years. The Upazila system was disbanded by the elected government in 1991. Union Parishads have been made totally ineffective by the interference of MPs and by undesirable controls exercised by the bureaucracy. City Corporations and Paurashavas have also been made the extended arms of the central government. Thus, our elected local government leaders have never had the opportunity to exercise their leadership in solving local problems locally through effective participation of the people. Consequently, our system of governance has become increasingly more centralised over the years.

Such lack of decentralisation and local democracy has also seriously harmed our poverty eradication efforts. Decentralisation gives power, authority and resources to local government bodies, which are closest to the people. As in politics, most problems are local and must be solved locally. Since the local government system is intended to manage local affairs by locally elected persons, experiences show that the decentralisation of power and the devolution of resources benefit the people most, thus expediting the poverty eradication process. In addition, decentralised governance gives rise to “participatory democracy,” which deepens the representative democracy and makes it more meaningful.

Thus, it is clear that a set of arcane laws and weakened institutions, including the local government institutions, have made our democratic system largely ineffective. Irregular means, such as the street agitations and violence – rather than the law, institutions and negotiations – became the vehicles of “solving” problems, resulting in serious political instability in the country. Such instability, without the institutional foundation, made our system of one-day democracy unsustainable, ultimately causing it to collapse through the cancellation of the elections to the 9<sup>th</sup> Parliament, scheduled to be held on January 22, 2007. Such a state of affairs also hamstrung our poverty

eradication efforts. To redress such a debased system, we need deep and all-encompassing reforms – reforms to clean our politics, promote local democracy and end hunger and poverty.

Reforms are needed in the electoral process, candidate eligibility, election finances, and code of conduct. The EC must be strengthened and made independent of the office of the Prime Minister. Political parties must be reformed to ensure internal democracy, to disband their associated and affiliated organizations and to become accountable for their activities. There must be disclosure of antecedents by candidates so that voters can make informed choices in the polling to make elections more meaningful. The local government system must also be reformed drastically to ensure a system of true local democracy. In addition, legal and institutional reforms are needed to establish the rule of law, safeguard the people's rights and stimulate poverty eradication.

I have been actively promoting many of the above reforms for many years both as an activist and as a newspaper columnist. In fact, I became a columnist mainly to articulate ideas and issues for reform and change. The present volume is mostly a collection of newspaper columns and concept papers, in some cases slightly modified, written over the years to that end.

The book has five major sections. The first section of the book is primarily devoted to local government, including its constitutional provisions, its present state and the challenges that lie ahead for creating a system of true local democracy. The next section highlights reform issues relating to elections, electoral rolls, political parties, role of MPs, women's representation and so on. The third section includes several pieces on disclosure issues based on Indian and Bangladeshi experiences. The fourth section addresses the issues relevant to civil society and the contributions made by civil society organizations, particularly SHUJAN, in the democratic transition that took place via the Parliament elections held in December 2008. The last section of the book is devoted to our poverty eradication efforts, including the formulation of PRSP and MDG indicators.

I am grateful to my friends and colleagues, Carol and John Coonrod, for reading the manuscript and substantially cleaning it up. The book would not have seen the light of the day without the untiring efforts of Bidhan Chandra Pal, Morji Biswas and the encouragement of my other colleagues. My wife and children deserve special thanks for their continued support and encouragement.

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## CHAPTER ONE: LOCAL GOVERNMENT

### Local government in our constitutional system

The celebration of the 30th anniversary of our Constitution – the supreme law of the land – offers us an excellent opportunity to closely examine its salient aspects and renew our commitment to the ideals for which it stands. The purpose of this short

piece is to review the provisions for local governance set out in the Constitution and briefly discuss its present state. The provisions for local governance are important aspects of the Constitution in that they define the fundamental structure of our government.

#### The Constitutional Provisions

One of the distinctive and unique features of Bangladesh's Constitution is that it provided for local governance in its original version. It has four Articles – Articles 9, 11, 59 and 60 – for this purpose. They state:

“9. The State shall encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation shall be given, as far as possible, to peasants, workers and women.

“11. The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.

“59. (1) Local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.

(2) Every body such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to:

- (a) Administration and the work of public officers;
- (b) The maintenance of public order;
- (c) The preparation and implementation of plans relating to public services and economic development.

“60. For the purpose of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budget and to maintain funds.”

Articles 9 and 11 are part of what is called the “fundamental principles of the state policy.” These principles are not mandatory or binding. They provide guidance to the interpretation of the Constitution, formulation of State policy, legislative initiatives and citizen action. As such a court of law cannot enforce the adherence to them (Article 8(2)). In other words, if the State cannot or does not implement these, the Court cannot compel the State to do so.

On the contrary, Articles 59 and 60 provide mandates and are therefore enforceable. In fact, they are the limitations on the plenary legislative power of the Parliament in the field of local government and the legislature cannot ignore them. Any law passed by the Parliament must be consistent with these two Articles. In other words, the Parliament is not free to legislate on local government ignoring Articles 59 and 60. Otherwise, there will be two classes of local government – one under the Constitution and the other under the ordinary law. This will be a clear mischief on the Constitution. (Kudra-e-Elahi Panir vs. Bangladesh 44DLR(AD)(1992)

#### Intentions and Interpretations

Articles 59 and 60 appear to clearly lay down three specific requirements: (a) there must be elected local bodies at each administrative unit; (b) they must be

autonomous and parallel to the bureaucratic structure; (c) they must have certain functions and responsibilities; and (d) these bodies must be given powers, including financial powers. Meeting these requirements would allow effective participation by the people of all walks of life in decisions that directly affect them (Articles 9 and 11), and ensure democratic governance at the grassroots.

The overt intentions of Articles 59 and 60 are to give sweeping powers to the local government bodies and to provide a blueprint for democratic decentralization and local self-government in our country. Article 59(2) specifically recommends for local government institutions' functions to include the work of public officers, the maintenance of public order and the planning and implementation of services provided by public officers and economic development at the local level. These activities essentially encompass the management of all local affairs. Thus the Constitution appears to make the local bodies the conduits for giving the people of an area, through a democratic process, adequate authority, responsibility, power and resources in order to manage their own affairs. This is what self-rule is all about.

The Appellate Division of the Bangladesh Supreme Court has interpreted Articles 59 and 60 to provide a definition of local government: "... it is meant for management of local affairs by locally elected persons. If government's officers or their henchmen are brought to run these local bodies, there is no sense in retaining them as local government bodies." (Kudra-e-Elahi Panir vs. Bangladesh 44DLR(AD)(1992) Thus it is clear that if local government bodies are controlled by the bureaucracy or the Members of Parliament (MPs), it is in violation of Article 59 of the Constitution.

#### The Reality

Although the constitutional commitment is to create an autonomous, self-governing system of local government, the reality has been very different. The local bodies have been made totally subservient to the bureaucracy both by legislation and administrative circulars. For example, both The Local Government (Union Parishad) Ordinance, 1983 and The Upazila Parishad Act, 1998 allow government officials to remove and suspend elected local officials, and supervise, control and direct the activities of the local bodies. In addition, both pieces of legislation have also designated elected local representatives as "public servants," like other paid staff, in order to bring them under the total control of the government officials. This control has become even more blatant over the years. The UP representatives are now even denied, through administrative circulars, their fundamental right of movement, violating Article 36 of the Constitution. Furthermore, the taxing authority of the local bodies is being taken away in violation of Article 60 of the Constitution. Such action affects the financial viability of local bodies, instead of empowering local bodies with financial powers, as required by Article 60.

A relatively new element in the local government scene is the interference – a rather naked control – of MPs over local bodies. In 1993, MPs were made advisor to the Thana (now Upazila) Development through an administrative circular. Subsequently, The Upazila Parishad Act, 1998 designated MPs as advisors whose advice would have to be accepted, turning the elected local body into merely the authority to put rubber stamps on the decisions of MPs. This is a "colourable legislation" in that it allows MPs to exercise executive functions, violating the

principles of separation of powers. The question of colourable legislation arises when something that cannot be done directly is done indirectly. Although MPs are locally elected, they are not elected for the management of local affairs but rather their functions are national in scope. Member of Parliament are to exercise legislative powers rather than the management of local affairs.

Thus, it is clear that legislation for Union Parishads and Upazila Parishads and administrative actions that place government officials in control of local bodies and facilitate MPs' interference are totally inconsistent with Articles 59 and 60. Rather than upholding and implementing the supreme law of the land, the authorities are making a mockery of it.

#### Conclusion

On the occasion of the celebration of the 30th anniversary of the Constitution, our resolve should be to strengthen its fundamental provisions, rather than undermining them, to ensure a vibrant, flourishing democracy in Bangladesh. This would mean not only safeguarding the provisions for local government already enshrined, but also including amendments which would direct a significant proportion of national budget – at least a third – to local bodies and settling contentious issues – such as the number of tiers – once and for all.

*The Daily Star*: November 3, 2002

## Persistent non-compliance with constitutional mandates and court directives must end

According to newspaper reports, the Government of Bangladesh once again applied for and obtained yet another extension – perhaps for the 22<sup>nd</sup> or 23<sup>rd</sup> time – of the time limit for the implementation of the directives unanimously given by the Supreme Court 12 years ago in *Kudrat-E-Elahi Panir vs. Bangladesh* (44DLR(AD)(1992)). This is unfortunate because it manifests persistent failures of successive governments to flagrantly and willfully ignore these directives for a dozen years, impeding the process of justice. As the old adage goes, justice delayed is justice denied.

#### The Directives

In 1992, the Full Court Bench of the Appellate Division of the Bangladesh Supreme Court, while upholding the government decision to cancel the Upazila system, issued two very important directives. They were:

“...With the re-appearance of Articles 59 and 60 with effect from 18 September 1991, on which date the Twelfth Amendment of the Constitution was made, these local bodies shall have to be updated in conformity with Articles 59 and 60, read with Article 152(1) for the lawful functioning of the said local bodies... as soon as possible – in any case within a period not exceeding four months from date.”

“...The existing local bodies are...required to be brought in line with Article 59 by replacing the non-elected persons by election keeping in view the provision for special representation under Article 9. Necessary action in this respect should be taken as

soon as possible – in any case within a period not exceeding six months from date.” (Kudrat-E-Elahi Panir vs. Bangladesh 44DLR (AD)(1992))

These two directives relate to very vital constitutional and governance issues.

#### Constitutional and Governance Issues

Our Constitution has four Articles – Articles 9, 11, 59 and 60 – on local governance. The last two Articles are more important in that the Parliament cannot ignore them in enacting laws and the Court can also legally enforce them. Article 59(1) states: “Local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.” That is, there must be elected local government bodies at each designated administrative unit. The purpose of such bodies is “the management of local affairs by locally elected persons” (Kudrat-E-Elahi Panir vs. Bangladesh).

It is clear that having elected local bodies at the District, Upazila and Union levels, which are already designated as administrative units, is a mandatory requirement of the Constitution. The government is bound to abide by this requirement, if there is to be rule of law in the country – the Constitution being the highest law of the land – rather than the rule of expediency, convenience or personal whims. The Court, through its directive to hold elections of local bodies within six months, rightly reminded the government of its constitutional obligations.

This constitutional mandate also specifies a dual structure of governance in our unitary system. It provides for a national government with clear and distinct executive authorities. At the same time, it requires a local government system with an elected body at each administrative unit. These local bodies – not national authorities – are to be entrusted with the task of governance at the local level (in Bangla, “স্বাধীনভাবে নির্বাচিত প্রতিনিধিত্বমূলক স্থানীয় সরকার গঠন করা হবে এবং এগুলোর মাধ্যমে স্থানীয় পর্যায়ে সরকারি কার্য পরিচালনা করা হবে”) in that they are to be responsible for administration and the work of the government officers, maintenance of law and order, delivery of all public services, and also planning and implementation of all local economic development activities (Article 59(2)). Thus, the local bodies are to form a system of self-government, responsible for the decision making as well as the implementation of various schemes and programmes. In other words, like the national government, local government is also a distinct government.

The constitutional mandate clearly requires that the local bodies not be subservient to national authorities. As the Appellate Division of the Supreme Court stated, “If government’s officers or their henchmen are to be brought in to run these local government bodies, there is no sense in retaining them as local government bodies” (Kudrat-E-Elahi Panir vs. Bangladesh 44DLR(AD)(1992)). This unanimous pronouncement of the apex Court thus leaves no doubt that the Constitution requires the local bodies to form an autonomous system of government at the doorsteps of the people, rather than being extensions of the national government. That is, according to our Constitution, the task of governance at local levels – at all designated administrative units – is to be carried out by elected local representatives – elected for that purpose – rather than by non-elected government officials or anyone else, for that matter. Unfortunately the opposite has become the case in our country, in total



In this context, it should be noted that the Upazila system represented an important step toward democratic decentralisation. The Supreme Court’s affirmation of the cancellation of the system on a purely technical ground that the Upazila was not designated as an administrative unit has had severe adverse impacts. Many now feel that if the Upazila system remained in place, the quality of our governance would gradually improve – rather than progressively deteriorate, as has been the case in the past decade – with opportunities for greater public participation and scrutiny. The elected Members of the Parliament would also have to behave more responsibly and concentrate on exercising their constitutionally mandated “legislative powers” (Article 65) rather than indulge in the extra-constitutional task of directing local development. It may be noted that our traditional field-level administration is now on the brink of total collapse and our already feeble local government system is about to become totally irrelevant because of the institution of an informal mechanism of “MP government,” consisting of local MPs and their party colleagues. This phenomenon, created during the past decade of our democratic rule, is now causing havoc in the administration across the country.

**Correcting Technical Flaws**

The Supreme Court’s second directive to update the local government bodies is also important in that it would help correct some serious technical flaws in the existing statutes on local government. The technical flaws arose due to the passage of the Twelfth Amendment of the Constitution in 1991. It may be recalled that Articles 59, 60 and the last part of 11 were deleted in 1975 by the Fourth Amendment of the Constitution, creating a total constitutional vacuum with respect to local government. The Paurashava Ordinance, 1977 and The Union Parishad Ordinance, 1983 were enacted in the backdrop of such a vacuum. In the absence of constitutional mandates, these two laws made Paurashavas and Union Parishads as bodies totally subservient to national authorities. For example, the Paurashava and Union Parishad laws allowed the government officials to directly supervise, direct and control the local bodies. They were even given the authorities to cancel these bodies and suspend the elected representatives. More seriously, the laws designated elected representatives as “public servants,” allowing the higher level public servants, i.e., government officials to impose unnecessary, unreasonable and unjust control over the latter’s activities. The Twelfth Amendment of the Constitution – which restored Articles 59 and 60, requiring an autonomous system of local government – clearly made the above laws unconstitutional. This obviously required the laws to be amended and updated, and the Supreme Court rightly directed the government to do so.

It must be pointed out that The Upazila Parishad Act, 1998 and The Zila Parishad Act, 2000 followed the other two statutes in making the elected bodies subservient to government officials, and similarly violated the Constitution. The Upazila Parishad Act, however, has a additional serious flaw. Section 25 of the said Act requires the Upazila Parishad to accept the advice of the local MP. (“□□□□□□ □□□□□□□□□□- □□□□□□□□□□□□□□ □□□□□□□□ □□□□□□□□ □□□□□□□□ □□-□□ □□□□ □□□ □ □□□ □□□□□ □□□□ □□□□□□□□ □□□□□□□□-□□□□ □□□□□ □□□□□□ □□□□□□□ □□□□□ □□□□□ □□□□□□□□ □□□□□□□□ □□□□□□ □□□□□ □□□□□□□□”) This turns

legislators into executives, which is a violation of the principles of separation of powers and a clear assault on the Constitution.

Can the government justifiably ignore the Supreme Court directives? An Indian Supreme Court judgment may be pertinent in this regard. In PUCL and another vs. Union of India (Writ Petition (Civil) No. 490 of 2002), the Court directed the Election Commission to collect from candidates in national and state elections sensitive information about their criminal antecedents, assets and liabilities and their educational qualifications, and help disseminate them among the public. The NDA government, with support from all other political parties, rejected the Supreme Court decision and decided to undo it through legislation. In response, the Court unequivocally stated that the “Legislature in this country has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts.” It thus appears that the government has no alternative but to hold the Upazila and Zila Parishad elections without any further delays and also amend the laws, as directed by the Court.

It may be pointed out that even though the government has been showing its total disregard for the Constitution and flagrantly and willfully ignoring the Supreme Court directives, no one seemed to be bothered about it although, as already noted, very serious constitutional and governance issues are involved. By contrast, one cannot help but notice the keen interest and activism of both the legal community and even the donors for the implementation of the Supreme Court’s landmark judgment in the Secretary, Ministry of Finance vs. Md. Masdar Hossain (52(2000)DLR(AD)84), requiring the separation of judiciary from the administration. Such activism should obviously be appreciated and must be extended to other important judicial decisions.

The next hearing date for the government’s prayer for yet another extension is reported to be set for November 16, 2004. We sincerely hope that the Supreme Court, as the guardian of our Constitution, will ensure that the government meets its constitutional obligations by the speediest implementation of the Court’s directives. The government must not anymore be allowed to treat the Constitution like a “telephone book” – using it when needed and putting it away or not using when its coterie interests are at stake. With regard to holding elections, the Court may even consider directing the Election Commission to set dates within a specific time limit. We strongly feel that there is no more room for allowing the government to continue playing the same old game of routinely asking for extensions and in the process ignoring the Constitution and flouting the Court directives. Clearly, what is now at stake is the rule of law – that is, maintaining the supremacy of the Constitution. The absence of the rule of law, we must not forget, is the prescription for anarchy. (The author is grateful to Dr. Kamal Hossain for his comments on this article.)

*The Daily Star: January 9, 2003*

**The government deserves thanks for correcting its mistakes**

On November 10, 2003, the Ministry of Local Government and Cooperatives issued a circular canceling the two circulars previously issued, requiring the elected Union Parishad (UP) representatives to obtain the permission: (1) of Deputy Commissioners to participate in training programmes, seminars and workshops organised by governmental and non-governmental organisations; and (2) of the Ministry in order to go abroad. These requirements were part of the multiplicity of controls and regulations that the bureaucracy has imposed on UPs, the only ongoing local government body in our country, over the years. In view of strong reactions and oppositions from the various stakeholders, the government withdrew the offending circulars, for which it deserves special thanks. For this does not usually happen in our country – the government normally shows arrogance and seldom corrects its mistakes.

This bureaucratic control over the activities of UPs is wrong because local government, by definition, must be local self-government. Controls allow the central bureaucracy to thwart local autonomy and, in the process, directly or indirectly intrude upon the running of local affairs. With controls, local bodies in essence become agents of the national government, and hence cease to function as self-governing entities. As the Appellate Division of the Bangladesh Supreme Court, in *Kudrat-E-Elahi Panir vs. Bangladesh* (44DLR (AD) (1992)), states: “‘Local government’ ... is meant for the management of local affairs by locally elected persons. If government’s officers or their henchmen are brought to run these local bodies, there is no sense in retaining them as local government bodies.”

Bureaucratic control also serves no useful purpose. Rather, it is counterproductive in that it prevents elected officials from exercising leadership to solve many of the socio-economic problems that their constituents face. Most of the challenges people face are local and must also be solved locally and primarily by the initiatives of those facing the challenges. Elected local leaders can play a catalytic role in this process. Elected leaders can awaken and mobilise people to become the principal authors of their own future. Thus, the UP representatives can become the change agents for the socio-economic resurgence of their unions.

The most serious problem with the imposition of controls over local bodies is that they raise serious constitutional issues. Article 59 (1) states that “Local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.” The implication is that local government bodies would be autonomous and not extensions of the national government. In other words, they would be parallel entities to the central bureaucracy. Thus, the imposition of bureaucratic controls over local bodies is in clear violation of the constitutional mandate of a system of autonomous local government.

It must be pointed out that not only the recent circulars, but also the constitutionality of The Local Government (Union Parishad) Ordinance, 1983 itself, which governs the functioning of UPs, can be challenged. Articles 12, 64 and 65 of the ordinance allow the bureaucracy to remove the elected representatives and even suspend the Parishad. Similarly, Articles 60, 61 and 62 empower the government officials to supervise, control and direct the activities of UPs. These provisions clearly make a mockery of the constitutional requirement of autonomous local bodies.

In addition, Article 81 of the ordinance designates elected UP representatives as public servants, although they are public representatives. The sinister idea behind such

a designation is that this allows the senior government officials to directly control the activities of the UP chairmen and members, as junior public servants, thus establishing a permanent subservient relationship.

How did it happen? How could the local bodies become subservient to the bureaucracy while the Constitution mandates an autonomous system? There is a sad history behind this.

The Fourth Amendment to the Constitution passed in 1975, one may recall, abolished Articles 59, 60 and the last clause of 11, which are the most relevant of the four constitutional provisions (Articles 9, 11, 59 and 60) relating to local governance. This clearly created a constitutional vacuum with respect to local government. After Ershad's takeover in 1992, the Constitution itself was suspended. Against this backdrop, The Local Government (Union Parishad) Ordinance was promulgated and subsequently passed into law in 1983. Thus, the ordinance, when promulgated, was not in violation of the Constitution since it was in a state of suspension.

However, the situation has changed as a result of the enactment of the Twelfth Amendment in 1991, which restored Articles 11, 59 and 60 to the Constitution. This Amendment has clearly made the 1993 law inconsistent with the Constitution, which calls for an autonomous local government system. The full-court bench of the Appellate Division of the Bangladesh Supreme Court itself, in its unanimous decision in Kudrat-E-Elahi Panir vs. Bangladesh (44DLR (AD) (1992)), explicitly directed the government to remove this inconsistency. It mandates that: "With the re-appearance of Articles 59 and 60 with effect from 18 September 1991, on which date the Twelfth Amendment of the Constitution was made, the local bodies shall have to be updated in conformity with Articles 59 and 60..." The court gave this verdict 11 years ago in 1992, and each successive government failed to implement it, impeding the process of establishing the rule of law. One may wonder: in whose interest?

It may also be pointed out here that the Appellate Division of the Bangladesh Supreme Court in Kudrat-E-Elahi Panir vs. Bangladesh gave another important directive to the government: "The existing local bodies are required to be brought in line with Article 59 by replacing the non-elected persons by election, keeping in view the provision for special representation under Article 9. Necessary action in this respect should be taken as soon as possible – in any case within a period not exceeding six months from date." This directive to hold elections in all tiers of local government in six months has far reaching implications in that it relates to the fundamental issue of people's participation in governance. As we know, the government has failed to hold elections of Zila and Upazila Parishads during the last 11 years, defying this important directive from the highest Court of the land.

With respect to the requirement that elected UP representatives obtain permission from the ministry for traveling outside the country: this is in clear violation of the fundamental rights enshrined in our Constitution. Article 36 of the Constitution states: "Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh." The 1993 law, or any other law for that matter, does not forbid the freedom of movement of UP chairmen and members, and there is also no serious public interest involved, which would warrant

the denial of such an important fundamental right to a very distinguished group of our citizens.

The constitutionality of the cancelled circulars could also be challenged on another ground – the government’s authority to issue circulars. Laws usually authorise the issuance of rules and directives, which are intended to clarify the provisions of the law and aid in their implementation. However, this privilege has been badly abused by the authorities in our country. The situation has come to a point that the local government, according to cynics, is now practically run by dozens of circulars, many of which are frivolous, vague and often contradictory. It must also be noted in this context that circulars are not approved by the Parliament and hence are not themselves laws. Rather they are the actions of bureaucrats, and thus can be at times self-serving. If circulars are issued for purposes other than to clarify and operationalise the law, they usurp the legislative authority of the Parliament, and hence cannot be valid constitutionally. According to the Constitution, legislative power is vested only in the Parliament.

To conclude, the two circulars recently cancelled were humiliating to the elected local representatives and would have further weakened the UP as a local government body. The circulars in question also would have impaired their ability to express leadership to move the country forward. The government has cancelled the circulars after realizing that it made a mistake. This is undoubtedly good news, for which the government deserves acknowledgement. We now fervently request the government to remedy its failure to implement the directives of the Appellate division of the Supreme Court, and soon take the necessary corrective actions, paving the way for instituting the rule of law and participatory governance in the country.

*The Daily Star: December 28, 2003*

## Reduction of budget for local government: What does it imply?

The budget, as pointed out by many commentators, has both positive and negative aspects. However, one of the disappointing aspects is the significant decreases in the allocations for local government bodies, especially for Union Parishads (UPs) and Paurashavas, in spite of the substantial increases in the overall budget. Consequently, the question that is now in the minds of many: what do these decreases mean?

Experts differ on the appropriate tiers of local government in our country. However, there is no controversy with respect to one tier—the UP for the rural sitting and the Paurashava for the urban area. The major political parties are unanimously for it. Our honourable MPs have no objection against it. Members of the civil society are strongly for strengthening the UPs and the Paurashavas by giving them more resources, functions and responsibilities. Nevertheless, the honourable Finance Minister, to the dismay of many, proposed drastic cuts in the allocations for these bodies.

The revised Annual Development Plan (ADP) for the current fiscal year is Tk. 17,100 crore, of which the allocations as lump sum grants for 'Upazilla Development Assistance' (which is distributed as ADP grants to UPs) and 'Paurashva Development Assistance' are Tk. 200 crore and Tk. 120 crore, accounting for 1.17 % and 0.70 %, respectively, of the total. In the new budget for 2003-04, these allocations are reduced to Tk. 100 crore, respectively, although the total ADP is increased to Tk. 20,300 crore. In terms of percentages, Upazilla Development Assistance and Paurashava Development Assistance consequently have gone down to 0.86 % and 0.49 %, respectively, of the proposed ADP. It may be pointed out that the allocations for the six City Corporations are also reduced from Tk. 120 crore (0.85%) in the current revised ADP to Tk. 100 crore (0.49%) in the proposed ADP for 2003-04.

Similarly, the grants for Zila Parishads, although nonexistent as elected bodies at this time, are reduced from Tk. 85 crore (0.50%) to Tk. 70 crore (0.34%). Thus, the allocations for all local government bodies – Zila Parishads, Upazilla Parishads, Union Parishads and City Corporations – have gone down significantly in the proposed ADP for the fiscal year in question.

It may be noted that in addition to the above reductions, the government has taken two decisions in recent years which put to risk the very financial viability of local bodies, especially the UPs. For example, in 1997 the authority to lease water bodies of 20 acres or less was taken away from the UPs and given to the Ministry of Youth and Sports. Similarly, the authority to lease local markets was transferred from the UPs to Upazilla Nirbahi Officers last year. These decisions could potentially cripple the UP bodies, although our constitutional commitment (Article 60) is "to confer powers on the local purposes, to prepare their budgets and to maintain funds."

It is hard to fathom the justifications for weakening the financial viability of the UPs – the oldest and the only ongoing local government bodies of rural Bangladesh – by both taking away the taxing authority and reducing their budgetary allocations. The UP election was held early this year, in which nearly 55,000 elected local representatives, including about 13,000 women in reserve seats were elected by the people at the grassroots. The election for the Paurashavas is expected to be held to elect several thousand more local leaders. These leaders would be utilized, many hoped, for mobilising local people and resources for solving locally many of the problems confronting our society relating to hunger, poverty and governance.

Many also thought that local government bodies would be used in the future to get more resources to the people at the grassroots. National resources are currently spent in a highly centralised manner and little of those resources actually reach the common people. Our research shows that the national government spends roughly between Tk. 5-10 lac per year through a UP body. We have also found that the government directly spends about a crore taka each year in Union. Nearly 60 % of such spending is used for salaries and benefits of functionaries including teachers; 30 % on building infrastructure, much of which are of very poor quality and which people can do without; 5 % as handouts; and the remaining 5 % on the so-called human development activities such as health, education and so on. Unfortunately, very little of these resources reach the people in poverty, which is reflected, in a glaring manner, in the growing disparities of income and opportunities in our society.

We can find a rather naked display of the resource deprivation of the ordinary people if we look at their entitlements in the national budget. The budget for 2003-04 is about Tk. 52,000 crore, which comes to about Tk. 4,000 on a per capita basis. Thus, the share of a Union, with a population of 25,000 in the national budget is about Tk. 10 crore if the government directly spends only about a crore in a typical Union, then the question that boggles the minds of many is : what happens to the other Tk. 9 crore? The amount is obviously spent – in a centralised manner by the administrative and political bureaucrats and in the name of the people. Unfortunately only the crumbs of this huge sum reach the people in villages, and much of it is wasted and misappropriated, earning us the dubious distinction of being the most corrupt nation in the world.

Given this, it was hoped that the government would use the large number of newly elected local leaders and their institutions as conduits for transferring resources to the people in poverty. Such transfers would no doubt contribute significantly to our progress as a nation. For example, if the government would allocate Tk. 1 crore to each Union every year and require by law that the UP body prepares local plan through effective participation of the people and holds periodic open budget meetings to account for all the spending, then many of the challenges faced by the common people could be solved in the next five years.

Experience shows that the closer that power, authority and resources are to the people the greater the degree of transparency and accountability, and the more benefits accrue to the people.

Despite these strong arguments in favour of giving more resources to local government bodies, why has the government – it is reasonable to ask – decided to lower their allocations in the budget? Does it reflect its lack of seriousness toward strengthening local government?

One should not be surprised if there is indeed a lack of seriousness, for many of the official decisions of the past decade went against the interests of local bodies. Cancellation of the Upazila system; forming of the “Thana/Upazila Development Coordination Committees” with MPs as advisors; giving the government officials the power to suspend and remove elected representatives and directly supervise and control their activities defying the constitutional provision of autonomous local bodies; designating the MPs as advisors in the 1998 Upazila Parishad Act and making their advice mandatory; ignoring the 1992 decision of the Supreme Court to “update” the local government laws in view of the Twelfth Amendment of the Constitution and not holding elections of local bodies; using the allocations for local government as patronage for party functionaries – are some of the examples of governmental decisions against local government. These decisions have progressively weakened the local bodies, if they are in existence at all, over the years. The incoming Gram Sarkar, according to many observers, is likely to worsen the situation, threatening the very existence of the UPs.

The reduction of budgets for UPs, Paurashavas and City Corporations clearly indicate that the government is putting less importance on these bodies. However, do the reduction of grants for Upazila and Zila Parishads imply that the government is not thinking of holding elections for these bodies in the near future? If so, it will mean a clear defiance of the unanimous decision of the Bangladesh Supreme Court. In the

case involving the cancellation of the Upazila Parishad, the Supreme Court in 1992 directed the government to remove non-elected persons in local bodies by holding elections within six months. Unfortunately, this decision has not been implemented in the last 12 years.

If elections of Upazila and Zila Parishads are not held, it would also mean that the ruling party would violate its own election commitment. The Bangladesh Nationalist Party (BNP), in its election manifesto before the last Parliamentary election, stated: "Active initiatives would be taken to form Upazila Parishads and Zila Parishads and make them the centre of all development activities in order to achieve administrative decentralisation." Begum Khaleda Zia made a similar commitment when we, along with a group of UP Chairmen, met with her prior to the election.

It may be noted that the Bangladesh Awami League, in its election manifesto, made a similar commitment. It stated: "If Awami League forms the government, it would hold elections of all local bodies including the Upazila and Zila Parishads and hand over to them the necessary powers and responsibilities in the light of the laws already passed and the recommendations of the Local Government Commission." Former Prime Minister Sheikh Hasina also in her 1995 book entitled *Poverty Eradication: Some Thoughts* committed to make local government the "driving force of all development activities." Unfortunately little was done to strengthen local government while she was in power.

*The Daily Star*: July 7, 2003

## The Wrong Way of Rethinking Local Government

In his recent post-editorial (*The Daily Star* 4/10/2002) on "Rethinking local government," Mr. Hasnat Abdul Hye observed: "...Giving elected members of Parliament development fund of certain amount for use in development activities in their constituency has been successful in both promoting greater momentum of development at grass roots level and for obtaining their support for the local government system...Even in America, legislator's career is made or marred by pork barrel schemes or their paucity in the constituency." By making these observations Mr. Hye appears to provide support for the recent recommendation of the Cabinet Committee on Local Government for giving Tk. 1 crore to each MP per year for local development.

Unfortunately Mr. Hye does not provide any evidence in support of his contention. Nor can we find examples of successful implementation of similar schemes in other countries. We therefore feel that the idea of allocating Tk. 1 crore per year to our legislators is the wrong way – rather the dangerous way – of rethink the future of our local government. Such a scheme will not only make a mockery of our Constitution – the supreme law of the land – it will also further criminalize our politics.

Of all the countries which provide money to their MPs for local development, India is most prominently cited. With respect to the so-called pork-barrel system in America, Mr. Hye has a serious misunderstanding. When a law provides special

benefits to a particular legislator's constituency, it is termed as pork-barrel legislation. In the American system, no Senator or Congressman is given any money to spend in his or her constituency nor do they have any direct involvement whatsoever in local development financed by taxpayers' money.

Let us examine the Indian programme, which is called the Members of Parliament Local Area Development Scheme (MPLADS). Under this scheme, announced by the Prime Minister in Parliament on 23rd December 1993, members of the legislature were given Rs. 1 crore (later raised to Rs. 2 crores) each with the freedom to suggest to the District Collector works to be done with a sum not exceeding Rs. 2 crores per year within her/his constituency. The Ministry of Rural Development releases the funds directly to the Collector, who gets the works carried out through government agencies or panchayati raj institutions. The maximum amount allowed for a single project is Rs 10 lacs. Twenty-three specific schemes such as constructing school buildings, village roads, bridges, shelters for the old, buildings for gram panchayats, hospitals or cultural/sport activities, digging of tube wells, etc., besides any other scheme specified by the Union Government from time to time, come under the LAD scheme. All these activities, it should be pointed out, are also carried out by the panchayats and municipalities.

The implementation of the MPLADS has been problematic at best. During the period between 1993 and 2000, the Parliament sanctioned Rs. 5,558 crores for the MPLADS and the Ministry released Rs. 5,018. However, the total amount utilized was Rs. 3,221 crores, representing 64 % of the funds released. The audit found that the Collectors inflated expenditure amounts to the Ministry. In a sample audit of 106 constituencies, it was found that out of total expenditure of Rs. 265 crores reported by the Collectors, Rs. 82 crores or 31 % was not incurred at all. The audit also found numerous instances of violation of guidelines and financial rules.

The MPLADS has come under severe attacks by various stakeholders. The most scathing attack came from Mr. Era Sezhiyan, a former Chairman of the Public Accounts Committee of the Indian Parliament:

“To say the least, the management of the scheme is a shambles. The accounting process is abominably anarchic. Some guidelines are blatantly contradictory to the constitutional provisions and the general financial rules...”

“There is a fundamental defect in the concept of the MPLADS itself. MPs are primarily responsible to look after legislative work and to ensure accountability of the administration. In the House, they question, debate, legislate, approve grants and taxation measures and give policy directions. On behalf of the House, they work in committees to inquire into the performance of Ministries and government organization and submit their recommendations to the House.

“The MPLADS changes the role of the MP...the MP is to ‘involve himself in the entire system of implementation and completion of projects’. In the process, the MP unerringly becomes a part of the administrative system of the government and loses his or her capability and moral right, as a member of the House and as a member of parliamentary committees, to scrutinize the ‘faithfulness, wisdom and economy’ of the expenses incurred in the administrative implementation of the works initiated by himself or by his colleagues under the scheme.

“...As the MPs are involved in the works of the scheme from the beginning, the administration conveniently shift the responsibility and disregards audit objections and reports...The controlling Ministry disclaims responsibility for the implementation of the works. The Collectors do not get utilization certificates and make no effort to return unspent amounts released to them. The Rajya Sabha Report found fault with the element of corruption, mal-implementation, improper channeling of funds and absence of close scrutiny in the works undertaken by the government.

“The failures of the government during the last 50 years have been overwhelmed and overshadowed by the volume and variety of irregularities generated by the MPLADS in a short period of seven years...

“The government’s disowning of responsibility for the works under the scheme and the involvement of MPs in the administrative system, thereby weakening their capability to ensure accountability of the executive to Parliament, cuts at the very roots of the parliamentary system of democracy in the country.” (*Frontline*, March 15, 2002).

Others have also spoken out very strongly against the MPLADS. The former Prime Minister, V.P. Singh, expressed his serious opposition to it. E.S. Venkataramiah, a former justice of the Supreme Court of India, contended that the MPLADS is “assaulting” the Constitution. Most significantly, the Indian National Commission to Review the Working of the Constitution has recently recommended the elimination of the scheme. So has the Indian Institute of Public Administration.

Variants of the Indian scheme have also been in practice in other developing countries. The Philippines is reported to have the worst variant in that the money is given to the MPs without much screening leading to widespread corruption. Thailand has recently abolished its scheme.

The constitutional argument used by Mr. Era Sezhiyan that the MPLADS makes the legislators get involved in executive tasks is also applicable in our case. Article 65 of the Bangladesh Constitution designates legislative powers to the Parliament. It states that: “There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic...” Article 55 assigns the executive powers to the Prime Minister and the cabinet. The Constitution also provides for the separation of the judiciary (Article 94) and makes the Courts the repository of judicial power of the State. The constitutional system of Bangladesh uses the principle of separation of powers as its fundamental pillar, and makes the three branches of government – legislative, executive and judiciary – separate and independent of each other, with distinct and non-amalgamable functions. In its landmark judgement on the separation of judiciary, the Bangladesh Supreme Court uses the analogy of oil and water to demonstrate the independence of the branches, especially of the executive and the judiciary.

In a democratic system, all powers are derived from the Constitution. It is clear that our Constitution, the supreme law of the land, is explicit and specific in assigning only the legislative powers to the Members of the Parliament. Nowhere in the Constitution are any other powers, functions, roles or responsibilities – not to speak of any executive power – given to them. Thus if the legislators decide to enact a law giving each one of them Tk. 1 crore per year, it will amount to a colourable

legislation. The question of colourable legislation arises when something which cannot be done directly is done indirectly.

The proposal to give MPs Tk. 1 crore each and their role in local development itself can be challenged on another ground. The full-court bench of the Appellate Division of the Bangladesh Supreme Court in its verdict on the cancellation of Upazila defined local government as: “it is meant to be management of local affairs by locally elected persons.” MPs are locally elected, but they are meant for, according to the Constitution, exercising only legislative powers. Thus involving them in local development will be a violation of the Constitution.

Giving each MP Tk. 1 crore per year will require a total of Tk. 1,500 crore, without taking into consideration the women MPs, during the life span of a Parliament. Can we afford to spend such a huge sum on a programme designed primarily to empower the MPs?

The proposed Tk. 5 crore to each MP during his or her tenure may denigrate the idea of running for national office a “business proposition,” inviting a lot of “investors.” This will further criminalize our politics and institutionalize corruption. Such a programme will also make professional politicians a dying breed, adversely affecting the quality of such officeholders. This is not a happy prospect as it will make our Parliament even more ineffective.

To conclude, it is clear that India, with its strong democratic institutions and a vibrant civil society movement for transparency and accountability, could not make the MPLADS work, and the scheme is marred by widespread corruption. Its Constitutional Review Commission has already recommended the abolition of the scheme. Other countries have also abandoned similar programmes. Given this, I consider it a dangerous idea to consider giving money to our MPs for local development. Furthermore, we cannot afford to spend such a huge sum of money on a scheme with questionable effectiveness at best.

*The Daily Star*: October 20, 2002

## What role for the Members of Parliament in Bangladesh?

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on governments would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is no doubt the primary control on the government; but experience has taught mankind the necessity of external precaution.” James Madison, *The Federalist Papers*, No. 51, 1788.

### 1.0 Introduction

In Bangladesh, the Members of Parliament (MPs) play a large and increasingly controversial role in local affairs. Although formally designated as “advisors” to the Thana Development Coordination Committee, a designation repeated in the yet to be implemented Upazila Parishad Act of 1998, they have steadily increased their

influence and control over most local government activities. In fact, an astute observer of local government in Bangladesh asserts that MPs “have the last say in all development matters within their constituencies.”<sup>1</sup>

This prominence of MPs has generated a lot of strong emotions among the major stakeholders in local government. The emotion has been so intense that this issue has dominated all recent discussions, dialogs and writings on local government.<sup>2</sup> The purpose of this paper is to examine, in a systematic way, the evolving role of the MPs during the democratic regimes of the last decade and critically examine its implications and problems.

The paper begins by briefly reviewing the theoretical basis of the role of the legislative branch in a modern state. It then focuses on the constitutional provisions on the role of legislators in Bangladesh and the actual legislative practices (and practices for involving MPs in local development) in other countries. The paper next narrates the actual role of MPs in our country in the past decade. The final section of the paper deals with the potential implications of the MPs’ current role in local development programs.

## 2.0 The Role of Legislators in a Democratic Polity

In a truly democratic system, the people hold all ruling powers and their elected representatives exercise those powers on their behalf, creating the basis for a government of the people, by the people and for the people. In such a system, although the consent of the people is the source of all governmental authorities, these lawful authorities can potentially turn coercive in their exercise as the government enjoys the “monopoly of the legitimate use of physical force within a given territory.”<sup>3</sup> In reality, these legitimate authorities of the government are often misused and misapplied, resulting in the concentration of powers and the creation of tyranny. The “tyranny of the majority” is one of their ugliest manifestations. The bigger the majority, the more intolerant the government can get as they are able to, with more relative ease, legislate “black laws” and take despotic actions.<sup>4</sup> Such risks are considerably higher in a unitary form of government.

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<sup>1</sup> Kamal Siddiqui, *Local Governance in Bangladesh: Leading Issues and Major Challenges* (Dhaka: The University Press Limited, 2000), pp. 37-8.

<sup>2</sup> For example, the Local Government Support Group, an advocacy group on local government headed by Professor Muhammad Yunus, on March 5, 2002, organized a Roundtable discussion specifically on the topic of the “Role of Members of Parliament in Local Development and Local Government.” A few months later, the Democracy Watch also organized a similar discussion on the role of MPs. In addition, discussions in a Roundtable organized by The Khan Foundation and two Roundtable meetings organized by The Hunger Project-Bangladesh this year centered around the enlarged role of MPs in local affairs.

<sup>3</sup> Max Weber, “Politics as a Vocation,” in Hans H. Gerth and C. Wright Mills (eds.) *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1958), p. 78.

<sup>4</sup> Citing the examples of Bangladesh, India and Sri Lanka, Mahfuz Anam recently coined the term “‘curse’ of the two-thirds majority.” Mahfuz Anam, “Dangers of Two-thirds Majority,” August 1, 2002.

The true challenge even in a democracy therefore is to restrain the powers of the government to prevent excesses by elected officials. The English political philosopher Locke was an ardent proponent of restraining such powers. He warned against the concentration of powers, arguing that those who make the laws should not also be allowed to enforce them so as to prevent misrule and protect people's liberty. In 1748 French theorist Montesquieu expanded this idea into a concept of separated powers, contending that liberty depended on a precise division of executive, legislative and judicial authority. He was against joining the executive, legislative and judicial powers in the same person, for every person is capable of abusing powers and, if she/he attains it, is likely to do so.

Instead of total separation of powers among three branches, the Framers of the American Constitution developed what is called the principle of separated institutions sharing powers or simply the principle of separation of powers.<sup>5</sup> Using this principle, the American Constitution prominently provided for a limited national government mainly by defining its lawful powers and by dividing those powers among competing institutions or branches. This scheme fragmented and diffused powers, and offset power by power. In such a system, no institution can act decisively without the support or acquiescence of the other institutions. Thus the legislative, executive, and judicial powers in the American system came to be divided in such a way that they overlap; each of the three branches of government checks the others' powers and balances those powers by its own.<sup>6</sup>

The separation of powers is now a generally accepted principle in all democracies. All democratic systems are, in fact, characterized by it. However, for the principle of separation of powers to work properly and effectively in practice, the three branches must be co-equal, autonomous and independent of each other. They must not perform each others' tasks and transgress the limits set by the Constitution. As Justice Shahabuddin in his landmark decision stated:

"In modern Constitutions State powers are distributed among the three Organs or Departments of Government. Legislature is one of the three organs. It is assigned the legislative powers which are clearly demarcated and it has to act within its own field and cannot transgress the limits set by the Constitutional provisions. If the legislature transgresses the limits, it may be stopped and the transgression may be declared a nullity by the Judiciary – another State Organ. The transgression may be 'patent,

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<sup>5</sup> For a review, see Mahbub A. Majumdar, "The Constitution: How Does the Separation of Powers Make it Work?" Winner of the first prize in National Bicentennial Writing Competition for High School Students, sponsored by the Commission on the Bicentennial of the U.S. Constitution, and published in the *U.S. Congressional Records*, December 22, 1987, pp. E511-4.

<sup>6</sup> By mandating the creation of independent branches, with separate responsibilities, the Framers appeared to have embraced the principle of specialization, developed by Adam Smith in his *Wealth of Nations* in 1776. Mahbub A. Majumdar, "The Constitution: How Does the Separation of Powers Make it Work?" *U.S. Congressional Records*, December 22, 1987, pp. E514

manifest or direct'; it may also be disguised, covert and indirect'. This latter class of transgression is expressed as colorable legislation in judicial pronouncements."<sup>7</sup>

Although the doctrine of separation of powers can be more easily put to practice in a Presidential form of government, its exercise may be relatively more challenging, requiring more vigilance, in a Parliamentary system. In the latter, voters choose the legislators, who then choose one of their colleagues to be the Prime Minister to serve as the chief executive. The Prime Minister finally appoints a group of ministers, who serve as executives, from both within and outside the legislature. In such a system, the legislative and executive powers are thus, on the surface, combined in one institution. The situation is further complicated by the fact that the legislators are often tempted to perform executive functions, and at the same time the chief executive also has the incentive to "look after" the legislators in order to keep their loyalty.

It should however be emphasized that the legislators, excepting the cabinet members, are not executives. Furthermore, since in a Parliamentary system the cabinet is made accountable to the legislature as a body, the latter must have a separate and autonomous identity, independent of the executives, if the system is to function with integrity and effectiveness. Thus, in order to prevent any form of government – be it Presidential or Parliamentary – from degenerating into tyranny, executive, legislative and judicial powers must be kept separate, and not be joined together. They must perform different and specific tasks and also guard each other. As James Madison eloquently said over 200 years ago: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may be justly pronounced the very definition of tyranny."<sup>8</sup>

### 3.0 Role Specified for MPs in the Bangladesh Constitution and Parliamentary Practices in Other Countries

#### 3.1 Role of MPs in the Bangladesh Constitution

The Constitution of the People's Republic of Bangladesh uses the principle of separation of powers as one of the pillars in its basic structure. It too provides for three organs or branches of the government, namely the executive, judiciary and the legislature, and takes for granted their separation and independence.<sup>9</sup> It mandates specific functions and powers for each of the branches.

Article 65 of the Bangladesh Constitution designates legislative powers for the Parliament. It states that: "There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic..." Article 55 assigns the executive powers to the Prime Minister and the cabinet. The Constitution also provides for the separation of the judiciary (Article 94) and makes "the Supreme Court and the subordinate courts ...the repository of judicial power of the State."<sup>10</sup> In the constitutional system of Bangladesh, the three branches of government are thus made

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<sup>7</sup> Kudrat-E-Elahi Panir vs. Bangladesh, 44 DLR (AD)(1992), para 37.

<sup>8</sup> James Madison, *Federalist Papers*, No. 47.

<sup>9</sup> Secretary, Ministry of Finance vs. Md. Masdar Hossain, 20 BLD(AD)(2000), paras 9 and 75.

<sup>10</sup> Md. Mujibur Rahman vs. Bangladesh, 44 DLR(AD)(1992), para 71.

separate and independent of each other, with distinct and non-amalgamable functions. In its landmark judgement on the separation of judiciary, the Bangladesh Supreme Court uses the analogy of oil and water to demonstrate the independence of the branches, especially of the executive and the judiciary.<sup>11</sup>

In a democratic system, all powers are derived from the Constitution. It is clear that our Constitution, the supreme law of the land, is explicit and specific in assigning only the legislative powers to the Members of the Parliament. Nowhere in the Constitution are any other powers, functions, roles or responsibilities – not to speak of any executive power – given to them. According to Article 7 of the Constitution, “All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution.”

Although the Constitution gives the legislative powers to the Parliament, it does not, however, define what is meant by legislative powers. In the absence of such a definition, guidance as to the role and functions of legislatures can be sought from other countries and from the established legislative practices. The Indian situation may be helpful in this regard.

Article 79 of the Indian Constitution states: “There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.” The home page of the Indian Parliament elaborates on this under the heading “Functions of Lok Sabha and Rajya Sabha”:

“The main function of both the Houses is to pass laws. Every Bill has to be passed by both the Houses and assented to by the President before it becomes law. The subjects over which Parliament can legislate are the subjects mentioned under the Union List in the Seventh Schedule to the Constitution of India. Broadly speaking, Union subjects are those important subjects which for reasons of convenience, efficiency and security are administered on all-India basis. The principal Union subjects are Defence, Foreign Affairs, Railways, Transport and Communications, Currency and Coinage, Banking, Customs and Excise Duties. There are numerous other subjects on which both Parliament and State Legislatures can legislate. Under this category mention may be made of economic and social planning, social security and insurance, labour welfare, price control and vital statistics.

“Besides passing laws, Parliament can by means of resolutions, motions for adjournment, discussions and questions addressed by members to Ministers exercise control over the administration of the country and safeguard people’s liberties.”<sup>12</sup>

### 3.2 Established Parliamentary Practices

There are also traditions – established throughout the world – concerning the parliamentary practices. They include, in addition to enacting legislation, performing oversight functions. Enacting laws is however the most fundamental of the functions of legislatures. Through passing laws and deliberating on them the legislative branch assists and supports the effective functioning of the executive branch by both defining and refining policies. In our context too, lawmaking is recognized as the primary

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<sup>11</sup> Secretary, Ministry of Finance vs. Md. Masdar Hossain, 20 BLD(AD)(2000), para 36.

<sup>12</sup> <http://alfa.nic.in/intro/introparl.htm>

function of the legislators and in order to facilitate the work of MPs with respect to lawmaking, the Bangladesh Constitution provides for legislative procedures (Part V, Chapter II)

For democratic governments to be truly non-intrusive of people's rights, the oversight functions of the legislature are very important. This is true both for the Presidential as well as the Parliamentary forms of government. Through an elaborate system of Committees and the meetings and hearings conducted by those Committees the oversight function of the legislative branch is carried out. In performing this function, the members of legislature essentially sit in judgement of the conduct of the cabinet members as executives and the performance of their ministries. This is a supervisory responsibility of the legislature designed to hold the executives to account. The Bangladesh Constitution and the rules of procedure of the Parliament provide for various Standing Committees, including Committees for each Ministry for carrying out this oversight or supervisory role.

The justification for parliamentary oversight is that although the Parliament enacts laws for governing the nation and appropriates the money to implement them, the administration of these laws is entrusted to the executive branch. The Parliament has the responsibility to see that the executive carries out the laws faithfully and spends the money properly. This supervisory function cannot be carried out properly and with integrity if the Parliament Members themselves become implementers of executive schemes. If that happens, the whole system of governance will turn into a sheer mockery as the judges and those to be judged will become the one and the same.

The oversight functions of the legislature are seriously carried out in all well functioning democracies. Let us take the case of Canada, a country with a Parliamentary form of government like ours.<sup>13</sup> In Canada, the Members of the Parliament perform what is called the surveillance function. This is done to protect the public from potential government arbitrariness and to ensure wise spending. The Parliament in Canada carefully scrutinizes government activity, a responsibility usually assumed by the Opposition parties. Scrutiny of government spending is thus an important element of the MP's surveillance role. It takes several forms, notably the examination by MPs of departmental estimates in committees.

The Commons committee system of Canada also provides for the scrutiny of government activity by the Members of Parliament. Under Standing Order 108, the standing committees are endowed with wide surveillance powers, including the power to send for "persons, papers and records" and (with certain exceptions) wide powers to study and report on legislative, policy, and long-term expenditure plans and management issues related to departments within their mandates. Members may interrogate Ministers about alleged cases of mismanagement of public funds or any area of perceived government bungling.

In Bangladesh, the oversight function performed by the Parliament is weak at best.<sup>14</sup> The absence of the opposition in the Parliament greatly contributes to this

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<sup>13</sup> <http://www.parl.gc.ca/information/library/PRBpubs/bp56-e.htm>.

<sup>14</sup> There also appears to be less interest in this role of the legislature. Even 11 months after the new government took office last October, many of the Parliamentary Standing Committees have not yet been constituted.

weakness. Ironically, a vigorous watchdog role by the opposition legislators would perhaps be able to prevent the government from indulging in repressive behavior – the very excuse used by the opposition for boycotting the Parliament. The lack of democracy in our political parties, resulting in the concentration of powers at the top, is also partly responsible for the weak parliamentary oversight. The absence of democratic practices brings the Members of Parliament under the iron grip of the top party leaders, turning the former “voiceless” and severely restraining them from becoming adversarial.<sup>15</sup> The Article 70 of our Constitution, by requiring absolute party loyalty, accentuates the problem. However, in our unitary system, the need for vigorous parliamentary oversight can hardly be overemphasized.

### 3.3 Foreign Examples of Legislative Interference in Executive Functions

Examples from other countries illustrate the problem of allowing legislators to interfere in local affairs. A case in point is the Members of Parliament Local Area Development Scheme (MPLADS) designed to empower Indian legislators.<sup>16</sup> Under this scheme, announced by the Prime Minister in Parliament on 23rd December 1993, members of the legislature were given Rs. 1 crore (later raised to Rs. 2 crores) each with the freedom to suggest to the District Collector works to be done with a sum not exceeding Rs. 2 crores per year within her/his constituency. The Ministry of Rural Development releases the funds directly to the Collector, who gets the works carried out through government agencies or panchayati raj institutions. The maximum amount allowed for a single project is Rs 10 lacs. Twenty-three specific schemes such as constructing school buildings, village roads, bridges, shelters for the old, buildings for gram panchayats, hospitals or cultural/sport activities, digging of tube wells, etc., besides any other scheme specified by the Union Government from time to time, come under the LAD scheme. All these activities, it should be pointed out, are also carried out by the panchayats and municipalities.

The MPLADS has come under severe attacks by various groups. The most scathing attack came from a former Chairman of the Public Accounts Committee of Indian Parliament:

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<sup>15</sup> Badiul Alam Majumdar, “Absence of Parliamentary Oversight,” *The Daily Star*, August 16, 2002.

<sup>16</sup> The First Report (December 1999) of the Rajya Sabha Committee on MPLADS gave the background of the MPLADS: “He (MP) had to remain merely a silent spectator on any element of corruption which generally creeps in the entire system of implementation of projects and financing the same...Apart from this, the ghastly countenance of the mechanics of mal-implementation or delayed implementation or delayed implementation of projects coupled by channellisation of funds for projects and absence of close monitoring of schemes contributed negatively to the entire scenario which gradually assumed a pernicious aberration from a normal state of affairs...Hence, there was a persistent demand from the Members of Parliament that some method of should be evolved under which he or she should be able to recommend works directly in their constituencies and could also involve himself/herself in the system of implementation and completion of project works.” See Era Sezhiyan, “Development Directions,” *Frontline*, March 15, 2002, p. 100

“To say the least, the management of the scheme is a shambles. The accounting process is abominably anarchic. Some guidelines are blatantly contradictory to the constitutional provisions and the general financial rules...

“There is a fundamental defect in the concept of the MPLADS itself. MPs are primarily responsible to look after legislative work and to ensure accountability of the administration. In the House, they question, debate, legislate, approve grants and taxation measures and give policy directions. On behalf of the House, they work in committees to inquire into the performance of Ministries and government organization and submit their recommendations to the House.

“The MPLADS changes the role of the MP...the MP is to ‘involve himself in the entire system of implementation and completion of projects’. In the process, the MP unerringly becomes a part of the administrative system of the government and loses his or her capability and moral right, as a member of the House and as a member of parliamentary committees, to scrutinize the ‘faithfulness, wisdom and economy’ of the expenses incurred in the administrative implementation of the works initiated by himself or by his colleagues under the scheme.

“...As the MPs are involved in the works of the scheme from the beginning, the administration conveniently shift the responsibility and disregards audit objections and reports...The controlling Ministry disclaims responsibility for the implementation of the works. The Collectors do not get utilization certificates and make no effort to return unspent amounts released to them. The Rajya Sabha Report found fault with the element of corruption, mal-implementation, improper channeling of funds and absence of close scrutiny in the works undertaken by the government.

“The failures of the government during the last 50 years have been overwhelmed and overshadowed by the volume and variety of irregularities generated by the MPLADS in a short period of seven years...

“The government’s disowning of responsibility for the works under the scheme and the involvement of MPs in the administrative system, thereby weakening their capability to ensure accountability of the executive to Parliament, cuts at the very roots of the parliamentary system of democracy in the country.”<sup>17</sup>

Others have also spoken out very strongly against the MPLADS. The former Prime Minister, V.P. Singh, expressed his serious opposition to it. E.S. Venkataramiah, a former justice of the Supreme Court of India, contended that the MPLADS is “assaulting” the Constitution.<sup>18</sup> The National Commission to Review the Working of the Constitution has also recently recommended the elimination of the scheme.<sup>19</sup> So did the Indian Institute of Public Administration.

Variants of the Indian scheme have also been in practice in other developing countries. The Philippines is reported to have the worst variant in that the money is

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<sup>17</sup> Era Sezhiyan, “Development Directions,” *Frontline*, pp. 100-1.

<sup>18</sup> George Mathew, “Decentralization in India: The Rural Local Bodies,” in Hossain Zillur Rahman, *Local Government Issues and Way Forward*, Proceedings of the International Workshop on Decentralization in Bangladesh, Local Government Division, Ministry of LGRD & Cooperatives, Government of the People’s Republic of Bangladesh, and Power and Participation Research Center, 2002, p. 26.

<sup>19</sup> <http://www.lawmin.nic.in/ncrwcreport.htm>









Yes, tensions and conflicts are inevitable. However, such tensions may even be highly desirable given the need for a system of built-in checks and balances to be in place at the local level. This could prevent both the MPs and elected local representatives from causing mischief. Such adversarial relationship is particularly important in our unitary system of government.

Another argument in favor of the involvement of MPs in local affairs is that they made commitments to promote local development during the election. Such commitments are most desirable and there is nothing wrong with them. However, the MPs do not have to get directly involved to meet those commitments. They could pursue two alternative, not necessarily mutually exclusive, ways to honor their commitments. First, as Professor Yunus argued, they could insist on the inclusion of development programs in their constituencies before casting their votes for the national budget. Secondly, the MPs do not have to direct the adoption of certain specific schemes and require the implementation of such schemes through their chosen people. The local government entities could legitimately take the responsibility of selecting and implementing actual schemes.<sup>29</sup>

The argument behind the involvement of MPs in local affairs is that they want to participate in local development; but it seems as though they are primarily interested in infrastructure projects which are money intensive and can be distributed as patronage. As a result, “development” has become a widely abused term in Bangladesh. Development has become rather synonymous with roads, culverts, buildings, earth work etc. something people can see and touch. However, these are

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<sup>29</sup> [Placeholder text for footnote 29]

“low grade” infrastructures, although people badly need electricity and other modern infrastructural facilities.

It must be understood that development is more than building infrastructure it means human development or changes in human conditions. Infrastructure building represents rather “illusion” of development and contributes only indirectly to such changes. If MPs are really interested in making differences in the lives of their constituents, they can do so without ever involving themselves in infrastructure building or distributing any spoils to their party activists. They can help solve the problems of health, education, income generation etc confronted by the people by ensuring the transparent and accountable delivery of essential services by government functionaries. They can also awaken and mobilize people to help themselves.

Many of the challenges of life that reflect as well as keep hunger and poverty in place must be faced and solved locally. Local initiatives, both individual and collective, are essential pre-requisites for creating income-earning opportunities, for providing safe drinking water and for ending the repression of women, among others. The MPs as elected representatives can effectively empower and mobilize people and local resources, if they so desire, toward devising appropriate solutions to most hunger and poverty related problems.

Not only do many of the challenges that the poor and the hungry face have local solutions, those solutions are also in many cases nearly cost-free.<sup>30</sup> If people come together and work shoulder to shoulder, a form of “social capital” is generated, often eliminating the need for large amounts of financial capital. Mobilized people can also catalyze their own savings and accumulate financial capital.

There are problems whose solutions depend primarily on creating awareness and generating commitment on the part of the people in order to change their habits and behavior (for example, practicing cleanliness). Solutions for still other problems are already present in the community (for example, ending environmental degradation) and if the people are organized they can more effectively get access to them without having to spend more money from their own pockets. The MPs as elected representatives can again play an effective catalytic role for mobilizing people and resources for local level self-reliant action. They can, for example, mobilize volunteers and party functionaries for literacy campaigns in their constituencies.

#### 5.0 Problems and Implications of the Expanding Role of MPs in Bangladesh

The intrusion of MPs or their party cronies in local affairs are untenable on both legal/technical as well as practical policy grounds. By inducting the MPs in local affairs through numerous Circulars, the executive branch redefined the role of the legislators essentially telling them what to do although to their utter delight, and in the process meddled in the functioning of another independent branch of the government. Clearly this amounts to overstepping the boundary delineated by the principle of separation of powers in our Constitution. In the same vein, by designating themselves as advisors (whose advice would have to be accepted) to Upazila Parishads by law, the MPs seem to have transgressed the limits of their legislative powers set by the

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<sup>30</sup> Badiul Alam Majumdar, “A Development Strategy for a Hunger-free, Self-reliant Bangladesh,” *The Daily Star*, July 30, 2001.

Constitution and indulged in enacting a colorable legislation.<sup>31</sup> Knowing fully well that legislators are not meant to be executives, they took the indirect route of assuming executive powers by designating themselves as advisors.<sup>32</sup> An established legal principle is that what cannot be done directly, cannot also be done indirectly.<sup>33</sup> In both of these instances, the independence of the executive and legislative branches is compromised by their own actions.

With their increasing involvement in local affairs, the MPs now perform many of the tasks and responsibilities, including the distribution of relief materials and construction of rural infrastructure, which have traditionally been done by local government representatives. The Union Parishad representatives are now in reality sidelined by MPs. Clearly this amounts to disempowerment of local government in violation of Articles 59 and 60 of our Constitution. Article 60 of our Constitution states: “For the purpose of giving full effect to the provisions of article 59 Parliament shall, by law, confer power on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds.”<sup>34</sup> The empowerment of the MPs by involving them in local affairs necessarily dis-empowers the elected local representatives.<sup>35</sup>

The fact that MPs are now essentially running the local bodies is also a mischief of Article 59 of the Constitution. Article 59 states that “Local Government in every administrative unit of the Republic shall be entrusted to bodies composed of persons elected in accordance with law.” The Constitution does not define the Local Government. However, the Supreme Court, in its landmark Full Court judgement handed down in 1992, filled this void:

“‘Local government’ has nowhere been defined; it is meant for management of local affairs by locally elected persons. If government’s officers or their henchmen are brought to run these local bodies, there is no sense in retaining them as local

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<sup>31</sup> It should be noted that Articles 59 and 60 are listed under the title “Executive” in the Constitution.

<sup>32</sup> This appears be inconsistent with Article 59 of the Constitution. since the “Parliament is not free to legislate on local government ignoring Articles 59 and 60.” Kudrat-E-Elahi Panir vs. Bangladesh, 44 DLR (AD) (1992), para 69.

<sup>33</sup> Kudrat-E-Elahi Panir vs. Bangladesh, 44 DLR (AD) (1992), para 36.

<sup>34</sup> Government has also in recent years took away from UPs some taxing authorities such as leasing of local water bodies.

<sup>35</sup> [REDACTED]

government bodies...The system of Local Government Institutions may be altered, re-organized or re-structured, and their powers and functions may be enlarged or curtailed by Act of Parliament, but the system as a whole cannot be abolished.<sup>36</sup>

The argument that is made with respect to the government officials must also be applicable to MPs and their henchmen. Thus the present Union Parishads, with the MP's direct decision-making role in them, cannot perhaps be legitimately called local government institutions under Article 59 of the Constitution.

The expanding role of the MPs in local affairs has serious implications. In Bangladesh, we currently have a dual administrative structure at the grassroots. At the Union Parishad level, both the central government functionaries as well as local government representatives perform their responsibilities, although not always in a coordinated manner. The induction of MPs in local government affairs introduces a third element, comprised primarily of their field level party activists. The interest of MPs in local activities is to provide patronage to these activists. In many areas, MPs direct the implementation of all local development and humanitarian activities through them, although the Union Parishad representatives continue to be legally responsible as chairs of the project implementation committees. This is not only unfair; it also establishes a sort of "MP (or party) government" along with the central and local government at the grassroots. More seriously, a cavalier "no questions asked" type of attitude on the part of authorities concerned now prevails in the implementation of rural infrastructure projects.

The introduction of the so-called "MP government" at the local level has another ominous implication. Corruption and hooliganism have now become the most challenging issues in our society. The MP 'factor' at the local level accentuates this problem. The patronage of the MPs helps the local party activists use the infrastructure projects as booties to be shared. Such patronage to the party cronies is obviously discriminatory in nature. Furthermore, since the amount of patronage to be distributed is limited, this creates the risks of intra-party rivalry and conflicts, threatening social harmony at the local level. Unfortunately, we have already begun to see the signs of such conflicts in many areas of the country.

#### 6.0 Conclusions

The principle of separation of powers is a time-honored concept employed for democratic governance. It states that all powers should be subject to formal, constitutional limits as safeguards against tyranny. Like other democratic countries, the Constitution of Bangladesh sets limits on the powers and functions of each of the three branches, namely the executive, legislative and judiciary. They are not to transgress on the domain of each other. Nevertheless, in the past decade the Members of our Parliament have been meddling in local government affairs, exercising executive responsibilities. The consequence of such meddling could be disastrous.

The expanding role of MPs beyond their formal established legislative jurisdiction is unlikely to serve the nation well in the long run. It weakens our already weak system of local government, compromising our ability to eradicate hunger and

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<sup>36</sup> Kudrat-E-Elahi Panir vs. Bangladesh, 44 DLR (AD) (1992), paras 20 and 41.

poverty from our country in the shortest possible time.<sup>37</sup> Our ability to attain a future free from hunger and poverty requires empowered local leadership and stronger local institutions. A strong system of local government is also vitally important in a unitary form of government for ensuring good governance. Furthermore, democracy at the grassroots – an essential prerequisite for a strong system of local government – can provide the foundation for a vibrant democracy at the national level. The present intrusive role of MPs into the affairs of local government is not conducive to the development of a democratic system and self-governing institutions at the grassroots.

As elected representatives, the MPs, however, can play other vitally important roles without having to step into the territory of the local government functionaries. They can mobilize masses and their party activists for constituency-wide voluntary actions. For example, they can lead campaigns for literacy, environmental sustainability, women's rights etc. Such initiatives will not only make lives better for their constituents, they will also enhance their prestige with the people.

Another positive role that the MPs can legitimately play is to provide “constituency service.” As elected officials, the MPs need to be responsive to local interests and concerns. They can effectively champion the community interests and express local concerns in various forums, especially in the Parliament. They can in essence play the role of lobbyists for their constituencies and represent them in the policymaking arenas, seeking a fair share of the national resources for their local areas. They can also effectively monitor the working of national programs in their constituencies.

One variant of the constituency service may be for the MP to be an ‘ombudsman’ for the constituents. Faced with problems involving the central government and its departments, constituents need help. The MPs can provide this important service. The constituency service should however be distinct from ‘tadbir’ or influence peddling, which is rampant in our country. Tadbir involves making unjust requests for undue favors while the constituency service involves requests for redressing legitimate grievances.

The MPs can also effectively perform another important non-legislative function. They can become policy advocates and policy monitors, which would be good complements to their legislative duties. The civil society now to a very limited extent performs these roles. But the MPs can be better policy watchdogs producing better results because of their access to the seats of power. With innovation and enterprise, they can really make a big difference for the nation as a whole.

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<sup>37</sup> For fuller discussions of the importance of local government, see Badiul Alam Majumdar, “Making the Case for Strengthening Local Governance,” and “Proceedings of the Roundtable on Local Governance,” *Ujjibak Barta*, April 2002.

*Bangladesh on August 1, 2002. The revision includes mainly the arguments in favor of MP's developmental role.*

## Proposed changes in local governance: Steps in the wrong direction

The present government is reported to be in the process of examining the system of local governance in order to make it more skilled, effective and viable. A cabinet sub-committee is now working on it. One idea under serious consideration by the subcommittee is to allow the Members of Parliament to formally share powers with elected local government representatives, especially at the Upazila level. The intention is to give the MPs a role in the "development work" of their constituencies. We consider this an ill-conceived idea with dangerous consequences, in fact, the proposed idea is not only bad, it may even be self-defeating.

It will, on the one hand, make our already weak system of local governance weaker and ineffectual; on the other hand, it will adversely affect our ability as a nation to eradicate hunger and poverty within the shortest possible time. Such changes may also expedite the process of making our existing corrupt political system more corrupt and self-serving. It may even render the parliament ineffective.

Thus, the proposed changes are likely to nip in the bud the present government's promises to the people to deliver good governance and economic prosperity. The functioning of our national parliament is already under pressure. The opposition's boycott virtually handicaps the institution. The absence of MPs during the last two parliaments had reached a crisis proportion. The maiden session of the 8th Parliament suffered from the same malice. Directly involving the legislators in local development work may make the situation even worse by adding more distractions to already busy MPs. This could only further compromise the effective functioning of the parliament.

Most of our parliament members are not professional politicians. They were businessmen to begin with, or became so after being elected. Naturally, most of their time and efforts are spent on running their businesses and adding to their personal wealth. A significant amount of their time is also spent on lobbying government officials at the secretariat, which is considered to be the permanent seat of government. The reality is that they spend little time in making laws or in relevant preparations and more time on unrelated activities. To burden them with the additional responsibilities of participating in local development work will leave them even less time for legislative functions. Furthermore, the opportunity to directly participate in local development work will encourage them to make local politics their primary focus at the expense of their parliamentary duties, which are less attractive in comparison. Thus, the proposed changes in the role of MPs are bound to draw them further away from their regular functions in the parliament.

There is no denying the fact that we have developed a corrupt political system over the past 30 years. Many factors contributed to this situation. A leading factor is our unitary system of government, with its "winner takes all" outcome. One important characteristic of this system is the absence of significant "checks and balances." By comparison, a federal system offers more checks and balances by allowing a single

party or a coalition of parties to be in power at the centre while opposition parties could form a government in provinces. In such a system, no one party can achieve absolute state power. This obviously creates a balance of power and prevents the arbitrary use of it. A federal system thus creates a natural check against political corruption and misuse of power. The inherent absence of such limitations, such as in our unitary form of government, provides potential for abuse of power. Rivalry and lack of cooperation among our major political parties further weaken our already weak system of checks and balances. The repeated boycott of the parliament by opposition allowed the ruling party to not only exercise absolute state power, but also, in the absence of challenges in the legislature, to more freely indulge in excesses. Thus, the parliamentary boycotts have succeeded only in further dirtying our politics.

The existing advisory role of MPs on Upazila coordination committees frequently becomes a position of final authority, making the abuse of power a fact of life in our political system. Already many MPs exercise this authority over the local officials for undue privileges. The proposed changes in the role of the legislators are likely to accentuate the situation and institutionalise graft and corruption in our politics. Direct participation in local development activities will bring the MPs even closer to government functionaries at the local level, creating opportunities for further influencing the latter.

Our legislators are human beings. Many, if not most, of them are good people. However, like other mortals, they are not angels. If there are opportunities for personally profiting by influencing officials, some will do so. This possibility of succumbing to temptation cannot be fully overruled. Such human frailty, of course, will further corrupt our politics, making the process of governance more challenging and difficult in the future. The delay in giving independence to the judiciary is only likely to make the situation worse. Good governance requires honesty and competence as well appropriate systems and procedures. Systems that create opportunities for graft and corruption are only likely to make good people dishonest. Thus, the proposed involvement of MPs in local development work is likely to be counterproductive.

Direct involvement of MPs in local development work is likely to have another serious and dangerous consequence. Elected local representatives are unlikely to easily accept sharing power with MPs. This may create significant animosity and hostility between the two groups, even leading to violence. As a result, the existing inter-party rivalry may degenerate into intra-party hostility. One only needs to talk to a UP chairman or even a member to get a sense of the intensity of their discontent with the role of MPs. In our current violent political environment, such discontent may easily get out of hand. This will certainly adversely affect our social harmony, impeding our economic progress.

Another telling argument against the proposed changes in the role of MPs is that they are elected for legislative work. Theirs are not executive positions. Direct participation in the local development work is not their designated task. Local development work is the preserve of the elected local government representatives and the functionaries of the central government.

This is what our Constitution mandates. Thus, one can plausibly and persuasively argue that, if the legislators are to participate in local government activities, they must run in local elections.

There is another strong argument for limiting the role of MPs to legislative work. With such a limitation, only those people who are interested in parliamentary duties will run in legislative elections. This is likely to bring back professional politicians to the parliament in increasing numbers, which will certainly enhance the quality of our legislature.

The most potent argument in favour of the proposed changes in the role of legislators is to give them the opportunity to participate in local development work. On the surface, this is a solid argument. No one, least of whom our MPs, should be denied the opportunity to contribute to the development of our country. However, the MPs are interested only in civil construction requiring the allocation of wheat or cash grants. To many of them, development primarily means infrastructure building, which is money-intensive and where political patronage can be indulged. However, infrastructure building in reality is the “illusion” of development; it is the “means” to development rather than the “end” in itself. Development truly means human development, which brings about sustainable changes in human conditions and in their living standards. Such changes in general require improvements in health, education, sanitation and security for people; income earning opportunities and sustainable environment for them; and the elimination of deprivations and creation of opportunities for women. If our MPs are interested in launching a campaign in their constituencies, for example, to eradicate illiteracy or eliminate dowry, everyone will welcome such initiatives. On the other hand, legislators’ interest only in allocating wheat or money to their local cronies for infrastructure building will only institutionalize undue activities.

It is certain that the proposed changes in the role of MPs will make our existing weak system of local governance weaker. Local bodies already have few resources and limited authorities at their disposal. If these limited resources and authorities are further shared with national legislators, their roles and effectiveness will be significantly reduced. The government’s reported recent decision to directly allocate wheat for local infrastructure project to the MPs rather than through LGED – as was done in the past has already begun to undermine the local bodies. Many MPs have started to bypass the Union Parishads for implementing the infrastructure project. This is an ominous sign for weakening the UPs, which must become the hub of all our poverty reduction and human development activities. Already parallel groups, comprising of party activists, have begun to emerge in many constituencies with the patronage of the MPs.

Solving the nation’s problems, especially that of widespread rural poverty and hunger, will require strong local institutions and visionary local leadership. Having realized this truth, the late Prime Minister of India, Rajiv Gandhi, introduced the 73<sup>th</sup> Amendment to the Indian Constitution, making the Panchayat system mandatory in all states. Similarly, the UPs and Upazila and their elected representatives can provide the necessary institutional base and the leadership for eliminating the prevailing widespread hunger and poverty from our country. We must therefore take steps to strengthen these bodies unlike many institutions we have managed to destroy in our country over the years.

It is thus clear that the proposed changes in the role of legislators allowing them to participate in local development work will be steps in the wrong direction. It is

therefore imperative that the government seriously think through the implications of changing the role of the legislators before making the final decision.

*The Daily Star*: February 4, 2002

## The Salient Features of a Proposed Comprehensive Local Self-Government Law

There is now a consensus prevailing in the country for reforming and strengthening our system of local governance. The major political parties, through their election manifestos, have already expressed their commitment to it. A cabinet sub-committee has been working on it for the last few months. The civil society representatives have also been putting forward many reform proposals. For all these initiatives by various interest groups to come to fruition, a very essential step now is to create a legal framework – a Comprehensive Local Self-Government Law – piecing together about a dozen or so relevant laws and many sets of rules in order to provide the basic foundation behind the reform ideas. This short piece is intended to identify what we feel should be the salient features of such a law for developing local self-governance.

In identifying the salient features we have taken a daring, “big bang” approach rather than a timid, incremental one. We believe that to be effective, reforms must be bold and based on “out of the box” thinking. As the old adage goes, half-way and half-hearted reform is worse than no reform at all. Furthermore, we strongly feel that curing all the ills that have accumulated in our system of governance over the years will require radical surgery rather than merely putting on bandages. It must also be pointed out that the ideas suggested here are not the last words; rather they are the initial volleys designed to provoke a vigorous issue-based debate, leading to a consensus on major issue.

### Rationale

In an emerging democracy like ours, which faces multifarious challenges on many fronts, good governance, poverty eradication and human development are generally the principal priorities of the government. However, merely setting priorities and having good intentions do not ensure their achievement. This requires, among other things, honest and visionary leadership and vibrant institutions. Strong self-governing local bodies can fill these needs. Such vigorous bodies provide opportunities for empowering leadership at all levels of a society, especially of those whose problems need to be solved. They can also play the all-important catalytic role in mobilizing human and non-human resources for solving those problems.

Strong self-governing local bodies essentially require local democratic governance. A vigorous and effective local democracy is also the underlying basis for a healthy and strong national-level democracy. Democracy and the wellbeing of the people, it must be noted, go hand in hand. As Nobel Prize-winning economist

Amartya Sen has pointed out, democracy is not only the goal of development, it is the primary means of development. Only when every individual person experiences greater freedom, voice and opportunity will she or he fully bring her or his creative powers to bear on solving the problems of the community.

Participation in local self-government is both a human right and a civic duty, consistent with Article 29 of the Universal Declaration of Human Rights. Only through democratic local government can people exercise their right and responsibility to be the authors of their own development.

Central to local democratic governance is the concept of self-government and administration closest to the people. The essential notion is that inhabitants of a given area have the opportunity to make decisions on those issues that affect them most directly. The principle of subsidiarity, enshrined in the United Nation's World Charter of Local Self-Government, states that maximum power, resources, and authority should reside at the level closest to the citizens – where there is greatest accountability, ownership and efficiency.

Strengthening local governance is a fundamental necessity for eradicating poverty. Unless there are local structures and institutions within society that are responsive and accountable to the people, the end to poverty and hunger cannot be achieved. The challenges of human development, economic progress and social justice must be dealt with primarily at the local level using local leadership and cannot be successfully resolved without stronger institutions of local self-government based on participatory grassroots democracy.

#### Basic Principles

The Proposed Comprehensive Local Self-Government Law is based on the principle enshrined in Article 7 of the Constitution of the People's Republic of Bangladesh that all powers belong to the people and every effort must be made to safeguard the rights of the people to exercise their powers and prevent encroachment by the government. It is intended to create a system of local self-government – government for and by the people themselves – in order to restore powers to the people by promoting decentralization and devolution through democratic local authorities and strengthening their financial and institutional capabilities. The Proposed Comprehensive Local Self-Government Law requires greater public accountability and emphasizes gender equality and social inclusion as a means of fostering human development, economic progress and social justice. It also takes a firm stand against criminalization of politics.

#### Structure of Local Government

Local self-government shall arise from the direct participation of the people through Gram Parishads (village assemblies) and through elected representative bodies at two levels: Union Parishad/Paurashava and Zila. Efficiency, effectiveness and costs are the primary considerations in proposing two tiers.

The Proposed Local Government Law upholds that:

The people are the source of all power.

The village is the basic unit of mobilization of the people for general welfare and development.

The ward is a political unit comprised of a constituency of an individual Union Parishad/Paurashava representative.

The Gram Parishad is a village assembly convened quarterly in each Union Parishad ward to ensure effective local participation, ownership and accountability.

The Union is a cluster of 5 rural wards to ensure that those authorities closest to citizens shall exercise public responsibilities.

The Paurashava is a cluster of 10 urban wards to ensure that those authorities closest to citizens shall exercise public responsibilities.

The Zila is envisioned as the largest sub-unit of the nation, comprised of 100-150 Unions and the existing Paurashavas, with primary responsibility for efficient coordination of facilities and services that are shared by more than one Union/Paurashava.

#### Gram Parishads

The Gram Parishads shall provide for the full participation of citizens in all local affairs in order to ensure accountability, transparency, access to information, communication and avoidance of parallel structures. The Gram Parishad shall convene at least once every three months to set the priorities for social and economic programmes and strategies to be implemented by the Union Parishad.

#### Union Parishads / Paurashavas

The Union Parishad shall provide people of rural areas and the Paurashavas shall provide people of urban areas with the opportunity to make decisions at the level that affect their lives most directly. Union Parishads and Paurashavas shall have administrative and political control over services in order to facilitate their efficient delivery, thereby improving accountability and effectiveness and promoting local ownership of programmes and projects.

The Union shall be around 10,000 people per last census, consisting of five wards. Each ward shall elect two representatives – one male and one female – to the Union. Each Union Parishad Chairperson shall be elected by a majority vote of all elected Union Parishad Members.

The Paurashava, with more than 20,000 people per last census, shall consist of 10 wards. Each ward shall elect two Commissioners – one male and one female – to the Paurashava. Each Paurashava Chairperson shall be elected by a majority vote of all elected Paurashava Commissioners.

The primary functions of Union Parishads and Paurashavas shall be to awaken the people to a shared vision of development and empower the local people to take ownership of the process. They shall mobilize people to form their own organizations and self-help groups to catalyze local initiatives and self-reliant action with respect to social and human development. Union Parishads and Paurashavas shall mobilize local and external resources for implementing plans and conduct continuous self-monitoring and self-evaluation.

Primary responsibilities of the Union Parishad include:

- Primary Health (including running community clinics)
- Primary and Secondary Education
- Safe Drinking Water
- Vocational Training and Livelihood
- Nutrition
- Agricultural extension and support services
- Equal Rights

- Sanitation and Environmental Protection
- Public Safety
- Maintenance of Union-level communication and transportation infrastructure
- Participation of and Accountability to the people

Primary responsibilities of the Paurashava include:

- Primary Health (including running community clinics)
- Primary and Secondary Education
- Safe Drinking Water
- Sanitation and Garbage Disposal Facilities
- Vocational Training and Livelihood
- Nutrition
- Equal Rights
- Environmental Protection
- Parks and Recreation Facilities
- Public Safety
- Maintenance of Paurashava-level communication and transportation infrastructure
- Participation of and Accountability to the people

Zila Parishads

Zila Parishad shall address issues of common concern brought to them by members of the Unions and Paurashavas and shall be responsible for the coordination of facilities and services shared by more than one Union/Paurashava.

The country shall be divided into 100 Zilas adjusting the existing district boundaries. Every Zila shall consist of 100-150 Unions and include the existing Paurashavas within its jurisdiction. Each Union/Paurashava shall elect one representative to the Zila Parishad. Half of the Zila Parishad Members shall be women, elected by Unions and Paurashavas on a rotational basis. Each Zila Parishad Chairperson shall be elected by a majority vote of all elected Zila Parishad Members.

Primary responsibilities of the Zila Parishad include:

- Quality Control of Primary and Secondary Education
- Running Zila and Upazila level Hospitals
- Emergency planning and disaster relief
- Training of government administrative personnel hired by Unions and Zilas (a “local government cadre”)
- Additional support services as requested by Unions and Paurashavas

Independence of Each Level of Government

Under the Proposed Comprehensive Local Self-Government Law, the national government shall commit to true devolution and deliver on this commitment by giving each level of local government real power and authority in their areas of responsibility as detailed in the law. This requires that each level of local government has clear roles and responsibilities, necessary capacity building and training and adequate resources to ensure that services are both effective and close to the citizens.

People have transferred limited powers – limited by the Constitution to perform legislative functions – to the Members of Parliament and they shall not have any direct

role in the governing of local affairs. Their role shall be confined to national legislative and oversight functions of the national government.

Governance systems shall be restructured to ensure that functions, powers and responsibilities are devolved and transferred from the national government to local government units in a coordinated manner.

#### Participation and Partnerships of Citizens

Local authorities shall be empowered to bring all people together and establish effective partnerships with all actors of the civil society, particularly non-governmental organizations, community-based organizations and with the private sector and other stakeholders.

Local authorities shall establish and provide effective opportunities for all citizens, including the civil society, to participate actively and directly in decisions made for all of society.

#### Resource Mobilization

The Proposed Comprehensive Local Self-Government Law calls for two categories of resources – those mobilized and raised by local government bodies and those transferred from the national government.

Local government bodies are encouraged to mobilize their own resources, which must be spent in a transparent and accountable manner. The national government, however, shall have no authority over these locally raised resources.

The national government shall, through a Permanent Local Government Commission, directly allocate at least a third of the national budget to local bodies. The Commission shall also serve as the Election Commission for the local government system and shall prepare a set of eligibility criteria and a code of conduct for locally elected representatives.

#### Lawmakers must not be lawbreakers

Recently, a headline of *The Daily Star* (June 20, 2009) read “MPs to make local development plans.” According to the report, the government has decided to give MPs the power to prepare the development plans for their constituencies, which will be implemented by the ministry of LGRD. This decision, we are afraid, will once again be a blatant assault on our Constitution.

The first assault on the Constitution was made when the 9th Parliament in its maiden session reintroduced the 1998 Upazila Act with some amendments. The amended Act designated the MPs advisers to the Upazila Parishad and made it mandatory for the Parishad to heed their advice. Giving the MPs controlling authority over the Upazila Parishad is a clear violation of Article 59 of our Constitution.

Article 59(1) of our Constitution mandates that “Local Government in every administrative unit of the Republic shall be entrusted to bodies composed of persons elected in accordance with law.” The upazila chairmen and two vice-chairmen, not the MPs, were elected to run the Upazila Parishads.

Members of Parliament, elected under Article 65 of our Constitution, are vested with “the legislative powers of the Republic.” Legislative powers generally include enacting laws, debating policy issues, ensuring transparency and accountability of the executive branch through Parliamentary Standing Committees, and approving budgets and the government’s financial decisions.

Running local bodies, it must be noted, is not among the constitutional responsibilities of the MPs. In fact, Article 9 requires “local government institutions composed of representatives of the areas concerned.” Article 11 requires “effective participation by the people through their representatives in administration at all levels.” That is, the constitutional requirement is for the locally elected persons to represent the people in local bodies.

Furthermore, according to Article 7(1) of our Constitution, “All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under and by the authority of this Constitution.” That is, whoever is given whatever authority to exercise on behalf of the people must stick to the Constitution. Thus, when the MPs, elected for the House of Nation, are brought in to run the local bodies it is a violation of the basic structure of our Constitution. This transgression, we are afraid, makes our lawmakers the lawbreakers.

The amended Upazila Act violates the basic structure of our Constitution in yet another way. Modern states like ours consist of three essential branches – the executive, the legislature and the judiciary. They are co-equal and independent of each other, although mutually interdependent. Thus, one branch cannot become involved in the activities of another. Local government is included in Part IV of our Constitution, and is a part of the executive branch.

Consequently, if MPs take over the controlling authority of local bodies, it will nakedly violate the basic structure of our Constitution. The same argument is applicable in the case of MPs becoming the chairs of the governing bodies of educational institutions.

Our MPs, we are afraid, have become lawbreakers in yet another way. If something that cannot be done directly is done indirectly by enacting a law, it is called a “colourable legislation.” Since, according to our Constitution, MPs are not elected to run local bodies, the amended Upazila Act is bound to be a colourable legislation.

The amended Upazila Act is also discriminatory in that it makes only the MPS from single territorial constituencies advisers to the Upazila Parishads, leaving out the women MPs elected from reserved seats. This is in clear violation of the fundamental right of nondiscrimination based on sex, as enshrined in Article 28 of our Constitution.

Some of our MPs contend that the sovereign Parliament is supreme and it can do and undo anything, including amending the Constitution. Unfortunately, this is an erroneous view. Parliament may be sovereign in Britain, where there is no written Constitution, and the Parliament there is the Court of Records, but it is not applicable to Bangladesh, which has a written Constitution. In our country, none of the branches is subservient to another.

A judgment of the Constitutional Bench of the Indian Supreme Court is most relevant in this regard: “It is necessary to remember that though our Legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution. In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England cannot be claimed by any Legislature in India in the literal absolute sense.”

That is, our legislature is not supreme and our MPs cannot do anything they want by ignoring the Constitution. All powers do not belong to them. They are merely the

custodians of the powers given to them, on behalf of the people, by the Constitution. In addition, even in amending the Constitution, they must follow Article 142 of our Constitution. In enacting legislation on local government also, they cannot go beyond the Constitution. As the Appellate Division of the Bangladesh Supreme Court, in Kudrate-E-Elahi Panir vs Bangladesh [44DLR(AD)1992], clearly stated: “Parliament is not free to legislate on local government ignoring Articles 59 and 60.”

In the same vein, the decision of the government to give MPs the authority to formulate development plans and the LGRD ministry to implement them is also a violation of our Constitution. According to Article 59(2)(c) of the Constitution, functions of local bodies include “the preparation and implementation of plans relating to public services and economic development.” Thus, the MPs, by using their plenary legislative powers, cannot take away the authority of formulating development plans given to the local bodies without violating the Constitution. Similarly, it will be a clear violation of the Constitution for the LGRD to directly implement the development plans.

The amended Upazila Act not only violates the Constitution, it is also inconsistent with prevailing court judgments. When the “District Minister” system was introduced during the last government, Mr. Anwar Hossain Manju filed a writ against it before the High Court.

In declaring it unconstitutional, Justice A.B.M. Khairul Haque and Justice A.T.M. Fazle Kabir stated: “None of the ministers, whips and other functionaries mentioned in the above notifications can be appointed in respect of any of the districts mentioned therein. They do not have any function as such in respect of the districts, save and except their functions as ministers for the particular departments in the context of the entire country. Similarly, the members of Parliament have got no direct role or function, in respect of either development or maintenance of law and order, in the district or in other local administrative units. As such, the petitioner, a member of Parliament, has got no function in respect of Pirojpur district.”

To conclude, it is clear that the amended Upazila Act is in clear violation of our Constitution. It is also not consistent with the prevailing court decisions. Thus, our lawmakers, we are afraid, have become lawbreakers, which is not consistent with the idea of the rule of law. This is also inconsistent with Awami League’s commitment in its election manifesto to strengthen the local government system.

In addition, the amended Upazila Act has given rise to a situation of serious conflicts at the local level, which is bound to hamper development activities at the grassroots. We hope that our Honourable Prime Minister will take note of the gravity of the situation and initiate effective steps to redress it. We further hope that the MPs, in the meantime, will stay away from the city corporations, Paurashavas and the Union Parishads.

*The Daily Star: July 8, 2009*

## A blatant misuse of legislative authority

The Upazila Parishad Act, passed during the first session of the 9th parliament represents a self-interest driven blatant misuse of legislative authority. The act provides that, among other things, MPs be advisers to the Upazila Parishads and makes it mandatory for the parishads to accept their advice. Each parishad is specifically required to accept the advice of the MP concerned with respect to development plans and their implementation. The parishad must also keep MPs informed of any contact with the government.

Based on the accumulated wisdom of several centuries, modern government is based on three pillars – the legislative branch, executive branch, and the judiciary. They are co-equal and independent of each other, although mutually interdependent.

This scheme, based on the principles of separation of powers, is designed to provide a system of checks and balances in the government. Such a system is necessary, as the government has the legitimate power to use force and thus citizens must be protected from the excesses of the government.

In Bangladesh, the legislative powers generally include the authority to enact laws, make budgetary allocations, debate policy issues, approve foreign treaties, and most importantly exercise parliamentary oversight the executive actions through standing committees.

On the other hand, Article 59 empowers the locally elected persons to run local affairs. Thus, if MPs are to control the activities of local bodies, they would overstep their legislative powers as delineated in Article 65 of the constitution.

Justices ABM Khairul Haque and ATM Fazle Kabir, in their judgment in Anwar Hossain Manju vs. Government of Bangladesh (2008), removes all doubt about the violation of the constitution by involving ministers and MPs in local affairs.

They stated: “The Local Government Bodies in every administrative units of the Republic are charged with the functions relating to administration and the work of public officers in the local area, the maintenance of local order and other nation-building development activities there. Neither the Ministers nor the members of Parliament can abdicate the functions of the elected members of the Local Government Bodies in respect of their functions in the concerned administrative units.”

The justification used by the legislators in imposing their hegemony over the Upazila Parishad is that parliament has the plenary power to legislate on local government as they please. But, while recognising this power, the Supreme Court, in Kudrat E-Elahi Panir vs Bangladesh (1992) held that: “Parliament is not free to legislate on local government ignoring Articles 59 and 60.”

The act also violates the constitution in another way. Under our constitutional scheme, the local government is part of the executive branch listed under Part IV of the constitution. The intent and purpose of the constitutional provisions, in the words of Justices Haque and Kabir: “While the Executive Government under Chapter-II would run the administration, development and other ancillary matters for the entire country as a whole, but at the same time the people at the grass-root level should also be made responsible for the development of their own respective areas, on the formation of local government bodies, in order to bring the development and also administration to their door steps so that they can be responsible as well as self-reliant

and also become part of the over-all nation building process.” (Anwar Hossain Manju vs. Government of Bangladesh)

Thus, controlling local government bodies and their executive functions will compromise the oversight role of the parliament and hence will make a mockery of the constitution.

The Upazila Parishad Act is also discriminatory in nature. Section 25 of the act makes only the 300 MPs elected from single constituencies advisers to the parishad, and thereby excludes the other 45 MPs elected from reserved seats.

The local government system is the product of historical developments based on historical experiences and is enshrined in our constitution. The common characteristics of local government include “local elections, procedure for public accountability, independent and substantial sources of income, clear areas of independent action and certainty of powers and duties and the conditions under which they would be exercised.” (Kudrat E-Elahi Panir vs Bangladesh)

The Upazila Parishad under the control of the MPs – control imposed by requiring the parishad to accept their advice – will lack most of these characteristics. MPs are indirectly given, in the guise of advisers with authority to impose their will, the authority to control local bodies although they are not elected to do so.

Similarly, Upazila representatives are accountable to the local people for their activities – although the legal provisions are quite weak and need to be strengthened – while the MPs are not required to be accountable for their advice although they are mandatory on the parishad.

Since it is mandatory for the Upazila representatives to adhere to the advice of the MPs, they will not also have the scope for independent action, violating the concept of an autonomous local government system.

In addition, since the MPs are given blanket authority to give advice, which must be accepted, there is great uncertainty concerning the powers and duties of the Upazila representatives and the conditions under which such powers would be exercised. Thus, if MPs control the activities of Upazila Parishad, they will lose the characteristics of local government bodies.

Most challenges people face in their everyday life are local and they must also be solved locally. Thus, local government bodies must be strengthened by giving them more freedom, functions, functionaries and finances, rather than taking away power and authority from them by imposing the hegemony of MPs.

Experience shows that the closer the power, authority and resources are to the people, the greater transparency and accountability and the more benefit the people get from them. Thus MPs’ control will weaken local bodies and harm public interests.

Another important goal of having elected local bodies in every administrative unit is to provide effective participation of the people in decisions that affect them. Such participation is a pre-requisite for creating a democratic polity at all levels, which will deepen its roots. Democracy, by giving people a voice and opportunities to participate, serves them better. Local bodies that are controlled by MPs lose their representative character.

To conclude, the Upazila Parishad Act represents a blatant misuse of legislative authority, and as such it violates the constitution, the affirmation of which comes from several court judgments.

## Wither Union Parishads?

The Union Parishad (UP), currently the only functioning local government body in Bangladesh, is a 132 year old institution, which came into existence through the enactment of the Gram Chowkidari Act of 1870. There are now about 4,500 UP bodies in the country with nearly 60,000 representatives elected to them.

Despite its long existence and the involvement of such a large number of grassroots leaders, the Union Parishad has unfortunately failed to become an important instrument of governance in our country. In fact, over the years it has become an increasingly weak and almost an ornamental institution due to the massive centralization of authority, bureaucratic controls and other legal and administrative restrictions. The recent recommendations of the cabinet committee on local government will make the UP body almost totally irrelevant and it would even make little difference if the institution is even abolished. However, the Self-governing UP Advocacy Group advocates a strong, vibrant and autonomous local government system, including a self-governing UP body envisioned in our Constitution. The situation has now deteriorated to a point that our policymakers must decide either to abolish the UP altogether or make it the strong, vibrant and autonomous institution envisioned in our Constitution.

### The Constitutional Commitment

A strong system of local government is indeed enshrined in our Constitution through Articles 9, 11, 59 and 60. The framers of our Constitution believed that “all powers in the Republic belong(ed) to the people” (Article 7) and they provided for “Local Government institutions composed of representatives of the areas concerned” (Article 9) – including disadvantaged groups such as peasants, workers and women – in order to more directly exercise that power. Local government institutions, according to Article 11, would facilitate “effective participation by the people” and ensure democratic governance at the grassroots. With such a system of grassroots democracy, people would be able to at least influence, if not directly participate in decisions that affect them.

Article 59 of the Constitution specifically mandates that “local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.” The functions of these bodies may include: “(a) administration and work of the public officers; (b) the maintenance of public order; (c) the preparation and implementation of plans relating to public services and economic development.” Article 60 provides for conferring powers to local government bodies, including the power to tax in order to perform these functions. Thus, the constitutional provisions appear to assign sweeping responsibility to local government bodies, and clearly present a blueprint for democratic decentralization in our country.

Thus the Constitution appears to make the local bodies the conduits for giving the people of an area, through a democratic process, adequate authority, responsibility,

power and resources in order to manage their own affairs. Such a process undoubtedly makes possible self-rule, rather than rule by distant masters. The UP body, being the local government tier closest to the people, is expected to be the principal instrument of this self-rule.

In order to ensure self-rule, our Constitution makes the local government institutions autonomous and independent entities, distinct from the central authorities. It mandates elected local bodies at each administrative unit in addition and co-equal to the regular administrative setups. If the local government bodies are to meet their constitutional responsibility of planning and implementing public services and economic development, field-level government functionaries must be accountable to the elected local officials. Looking at the issue in another way, had the intention been to make the local government system a subordinate organ of the central authorities, there would be no need to devote separate Articles for local government in the Constitution. Furthermore, the autonomy of the local government bodies is very much necessary in a unitary form of government like ours in order to provide for a system of built-in checks and balances.

The Union Parishad (UP), the only functioning local government in Bangladesh at this time, is a 132 years old institution – it came into existence by the enactment of the Gram Chowkidari Act of 1870. There are now over 4,600 UP bodies in the country with nearly 60,000 representatives elected to them.

Despite its long existence and the involvement of such a large number of grassroots leaders, it has unfortunately failed to become an important instrument of governance in our country. In fact, over the years it has become an increasingly weak and almost an ornamental institution with little useful role to play in our national life. The situation has now deteriorated to a point that our policymakers must decide either to abolish the UP altogether or make it an effective and useful entity. We obviously want it to be the strong, vibrant and autonomous institution envisioned in our Constitution.

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government bodies, including the power to tax in order to perform these functions. Thus, the constitutional provisions appear to assign sweeping responsibility to local government bodies, and clearly present a blueprint for democratic decentralization in our country.

Planning and implementing services provided by public authorities and economic development at the local level are almost an all-inclusive responsibility, encompassing the management of all local affairs. To be successful in meeting this constitutional responsibility, it is obvious that the local government bodies need to be given the necessary ways and means through an appropriate program of decentralization of authority and devolution of resources. Thus the Constitution appears to make the local bodies the conduits for giving the people of an area, through a democratic process, adequate authority, responsibility, power and resources in order to manage their own affairs. Such a process undoubtedly makes possible self-rule, rather than rule by distant masters. The UP body, being the local government tier closest to the people, is expected to be the principal instrument of this self-rule.

In order to ensure self-rule, our Constitution makes the local government institutions autonomous and independent entities, distinct from the central authorities. It mandates elected local bodies at each administrative unit in addition and co-equal/parallel to the regular administrative setups. It is obvious that these bodies need to be (at the very least) parallel entities, but not subservient to the central bureaucracy. Rather it should be, if anything, the other way around. If the local government bodies are to meet their constitutional responsibility of planning and implementing public services and economic development, it would make good sense for the field level government functionaries to become accountable to the elected local officials. Looking at the issue in another way, had the intention been to make the local government system a subordinate organ of the central authorities, there was no need to devote separate Articles for local government in the Constitution. Furthermore, the autonomy of the local government bodies is very much necessary in a unitary form of government like ours in order to provide for a system of built-in checks and balances.

#### The Reality

In spite of the bold and visionary provisions on local government in our Constitution, the reality has been just the opposite. Even after more than 30 years of independence, our local government institutions are in total shambles. The Zila Parishad and Upazila Parishads are non-existent. The UP bodies are in a very weak state, with practically no authority or worthwhile responsibility. In fact, they have been made progressively weaker over the years through massive centralization of authority and other legal/administrative restrictions. They are now totally subservient to the central bureaucracy and merely act as vehicles for implementing selected government programs. In recent years, the situation has been worsened by the intrusions of the Members of Parliament in local affairs.

#### Bureaucratic control of UP activities

Contrary to the constitutional provisions, The Local Government (Union Parishads) Ordinance, 1983, which governs the UP activities, makes the UP bodies completely subordinate to the central authorities. There are also countless circulars from various Ministries solidifying the bureaucracy's grip on UP bodies. In fact, they

are now totally at the mercy of the central bureaucracy. Three parts of the law can be cited as examples of bureaucracy's subordination of UPs.

First, Sections 12 and 65 of the 1983 law provide for the removal and suspension of UP Chairmen (and also sometimes Members) by government officers in certain circumstances. Some of the grounds for removal and suspension are quite flimsy, such as the absence from three consecutive meetings of the UP bodies and the initiation of criminal proceedings against them. Although there are requirements for investigation, the government enjoys wide latitude in these decisions. These legal provisions, in spite of some procedural precautions, unequivocally put the government officials in positions of authority capable of removing the elected representatives from office. The very possibility of such removal makes them the superior authority to UP Chairman and Members. Unfortunately these authorities have been misused in a rampant manner over the years. As a judgement of the full-court bench of the Bangladesh Supreme Court noted:

Since Independence from the British, the local government bodies...were superseded by the Government very often, not so much on the ground of inefficiency, mis-management or lack of finance, as on political grounds or personal rivalries. If the Chairman of the local body was not functioning as 'yes' man of the Government of the day his committee was superseded which resulted in litigation that continued for years. During the period of supersession Government took over functions of a local body and managed them through their officers, such as Sub-divisional Officers, District Magistrates or Commissioners. Hardly any chance was given for these bodies to grow on a democratic line by 'trial and error'..." (Kudrat-E-Elahi Panir vs. Bangladesh, 44 DLR (AD) (1992), para 41) p. 326.

Second, in addition to the removal and suspension, Sections 60, 61 and 62 of the law give the government power to directly supervise, control and give direction to UPs. This makes these bodies rather extensions of the executive branch, although the Constitution expected them to be parallel entities. These controls have become more blatant over the years. For example, the UP representatives are now even denied, through administrative circulars, the fundamental right of freedom of movement, violating the Article 36 of the Constitution.

Third, budget making is a very fundamental instrument for setting priorities and expressing autonomy. Article 60 of the Constitution recognizes the right of local bodies to prepare their own budgets. However, the 1983 law denies this autonomy to the UPs. In fact, Section 47 of the law makes UP bodies subservient to Deputy Commissioners by designating the latter the final authority to approve UP budgets.

#### Role of MPs

In addition to bureaucratic control, the UP bodies, the only on-going local government entities, have in recent years faced another serious challenge – a challenge that threatens their very existence as meaningful entities. This challenge comes from the induction of the Members of Parliament in local affairs.

After the cancellation of the Upazila system in 1991, the government, through administrative circulars, gradually and steadily inducted the MPs in local bodies as advisors on the pretext of allowing them to participate in local development. The circulars were later legalized by the enactment of The Upazila Parishad Act, 1998. The new law designated the MPs as advisors to the Upazila Parishad and required that

the Parishad would accept their advice. As a result, although advisors in designation, the MPs soon became the final authorities in the selection of all rural infrastructure projects. Their roles are now extended to selection of committees for the implementation of those projects. Over the years, their roles have become so ubiquitous that they now have the final say in all development matters in their constituencies.

Several self-serving arguments are put forward in support of the role of the MPs in local affairs. First argument is that in the absence of Zila and Upazila Parishads they are merely filling a gap between the UPs and the central government. True, there is a gap, but this gap is created by the cancellation of the Upazila and not holding election for re-introduced Upazila and Zila Parishads, in clear violation of the 1992 Supreme Court directive. In upholding the decision to cancel the Upazila Parishad, the Supreme Court in a full-court judgement directed the government: “The existing local bodies are required to be brought in line with Article 59 by replacing the non-elected persons by election keeping in view the provision for special representation under Article 9. Necessary action in this respect should be taken as soon as possible – in any case within a period not exceeding six months from date.” (Kudrat-E-Elahi Panir vs. Bangladesh, 44 DLR (AD) (1992), para 41). Unfortunately the government blatantly defied this directive for the last 10 years.

The second argument is that MPs want to participate in local development. However, the experience shows that they are interested only in infrastructure projects, which can be used as patronage for party functionaries. Besides, if they are really interested in local development, they do not have to directly get involved in the selection and implementation of projects or use their party activists to implement such projects.

As a result of the induction of MPs in local affairs, we now have a “MP government” along with the central and local government bodies in many parts of Bangladesh. The MP government is consisted of his/her party functionaries who usually implement many schemes even though the UP Chairmen and Members continue to be legally liable as chairpersons of the implementation committees. This not only compromises governmental authority and encourages corruption; it also creates serious social tensions.

The involvement of the MPs in the implementation of local schemes raises serious constitutional issues. Article 65 of the Constitution assigns only “legislative powers” – involving the enactment of laws and the exercise of parliamentary oversight – to the MPs. However, the development work is an executive function. Thus the interference of MPs in local affairs violates the “principle of separation of powers,” which is a fundamental pillar of our Constitution. Besides, the involvement of the MPs in the implementation of development schemes compromises their oversight role, cutting into the very roots of our parliamentary democracy.

The involvement of the MPs in local development activities also violates the 1992 Supreme Court judgement. The court defined local government as entities “meant for management of local affairs by locally elected persons” and stated that “if the Government’s officers or their henchmen are brought to run local bodies, there is no sense in retaining them as Local Government Bodies.” MPs are locally elected, but meant for exercising legislative powers, not executive powers. Thus, the present UPs,

with MPs essentially as their bosses, cannot be viewed as local government entities consistent with Article 59 of the Constitution.

A related issue: It is reported in newspapers that government is considering the introduction of a 13-member “Gram Sarkar” in each UP ward, with UNOs having the final say in the selection of its members. This is not good news for UPs. The proposed Gram Sarkar, if implemented, will, on the one hand, further solidify bureaucratic control on local government system, and at the same time, it will legitimize the MP government, by accommodating the party functionaries in the newly constituted entities. This is likely to make the UP body totally ineffective and almost irrelevant.

#### Conclusions

Our Constitution prominently provides for an autonomous and self-governing system of local government. It mandates the creation of local government co-equal and parallel to the central government – the two are to exist side by side. Nowhere does the Constitution, either explicitly or even implicitly, require the local government bodies to be subservient to the central bureaucracy or be directed by the Members of Parliament.

Despite the constitutional commitment to the creation of a strong local government, the reality is very different. At this time we have a very weak system of local governance, which exists mostly in name. The UP, the only functioning local government body, has little authority or real responsibility, although nearly 60,000 grassroots leaders are part of it. It also has little resources at its disposal to perform any of the 48 functions assigned to it. Progressive centralization of authorities, mindless bureaucratic control and the blatant interference of MPs over the activities of local government bodies are primarily responsible for such a state of affairs. Since because of the bureaucratic control and MPs’ interference, the UPs are now unable to play much useful role, it may be best to eliminate them altogether.

It must be noted that there are serious costs associated with the progressive weakening of the local government system in our country. We are missing a great opportunity to empower a large group of local leaders and create vibrant local institutions to mobilize local people and local resources for solving many of the poverty-related challenges we face as a nation. According to the principle of proximity, the closer the power and resources are to the people, the more benefit they provide to the people. In addition, democratic governance at the grassroots could provide a solid foundation for democratic governance at the national level.

*The Daily Star: September 29, 2002*

## Make the Union Parishad Active to Effectively Face the Disaster

I have just returned from the cyclone Sidr affected areas. Along with a group of volunteers I went to several locations of Borguna, Patuakhali, Pirojpur and Jalkathi with some emergency relief supplies and much heartfelt empathy. There I saw with my own eyes the devastation which turned some areas into killing fields and shattered the lives and livelihood of so many. A week after that fateful night of November 15<sup>th</sup>,

the smell of death lingers in the air as some dead still remained unburied, the wails of orphaned children are ever present, and the cries of widowed women pierce the darkness of the night. There is so much pain there that one's mind goes numb and the tears become impossible to hold back.

The number of deaths and injuries cannot accurately portray the devastation. Properties, houses, plants and crops – almost all the worldly possessions of the residents – were destroyed. Food stuffs from their homes, fish from their farms, freshwater ponds, cows, buffalos, goats, ducks and chickens were all wiped away by the tidal surge. Fishermen lost their nets and boats. Where there was no high tide, the water contaminated by fallen leaves and other debris has become unusable and pond fish are dying. The environment of the affected areas is totally polluted. The victims are now hungry and thirsty. Many are living under the open sky. They do not even have seeds to plant.

This scenario is common to almost all districts of the South. Conditions in the chars and near river banks are however most serious. Falishatoli village under Monsha Baliatoli Union of Borguna Sadar is a case in point. Almost no dwelling is still standing there. Even the soil from the foundations has washed away. The top of the embankment protecting the village is gone creating deep ditches every few meters. Twenty-two people from this location were reportedly lost, nine people being from a single homestead. A “war” appears to have fought here as very few things still remain standing.

Each successive story I heard in the Sidr affected areas was more horrifying than the one before. I heard of a 10-year old schoolboy whose dead body was washed into a house. His school backpack was still tightly strapped to his back. Clearly, he tried to flee from death carrying his most important possession! I heard of a young man dying under a fallen wall while trying to rescue his blind, aging mother. Instead of swimming away to save her own life, a mother embraced death holding her child in her bosom. In Falishatoli I heard of a mason who came home from his workplace in Dhaka to find that all four of his family members were dead. He was last seen leaving the area wailing – “who should I live for anymore!”

This is not the first time natural disasters have hit coastal Bangladesh. They have occurred many times before. The great tidal wave of 1970 killed over half a million people. The loss of life and property of the 1991 cyclone was also enormous. In addition, there have been many relatively smaller calamities. Even though the destruction of these smaller calamities was less, their cumulative impacts are serious and far-reaching.

Because of repeated disasters of the past, many people were already in an awful state before Sidr arrived. Malnutrition, especially among the poorest segment of the society like women and the disadvantaged, is nakedly visible here. Women of these areas are short and very thin. The effect of women's malnutrition is clearly noticeable among the children. Because of malnutrition, their immune systems have not fully developed. Given an outbreak of common diseases like diarrhea and pneumonia, they will therefore be the first victims. Because malnutrition and lack of immunity are the real killers – diarrhea and pneumonia are merely easily blamed excuses for death.

Clearly, the lives of the people of Sidr affected areas are once again shattered, but they are not defeated. In the past, these people, who lost their loved ones and much of

their material possessions, have courageously fought back. They appear to be determined to do so again this time. Resiliency is a unique trait of the Bangladeshis, especially among the disaster prone people of this country.

Another distinguishing attribute of these people is that they have few worldly possessions and their demands are also very limited. Given rock bottom minimums, they are satisfied. If they are able to feed and clothe themselves and have roofs over their head, they feel “grateful”. They do not need fancy cars or extravagant palaces. Still our policymakers have repeatedly shown indifferences to these citizens in the past. Our leaders have even ignored their survival needs during disasters. Thus, we don’t even have enough cyclone shelters for the coastal areas. Only 2000 such shelters with the stated capacity to hold 20 lac exist, although the population of the coastal region is several times more.

What was most visible to me in the Sidr affected areas is the lack of coordination. Many individuals, organizations and the government are distributing emergency relief. They are doing it based on their own instincts and cursory information. As a result, even a week after the disaster hit, help has not yet reached some remote areas where the communication system has broken down. In some locations, especially close to the river banks, relief supplies have been distributed repeatedly. Consequently, the right kinds of supplies are not reaching the right places. This is unacceptable in a country like Bangladesh which has vast disaster management experiences. In any event, the government will have to take responsibility for the coordination and we are pleased that it has taken the initiative under an Honourable Adviser.

A prerequisite for coordination is reliable information. The number of dead and injured, where they are, what types of damage occurred in which location, and what types of help are urgently needed in different areas – such information needs to be collected for each village. For example, information about whose dwellings were demolished, which families are hungry, who lost how many bulls and buffalos, how many hand pumps are dysfunctional, which public institutions such as schools were destroyed, etc., need to be collected. With an appropriate format developed for this purpose, the local Union Parishad representatives could easily gather this information in a few days. It would only require the initiative of the UNOs. The help of the armed forces would be needed for reaching the remote areas. District and Upazila level officers, instead of performing protocol duties, could be assigned to specific Unions to help with data collection and need assessments. We feel that such information and ground work are still needed.

The information offices at the Upazila could be turned into information centres, where which types of help are needed in which areas could be displayed. The information displayed at these centres could come from Union Parishads, journalists and social workers, and they would be used by all concerned to direct assistance to appropriate places. The Adviser’s office, to be located in Barisal, could do the much needed supervision and monitoring through the DCs and other functionaries.

Union Parishads will have to play the most vital role in the process of coordination. UPs must also be used for distributing help. We do not understand why this important institution with rich traditions, which has withstood the test of time, is not used to tackle this dire emergency. Also, if the elected UP representatives cannot effectively respond to this call of humanity with honesty and dedication, there is no

justification to keep around this 135-year old institution. Unlike in the past, there are no parallel networks of “MP sarkar” to bypass them or make them ineffective. Since human beings are not angels, in order to avoid “election politics” on the part of the UP representatives, local distinguished persons and social workers must be tagged with them in this endeavour. NGOs must also work in coordination with UPs. Our experience of using this arrangement for distributing relief supplies has been quite positive and confidence inspiring.

Several priorities must be kept in mind in extending help to the Sidr victims. Emergency supplies of food, water, clothes especially winter clothes, seeds, bullocks for cultivation etc will have to be immediately arranged. Women, children, the old and the handicapped will have to be given priority. Damaged gardens and ponds need to be cleaned. Roads must be cleared and electricity connections restored. People must be provided financial support to restart their livelihood efforts, which the government has already initiated. Books and supplies for students must be arranged and educational institutions renovated. We must not also forget the relatively better off families, who lost everything and are hungry, but are uncomfortable to stand in line for relief. In the middle term, the “WAPDA embankments” must be repaired and they must be elevated and made stronger. Otherwise salt water will damage their crops during the high tides of the rainy season.

In the long-term, many more cyclone shelters will have to be constructed. Houses for the victims will have to be built based on scientific designs so that they are cyclone-safe. A green belt will have to be built throughout the coastal line, for the Sundarban has greatly protected some areas from the ferocity of the cyclone. However, cautiousness must be exercised in planting trees. Cyclone Sidr preferentially damaged alien trees like Chambal which are very soft. Many rain trees were also uprooted – it is alleged that polyethylene bags from the bottom of the saplings were not removed and sometimes roots were trimmed before they were planted.

While returning from the Sidr affected districts by the river, it occurred to me, as I approached Sadar Ghat, that I was returning from one devastated area to another. In contrast to the southern districts, the devastation in the capital city is in the values and norms of its residents. This realization became more acute as I saw the continued competition among the rich to occupy the banks of the Buriganga River. It became increasingly clear to me that honesty, equity and fairness etc. – the values based on which the liberation war was fought – are no longer held by many who live in Dhaka City’s concrete jungle. It is clearly reflected in one single political family’s alleged plundering of nearly 16,000 crores which is apparently equivalent to the total loss of the cyclone Sidr. Thus, all the palatial buildings of the capital city appeared to me rather nothing more than monuments of the devastated values of their owners. If we are really to move forward as a civilized nation, we must urgently do something about restoring these disappearing values.

*The Daily Star, 4 December, 2007*

**Traditional mindset of UP chairman must be changed**

The election of the Union Parishad (UP), the only on-going local government body of our country, was completed with much fanfare in early this year. In this election nearly 55,000 local representatives, including about 13,000 women, were elected by the people at the grassroots. These leaders have already taken office and the question that is now in the minds of many – what is next?

The Union Parishad is a very important institution in our country in that it can play a critical role in institutionalising democracy, achieving good governance and fostering socio-economic development. Democratic norms and practices at the grassroots can provide a solid foundation for democracy at the national level. As a strong base is needed for a building to stand on, similarly a vibrant democratic system is required to make the democracy function effectively at the higher echelon.

Good governance requires, among other things, effective people's participation as well as transparency and accountability in the process of governance. Only at the grassroots can democratic governance transition from the "representative" type to a "participatory" variety, reflecting greater participation of the people. Similarly, transparency and accountability can best be practiced at the lower echelon.

Democratic governance is vital for development. As Nobel Prize winning economist Amartya Sen has written, "Democracy is not only the goal of development; it is also the primary means of development." Strong and effective democratic governance, especially participatory governance at the local level is critically important for the socio-economic resurgence of a country like Bangladesh. People in our country face many challenges on a daily basis and these challenges cannot be solved by the government alone or anyone else for that matter. It will require that the people facing the problems take the primary responsibility for their solution. Most problems are locally created and can – and must – also be solved locally, at their roots, by awakening and mobilising people, utilising local resources and local leadership, and planning from the bottom. Elected representatives of local democratic institutions can be the change agents in this process and can foment a social movement for this purpose. The "people's campaign" carried out by Panchayati raj institutions in Kerala, India is an excellent example of such a bottom-up planning process.

In 1992, the SAARC Independent Commission on poverty alleviation pointed out that the traditional, top-down, service delivery paradigm of development could never be effective in reducing poverty in South Asia. The depth and complexity of poverty in South Asia – and the enormous numbers of people affected – are too vast. The only pathway to poverty eradication, the Commission asserted, is to catalyze a process of self-reliant development, built primarily on the talent, ingenuity and resources of the people themselves. This can only be catalysed by vibrant democratic local government institutions.

Our Honourable Prime Minister, Begum Khaleda Zia, in her inaugural speech to the nation after getting re-elected in October 2001, alluded to a similar development strategy. She asserted that government's main responsibility is to create an enabling environment, while the people have to take the responsibility to achieve progress and prosperity themselves. This obviously calls for a new, people-centred development approach.

The recent UP election, in which nearly 55,000 new representatives were elected, offers a great opportunity to put into practice such a people-centred development

paradigm. This will require changing their long entrenched mindset – mindset of depending on the national government for resources and directions. This will also require a new realization that the so-called “poor” people are not “problems,” but they are the “solutions” of poverty and “keys” to their own development. In other words, the realization must be that if the poor are mobilized, their creativity unleashed and opportunities created for them, they can become the principal authors of their own future.

In spite of the vast potentials to contribute to institutionalising democracy, achieving good governance and promoting socio-economic development, the roles of UP representatives are at present largely confined to a few traditional, mundane activities. These activities include building infrastructure, dispensing justice and distributing relief materials. They have in essence been working as “agents” of the national government and depending on its favours and largesse. However, these traditional roles can easily be performed by low level functionaries, for they do not require “leading” people – awakening, unleashing and mobilizing them.

If we are to take advantage of the enormous potentials created by the recent election to solve many of our problems, we must without delay initiate a radical decentralisation programme to give the newly elected representatives the necessary responsibilities, powers and resources. History teaches that as power and resources move closer to the people, greater transparency and accountability are achieved in their utilisation and more benefits accrue to the people. Along with the decentralisation initiative, there must also be an effort to prepare the elected local leaders for the tasks ahead. This will require getting them, on a priority basis, out of their traditional mindset regarding their roles and responsibilities. This obviously calls for transforming their present roles and enhancing their skills and leadership, requiring appropriate training and empowerment.

In order to fully utilise the leadership of the newly elected UP leaders to move the country ahead, they need two types of training. They first need the so-called statutory training – the training that will inform them of their powers, responsibilities and the rules governing their activities, as laid out in the statutes, government circulars and guidelines. Fortunately, the government has already implemented such a training programme.

The newly elected leaders must also be given transformational training – training which will change their mindset and transform their roles – in addition to the informational or statutory training. Such training will help them come out of their present state of “thinking within the box” about their roles, confined primarily to infrastructure building and providing a few traditional and rudimentary services. In other words, a successful transformational training, with an appropriate follow-up mechanism in place, will enable the elected representatives to become catalysts in awakening their constituents to the vision for a better future and mobilizing them for action for bringing about measurable improvements in their quality of life rather than merely performing a service delivery role.

With the transformation of their mindset and their roles, the UP representatives would be able to contribute to solving the challenges that people face with respect to quality of education, health awareness, safe water, hooliganism, drug abuse, environmental degradation, women’s repression, dowry, child marriage, unplanned

birth, and even creating self-employment. For, most of these challenges are created locally and must also be solved locally. When people are mobilized, they work in unison and there are changes in their habits and attitudes, many of these challenges get solved without external financial support. For example, when people come together and work shoulder to shoulder, a form of “social capital” is created, which can be utilised for setting up educational institutions, health centres and even for organising joint income earning projects. Likewise when people are mobilised, they can take a united stand and foment a social movement against serious social ills such as hooliganism, toll-collection, corruption and repression of women. With the active intervention of The Hunger Project, UP representatives in several Unions around the country have already catalysed exemplary changes in the lives of their people.

If we are to take advantage of the tremendous possibilities created as a result of the recent UP election, immediate steps should be taken to arrange training for changing the mindset of the elected leaders, which will transform their traditional roles. I hope the government will forthwith make the necessary arrangements for such training and involve those in the non-government sectors with the requisite skills, expertise and experience.

*The Daily Star: November 16, 2003*

## Gram sarkar: a self-defeating initiative

The Gram Sarkar (GS) Act, 2003, passed by the Parliament in its last session, will go into effect on July 1, 2003. The Act calls for a 15-member Gram Sarkar in each Union Parishad (UP) ward, chaired by the elected member of the respective ward. The woman member elected in a reserved seat will serve as advisor to each of the three wards representing her constituency. The Gram Sarkar is not designated as an administrative unit, and instead it would be a supporting organisation of the UP.

The membership of the Gram Sarkar will represent different groups of the community. It will include: three women representatives, including a trained Ansar/VDP member; one farmer; two landless farmers; one male Ansar/VDP member; one teacher; one physician or professional; one businessman; one member of cooperatives; one freedom fighter; and one distinguished individual. The UNO will nominate the members of the GS, other than the chairperson, preferably on the basis of a consensus of at least 10 % of the voters of the ward. The terms of Gram Sarkar will be five years and each GS body will hold general meetings once every six months with at least one-third of the registered voters of the ward present. The UP chairman will be invited to these meetings.

On the surface, the idea of Gram Sarkar is attractive. It is intended to harness local leadership for mobilizing people and resources at the grassroots for solving the problems they face. Through periodic general meetings, it is also expected to ensure people’s participation in decisions that affect them. These outcomes are indeed very desirable.

However, on close examination, the concept of Gram Sarkar loses much of its attractiveness. In our present context it may even be a very self-defeating initiative. It

is likely to make our only on-going local government body, the Union Parishad, totally redundant. It may also institutionalise cadre-based politics at the grassroots and further spread corruption. More seriously, the whole idea appears to represent a violation of our Constitution.

#### The Constitutionality of Gram Sarkar

The Act designated Gram Sarkar as a supporting organisation (mnvqK msMVb) of the UP in order to avoid its being called a new tier of local government. This is a clever move to avoid the problem encountered with respect to a similar law enacted during the previous government. In 1997, the Gram Parishad Act was passed by the Parliament to create a similar non-elected body at the ward level. The Act was challenged before the High Court Division of the Bangladesh Supreme Court on the ground that it violated Article 59 of the Constitution, which calls for local government bodies, “composed of persons elected in accordance with law” at each administrative unit.

The cleverness in calling the Gram Sarkar a supporting organisation of the UP, however, does not make it a constitutionally valid entity. The critical question in this regard: is the proposed GS a part of the UP or is it a separate entity? Either way, its constitutional validity is questionable at best.

If the Gram Sarkar is to be viewed as an extension or part of the UP – created to provide support to the latter’s activities – then it is a local government body under the Constitution. It must then conform to Article 59 of the Constitution and be represented by persons elected in accordance with law. This means that the members of Gram Sarkar must be elected through a free, fair and credible election process. Such a process will require that election must be by secret ballot, conducted by an impartial body, namely the Election Commission, and control and interference of the government and the law enforcement agencies and/or the ruling party must be avoided.

On the other hand, if one argues that the Gram Sarkar is not a part of the UP and should not meet the requirements of Article 59, then it must be a separate entity. In that case, it must be a new local government body outside the Article 59 of the Constitution as it is not designated as an administrative unit under Article 152(1) of the Constitution. In fact, the Act designated Gram Sarkar as a statutory body with all the essential features of a local government body – the perpetual existence; a seal; office; budget; oath-taking; acquire, hold and dispose of temporary and permanent properties; ability to sue and be sued. Thus, the Gram Sarkar must be a distinct local body, a sarkar by designation, managing local affairs at the lowest level.

The difficulty arises in this context is that there cannot be two classes of local government bodies – one under the Constitution and the other outside it. The Supreme Court, in its Full Court judgement on Kudrat-e-Elahi Panir vs. Bangladesh (44DLR(AD)(1992)) clearly stated: “This will lead to a situation not contemplated by the Constitution ... (and hence a) mischief of the Article 7(1) of the Constitution.” Ironically, this was the very argument used by the Court – Upazila was not a designated administrative unit and hence not a local government body under Article 59 – in upholding the government’s decision to abolish the Upazila system.

The Gram Sarkar Act is inconsistent with our Constitution in another way. Article 59 of our Constitution states, “Local government in every administrative unit

of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.” The purpose of such bodies is to “manage local affairs by locally elected persons.” (Kudrat-e-Elahi Panir vs. Bangladesh 44DLR(AD)(1992)) The Constitution nowhere says or otherwise indicates that these local bodies should be subservient to the prevailing administrative structure. In fact, the intention was that these bodies would be autonomous or parallel to the existing bureaucratic setup.

However, by allowing UNOs to nominate the members of Gram Sarkar, the Law would institutionalise the supremacy of the bureaucracy over local government. This is clearly contrary to the constitutional commitment of autonomous local government bodies. Such supremacy, it goes without saying, will allow the bureaucracy to cause, under political pressure, all kinds of mischief. Stories of such mischief abound in case of UPs where a similar subservient relationship was created by law in violation of the Constitution.

In addition, the Law gives the Deputy Commissioner the authority to dismiss the Gram Sarkar, again making it an entity subservient to the bureaucracy. Thus, the proposed GS would perpetuate, in violation of Article 59 of our Constitution, the unequal relationship between the government officials and the elected local representatives that already now exists in our country.

The 1992 judgement of the Full Court Bench of the Bangladesh Supreme Court was rather explicit about the illegality of involvement of the bureaucracy in the affairs of local bodies. The judgement clearly stated: “If Government’s officers or their henchmen are brought to run the local bodies, there is no sense in retaining them as Local Government Bodies.” This is an unequivocal position taken by the Bangladesh Supreme Court, the guardian of our Constitution, against the role of the government officers and their designated persons (termed as henchmen) in local bodies.

#### Institutionalisation of Cadre-Based Politics

One of the sad developments in Bangladesh over the past couple of decades is the dominance of hooligans and unsavory characters – come to be known as cadres – in our national life. Unfortunately our political system breeds such cadres. The mass entry of the rich and the owners of black money in our politics provided the much-needed lifeblood for such cadres. Government programmes and services are now in most cases used as patronage for supporting them. In the last few years, we have institutionalised the cadre-based politics, with ominous consequences, by spreading it to the grassroots.

In Bangladesh, we traditionally have had a dual administrative system – the dominant bureaucratic structure and the feeble local government structure. The involvement of the Members of Parliament (MP) in the local development activities in recent years has introduced a new element – the so-called “MP government” in our system of governance. The “MP government,” composed of party functionaries and cadres, in most areas of the country now implement all local infrastructure projects and distribute relief goods. Although UP chairmen and members are required by government circulars to be the chairpersons of the project committees and are legally responsible for the proper implementation of these projects, in most cases they are now mere bystanders. Thus, much of the development and humanitarian programmes at the grassroots are now used as patronage, with almost no questions asked, to provide sustenance to cadres.

It should be noted that the present patronage system is run informally without any legal sanction. However, the situation will change with the implementation of the Gram Sarkar, as it is likely to absorb in it all party functionaries and cadres, who are now part of the “MP government.” This will give the hoodlums a legal cover to continue to do with totally impunity what they have already been doing: bypassing the UP body. This will also largely reduce the importance of chairmen in UP bodies. Thus the Gram Sarkar, if implemented, is likely to turn the only surviving local government body, the UP, into a totally irrelevant institution and also further spread corruption.

The proposed Gram Sarkar will also encourage violence and destroy social harmony in rural areas. As the Gram Sarkar will be used for patronage distribution, it will attract all village thugs to the ruling party like honey attracts bees, institutionalising cadre-based politics at the grassroots. Since the spoils to be had are limited, violent confrontations may develop among these unscrupulous characters. This is not a very desirable scenario.

Another related issue. The local government institutions can provide a fertile ground for democratic practices, providing a strong foundation for our democratic polity at the national level. However, by relying on a system of nomination, the proposed Gram Sarkar will be counterproductive to our goal of creating a vibrant system of grassroots democracy. It may also further divisiveness in our society.

#### Exclusion of Women

There is another serious argument against the concept of Gram Sarkar, as is presently laid out. It is unlikely to enhance or strengthen women’s leadership role at the grassroots. Rather it would be discriminatory to them, in violation of the equal rights protection guaranteed under the Constitution.

The present reservation system clearly “excludes” women from the mainstream UP activities. This is an inherent weakness of the system now in place. Designating women members as advisors to GS bodies would not solve this problem of “exclusion.” As advisors, women would continue to be “outsiders” with little or no authority and responsibility other than to give advice, if and when sought. Advice, by definition, does not carry any weight of authority and hence not mandatory unless the advisor is a power elite. Thus, the creation of Gram Sarkar would perpetuate women’s peripheral role in our local government system and would be contrary to the goal of empowering half of our total population.

#### Concluding Remarks

The proposed Gram Sarkar was perhaps a great idea at a different time period. However, in our present context it is a self-defeating idea and is likely to do more harm than good. It may make our present UP body a totally irrelevant institution and also destabilise social harmony and spread corruption. This is not good news for those who think that the UPs could be the hub of socioeconomic resurgence of our society starting from villages and creating a strong foundation from the grassroots for our democratic structure. Furthermore, the GS would make little contribution, if any, to empowering women’s leadership at the grassroots.

There are also serious constitutional issues underlying the initiative. By calling the Gram Sarkar a supporting organisation of the UP, the government may have met the requirements of the letter of the law for avoiding the designation of GS as a new tier of local government, but it violated the spirit of the law with respect to creating

elected local bodies. In doing so, it also acted contrary to the “original intent,” which is a well established legal doctrine. Given these, we respectfully request the government to reconsider its decision to implement the proposed Gram Sarkar.

New Age: June 7, 2003

## Gram sarkar: a problematic initiative

Two years ago, the Government of Bangladesh enacted the The Gram Sarkar Act, 2003. The legislation called for a 15-member non-elected body in each Union Parishad (UP) ward, chaired by the elected member of the respective ward. The women members elected in reserved seats serve as advisors to each of the three Gram Sarkars (GS) in their constituencies. The UNO was empowered to nominate the members of the GS other than the chairperson, unless there was a consensus in the meeting where at least 10 % of the voters of the ward were present to decide on the panel of nominees.

The government went ahead with the implementation of the legislation on August 1, 2003, ignoring the constitutional and other concerns expressed about it by various interest groups. Since President Ziaur Rahman was the originator of the Gram Sarkar concept, the ruling BNP emotionally went ahead with it. In its rush, it even ignored the experiences of President Zia’s Swanirvar Gram Sarkar (SGS) experiment, which were not all that positive. Within a few weeks, about 40,000 GS bodies were formed and the available evidence indicates that the process was quite problematic.

The Constitutionality of Gram Sarkar

The legislation designated Gram Sarkar as a supportive organisation (**সহায়ক সংগঠন**) of the UP in order to avoid its being called a new tier of local government.

This was a clever move to avoid the problem encountered with respect to a similar law enacted during the previous government. In 1997, the Gram Parishad Act was passed by the Parliament to create almost in the same way a non-elected body at the ward level. The Act was challenged before the High Court Division of the Bangladesh Supreme Court on the ground that it violated Article 59 of the Constitution, which calls for local government bodies composed of elected persons in each administrative unit.

The cleverness in calling the GS a supportive organisation of the UP, however, does not make it a constitutionally valid entity. The critical question in this regard is: is the GS a part of the UP or is it a separate entity? Either way, its constitutional validity is questionable at best.

If the GS is to be viewed as an extension or part of the UP – created to provide support to the latter’s activities – then it is a local government body under the Constitution. It must then conform to Article 59 of the Constitution and be represented by persons elected in accordance with law. This means that the members of Gram Sarkar must be elected through a free, fair and credible election process. Such a process will require that elections be via secret ballots, conducted by an impartial

body, namely the Election Commission, and be outside the control and interference of the government and/or the ruling party.

On the other hand, if one argues that the GS is not a part of the UP and should not meet the requirements of Article 59, then it must be a separate entity. In that case, it must be a new local government body outside the Article 59 of the Constitution as it is not designated as an administrative unit under Article 152(1) of the Constitution. In fact, the Act designated Gram Sarkar as a statutory body with all the essential features of a local government body – perpetual existence; a seal; office; budget; oath-taking; ability to acquire, hold and dispose of temporary and permanent properties; and ability to sue and be sued. Thus, the Gram Sarkar must be a distinct local body (a sarkar by designation) managing local affairs at the lowest level. As the old adage goes, something that looks like a duck, quacks like a duck and acts like a duck must be a duck, whatever name it is given.

The difficulty which arises in this context is that there cannot be two classes of local government bodies – one under the Constitution and the other outside it. The Supreme Court, in its Full Court judgement on Kudrat-e-Elahi Panir vs. Bangladesh (44DLR(AD)(1992)) clearly stated: “This will lead to a situation not contemplated by the Constitution ... (and hence a) mischief of the Article 7(1) of the Constitution.” Ironically, this was the very argument used by the Court that a Upazila was not a designated administrative unit and hence not a local government body under Article 59 when the government decided to abolish the Upazila system.

The Gram Sarkar Act is inconsistent with our Constitution in another way. Article 59 of our Constitution states that, “Local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.” The Constitution did not intend local bodies to be subservient or extensions of the prevailing administrative structure. In fact, the constitutional commitment was to make these bodies autonomous and parallel to the existing bureaucratic setup. Our Constitution clearly created a dual structure of governance in our unitary system – it provides for a national government with clear and distinct executive authorities and at the same time a local government system at each administrative unit to “manage local affairs by locally elected persons.” (Kudrat-e-Elahi Panir vs. Bangladesh)

However, by allowing UNOs to nominate the members of GS, the legislation institutionalises the supremacy of the bureaucracy over local government. This is clearly contrary to the constitutional commitment of autonomous local government bodies. Such supremacy, it goes without saying, will allow the bureaucracy to exert political pressure and create all kinds of mischief. Stories of such mischief abound in the case of UPs where a similar subservient relationship was created by law in violation of the Constitution.

In addition, the legislation gives the Deputy Commissioner the authority to dismiss the Gram Sarkar, again making it an entity subservient to the bureaucracy. Thus, the proposed GS would perpetuate, in violation of the Article 59 of our Constitution, the unequal relationship between government officials and elected local representatives that already exists in our country.

The 1992 judgement of the Full Court Bench of the Bangladesh Supreme Court was rather explicit about the illegality of involvement of the bureaucracy in the affairs

of local bodies. The judgement clearly stated: “If Government’s officers or their henchmen are brought to run the local bodies, there is no sense in retaining them as Local Government Bodies.” This is an unequivocal position taken by the Bangladesh Supreme Court, the guardian of our Constitution, against the role of government officers and their designated persons (termed as henchmen) in local bodies. Thus, the Gram Sarkar Act may even be a “colourable legislation” in that it sought to indirectly do something that cannot be done directly.

Experiences of the Swanirvar Gram Sarkar

In 1980, President Ziaur Rahman introduced the concept of Gram Sarkar in the majority of the villages of the country. A team of Comilla BARD researchers carried out a study in three villages in three districts – Muzaffarabad, Kalihati and Zirak – to observe the workings of the SGSs. The researchers observed that:

“... in all the villages the participation of the common people in the meetings held for the formation of Gram Sarkar was very poor. It varies from 6 to 11% in these villages. It was further observed that the Government officials, chairman, and Members of Union Parishads (except those who were affiliated to the Ruling political party) were dis-interested in the new organization and they expressed their indifference towards the concept of Swanirvar Gram Sarkar. The people in general were also observed to be unconcerned and dis-interested in the Gram Sarkar ... In most of these cases, it was observed, that the people took it as an institution of a particular party to serve vested interests and they thought that their participation would not have been properly weighted even if they would have attended such meetings for formation of Gram Sarkar. It was observed that in the absence of any defined functional relationship between the Cooperatives, the Union Parishad and the Gram Sarkar, a sense of confusion and misunderstanding was prevailing both among the officials and non-officials. As a result of establishment of Gram Sarkar as a ‘Sarkar’ (Government) the people started thinking whether this new organization would enjoy the authority of complete local government within their villages including the power to levy taxes. A good number of people in these areas were also thinking whether the Union Parishad would become less important or be abolished as a Local Government Institution as a result of the establishment of Gram Sarkar.”

The researchers suggested that “instead of selection of Gram Sarkar by consensus in all the cases, there should also be alternative provision for fair election to avoid soci-political influence and to give the common people a chance to elect their representatives without any fear or influence particularly where such problems arise.” (Md. Manjurul Alam, Md. Hazrat Ali and Bijoy Kumer Barua, “Swanirvar Gram Sarkar in Bangladesh – A Preliminary Observation on Three Villages,” BARD, November 1980.)

The National Institute of Local Government (NILG) published a study in 1994 on the experiences of Swanirvar Gram Sarkar in four villages. The study concluded: “The SGSs made efforts to carry out some assigned functions such as agriculture, pisciculture, mass literacy, cottage industry, development of communication and family planning. They also settled disputes through Salish ... But in practice, the SGSs could not succeed in any of the above activities except settlement of disputes. The reasons were: first, the institution lost people’s support for being constituted on consensus rather than direct election ... growing conflicts among the SGS

functionaries, UP functionaries and the general public ... there were growing conflicts and non-cooperation between the Union Parishad and the SGSs due to overlapping functions...” According to the study, “the members of the general public felt that the SGS would be effective had it been (i) a directly elected body, (ii) filled with good, honest and sincere people ...” (Quazi Afsar Hossain Saqui, Swanirvar Gram Sarkar in Four Villages of Bangladesh, NILG, 1994.)

#### Experiences of Recent Gram Sarkar

The formation of the GS in 2003 caught a lot of media attention. In November 2003, Journalist Ajoy Das Gupta compiled the reports published in 14 national dailies on Gram Sarkar. At about the same time, the Power and Participation Research Center (PPRC), Unnoyan Sammunay and Brotee also conducted a rapid assessment of the process, outcome and perception about the implementation of Gram Sarkars. They all more or less came to the same conclusion that the recent formation of more than 40,000 Gram Sarkar was problematic.

Based on the reports of the formation of 1,150 GSs published in newspapers, Ajoy Das Gupta found that the rules and procedures were not followed in a majority (53%) of the cases and there was no quorum in 60% of the places. Satisfactory and enthusiastic participation was observed in only 3.39% of the cases. The UNOs ignored the rules and procedures in 54.96% cases. The administration was found to be neutral in only 10.87% instances. Evidence of the nomination of opposition party members was found in less than 1% cases.

The study by PPRC and others concluded: “The implementation of gram sarkars came amidst a great deal of controversy. One strand of criticism was that it was mainly as a partisan initiative by the ruling party that would heighten tensions in the rural areas. The other strand of criticism questioned how well mission objectives had been thought out and how well the electorate had prepared for such an initiative. The survey provides useful evidence on how well-founded such apprehensions were ... Apprehensions about partisan dominance by the ruling party was also broadly borne out by the survey. Though in about a quarter of the surveyed cases, the selection process reflected a strong degree of community consensus, the dominant perception of the selection process was as rubber-stamping of lists pre-selected under direct or indirect influence of the ruling party.” The survey, however, found that the fear of widespread violence was not borne out by evidence because of the pre-event informal selection of the panel, low public enthusiasm and the implicit boycott of the major opposition party. The survey also found no clear-cut answers as to the larger acceptability of the GS as a grassroots institution.

Last year, the government allocated block grants of Tk. 20 crores for Gram Sarkars. The current year’s allocation is Tk. 40 crores. Serious questions have already been raised about the honest and effective implementation of projects with these large sums of money. There are also many instances of conflicts between UP bodies and Gram Sarkars.

#### Exclusion of Women

There is another serious criticism of the Gram Sarkar system. It is discriminatory to women in violation of the equal rights protection guaranteed under the Constitution. The present reservation system clearly “excludes” women from mainstream UP activities. This is an inherent weakness of the system now in place. Designating

women members as advisors to GS bodies would not solve this problem of “exclusion.” As advisors, women would continue to be “outsiders” with little or no authority and responsibility other than to give advice, if at all sought. Thus, the creation of Gram Sarkars would perpetuate women’s peripheral role in our local government system and be contrary to the goal of empowering half of our total population.

To conclude, the Gram Sarkar appears to be an ill-conceived idea implemented rather emotionally and in haste. It raises serious constitutional issues and it also largely “excludes” women. The experiences of Swanirvar Gram Sarkar of the early 1980s were not very positive. The recent experiences are also not very pleasant and promising. Thus, it is clear that the Gram Sarkar system serves no useful purposes and does not have much to offer. Rather, it is a parallel institution threatening the very existence of the Union Parishad which is a time-tested 135-year old institution.

*The Daily Star: May 10, 2005*

## Democracy without a support structure is unsustainable

Bangladesh’s democratic system unraveled on January 11, 2007 with the promulgation of a state of emergency and the cancellation of the parliamentary elections that were scheduled to be held on January 22nd. To many observers, this was a shocking development in that it happened 15 years and three general elections after democracy was reestablished in the country through a mass upsurge against the dictatorial Ershad regime.

Many complex factors – such as rampant corruption and the undemocratic behaviour of politicians – are responsible for the events leading to that fateful day on January 11<sup>th</sup> and they ought to be thoroughly analysed and clearly understood. However, another factor behind the collapse of the system appears to be that it lacked the necessary support structure for the democratic edifice created at the national level.

In the physical universe, for any structure to remain standing a support system – a set of pillars – is required. Without such pillars it cannot hang in the air. Similarly, a democratic edifice put in place through national elections cannot dangle in a vacuum – it needs a support structure. It needs a foundation from the bottom up. That is what appears to have been missing in Bangladesh’s experiment with democracy, making it unsustainable.

The democratic structure that was ushered in Bangladesh in 1990 consisted primarily of a parliament elected through fairly free and fair elections and a cabinet – the executive branch – formed by the majority party. Underneath was an elected Union Parishad, around a hundred Paurashavas and one city corporation. In between the elected local bodies and the elected national government existed a big vacuum due to the absence of elected Zila and Upazila Parishads.

Experience worldwide is that democracy only at the top is not sustainable. You cannot hang a democracy between layers of autocracy. It must have a solid foundation. If the culture, values and practices of democracy are to be established, democracy must start with the people – at the people’s doorstep – and go all the way

to the top. Elected structures must be created from the grassroots all the way to the national level.

In the vacuum caused by the absence of any democratic structure, bureaucrats operated at the District and Upazila levels with no democratic accountability – accountability to elected representatives. This caused representative democracy to lose its representative character and much of its true meaning. In fact, with no elected bodies at the Zila and Upazila levels, the representative democracy became largely a sham.

Without elected bodies at the Zilas and Upazilas, the governance at those two levels lost much of their vitality and vibrancy. This is reflected in the District Administration's gradually becoming less and less important and the Upazila Administration growing largely dysfunctional. The breakdown of the Upazila administration is evidenced by the fact that most of the government functionaries, except the UNOs, now do not even reside at their place of posting. This is primarily because of the collapse of the accountability structure.

As in nature, no vacuum remains unfilled. The vacuum caused by the absence of elected representatives at the Zila and Upazila levels were filled by power brokers linking the people at the grassroots with the Ministries and Directorates in Dhaka. The elected Members of Parliament (MPs) from the ruling party became the most prominent of these power brokers, creating a sort of “MP sarkar” or “MP raj”. In those Zilas and Upazilas where the MPs were from the opposition camp, the ruling party bosses played this ever-powerful role of power brokers.

These power brokers were obviously not accountable to anyone. There was also no countervailing power. The unfortunate consequence of this arrangement with no accountability and countervailing forces was that power brokers used their influence to enrich themselves as well as dispense patronage to their cronies. More seriously, these powerful power brokers and their cronies, with the blessings of their party brass, not only indulged in rampant corruption, they also undermined the unelected, bureaucratic Administration at Zila and Upazila levels and were largely responsible for making these two layers of administration gradually less important. The emergence of the “MP raj” thus clearly resulted in a serious breakdown in the age-old administrative structure.

The absence of elected Zila and Upazila Parishad also weakened other local government bodies, especially the Union Parishads. In fact, the power brokers, particularly the ruling party MPs took over the UPs, making them largely ineffective. This further impaired the system of local governance, preventing institutionalisation of democracy in our country.

A serious consequence of the lack of elected structures in the middle was further centralisation of power and authority. Instead of bringing governmental services closer to the doorsteps of the people under the leadership of elected local bodies, the decision points for the simplest of services became more concentrated in the hands of bureaucrats located in the distant capital city. The decisions that were once taken close to where people lived were transferred to nameless, faceless functionaries located far away.

Many horror stories about the mindless centralization and its consequences abound. For example, you even need permission from the Director General's office

for the simple task of placing advertisements for hiring secondary school teachers for which you already have sanctioned positions. This is a clear breakdown of the system, leading to unnecessary harassment of citizens and rampant rent seeking activities by functionaries. Again, this unreasonable and unnecessary centralisation happened in the absence of elected local bodies in the middle layers to guard against it. In fact, had there been democratic structure in those layers, there would be democratic decentralisation rather than centralisation. There would also be devolution of resources, making more resources directly available to the people through self-governing local bodies. Studies show that the closer power and resources are to the people, the more benefits people derive from them.

Increasing centralisation clearly caused a disconnection between the citizens at the grassroots and the government at the distant centre. Consequently, citizens became alienated and increasingly lost faith in the government. Many now feel that government is not for them and they have no ownership right in the state. To many ordinary citizens, government has become “of the power brokers, by the power brokers and for the power brokers” and it cares little for them. Such loss of public confidence clearly made the existing democratic system unsustainable. The collapse of the democratic edifice is the end result of such un-sustainability.

Given this, if we are now to put our derailed democracy back on track, we must, among others things, urgently initiate the important task of democratic decentralisation using local government as the instrument. With that end in mind, we must immediately overhaul the existing statues of local government to make them reflect the words and spirit of self-government as laid out in our Constitution. We must then embark on holding all local body elections. This only will help provide the necessary foundation for a democratic polity in the country. It may be noted that the Appellate Division of the Bangladesh Supreme Court, in its unanimous judgment, in the famous Kudrat-E-Elahi Panir vs Bangladesh directed the government in 1992 to hold elections of all local body elections in six months, which was defied by successive political governments for the last 15 years.

*The Daily Star: July 8, 2007*

## CHAPTER TWO: POLITICAL REFORMS

### Consequences of renegeing on the commitments of 1990

Nearly 16 years ago, on 27 February 1991, democracy was reintroduced in this country by means of free and fair elections. This was the result of a people’s movement under the leadership of an Alliance composed of 15-7-5 political parties. The movement involved people from all segments of the society, including students, teachers and professionals. The Alliance included almost all major parties excepting the Jatiya Party and Jamaat-e-Islami.

At that time it was hoped that the democratically elected government would practice democratic norms and institutionalise democracy in the country. A unified agenda was announced on the part of the Alliance for this purpose. Unfortunately the three successive governments not only failed to implement the agenda, they indulged in many disgraceful activities which were contrary to it. Consequently our democratic system fell apart, the result of which was the imposition of the state of emergency and the cancellation of the election scheduled to be held last January 22nd.

The Alliance's agenda is a historic document. But many citizens are not aware of its contents and most politicians would want the public to forget it. Nevertheless, since we are trying to reintroduce democracy once again, it will be instructive for us to review the agenda and the track record of the Alliance members in implementing it.

The Alliance's agenda, circulated on 29 November 1990, contained ten items under four categories. They include:

"1. In order to introduce true democracy and a democratic system of administration in line with the spirit of independence and the liberation war by freeing the country from the shackles of the autocratic Ershad and his regime which is characterised by murder, coup d'etat, deceit and conspiracy (we resolve that): (a) Keeping the constitutional process continuing, ... Ershad and his government must be compelled to resign and a non-partisan neutral person appointed as the Vice President. The government and the Parliament must be dissolved and the President must resign and hand over power to the Vice President. (b) An interim caretaker government must be set up under the leadership of the Vice President in-charge whose responsibility will be to hold free and fair elections for a sovereign Parliament within three months.

2. (a) The head of the caretaker government must be non-partisan and neutral; that is he/she must not be a follower of, or involved with, any political party ... (b) The interim government shall only perform regular daily administrative work, reconstitute the Election Commission and reassign the activities of the Commission in order to ensure free and fair elections. (c) Confidence must be built and guarantees must be made so that the voters can exercise their franchise freely and without influence. (d) In order to guarantee their full neutrality, the independence and autonomy of all public media, including the radio and television, shall be ensured so that unhindered publicity for all parties can be assured.

3. The interim caretaker government shall transfer power to a sovereign Parliament elected through free and fair elections and the government shall be compelled to be accountable to the Parliament.

4. (a) Recognizing the sovereignty of the people, the integrity of the constitutional system shall be upheld and continued, and any unconstitutional effort to capture power shall be resisted. Elected governments must not be removed by any unconstitutional and extra constitutional means or using any other excuse except through elections. (b) People's fundamental rights shall be guaranteed, and independence and neutrality of the judiciary and rule of law be ensured. (c) All laws contrary to fundamental rights shall be annulled."

The Alliance's agenda may be broadly categorised into two groups. The first category relates to a set of demands and the second to a set of commitments.

The first demand relates to the issue of transferring power to an interim caretaker government. The demand included confining the caretaker government to routine

administrative tasks and to reconstituting the Election Commission and making the Commission effective to ensure free and fair elections. Independence and autonomy of the state media were also demanded in order to give all political parties access to them.

The commitment of the Alliance included the creation of a sovereign Parliament and ensuring the accountability of the executives to it. The Alliance also committed to ensuring that the rule of law and the independence of the judiciary. Thus, the Alliance committed to a system of checks and balances by instituting the principles of separation powers.

Furthermore, the Alliance committed to the repealing of all laws which violated fundamental rights. Most importantly, the Alliance's commitment included renouncing the idea of removing any elected government through unconstitutional or extra constitutional means or through any excuse other than elections. Undoubtedly, these were very bold and wise commitments made to safeguard public interests.

It is well known that in the face of the mass upsurge, the autocratic Ershad government resigned and a neutral caretaker government was established in early December of 1990. The interim caretaker government, headed by Justice Shahabuddin Ahmed, handed over power to a new government constituted by means of free and fair elections. The interim government also reconstituted the Election Commission and gave the political parties access to the government media, although there was no time to make the media autonomous.

It is clear that the Ershad regime acceded to the demands of the Alliance and resigned. The interim government also kept its word. But did subsequent elected governments keep their commitments?

Experiences of the past 16 years sadly show that the political parties did not keep their commitments; rather they did just the opposite. For example, the continuous boycott of the Parliaments, partisan behaviour of the Speakers and the ineffectiveness of the Standing Committees made all successive Parliaments ineffective. Instead of making the administration accountable to them, the Parliaments themselves were made subservient to the "imperial" Premiers. As a result, although we have been able to create a system of election-centred "one-day-democracy" with great fanfare, true democracy was not established in the country. In fact, we are now the victims of the unscrupulous behaviour of the political parties in the name of democracy.

The Parliament, as an institution, could not even ensure the honesty, transparency and accountability of its members, let alone the government. Consequently, politics has become a profitable business and the Parliament has become a safe haven for the corrupt, hooligans and owners of black money. This made the Parliament itself the source of most of our problems rather than the centre for settling all national issues. The disclosures over the past few months by the arrested politicians clearly confirm this.

The fundamental rights of the people were also seriously undermined by successive governments. Not only were the laws violating fundamental rights kept in place, new such laws were enacted to impede such rights. The political governments also played naked games rather than fulfilling their commitment to a separate judiciary. Instead of the rule of law, the rule of whims of a few was established, which in essence led increasingly to dynastic and plunderous rule by the Prime Minister and

her family. The mindless competition for pillage thus divided a once united people into two warring camps.

It must be noted that there was nothing in the Alliance's unified agenda about hooliganism, black money, nomination trade, fundamentalism and corruption, because apart from corruption, they were not the burning issues then. In fact, these problems were the "gifts" of successive democratically elected governments over the past 16 years. Moreover, it was hoped that the elected governments, once in power, would be able to solve all the challenges that the country faced.

One of the main commitments of the Alliance was to shun unconstitutional and extra-constitutional means or the use of any excuse to remove democratically elected governments. However, undemocratic activities like the continuous boycott of Parliament, forced hartal and siege etc. were egregious violations of this commitment. In addition, by grafting the caretaker system into our Constitution, the political governments have institutionalised this undemocratic system instead of keeping it as a temporary measure, which ultimately led to serious political instability in the country. Clearly, the caretaker system is not the solution for our dysfunctional and criminalised democratic system. Rather it was instituted to sweep those problems under the rug which did not make them go away.

It is clear that the 15-7-5 political parties belonging to the Alliance did not uphold their promises to create a truly representative democracy based on the consent of the people. Rather they almost destroyed important democratic institutions like the Election Commission, Public Service Commission, Anti-Corruption Commission, Supreme Court, bureaucracy etc., through their reckless partisan behaviour. Such recklessness caused our democratic system to melt down, shaking the very foundation of the state. To remedy this, we must now refocus on the commitments made by the Alliance in 1990 while doggedly pursuing the goal of free and fair elections. This will require cleaning up the mess created by the political governments over the years and keeping, through necessary reforms, the ruffians out of the electoral process. This will further require reconstituting the vital democratic institutions and making them effective. We must also, through compulsory registration, bring the political parties under a legal cover and statutory restrictions, which is not the control of the Election Commission.

We hope that the political parties will seriously examine the consequences of their renegeing on the commitments of 1990. We further hope that in the greater national interests, and the interest of reintroducing democracy they will voluntarily come forward for initiating reforms on their own. Otherwise democracy will once again turn into a meaningless slogan, and more seriously, an instrument for meeting the selfish ends of criminalised political operatives via deception of the masses.

*The Daily Star, Forum, December, 2007*

## Needed: Honest intentions and bold reforms

The day of August 21<sup>st</sup> will live in infamy. The heinous incident of that day was not only a shameless attack on the Awami League as a political party and on the life of

Sheikh Hasina as the leader of the opposition, it was also an attack on our nation and the ideals for which it stands.

The core values of our nation – as enshrined in our Constitution – include equality, equity, secularism, human rights and liberal democracy with tolerance for all views and beliefs. It is clear that some hideous evil force is out to destroy these values. This evil force is undoubtedly the enemy of our nation and it has clearly pushed us into a future of more serious political confrontation and uncertainty. The urgent task before us therefore is to identify and provide exemplary punishment to the culprits, and also to take effective measures to prevent such cowardly incidents in the future.

In order to identify and take drastic action against the culprits, we obviously need an independent and thorough investigation involving neutral experts from home and abroad. At the same time we must hold those to account whose incompetence and failings allowed such an unbelievable incident to happen in broad daylight and the perpetrators to flee safely without being caught. We must also publish the inquiry reports of all the bomb blasts, arm catches and other violent acts of the past, and relentlessly pursue those identified to be responsible.

As for preventing the recurrence of such dastardly act, we most need the honest intentions and ironclad commitments of our leaders, and also bold reform initiatives to transform our present confrontational and criminalised political culture. For it is our sick political culture that allowed the sinister forces to perpetrate their violent acts time and again and remain behind the scenes, which clearly made them increasingly more daring. It is highly likely that the carnage of August 21 was inevitable and represents yet another violent act, although more heinous, of the same group. Had our two major political parties not engage in a blame game and confrontation, and worked together in the past to identify and uproot the evil force, we could perhaps nip it in the bud.

Along with political reforms, we also need serious economic reforms to give a better deal to the poor of the country, who have been unfairly and systematically deprived of what was due them. By contrast, the vested interest groups have become increasingly richer over the years through unfair and dishonest means. According to published Government statistics, the share of the national income of the richest 5% of families increased from 18.85% in 1991-92 to 23.62% in 1995-96 and then to 30.66% in 2000. On the contrary, the share of the poorest 5% families declined from 1.03% to 0.88% to 0.67% during the same period. The discrimination and deprivation of the poor have unfortunately grown worse during the democratic rules of the past decade and still continuing unabated. As a result, we have managed to create two Bangladeshes – one for the rich and the other for the poor – in the same land and under the same flag. This growing disparity is a serious threat to the stability of our nation and it must be redressed urgently.

In our present sick and feudalistic political culture, self-serving, corrupt, irresponsible, extremist, immature and most of all incompetent people can and do get elected. To stay in power after election, they often engage in illegal and repressive measures. They frequently violate their oath of office and the Constitution. Use black money and muscle. Practice naked nepotism and compromise the integrity of vital institutions. Engage in graft and corruption. Most of all, give patronage to hooliganism and violence. Today politics in our country has become a “business” and clearly

hostage to money and muscle. Our political process in essence created a Frankenstein, which is threatening our very existence as a nation. To overcome this dire condition, we urgently need major, big-bang type reforms – reforms that might give birth to a new political culture, based on honesty, tolerance, fair play, and most of all a sense of public service.

In a seminar organised by the World Bank in 2003, its departing Country Director Fred Temple argued: “On concluding my remarks today I would like to focus on ... sets of reforms that might be called ‘deep reforms’... First, reforms of the election system and political parties. The political system is being increasingly commercialized by the way the election system works. Candidates spend huge amounts of money to get elected, and if they win, many use their offices to recoup their investments, with profit. The election system generates the demand for bribes. Candidates from the major political parties violate the campaign spending limitation, and when the winners become MPs, one of their first acts is to lie, by certifying they didn’t exceed the campaign expenditure limit. One motive for running is to gain the protection that being an MP provides from being prosecuted, especially for loan default. The party organizations are not very democratic, and the party inner circles decide who will run. The lack of democracy inhibits the emergence of new leaders ... Second, law and order must be improved, especially by breaking the nexus among some politicians, the police and criminals.”

In our country we have come to practice what may be called “one-day democracy” – the election-day democracy, through which politicians take “lease” of the governmental machinery for five years to loot, plunder and practically do as they wish. In such an environment, the primary goal of politics is to get power by hook or by crook and to serve one’s own interest rather than public interest. The prevailing violence, corruption, property grabbing, nepotism, hooliganism, toll collection and influence of black money – that is, the criminalisation – are the inevitable outcome of such leaseholder mentality of our political bosses.

The election in our country has in essence turned into a farce. In elections we often, under the influence of money and muscle, elect people about whom we know very little. Candidates in elections are not at all obligated to give us any information about them. We also do not have any right to seek information about their background and future plans, even though we have the right to know the names of the ingredients in a bottle of water we purchase. As a result, many criminals, due to their money and muscle power, get elected to national offices and become the master of our future. We as a nation have thus become trapped in a vicious cycle of criminalised politics, which earned us the reputation of being the “filthiest” nation in the world. We must urgently try to break this vicious cycle.

Democracy involves governance with the consent of the people. True consent requires information. Getting votes with undue influence and hiding information about the candidate’s present and past antecedents does not constitute valid consent and cannot be called democracy.

In the present critical juncture of our nation, we need bold political reforms – reforms that would not be limited to timid, incremental steps, but rather would involve giant leaps. We need reforms that encourage honest, dedicated and competent people to contest and win elections, and discourage criminal elements from doing so. More

specifically, the reform agenda should include: (1) providing full administrative and financial autonomy to the Election Commission; (2) issuing voter IDs cards and correcting voter rolls; (3) requiring the registration of political parties based on specific performance criteria such as holding regular elections of their leaders, submission of annual audit reports etc.; and (4) mandating the submission with the nomination paper of an affidavit containing information on the candidate's income and expenditures, assets and liabilities, past criminal records etc. With such reforms not only the honest people will have a chance to get elected, it will also pave the way for ushering in a new political culture in our country and may help redress the widespread governance failures.

It must be noted that knowing about the candidate and his/her past is a fundamental right of voters. Article 39(2)(a) of our Constitution guarantees "the right of every citizen to freedom of speech and expression." According to experts, getting information about the candidate is part of the fundamental right of expression because the voter expresses his/her right through voting.

In conclusion, we commend the Prime Minister for proposing to meet with the leader of the opposition. Such dialogues to discuss important issues are necessary to create a new political culture in our country. We hope that the leader of the opposition will agree to it. In the present critical situation, we feel that representatives of other political parties and some distinguished citizens should also be included in the discussions. However, the proposed dialogue should not be merely to exchange pleasantries and it must not also be a meaningless political stunt. It should be arranged to build consensus for political and economic reforms to combat violence, toll collection, extremism, corruption and deprivations of the common people. Then only we can expect to see a transformation in our political culture and perhaps thwart the evil designs of the hideous force at work. If the politicians do not learn the lesson, the violence will destroy them, and in the process destroy our nation. For, when you fight fire with fire, you end of with ashes.

*The Daily Star*: September 16, 2004

## Political reforms: which way?

The next parliamentary election is less than two years away. However, election winds appear to be hitting our sail already. Our Honourable Prime Minister, in her recent public meetings, has begun to ask for votes. Other political parties seem to be warming up for it. Newspapers have also started to highlight election related issues. For example, *The Daily Star* has recently focused its entire anniversary supplement on electoral issues.

Elections are important in that they help choose leaders in a methodical and orderly way – as opposed to through chaotic or violent competitions. Elections are in essence filters for picking the good and discarding the bad. If elections fail to differentiate between the honest and the dishonest, the competent and the incompetent, and those committed to people's welfare and those committed to self-interest, they

carry little meaning and significance. In fact, such elections can cause more harm than good.

Bangladesh's experiences of the past decade provide ample evidence of how elections can generate undesirable consequences. During our so-called democratic experiment, the income disparity has greatly widened and the common people have increasingly been deprived while the rich have gotten richer and received more and more privileges. We became singled out as the filthiest nation in the world four times in a row. Our political process has become totally criminalised. Toll collection, hooliganism, violence, political killing, flaunting of black money, land grabbing, trampling of citizens' rights have now become all-pervasive in our country.

These evil consequences are the results of our inability to elect honest, competent and committed individuals to high offices. We have been seduced by our leaders to vote for party symbols, rather than quality candidates or party programmes, and we are now reaping the bitter harvest. We have been asked to elect "lamp posts;" we complied and have gotten what we deserved.

Our political bosses have convinced us to believe that elections and democracy are synonymous – in order to institutionalise democracy we just need to hold periodic elections. Thus, we have been practicing "one-day – election-day – democracy" in our country. However, an election-only democracy usually degenerates into "leaseocracy" setting in motion a tendency toward kleptomania. Uncontrolled looting and plundering then follow. Our democracy has in essence given the elected leaders and – through a patronage system – their cronies the license to steal with impunity. This obviously creates an incentive for an all out competition among political parties to attain power at any cost. They thus employ all conceivable means to get elected – they resort to violence, use black money, occupy polling booths and attempt to manipulate the polling process. These actions clearly thwart the democratic process.

Democracy is a system of government in which people govern themselves, either directly or through their elected representatives. Democracy is not just about elections. Elections are mere procedures – democratic procedures. However, democratic procedures, such as free and fair elections, are distinctly different from democratic principles, such as self-government and good governance. Democratic procedures are useful to the extent that they promote democratic principles. Thus, elections are necessary, but not sufficient conditions for a democratic system. In fact, the election-only democracy, as our experience shows, can really create "Frankensteins," which can irreparably ruin the future of their creators.

It is clear that the criminalization of our election-centred politics, engendered by the influence of black money and muscle, now poses the biggest challenge to our nascent democracy. In order to overcome this problem, we need institutional as well as systemic reforms and changes. For such reforms we specifically propose, among other things, to: (a) make the Election Commission truly independent and transparent; (b) provide for registration/deregistration of political parties; (c) ensure the accuracy of electoral rolls; (d) outlaw exorbitant election expenses and make its accounting transparent; (e) expedite the disposal of election disputes; and (f) empower voters with information regarding the antecedents of candidates running for office.

The independence of the Election Commission may be assured by treating all its expenditures as charged, allowing it to have an independent secretariat, nominating

honest, competent and courageous individuals to the EC, providing them with the necessary constitutional protection, and vesting in the EC the rule-making authority for election related laws. The activities of the EC must also be made transparent to avoid allegations of wrongdoing. The issue of nominating good, honest and competent people to the EC is particularly relevant at this time in that the terms of the CEC and one other EC member will expire in a few months. The terms of other members will also expire before the next general election.

Registration of political parties with the EC is a contentious issue in that our major political parties are not in favour of it. Thoughtful observers are, however, insistent on it. Requirements for registration of political parties would include democratisation of their party hierarchies, transparency in their raising and spending of funds, their membership receiving a voice in the nomination process, and restrictions on the nomination of certain types of candidates to ensure a level playing field. Arguments against registration of political parties lack justification in that all formal endeavours, including the setting up of a business, require registration with some authority. In neighboring India, for example, it is mandatory by law for political parties to register with the EC.

Maintaining the accuracy of electoral rolls would require an easing of the registration process, continuous updating of the electoral rolls, providing for an appellate authority, and the issuance of voter IDs.

To eliminate the influence of black money in elections and in the political process, candidates must submit accurate reports of their election expenses and those reports must be available for public scrutiny. They must also periodically submit statements of personal income, assets and liabilities and financial statements of members of their immediate families. These reports and statements must be audited by competent experts and appropriate actions must be taken for submitting false and misleading information. Loopholes allowing loan defaulters to run in elections must also be eliminated.

It may be pointed out under section 44 of the Representation of People Order 1972, candidates running for parliament are now required to file forms 17A, B and C to account for: (a) the probable amount and the sources of their election expenses; (b) the amount and types of their assets, nature of their liabilities, and their amount of annual income and expenditures; and (c) their actual election expense details, including listings of payments, unpaid claims, amounts received in various forms by election agents. According to available information, of the 1939 total candidates contesting the 8<sup>th</sup> parliamentary elections, 1587 filed form 17A and B, and 1473 filed form 17C. Thus, all candidates in the 2001 parliamentary elections did not even comply with the reporting requirements under the existing statutes. Yet cases were reported to have been filed against only 40 defaulters, and nothing was done against the rest although the law clearly provides for specific penalties. Without swift and severe retribution for violations of law and codes of conduct, violations are usually encouraged.

The resolution of election related disputes is generally so time consuming that justice is not often carried out, and justice delayed is justice denied. Thus expeditious and timely resolution of election disputes must be ensured to make the election process fair.

Even when we buy a bottle of water, the bottler is required to provide ‘accurate’ information regarding the ingredients of its product so that buyers can make informed decisions. The bottler may be prosecuted for providing misleading information. However, citizens do not have a right to know anything about the background and antecedents of candidates running for office to help make an informed choice. The decision about buying a bottle of water is a trivial one, while the effects of voter selection of leaders can hardly be over-estimated. In order to remedy this void, individuals contesting elections must be required to submit affidavits with their nomination papers disclosing their criminal records, their own and their immediate family members’ income, sources of income, assets and liabilities. Those affidavits must be posted on the EC website, as is done in India. The affidavits must be scrutinised and those filing false and misleading affidavits must lose their seats if elected. Candidates with criminal background and records of corrupt practices must also be made ineligible to run for office.

Disclosures of information relating to financial and criminal backgrounds are very important in that democracy is as sound as the people running for and holding offices. However, the people are as good as their backgrounds. Only good and honest people are likely to make sincere and conscientious efforts to play the political games according to the rules and make the system work. Dishonest politicians are not only apt to break the rules and undermine the system, they are also likely to try to change the rules in the middle of the game, if the game does not go their way. This is what is happening in the case of our non-party caretaker system. With honest politicians and an independent Election Commission, we will not need the caretaker system.

To conclude, in order to remedy the harms already caused by our system of election-only democracy, we need some deep and far-reaching political reforms. We need to clean up the procedures to make the elections free and open as well as embrace the core democratic principles to make the system work for the benefit of the people. We also need to elect honest and competent people to run the affairs of the nation. Only then can we expect to have a truly democratic system of government. A truly democratic system is attractive in that it can foster good and people-oriented governance.

We have put forward these proposals in order to foment a serious dialogue on and develop an agenda for political reforms in Bangladesh. We invite everyone to participate in this dialogue and contribute ideas for reforms.

*The Daily Star*: February 4, 2005

## Electoral reform: limitations of the current discourse

It is gratifying to see that the newspapers now regularly carry headlines on electoral reform. Almost everyday, since the first public discourse on the subject was kicked off last September jointly by *The Daily Star* and SHUJAN, a citizens’ initiative for good governance, one group or another holds another discussion on issues relating to electoral reform. *The Daily Star* later devoted its entire anniversary issue (January 14, 2005) to the continuation of the public dialogue. It is fortunate that the subject of

electoral reform has caught the people's imagination and it is now on the minds of the nation's thoughtful citizens.

#### The Current Discourse

Public discourse on electoral reform, as reported in the media, is primarily focused on two aspects: (1) the reforming of the Non-Party Caretaker Government, and (2) the strengthening of the Election Commission (EC). The opposition parties and their allies in the intellectual community are clamouring for a redesign of the Caretaker system in order to ensure free, fair and impartial elections, while the ruling coalition dismisses the idea outright. Many non-partisan thoughtful citizens appear to feel that the Caretaker system, by reflecting a total lack of trust and confidence of major political parties in one another, seriously undermines the political process itself and thus prevents the institutionalisation of democracy in our country. These citizens are, in essence, in favor of doing away with the system altogether as it offers no permanent solution for our criminalised political system.

There, however, seems to be a unanimity regarding the need for a strong and independent Election Commission, although many are frustrated that the EC does not even exercise the power and authority it already enjoys under the existing statutes. For example, the EC has totally failed to enforce the limits on election expenses; to take action against those who exceeded the limit or who failed to file required expense reports at all; to make the electoral roll reliable; to issue voter identification cards; and to take firm action against prominent violators of election rules and manipulators of election results. Nevertheless, most conscientious citizens, irrespective of party affiliations, now feel that EC must have an independent secretariat and financial independence. Many also feel that the EC must be empowered to make rules under all election-related statutes and hold local body elections. Some are also demanding transparency in the EC's decision-making process.

#### Limitations of the Current Discourse

While the discourse on electoral reform has become a popular one, involving many of our thoughtful citizens, it appears to still be too limited in focus and content. Reforms are obviously intended to make elections acceptable and useful. Election results are acceptable if the process is free, fair and impartial, and if they reflect the unhindered and informed opinions of the citizenry. They are useful if elections, as the democratic procedure, provide opportunities for honest, competent and dedicated individuals—individuals dedicated to the people's welfare—to get elected.

In our context, four interested parties are directly involved in the electoral process. They include (1) the Non-Party Caretaker Government and (2) the EC from the official side, and (3) political parties and (4) their candidates from the non-government side. Each of these four plays an important role in making elections acceptable and useful. Nevertheless, the current discourse is focused only on one side: the official side of the electoral equation, namely the Caretaker Government and the Election Commission. It totally ignores the necessity of reform on the other side, the non-official side of the equation, which includes political parties and election candidates.

The roles that each of these interested parties play in the election process, while equally vital, are quite different and, at times, conflicting. For example, the role of the Caretaker system, as per our Constitution, is to "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” (Article 58D(2)). Clearly, it is not the responsibility of the Caretaker Government to hold elections, and it also must not also have any direct role in elections. Rather, its role is to create an enabling environment so that the EC can fulfill its task of holding parliamentary elections.

The Election Commission, and not the Caretaker Government, is clearly the body empowered by our Constitution to hold all national elections. In fact, it was created as a constitutional entity solely for this purpose (Article 119). Thus, in order to hold free and fair elections, it is imperative that the Election Commission be strengthened by giving it the constitutionally-mandated autonomy and the necessary resources to function independently. It is also important that the EC is manned by competent and respected individuals so that it can courageously and effectively perform its constitutional responsibilities, and fend off any interference in its activities by outsiders.

On the other side of the electoral equation are political parties and candidates, and their roles are equally important in ensuring the smooth functioning of the electoral process. Unless these two interested parties play positive and helpful roles, it will be almost impossible to make elections credible. For example, if political parties field dishonest individuals or criminals as candidates or “sell” nominations to owners of black money, while ignoring dedicated party functionaries, or otherwise try to systematically cheat in elections, it will be impossible for the EC to make elections free and fair. Similarly, if candidates in an election, numbering thousands, are determined to indulge in illegal activities (i.e. occupying polling booths, stuffing ballot boxes, casting false votes, bribing election officials or otherwise undermining the system), the election is likely to be tainted. Thus, if the political parties and the candidates they nominate do not practice democratic principles in their actions and behaviour, even the most neutral Caretaker Government and most independent Election Commission would be unable to ensure the integrity of the electoral process. Political parties and candidates they nominate are, therefore, equally responsible for maintaining the credibility of elections, and they must bear the blame for problems originating from their dishonest actions and lack of democratic norms.

#### Need to Focus on Political Parties and Candidates

It must be noted, however, that the overriding goal of political parties and their candidates is to win electoral contests. Thus, it is not unlikely that they would use all possible means, including unfair means, to prevail. Unless such tendencies can be checked, election outcomes are bound to be compromised. Thus, in the interest of ensuring the integrity of the electoral process, the Election Commission, as a democratic institution, needs to be given specific authority to regulate the actions and behaviour of political parties and their nominees. The activities of political parties can be regulated through a legal provision for their mandatory registration. The requirements of registration must include the practice of democracy within political parties, transparency of their income and expenditures, and the use of systematic procedures to give the primary members of the party a clear say in the nomination process. There also must be a requirement of active party membership of those seeking a party nomination. India, for example, has a system of mandatory registration of political parties under its Election Commission, in contrast to our system of

voluntary registration. It must be pointed out that giving such regulatory authority to the EC does not take political parties off the hook for demonstrating good behaviour.

The integrity of the electoral system also depends on the quality of the candidates running for office. Elections can cause more harm than good unless honest, dedicated and competent individuals are elected to public offices. Our own experiences provide clear evidence of how elected officials can cause great harm to a nation. Thus, criminal and corrupt elements, as intended by Article 66 of our Constitution, must be made ineligible to run for public office. Again, the Election Commission, as the constitutional body, must be given the authority to prevent undesirable elements from contesting in elections. Criminal dons, corrupt individuals, loan defaulters, bill dodgers of government services and the like must be made ineligible to run for office. The EC must also collect information about the backgrounds of candidates, especially regarding financial and criminal activities, and make that information available to the public so that voters can make informed choices.

Fortunately, a recent High Court ruling empowered the EC to require candidates in national elections to submit, with their nomination papers, affidavits disclosing their educational qualifications, criminal antecedents and the assets and liabilities of themselves and their dependents. The effectiveness of this court ruling in preventing dishonest individuals from contesting in elections will depend on the EC's seriousness in informing citizens about the backgrounds of candidates. It will also depend on the activism of citizen groups in distributing the contents of the submitted affidavits to the voting public in order to clean up our electoral process.

To conclude, it is gratifying that there is an almost universal demand for free, fair and impartial elections. Clearly, the credibility of elections as the democratic procedure is necessary for institutionalising democracy. However, this alone is not sufficient, for the election alone is not democracy. The institutionalisation of democracy will further require the demonstrated practice of democratic principles and norms by political parties and candidates in elections, and the strengthening and autonomy of democratic institutions such as the Election Commission. Thus, the demand for electoral reform must also include insistence on the mandatory registration of political parties, the nomination of honest and competent candidates, and the good behaviour of those candidates. Without such major changes in how political parties conduct themselves, how candidates in elections behave and in the quality of our political process, mere reform of the Caretaker system and strengthening of the EC would amount to putting bandages on deep and fatal wounds.

*The Daily Star: June 15, 2005*

## Is misgiving about EC's proposed dialogue justified?

The Election Commission (EC) has invited 15 political parties for dialogue on electoral reforms, which is to begin on 12th September. Some political parties have already expressed their hesitation to participate in the dialogue. Others are demanding the lifting of the existing ban on indoor politics as a condition for their participation. However, many have misgivings about the very intention behind the Commission's

initiative. Some even view it as a part of a conspiracy designed to put into practice the so-called “minus two” formula.

Such misgivings are uncalled for in that the electoral reform ideas have not been conceived to exclude anyone, nor have they suddenly fallen as manna from heaven. In fact, ideas of reform have evolved over time and they have a celebrated history. Over time they have been sharpened by the contributions of many including the media, and now they have, for all practical purposes, become a necessity. Political parties have also played a significant and praiseworthy role in advancing and popularising the demands for reform. Our left political parties, including the Communist Party, have been for a long time demanding reforms of the electoral process and democratic institutions. Fair Election Monitoring Alliance (FEMA) also advanced some important reform ideas in 2000. Many conscientious citizens have also been proposing reforms with a view to cleaning up our criminalised political system.

In recent years, SHUJAN – Citizens for Good Governance – has initiated a systematic and serious discourse on reform. The most significant initial step in this regard was a roundtable discussion on “Political Reforms in Bangladesh,” held in September 2004 in partnership with *The Daily Star*. Subsequently, in another roundtable discussion on 10 April, 2005, organised with the assistance of The Daily Prothom Alo and *The Daily Star*, the reform ideas were made concrete and specific. Following that, the discourse was carried forward in countless discussions, seminars and roundtable meetings organised by SHUJAN volunteers throughout the country. This author also wrote many newspaper pieces on various reform issues.

One important milestone in the advancement of the reform discourse was a news conference by the Awami League President and Leader of the Opposition in Parliament, Sheikh Hasina, on 15 July, 2005 on behalf of the 14-Party Alliance (Alliance). In the news conference, she proposed a unified “Outline for reforming the Caretaker Government, the Election Commission and the electoral process for free and impartial elections.” In the unified outline, she offered 15 specific commitments to make the EC independent and effective. At the same time, she made 30 specific promises under 11 headings to reform the electoral laws and rules. The headings included: eliminating the undue influence of money in elections; publishing the statements of wealth and antecedents of candidates; qualifications of candidates; making elections free of hooliganism, muscle power and hoodlums; stopping the use of religion and communalism in elections; giving everyone equal opportunity in elections; ensuring transparency in elections; role of the law enforcement agencies during elections; ensuring internal democracy and democratic practices within political parties; and increasing the number of women’s seats in Parliament and ensuring direct elections. Sheikh Hasina also made reform proposals in Parliament.

Later, on 22 November 2005, “a unified minimum programme” was announced on behalf of the Alliance at a grand public meeting in Paltan Maidan. The document included the commitment that: “In line with the unified outline declared on 15 July, 2005, free and impartial elections without the influence of black money, hooliganism and communalism will be ensured along with the reform of the Caretaker Government and the Election Commission.” Thus, it can perhaps be safely said that the Awami League and its allies are clearly committed to political reforms in Bangladesh.

Another milestone in the reform discourse was a dialogue entitled “The role of the civil society in accountable development efforts,” jointly organised by the Center for Policy Dialogue (CPD), The Daily Prothom Alo and *The Daily Star*, which was held on 20 March 2006, and the subsequent formation of the “Nagorik Committee,” consisting of a group of most distinguished citizens of the country. On the initiative of this Committee and the assistance of the Channel i, 15 “citizens’ dialogue” were subsequently held throughout the country, and through these efforts mass awareness was created about reforms.

At this stage, some of the other political parties and many citizens from all walks of life became involved in the burgeoning debate on reforms. Consequently, political reform has become a mass demand and turned into a people’s movement, which was clearly the outcome of the combined efforts of many.

After the EC was reconstituted, SHUJAN incorporated reform ideas into a draft ordinance designed to amend The Representation of the People Order, 1972, and handed it over to the EC. The Nagorik Committee separately, did the same. Many other individuals and organisations also submitted reform proposals to the EC, and the Commission’s proposed reform agenda made public last April is clearly based on ideas coming from political parties as well as from individual citizens and citizen groups.

Broadly speaking, the EC’s proposals can be grouped into five categories: the standard of qualifications and disqualifications of candidates; the disclosure requirements for candidates; empowerment and independence of the EC; and the resolution of election disputes. In addition, the EC proposal dealt with the issues relating to the number of polling agents, forfeitures of deposits and the submission of reports of election expenses. It also proposed some changes in the Conduct Rules. However, the EC proposal contained nothing about the election expenses. It should be noted that the Commission held dialogues with the representatives of citizens groups as well the media, and based on their recommendations brought about some changes in its original reform agenda.

Clearly, the goals of the EC, the citizen groups and the political parties are similar – the ensuring of free, fair and meaningful elections. However, the reform proposals of political parties include some changes which would require amending the Constitution, for which we will have to wait until the 9th Parliament comes into session. The EC however, has proposed only those reforms which can be put into effect by amending the Representation of the People Order and the Conduct Rules. In most cases, there is no conflict between the reform ideas proposed by political parties and the EC, although the Commission’s proposals are generally more detailed and specific.

However, in two areas there are divergences between the two proposals. The Commission proposed the compulsory registration of political parties, but political parties are silent about it. Nevertheless, section 9(a) of the unified programme of the Alliance declared on 22<sup>nd</sup> November states that “the functioning of political parties contesting elections in accordance with democratic principles and the regular election of party leaders would be ensured, and the submission of the financial reports to the Election Commission would be made compulsory.” These are in essence the main conditions for registration proposed by the EC. Thus, the political parties, especially

the 14-Party Alliance should have no objection to compulsory registration of political parties. It may be noted that similar registration requirements are in force in many other countries including neighbouring India.

Another important difference between the two is that the EC proposal requires the banning of front organisations, especially student and labour organisations. The constitutions of the main political parties have made their front organisations totally subservient to the main party. For instance, according to section 25(1) of the Awami League constitution, the party will, through its designated official, supervise and coordinate the policymaking of its front entities. Because of such controls, student politics, for example, could not develop to protect and promote the students' interests, and there is growing public sentiment against such proxy politics. In addition, Sheikh Hasina, while the Prime Minister, once proposed, subject to the agreement of the opposition, the banning of student politics.

It is clear that the 14-Party Alliance including the Awami League is committed to major reform. Even the two factions of BNP have in recent times claimed that they want reform. Given this, we hope that our political leaders will respond to the EC's invitation and participate in the forthcoming dialogue. We also hope that they will give their considered opinion on the EC proposal, and put forward, if necessary, new reform ideas, based on which the Commission will be able to finalise its agenda. However, the Commission must not allow political parties to veto any of its proposals, for, as a constitutional body, its solemn duty is to protect the public interest. At the same time, we request that the government, in the interest of facilitating the dialogue, consider the EC's proposal to lift the ban on indoor politics. We further hope that our respected politicians will prove Aristotle right and show that "the good of man must be the end of the science of politics."

*The Daily Star*: September 10, 2007

## Proposed reforms and our thoughts as citizens

Last November, the opposition 14-party Alliance made public from its grand gathering a 23-point common minimum agenda for election and future governance. The agenda includes some significant reform proposals. Despite some initial positive reactions, in recent weeks the ruling BNP appears to have taken a hard-line and ruled out the possibility of any reform at all. Nevertheless, the European Union and other donors have continued to advocate reforms. What are our thoughts as citizens on reforms? What must also a comprehensive reform agenda include? Why reform, anyway?

At the time of the fall of the Ershad regime in the face of a mass upsurge, it was generally believed that with free, fair and impartial elections, democracy would develop deep roots and consequently become institutionalised in Bangladesh. Such elections would, it was further naively believed, establish people's rule and hence good governance in the country. Unfortunately, the reality turned out to be far different from the expectation. Reasonably free and fair elections even under neutral caretaker governments did not lead to the election of honest and competent individuals

dedicated to public welfare to public office. Rather they created opportunities for largely self-interested individuals to occupy state power, making the state machineries largely ineffective in meeting the basic needs and aspirations of the common people. This has obviously caused great harm to the nation and also largely shattered our illusion about the outcome of free and fair elections. The recent rise in religious extremism and the suicide bombing, it must be noted, appear to be deeply rooted in the demonstrated failures of the state. If we are now to remedy this situation – which we must – serious reforms are urgently needed in our electoral, rather political, system. There must also be other accompanying reforms in our governance and economic systems in order to institutionalise our much hard earned democracy and fully reap the benefits from it. The ruling BNP must come to term with such a realisation. We must further recognise that the reform agenda proposed by the 14-party Alliance also does not go far enough to confront the challenges the nation faces today. It appears to be incomplete and sometimes ambiguous.

It is clear that we as a nation face three types of challenges. One set of challenges relates to politics, that is, criminalisation of politics. The second set of challenges concerns governance or lack of good governance. The third set of challenges has to do with the socio-economic backwardness of nearly half of our population and the growing disparity of income, wealth and opportunities between the rich and the poor. A related overarching issue is the burgeoning religious extremism, which to a great extent is the outgrowth of criminalisation of politics, governance failures and extreme socio-economic deprivations of the common people. These challenges seriously threaten the future of our nation and the safety and security of us as its citizens. The reform agenda must be designed to effectively address these challenges. Thus, the proposals for change must be precise and result-oriented rather than vague or rhetorical.

#### Preventing Criminalisation of Politics

Our election process, as is practiced today, encourages the involvement of criminal elements – owners of black money and muscle power – in politics. In Bangladesh, elections are taken as synonymous to democracy. However, an election is only the democratic process for orderly transfers of governmental power based on the consent of the people. An effective democratic system also requires the practice of democratic principles and the creation and strengthening of democratic institutions. In order to decriminalise our political system, we must embark on major reforms in our electoral process and the related institutions to prevent the criminal elements from getting into and remaining in politics. This would obviously require our politicians and political parties to practice democratic norms and values.

Reform of the democratic process: Fair and impartial elections is necessary, although not sufficient, to create opportunities for honest and competent individuals committed to people's wellbeing to be elected to public offices, which may pave the way for pro-people governance. However, without significant reform of the electoral process, free and fair elections are hardly possible in the present situation. Electoral reforms should therefore, among other things, require: (a) developing a strict code of conduct and aggressively enforcing it; (b) preparing an accurate voter list; (c) issuing photo identity cards for voters; (d) providing for negative voting so that voters can reject undesirable candidates; (e) using photographs of candidates rather than party

symbols in ballot paper so that candidates' personal qualities, rather than party affiliations, become important; (f) preventing dummy candidates from contesting; (g) ensuring the impartiality of the election process by engaging non-partisan election/polling officers; (h) preventing fake voting, ballot stuffing and ensuring the security of polling centres; (i) multiple counting of votes cast so that there is no manipulation of election results; (j) expeditiously disposing of election disputes; (k) introducing technological safeguards (e.g. voting machines) against vote tempering; (l) reducing and accurate reporting of election expenses. Election expenses may be drastically reduced by having the Election Commission publish leaflets/posters based on information submitted by candidates in their affidavits, as mandated by the High Court last May, and arranging projection meetings. We must also lower the present election expense ceiling of Tk 5 lacs in order to allow individuals of lower financial means to run for office.

Practice of democratic principles: Unless politicians and political parties demonstrate good behaviour and democratic norms, free and fair elections will never be held, democracy will never be institutionalised and criminalisation of politics will continue to be a serious menace. The British Committee on Standards in Public Life recommended seven important principles for politicians and political parties. They include selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Unfortunately, our politicians have failed to develop appropriate systems and mechanisms to ensure compliance to such standards. Thus, something needs to be done about it. One possible means to enforce such conduct is through compulsory registration of political parties under an independent Election Commission. Conditions for registration must include: (a) practicing democracy within political parties – that is, holding regular elections of office-bearers of political parties; (b) carrying out all financial transactions through bank accounts; (c) publishing audited financial statements for transparency; (d) denying nominations to owners of black money and muscle, bill and loan defaulters, and criminals and corrupt individuals; (e) reforming the nomination process. Reform of the nomination process should focus on restricting party tickets to those who have had active party membership for at least three previous years and giving the primary members of the party a formal role (eg. through party primary) in the nomination process. The rich must not be allowed to buy political powers with money. In addition, the change of the prevailing system of autocracy in party governance – unfettered authority of the party chief creating a system of 'imperial democracy' – would require reforming Article 70 of the Constitution, which prevents floor crossing by the Members of Parliament.

#### Strengthening democratic institutions

Two institutions – the Nonparty Caretaker Government (NCG) and the Election Commission (EC) – can play vitally important roles toward preventing criminalisation of politics by ensuring fairness and transparency in the election process. Although the mandate of the NCG, as per Article 58D of our Constitution, is to “give 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”, it should not have any direct role in elections, in reality the NCG can influence elections. That is why politicians try to manipulate the caretaker system. It must be noted that the caretaker arrangement represents the total lack of trust and confidence

of political parties toward each other and a complete repudiation of the democratic process itself, and hence cannot be a permanent solution for our criminalised political system. If our democratic system is to develop deep roots and become mature, the elected party government rather than the NCG, must be able to play the caretaker role during elections. Otherwise through the caretaker system we would only be avoiding the problem rather than solving it. Therefore, it is important that we limit the use of the NCG to a few (eg. 2-3) terms which will allow sufficient time to strengthen the EC and build confidence of all concerned in our democratic system. We must also strengthen the institution of the presidency and ensure that the best possible person occupy that office. In order to elect the most competent and respected person to the office of the President, we may consider forming an electoral college consisted of the MPs and all local body representatives.

#### Ensuring Good Governance

The election of honest and competent individuals to public offices through free and fair elections is merely the starting point for us to get out of the present mess. It will also require the rule of the honest and competent individuals to translate into effective and people-oriented governance. Good governance includes the rule of law, equity, transparency and accountability, protection of human rights, effective participation of people in governance and so on.

Good governance would require: (a) separating the judiciary from the executive to ensure the rule of law; (b) strengthening the Anti-Corruption Commission by appointing courageous, competent and non-partisan individuals as Commissioners; (c) ensuring true political empowerment of women by increasing women's representation in Parliament and holding direct elections to those seats; (d) creating an upper chamber of the Parliament to include representation of all segments of the society, especially the poor and the disadvantaged; (e) setting up a Human Rights Commission; (f) enacting a Right to Information law to empower people with information; (g) embarking on a massive programme of decentralisation and devolution of power, authority and resources in order to create a truly autonomous, strong and financially empowered system of local government; (h) appointing one or more ombudsmen; (i) reforming and restructuring the bureaucracy and the law enforcement agencies; (j) making the parliament effective. In order to make it effective, continuing boycott of the Parliament must be outlawed, Article 70 of the Constitution amended, functions of the MPs restricted to legislative activities as per Article 65 of the Constitution, and strengthen the oversight role of the Parliament by making the standing committees effectual.

#### Improving the Socio-economic Condition of the People

Our prevailing development approach is founded on the growth-oriented trickle down approach. This approach has created opportunities for a small minority to become quickly very rich, resulting in growing disparities of income and opportunities. Our past commitments to make economic growth pro-poor have not worked because growth-oriented development never protects the interests of the poor. Thus, we must consider an alternative, people-oriented development approach based on fully utilising people's innate power and capabilities. Such an approach would require empowering the common people by unleashing their human spirit, awakening and mobilising them, utilizing their creative genius, and ensuring that they receive

their due share of the political power and economic resources of the state so that they themselves can become authors of their own future. This will further require massive decentralisation and many other related reforms. Major reform initiatives will also be required to improve the quality of publicly provided services, including the areas of health, education, family planning and so on. Urgent reforms in education will be particularly needed to make the Madrasha education compatible with modernity and embrace science. An important focus of the reform proposals must be to establish local accountability of grassroots-level government functionaries. Furthermore, important reforms will be necessary to protect us from the ill effects and take advantage of the opportunities of globalisation.

It is clear that we as a nation are at a crossroad in the face of the recent rise of religious extremism and suicide bombings. Important and urgent reforms are now needed to move the nation in the right direction – the direction of democracy and broad-based development – through the transformation of our criminalised politics, the institution of good governance and rapid improvements in the socio-economic conditions of the poor. But what appears to be most urgently needed at this time is for our major political parties to engage in immediate dialogue to remove the impasse over the caretaker system in order to ensure that the forthcoming election is held on time. At the same time we must take steps on a priority basis to remove the controversy over the Election Commission and initiate reforms to make it a strong, independent and credible institution in order to make the democratic process acceptable to all concerned. However, the most neutral caretaker government and the most independent EC would not be able to deliver free, fair and acceptable elections unless the political parties do their part and behave. In addition, fair election is not a panacea. Thus, the political parties must now come forward with an agenda for their own reform. They must agree to compulsory registration and reform their nomination process. Fair elections and change of guards are not sufficient at this time – for there would not be any changes in our state policies and the system of governance unless elections bring about significant changes in the quality of leadership. Political parties must also now come forward with clear action plans to remedy selfishness in politics, corruption, pervasive politicisation, patronage system, nepotism, extremism, sheltering the criminals and giving them nominations.

*The Daily Star: February 15, 2006*

## Need meaningful dialogue and comprehensive reforms

We are pleased that the on-again, off-again dialogue between the secretary generals of BNP and Awami League has finally started and is continuing. Like many citizens, we hope that our leaders will be able to transcend narrow partisan interests and bring about a negotiated settlement of the reform issues so that elections can be held on time in a fair and impartial manner.

However, the questions which are now in the minds of many: Are fair elections enough? Would the removal of Justice K.M. Hasan as the designated head of the caretaker government and the Chief Election Commissioner along with his three other

colleagues ensure fair elections? In addition, would fair elections alone solve the thorny problems of the criminalization of politics and politicisation of crime, as manifested by the increasing role of black money and muscle power in our political arena? Would that also help achieve good governance?

In order to fully comprehend the challenges we face, we need to closely look at their background. Many of us still remember the fiasco at the Magura by-election, which was caused by the rigging of the election results and the inability of the Election Commission (EC) to prevent it. It must be noted that such riggings were not new in Bangladesh, and they have been going on since independence under different governments. Instead of addressing the issues of misconduct on the part of politicians and their political parties, and making the EC effective, the combined opposition came up, following the Magura by-election, with the idea of a caretaker system as a solution. This clearly amounted to sidetracking or avoiding the problem rather than facing it head on. To use a medical metaphor, this was like rubbing ointment on the forehead for pain in the leg, causing serious adverse and unintended consequences. The present and persistent political deadlock in the country undoubtedly is the consequence of our avoidance of the problem in the past.

The caretaker government is, in a sense, nothing but a poisoned fruit of distrust – politicians’ distrust of each other and people’s distrust of them. Such an environment of distrust is not conducive for democracy to flourish and take deep root. In addition, the unelected caretaker system, which is a clear violation of the basic structure of our constitution, is threatening to destroy our judiciary. It is thus clear that the caretaker arrangement is not a permanent solution of our system of criminalised politics, and we should try to abolish it at the earliest.

If we are now to make our democratic system truly functional, self-serving solutions will not do. Instead we must go deeply into the problems and come up with effective solutions. The best solution, in our view, would be to reform our political system in such a drastic way that the elected party government becomes capable and trustworthy enough to successfully act as the caretaker government during the election. This will obviously require, among others, reforming political parties. Thus, fair elections alone are not enough without substantive systemic and institutional reforms – reforms which would keep self-serving elements from the political arena for whom politics is no more than a profitable business. Mere changing of guards will not take us very far.

Elections are obviously necessary for the democratic process to continue and they must be held on time. But such elections must create opportunities for honest, competent and committed individuals to get elected to national offices. We on behalf of SHUJAN therefore demand meaningful dialogue and significant reforms to overhaul our criminalised political system so that people’s rule can be established in the country.

We specifically demand: (a) the immediate removal of the deadlock over the caretaker chief through mutual agreement; (b) independence and strengthening of the Election Commission and the nomination of honest, neutral, competent and self-respecting individuals to the Commission; (c) compulsory registration of political parties to ensure their internal democracy, financial transparency and to prevent criminal and other undesirable elements from participating in the electoral process; (d)

complete disclosure of the antecedents of candidates, and provisions for negative voting and the recall of elected representatives.

Furthermore, if we are to solve our problems once and for all, morality, public service and clean governance must become the basis of our politics. We therefore demand a declaration from our two main political parties that in the next election they will not nominate: anyone with criminal antecedents, owners of black money and muscle power, loan and bill defaulters, corrupt individuals, and that they will ensure the accountability and transparency of elected representatives. We further demand that our leaders will commit to eliminate the tax-free auto imports and other privileges of Members of Parliament and keep them focused on lawmaking as per Article 65 of the Constitution so that the quality of our elected representatives improve. In addition, we demand, broadly speaking, effectiveness of the parliament; reform of Article 70; and increase and direct election of women's seats in parliament; separation of the judiciary; decentralization and devolution of power, authority and resources; elimination of corruption; and the elimination of poverty and the growing disparity of income and opportunities. The political parties must also commit to empower the people rather than the elected representatives.

It must be noted that any of the daunting problems that have accumulated over the years cannot be solved immediately. Thus, we demand that our leaders reach consensus on those immediate reforms that are essential for fair and impartial elections on time and implement them without delay. However, we must not suffer from the illusion that an election is democracy. An election is only a democratic process, and while it is necessary for a democratic system, it is not sufficient. In fact, our election-centred democracy, which has been empowering elected representatives to loot and plunder with impunity for five years, has become the biggest threat to our future.

Democracy, to be meaningful, must be people-centred. A democratic system, which truly creates a 'people's republic' must include the following essential features: (1) free, fair and competitive elections; (2) orderly transfer of power, absence of any retribution and a role of the defeated in formulating national policies; (3) true power in the hands of the elected representatives, sovereignty and effectiveness of the legislature, and absence of any other centres of power; (4) transparency and accountability of elected representatives and confinement of their role to legislative duties; (5) unhindered political freedom, equal rights and equal opportunities for all citizens; and (6) provisions for separation of powers and checks and balances. Thus, elections, however fair and impartial are not enough for a true democratic polity.

We further demand that our leaders will sign a memorandum of agreement on other relevant issues which will be implemented by the government that assumes power after election. The leaders can seek the help of a committee of experts to draft such a memorandum. To turn the agreement into a national consensus, the leaders will have to take into confidence other political parties.

To conclude, democratic and clean governance are the democratic rights of the people. However, the people of this country are deprived of a meaningful democratic system and good governance. In fact, our democratic system is now under severe threat. We stand on a thin line between autocracy and democracy. Which way we will

sway – towards progress or darkness – will depend on the sincerity, sagacity, courage and wisdom of our leaders. I am sure our patriotic leaders will not fail the nation.

*The Daily Star: October 17, 2006*

## Reforms for fair and meaningful elections

In his maiden speech to the nation on January 20<sup>th</sup>, Dr. Fakhruddin Ahmed expressed his determination to create an environment conducive to 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 9<sup>th</sup> 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:

### 1. 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 opinions 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 may be identified by a committee from which the President will make the appointment. 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 debarring 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 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, currently the administrative expenses of the EC and the salaries and benefits of the Commissioners are treated as charges on the consolidated 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 a special audit of the expenses of the Commission.

## 2. Preparing an Error-free Electoral Roll

Last April, the Supreme Court directed the EC to prepare the electoral roll for the 9<sup>th</sup> 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 for all. In order to comply with the Court judgment, we propose the preparation of an electoral roll for the coming elections 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 happen. 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](http://www.SHUJAN.org)), which may be used as the basis for the new database.

## 3. 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 wing), 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.

## 4. Qualifications for Parliamentary Candidates

We propose the amendment of Article 12(1) of the RPO to prevent convicted criminals of heinous crimes, loan and bill defaulters, retired government officials until 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 restrictions in the RPO on the participation in parliamentary elections of those businessmen who have business relationship with the government. We also recommend that the plunderers of government exchequer or godfathers of musclemen be declared ineligible for public offices. No one should be allowed to contest in more than one parliamentary seats or simultaneously hold more than one elective offices.

## 5. Provision 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”. By including a clause in Article 31 of the RPO, provisions must be made that if the negative vote wins the election, there shall be new elections with new candidates. We must also consider imposing term limits on 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.

#### 6. Voters’ Right to Get Information about Candidates

The historic judgment of the High Court of 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.

#### 7. Reducing Election Expenses

Fair and meaningful elections require reducing election expenses. Thus, the existing limit on election expenses of Tk 5 lac must be strictly enforced. To achieve it, 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 arranging 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 erecting gates, showdowns, setting 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 benefits of tax free cars and residential plots etc.

#### 8. Quick Resolution of Election Disputes

Expeditious resolution of election disputes, preventing the wrong doers from getting away with 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 not allowing more than two continuances of hearings so that all disputes relating to parliamentary elections, including the appeals, may be resolved within six months. This will require, among others, doing away with some privileges of MPs, such as the exiting 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.

#### 9. Delimitation of Constituencies

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 is 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.

#### 10. 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 gives back the responsibility to hold Upazila elections to the EC and actually hold the Upazila elections with the parliamentary parties. This will reduce election expenses and it 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 it 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 powers, 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 implementing the reforms to protect and promote public interest, which must be its utmost priority. Missing this opportunity will be a tragedy of monumental proportions.

*The Daily Star: March 10, 2007*

## Why must political parties be reformed?

Reforming political parties has now become a popular demand. With revelations in the media of all the alleged corrupt and criminal activities by our top leaders, the demand has become more intense in recent weeks. While the conscientious citizens have been very vocal about reform for a long time, even some politicians are now beginning to speak out. Are there real justifications for reforming political parties?

Political parties are important democratic institutions. They are in essence the engines or driving force of democracy. As a carriage cannot move without its engine, similarly democracy cannot function without effective political parties. The crisis in Bangladesh's democracy is, in fact, largely due to dysfunctional political parties in our country. Thus, urgent reforms are needed in our political parties which are important democratic institutions in our constitutional scheme.

Political parties are composed of people organised on the basis of an ideology or a programme. Since public welfare rather than furthering personal interests is the

purpose of political parties, they must be democratic, transparent and accountable organisations. Are these values reflected in the constitutions of our political parties? Are they at all implemented? We can get a clear idea of how our political parties function by examining, among others, the eligibility and process of granting their membership, the procedures of electing their leadership and taking major decisions, transparency of their finances, and the role of their primary members in the nomination process.

Any citizen 18 years or older can become members of Awami League (AL), Bangladesh Nationalist Party (BNP) and Jatiyo Party (JP). To be a member of AL, the approval of relevant committees is needed. According to its constitution, hooligans or those engaged in anti-public safety activities are ineligible to become AL members. However, the reality is very different – many known godfathers are well placed in AL, and many of them were nominated for the elections scheduled to be held last January.

As per the BNP constitution, anyone who believes in terrorism or engages in politics based on secret terrorist activities cannot become a member of BNP. However, many individuals who were known patrons of JMB hold important positions in the BNP hierarchy and many of them were nominated for the cancelled elections of last January. Furthermore, there are serious allegations of patronising religious extremism against Jamaat-e-Islami, an important member of the ruling four-party alliance.

According to the JP constitution, only honest persons can become its members. With this constitutional provision, even the chairman of JP, who has had convictions of multiple criminal offences, cannot retain his membership of JP. Thus, it is clear that none of the major political parties practice what is in their constitutions.

Since political parties in Bangladesh are constitutionally recognised entities rather than secret organisations, they must have published lists of their members and those lists must be continuously updated. BNP and JP constitutions have clear provisions for maintaining such lists. However, none of the parties – AL, BNP and JP – even maintain lists of their members, let alone publish them.

AL's constitution provides for direct elections of its president, presidium members, general secretary, other secretaries and treasurer (who are members of the executive committee) in party councils every three years. However, there is no provision for secret ballots in its constitution. In addition, 21 out of 166 members of the national committee, 26 of the 73 members of the executive committee are nominated by the party president. The president also nominates all 41 members of the advisory committee. Although the AL constitution bestows no special powers on its president and the elected committees are to make all decisions, the reality is very different – the president, in connivance with those closest to her, takes the important decisions. A case in point is the agreement secretly signed with Khelafat Majlis last December. In addition, the party council has not been held for a long time and even when it was held, the party president was authorized to pick the leadership. The committees also do not meet regularly.

Despite the denial from the party, the prominence of the Bangabandhu family is clearly visible in AL. Many close relatives of the party president hold important positions in AL, although there are serious allegations of wrongdoings against some of them. One indication of the Bangabandhu family's prominence are the three

photographs on the homepage of the AL website – that of Bangabandhu, President Sk. Hasina and her son Sajeeb Wajed Joy – although Joy holds no important position in the party.

According to the BNP constitution, the party chairman is to be elected in party councils every two years. The 251 members of the executive committee, except for presidents of district and city committee, who are ex-officio members, are nominated by the chairman. Similarly, all the 15 members of the permanent national committee, who also serve as the nomination board, and the 15 member advisory parishad, are nominated by the chairman. More seriously, the BNP council has not been held in the last 14 years. Furthermore, the committees seldom meet.

It is clear that the BNP chairman has absolute power over the party and it is, in fact, a family dynasty. For example, the chairman had arbitrarily appointed her own son as the senior joint secretary of the party even though there is no such post in the party constitution. Furthermore, she recently appointed her brother Major (Ret.) Sayeed Ishkander as a party vice chairman without consulting others at a time when demand for party reform has become intense and widespread.

According to its constitution, the sources of AL's income is Tk. 20 thrice-yearly fee of its councilors, the regular monthly fee of the members of the executive committee, Tk. 200 (currently Tk. 2000) monthly fee of MPs, Tk. 100 approval fee of district committees, proceeds from sales of publications, one-time contributions, money raised through socio-cultural exhibitions, the three-yearly membership fee of Tk. 5 for primary members etc. A daily Prothom Alo report (February 9, 2007) indicates that the AL requires about Tk. 12 crore for regular operation of the party each year, of which not even 10 % comes from known sources. Then the logical question is: from where does the rest of the money come? A partial answer comes from the alleged confessions of the recently arrested general secretary of the party and some business leaders. In these confessions, widely published in the media though not yet proven in the court of law, serious allegations were raised against the party chief of regularly and secretly taking huge sums of money from businessmen. There are also allegations of extortion against her and members of her extended family. No official record of these financial transactions is available as they were not transacted through bank accounts although the party constitution calls for having bank accounts for each unit, which are to be run with joint signatures and audited each year.

BNP has no other known sources of income except for Tk. 2 membership fee of primary members and Tk. 1 renewal fee. According to the above-mentioned Prothom Alo report, BNP's regular operational cost is about Tk. 15 crore each year. No one other than the party higher ups knows the sources of these huge sums of money. However, the alleged confessional statements of former State Minister for Home published in the media provide some clues about their sources. He apparently alleged that the BNP chairman and her son made an agreement with a business group to absolve them of murder charges for a sum of Tk. 50 crore. He further alleged that BNP received Tk. 300 crore from three countries before the 2001 national elections. Defying the constitution, BNP also does not carry out financial transactions through bank accounts, let alone auditing those accounts.

Although the parliamentary boards of AL, BNP and JP, according to the respective party constitutions, have the final say in deciding party nominations, the

party chiefs in reality make the decisions. In this context, there are serious allegations of selling nominations for money, now popularly known as mononoyan banijya. It is alleged that prior to the elections scheduled to be held on 22<sup>nd</sup> January, AL nominations in 50 seats were sold for a minimum of Tk. 50 lac to a maximum amount of Tk. 20 crore, resulting in illegal transfer of hundreds of crores of taka (Prothom Alo, 14 January 2007).

There are also serious allegations of illegal inter-party transfer of huge sums of money. For example, it is claimed that AL agreed to pay Tk. 60-70 crore, of which Tk. 3.5 crore were paid as advance, to bring JP into the fold of the 14-party grand alliance. On the other hand, BNP allegedly offered to pay JP Tk. 50-60 crore, of which Tk. 2 crore were paid in advance, which had to be returned later. Apparently BNP also agreed to make General Ershad the President (Prothom Alo, 15 January 2007). It is clear from these alleged illegal, immoral and self-serving actions, the party primary members of AL, BNP and JP have nothing to do with the nominations, although the AL constitution allows district and upazila committees to make recommendations. Thus, the party high commands do not have any accountability to their primary members – parties do not even have lists of their primary members.

To conclude, it is clear that even though constitutions of some of our major political parties have some provisions for internal democracy and financial transparency, they are not at all practiced. Parties do not even have lists of their primary members, not even to mention accountability from party higher-ups to them. Consequently, absolute autocracy and dynasty are in place in our three major political parties. Since power corrupts and absolute power corrupts absolutely, our major political parties have now become dens of uncontrolled corruption. And elections have become means of going to power at any cost and politics has become a naked business-for-profit. In other words, our main political parties have become instruments for furthering selfish interests rather than public welfare, and they function like secret syndicates organised for that purpose. The proposed reform of political parties and their compulsory registration under the Election Commission are intended to redress these ills. I hope our respected politicians will come to terms with this reality and immediately embark on significant reforms of their parties in the greater national interest. However, citizen groups must continue exerting pressures.

*The Daily Star: June 17, 2007*

## Are we going to sweep the problems under the rug again?

The reform of political parties has now become a popular demand. Yet some politicians appear to be cunningly trying to avoid the issue. Some have been claiming that democracy, transparency and accountability are already in practice in their parties. Others are arguing, although faintly, that reforming political parties should be the exclusive preserve of politicians, and outsiders should not have any say in this matter.

Such utterances from our national leaders make us feel that our crisis is not over yet – we as a nation have more difficult days to face ahead. This is because we are

again trying, as we did about a decade ago, to avoid the problem that made our democracy dysfunctional rather than face it head on.

Readers may remember the Magura by-election during the first BNP government. There were allegations of serious irregularities in that by-election and, in the face of such allegations, the Chief Election Commissioner unexpectedly left Magura. Armed with experiences of the Magura by-election, the opposition parties started demanding a system of non-party Caretaker Government to oversee parliamentary elections. The argument behind the demand was that party-affiliated political governments could not be trusted to hold fair elections.

Who was responsible for irregularities in the Magura by-election? Who was to prevent such irregularities and take action against the offenders? The ruling party goons were obviously responsible for the irregularities, and the Election Commission (EC) should have been responsible for preventing the misdeeds. In other words, the misconduct of the political party hoodlums and the impotence and partisan behaviour of the EC were primarily responsible for the shameful occurrences at Magura.

Given these reasons, it would have been prudent to demand reforms of the political parties to require good behaviour of their activists. Also, it would have been logical to insist on strengthening the EC and to ensure its independence. Unfortunately, our opposition parties, in their infinite wisdom or lack thereof, decided to avoid the problem rather than to solve it. Instead of talking voluntary initiatives to clean up our politics and reform the EC, the ruling party also caved to the intense pressure of opposition demand. Consequently the real culprit – the criminalisation of our politics – remained hidden under the rug. This also amounted to “sacrificing” our democratic process – elected representative government being the essential prerequisite of a democratic polity – by creating an unelected Caretaker Government. Thus, our respected politicians themselves, who claim to be champions of democracy, became responsible for “killing” democracy at least for 90 days. They did so because they wanted to avoid solving the problem of criminal activities within the fold of political parties which would require painful changes in their own behaviour. Instead, they became overly preoccupied with removing barriers to holding immediate elections in order to quickly go to power.

We are afraid that our honourable politicians are trying to follow the same script again. Instead of taking lessons from the past, they are once again trying to hide the problem under the carpet. They are demanding immediate elections so that they can go to power without further delays. As conscientious citizens, we too want elections as soon as possible in order to replace the unelected government by representative government, although after some urgent reforms. There must be changes in the quality of our politics through elections. Fortunately, the EC has already been reconstituted and the Commission has taken the initiative for reform.

It must be noted that, while agitating for the caretaker system, the politicians were able to convince us that elections alone constitute democracy. But an election is not democracy – it is only a means to transfer state powers in a peaceful and orderly manner. Our experiences of the past decade and a half clearly show that an “election-only democracy” necessarily degenerates into the establishment of a “lease” for the rulers during their term of office, and dynasty politics is instituted to perpetuate this lease through generations. Democracy is truly reflected in what actually happens in

between two elections: how much transparency, accountability, fairness, inclusiveness, participation, rule of law etc. are practiced by rules in the process of governance. The declaration of the state of emergency on January 11 is the result of the naked selfishness that the successive governments demonstrated by ignoring these democratic norms over the past 15 years. The chicken has finally come home to roost.

If our politicians would try to nip in the bud the criminalisation of politics, our democratic process and democratic institutions would not have collapsed the way they have. We could avoid the “joke” in the name of by-election in Dhaka-10. We could also avoid the “hijacking” of important institutions like the EC by the rulers. We further could have avoided the pre-January 11 violence and the changes that took place on that fateful day.

The election-centered democracy of the past decade and a half has caused many catastrophes in our country. Politics has become a profit-making business. Political parties have become dens of graft and corruption. Most criminal activities, have until recently, been committed under the patronage and protection of politicians. Many individuals who were once idealists became criminals after becoming involved in politics. Politics and criminal acts have now become almost one and the same, and a new criminalised culture has become the part of our political scene. The revelations by the recently imprisoned political and business leaders leave no doubt about such a reality. If we once again avoid the problem and fail to uproot the accumulated corruption, violence, the influence of black money and similar criminal acts, our future, we are afraid, will remain bleak. If we are to avoid such a future, we must now drastically reform our political parties. Thus, creating democratic, transparent and accountable political parties must now become our urgent priority.

Those who argue that reforming political parties should be up to the politicians do not realise the parties’ importance. In our country, political parties are constitutionally recognised democratic institutions. The effectiveness of our democratic polity primarily depends on the behaviour of political parties and their activists. In other words, political parties are engines or the driving force behind democracy. Because the engine is dysfunctional, our democratic system, in the words of our Army Chief, has now fallen off the track.

Political parties are not private clubs. The overriding goal of private clubs is the furtherance of the interests of their members. Thus, the management policies and practices of such clubs can be determined by their members, although they cannot do anything which is contrary to the law of the land and detrimental to the public interest. On the contrary, a political party consists of individuals who come together on the basis of either an ideology or programme. Their purpose is to go to power and pursue public welfare rather than self-interest. Since the activities of political parties are directly related to public interest and they affect public welfare, the public has the right to have a say in the way political parties are run.

An undemocratic party, whose strength comes from money and muscle rather than the consent of its members, is not suited to enhance public welfare. Thus, in the public interest, political parties will have to be urgently reformed; cleansing operations will have to be carried out within parties and criminals will have to be thrown out. The politicians themselves will have to take up this slogan: “politics for the good, jails for the bad”.

The political leaders should voluntarily take reform initiatives for another important reason. They are the ones who will be occupying state power and have to face these challenges in the future. If the thorny problem of criminalisation of politics can be solved now, they will then be able to focus on other important issues with more success. Their success will obviously be reflected in the nation's achievements. Thus our honourable politicians need to be reminded of the auto mechanics' old slogan – "You pay now or you pay more later".

The track record of our politicians in resisting criminals and correcting their own selves is not very encouraging. For example, before the 2001 national elections, the EC was given the authority to cancel nomination candidates for serious breaches of electoral laws and rules. Unfortunately, our politicians at that time ganged upon our President and forced him to repeal this authority on the eve of the elections. In addition, they prevented the compulsory registration of political parties. Our later experiences are not also very encouraging. About two years later, when the General Secretaries of Awami League and BNP were again asked about the compulsory registration of political parties under the EC, Mr. Abdul Mannan Bhuiyan claimed that there was no need for it as it will diminish their freedom. Mr. Abdul Jalil also made the same claim. (*The Daily Star* Anniversary Issue, January 14, 2005).

We hope that, in the greater interest of the nation, our politicians will change their minds and take aggressive and voluntary action toward reform. We are afraid that the consequences of avoiding the problem once more will be very serious for the nation. However, politicians may not be easily forthcoming. Thus, the citizens must remain vigilant and continue to speak up for change.

*The Daily Star*: June 9, 2007

## Ban politics using students, not the traditional student politics

Over the last decade and a half I have spoken to countless people on many national issues. In the course of holding "election olympiads" – an innovative programme initiated by SHUJAN since last year to help our young people become informed citizens – I have interacted with thousands of students. One burning issue that was often discussed in these dialogues is student politics. My experience has been that all guardians and most students, excepting a microscopic minority of beneficiaries, are vehemently opposed to the type of student politics that is in practice these days in our country. In fact, they are strongly in favour of banning politics using students, although not student politics of the traditional kind.

Today student politics refers to the activities of the student wings or front organisations of various political parties. These are partisan activities carried out primarily in the interests of certain political quarters or interest groups. In fact, the beneficiaries of such politics are the political parties and the so-called student leaders who get patronage (such as contracts, commissions) and other illegal payoffs. Illegal benefits often include payments from students for admission into educational institutions or accommodation in hotels and toll collections from businesses.

Student politics today rarely serve the interests of ordinary students. Students are often forced to participate in strikes, protests and demonstrations called by political parties. Thus, student politics has degenerated into using students, through front organisations, for political ends of politicians rather than politics by students for their own interests. Most students are unwilling victims rather than willing participants of such politics. Hooligans, musclemen and non-students are regularly used for enforcing such exploitation. Many so-called student leaders are non-students or students in name only. Consequently, student politics has now largely become politics by non-students or politicians through exploitation of students.

Such was not the characteristic of student politics in the past. In the old days, elected student unions were the centre of many cultural and other related activities for the welfare of students. Those bodies protected and promoted the interests of students. They also provided avenues for students to hone their leadership abilities. In fact, the most meritorious students got elected in such bodies. Students in general were guided by moral stands and they invariably displayed anti-establishment sentiments. Students got organized primarily to participate in student union elections instead of serving certain political masters. Ideology – rather than becoming the B-team of, or developing subservient relationship with, political parties – was the driving force behind student organizations. This author, as a serious student activist during the 11-point movement of the late 1960s, knows it from first-hand experiences.

Historically, students did get involved in politics at times of national crisis to protect larger public interests. The language movement, the 11-point movement, the liberation war and the anti-autocracy movement of 1990 were largely spearheaded by students. However, those movements were carried out not for partisan interests or to reap narrow benefits. Students participated in those movements out of patriotism and because of their strong sense of social commitment. With student wings becoming totally under the control of political parties, it will be impossible these days for students to get united with a common national purpose as they are totally divided according to party lines and narrow interests. In fact, front organisations were developed by political parties to prevent such unity.

The degeneration of student politics into partisan squabbles has had high costs. It has turned our institutions of higher education, especially public institutions into dens of violence and other illegal and immoral activities. Consequently, over the years many precious lives were lost and many careers destroyed. “Session jams” caused countless young people to unnecessarily waste valuable years of their lives. More seriously, because of both student and teacher politics we as a nation failed to develop a system of quality higher education which is essential for today’s knowledge-based, interrelated world economy. Because of these consequences, some of our national leaders in the past spoke out against the ugly sides of the so-called student politics and even offered to disband it provided a consensus could be developed with their political opponents.

There now appears to be a national consensus among the general public against the exploitative student politics that is currently in practice. But, how to go about it?

A law already exists in our books against using and exploiting students for political gains. Our Penal Code make student politics, as is practiced today, an offense. Section 153B of the law states: “Inducing students, etc. to take part in

political activity – Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise induces or attempts to induce any student, or any class of students, or any institution interested in or connected with students, to take part in any political activity, which disturbs or undermines or is likely to disturb or undermine, the public order shall be punished with imprisonment which may extend to two years or with a fine, or with both.”

Political activity includes activities like processions, strikes, demonstrations and meetings arranged for a political purpose. Unfortunately, the law was never applied by successive governments. To remedy this, what is now needed is to lay out the mode and procedures for prosecuting this offense and vigorously enforce it.

It must also be noted that it appears to be a violation of our Constitution for political parties to have front organisations. The formation of front organizations were legalised under the Political Parties Regulation, 1976 (Regulation), section 2(d) of which defines political party to mean: “any association or body of individuals which pursues, or is engaged in, any activity with political purpose including propagation of any political opinion and includes any affiliated, associated or front organisation, such as, student, labour, cultural, peasant and youth organisation, of such association or body.” However, according to the Constitution (Article 152(1), political party “includes a group or combination of persons who operate within or outside Parliament under a distinctive name and who hold themselves out for the purpose of propagating a political opinion or engaging in any other political activity;” and this definition clearly does not include front organizations. Thus, the Political Parties Regulation, 1976 is inconsistent with the Constitution. To remedy this and to bring the regulation in conformity with the Constitution, the clause “includes any affiliated, associated or front organisation, such as, student, labour, cultural, peasant and youth organisation, of such association or body” must be deleted from its section 2(d). This will automatically de-link student politics from political parties. The Regulation may also be altogether repelled or replaced by a new law.

To ensure the end of exploitative types of student politics, an additional condition must be added to the registration of political parties, a requirement recently proposed by the Election Commission in response to popular demands. For this purpose, a new proviso must be added to the proposed amendment of the Article 90A of The Representation of People Order, 1972, as: “Provided that no political party which maintains front organisations affiliated to it shall be registered by the Commission.”

To conclude, we strongly feel that in the greater national interests, the student fronts must be de-linked from political parties, bringing an end to politics using young students, which has already caused serious harms to the nation. However, we are not opposed to student politics for the interests of students, as was historically practiced by students themselves, and which centred around elections of student unions of educational institutions. We are also strongly for upholding the rights of students to join politics, which they should do by directly joining the main political parties. We hope that our politicians will show the courage, wisdom and sagacity to rise up to the occasion and do what is right for the greater national interests rather than what is expedient. In making the decision, they must remember that they will have to govern the nation in the future and deal with these thorny issues in coming days.

The Daily Star, May 6 2007

## A proposal to our political parties to include in their election manifesto

With the national election nearing, we, the undersigned elected local government representatives, respectfully propose to our major political parties to make an unequivocal commitment in their election manifesto to create a powerful system of local government as part of a strategy for eradicating hunger and poverty from our country. We present below our arguments in favor of the proposal:

### Need for a New Development Strategy

Creating a hunger-free self-reliant Bangladesh is our national commitment. Our Constitution made this commitment explicit and unequivocal. Accordingly, successive governments since independence in 1971 have made poverty eradication and improving the lives of the people their highest priority. The international community has also provided a substantial amount of resources for this purpose. Nevertheless, hunger and poverty are widely prevalent in our country and they have become an unescapable part of life for a large number of our people. The prevailing aid-dependent, donor-driven, project-oriented, bureaucracy-managed and “beneficiary”-creating development strategy has not worked in Bangladesh, pointing to the need for a new approach. In 1992, the SAARC Independent Commission on Poverty Alleviation came to a similar conclusion.

The strategy we propose will establish the primacy of the people and place them in the drivers’ seat for the creation of a new future for our country – a future where all of our people, not just a fortunate few, will have a chance to live long, healthy and productive lives. People are Bangladesh’s biggest and most precious resource, and our development strategy must make the best and most effective use of their creativity and productive prowess.

We specifically propose a people-centered development approach where the people’s power and their own resources will be the key factors. Empowerment of the people, social mobilization, creating local institutions and leadership, local level planning and action, and harnessing indigenous resources are the cornerstones of this approach. The participation of women and the creation of opportunities for them are its other important elements. Contrary to the traditional methods of service delivery or giving handouts, this strategy will require fomenting a social movement or a phenomenon, involving all segments of the society. The focus of such a movement will be to empower each person to take responsibility for her or his own future and initiate individual and collective action with whatever she or he has in order to meet at the community level the challenges of hunger and poverty. In a similar vein, it may be noted that the Rural Development Policy, recently adopted by the government, also puts emphasis on popular participation and local resource mobilization.

The traditional development approach puts excessive emphasis on civil construction with bricks and mortar and big-ticket infrastructural projects. However, infrastructure building, which often represents showcase projects, is merely the means to an end – the end being human development or the transformation of human conditions. The principal focus of our proposed new strategy will be human development and improving the quality of human lives.

### Strong Local government is the Key

In our prevailing development strategy, the government, with large amounts of human and nonhuman resources at its disposal, is the dominant player, shaping all development activities. The proposed new strategy will relieve the government of its traditional responsibility of planning and “delivering” development for people. Rather its main objective will be to make people the principal authors of their own future with the government creating a conducive environment for them to succeed. In this approach, the local government must be the appropriate entity facilitating popular participation and action.

More explicitly, we see three principal forces – the people, their elected local representatives and the government – playing the critical role in the proposed new strategy. In this arrangement, people are the principal players, taking the primary responsibility for ending their own hunger and poverty. The role of the elected representatives, which represent the tested grassroots leadership, will be to awaken, animate and mobilize people and local resources for generating local-level planning and appropriate citizen action, reflecting the aspirations and priorities of the people. Article 59 of our Constitution earmarks these planning and implementation functions for local bodies.

Another important role for the local government structure will be to create effective linkages between people and public authorities to ensure that governmental resources and services reach those who need and are entitled to them. Much of the resources now allocated for the rural poor do not actually reach them. As Rajiv Gandhi found out in India, only 15 % of all anti-poverty programs actually reached the poor, which induced him to push through the 73<sup>rd</sup> Amendment of the Indian Constitution, making the panchayati raj mandatory in all states. If our system of local government is strengthened and truly made the conduit for the delivery of all public services, as already mandated by Article 59 of our Constitution, it is likely to have a drastic impact on the prevailing level of poverty in our country.

A strong local government structure is also likely to redress another serious problem we face in this country. The distribution of income in Bangladesh has become increasingly skewed over the years. The income disparity between the rich and the poor – most of whom are rural – is now acute. Direct and increased allocation of resources to local bodies and the better utilization of those resources by a transparent and accountable local system will be the best way to reduce the income gap.

In our proposed strategy, the government’s main responsibility will be to make the skills and resources it has at its disposal available to the people in a transparent and accountable manner so that the latter can succeed in creating lives of self-reliance and dignity. The government must also provide an appropriate legal and policy framework in order to create a level playing field for those who are hungry and disadvantaged and offer appropriate opportunities for them. In other words, in the proposed strategy the government’s role will be to create an enabling environment for the people to succeed.

We can illustrate our proposed strategy with the analogy of a soccer game. In our “game,” the object of which to create a hunger-free, self-reliant Bangladesh, the people, especially the hungry, are the main players who will have to succeed in

scoring “goals.” The elected local representatives will not be in the field playing the game, but will perform the all-important tasks of coaches and managers, preparing the players and facilitating the game. The government’s role in this game is that of a referee and sponsor; it must define appropriate and equitable rules, enforce them and create opportunities for those who are disadvantaged. A soccer game cannot be successfully played without the genuine partnership and effective cooperation of all three forces: players, coaches and managers, and referees and sponsors. Similarly, creating a new hunger-free self-reliant Bangladesh will require an effective partnership among the people, their elected local representatives, and the government.

For this partnership to work and to be able to deliver the goods, the elected local representatives must play a key role. Many of the challenges of life that reflect as well as keep hunger in place must be faced and solved locally. Local initiatives, both individual and collective, are essential pre-requisites for creating income-earning opportunities to providing safe drinking water to eradicating repression of women. Elected local government representatives can effectively empower and mobilize people and local resources to devise appropriate solutions to most hunger-related problems.

Not only do many of the challenges that the poor and the hungry face have local solutions, those solutions are also in many cases nearly cost-free. If the people come together and work shoulder to shoulder, a form of “social capital” is generated, often eliminating the need for large amounts of material resources. There are other problems, whose solutions depend on creating awareness and generating commitment on the part of the people in order to change their habits and behavior. Solutions for still other problems are already present in the community (for example, opportunities for quality education) and if the people are organized they can more effectively get access to them without having to shell out more money from their own pockets. Elected local representatives can again play the most effective catalytic role for mobilizing local people and resources for local level planning and action.

For all of these to happen – solving local problems primarily through mobilized local efforts and resources – the present system of local government in Bangladesh needs to be strengthened and its roles and functions transformed. It must be given appropriate legal authorities and adequate financial resources so that elected local representatives can be the change agents for creating a hunger-free, self-reliant Bangladesh.

#### A Weakened Local Government Structure

Although a strong local government structure is an essential pre-condition for creating a new future for Bangladesh, the system currently in place falls far short of the promise of the authors of the Constitution. The present system, as a result, is far from strong. In fact, it has not only been weak to begin with, it has become weaker over time.

A major reason for the weakened status of local government bodies in Bangladesh is their neglect by concerned authorities over the years. No serious efforts have been made by successive governments to take effective steps toward creating a powerful and viable local government system. The reform efforts have been mostly feeble and cosmetic in nature, often limited to only changing the nomenclature. Local government entities have also been denied the necessary powers and resources. Some

financial authority was even taken away from Union Parishads. Consequently, because of lack of resources these institutions do not and cannot afford to have any staff of their own. In addition, there have been no serious initiatives for building the internal capacities of local government institutions, eroding their effectiveness as autonomous and independent institutions. This state of affairs made Professor Zairian Khan recently lament that the history of local government in Bangladesh has been full of rhetoric and devoid of commitment.

Another reason for the present poor state of the local government system in Bangladesh is its manipulation for political purposes by successive governments. Beginning from the Ayub Khan regime, political expediency rather than the consideration of creating a potent instrument of governance has led politicians to tinker with the structure of local governance. This tinkering has turned it into a hodge-podge of a system with no clear purpose or focus.

More seriously, the local government structure has come to be a mere extension of central authorities and exists only in name. Government rules, circulars and bureaucratic edicts – which are often vague and contradictory – have become the instruments of central control. Such control, for example, included the approval of the Union Parishad budget at three levels of central authority, totally undermining the Parishad's autonomy. Consequently, elected UP representatives primarily perform according to the wishes and priorities of their bureaucratic superiors, which range from tree plantation to literacy campaigns. The demands of the central authorities are often most absurd. For example, giving almost no resources, the central government has mandated 48 functions – ten compulsory and 38 optional – for UPs.

As a result of continuing neglect, politicisation and direct central control, the local government structure in Bangladesh has not grown into a representative, decentralised, independent and transparent system accountable to the people. It has failed to become an effective instrument of the democratic process and of participatory development. Lack of resources prevented it from significantly impacting the lives of their constituents. Local government bodies are also now plagued with many internal weaknesses, including serious operational and management shortcomings.

In spite of all the weaknesses of the existing local government structure, there is still one development with respect to women's empowerment, of which we can be proud. The 1997 amendments to the Local Government Ordinance provided for the direct election of three women members to the Union Parishads and Gram Parishads. This landmark development opened a new horizon for unleashing women's leadership at the grassroots.

#### Elements of an Empowered System of Local Governance

In order to be able to play its due role of creating a hunger-free, self-reliant Bangladesh, the local government system, trapped in its present outmoded shell, must undergo major restructuring and reforms. Such reforms must be bold and based on "out of the box" thinking. They must also be consistent with the principles of devolved authority and decentralized governance.

The very first step in strengthening the system of local governance must be to overhaul the existing statute, which was inherited from the colonial period and has been tinkered with many times over the years. The purpose of the overhaul, as the

Local Government Commissions in 1997 recommended, must be to make a system of local self-government, responsive to the needs, aspirations and priorities of the people and accountable to them. The new statute must also redefine the role of the local government representatives, especially the UPs and Pourashavas, so that they become the focal point of all poverty eradication and human development activities by harnessing the creativity and resources of the grassroots people.

A fundamental step toward building a strong local government structure must be to channel adequate resources to it. A revenue sharing formula must be developed, specifying a regular transfer of a fixed proportion of central government resources to the local government. Such transfer of resources must be as a matter of right and not based on the discretion of central authorities. It must not be an instrument to control or influence local government activities. In order to operationalize this revenue sharing formula, the Ministry of Local Government, Rural Development and Cooperatives needs to be restructured and even renamed perhaps as the Ministry of Local Government Financing. In addition, the local government bodies must be given authority to raise revenue from their local constituencies.

In order to make the local government bodies potent and effective entities, needed policy and administrative reforms must also accompany legal reforms. The purpose of the reforms must be to strengthen local bodies and to create an enabling environment for people to succeed. This will require the central government to shed some of its traditional command and control functions and assume the role of facilitator and coordinator. This will, most importantly, require devolution of function and decentralization of authority and make the local bodies accountable for many of the functions that have traditionally been the preserve of the central government.

Another important step toward strengthening the local government must be to increase their institutional capacity. This is will require a comprehensive and continuing training program to empower the elected local representatives and enhance their skills. The training program must go beyond the traditional statutory type to inform them of their functional responsibilities, but to transform their roles to be a catalyst of a hunger-free self-reliant Bangladesh. There must also be a special training program to empower the leadership of the elected women local representatives, particularly the female UP representatives, so that they can become the change agents for improving the lives of rural women.

To conclude, a strong local government structure is a fundamental pillar of an independent country and a vibrant democratic society. The idea of such a structure in our sub-continent owes its historical origin to the pre-colonial village panchayat system, which was designed to institute self-rule rather than rule by landlords, their agents or other outsiders. In the case of our country, we first rid ourselves of the British and then the Pakistanis at the cost of many lives and much blood in order to earn this right of self-rule and decision-making based on local needs and priorities. A politically empowered, economically viable and technically skilled local government system, which is transparent and accountable to the people, can thus make our freedom and independence meaningful. Such a system will also establish true grassroots democracy. With a decentralized, autonomous and democratic local government system, people will not only participate in the rituals of voting, they will also have an opportunity to shape and influence the decisions that directly affect their

lives and livelihood. Thus, democracy will become, in the language of Amartya Sen, not only the goal, but also the primary means of development.

## A Letter to Mr. Justice M. A. Aziz, Chief Election Commissioner

Dear Sir,

We, a group of committed citizens who have long served our nation in various capacities, are writing to you to propose a set of reform proposals in order to promote and safeguard the integrity of our electoral process and hence the democratic system itself.

As a constitutionally mandated, independent institution to ensure fair and impartial election, we believe that the Election Commission, using its rulemaking authority, can initiate many of the reforms on its own, marked by a single asterisk (\*), without reference to the Parliament. Many of these would essentially involve aggressively enforcing the existing codes of conduct and other laws. Others marked by two asterisks (\*\*) would require legislative action, particularly the amendment of the Representation of People Order (amended), 1972. (Implementation of the remaining reforms would require amending the Constitution.)

It is our considered view, consistent with our Constitution, that we need a strong and independent Election Commission with the necessary powers, authorities, functions and resources. More specifically, we feel that the EC must be adequately empowered to: (1) conduct free, fair and impartial elections; (2) ensure the accuracy and integrity of electoral rolls; (3) promptly adjudicate election disputes; (4) eliminate the influence of money on elections; (5) collect and disseminate information from candidates running for office so that voters can make informed decisions; and (6) ensure that political parties practice democratic principles and pursue transparent policies. We recommend the following specific reform initiatives to be immediately taken:

Free, fair and impartial election process:

Revision of election codes of conduct and the relevant laws to prevent the use of governmental powers, authorities and resources from influencing elections;\*\*

Revision of election codes of conduct and the relevant laws to prevent political parties and candidates from making commitments to implement any project or projects and take any action which will benefit the people of a particular constituency within six months prior to the due date of the election (in case of premature dissolution of Parliament, from the date of dissolution);\*\*

Revision of election codes of conduct and the relevant laws to prohibit political parties and candidates from advertising their achievements in whatsoever manner within six months prior to the due date of the election;\*\*

Aggressive enforcement of codes of conduct and other relevant laws and canceling the candidature of those committing serious violations;\*

Issuance of voter ID cards with the ID cards including the voter number, which will eliminate the need for candidates to set up booths on the election day;\*

Allowing staggered voting in Parliamentary elections to ensure better security of polling centres;\*\*\*

Allowing negative voting and if the negative votes exceed 50% of votes cast, there must be reelection;\*\*\*

Requiring automatic cancellation of results of and, re-polling in, those centres where vote casting is 20% above the national average or any one candidate receives more than 90% of the vote cast;\*\*\*

Disallowing candidates from contesting in more than one constituency at a time; \*\*

Effective monitoring and review of the voting process to eliminate the influence of muscle power on the election day and canceling the results of the polling centre or centres for serious violations;\*

Taking punitive action against surrogate candidates – for example, those candidates getting less than 1% of the votes cast – to prevent false voting;\*

Allowing double counting of votes – once at the polling centers and the second time at the office of the Returning Officers/Assistant Returning Officers;\*

Disallowing writings on the walls, posting posters, leaflets and handbills on the walls as part of the election campaign and strict enforcement of punishments for violations;\*

Allowing the use of voting machines to ensure the accuracy and integrity of the voting process;\*\*\*

Not reserving symbols for candidates nominated by parties that are not registered;\*

Appointing impartial election officials in consultation with major political parties and closely monitoring their activities.\*

Accuracy and reliability of the electoral roll

Ensuring the dependability and accuracy of the electoral rolls through its continuous updating;\*

Easing the enrolment process by making the post office the nodal agency for continuous updating of the electoral roll;\*

Providing for an appellate authority at the district level for resolving disputes relating to voter enrolment;\*

Expeditious resolution of election disputes

Resolving all pre-election disputes initially by the Returning Officers/Assistant Returning Officers, and in the case of appeals, the Election Commission will make the adjudication within 15 days and its decisions will be binding;\*

Setting up the required number of special tribunals of the Supreme Court to hear election disputes and requiring that they are resolved within six months.\*\*

Elimination of the influence of money on elections

Closely monitoring election expenses to ensure that they do not exceed the set limit;\*

Canceling the candidatures of those who fail to submit statements under section 44AA of RPO or submitting false or misleading statements or suppression of material information;\*

Withholding the Gazette Notification of election results unless the candidates submit detailed accounts of all election expenses and the sources of those expenses in

prescribed forms within 15 days of the election and ensuring that the defaulters receive the punishment laid out in the law;\*

Ensuring that punitive actions are taken against political parties for not meeting the legal requirements of submitting the post-election expense reports;\*

Including the expenses of the supporters in the total expenses of the candidate;\*

Posting all reports submitted by candidates and political parties in the Election Commission website and canceling the election of those who are found to have, based on proper scrutiny, submitted false and misleading information;\*

Disclosure of the financial background and antecedents of candidates:

Aggressively enforce the disclosure requirements of candidates in parliamentary elections directed by the Honorable High Court on May 24, 2005, and cancel the nominations of those who do not submit affidavits or disclose false or misleading information or hide material information;\*

Revise the affidavit format to facilitate full and complete disclosures;\*

Requiring candidates to include in their affidavits the amount of their and dependents' income from various sources and their tax returns for the previous 3 (three) years;\*\*

Allowing the filing of counter-affidavits by opponents;\*

Requiring all elected representatives to file yearly statements of income, sources of income, interests they hold in businesses, the assets and liabilities, and their own income tax returns and those of their immediate family;\*\*

Disseminating the information contained in affidavits, counter-affidavits and yearly statements by posting those on the EC website to enable citizens to make an informed choice, and canceling the candidature/election of those found to have, after due scrutiny, submitted false and misleading information;\*

Disqualifying convicted criminals or those found to be corrupt by a commission of inquiry from contesting in elections;\*\*

Eliminating the loopholes to ensure that candidates with loan defaults are disqualified;\*

Disqualifying defaulters of bills of government services from contesting in elections.\*\*

Facilitate the practice of democracy and transparency within political parties

Making biennial registration/deregistration of political parties mandatory and only registered parties will be allowed to participate in elections;\*\*

Requiring, as conditions of registration, holding yearly elections of office bearers of political parties, carrying out all their financial transactions through banks, and submitting audited accounts to the Election Commission each year;\*\*

Promptly posting the information and accounts submitted by political parties in the Election Commission's website for public awareness and canceling the registration of those parties who are, after due scrutiny, found to have submitted false or misleading statements ;\*

Requiring political parties to maintain lists of their primary membership and systematically allowing the primary members to have a direct say (e.g., through a primary election) and ensuring transparency in the nomination process;\*\*

Requiring party membership and direct involvement in party activities for five years before giving nomination to anyone in an election;\*\*

Canceling the registration of political parties which boycott the Parliament for 90 consecutive working days.\*\*\*

As stated earlier, all of the recommended changes would, however, involve strengthening the Election Commission. More specifically, it would require:

- the financial independence of the EC by treating all its expenses as charged on the Bangladesh Consolidated Funds;
- an independent secretariat for the EC with ability to recruit its own personnel;
- empowering the EC to disqualify candidates or cancel candidatures or elections of those committing material violations of codes of conduct or election laws;
- nominating bold and impartial persons to the EC in consultation with major political parties;
- providing assistance by the Home Ministry, Defense Ministry and other governmental authorities, as and when asked by the EC;
- the EC to make its decisions transparent.

We call upon you and your colleagues to take the necessary steps for immediate implementation of those recommendations that the Election Commission can, on its own, implement at this time. We also respectfully request the EC to send the remaining reform recommendations, in the form of a concrete proposal, including the steps needed to strengthen EC, to the government for its immediate action. Major political parties are already on record in support of strengthening the EC.

We are very serious about our recommendations and will be most interested to work with the EC to pinpoint the actual changes that it can implement on its own.

With warm regards,

(Signed by elected representatives.)

## BNP conference and citizens' expectation

THE BNP's national council, to be held after nearly 16 years, has generated much interest among both party loyalists and citizen groups. Within the party, this interest is manifested in competition, often violent, for holding higher positions and influence.

The in-fighting is due to competing individual interests among the party activists. In today's Bangladesh, the primary reason for joining and being active in political parties is the receipt of patronage. It is now well known that the party in power, or coming into power, will reward its followers with benefits, both due and undue.

Key officeholders get even more benefits. With the possibilities of such payoffs in play, it is natural that self-interested people should join major parties and resort to any means, including violence, to achieve prominence. This is what has been happening within both the Awami League and the BNP.

The violent conflict within the BNP rank and file is undoubtedly scandalous. However, it is perhaps even more scandalous for the party higher-ups to deny the

problem and shift the blame to the government. With so many legitimate grounds to criticise the government, it is ironic that BNP chooses to invent such disingenuous charges. This is an ugly, all-too-blatant, manifestation of our bankrupt politics.

Such a blame-game must end. The first step towards solving the problem is to recognise its existence. However, by refusing to admit that it has serious conflicts within the party, BNP is sidestepping the need to resolve the issue. Unfortunately, avoiding an issue, as everyone knows, does not make it go away; it only allows it to become bigger and more serious in the future.

It is also well known that nowadays people rarely join our major political parties out of an attraction to their ideology or programs. They do so primarily to get a share of the pie. In fact, politics over the years has become a very profitable “business” – a shameless get-rich-quick scheme. Slogans and symbolism, rather than ideology and principles, have now become the main tools of its trade. Thus, the principal purpose of the competition and conflict within major political parties is for aspirants to get as close as possible to the all-powerful leaders at the top.

Such closeness proportionally increases the opportunity and amount of patronage and favour. It is no wonder, then, that so much jockeying and manipulation are the order of the day. In contrast, citizens like us are interested in BNP’s convention for very different reasons. We want to see BNP learn from its past painful experiences and stay clear of the excesses and wrongdoings that led it into trouble. We want them to start practicing democracy, transparency and accountability within the party hierarchy – not only for their own sake, but also for the sake of the nation. We also hope that they will free the party from the clutches of selfishness, corruption and dynastic politics.

As citizens, we want BNP to comply with the Representation of the People Order (Amendment) Act, 2009, passed in the first session of the 9th Parliament, especially the conditions for registration of political parties. Section 90B of the amended RPO contains the conditions for such registration, the most important of which are: 90 (1) (b) “[...] political party desiring to be registered with the Commission, shall have the following specific provisions in its constitution, namely:

To elect the members of the committees at all levels, including members of the central committee;

To fix the goal of reserving at least 33% of all committee positions for women, including the central committee, and achieving this goal by the year 2020;

To prohibit formation of any organisation or body as its affiliated or associated body consisting of the teachers or students of any educational institution or the employees or labourers of any financial, commercial or industrial institution or establishment, or the members of any other profession: Provided that nothing shall prevent them from organising independently in their respective fields or forming an association, society, trade union etc. and exercising all democratic and political rights, and individual, subject to the provisions of the existing laws, to be a member of any political party;

To finalise nomination of candidates by the central parliamentary board of the party in consideration of panels prepared by members of the ward, union, thana, upazila or district committee, as the case may be, of the concerned constituency.”

Section 90C of the RPO also provides: 90 C (I) “A political party shall not be qualified for registration under this Chapter, if ... (e) there is any provision in its constitution for the establishment or operation of any office, branch or committee outside the territory of Bangladesh.”

That is, the law mandates the practice of democracy within the party rank and file. It is also illegal to have affiliated and associated organisations of the party. In addition, it would be a violation of the law to have any branch or office of the party outside Bangladesh. It is important to note that the mere inclusion of these provisions in the party constitution is not enough – they must be put to practice. The unfortunate truth is that foreign branches of political parties often take intra-party conflicts outside the country, badly tarnishing the image of Bangladesh.

It may be pointed out that the Awami League and Jatiya Party did not fully comply with these provisions of the RPO. Their committees were not elected; the Awami League also played a very unfortunate game by designating its affiliated bodies as associated organisations, although both are illegal. Their foreign branches also still exist.

Will BNP be able to rise above this culture of non-compliance? It goes without saying that unless laws are implemented, we will not have the rule of law. Without rule of law, the rule of the jungle prevails – thus the strong prey on the weak, the rich on the poor, and the powerful on the disenfranchised. Such conditions eat away at the vitality of a nation, pushing it into a state of dysfunction.

It may be noted that, while adopting the RPO framed during the caretaker government, the 9th Parliament ratified the conditions of registration of political parties under the Election Commission, but removed the EC’s authority to deregister parties for non-compliance.

By doing so, Parliament has made compliance with the conditions for registrations discretionary rather than mandatory and, in the process, has clipped the authority of the EC, turning it into a paper tiger. Note further that, during the caretaker government, the registration conditions were hammered out through many consultations between the EC and the political parties – they were not unilaterally imposed by the EC.

According to media reports, the BNP chairperson may designate the future leadership, rather than the leadership being elected by the councilors – which would be a violation of the law and thus totally unacceptable. Rumours also abound that BNP will amend its constitution, more or less keeping the chairperson’s power intact – now the BNP chairperson has almost absolute power and she can do and undo anything – which will also be contrary to democratic norms.

It is clear from our past experience that, given the opportunity, power tends to concentrate, with unfettered power leading to undesirable outcomes. Such outcomes may not only be a bad omen for the party, but for the country as well.

To conclude, politicians often complain that what they do is their own business; why should some citizens be concerned about it? They infer that politics is for politicians and others should not poke their noses into it. It is obvious, however, that citizens cannot keep mum.

Political parties are not private clubs; they are constitutionally recognised entities, the effectiveness of which primarily determines whether democracy succeeds

in Bangladesh. If political parties are not democratic and they are not transparent, accountable and are committed to the people's welfare, it is unrealistic to expect good and democratic governance in the country.

Furthermore, even private clubs cannot do anything they like; they must comply with prevailing laws and cannot act against the public interest. Thus, the behaviour of political parties and the public welfare are inextricably tied together – for the consequences of the irresponsibility of political parties will have to be borne not by the parties alone, but by all citizens of Bangladesh.

*The Daily Star*: December 7, 2009

## Women's participation in parliament: An alternative proposal

According to newspaper reports, the government is considering increasing the number of parliamentary seats to 450, of which 50 would be reserved for women. The women's seats would be divided among political parties according to their existing parliamentary strengths. Various stakeholders reacted sharply and angrily against this proposal. We make here an alternative proposal for ensuring a critical mass of women in Parliament for effectively raising their voice while overcoming the criticisms of the government proposal.

### Why Women's Representation in Parliament?

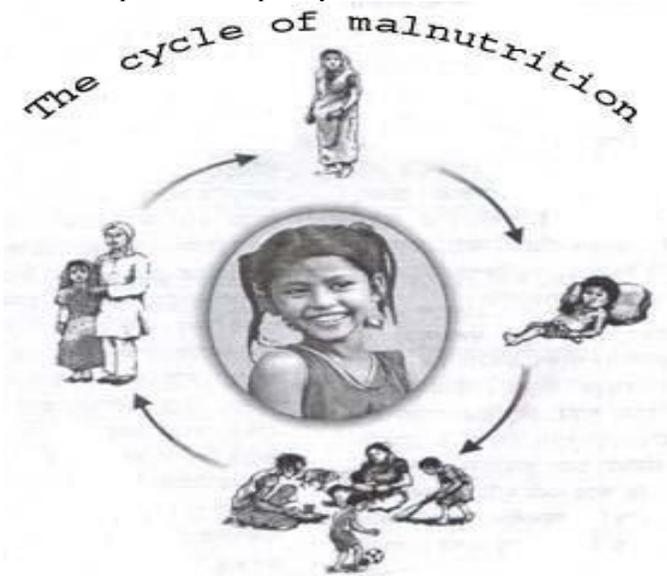
There are two overriding arguments for significant representation of women in Parliament. First is the argument of democracy, human rights and equality. The fundamental principle of democracy is that the power of government is only legitimate when derived from the consent of the governed. That is, a truly democratic system requires participation of all citizens. Hence a governance system with little or no presence of women can hardly be called democratic. Thus, democracy cannot be gender-blind, and our Constitution (Articles 10, 19(1) and 28(2)) guarantees equality for women.

Poverty eradication is the other reason for increased women's participation in governance. Nearly half of our population lives below the poverty line. Of the poor, women are the poorest, and their poverty is unfortunately the primary source of the overall poverty condition in our country.

Poverty among women triggers an insidious cycle of malnutrition. Nearly a third of our children are born with low birth weight, which is among the highest in the world. Girls and boys are almost equal in numbers among newborns with low birth weight. However, because of patriarchy, discrimination against girls starts right after birth – they are fed less and cared for less – causing relatively higher rates of malnutrition among them. Many village girls, as they become older, get confined within four walls and are required to perform household chores. They are often deprived of education and basic health services. At puberty, many of them are married off and most get pregnant before their own bodies are matured. These young and malnourished women then give birth to low birth weight babies, sustaining the cycle of malnutrition, the source of which is clearly the discrimination against women.

Thus, a 1996 UNICEF study concluded, “The exceptionally high rates of malnutrition in South Asia are rooted deep in the soil of inequality between men and women.” The ill effect of the cycle of malnutrition is visibly reflected in the fact that the average height of Bangladeshi girls, especially the village girls, have been declining over the years.

The cycle of malnutrition sustains poverty by preventing people from becoming healthy and productive individuals. People born with low birth weight and growing up malnourished suffer from chronic persistent hunger, which affects their productivity. Because of this condition, Bangladesh would lose, according to a 1998 UNICEF estimate, about \$23 billion worth of productivity in the next 10 years, which would no doubt ensure the persistence of poverty.



In recent years, scientists have also been warning about fetal programming – the health consequences of deprivation of women. That is, persons born with low birth weight are more likely to develop coronary heart disease and diabetes in later life. This causes an increasing burden for the poor of Bangladesh, who can hardly afford additional medical expenses.

To end the cycle of malnutrition and avoid the ill effects of fetal programming, we must immediately take effective steps to improve women’s conditions. Political empowerment of women, ensuring them the opportunity to voice their concerns, share their experiences and take part in decision-making, is a fundamental necessity for such steps. Significant involvement of women in the political arena will help bring to the forefront the issues and concerns that are important to and that involve women, making the process inclusive.

### Flawed Government Proposal

The government's proposed new reservation system for women is seriously flawed. First of all, the proposal offers too little – only 50 out of 450 or 11% seats in Parliament for women compared to 10% during the last Parliament. This represents a token gesture, reflecting the “generosity” of the policymakers rather than a genuine effort to redress longstanding discrimination against women. Secondly, contrary to the commitment of BNP, the proposal calls for selection rather than direct election of women MPs. Thirdly, in the proposed system the MPs from the regular and reserve seats will have overlapping responsibilities, and the female MPs will have no accountability to the people. Rather they will be “accountable” to the party bosses. Fourthly, the selection of MPs by parties rather than election by the voters will exclude women from the process of mainstream politics and decision-making. They will be looked down upon by their male colleagues, and denied real powers and responsibilities. They will be relegated to minor, peripheral and symbolic roles – as has happened in the case of women representatives in local governments.

Fifthly, since under the proposed system the women MPs will not have their own constituencies and do not have to face voters, their selections will not be based on competence or “electability.” Rather their connections to party leaders and their lobbying ability will be the most important qualities for being selected. In our present corrupt and criminalized political culture, “selling” the women's membership in Parliament for money or other considerations may not also be completely ruled out. Sixthly, the proposal will allow the women's seats in Parliament to be used as spoils by the party high command – a tool of bestowing “favours” to women in party or in family. This will further corrupt our politics, contributing more to our already ineffective parliamentary democracy. The naked patronage system practiced in our “winner-take-all” political culture, ignoring fairness and justice, is perhaps the worst form of corruption, and it has already caused enormous harm to our political system. We can ill afford yet another patronage tool, especially for selecting our leaders. Finally, the proposed reservation system, like in the past, will fail to empower a significant cadre of women leaders with deep grassroots connections who can stand on their own and get elected competing against men. Given all these pitfalls, the proposed system will be clearly counterproductive to our goal of empowering women and their voices and concerns reflected in national policymaking.

### An Alternative Proposal

A quota or reservation is usually instituted to protect and promote the interests of minority groups who are traditionally excluded from political powers. However, women are not minorities, and a reservation system is not appropriate for them in the long-run, although it will be necessary for a while to give them a head start. Women are half of our population and their legitimate right is to have 50% representation in Parliament. With this premise, we propose a rotating system that will reserve 1/3 of all parliamentary seats for women through direct elections, plus the possibility of women being elected to unreserved seats.

Our proposal will require apportioning all seats in Parliament into three groups. In the first term, 1/3 of all seats/constituencies will be chosen by lottery and reserved for women for a period of one term. All candidates within those constituencies must be women and they will be directly elected by the voters.

In the second term, a second and different 1/3 of seats will be reserved for women from the constituencies that were previously unreserved. Through direct elections, this second 1/3 of the total seats will be filled by women.

The same process occurs in the third term with the remaining seats. The cycle repeats itself until it is deemed no longer necessary. In this way, each seat in Parliament will be reserved for women 1/3 of the time on a rotating basis.

Under our proposal, women may also run for election to the non-reserved seats. The most effective women representatives, with strong grassroots connections, may also win against men. In this way, the overall representation of women will be higher than 1/3 and can approach the ideal 50/50 representation, ensuring that women's voices are heard.

The rotating system is attractive for many reasons. First, it will put in place a built-in mechanism for empowering a new generation of women leaders by allowing them to be directly elected from a specific constituency and getting the opportunity to nurture the constituency for future elections. Our proposal will allow within three terms the election of at least one woman MP from each constituency, and thus the empowerment of a minimum of 300 to 450 women leaders, depending on the total number of MPs. It will particularly open opportunities for women from the grassroots to express their leadership and be elected on their own in the future, making the reservation system unnecessary in the long-run.

Secondly, it will avoid overlapping responsibilities and make the women MPs accountable to the people, not to the party bosses. Such accountability will be consistent with the basic tenet of parliamentary democracy and also Article 65(2) of our Constitution which requires Members of Parliament to be elected from "single territorial constituencies by direct election."

Thirdly, our proposal will adhere to the democratic principle of direct elections. It will in the process allow the women MPs to have the same powers and responsibilities as their male counterparts, making our political system inclusive.

Fourthly, our proposed system will make competence and "electability" of women as primary criteria for nomination as opposed to connections to and lobbying ability with the party high command. In such a situation, the political parties will search for and nominate the best candidates, creating opportunities for true leaders to represent women.

In the final analysis, because of the need to nominate competent women, our proposal will prevent the women's seats in Parliament from being used as a patronage tool. This may in turn reduce political corruption and lessen dynastic influence in our political system.

It must be pointed out that guaranteeing significant women's presence in Parliament is not enough; women must be given the freedom to voice their opinions and concerns so that they can work in a bipartisan manner on issues important to them. In the present condition, Article 70 of our Constitution prevents MPs from being the voice of their constituencies and vote against the wishes of the party bosses. This single constitutional provision makes a mockery of our claim that Parliament represents the people. A critical step in this respect is to abolish Article 70 to ensure that every MP, including the woman MP, is free to vote his or her conscious thinking primarily of the people, not of the party. This must, however, be accompanied by bold

political reforms, ensuring the practice of democratic norms in party as well as national politics.

#### Conclusions

It is clear that if we are to solve our problems of widespread poverty and malnutrition, which is the source of chronic persistent hunger, we must find ways to empower women, ensure their equality and create opportunities for them. This will in turn require their political empowerment – significantly involving them in the political arena so that their voices are heard and their concerns reflected in the policy and decision-making processes. Guaranteeing a significant proportion of seats for women in the Parliament is an important step in that direction.

We have made here an alternative proposal in order to stimulate vigorous and specific discussions on women's representation in Parliament leading to a consensus. In making the proposal, we have taken the risk of being called radical, especially by the vested interest groups. The strongest argument against our proposal is that the male MPs would oppose it for fear of losing their seats in the rotation process. However, no one has been given permanent lease to stand for election in perpetuity. Besides, many countries are now working to impose term-limits on legislators.

We may also be called impractical, even by those sympathetic to the idea of increased women's representation in Parliament. Yes, to some, in the present condition having a third of the seats in Parliament reserved for women is impractical – like it was one time impractical to demand voting rights for women. We do not want to fault them, like we must not fault the mother who gives relatively less food and less care to their daughters than to their sons. The mother unwittingly discriminates against her daughters, not because she loves her daughters less than sons, but because of her upbringing in a patriarchal culture. Similarly, many of us, including many women, find it impractical to think of a third, not to speak of a half, of our MPs being women. Yet our commitment to the health, wellbeing, dignity and self-reliance of all our people demands nothing less. We must not, therefore, shy away from controversy and criticism, for progress in all human endeavours is embedded in controversies.

It must be noted that no system is perfect and the effectiveness of any system will depend on the sincerity and integrity of those executing it. Thus, the unwavering commitment of our political parties to truly empower women and give them the opportunity to be heard and effectively participate is a prerequisite for making the proposal work. It will also require our politicians to play the game according to the rules, rather than trying to redefine the rules – if the rules do not suit them – in the middle of the game.

i Vulimiri Ramalingaswami, Urban Jonsson and Jon Rohde, "Commentary: The Asian Enigma," UNICEF, Progress of the Nation, 1996.

*The Daily Star*: February 29, 2004

**Increasing women's representation in Parliament: What is the best alternative?**

The cabinet has recently decided to propose a constitutional amendment to increase the parliamentary seats to 345, of which 45 seats would be reserved for women for another 10 years. Instead of direct elections of women MPs, as demanded by various women's groups and pledged by BNP in its election manifesto, the government proposal calls for distributing women's reserved seats among political parties based on their strengths in Parliament. The reaction to the government proposal has been sharp and swift, with many stakeholders outright rejecting it. This article is intended to evaluate, based on a set of relevant criteria, the government proposal relative to alternatives put forward by others to ensure significant increases in women's participation in Parliament.

#### Criteria for Evaluating Alternative Proposals

The system of reservation of seats in Parliament is intended to cause the political empowerment of women so that their views and ideas are adequately reflected in the policymaking and governance structure of the country. Women are half of our population. The political process that does not allow significant and effective representation of women in Parliament can hardly be called democratic. Thus, any proposal to increase women's seats in Parliament must be judged from the point of view of its significance and effectiveness.

Significant and effective participation of women in Parliament will be ensured if the reservation system meets several important criteria. The first criteria should be that it substantially increases the number of women in Parliament rather than the women's seats becoming just an ornamental token, reflecting the "generosity" of the policymakers. Many experts feel that at least a third of the seats should be reserved so that there would be a critical mass of women in Parliament who could become an effective voice.

Secondly, it must adhere to the democratic principle of direct election and every MP representing a distinct constituency. Article 65 (2) of our Constitution calls for MPs to be "elected in accordance with law from single territorial constituencies by direct election..." Thus, without direct election, the basic structure of our Constitution would be compromised.

Thirdly, it must provide for women MPs to be accountable to the people rather than to the party higher ups. Accountability to the people is ensured only when MPs have specific constituencies of their own.

Fourthly, the women MPs must not have overlapping responsibilities. Without specific constituencies of their own, women MPs will have overlapping responsibilities with their male colleagues. In that case voters will not know whom to hold accountable, the male MPs or the female MPs.

Fifthly, for women's representation to be effective, women MPs must have the same powers, authorities and responsibilities as that of their male colleagues. If women MPs are not directly elected, they are looked down upon by their male colleagues, and they are "excluded" from, rather than "included" in, the mainstream politics and decision making. They are normally relegated to minor, peripheral and symbolic roles, as has happened in the case of women UP members elected from reserved seats.

Sixthly, it must not allow connections to party bosses rather than their competence to be the primary consideration of their being nominated as women MPs.

The difficulty with the reservation system is that since the women MPs do not have constituencies of their own and face the voters, their nomination does not depend on their “electability.” In such a situation, “selling” of women seats in Parliament for money or other considerations may not be completely ruled out, contributing to further criminalisation of our politics.

Seventhly, the best alternative for significantly increasing women’s seats in Parliament would be one that could empower a new generation of women leaders with strong grassroots connections who could make the reservation system unnecessary in the future. The reservation system is normally used for protecting and promoting the interest of minorities. But women are not minorities, and thus it is not appropriate for them. The problem with the past reservation system is that it did not put in place a mechanism to bring forth a new generation of women leaders, who could eventually compete against men and win.

Finally, the reservation system must not be used as a patronage tool for bestowing favours to women in party or family. The naked patronage system, practised in our “winners-take-all” political culture, ignoring all sense of justice and fairness, is perhaps the worst form of corruption.

#### Evaluation of Alternative Proposals

An evaluation of the alternative proposals for women’s representation in Parliament is presented below based on the set of criteria listed above.

It is clear that the government proposal is the worst of the six options we have analysed. It will allow women seats to be increased to only 13%, which is not a significant improvement from 9% (30 out of 330) under the previous reservation system. They will again play symbolic roles and be the vote banks of the political parties. It will allow women MPs to be selected by party high command rather than directly elected, as is demanded by almost everyone concerned. Thus, women in Parliament will be accountable to the party bosses rather than to the people, defying the very basic principle of democracy. Their connections to, and lobbying ability with, the party higher commands will be the primary criteria for such selections. Under the government proposal, MPs from regular women seats will have overlapping responsibilities with dissimilar powers, authorities and responsibilities, and the process will not be inclusive. Another serious flaw with the government proposal is that it will not, as in the past, infuse new blood into the women’s leadership, making the reservation system necessary forever. Worst of all, it will allow the party higher ups to use the reserve seats as spoils to be distributed among family and friends, making our parliamentary system more ineffective.

By contrast, the rotating system we proposed has many attractive elements. Women’s seats in Parliament will no longer be mere ornaments in a male-dominated patriarchal system. More significantly, it will put in place a built-in mechanism for empowering a new generation of women leaders by allowing them to be directly elected from a specific constituency and getting the opportunity to nurture the constituency for future elections. Our proposal will allow within three terms the election of at least one woman MP from each constituency, and thus the empowerment of a minimum of 300 women leaders. It will particularly open opportunities for women from the grassroots to express their leadership and be elected on their own in the future, making the reservation system unnecessary in the long-run.

Our proposed system will also make competence and “electability” of women as primary criteria for nomination as opposed to connections to and lobbying ability with the party high command. In such a situation, the political parties will search for and nominate the best candidates, creating opportunities for true leaders to represent women. Furthermore, it will prevent the women seats in Parliament from being used as a patronage tool. This may in turn reduce political corruption and lessen dynastic influence in our political system. Thus, the rotating system passes our significance and effectiveness test for women’s seats in Parliament.

#### Conclusions

There is now a widespread consensus among all concerned to substantially increase women’s seats in Parliament and hold direct elections for those seats. Major political parties also in their election manifestos made such commitments. However, the ruling BNP has defied its own commitment on the argument that holding direct elections for women seats is “impractical” as they will have multiple constituencies with 13 to 15 lac voters. Our proposal could be a practical alternative to dispel such concerns.

Our proposal is intended to stimulate vigorous and specific discussions on women’s representation in Parliament with the intention of reaching a consensus. In making the proposal, we have taken the risk of being called radical, especially by the vested interest groups. The strongest argument against our proposal is that the male MPs would oppose it for fear of losing their seats in the rotation process. However, no one has been given permanent lease to stand for election in perpetuity and be elected. Besides, many countries are now working to impose term-limits on legislators and we should also seriously consider it. Even those sympathetic to the idea of increased women’s representation in Parliament may also find our proposal too provocative. Yes, in the present condition having a third of the women’s seats in Parliament reserved for women is unthinkable – like it was one time impractical to demand voting rights for women. Yet our commitment to the health, wellbeing, dignity and self-reliance of all our people demands nothing less than the political empowerment of women. We must not, therefore, shy away from controversy and criticism, for progress in all human endeavours is embedded in controversies.

*The Daily Star*: March 14, 2004

## Too little, too late?

As the old adage goes, you can drag a donkey to the water but can’t make it drink. The same appears to be true with our Election Commission (EC). Notwithstanding all the pressures to the contrary, it is continuing to work against the best interests of the voting public. It is creating yet another half-hearted effort to correct the electoral roll.

After widespread criticisms about the accuracy of its revised electoral roll – revised last August – and pressures from the Caretaker Government Advisers, the EC has finally decided to remove glaring errors from the roll. To this effect, it issued a letter to its field offices on December 5, 2006, replacing another letter of November

26, 2006. Based on the available information, the Commission will give temporary appointments to 1,40,000 individuals who will go to households during December 8-11 for identifying names for deletion and getting the relevant Form completed. Later, during December 13-15, the Assistant Registration Officers will hold hearings and make the necessary corrections in the revised roll. The whole correction process will be done in a week at a cost of about Tk. 10 crore.

Since an accurate electoral roll is an essential prerequisite for fair elections, the EC's initiative to once again revise the electoral roll is very significant. In fact, if we are to hold elections on time with the participation of all major parties, which is a constitutional obligation, this is our last opportunity to make the electoral roll truly and reasonably error free. We, therefore, welcome the initiative of the EC. However, we are afraid that it is too little, too late and is unlikely to succeed.

The Commission's initiative has serious flaws. One of the main shortcomings is that its efforts are only to delete names. Its instructions call for using Form-9, which is meant only for deletion of names of voters who are either dead or have lost eligibility. Nothing is said in the Commission's letter of December 5<sup>th</sup> for inclusion of names, although the earlier letter of December 26<sup>th</sup> had instructions for inclusions in the electoral roll.

It is well known that the errors in the revised electoral roll are not only due to duplicate registration of same names and fictitious names in the roll, many eligible voters also failed to be enrolled in the revision process. The recent National Democratic Institute (NDI) survey clearly provides evidence for it. The survey shows that 13 % of the voters in the revised roll are false, of which 6 % are fake and 7 % are duplicate voters. In other words, the revised electoral roll contains at least 1.21 crore of questionable voters. In addition, 2.5 % genuine voters could not be enrolled. Thus, deleting names from the revised roll is not enough, it will also require inclusion, by using forms 2 and 7, of those voters who were left out. So far, the Commission has not taken any initiative for such inclusion.

Another serious concern about the EC's initiative arises from the fact that the same individuals who were involved in the earlier revisions would again be employed for the task ahead. There have been many media reports about the ineptness and partiality of these individuals. We know from our own experiences that some of these temporary hires in the past did not go to households themselves, instead they sent their students for the job. It was alleged that many of these students belonged to the student wings of certain political parties. In addition, they did not go to many households and consequently many eligible voters were left out of the electoral roll. How can we be sure that these individuals will be more serious and careful this time?

Other serious questions about the EC's initiative are: What would be the procedures for corrections? How would they be different from the previous procedures which did not work in the first place in identifying duplicate voters? If the offenders or their family members do not volunteer the information about the duplication, how would the task be accomplished?

Another serious concern is about the publicity, or lack of it, about the initiative. To the best of our information, during the previous revision, advertisements were placed for two consecutive days only in five newspapers which did not include the dailies with highest circulation. This time also there does not seem to be a serious

media campaign planned. In addition, only three days may not be enough for this gigantic task while 22 days allowed for the last revision could not produce a reliable electoral roll. Thus, we are concerned that the Commission may not succeed in bringing the errors in the electoral roll to an acceptable level.

We cannot help but raise another question. Why did the EC send only 30,000 forms to its field offices? The number of households in Bangladesh is at least three crores. In addition, if we go by the NDI estimate, the revised roll has at least 1,21,000 questionable voters. How could 30,000 forms be enough for the task?

Given the above concerns, we specifically propose that:

Electoral rolls be prepared afresh for major cities, especially for Dhaka and Chittagong. For such fresh preparation, the existing electoral rolls will have to be cancelled first under Article 7(7) of the Electoral Rolls Ordinance 1982 on account of major errors. Then enumerators will have to be sent from door-to-door for collection of information, a draft roll prepared and published using the information collected, and then the final roll published after the necessary revision.

The EC publishes the electoral roll revised last August as a draft roll. After it is available for public inspection, which is so far not available, necessary amendments and deletions could take place under a Revising Authority set up per Article 9 of the Ordinance.

The EC initiates a major media campaign using both the print and electronic media to inform the general public of the initiative. The campaign must emphasise that having names in the electoral roll more than once is a punishable offence. The opinion makers of the society should be used in the campaign.

A permanent electoral roll be prepared and kept on display in Union Parishad, Paurashava and City Corporation Ward offices. Such display will enable the continuous revision of the roll. Photo ID cards for voters will also have to be issued in the future as part of the permanent roll.

The publication of the revised electoral roll as a draft roll is attractive on several counts. First, this will ensure full compliance with last April's Supreme Court judgment on electoral roll. In the above judgment, Justice Tafazzul Islam directed that "before the 9<sup>th</sup> Parliamentary elections, it is the existing electoral roll, i.e. the electoral roll of 2000, with some addition, deletions and modification as may be necessary, is to be published as draft electoral roll." Three other justices – Chief Justice J R Mudassir Husain, Justice Md. Ruhul Amin and Justice M M Ruhul Amin – concurred with this opinion of Justice Islam.

Furthermore, if a draft roll is published, it will create opportunities for activists of political parties to be involved in the correction of the electoral roll. If the opposing political parties are engaged in the process and a competitive environment is created, it will pave the way for developing a reasonably reliable, and more importantly, an acceptable roll.

According to media reports, it may be noted, our Acting Chief Election Commissioner Justice Mahfuzur Rahman, mentioned that because of the Supreme Court judgment, the EC is not able to touch the electoral roll prepared in 2000. This is far from the truth, as can be seen from the direction of Justice Tafazzul Islam, quoted above. Furthermore, the main judgment written by Justice Amirul Kabir Chowdhury, clearly directs the EC to revise the electoral roll taking into consideration the roll

prepared in 2000. In other words, the Court directives call for amendment and modifications of the exiting roll. In addition, Rule 20(6) of The Electoral Rolls Rules 1982 states that “When an electoral roll has been amended under this rule by the Registration Officer, corresponding amendment or correction shall be made in the copy of the electoral rolls in his custody as well as in the copies of the rolls kept at other places under rule 22.” The law also does not provide for “supplementary electoral roll,” as prepared by the Commission. Thus, we are deeply puzzled by the Justice Rahman’s claim.

It is also often claimed by the EC as well as other important personalities that a voter can include his/her name in the electoral roll until the day before the election. This is a misleading claim in that such inclusions require the permission of the Commission. After the declaration of the election schedule, the field level officers of the EC can no more amend the electoral roll until the election is over. Thus, ordinary citizens even from Dhaka city, not to speak of potential voters from distant areas, do not have ready access to the option.

To conclude, by all accounts, the electoral roll revised by the EC last August has serious errors. Thus, the Commission so far has clearly failed in its constitutional obligation to prepare a reliable electoral roll for the coming Parliamentary elections. Its most recent initiative to once again correct the revised roll – the initiative taken as result of the prodding by the Advisers of the Caretaker Government – is half-hearted at best in that it only seeks to delete the duplicate names from the roll. But the duplication of names is not the only problem with the revised roll. Thus, it seems that we are losing this last opportunity to correct the electoral roll before the elections. Is it because of the incompetence of the EC or its lack of concern for public interest or both? The Commission, unfortunately, has the dubious record of acting against public interest in the past. The best example being its unwillingness to fully and completely implement last year’s historic High Court judgment on disclosures of antecedents of candidates running for national office. We hope that the “reconstituted” EC, if reconstituted with public interests in mind, will do better in the future.

*The Daily Star: December 10, 2006*

## Roll Play

After becoming the chief election commissioner last year, Justice MA Aziz slated publicly that the Electoral Rolls Ordinance, 1982 allows one revision of the electoral roll, and preparing it afresh would require amending the law. Nevertheless, the EC, under his chairmanship, decided in its meeting of August 6, 2005 to prepare a fresh electoral roll to make it “completely error free.” The EC’s decision was questionable at best.

Subsequently, the two election commissioners, MM Munsef Ali and AK Mohammad Ali, stated publicly that the decision to prepare a fresh electoral roll was taken unilaterally by the CEC over their objections. But the EC is a composite body

and the commissioners must make decisions either unanimously, or in the case of a difference of opinion, by a majority vote. Later, three members of parliament filed two writ petitions before the High Court Division of the Bangladesh Supreme Court challenging the preparation of a fresh electoral roll by the unilateral decision of the CEC.

#### Legal provisions

The EC is mandated by Article 119 of the Constitution to prepare the electoral roll. The actual preparation of the roll is governed by the Rolls Ordinance, 1982. The law provides for both the preparation of electoral roll afresh and its revisions. Revisions require routine inclusion and deletion of names and also major corrections.

Section 7(7) of the Ordinance relates to the preparation of a new electoral roll. It states: “If the Commission, on account of any gross error or irregularity in or in the preparation of electoral roll for any electoral area or constituency or draft thereof, considers it necessary so to do, it may by order direct such roll or draft shall stand cancelled and that an electoral roll for that electoral area or constituency be prepared afresh.”

It is clear from the above that the law gives the EC the authority to prepare a new electoral roll only for a specific electoral area or constituency. Even for such fresh preparation of the roll for a specific area or constituency, the commission has to be satisfied that there is gross error or irregularity in the roll or in its preparation.

Furthermore, the decision will have to be made by the commission, not by the CFC alone, and before deciding to order the preparation of a fresh electoral roll the existing roll needs to be cancelled by the commission.

#### Court judgments

On January 4, a Division Bench of the High Court passed judgment on the writ petition filed by the three MPs and directed that the commission should prepare the electoral roll by taking the existing roll maintained under Section 7(6) of the Ordinance as a major basis.

The EC appealed while continuing to prepare the new electoral roll, although the Appellate Division issued no stay on the High Court judgment. On May 23, the appellate court dismissed the appeal and upheld the earlier judgment with slight modifications.

The directives of the Appellate Division amounted to declaring the new electoral roll prepared by the HC as illegal. It also once and for all sealed the question of whether to prepare a new electoral roll or to revise it. The court unequivocally directed the revision of the existing electoral roll prepared in 2000.

In fact, it held that the commission is in no way authorized to prepare a fresh electoral roll for all electoral areas or constituencies by scrapping the already existing roll preserved, under Section 7(6) of the said Ordinance since there are provisions for amendments, corrections, and revisions of the same.

In order to determine whether the EC fully complied with the court directives, one must very carefully read the judgment in conjunction with the Electoral Rolls Ordinance, 1982.

Justice Amirul Kabir Chowdhury, who wrote in the main judgment, directed the Election Commission to “prepare Electoral Roll taking into consideration the existing Roll under Section 7(6) of the Ordinance”.

He then provided a guideline to delete names from the existing roll in accordance with rule 20 and sub-rule 3 and 4 framed under the said Ordinance. The other four justices concurred with these directives.

Although Justice Chowdhury provided a guideline for deletion, he offered no guidance as to how to prepare an electoral roll for the upcoming election taking into consideration the existing roll.

Justice Md Tafazzul Islam remedied this void by directing that “before the 9th Parliamentary election, it is the existing electoral roll, i.e., the electoral roll of 2000, with some additions, deletions and modification as may be necessary, that is to be published as draft electoral roll.”

The other three justices concurred with this guideline. It is thus clear that Justice Islam’s additions contain a critical supplement to the main judgment written by Justice Chowdhury.

In order to understand the significance of Justice Islam’s additions, one must clearly understand the stages in the preparation of the electoral roll. Justice Islam himself specified the stages as: “(1) preparation of the draft electoral roll, (2) after making addition or modification or correction in the draft electoral roll, publication of the final electoral roll, (3) maintenance of the final electoral roll in the prescribed manner and keeping it open for public inspection, (4) addition, modification and correction of the final electoral roll, (5) revision of the existing electoral roll and preparation of subsequent electoral roll after revision.”

Justice Islam further elaborated the procedure involved in the fifth stage: “At the fifth stage in terms of Section 11 read with rule 21, unless otherwise directed by the Election Commission, before each election to an elected body, the electoral roll shall be revised and if directed by the Election Commission, the electoral roll shall also be revised in any year.”

Section 11(1) of the Ordinance, which related to revision, states: “The electoral roll shall, unless otherwise directed by the Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date before each election for an elective body.”

Thus, it is clear that unless otherwise decided by the commission in writing, it is mandatory by law to revise the existing electoral roll before each election to an elective body.

In accordance with rule 21(1), Justice Md. Tafazzul Islam directed that prior to the next parliamentary elections the existing electoral roll would have to be revised and published as a draft electoral roll for the sake of continuity. As noted earlier, the other three justices concurred with this direction.

It must be noted that the publication of the draft electoral roll requires enumerators to go from door to door to collect information, and then to publish it, inviting claims and objections.

Once the draft roll is published, it must be added to, modified, and corrected using the procedures laid out in Sections 7 (3) rules 7 to 17 before publishing it as the final electoral roll.

It is clear from the above that in order to fully abide by the SC judgment, the EC would have no alternative but to sent enumerations from door to door for collecting

information. In fact, even without the court judgment, it is mandatory for the commission to do so under section 11(1) of the Ordinance.

#### EC decisions

The HC, in its meeting of May 12, decided to amend and correct the existing electoral roll, as directed by the Appellate Division, in accordance with rule 20, framed under the Electoral Rolls Ordinance, 1982. Approximately 6,300 registration/assistant registration officers hired earlier for the preparation of the electoral roll afresh were used for this purpose.

Although the commission initially did not want to send enumerators from door to door for collecting information from the households, as required by law, it later changed its mind under pressure from all concerned. However, the commission failed to prepare a draft electoral roll using the information collected by the enumerators. The commission also prepared a supplementary electoral roll, instead of making actual changes in, and additions to, the existing roll.

After completion of its revision, the commission came up with a total electoral roll with nearly 9.3 crore names, which is about 2 crore higher than the previous roll prepared in 2001. The revised roll came under severe criticism on two major practical grounds: first, the large increase in the number of voters is higher than the rate of increase in our population. Second, the number of new voters is higher than the number of people who became adults according to the 2001 population census, after the preparation of the last electoral roll. Thus, the new electoral roll is mathematically impossible. There are also complaints that the new roll includes many fake voters and excludes many eligible voters.

In addition to the practical reasons, the EC's actions are questionable on legal grounds. For example, while the commission's position is consistent with the guideline provided by Justice Amirul Kabir Chowdhury, it totally ignored the important additions made and the guideline provided by Justice Md Tafazzul Islam, with whom the other three justices concurred. It also totally disregarded the revision needed as per law (Section 11) prior to the election of an elective body. More specifically, it did not prepare a draft electoral roll, as required by law and directed by the court. Thus, the HC's decisions appear to violate both the law and the court directives.

#### Views from the grassroots

How do people view the HC and its actions? Based on our experiences working with people at the grassroots, we feel that there is much suspicion about the EC. People in general feel that all those associated with the EC do not work to protect and promote their interests. Instead they are put in there to look after the interests of certain vested quarters.

Such attitudes are reinforced by the HC's many questionable decisions and contradictory actions. EC's meaningless dialogues with many inconsequential political parties, its squandering of large sums of money on an electoral roll found illegal by the Supreme Court, large jumps in the number of voters, its unwillingness to fully implement the High Court judgment on disclosures, and even the personal idiosyncrasies of some of the commissioners are greatly responsible for its losing public confidence.

Most people feel that the commissioners are not honest brokers. They cared less about preparing a dependable electoral roll and more about their egos and self-interest. Many are suspicious that the commission surreptitiously used the electoral roll found illegal by the Supreme Court in their subsequent revisions.

Because receipts were not given by the enumerators who collected the information and a draft electoral roll was not published, many eligible persons are not sure whether they are indeed voters.

Thus, few are confident that the HC's revised electoral roll will be acceptable enough to be used in the upcoming parliamentary elections.

#### Conclusions

Free, fair, and impartial elections are preconditions for a true democratic system. However, fair elections require reliable electoral rolls. But the revised electoral roll prepared recently by the EC is seriously flawed. It is flawed because it did not follow the procedures laid out in Section 11 of the Ordinance for revision of electoral roll, namely the preparation of a draft electoral roll and then making additions and modifications to come up with the final electoral roll.

The EC's actions are also inconsistent with the recent judgment of the Appellate Division. Furthermore, there are allegations that the revised roll excluded many eligible voters and included many fictitious names. Any election held with such a flawed electoral roll is bound to be legally questionable.

Thus, it would be important to once more revise the existing electoral roll in accordance with both the law and the Court directives. In making the revisions, steps must also be taken to issue the voters identity cards, as per Section 11A of the Ordinance, and with technical advancements in digital photography it should not be very difficult to do so.

But we are concerned that the present EC is incapable of carrying out such a revision. Many people now view the commission as a partisan body, serving certain coterie interests rather than public interests. Thus, they have lost the trust and confidence of a large proportion of our population.

In fact, the EC appears to have become the biggest obstacle to free and fair elections. We therefore recommend that in order to restore public trust and confidence in the commission, the commissioners resign immediately and be replaced by competent individuals on the basis of political consensus so that we can get on with the important tasks ahead of us to hold the coming election on time.

Forum, *The Daily Star*, November 2006

## Electoral Roll Court judgments, EC decisions and controversies

Supreme Court judgment and ED's credibility are causes for controversies over the electoral roll revision

The Election Commission's (EC) decision of June 12, 2006 to revise the electoral roll as per the recent decision of the Supreme Court (SC) has evoked a great deal of controversies. Some legal experts have argued that the EC's decision not to send

enumerators from door to door and use its own offices and functionaries for revision are inconsistent with both the law and the Appellate Division's judgment. Some election experts also raised serious questions about the wisdom of the EC's decision. They argue that the revision contemplated by the EC would keep many eligible voters out and include and leave many fictitious voters in, making the revised electoral roll unreliable. Are these concerns justified?

#### The Background

Justice MA Aziz, after becoming the Chief Election Commissioner (CEC) last year, stated publicly that The Electoral Rolls Ordinance, 1982 allows only revision of the electoral roll and preparing electoral roll afresh would require amending the law. Nevertheless, the EC decided in its meeting of August 6, 2005 to prepare a fresh electoral roll as per section 7(7) of the Ordinance to make it "completely error free". In reaction, this author wrote an article in the Daily Prothom Alo (September 16, 2005) presenting both legal and economic arguments for revision of the electoral roll.

Subsequently, the two Election Commissioners Messrs Munsef Ali and Mohammad Ali stated publicly that the decision to prepare a fresh electoral roll was taken unilaterally by the CEC over their objections. Following the two Commissioners' public objections, this author wrote both in *The Daily Star* (December 6, 2005) and Prothom Alo (December 17, 2005) stating that the EC is a composite body and the Commissioners must make decisions either unanimously, and in case of difference of opinion, by the majority vote. Later three Members of Parliament filed two writ petitions before the High Court Division of the Bangladesh Supreme Court challenging the preparation of a fresh electoral roll, allegedly by the unilateral decision of the Chief Election Commissioner.

#### The Court Judgments

On January 4, 2006, a Division Bench of the High Court held that the EC is indeed a composite body and it must act collectively. However, the Court found that the Commission's decision of August 6, 2005 to prepare the electoral roll was not unilateral. More importantly, the Court directed that:

"(III) The Commission should prepare Electoral Roll taking the existing Roll maintained under section 7(6) of the Ordinance as a major basis. If there is a computerised database the Commission should make the best use of it and if not, a computerised Electoral Roll with database should always be maintained to avoid future controversy, costs and labour.

(IV) The persons whose names are already in the existing electoral roll cannot be dropped from that roll unless they are dead or have been declared to be of unsound mind or ceased to be residents or ceased to be deemed to be a resident of that area of the constituency."

The EC appealed these two directives while continuing to prepare the new electoral roll, although the Supreme Court issued no stay on the High Court judgment. On May 23, the Court dismissed the appeal and upheld the earlier judgment with slight modifications. The judgment once and for all settled the question of whether to prepare a new electoral roll or to revise it. The Court emphatically came in favour of revising the existing electoral roll. In fact, it was held that the Commission is in no way authorised to prepare a fresh electoral roll for all electoral areas or constituencies upon scrapping the already existing roll preserved under 7(6) of the said Ordinance

since there are provisions for amendments, corrections and revisions of the same. Thus, the Court directed continuity of the electoral roll and maintaining it in the form of computerised database. The Court also provided some “legal guideline” as to how to delete names from (revise) the existing electoral roll.

In order to determine whether the EC fully complied with the Court directives, one must very carefully read the judgment in conjunction with The Electoral Rolls Ordinance, 1982, which appears to be a very poorly drafted law, and one can easily get lost in the maze it created and be left utterly confused. However, the repeated reading of the law seems to indicate that it provides for two types of revisions – one major or special and another minor. To understand the differences between the two, one must also understand the stages in preparing the electoral roll. The stages, as laid out in the SC judgment, are: First, preparation of the draft electoral roll under section 7(1) of the Ordinance; Second, publication of the final electoral roll in accordance with sections 7(2), 7(3), 7(4) and 7(5) of the said Ordinance; Third, maintenance of the final electoral roll under section 7(6) of the Ordinance; Fourth, additions, modifications and corrections of the final electoral roll under sections 10, 13 and 15 the Ordinance; Fifth, revision of the existing electoral roll and preparation of subsequent electoral roll after special revision under section 11 of the Ordinance.

It seems that the second and fourth stages call for minor revision, while stage five refers to major or special revision. However, there is also a significant difference between procedures for minor revisions in second and fourth stages. The revision in the second stage must take place within a period of 15 days from the publication of the draft electoral roll and must use form 4, 5 and 7. But no such time limit is applicable in the fourth stage revision and it would require forms 2, 7, 8 and 9. There is also a difference between the revision under section 10 and 13, and section 15. The revision under section 10 and 13 and rule 20 can take place at any time, while the revision under section 15 is applicable only with the permission of the Commission. It appears that for stage two revision, the Commission must appoint revising authorities for each electoral area or constituency. The procedures for major revision under section 11 are more or less the same as that of preparing electoral roll afresh under section 7(1) of the ordinance.

From a very careful reading of the judgment it appears that like most other mortals, our Justices also became confused and consequently erred. In fact, the Justices seem to have seriously contradicted each other on the basic issues although apparently they gave a unanimous judgment. For example, Justice Amirul Kabir Chowdhury provided the “legal guideline” calling for minor revision under section 10 and rule 20 of the Ordinance, with which the other four Justices agreed. Yet Justice Tafazzul Islam, while concurring with Justice Amirul Kabir Chowdhury, appears to have taken the position of major revision under section 11 and rule 21 of the Ordinance. He clearly stated: “before the 9<sup>th</sup> Parliamentary election it is the existing electoral roll, i.e., the electoral roll of 2000, with some additions, deletions and modification as may be necessary, is to be published as draft electoral roll and since the electoral roll 2000 will be the basis for preparing the draft electoral roll, the same has a continuity.” The publication of the draft electoral roll, it must be noted, requires enumerators to go from door to door for collecting information under section 7(1) of the said Ordinance. Surprisingly, the other two Justices – Justice M.M Ruhul Amin

and Justice Md. Ruhul Amin – and the Chief Justice Syed J.R. Mudassir Husain concurred with ideas of both major and minor revisions espoused by Justices Tafazzul Islam and Justice Amirul Kabir Chowdhury. It is thus clear that the SC judgment is flawed in that it at best lacks clarity and at worst it contains serious contradictions.

#### The EC Decisions

The EC appears to have taken the electoral roll prepared in 2000 as the final electoral roll maintained under section 7(6) of the The Electoral Rolls Ordinance, 1982 and decided to pursue the minor revision (stage four) under sections 10 and 13 and rule 20 of the Ordinance. As pointed out earlier, this is a routine, continuing type revision, distinct from the minor revision which takes place following the publication of the draft electoral roll (stage two) after a major revision, required perhaps every five years at the time of the parliamentary elections (stage five). Consistent with the procedure laid out for the stage four revision, the Commission has decided not to send enumerators to households to collect information, rather use the Registration/Assistant Registration Officers for the revision. Forms 2, 7, 8 and 9 will be used for this purpose. The Commission has also decided to prepare a supplementary electoral roll rather than making the changes and additions in the existing roll. Furthermore, the Commission initially decided to use the ill-fated electoral roll, although it backed off later because of widespread criticism.

While the Commission's position is consistent with the guideline provided by Justice Amirul Kabir Chowdhury, with which all other Justices (including Justice Tafazzul Islam) concurred, it is inconsistent with the position taken by Justice Tafazzul Islam, with which three other Justices concurred. It should be noted that Justice Chowdhury recommended stage four revision while Justice Islam stood for stage five revision under section 11 and rule 21 of the ordinance, requiring procedures similar to the preparation of electoral roll afresh. Thus, it appears that the Court has failed to give a clear and consistent guidance, and the Commissioners took the option that was most "convenient" for them. The stage four revision is most convenient for the Commission in that it will cost least and it can be completed within the shortest possible time. The Commission is already under severe criticism for its misadventures in preparing a fresh electoral roll defying the High Court judgment and wasting a lot of time and money, for which contempt proceedings against it are already underway.

While the EC's decision is in technical compliance with the Appellate Division's judgment and is convenient for the Commission, its practicality and wisdom are in serious question. The decision is impractical because it is not conducive to preparing a "error free", reliable electoral roll, which is an essential prerequisite for fair elections. Nearly six years have elapsed since the existing electoral roll was prepared and many citizens became eligible to become voters and many lost their eligibility because of death and other reasons. By EC's own account, as revealed by the electoral roll rejected by the Court, 1.75 crore voters increased between 2000 and 2006. Furthermore, the EC is on record in saying that the 2000 electoral roll contained 65 lac fake voters. It will be impossible to make these huge corrections to make the electoral roll reasonably reliable with a minor revision (stage four) within the one month time limit specified by the Commission. It may also be noted that the Commission is not authorised by law to specify a time limit for stage four revision and this type of revision is routinely done on a continuing basis. Another source of concern arises

from the fact that last year the government appointed new election officers apparently based on partisan considerations and these officers will be in the thick of the revision to be carried out. Thus, there appears to be justifications behind the concerns and criticisms against the EC's decision to carry out a minor revision.

The EC's decision to prepare a supplementary roll rather than making revisions of the 2000 electoral roll also begs serious questions. What it would mean is that the names of the fake and ineligible voters would continue to be in the already existing electoral roll and the users will face nightmarish experiences. In addition, the Court directed the preparation and maintenance of a database, and there should be one updated database rather than two separate ones.

Given these practical considerations, it may therefore be more reasonable to carry out a stage five major revision under sections 11 and rule 21 of the Ordinance. This may be done quickly and with reasonable costs if the local body representatives and social leaders are involved in the revision process. Furthermore, the overriding concern should be to prepare the most reliable electoral roll rather than the cost of doing so. In addition, we must take up the idea of issuing the identity cards, required by section 11A of the ordinance, and with technical advancements in digital photography it may not be very difficult to issue identify cards while doing a major revision.

Another practical matter is that the proposed revision could perhaps be made reasonably successful if there was political consensus prevailing in the country. In other words, if the political parties would come forward to help with the revision and would mobilise their own forces for this purpose, the task would become much easier and the Commission would be more successful. But unfortunately the opposition political parties have already declared its opposition to the EC's decision and are committed to fighting the Commission's every move. In fact, they would have opposed even if the Commission decided to carry out a stage five revision and send enumerators from house to house for information collection. Certainly, this is not a conducive political climate.

In addition to the opposition political camps, many of our thoughtful citizens are also very critical of the EC. Many of them view the Commission as a partisan body and not capable of conducting free and fair elections. Past decisions of the Commissions, and personal pronouncements and behaviour of the Commissioners only kicked up new controversies which did not helped the matter. For example, the position taken by the CEC – that the High Court directive for disclosures by candidates contesting in parliament elections is directory, rather than mandatory – is without legal basis. Similarly, Justice Mahfuzur Rahman's contention that the Commission was not required to abide by the High Court decision on electoral rolls, amounts to defying the Article 111 of the Constitution, which gives such decisions the force of law. Accusation of past partisan activities against another Commissioner Mr. SM Zakaria is well known. Thus, the Commission appears to have lost the trust and confidence of a large proportion of our population and the three Commissioners are subjected to ridicule and derision in the media day in and day out. In fact, the Commission has become rather a laughing stock in the eyes of many. This undermines the very credibility of the institution created by our Constitution for holding free and fair elections.

To conclude, free, fair and impartial elections are preconditions for a true democratic system. However, fair elections require reliable electoral rolls. We are now facing a serious challenge in preparing a reasonably reliable electoral roll. Part of the problem originates from the flaws in the recent Supreme Court judgment. However, the credibility of the EC or, rather the lack of it, is perhaps the biggest stumbling block. We therefore recommend that the Court be approached for clarification of the judgment and a clear direction. More importantly, in order to restore the public trust and confidence in the Commission, the three Commissioners resign immediately and they be replaced on the basis of political consensus so that we can get on with the important tasks ahead of us for holding the forthcoming elections on time.

*The Daily Star*: July 1, 2006

## Evaluation of the EC reform package

Recently the Election Commission (EC) has proposed a set of amendments to The Representation of People Order 1972 (RPO), focusing on the reform of our electoral system, the registration of political parties, disclosures of antecedents of candidates running for Parliament and the Commission's own empowerment to debar candidates. We, on behalf of SHUJAN, have been demanding such reforms for a long time and we prepared a draft ordinance based on our demands, which we already handed over to the Caretaker Government and the EC. Many other concerned citizens, citizen groups and the media have also been very vocal for reforms. We congratulate the Commission members for their proposal and we thank them for starting a process of consultation before finalising their proposal. While the Commission's proposal represents a good faith effort and includes many of our recommendations, we have reservations about some of the proposed changes. We also feel that the proposal is incomplete and the Commission needs to reassess some of its decisions.

The Commission's recommendations may be divided into five broad categories: (1) reform and registration of political parties; (2) qualifications/disqualifications of candidates for parliamentary elections; (3) empowerment of voters through disclosure requirements etc; (4) Commission's authority to debar candidates; and (5) resolution of election disputes. In addition, the Commission made a few other minor recommendations, such as reducing the number of polling agents for each polling station for each candidate to four. It also proposed increasing the threshold for confiscating deposits of a candidate if she/he fails to get less than one-fifth of the votes compared to the current requirement of one-eighth. The Commission, for the sake of transparency, further proposed to instantaneously disclose vote counting results from the polling centres and require political parties to submit reports of election expenses within 60 days after elections. While there may be scope for reconsidering the restrictions on the number of polling agents, the other minor recommendations of the Commission are acceptable.

### Reform and registration of political parties

We are pleased that the EC has proposed compulsory registration of political parties and restriction of the privilege of nominating candidates in parliamentary elections to only registered parties. Provisions for elections of office bearers in party constitutions and the actual practice of such elections is one important condition proposed for registration. Financial transparency through yearly submission of audited statements to the Commission is another condition. The Commission also proposed that, to be registered, a party must have had at least one seat in the Parliament since independence or minimum 2% of the total vote cast in the last general elections. More recently, in response to popular demands, it proposed disbanding of student fronts, labour and professional organisations of political parties and that women make up at least 33 % of the office bearers in various party committees as additional conditions for registration. These conditions pertain to the registration of existing political parties. For the registration of new political parties, the Commission proposed that they must have offices in at least half of the districts, and 1,000 members in each district and 200 members in each upazila.

The first two conditions – conditions for internal democracy and financial transparency – are praiseworthy. However, we recommend that in order to ensure transparency, all financial transactions of political parties must be carried out through bank accounts and that audited annual statements must be made public.

We support the EC's proposal to ban front organisations as a condition for registration. Hooliganism, toll collections, corruption, religious extremism and similar ills have now become institutionalized in many of our institutions through front organisations. Thanks to these fronts, for example, most educational institutions have now become dens of extreme partisan and divisive activities, and students in most cases are the victims rather than willing participants in the activities of these front organisations. We are also in favour of requiring political parties to have at least one third women as office bearers as a condition for registration, although they will have to be allowed time for this. However, we feel that a more effective means to politically empower women would be to require political parties to nominate women in at least a third of the parliamentary seats, if they desire to be registered.

The purpose of registration, we submit, must be not only to promote internal democracy and transparency, but also to help create accountable political parties – accountable to its primary members as well as to the voters. In order to ensure accountability to its members and to prevent the nomination of candidates in exchange for money, which has now come to be popularly known as mononoyon baniyya, the primary members of political parties must be given a formal say (for example, through party primaries or caucuses) in the nomination process. This will obviously require compiling as well as publishing the list of primary members by political parties, which can be easily done through websites – all major political parties already have websites. Since political parties, by definition, are a group of individuals with a common ideology or vision and they are not secret organisations, the names of their primary members must be known. In addition, the nomination process of political parties must be made transparent. For this purpose we recommend that political parties collect detailed information about the antecedents of candidates and publish the information as soon as the election schedule is declared. Political parties, for the sake of transparency, must also publish the criteria for their nomination and the scores of each candidate seeking nomination against those criteria.

To ensure accountability to the voters, we recommend that registered political parties be required to issue detailed election manifestos covering both important national and local issues, and for the party/parties in power to publish annual reports and a detailed report showing the extent of implementation of the manifesto at the expiry of their term of office. The election manifestos must become an unwritten contract between the voters and the political parties. Thus, we recommend the inclusion of election manifestos and compliance reports as additional conditions for registration.

However desirable it may be to disband parties which are not credible, the EC's condition with respect to the demonstrated support base – either one MP in any of the past parliaments or 2% of the vote in the 8<sup>th</sup> parliament elections – for registration may be too stringent at this time. The requirement of having offices in half of the districts and a certain number of primary members in districts and upazilas for the registration of new political parties would make little difference as anyone with a deep pocket will

be able to easily meet these requirements. We therefore recommend that political parties be given registration before the next election if they meet requirements of internal democracy, financial transparency and accountability to both its primary members and the voters, subject to the condition that if they score less than 3% of the votes in the 9<sup>th</sup> parliamentary elections, their registration will be automatically cancelled.

The EC also proposed a few other requirements for the functioning of political parties which we support. We are in favour of the Commission's proposal for tax benefits for contributing to political parties and against receiving contributions from foreign governments and other foreign sources except from expatriate Bangladeshis. There are serious allegations of foreign governments' contributions to our political parties, which must be stopped. In this context, serious thought must be given to the idea of disclosing the names of all donors to political parties, although its possible implications in terms of reprisals must be taken into account. Barring registered parties from entering into electoral alliance with non-registered political parties is also acceptable.

#### Qualifications/disqualifications of candidates

The Commission made some important proposals regarding the qualifications/disqualifications of candidates running for parliamentary elections. We are in favour of requiring government officials and officials of foreign-funded NGOs to wait three years after their retirement or resignation before they can be candidates, although it may be difficult to precisely define which are foreign-funded NGOs. In addition, serious thoughts must be given to the idea of imposing similar requirements on the officials of national NGOs as they are also capable of unfairly influencing the voters using organisational resources or their personal resources channeled through organisations.

We also support the requirement that the candidates seeking nominations from political parties must be members of that party for at least three years. However, its potential implications of limiting the infusion of new blood into our politics should be seriously thought through. In addition, we support the imposition of stringent requirements on the candidatures of loan and bill defaulters.

We are in favour of disqualifying sitting mayors of city corporations from running for Parliament, which is not in the EC's proposal. Although we are in favour of restricting a candidate to contesting only one seat, we support the Commission's proposal to restrict it to three seats because of the existing constitutional barrier. However, we propose that the candidates be required to deposit Tk. 10 lac for each additional seat, as opposed to the EC's proposed Tk. 5 lac, and the EC confiscates the deposited amounts for those seats, in which she/he has won and subsequently relinquished. We are also in favour of further tightening and vigorously enforcing the existing requirement in the law which prevents those having business/contractual relationship with the government from contesting Parliament elections. Furthermore, we favour permanently disqualifying convicted hooligans and persons convicted of corruption and other heinous crimes.

The Commission's proposed requirement for independent candidates to submit signed assent from one percent of voters is discriminatory, although it may be desirable to clamp down on those who are trying to turn their right to run for

parliamentary elections into a farce. The principal argument behind such restrictions is to prevent so-called dummy candidates – spurious candidates running in support of major candidates – from turning the system into a mockery. However, we expect that with the creation of electoral rolls with photographs, the scope for fake voting will substantially decrease and there will be little incentive for encouraging dummy candidates to run. In addition, to prevent spurious candidature, penalties (such as paying Tk. 5 lac) may be imposed on independent candidates who receive less than 3% of the votes.

It must be remembered in this connection that over the years we as a nation have become totally divided among party lines because of extreme partisan behaviour and patronage politics of the past regimes. Consequently, remaining neutral or non-partisan in the present environment exacts very high costs. Such divisiveness and disunity seriously hampers our progress as a nation. Thus, encouraging independent candidates must now be an important priority for us. However, there must be restrictions on independent MPs' subsequent joining any political party, because many voters would vote for them because they are independents.

#### Voters' right to know

The EC has proposed that the nomination paper be amended to include the eight disclosures about the background and antecedents of candidates, as directed by the High Court of judgment of May 2005. The Commission's proposal also includes the publication of documents and information submitted by candidates on the Commission's website and the cancellation of the elections of those MPs who are found, after due scrutiny, to have furnished erroneous information and documents. We congratulate the Commission for this proposal. However, the Commission should also allow the filing of counter-affidavits disputing the information submitted by candidates and allow a longer time period for the scrutiny of nomination papers so that the Returning Officers could judge the veracity of the information. The Commission must also clearly spell out the modality and procedures for the after-election scrutiny of the information and documents to be submitted.

In this context, we want to bring to the attention of the Commission a serious problem. The disclosure requirement is intended to empower the voters with information so that they can make informed choices. However, under the present legal provisions hardly two weeks are available between the submission of information and statements and the date of elections. Such a short time period is grossly inadequate for any citizens group to collect the information and disseminate them among the voters, which greatly defeats the very purpose of disclosure. We, therefore, recommend the inclusion of a new provision in the RPO requiring all candidates to file an "Intent to Run" application as soon as the election schedule is declared. The application should include all the relevant information and statements about the candidates' background and antecedents. The Commission should promptly make that information and documents available through websites and other means so that the citizen groups and ultimately the voters can get access to them before the elections. Such a requirement, in our judgment, will discourage many undesirable candidates from entering into electoral contests for fear of being exposed.

We also appreciate the Commission's decisions to include the provision of negative voting in the RPO as a means to empower the voters. However, we are

against making it into a mere academic exercise. Instead we recommend that if the negative vote scores the majority in any constituency, there should be a by-election with new candidates. It must be pointed out that because of the demonstrated deterioration of the qualities of candidates running for Parliament over the years, the idea of negative voting has now become very popular. We also recommend the inclusion of photographs of candidates on ballot papers along with the party symbols.

In this context we would like to point out that there still exists a serious threat against the requirements of disclosures by candidates. An appeal against the landmark High Court judgment on disclosures (Abdul Momen Chowdhury and others vs Bangladesh) is now before the Appellate Division of the Supreme Court for its final decision. A fraud named Md. Abu Safa, representing a vested quarter, had filed an appeal by manipulating the process and submitting fraudulent information. Even though the Commission and the Chief Election Commissioner (CEC) were the only defendants in the original writ, they were not even notified of the hearing of the leave to appeal petition. Even though public interest is intimately involved in this case and the EC is the constitutional body to protect the interests of the voting public, the Commission has so far failed to intervene in this appeal. This author wrote two letters to the EC in the last few months reminding it of its obligation to protect the interests of the public. But the Commission has refused to act. What will the Commission do if the Supreme Court overturns the High Court judgment, as it almost did on 20 February by granting the appeal, leading to a drama and the subsequent reversal of the decision? Thus, we urge the Commission to immediately intervene in the Abu Safa appeal.

In order to show its seriousness about disclosures, we also request that the Commission make public the information and the statements submitted by candidates contesting in the elections scheduled to be held on 22<sup>nd</sup> January. We, on behalf of SHUJAN, had filed applications for those documents before the elections were cancelled using the proper procedures and paying the necessary court fees. However, the most ROs dragged their feet and failed to give us the information before the elections were cancelled. We now respectfully request the EC to ask the ROs to disclose the information which we are entitled to receive under Article 44D of the RPO. We strongly feel that public interests would be better served – that must be the overriding concerns of the EC – by disclosing the information submitted by candidates knowing that they would be public information and subject to disclosures by the Commission. We hope that the Commission would rise above the age old bureaucratic mindset of secrecy and take the necessary action to ensure full disclosures. Such an action would be consistent with the people's right to know, a principle the new government has publicly committed to uphold.

#### Independence and empowerment of the EC

We support the proposal to empower the EC to debar candidates for serious violations of electoral laws. We also support the proposed increase of the penalty for less serious violations of such laws to a minimum of Tk. 20,000 and maximum Tk. 100,000. At the same time, we are in favour of the proposal to allow appeal before the Commission against the acceptance of nomination papers by Returning Officers (ROs).

We are strong proponents of making the EC independent and de-linking it from the Prime Minister's secretariat, but there is nothing about it in the Commission's proposal. Only amending the RPO is not enough. The Commission must be made independent and strengthened to ensure its full and impartial implementation. 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 will include its secretariat. Subsequently, a law will have to be enacted and rules framed for governing the actual working of the Commission. This may also require changing the rules of business.

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 are in favour of amending 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 CEC 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 a public hearing before the relevant parliamentary standing committee prior to the confirmation of the appointment.

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 consolidated 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 a special audit of the expenses of the Commission.

At times government officials have been involved in electoral fraud and misconduct. We are in favour of giving authority to the EC to take swift and severe actions against such officials. We have already proposed the creation of an "Election Misconduct and Disqualifications Commission" to enhance the enforcement capability of the EC. The proposed Commission under the EC will not only have the power to debar candidates and punish the functionaries, but also, if necessary, to postpone and cancel elections.

#### Resolving Election Disputes

We are in favour of resolving all election disputes within six months, as proposed by the EC. However, it is doubtful whether this can be achieved by setting up additional High Court benches and setting time limits for settling the cases. No one has the authority to impose time limits on the Court. Thus, serious thought must be given to the formation of a few tribunals with retired Justices for quick disposal of election disputes. Some privileges of MPs, such as their not participating in court proceedings during the sessions of the Parliament, must also be discontinued.

#### Limitations of the EC proposal

One of the serious limitations of the EC's proposal is that it is totally silent about election expenses and the role of black money in elections except for restricting the number of election camps by candidates, which we support. However, in our present situation, the ordinary citizens have the right to vote but they have no representations in the Parliament because of the influence of money in elections. The situation will not

change unless the use of money for buying elections by rich candidates can be stopped and a level playing field is created for all concerned. Thus, the present Tk. 5 lac limit on election expenses must be vigorously enforced and there must be every effort to reduce the actual expenses.

In order to reduce election expenses, a common poster for each constituency for all candidates may be printed with public funds by ROs using the information submitted by candidates in their affidavits. Projection meetings may also be arranged by them to reduce such expenses. At the same time restrictions on erection of gates, showdowns, setting up of booths on election days, wall writings etc. must be strictly prohibited. We, on behalf of SHUJAN, have demonstrated that projection meetings can be arranged with very positive outcomes. As in neighboring India, the Commission must also employ auditors during election campaigns to strictly monitor election expenses. In addition, there must be serious clamping down on vote buying by punishing both the buyers and sellers.

In order to put our politics on a strong and clean base, several other important reforms must also be instituted. Provision for recalling elected representatives is one such reform. Serious thoughts must also be given on imposing term limits for elected officials. At the same time women's representation in Parliament must be increased and direct elections arranged for women's seats. The much maligned Article 70 of the Constitution must also be abolished. However, these changes will require amending the Constitution, for which we will have to wait for the 9<sup>th</sup> parliament to be constituted after the next elections. However, the EC must immediately take the initiative to delimit constituencies, which is part of the Commission's constitutional responsibility.

To conclude, we hope that the EC will expeditiously complete its round of consultations with all concerned to finalise the reform proposals and arrange to have it promulgated as an ordinance by the President. Instead of cutting and pasting The Representation of People Ordinance, 1972 – which was amended 15 times in the last 35 years, we recommend that the law is drafted afresh. In doing so, the Commission must be guided by public interest, not any other considerations. Holding fair, peaceful and impartial elections is the Commission's constitutional responsibility and its accountability to the people of the country. No one is the EC's "client" – the Commission's job is not to "serve" anyone – and none should have the right to veto the reform proposals formulated to protect and promote public interest. The Commission must also realise its historic responsibility and not abdicate its authority to anyone.

In addition, the amendment of the law and the reconstitution of the EC are necessary but not sufficient for fair and meaningful elections. It will also require the sincerity of political parties and their voluntary initiatives for internal reform. However, political parties will be seriously interested in reforms only if there is widespread public pressure for change. The concerned and conscientious citizens must now come forward to create the necessary public pressure.

*The Daily Star*, Forum, July 17, 2007

## Effects of Money, Muscle and Official Influence on Elections: The Experience of Bangladesh

Democracy is rule by the consent of the people. Elections are the only means to attain that consent. In fact, it is the only non-violent and civilized means of transferring governmental powers. Thus, elections are prerequisites for a democratic polity. However, merely holding periodic elections does not establish democracy – elections must be free, fair and meaningful. Elections are free and fair only if they are not manipulated by money, muscles and official influences. They are meaningful only if free and fair elections lead to improvements in the quality of elected representatives and consequently better governance. Unfortunately money, muscles and official influences played important roles in Bangladesh's elections over the years and this continuously lowered the quality of our elected leaders.

### Effects of Money

In Bangladesh, money influences elections in several important ways. One obvious and widely prevalent use of money is the buying of nominations from established political parties. This seedy act is known as mononoyan banijya or “nomination trade”. Candidates often pay huge sums of money to party bosses and sometimes to several leaders of the party. At times larger parties engage in bidding wars for forming electoral alliances with smaller parties.

Obtaining nominations by paying bribes to party leaders has become a widespread practice in Bangladesh in recent years. It is alleged that prior to the election that was scheduled to be held last January 22<sup>nd</sup> but cancelled, Awami League nominations in 50 seats were sold for a minimum of Tk. 5 crore to a maximum of Tk. 20 crore each, resulting in illegal transfers of huge sums of money. (The Prothom Alo, 14 January 2007) Thus in the past, through such nomination trade, many corrupt businessmen and black money owners became Members of Parliament (MPs), making this august institution a sort of club of with many unsavory characters.

There are also serious allegations of illegal inter-party transfers of huge sums of money prior to the cancelled elections of January 2007. It is alleged that the Awami League agreed to pay Tk 60-70 crore, of which Tk. 3.5 crore was paid as advance, to bring General Ershad's Jatiyo Party into the fold of the 14-party grand alliance. On the other hand, BNP allegedly offered to pay Tk. 50-60 crore, of which Tk. 2 crore was paid in advance, which had to be returned when the deal fell through. (The Prothom Alo, 15 January 2007) Interestingly, both the Awami League and BNP were part of the 15-7-5 party alliance which brought down the Ershad regime in 1990 and the alliance members committed never to embrace Ershad or his cohorts and bring them into their fold. This was yet another blatant example of our political parties not keeping their word.

Buying votes is another important use of money in elections. Candidates often pay cash and sometimes material items such as saris, lungis and other things for buying votes. Voters are almost always entertained with drinks and snacks and sometimes more. Widespread poverty and lack of voter awareness makes such vote buying rampant. Sometimes middlemen are used for this purpose. Buying votes is an illegal act and considered to be a “corrupt practice” under The Representation of

People Order, 1972 ( the Order) and it is a punishable offence, punishment being rigorous imprisonment of two to seven years and also fines.

Yet another use of money in elections is the buying of official influence. Sometimes Returning Officers, Polling Officers, and law enforcement personnel etc. are bribed. In the same vein, the services of hooligans and musclemen are also bought and weapons leased with money to influence election results.

Sometimes services of “dummy candidates” are bought with money. Setting dummy candidates is a recent phenomenon in Bangladesh. In this arrangement, one or more spurious candidates run incognito in support of each major candidate and the polling agents of such candidates support the major candidates’ attempts to cast false votes. These agents also support their benefactors in cases of disputes in vote counting, declaration of results etc. At times money is used to buy the polling agents of major opponents and cause other mischief. In a notoriously rigged by-election during the latter part of the last government, for example, major candidates allegedly gave huge amounts of money to a top political party leader to buy the party’s influence for the day of the election.

Money is often used for campaign expenses in excess of the allowable limits, which is currently 5 lac taka. Money is also utilized for unallowable election expenses such as wall writings, colour posters, using vehicles for transporting voters, entertaining voters etc. Excessive election expenses are possible because of non-enforcement of electoral laws by the Election Commission (EC). For example, of the 1939 candidates who contested the 8<sup>th</sup> Parliamentary elections in 2001, only 1473 submitted election expense reports. The remaining 466 candidates did not do so in violation of section 44C of the law, which is treated as an “illegal practice” under section 74 of the Order and is punishable with a rigorous imprisonment of two to seven years and also fines. However, nothing was done against the aspiring or actual lawmakers who were lawbreakers.

More importantly, all those who complied with the requirements of the law and submitted the required statements indicated that they did not exceed the expense limit of Tk. 500,000. However, it is common knowledge that in all recent elections every elected MP exceeded the expense limit and thus they began their lawmaking career with false declarations. Also, even though the election expenses are, by tradition, counted from the date of declaration of the election schedule, many candidates spend huge sums of money prior to that date for staging showdowns as well as printing posters and portraits etc.

How much money parliamentary candidates, especially rich candidates, spend in election campaigns can be ascertained from a study conducted by Transparency International-Bangladesh (TIB) during the three months prior to the elections that were to be held on 22 January 2007. TIB monitored the election expenses of 122 candidates in 40 constituencies and found that as of January 3, 2007, the candidates spent a total of Tk. 18,55,00,000 or an average of Tk, 15,20,000. However, the candidates other than the two major political parties – Awami League and BNP – spent only minor amounts. One Awami League candidate alone, for example, spent Tk. 1,67,00,000 and a lone BNP candidate spent Tk. 1,94,00,000 during the study period. Much of these amounts were spent for showdowns, rallies, public meetings,

setting up election camps, paying campaign workers, transportation costs, some of which are not allowable election expenses under the law.

It should be noted that the above figures are only for visible election expenses. There are also many types of invisible expenses such as payments for buying nominations and other bribes. In addition, they exclude the amounts spent prior to the three-month study period. Furthermore, they do not include the expenses of the final 18 days prior to the day of the election, which would have been substantial. Thus, TIB estimates give a rough indication, but not a complete picture of election expenses of parliamentary candidates.

It should be noted in this context that major political parties are also awash in cash and spend big money for their own activities, some of which are illegal. The Prothom Alo (February 9, 2007) reported that the Awami League requires about Tk. 12 crore for regular operations of the party each year. BNP, on the other hand, spends about Tk. 15 crore annually. These huge sums of money are often extorted from corrupt businessmen or are collected from them in exchange for “selling” official favours as well as from foreign sources. For example, the former State Minister for Home during the last regime, who is now in jail, is reported to have alleged that BNP received Tk. 300 crore from three foreign countries prior to the 2001 elections. It may also be noted that some of Bangladesh’s top political leaders are now in custody on charges of extortion.

#### Muscle Power

Influences of muscle power on elections are a fact of life in many countries, including Bangladesh. Muscle power is normally used for the following ends: intimidating opposing candidates, their representatives and supporters; driving away the polling agents of opposing candidates on the election day; threatening the poor and minority voters to prevent them from voting; snatching ballot boxes; stuffing ballot boxes; disrupting the law and order situation around the polling centres to slow down the voting rate, or chasing away voters or stopping voting altogether; capturing polling centres; disrupting the counting of votes or destroying ballot papers or result sheets; altering the polling results and the broadcasting of those results; and so on.

#### Killings and injuries in election violence (July 15 to October 10, 2001)

District	Killed	Injured	District	Killed	Injured
Feni	33	300	Jhenaidah	2	55
Chittagong	22	323	Netrokona	2	36
Barisal	7	374	Rajbari	2	22
Bhola	15	352	Natore	2	18
Dhaka	15	274	Noakhali	1	201
Bagerhat	15	199	Rajshahi	1	198
Sirajganj	8	352	Habiganj	1	50

Pabna	8	273	Tangail	1	37
Comilla	8	212	Maherpur	1	22
Mymensingh	8	160	Gopalganj	1	18
Kushtia	7	156	Faridpur	1	5
Munshiganj	6	162	Rangamati	1	3
Sylhet	6	18	Moulvi Bazar	1	-
Sariatpur	5	503	Naogaon	1	8
Khulna	5	10	Laxmipur	-	146
Narayanganj	4	307	Patuakhali	-	86
Jamalpur	4	203	Magura	-	78
Sunamganj	4	15	Sherpur	-	50
Gazipur	3	134	Manikganj	-	40
Chandpur	3	39	Panchagarh	-	24
Khagrachhari	3	7	Jhalakathi	-	22
Rangpur	2	620	B'baria	-	10
Satkhira	2	223	Pirojpur	-	7
Narsingdi	2	195	Madaripur	-	6
Jessore	2	75	Cox's Bazar	-	3
Bogra	2	55			

Source: SHED, "The CCHRB Election Observation Report, The Eight Parliamentary Elections 2001"

Muscle power is exercised both during the pre- and post-poll periods. Violence leading to death and injuries are often the outcome of the demonstration of raw muscle power. During the 8<sup>th</sup> Parliament elections held on October 1, 2001, terrorism and violence were used against opposing candidates and minorities even in the days following the elections. The reported deaths and injuries during the July 15 through October 10, 2001 period, which was the period of non-party Caretaker Government (CTG), pieced together by the Society for Environment and Human Development (SHED) from major newspaper reports, show that at least 217 persons were killed including one woman and 6,686 were injured in 415 major cases of violence across the country. Of those killed, 93 were identified as leaders and supporters of Awami League and its front organizations, 43 belonged to BNP and its front organizations and

the remaining 81 were innocent people. However, these figures do not tell the full story because many violent incidents were not reported since the perpetrators were seldom punished.

Dr. Waresul Karim designated 58 out of 300 seats as terrorism prone constituencies based on their crime records at the time of the 8<sup>th</sup> Parliament elections and studied the election results of those constituencies. Eleven constituencies which had arguably been affected most by terrorism were designated the “Core Terrorism Prone Areas” (CPT). Another 19 constituencies were classified as “Medium Terrorism Prone Areas” (MTP). Still another 28 constituencies were categorized as “Broadly defined Terrorism Prone Areas” (BDTP).

Creation of public opinion/awareness	<= Media coverage	<= Civil society initiatives
In favor of honest, clean and competent candidates	Coverage of issue based roundtables/ debates/election olympiads etc	Clean candidate campaign during UP/Paurashava elections
In favor of reforms of the electoral process and institutions	Coverage of citizens' dialogues	Campaign for political reform Campaign for strengthening local government
In support of strong local government	Coverage highlighting candidate profiles	Legal battle for disclosures Legal battle on electoral rolls
In support of negative vote	Coverage of EC dialogues	Clean candidate campaign by Nagorik Committee
Against hooliganism	Hosting talk shows	Citizens Dialogue/ Candidate-Voter Face-to-Face Meetings and distribution of candidate profiles during local elections
Against religious extremists/war criminals		Citizens Dialogue/ Candidate-Voter Face-to-Face Meetings/ distribution of candidate profiles during Parliament elections
Against corruption		

Election results show that Awami League won 3 seats in 1991, 7 seats in 1996 and only 1 seat in 2001 in the 11 CPT areas. On the other hand, BNP won 7, 3 and 10 seats respectively in the same areas. In all 58 terrorism prone area seats, Awami League bagged 20, 38 and 7 seats respectively, while the BNP alliance won 31, 17 and 49 seats. Clearly, the 4-party alliance won more seats in 2001 in all terrorism prone areas. According to Dr. Karim, two factors affected the performance of Awami

League candidates in 2001: the alliance arithmetic (i.e., BNP's formation of an alliance with Jamaat and two other parties) and the more unfavourable "violent" image of their candidates in those constituencies. Thus, while widespread violence and terrorism is a reality in the electoral politics of countries like Bangladesh, voters, given the chance, appear to have voted against candidates with such images.

#### Official Influences

Neutrality of the government in power and other relevant institutions including the Election Commission is a prerequisite for free, fair and acceptable elections. Undue official influences can, in fact, cause havoc on election outcomes. Bangladesh's past experiences show that such influences can work at every step of the election process and distort election results.

In Bangladesh, one of the sources of unwarranted official influences is the EC and the lack of its independence. Although the EC was set up as an independent constitutional body in independent Bangladesh, it was brought under the President's secretariat during the Ershad regime as part of an administrative reorganization scheme. This clearly enabled the chief executive of the Republic to make mischief in its functioning.

The use of the EC for partisan ends has always been a problem in Bangladesh, but it was more so during the last government. For example, during the early part of the 4-party alliance government, the Secretary of the EC was totally partisan and he and some of his colleagues often pursued their partisan interests even defying the Commission. He was also instrumental in hiring dozens of ruling party cadres as grassroots level election officers, some of whom were later released by the reconstituted EC. The request of the Chief Election Commissioner, who was totally frustrated, to transfer the Secretary was not also heeded by the government. This particular person, it may be noted, was later rewarded by the last government by elevation to the position of an Election Commissioner.

In Bangladesh, appointments of Election Commissioners have also been a means to exert influence on elections. During the Awami League regime, at least one former government official, who took a public position against the first BNP government, was appointed Election Commissioner. However, all the appointments of the 4-party alliance government were more or less partisan and some were nakedly so. In fact, the Chief Election Commissioner Justice MA Aziz's appointment, made on partisan considerations, was recently found to be unconstitutional by the High Court. More seriously, one of the Commissioners even sought the BNP nomination for parliamentary election.

During the last regime, the partisan EC made a mess of the preparation of the electoral roll, allegedly padding the numbers with the fake registration of over one crore voters. The electoral roll issue became so controversial that it had to be litigated in the Supreme Court of Bangladesh and updated several times and was still rejected by neutral observers. It goes without saying that the manipulation of the electoral roll is an important means of influencing election results.

Official influences are also blatantly used in resolving election disputes. For example, none of the election petitions filed after the 2001 elections were resolved within the terms of the Parliament. Both the EC and the judiciary were influenced by the government for this purpose.

Another source of influencing electoral outcomes is by means of the delimitation of constituencies. Fortunately or unfortunately, parliamentary constituencies have never been delimited in Bangladesh. Official influences are also exerted in Bangladesh in the appointment of Returning Officers, Assistant Returning Officers, Presiding Officers and Polling Officers etc.

Yet another popular means of influencing election results is through promises made by political parties, especially by the ruling political party. In Bangladesh, ruling parties normally go through what is called the “politics of laying foundation stones” at the end of their term of office. This is intended to cater to specific groups and constituencies for gaining their support during elections.

Bangladesh has a system of an unelected non-party Caretaker Government with the responsibility of aiding the EC for holding free and fair elections, which, interestingly, amounts to using an undemocratic system to save democracy. In any event, the neutrality of the CTG is an essential pre-condition for fair elections as it can conceivably influence election results by manipulating the deployment of government officials and security personnel. The neutrality of the Caretaker Government, which assumed office after the expiry of the 8<sup>th</sup> Parliament was seriously questioned. The partisan President, who was nominated by the 4-party alliance, became the Chief Adviser and he made controversial appointments to his Council of Advisers as well as to the Election Commission. The partisan stance of the CTG became so controversial that it could not be sustained, and it was indeed replaced on January 11, 2007, with army intervention, by a new interim government.

In recent years, a naked case of official influence took place in the implementation of a historic court judgment on disclosures. In May 2005, the High Court Division of the Bangladesh Supreme Court passed a judgment requiring candidates in Parliamentary elections to disclose with their nomination papers information about their education, income, assets, loans, criminal records etc. in the form of affidavits. Going out of the normal procedure, a third party, who completely misrepresented himself, was allowed to file a public interest litigation to appeal against the judgment after the judgment was already implemented in five by-elections. Later, on December 19, 2006, only two days before the filing of the nomination papers for the elections scheduled for January 22<sup>nd</sup>, the vacation Judge of the Appellate Division, unilaterally, issued a stay on the judgment, although a 4-judge regular bench of the Appellate Division, headed by the Chief Justice, did not do so earlier. In unmatched haste, the order was transmitted to the EC on the same day and the Commission instantaneously implemented it. Subsequently, the relevant bench of the Appellate Division accepted the appeal and thus overturned the entire High Court judgments in spite of the fact that the appellant objected to the disclosure of only educational qualifications. After loud protests from the opposing lawyers, the Court, however, recalled its judgment in a few hours, staging an unprecedented drama. The saga of undue official influences on the judiciary with respect to this important case appears to have ended as the full Court bench of the Appellate Division recently found that fabricated documents were used to file the appeal, which upheld the High Court judgment. Needless to say, under the influences of the government in power, undue means, deception and fraud were committed at almost every step of the way of the appeal process of this important case.

To conclude, it is clear that money and muscles have been widely used in Bangladesh to influence election results. This helped create a government of, by and for the vested interests in the country. In fact, we seem to have the best democracy that money and muscle can buy. Undue official influences on election machinery and other relevant institutions over the years pushed things further to an intolerable and unsustainable level. It is no wonder that our democratic system collapsed on 11 January 2007. If we are to now redress the situation, we must urgently embark on systematic electoral and institutional reforms.

Choose with care

It is clear from the foregoing that many controversial individuals are running for the upcoming parliamentary elections. There are convicted criminals as well as alleged criminals among them. If these individuals are elected, it is feared that a criminal empire may be established in the country rather than a democratic one.

The nation is seeking a democratic transition through the ninth parliamentary elections. Such a transition will obviously largely depend on the candidates who are nominated, especially by the major parties, and their backgrounds. However, it is hard to be optimistic from the information we have about the candidates.

As of 26 December, there were 1555 candidates contesting for 299 seats. Of these, the Awami League–led grand alliance has 318 candidates and the BNP-led four party alliance has 305. Among the grand alliance candidates, 270 are using the boats as symbols and 48 are using the plough. Of the four party alliance candidates, 266 are using the sheaf of paddy and 39 are using the scales as their symbols. Thus, there are duplicate candidates in a number of seats. Interestingly, this year we have 373 fewer candidates for the 299 constituencies compared to the 2001 elections.

Of the 1555 candidates, 192 were members of the last parliament, among whom 41 were running as Awami League candidates, 109 as BNP candidates, 10 as Jatiya Party candidates and 12 as Jamaat candidates.

It is disappointing to note that only 58 women are contesting for 59 seats. Among these, former prime ministers Sheikh Hasina and Khaleda Zia, are running in three seats each and Beum Rowshan Ershad in two seats. There are also four seats: Sirajang-2, Dhaka-7, Dhaka-9 and Rangamati, where two women are contesting. The proportion of women candidates of the two major parties is less than 5 %. Even in this small number, there are some who were nominated as proxy candidates for their near ones who are accused or convicted of serious crimes and could not run.

One important attribute of the contesting candidates is that the vast majority of them are educated. For example, of the Awami League and the BNP candidates, about 80% have at least a Bachelor's degree. Less than 2 % have educational qualifications of less than SSC.

With respect to profession, the majority of the candidates declared themselves as businessmen. About half of the Awami League and 62 % of the BNP candidates' profession is business. In the last parliament, about two-thirds of the members were businessmen, and this time also it is certain that the majority of the MPs will be businessmen, which will be contrary to the idea of a representative democracy, because the parliament should have representatives from all segments of the society.

It is disconcerting to note that there are cases of corruption against at least 48 candidates and charge sheets have been filed against some of them. Of them, 27 belong to BNP and 17 to Awami League.

The information provided in the affidavits shows that in the past there were criminal cases against 1/4 of the Awami League candidates and currently criminal cases are pending against 38 % of them. Among the BNP candidates, 49 % had criminal cases against them while 35 % are at present facing criminal charges. At least 100 candidates are facing murder charges, among whom 1/4 belong to the Awami League and 1/3 belong to BNP.

However, it must be emphasised that mere allegations, and even the filing of charge sheets, does not represent proof of crime. Cases are sometimes filed for political considerations. Those accused are also often found innocent or cases against them withdrawn, again under political influence. Because of political considerations legal proceedings are sometimes not instituted against real criminals.

There are allegations that many candidates hid information about their criminal past in their affidavits, thus the number of alleged criminals is understated. Therefore, it is impossible to determine the extent of criminal elements, although the information contained in the affidavits provides an indication.

With respect to criminal activities, there is some really outrageous information. There are at least two candidates who were sentenced to life imprisonment for murder and were freed under presidential clemency. Several convicted individuals were also allowed in the contest under Court directives. Former president Ershad is contesting in three seats after the lapse of five years following his incarceration for more than two years.

There are at least 21 candidates against whom there are allegations of war crimes, and also a significant number of loan defaulters who are contesting under court intervention. Many have business relationship with the government, which makes them ineligible under the existing law. Many former MPs running for re-election are accused of misusing their privileges for importing tax-free cars and indulging in 'car trade'. According to NBR, at least 439 candidates do not have TIN numbers and, thus, are not tax payers.

It is clear from the foregoing that many controversial individuals are running for the upcoming parliamentary elections. There are convicted criminals as well as alleged criminals among them. If these individuals are elected, it is feared that a criminal empire may be established in the country rather than a democratic one.

Unfortunately, the parties failed to show a sense of responsibility. They should have prevented the tainted individuals from contesting. Clearly, the parties have failed to provide moral leadership – it goes without saying that morality and leadership must go hand to hand. Most parties even failed to adhere to the legal provisions in nominating candidates based on the recommendations of their grassroots members. Even the Awami League, which tried to follow the law, failed to fully respect the recommendations of their grassroots committees.

*The Daily Star*, December 28, 2008

## Elections, parliaments and citizens' trust

While studying the governments and politics of ancient Greece, Aristotle classified governments into three distinct categories according to number of people who have power. The first category is autocracy or rule by one person. The second is oligarchy – rule by a small group. The third is democracy.

Democracy is the rule by or with the consent of the people. In ancient Greece, people used to rule themselves through what is called direct democracy. In modern days, self rule is realised through their elected representatives and such a system is known as representative democracy. The people's representatives are called by a variety of names, such as the legislature, congress, council, house or parliament.

In a truly representative democracy, parliaments (or whatever they are called) are elected at regular intervals through adult franchise. Thus, regular elections and parliaments are essential cornerstones of a democratic polity. The legitimacy of such a polity primarily depends on citizens' trust and confidence in parliaments and the elections through which parliaments are chosen.

Elections are the democratic process – they are peaceful means of transferring power. They are orderly means of such transfer. Parliaments are democratic institutions – institutions of people's representatives. It is an institution through which, in Lincoln's language, a "government of the people, by the people, for the people (which) shall not perish from the earth" is achieved. However, citizens' trust in elections and parliaments depend on their effective functioning, both real and perceived. In other words, the perception of the functioning of these institutions matters as much as the reality.

### Effectiveness of Elections

The effectiveness of elections is reflected in their credibility. And elections are credible only if they are fair, impartial and meaningful – meaningful in that they lead to improvements in the quality of leadership. Fair, impartial and meaningful elections are generally acceptable. Acceptable elections are possible only if the electoral process is appropriate and the integrity of the relevant institutions is beyond questions.

### Elements of Credible Elections and Bangladesh's Status

Essential elements of credible elections: Process	Bangladesh's status
Appropriate legal framework.	Inappropriate legal framework, which is now being amended and updated.
A reasonably reliable electoral roll based on adult franchise.	Many controversies about electoral rolls – the issue even went to the Supreme Court.
Voter awareness of the important issues.	Misinformed voters due to disinformation campaigns by political parties.
Meaningful disclosures to inform the voters and to keep the undesirable candidates away.	Meaningless disclosures and the EC's non-cooperation to enforce the requirement.

Elections free from the influence of money and muscle power.	In the 3 months prior to the cancelled elections of 22 January, nearly Tk. 18 lac was spent by each candidate in 38 constituencies: TIB. Many known godfathers were nominated and elected in recent elections.
Expeditious resolution of election disputes.	None of the cases involving disputes was resolved during the tenure of the 8 <sup>th</sup> parliament.
Delimitation of constituencies as per the constitutional requirement.	Not done since the 1973 elections.
Essential elements of credible elections: Institution	
Strong, neutral and independent Election Commission.	Until the recent reconstitution, the EC was weak and partisan, and its secretariat was under the Prime Minister's secretariat.
Neutral Caretaker Government – both bureaucracy and law enforcement agencies – for providing a level playing field	Neutrality of the previous Caretaker Government was widely questioned.
Democratic, transparent and accountable political party.	Major political parties are not registered and they act like syndicates.

It is clear from the above that our electoral system has been largely inappropriate for holding credible elections. The relevant institutions have also become mostly dysfunctional over time. In fact, the public institutions – the Caretaker Government and the Election Commission – appeared to have been stacked with partisan individuals to ensure a certain pre-determined electoral outcome. Our major political parties have also been behaving like syndicates committed to the interests of self-interested vested groups rather than public welfare.

#### Effectiveness of Parliament

Effectiveness of elections depends on a variety of factors. They include:

Sovereignty of parliament: meaningful power.	No meaningful power: Article 70 made parliament largely irrelevant.
Representative parliament and the expression of people's voice.	Nearly 60% members of the 8th parliament were businessmen, and no meaningful representation of the rest of the people.
Participation of all parties in the	Parliament boycott by the opposition has

parliament.	been a common phenomenon.
Meaningful debate and lawmaking.	Criticism of the opposition and praising of own leader dominated parliamentary discussions; 227 hours and Tk. 20.5 crore lost for lack of quorum during the last parliament: TIB. The Speaker/Deputy Speaker were partisan.
Performing oversight roles of the parliament.	Utterly failed in this role; Committees formed after 1.5 years during the 8 <sup>th</sup> parliament elections and they were partisan.
Ethical conduct of Members of Parliament.	Unethical and dishonest behaviour of MPs was widespread and there no sanction against anyone.

It is clear that our successive parliaments have been totally unrepresentative and they failed to provide the forum for meaningful debates and holding the executives to account. The boycotts of opposition parties made them totally ineffective and dysfunctional. In fact, our election-only democracy has managed to create in our country governments of the vested interest, by the vested interest and for the vested interest, which became clearly unsustainable and had to “perish”.

To conclude, with the credibility of the electoral system and the integrity of the relevant institutions in serious question and a dysfunctional parliament, it is no wonder that citizens lost trust in our democratic system. In fact, the crisis of our democracy is the crisis of confidence, or lack of it, the culmination of which was the promulgation of a national emergency on January 11<sup>th</sup>.

*Prothom alo, 23 June 2007*

## Challenges before the new caretaker government

A lot of dramatic events took place in Bangladesh in the last few months. The climactic end of the drama came through the resignation of the Honourable President Dr. Iajuddin Ahmad from the position of the Chief Adviser of the Caretaker Government (CTG), the declaration of the emergency and the cancellation of the elections to be held on January 22<sup>nd</sup>. We hope the nation can recover from the ill effects of those unfortunate precedents.

However, we are pleased that an honest and competent individual, Dr. Fakhruddin Ahmed, has become the new head of the CTG. He has already brought on board ten other advisers. We congratulate Dr. Fakhruddin and his colleagues and wish their success.

We feel that the new CTG faces quite a few daunting challenges. In order to identify the challenges, we must first dispassionately and in a nutshell assess the current state of the nation. It appears that we have over the years managed to create a totally criminalized political system in Bangladesh characterised by endemic corruption and plundering. In fact, we now have what may be called a system of “gangster democracy”. Political parties in essence act like syndicates and the elected representatives in general do not represent the aspirations and interests of the people. The self-serving and patronage-based politics has managed to divide the nation which was solidly united even in 1990. The governance failure is all encompassing. Poverty is well entrenched and the deprivation of the common people is naked and widespread. In the backdrop of these monumental problems, religious extremism has cropped up in the country with the intention of creating an alternative theocratic state.

Given this state of affairs, the incoming government faces several challenges. The first and most serious challenge is to hold fair elections in the shortest possible time. Fair elections require: (1) absolute neutrality of the CTG; (2) the effectiveness and neutrality of the Election Commission (EC) and its commitment to public interest; (3) the evenhandedness of the administration and the law enforcement agencies; (4) an overhaul of the electoral laws and rules; (5) good behaviour of politicians and their playing the electoral game by the rules; and (6) creating public awareness for fair and peaceful elections and educating them about the issues.

The EC is mandated by the Constitution to hold elections. Thus, it is important that the EC is strengthened, made independent and, most of all, competent individuals are immediately appointed in the Commission. In order to make the Commission independent, it must be given financial independence and control over its own secretariat. Such changes will require amendments in The Representation of the People Order, 1972 (RPO), which may be effected through the promulgation of an Ordinance by the President.

Strengthening the EC will require total house cleaning and its immediate reconstitution. In the changing circumstances, the CEC and his other colleagues should voluntarily resign. Otherwise they must be removed for incompetence, ineffectiveness and partisan behaviour by referring the matter to the Supreme Judicial Council. The most serious allegations against them are that they have failed in their constitutional responsibilities to prepare a reliable electoral roll on time, delimit constituencies and play fairly. In fact, the President in his last speech to the nation made serious allegations against the Commission. The Commission has also squandered away about Tk. 175 crore for preparing an electoral roll which was declared illegal by the highest Court of the land. In addition, it failed to fully and completely implement the Supreme Court judgments on electoral roll and disclosure of antecedents by parliamentary candidates. For these reasons, especially for the Commissioners showing disrespect to both the law and the judiciary and the inability of the CEC to tell the truth, not much public confidence remains for the institution itself.

The most important priority of the new CTG must be to prepare an accurate electoral roll and a reliable identification system, although issuing picture IDs to each voter will be an expensive and time consuming affair. It should be noted that fair elections require not only accurate electoral roll and delimitation of constituencies, it

will also require significant electoral reforms. With such reforms, owners of the black money, the muscle power, the corrupt, bank and bill defaulters – that is, the criminal dons – must be kept out of the electoral process. Electoral expenses must be reduced and disputes quickly resolved. Candidates must be required to disclose their antecedents and that disclosed information must be widely publicised so that voters can make informed choices. To give the voters meaningful choices, a system of negative voting must be introduced. These changes for fair elections can also be implemented through an Ordinance to amend the RPO.

However, fair elections are not enough – they must be meaningful. Elections are prerequisites for democracy, but elections are not democracy. Election-centred democracy necessarily leads to *ijaratantra* or leaseholder rights, and to perpetuate such rights for generations, dynastic rules are often established. But democracy is not a “one-day” – election-day – affair. A truly democratic system depends on what happens in between elections.

The futility of the one-day or election-only democracy can be seen from our own experiences. After the fall of the autocratic Ershad regime in 1990, it was naively believed by many that with a few free, fair and impartial elections, democracy will grow deep roots and become institutionalised in Bangladesh. However, the experiences of the past 15 years provided a rude awakening for most. After three successive reasonably free and fair elections, we have institutionalised an ineffective, corrupt and criminalised governance system in the country. Thus, fair elections are not sufficient for democracy – it is only a necessary condition for such a system – for a truly democratic polity elections must also bring about qualitative changes in the elected representatives.

Qualitative changes in the leadership will obviously require the reform of political parties. Political parties are the engines of democracy and without democratic, transparent and accountable political parties, fair and meaningful elections are not possible and democracy cannot become effective. In fact, the present crisis in our democracy is largely due to the weaknesses of our political parties. Good and democratic behaviour of political parties can only be ensured through their compulsory registration under the EC. The political parties must also be required to give its primary members – and they must have primary members – a clear say in the nomination process and unwanted individuals, including those who have not been active members of the party for at least three years, must be prevented from getting nominated. In addition, the affiliated bodies of the political parties, such as their student wings, must be banned to bring an end to the divisive politics. All these changes can also be brought about through an Ordinance.

Another issue which should deserve the attention of the new CTG is holding elections of the local bodies. Local government is part of the basic structure of our Constitution. Article 59 of our Constitution mandates the creation of elected local bodies at each administrative unit. The full Court bench of the Appellate Division of the Bangladesh Supreme Court, in a unanimous judgment in 1992, directed the government to hold elections of local bodies in six months. However, because of the vested interests of the Members of Parliament, three successive governments failed to hold these elections, defying both the Constitution and the Court directives. Thus, we recommend that the CTG seriously consider holding both Zila and Upazila Parishad

elections along with the parliamentary elections. This should be an attractive proposition for the political parties too as they will be able to accommodate more candidates.

It is now generally accepted that there is a built-in instability in our political system because the political arena has become a den of criminals. Most serious criminal activities are now carried out under the tacit protection of political parties. A system, which is based on immorality and illegality, cannot last forever. History teaches us that you can fool some people for some time, but you cannot fool all the people all the time. Many self-respecting politicians candidly agree in private conversations that our present criminalised political system cannot and will not last. This must be the realisation behind the recent rise of JMB in the country. Thus, we must immediately take some bold initiatives for long-term changes, if we are to prevent unplanned and unexpected developments in the future. As part of these initiatives, we must take drastic actions against the looters and criminals. For this purpose, we must make the independent Anti-Corruption Commission truly independent by allowing it the rule-framing authority and also replacing the present ineffective Commissioners with courageous individuals.

At the same time, we must review and replace the appointments in the highest judiciary, the Public Service Commission and even in public universities – these institutions have been “hijacked” and stacked with partisan and incompetent individuals. Desired changes in them must be made by setting up non-partisan Commissions. These critically-important institutions form the very foundations of the state and with the weakening of them over the years, the state itself has become weak. It is gratifying to see that the judiciary has recently been separated from the executive through the interventions of the Supreme Court, but now the challenge will be to make the judiciary truly independent. We must also, in view of the changing circumstances, set up a Constitution Review Commission. In addition, urgent reforms of the law enforcement agencies and the bureaucracy must be initiated. These reforms must be done by elected government. But the consensus for the changes may be developed and some useful initiatives may be taken during the tenure of the newly formed CTG. However, holding fair and meaningful elections should be the highest priority for the new government.

*The Daily Star: January 23, 2007*

## Elections and the future of democracy

Mr. Richard Boucher, the American Assistant Foreign Secretary of State for South and Central Asia Affairs, in a news conference prior to his departure from Bangladesh early August, is reported to have said that Bangladesh has had three “successful” elections in the past and he hoped that the next one would be successful too. By successful elections, he appeared to have meant free, fair and impartial elections. He also urged political parties to sit down and settle their disputes on reforms. If they are unable to agree on reforms, he reasoned, the constitutional process should continue. He further said that the United States was interested in the working

of the electoral process in Bangladesh, but not its outcome. The American Ambassador recently echoed almost the same sentiment.

While welcoming Mr. Boucher's desire to see that free and fair elections are held in Bangladesh, let us ask ourselves what it takes to have such elections. The 1991 parliamentary elections are widely viewed to be the fairest of all elections held in independent Bangladesh and it may therefore be instructive to examine them. What enabling conditions prevailed during that time? Do they exist now? In this context, we must also ask ourselves – are only fair elections enough?

It seems that there were seven major factors that contributed positively to making the 1991 elections fair: (a) absolute neutrality of the Caretaker Government (CTG); (b) effectiveness of the Election Commission (EC); (c) impartiality of the bureaucracy; (d) evenhandedness of the law enforcement agencies; (e) unity of the people of all walks of life against autocracy; (f) insignificant presence, if any, of criminal elements – owners of black money and muscle power – in politics; and (g) commitment of political parties to democracy, particularly to fair elections. Do we have the same objective conditions present at this time?

Conditions have drastically changed since 1991. The neutrality of the incoming chief adviser of the CTG is, fairly or unfairly, questioned by the opposition parties. The changing of the retirement age of the Supreme Court Justices, which ensures that Justice K.M. Hasan would become the chief of CTG, is primarily responsible for the controversy. With respect to the EC, it has clearly lost the confidence not only of the opposition parties, but also of the public in general. Thus, the two most important constitutional institutions, indirectly and directly responsible for holding fair elections, are now under severe clouds.

Thanks to the widespread misuse and the practice of “clientalism” of the past decade, our bureaucracy is now totally politicised. The law enforcement agencies have mostly become the instruments for aiding and protecting the interests of the ruling elites. We have not even been able to keep our armed forces beyond question. A law enacted in 1991 (law no. 57) included the defense services in the definition of law enforcing agencies, unnecessarily dragging this important institution into controversy.

Patronage politics has managed to divide our entire nation, including teachers, journalists, trade unions, students and the like into confronting camps. Thus, the unity among the people of all walks of life for democracy and fair elections that prevailed in 1991 is largely gone, and most citizens have now become directly and indirectly affiliated to different political parties. The so-called civil society, with some exceptions, has also increasingly indulged in partisan politics and consequently become the “evil society”. In fact, in today's sick and intolerant political environment, which is almost totally devoid of ideology, the cost of remaining neutral has become infinitely high. In addition, even the neutral individuals are branded partisan by vested interest groups to discredit them.

Due to the breakdown of transparency and accountability mechanisms and the rule of law during the so-called democratic period of the last decade and a half, politics has now become the den of criminal elements. Instead of upholding democratic values, political parties have become totally committed to winning elections at any cost. Losing elections is no longer an option because losing has very high costs – as high as losing one's life. On the other hand, winning gives the winners

a “lease” for five years to loot and plunder with impunity. In fact, politics in Bangladesh has become a “business” and running for parliament is now largely considered to be an “investment.” The sad reality is that huge sums of ill-gotten money are now floating around to be invested in the upcoming parliamentary elections.

Thus, it is clear that the objective conditions are not now conducive to holding fair elections. Given this reality, it is highly unlikely that another round of successful elections can be held in January 2007 without substantive changes in the underlying conditions via major reforms. It may further be noted in this context that the objective conditions have progressively deteriorated since 1991, making the results of subsequent elections increasingly controversial.

One of the biggest threats to holding fair elections in the future is the lack of appropriate political parties in the country. Political parties are the engines of democracy. Democratic, transparent and accountable political parties are essential prerequisites for democracy to effectively function and truly flourish. Unfortunately, we have failed to develop such institutions in our country. There are no laws as such to govern political parties in Bangladesh. They do not even have to be registered with any authority and thus do not have to abide by any restrictions or regulations. What little regulations there are with respect to reporting election expenses are ignored by political parties. In fact, for all practical purposes political parties in Bangladesh function more like syndicates, willing to do or undo anything to win elections. The unholy competition that is now going on between the two major political camps to bring Ershad into their fold, amply demonstrates that, like in love and war, everything is “fair game” in Bangladesh’s election-centered politics.

Democracy in Bangladesh has indeed become mostly election-centred. It has become a one-day – the election day – affair. However, election alone is not democracy – election is only a democratic process compared to autocratic means. Democracy further requires practicing democratic principles and vigorously functioning democratic institutions. Furthermore, as our experiences clearly show, election-only democracy essentially degenerates into elected autocracy.

Elected autocracy necessarily patronises and derives its authority, not from the consent of the people, but from criminal elements owning muscle power and black money. Thus, our political arena has now turned into a safe heaven for criminal elements, engaged in almost uncontrolled looting and pillaging. Through elections we have essentially “empowered” our elected representatives, with some notable exceptions, to steal and plunder with impunity, completely violating the public trust. It is no wonder that the political bosses in our country are bent upon establishing dynastic rules by hook and by crook in order to perpetuate such illegitimate benefits. This obviously poses a serious threat to our burgeoning democracy.

In fact, democracy in Bangladesh is now ailing, even failing, and there is no sign of its rejuvenation in the near future. Democracy is, as defined by Abraham Lincoln in his celebrated Gettysburg address, is a “government of the people, by the people, for the people, (and) shall not perish from the earth.” Unfortunately, in Bangladesh, democracy has essentially turned into a government of the looters, by the looter and for the looters. This type of democracy, allowing unabated pillage, cannot and will not

survive and be sustained. The recent outburst of extremism throughout the country may be a reflection of such an unsustainable state.

The extremists appear to have come to realise the shakiness of our present democratic edifice, characterised by the entrenched criminalisation of politics and the resulting naked deprivation and exploitation of the common people, their abject poverty, and the lack of good governance. With such a realisation, they seem to have defined their course of action – that is to undo the democratic process, which appears to have become, in the words of George Bernard Shaw, “the last refuge of cheap misgovernment”, with violent means using religious slogans. Thus, unless the democratic exercise can be made meaningful and its failures can be effectively arrested, I am afraid, we face the risk of turning Bangladesh into a truly theocratic state. While this is a long-term threat, the extremists may also be an immediate menace to holding peaceful elections in coming January.

It is clear that an enabling environment does not exist for holding free, fair, impartial and peaceful elections at this time. Thus, we need significant systemic and institutional reforms for changing the objective conditions before holding elections. We are concerned that if we force another round of elections in 2007 without appropriate reforms and negotiated agreements among major political parties, we take the risk of making them unacceptable, pushing Bangladesh to a path of serious political instability. This will only create a perfect breeding ground for the extremists.

We need to reform the electoral process to include, among other things, negative voting, the recall system, preventing voting for lampposts and other measures to keep criminals and plunderers away from the political arena. We must institute measures to reduce electoral expenses and expeditious adjudication of electoral disputes. We must also ensure the neutrality of the caretaker government. Most of all, we need to strengthen the Election Commission by making it independent of the Prime Minister’s Secretariat and appointing in it self-respecting and neutral individuals. There must also be full and complete disclosures of the antecedents of candidates, including their financial records. However, we are afraid that these changes without significant reform of the political parties will not take us very far. Fair elections are not possible unless political parties and their nominated candidates behave and practice democratic norms.

However, even fair elections are not enough. Elections must also be meaningful in that they bring about significant changes in the quality of political leadership. Clearly, we need leadership which is honest, competent and dedicated to people’s welfare rather than to naked self-interest. Such leadership will not be forthcoming on its own unless there is reform of the political parties and their registration is made compulsory. Requirements for registration must be the practice of democracy within the party hierarchy, their financial transparency and the reform of their nomination process to prevent people from buying political power with money. Only with such political party reforms, along with other changes, may we expect reasonably free and fair elections, which may bring a positive and meaningful outcome for the common people of Bangladesh.

I began this article by referring to two American high officials. Let me conclude it by quoting a famous American President – President Ronald Reagan. He once said, “Politics is supposed to be the second oldest profession. But I have come to realize

that it bears a close resemblance with the first.” This is probably more true in the today’s Bangladesh which is witnessing an election frenzy. Instead of being blown away by the frenzy, the thoughtful citizens and friends of Bangladesh must now pointedly ask themselves: what would be the long-term benefits or harms, if any, of holding yet another election to the people of Bangladesh without changing the rules of the game through significant systemic and institutional reforms? Will it hurt or help our democratic move forward? While raising these questions, we must do everything possible to ensure that elections are held and held on time.

*The Daily Star*, August 29, 2006

## Is 90 days written in stone?

ARTICLE 123(3) of the Constitution mandates: “A general election of members of parliament shall be held within ninety days after Parliament is dissolved, whether by reason of the expiration of its term or otherwise than by reason of such expiration.” This is clearly a constitutional mandate to hold elections within 90 days. However, is the mandate absolute? In other words, must it be adhered to no matter what? Must the elections be held irrespective of the prevailing conditions? Must they take place ignoring other constitutional provisions and legal constraints? In our opinion, it is a conditional constitutional mandate.

Article 123(3) is not the only constitutional provision relating to elections. There are other such provisions and they must be read together. Thus, in our view, 123(3) of the Constitution must be read in conjunction with Article 119 (1)(b), Article 58(2) and Article 119(1)(d), which are other relevant constitutional provisions.

Article 119(1)(b) empowers the Election Commission (EC) to hold parliamentary elections. But what kind of elections should they be? Article 58D(2) answers that question. It requires that those elections are held “peacefully, fairly and impartially.” That is, the EC must hold parliamentary elections in 90 days and that they are peaceful, fair, and impartial. In other words, merely holding elections within the 90-day time limit is not enough, they must meet the peacefulness, fairness and impartiality criteria.

Let us examine the fairness and impartiality criteria. The 1991 parliamentary elections are widely viewed to be the fairest of all elections held in independent Bangladesh and it may therefore be instructive to examine them. What were the enabling conditions prevailing during that time? Do they exist now?

It seems that there were seven major factors that contributed positively to making the 1991 elections fair: (1) absolute neutrality of the caretaker government (CTG); (2) credibility of the EC; (3) impartiality of the bureaucracy; (4) even-handedness of the law enforcement agencies; (5) unity among the people of all walks of life against autocracy; (6) insignificant presence, if any, of criminal elements – owners of black money and muscle power – in politics; and (7) commitment of political parties to democracy, particularly to fair elections. Do we have the same objective conditions present at this time?

The credibility and impartiality of the CTG is now in serious question. In fact, because of the questionable actions of the Chief Adviser and President Dr Iajuddin

Ahmed, the “non-party” character of the CTG is now seriously compromised. Most citizens have also lost confidence in the EC because of all its controversial actions of the past year and a half and its flouting of the relevant electoral laws and court directives. Two recent controversial appointments to the Commission only destroyed its credibility further. Thus, two most important institutions – CTG and EC – directly and indirectly connected to parliamentary elections have now lost confidence of a large segment of the population and have become the biggest stumbling block to acceptable elections. Thanks to the widespread use of “clientalism” of the successive governments of the past decade, the impartiality and evenhandedness of our bureaucracy and law enforcement agencies are now in serious question. In fact, over the years they have become the instruments for aiding and protecting the interests of the ruling elites. Patronage politics has managed to divide our entire nation, including teachers, journalists, trade union activists, students and the like, into confronting camps. Thus, the unity among people that existed in the late 1990s is now absent due to the divisiveness of our politics.

Criminalization of politics and politicization of crimes are now common phenomena in Bangladesh. Political parties, for all practical purposes, have become dens of criminals. In addition, instead of being united against autocracy, they are now committed to winning elections at any costs to perpetuate their “rights” – rights bestowed through elections – to loot and plunder. Consequently, confronting political parties have also become serious barriers to fair elections. Thus, it is our judgment that the enabling conditions for fair and impartial elections do not appear to prevail in Bangladesh at this time.

Fair elections also require a reasonably accurate electoral roll. The Constitution (Article 119(l)(d)) enjoins the EC to prepare the electoral roll for parliamentary elections. Citizens’ right to franchise would be impeded if they are left out of the electoral roll because of the ineptness or evil intentions of the EC functionaries. If fictitious names are in the roll, the fairness of the elections would be seriously compromised. Thus, if the Commission tries to hold elections without preparing a dependable electoral roll, it will only meet a part of its constitutional obligations with regard to parliamentary elections. There are now widespread accusations that our EC has so far failed to prepare a reasonably reliable electoral roll for the coming parliamentary elections.

In addition, fair elections require delimitation of constituencies after regular intervals. Article 119(l)(c) of the Constitution entrusts EC with this responsibility. The Delimitation of Constituencies Ordinance, 197G requires that: “The territorial constituencies shall be delimited afresh upon the completion of each census, for the purpose of general election to Parliament to be held following each census.” But our EC has failed to perform this constitutional obligation even though more than five years have elapsed since the last population census held in 2001. Thus, there is now wide variance in the number of voters in different constituencies. For instance, the number of voters, based on the latest available information, vary from the highest 047,000 in Dhaka-II to the lowest 106,000 in Moulvibazar-1. Even in Dhaka district itself, the difference is stark. For example, compared to Dhaka-11, the number of voters is Dhaka-1 is only 167,000. Such wide variations are not consistent with the concept of fairness.

Furthermore, clean and efficient government through fair elections is the right of every citizen. Thus, the Commission has the obligation to make the elections meaningful in that honest and competent candidates have the fair opportunity to get elected. This requires the disclosure of accurate information about the antecedents of candidates running for office. The High Court Division of Abdul Momen Chowdhury and others as Bangladesh and Others (Writ Petition No. 2561 or 2005) has provided directives for disclosures. However, our EC has so far taken no effective steps to fully and completely disclose the necessary information regarding candidates who will contest in the coming elections. In fact, repeated efforts on behalf of SHUJAN to ensure such disclosures have faced only non-cooperation from the EC.

One must also ask – is the present condition prevailing in the country congenial for peaceful elections? More specifically, has the EC taken the initiative to intern the criminal elements who can threaten peace during elections. Has it taken any effective steps to recover illegal arms which may be used by the criminals? It may be instructive to note that the Indian EC compelled their law enforcement agencies to put behind bars 140,000 criminals during the last assembly elections in Bihar, as a result of which fair elections were held for the first time in that state.

To conclude, the EC is the constitutional body responsible for holding parliamentary elections and it is obliged, under Article 123(3) of the Constitution, to do so within 90 days of the dissolution of the Parliament. However, Article 123(3) is not the only constitutional provision relating to holding parliamentary elections. Thus, the requirement of the article is not absolute, rather conditional, and to conveniently argue that parliamentary elections must be held within 90 days of the dissolution of the Parliament to uphold the Constitution tells only part of the truth.

The Constitution further mandates the EC to make the elections peaceful, fair and impartial. It also enjoins EC to delimit constituencies. The relevant law requires that constituencies be delimited after every census. The court directed the Commission to disclose information about candidates. Thus, to fully meet its constitutional obligations, the EC must create the enabling conditions for peaceful, fair and impartial elections, prepare a reasonably accurate electoral roll, delimit the constituencies and also disclose accurate information about candidates running for elections. We hope that the members of the Election Commission will read the Constitution in its entirety rather than only part of it.

*The Daily Star, December 17, 2006*

## Lawbreakers must not become lawmakers

The idea of allowing convicted criminals to contest the upcoming elections has now become an important issue. Some political parties have been making demands for it and have even nominated convicts. We feel that permitting the convicted criminals to run the affairs of our nation is a serious matter and we are totally opposed to it. Such permission will allow the lawbreakers to become lawmakers and thereby further undermine our democratic system. This will also impede the process of good governance and the rule of law, further weakening of the state and ultimately making

it ungovernable. This will obviously create a fertile ground for extremism and fuel its rapid spread.

Article 66 of the Bangladesh Constitution specifies the disqualifications for MP candidates. According to Article 66(2)(d), “A person shall be disqualified for election as, or for being a member of Parliament who has been convicted for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release.” The Constitution clearly disqualifies convicted criminals to contest elections. However, the question remains: When does the convict become disqualified – from the date of the first conviction by a trial court? Or after the appeals court confirmed the conviction?

Unfortunately, our Representation of the People Order, 1972 and its subsequent amendments (RPO) do not provide a clear guideline for this. However, the Representation of the People Act, 1951 of the neighbouring India debar convicted criminals from the date of first conviction. Indian Courts in numerous decisions have supported this position.

Although the RPO is unclear about it, the Emergency Powers Rules, 2007 (Rules) disqualify the convicted criminals from contesting any election. Section 11(5) states, “If anyone is convicted in cases filed under these Rules, he will be disqualified to contest the Parliament and any local government elections despite filing an appeal.” The High Court in its most recent decision, in the case of the writ petition filed by Barrister Nazmul Huda, affirmed it. However, a relevant question in this connection – what will happen if the Rules are repealed? Will that make the convicted criminals under the Rules eligible to run for office?

It should be remembered in this context that although the Rules provide for an expeditious trial, convictions take place under certain existing statutes such as The Penal Code. Thus, a conviction should stand despite the repeal of the Rules. However, since the Order is silent as to when the convicts become ineligible, the court will have to decide when the ineligibility takes effect under the provisions of Article 66(2)(d) of the Constitution.

Unfortunately, our court judgment on the issue of when the conviction takes effect is contradictory and often erroneous. The issue first came up in *Serajul Huq Chowdhury v. Nur Ahmed Company and Wahidur Rahman Chowdhury* [18DLR(1967)]. To give a brief description of the case, on 18 November, 1964, Mr. Nur Ahmed Company was elected a member of the electoral college under The Electoral College Law, 1964 from Daulatpur East area of Gopal Union Council under the Chagalnaiya Thana of the then Noakhali District. Earlier on 30 June 1964, he was convicted by the Assistant Session Judge of Noakhali under Part II of section 304 of the Pakistan Penal Code, against which he filed an appeal before the Session Judge and he was granted bail. Mr. Serajul Huq Chowdhury challenged his qualifications to become a candidate because of this conviction, and Justice S.D. Ahmed and Justice Abdul Hakim of East Pakistan High Court found that the disqualification “applies when a conviction and sentence has become final ... on the appeal ...”

The last time the issue of disqualification of convicted criminals came before the High Court was in 1996, in the case of *Hussain Muhammad Ershad vs. AKM Mayeedul Islam* (Writ Petition No. 1732 of 1996). The brief history of the case is that the former President Ershad became a candidate in the 1996 Parliamentary elections

while in jail after being convicted in the Janata Tower case. The Returning Officer accepted Mr. Ershad's nomination papers, against which Mr. Islam petitioned the Court. The Appellate Division in its judgment [AKM Mayeedul Islam vs. Bangladesh Commission, 48 DLR(AD)(1966)] reasoned that the Returning Officer was justified in viewing the issue as an "election dispute" and took the position that the court should not intervene in elections "unless the impugned order passed by the authority concerned is *coram non judge* or is afflicted with malice in law." Thus, the Highest Court did not settle the issue of disqualification of MP candidates because of conviction.

Subsequently, on 24 August 2000, the High Court confirmed Mr. Ershad's conviction and the Election Commission Secretariat issued a gazette notification vacating his seat. Mr. Ershad appealed the High Court judgment and at the same time filed a writ against the EC's notification with the argument that his disqualifications should not take effect until the appeal against the conviction is exhausted. Justice Md. Joynul Abedin and Justice ABM Khairul Haque gave a divided judgment on the issue of when the disqualification starts, although they declared the notification illegal [Hussain Muhammad Ershad vs. Abdul Muqtadir Chowdhury and another, 53DLR(2001)].

Justice ABM Khairul Haque opined that "the wordings of the Constitution are crystal clear that a member would be at once disqualified if he is convicted of an offence involving moral turpitude and sentenced to imprisonment for a period not less than two years." He further argued that Article 66 of the Constitution is intended to ensure that the representatives of the people, though duly elected must not be of questionable reputation, because they will be at the helm of affairs of the republic. In reply to Mr. Ershad's lawyer that even a criminal of worst kind has the right of appeal, Justice Haque argued that MPs "are not ordinary people, rather, their position as members of Parliament makes them not only extraordinary rather, distinguishing them from any other ordinary citizen, not to speak of a convict."

On the other hand, Justice Md. Joynul Abedin gave the opinion that "the aggrieved person should be allowed to go up to the Appellate Division by filing a leave petition ... and until that forum is exhausted his conviction and sentence cannot be taken to be final and conclusive for the disqualification to operate." He referred to both *Serajul Huq Chowdhury vs. Nur Ahmed Company* case and some other Indian judgments in support of his opinion. Unfortunately, the Indian judgments do not support the decision of Justice Abedin (Mahmudul Islam, *Constitutional Law of Bangladesh*, Second edition, Mullick Brothers, p. 342). In fact, according to Indian judgments, a convict becomes ineligible from the day of the first pronouncement of the conviction by a trial court, except in case of a sitting MP, in whose case the ineligibility starts after the appeal process is exhausted (*Baboolal vs. Kankar*, AIR 1988 MP 15). Another decision of the Indian Court is that for a convict to participate in elections, both his sentence and conviction must be set aside by the Court (*Bharamu Subrao Patil vs. Narsingrao Gurunath Patil*, AIR 2001 Bom, 114).

According to the former Bangladesh Attorney General Mr. Mahmudul Islam, the same condition must also apply in Bangladesh. In his opinion, for any convicted person to contest parliamentary elections, he must get a say on both the sentence and conviction under section 561(a) and 426 of CrPc. He argued that the conviction stands

despite the filing of an appeal and the appellant continues to be a convict. In other words, even when leave to appeal is granted and bail is given, it “does not take away the effect of conviction and civil consequences like disqualification for election or termination of service ...” (p. 342). He further argued that: “The East Pakistan High Court in Serajul Huq Chowdhury did not notice the provisions in the Code of Criminal Procedure while taking the view that the disqualification cannot operate when an appeal is preferred. The decision is per incuriam.” That is, the judgment is not binding on other courts. According to many experts, the original intent of the constitutional provision is also not to turn lawbreakers into lawmakers.

It is clear from the foregoing that those convicted under the Emergency Powers Rules are ineligible to contest Parliament elections. Their convictions will prevail despite repealing the emergency and they should not be allowed to run for office despite filing appeals. The same should be applicable to those who are convicted on the grounds of moral turpitude under prevailing laws. In other words, notwithstanding the silence of the RPO and the lack of clear direction from the courts, a convict should not be allowed to contest elections after filing an appeal – he must obtain a suspension of both his sentence and conviction.

The issue of morality is also relevant in this context. We feel that from moral considerations the demand on the part of our political parties to allow convicted criminals to contest elections is unjustified. In fact, it is now high time to deprive nominations, for the sake of ensuring a truly democratic polity, even to those with questionable reputations. Those charge-sheeted by competent courts must not be allowed to contest elections. The Indian Election Commission, it may be noted, made a similar recommendation in its 22-point reform proposal put forward in 2004: The Commission is of the view that keeping a person, who is accused of serious criminal charges and where the Court is prima facie satisfied about his involvement in the crime and consequently framed charges, out of electoral arena would be a reasonable restriction in greater public interests. There cannot be any grievance on this. However, as a precaution against motivated cases by the ruling party, it may be provided that only those cases which were filed prior to six months before an election alone would lead to disqualification as proposed. It is also suggested that persons found guilty by a Commission of Enquiry should ... stand disqualified from contesting elections” ([www.eci.gov.in](http://www.eci.gov.in)). It may further be noted that The Representation of People Act of Jammu and Kashmir has a similar provision.

November, 28, 2008

## Who Got Elected to the Ninth Parliament?

The election to the ninth parliament is over, and its newly elected members have already taken the oath of office. We compiled the information contained in the affidavits and tax returns filed by them with their nomination papers. The exercise is quite revealing with respect to the composition of the new parliament and the backgrounds of its members.

The official results show that the Awami League-led Grand Alliance won 262 seats, of which the Awami League itself won 230 seats, Jatiyo Party 27 seats, Workers' Party 2 seats, and Jatiyo Samajtantrik Dal (JSD) 3 seats.

The BNP-led Four Party Alliance won a total of 32 seats, of which BNP won 29 seats, Bangladesh Jamaat-e-Islami won 2 seats and Bangladesh Jatiyo Party (BJP) won 1 seat. Liberal Democratic Front (LDP) won 1 seat and the remaining 4 seats went to independents.

The elected MPs included 41 former Awami League MPs who were re-elected in 43 seats, although 2 former Awami League MP contested as independents and were defeated. The contestants also included 129 former BNP MPs who ran on different tickets (110 with BNP, 2 on Bikalpa Dhara, 2 with the LDP, and 15 as independents) in 137 seats. Only 15 of them won. Eleven former Jamaat MPs ran, and none of them won a seat.

Many of these former BNP and Jamaat MPs were controversial for their alleged involvement in graft, corruption, war crimes, and other misdeeds in the past; as a result they found it difficult to face independent minded voters. Thus, the anti-incumbency factor – the ugly baggage they carried as incumbents – appears to have played a key role in their defeat.

Another interesting feature of the newly elected MPs is that, of the 293 persons elected from 299 seats (Sheikh Hasina, Khaleda Zia and Ershad each won in three seats), 163 (56 %) of them are new faces – they had never been elected to the parliament.

Of the Awami League MPs, 132 (58 %) are newcomers. Thirteen MPs belonging to BNP, 14 to Jatiyo Party, 2 to Jamaat and 2 independents are also fresh faces. They have relatively cleaner images, and this appears to have been an important factor in the lopsided results in favour of the Grand Alliance.

Among the 293 newly elected MPs, 14 are from religious and ethnic minorities – all of whom belong to Awami League. Fifty-eight women ran in 62 seats and only 19 of them won in 23 seats, with former prime ministers Sheikh Hasina and Khaleda Zia winning in 3 seats each. AL has 16 women MPs in 18 seats and BNP has 3 in 5 seats. Unfortunately, only 6 % of the newly elected 293 MPs are women, although women constitute about half of the total population and the majority of the voters.

Most of the elected MPs appear to be educated. About 82 % of the Awami League MPs have Bachelor or higher degrees. The same is true for 79 % of BNP MPs. Only about 7 % have educational qualification of SSC or lower. Some MPs gave misleading information about their educational qualification and some also reported higher degrees obtained from so-called diploma mills.

With regard to profession, 53 % of the new MPs from AL reported business as their profession in their affidavits. On the other hand, 69 % of BNP MPs indicated business as their profession. Overall, 59 % of the elected MPs are businessman by their own declaration.

However, in reality, the proportion of businessmen in the ninth parliament is likely to be higher because many elected MPs did not clearly specify their source of income in their affidavits. For example, 10 MPs, including the two former prime ministers, indicated politics as their profession, and some said they were former government officials, etc.

Unfortunately, many of the elected MPs have been accused of having criminal pasts. For example, of the 262 MPs belonging to the Grand Alliance, 111 (43 %) had criminal cases against them in the past, and 74 (or 28 %) have cases pending at present. In contrast, 23 (72 %) of the 32 Four Party Alliance MPs were in the past accused of criminal wrongdoing and 17 (59 %) currently have criminal cases against them.

Overall, out of 293 MPs, 139 (46 %) are accused of having criminal pasts and 92 (31 %) are accused of engaging in criminal activities at present. At least 18 elected MPs have murder charges under Section 302 of the CPC pending against them. At least two elected MPs are accused of committing war crimes and several are loan defaulters.

There are also accusations of corruption against a significant number of newly elected MPs. We could identify at least 54 candidates with corruption charges, 29 of whom belong to BNP and 17 to AL. Of these 54, a total of 24 tainted candidates – all 17 AL candidates and only 6 belonging to BNP – got elected. The new parliament also includes at least one member who was convicted for corruption.

It must be emphasised that mere allegations, and even the filling of charge sheets, do not represent proof of crime. Cases are sometimes filed for political considerations. Those accused are also often found innocent or the cases against them are withdrawn, again under political influence.

For example, after the Four Party Alliance came to power in 2001, several thousand cases against their party activities were reported to have been withdrawn. Because of political considerations, sometimes even legal proceedings are not instituted against real criminals.

In addition, there are allegations that many candidates hid information about their criminal past in their affidavits. Thus, the number of alleged criminals, by our count, is understated. Therefore, it is impossible to determine the extent of criminal elements elected to the ninth parliament, although the information contained in the affidavits provides an indication.

Nevertheless, it is clear from the alleged criminal records that BNP nominated relatively more tainted candidates, and the voters rejected them with a vengeance. In fact, BNP appears to have demonstrated irresponsibility in its nominations, which earned the wrath of the voters.

For example, it nominated two candidates who were convicted of committing multiple murders, although their sentences were commuted by presidential clemency. It also nominated many known godfathers and looters and plunderers of the public chequer.

In addition, many of its partner Jamaat-e-Islami's candidates are accused of committing war crimes. Many voters appear to have felt that the election of controversial candidates would validate their activities and allow them to go on a rampage in the future. Thus, the election was a sort of referendum.

The financial information contained in both the affidavits and the tax returns submitted by the candidates is also quite revealing. According to NBR sources, all elected MPs, with the exception of only two, are taxpayers. The disclosed information indicates that most of them are millionaires. The available information shows that 44 % have assets of at least one crore taka.

However, it must be pointed out that many elected MPs only listed their assets without indicating their value, and they could not be included in our count. There are also accusations of widespread concealment of information regarding wealth by many MPs. Thus, the number of kotipati, with at least 10 million taka worth of assets, is grossly understated.

In fact, our hunch is that the ninth parliament will be a kotipati club, which is an anathema to the idea of a representative democracy with all segments of the population fairly represented in the parliament. Of course, there is nothing wrong in becoming a kotipati as long as the accumulated wealth is not ill-gotten.

It is clear from the foregoing that many controversial persons were elected to the ninth parliament, and that we must do better in the future. Nevertheless, many new faces with relatively cleaner backgrounds were elected, creating an unprecedented possibility of a new generation of dedicated leadership – leadership committed to public service rather than to selfish interests.

Whether or not this possibility becomes a reality will depend on the thoughtfulness and wisdom of the leaders of the ruling coalition. We wish them well and at the same time assure them of our support and cooperation while keeping a watchful eye on their actions and inactions.

Daily Star, Forum January 2009

## As you sow, so shall you reap

Now that a democratic transition is almost certain through the parliamentary elections to be held on 29 December, we must start asking ourselves: What is next? What can we expect of the newly elected government? Also, how can we shape the things to come.

For anything good to come out of the elections, we must first ensure that they are free, fair and credible. Otherwise the nation will, at best, plunge into an uncharted course, and, at worst into a chaotic state, with disastrous consequences. Such consequences may push the nation to an ungovernable condition, further fueling the spread of extremism.

Even with credible elections, we will be facing enormous risks. Risks will arise from the fact that many of the candidates contesting elections have questionable antecedents. Many have criminal records, some of whom are already convicted or charge sheeted. Quite a number of them are known looters and plunderers of public exchequer and financial institutions or gangsters, even though no charges have been brought against some of them. There are still others who are known war criminals, although not yet convicted.

As one cannot get apples from banana plants, similarly one can hardly expect honest behaviour from corrupt representatives. In fact, as the old adage goes, as you sow, so shall you reap. Although systemic changes may create some deterrence, dishonest persons can manipulate the system and make them unworkable, as has happened in the past. Thus, we cannot be certain that Bangladesh after elections will not again become a haven for indulging in graft and corruption with impunity.

Nevertheless, there is no alternative to elections and democratic transition. History teaches us that autocratic governments do not in the long-run benefit the people, especially the common people. Common people do not hold privileged positions which they can use to their advantage to extract benefits from autocratic regimes. But in a democracy their votes at the time of elections count as much as that of any privileged person. Thus, politicians have to pay at least some attention to them and their needs, especially because their numbers are large. In other words, a functional democracy, where people have a continuing engagement, is good for them. That is the reason behind Amartya Sen's famous observation that in a democratic polity, famine cannot happen.

It thus goes without saying that whether elections bring tangible benefits to the people depends on what happens after elections – whether the elected government practices democracy. After all, elections are not democracy, they are merely an entry point to a democratic governance. Democracy is not just a one-day ritual. In fact, democracy is what happens in between two election days. It depends on whether elected leaders demonstrate democratic norms, show respect to the rights of the citizens: institute the rule of law, practice transparency and accountability, ensure people's participation, and overall facilitate good governance. It will also greatly depend on initiatives to deepen democracy by empowering a system of local self-government and bringing government to the door step of the people. The closer the power and resources to the people, the more they benefit from such power and resources.

We can expect democratic behaviour and better governance from the newly elected government if the right representatives are elected – representatives who are honest, competent and are dedicated to the people's welfare rather than their own selfish interests. Creation of such opportunities will depend on several interest groups, namely, the political parties, the Election Commission, the media/conscientious citizens, and most importantly the voters.

If we are to enhance the quality of our future representatives, political parties must nominate clean candidates for elections. The Election Commission must fully and faithfully implement the law and keep the undesirable candidates out of the electoral arena. The media and the citizen groups must unveil the background and antecedents of candidates to inform the voters. Finally, the voters must make informed decisions at the polling booths. Government also must perform its constitutional responsibilities to assist the Commission to hold free, fair and peaceful elections.

With regard to the nomination of candidates for the coming elections, political parties have already done their part, although many of their nominated candidates have blemished pasts. Now the Commission will have to do its part to ensure that political parties behave and the candidates abide by the laws and rules. It must not hesitate to show red and yellow cards to candidates who violate laws or try to manipulate the system.

The media and the citizen groups have the most critical roles to play in the coming weeks. Democracy is not a spectator sport and such groups must actively engage themselves to help elect clean candidates. Thanks to the relentlessness of organizations like SHUJAN, the candidates who are now contesting elections had to submit affidavits to disclose their educational, criminal and background. The media

now must dig deep and publish investigative reports on them and the citizen groups can help in these efforts. Then only the voters will be able to make informed choices. It goes without saying that unless the voters make the right decision in the polling booths, we can hardly expect anything good to happen. Let us hope that the voters, especially the new voters, being a substantial number this time, will act responsibly. That may be our best hope.

New Age, 18 December, 2008

## Prosecuting war criminals, religion-based politics and elections

Demands for bringing the war criminals to justice are intensifying everyday. People from all walks of life are increasingly making these demands. Even the ardent political rivals appear to have reached an informal consensus on this issue. We hope that the government will pay heed to the burgeoning public opinion and take bold action on this issue instead of using the excuses that the politicians did not try the war criminals in the past and they are now making self-serving demands. However, the trial must be fair and injustice must not be done while trying to undo a historic injustice.

Aside from the popular demands, there is another reason for prosecuting these alleged criminals. Their heinous crimes have inflicted serious wounds on the nation's psyche and the trial will help us heal the wounds. It will also help us become forward-looking as a nation. Just as one subconsciously continually touches a painful spot on the body, the nation's wounds also readily capture the citizens' attention. Hence, many issues become seriously coloured by the past, making it difficult to focus on the future. This makes the nation backward-looking and too preoccupied with the past to move forward.

Bangabandhu Sheikh Mujibur Rahman wanted to forgive the war criminals with the realisation that a nation that is focused on the past cannot create a future. And indeed he forgave many of them except the ones accused of serious crimes. However, even though we wanted to forget and forgive these despised individuals, they did not want to leave us alone. They never apologised nor did they show repentance for their misdeeds. Instead they insistently deny their evil actions and even make arrogant utterances. Their incendiary statements, a continual presence in public life, and lack of public remorse have made their past an issue wherever they go. Thus, this is something which must finally be settled once and for all.

Demands have also been raised to ban religion-based politics in the country along with the trial of the war criminals. The rationale for such demands is that state belongs to all citizens while religion to individuals, and individual religious beliefs should not be used to divide the society. Nevertheless, political manipulators conveniently use religious slogans to serve their selfish ends. They use religion to foment hatred and divisiveness rather than foster harmony among people. As Marx said, they use religion like opium to arouse religious sentiments.

A glaring example of how people's religious emotions were used for a selfish purpose can be found in the 2001 election of Pirojpur-1 constituency. A clear picture

of the mischief emerges from the High Court judgment on Sudhangshu Shekhor Halder vs. The Chief Election Commission and others (Election Petition No. 10 of 2001). In this celebrated case, Awami League candidate Late Sudhangshu Shekher Halder accused Allahma Delawar Hossain Sayedee, the winner of the election, of submitting a false and illegal election expenses statement. Mr. Halder further alleged that a leaflet published in the name of “Shamprodayek Sompriti Shongrokhon Parishad, Central Committee” made false propaganda and asked people not to vote for him as he was threat to the communal harmony. The leaflet was based on a report published in the 28 March 2001 issue of The Daily Inqilab entitled “Monument to build Ramna Kali Mandir, mother Kali will not awaken unless the fatwabajs are eliminated.” In addition, it was alleged that hundreds of thousands of leaflets in the name of some Sagar Chowdhury were distributed in which Bangabandhu was called a Hindu. Furthermore, the Awami League was allegedly branded as anti-Islamic by showing burnt pages of the Holy Qur’an which were apparently burnt along with the Jamaat Office in Pirojpur. In addition to the leaflets, publicity inciting religious sentiments of voters against Mr. Halder was also allegedly made through speeches, posters and wall writings.

After holding eight hearings, Justice Md. Imman Ali pronounced judgment on the case on 14 September 2003. During the hearing, five witnesses including the petitioner, gave oral testimony. Mr. Sayedee and two other witnesses for him were also deposed. Furthermore, Mr. Sayedee made a written statement. The Court also examined 53 exhibits submitted by Mr. Halder.

During the hearing, the petitioner and his witnesses claimed that Mr. Sayedee and his associates created propaganda against Mr. Halder by branding the latter as a “Kafer” and a “RAW agent.” The witnesses also accused Mr. Sayedee of spending Tk. 2 crore for the election. Mr. Sayedee was further accused of asking voters to take money from the Awami League and if they kept the money on the Holy Qur’an and voted for him, it would not violate the tenets of Islam. In the published leaflet it was claimed that the petitioner instigated the sacrifice of Muslims at the feet of Ma-Kali and vowed to forcibly drown the Muslim fatwabajs of the country. The witnesses further claimed that Mr. Sayedee and his associates made propaganda that: “... if they cast vote for ‘Kafer’ then their janaza would not be held. If they vote for the Awami League they will not be residents of Heaven and then it is a crime to vote for a Kafer ... if they vote for him (Sayedee), it will be a vote for Allah and they would go to Heaven and he would issue tickets for Heaven...”

Mr. Sayedee and his witnesses denied all these allegations. However, Mr. Abdur Razzak, the lawyer for the respondent, raised technical points and argued against the admissibility of the leaflets as they were not dated and they were photocopies. He further reasoned: “The matters stated therein (in the two leaflets) are political statements with a political aim and not an attack on the personal character of the Petitioner.” He further stated, it is instructive to note, that “it has become the political culture of this country to label the opponent as an agent of this or that foreign agency.” With respect to the leaflet by Shamprodayek Sompriti Shongrokhon Parishad, Central Committee, he submitted that it was a reproduction of a newspaper article and can be viewed as a “fair comment”.

The Honourable Court, in its judgment stated that: “On the face of it, the contents of the leaflets are tinkered with religious innuendos and exhortations to refrain from casting votes in favour of a Hindu, who is allegedly anti-Muslim and planning to make the country into a satellite state of India. However, in my view the Petitioner has not been able to pinpoint the activity to the Respondent (Mr. Sayedee) in this regard. Certainly there has been propaganda in the constituency with religious connotations. But there is no clear evidence that the Respondent played any part in publishing the offending leaflets or made the alleged speeches ... Taking the evidence as a whole, I am of the view that the petitioner has not been able to prove the Respondent guilty of corrupt practice under Articles 73(3)(a) and 73(4)” of The Representation of the People Order, 1972.

Article 73(3)(a) of the Representation of the People Order provides: “A person is guilty of corrupt practice punishable with rigorous imprisonment for a term which may extend to seven years and shall not be less than two years, and with a fine if he ... (3) makes or publishes a false statement (a) concerning the personal character of a candidate or any of his relations calculated to adversely affect the election of such candidate or for the purpose of promoting or procuring the election of another candidate unless he proves that he had reasonable grounds for believing or did believe the statement to be true.” Article 73(4) applies when the offender “calls upon or persuades any person to vote, or to refrain from voting for any candidate on the ground that he belongs to a particular religion, community, race, caste, sect or tribe.”

It may be remembered that even if the Honourable Court found that the allegations of indulging in corrupt practices against Mr. Sayedee were unproven beyond a reasonable doubt, he was found guilty of submitting illegal election expenses making his election void. However, using the argument that since failure to submit an election expense return in accordance with the law and not disclosing all sources of funds had no direct bearing on the election, the Court did not declare Mr. Halder duly elected from Pirojpur-1 constituency replacing Mr. Sayedee. It may further be remembered that the Appellate Division of the Bangladesh Supreme Court, on appeal, subsequently stayed the High Court judgment, and Mr. Halder died while the appeal was pending, making the case in fruituous.

To conclude, although the allegations against Mr. Sayedee of using religious sentiments to defame Mr. Halder and to incite the voters to vote against him were not proven beyond a reason doubt, the Court itself found that the campaign for election of Pirojpur-1 in 2001 was marred with religion-based propaganda. Clearly, someone or some group resorted to a disgraceful campaign with the sinister motive to harm Mr. Halder and benefit Mr. Sayedee. Undoubtedly such propaganda catered to the religious emotions of voters affecting the election results. Thus, for the sake of fair elections in the future, the use of religion to defame opponents to win elections must be stopped. But, how?

One proposal is to ban the religion-based political parties. But with the deletion of Article 12 and the last part of 38 of the 1972 Constitution, such a ban will be illegal. However, under section 20 of The Special Powers Act, 1974, it is illegal to “form, or be a member or otherwise take part in the activities of, any communal or other association or union which in the name or on the basis of any religion has its

object, or pursues, a political purpose.” The government can ban such an organisation by notification in the official Gazette.

But the present Constitution’s Article 38, which guarantees right to assembly as a fundamental right, is used against banning religious-based political activities and mobilisation. But the right to form association under the Constitution is not an unfettered or absolute right – it is “subject to any reasonable restrictions imposed by law in the interests of public order or public health.” Thus, it appears that the government can ban religion-based politics under the present Special Powers Act. It can also conceivably enact a law to impose reasonable restrictions on communal politics in the country. However, we must think seriously about the wisdom and consequences of such a decision before rushing into it.

Some experts are concerned that banishing the religion-based parties from normal political activities may backfire and force them to become extremists, a possibility that cannot be totally dismissed. Some top political leaders are also against banning political parties like Jamaat – for example, Sheikh Hasina opposed such a ban in 1996.

In addition, Bangladesh’s political history shows that religion- based politics and political parties were legitimised and became stronger either through support from major political parties or the patronage of martial law regimes. For example, in the 1991 elections Jamaat bagged 18 parliamentary seats and 12.13 % of the popular votes with indirect support of the BNP. However, contesting alone in 1996, its share of the election booty declined to 3 seats and 8.61 % of the votes. In the 2001 elections, as a partner of the four-party alliance, its electoral gains shot up to 17 seats.

From these past experiences it is clear that we may not have to be concerned about the religion-based politics if our main political parties commit not to support them or take them into their electoral alliances. However, the track record of our politicians keeping their word is not good. For example, the joint declarations of the 15-7-5 party alliance of 1990 to boycott General Ershad and his cronies were not kept by our main political parties. Thus, the long-term solution of the problem of religion-based politics in Bangladesh depends largely on the political will and commitment of our political leaders.

## Yet another acid test for the nation

By-elections of the seven vacant parliamentary seats are scheduled for April 2. It is very important that these elections are free, fair, and peaceful. In fact, we feel that these elections are yet another acid test for the nation, and passing this test will largely determine the success of our democratic transition.

It is generally believed that our elected governments are incapable of holding free and fair elections. In fact, the system of caretaker government was created to redress this situation, though in reality it swept under the rug the misconduct of the political parties, which was really the problem.

More seriously, we have once again recently demonstrated that our political culture does not allow fair elections to be held under an elected government. According to all domestic and foreign observers, the interim government headed by

Dr. Fakhruddin Ahmed was able to give the nation a free, fair and peaceful national election on December 29, 2008. But, unfortunately, serious accusations of hooliganism and undue influences were raised about the upazila elections held under the elected government.

Complaints have been made against some government functionaries of partisan behaviour and against some MPs and ministers of exerting undue influence. As a result, the elections of six upazilas were postponed by the EC on the election day, and later the election results of another 16 upazilas were either fully or partially postponed, and judicial enquiry was initiated. In addition, administrative enquiry was launched in several other upazilas. By contrast, no election results were suspended or elections postponed in any constituency during the parliament elections.

Elections are pre-requisites for a democratic system. However, elections, as stated in our constitution, must be “peaceful, fair and neutral.” Thus if the elected governments continue to fail to hold fair elections in the future, our democratic system will be at risk again. Like nature, where species must regenerate themselves to survive, political systems must also revitalise themselves to be sustainable. Thus, in the interests of sustaining and institutionalising our democratic system, it must be demonstrated beyond doubt, through the coming by-elections, that free and neutral elections are possible under an elected government.

Unfortunately, we have been hearing from some of the constituencies that already the hooligans have begun to flex their muscles – they have been harassing some voters, especially the minorities. Moneyed men have also started spreading their wealth. These illegal activities will intensify as the elections come nearer. Thus the government must begin to take stern actions immediately.

Coming by-elections are also an acid test for the EC. The commissioners themselves expressed unhappiness about the upazila elections. Now using the experiences of these two elections and also the previous local elections, the commission must take appropriate actions to make the by-elections free and fair.

It must ensure that candidates disclose information fully, debar the candidates for providing wrong and misleading information, and take severe punitive actions against those who violate the law and the code of conduct. It must also ensure that ineligible candidates cannot become elected using the legal loopholes and legal manipulations. It must not hesitate, if necessary, to debar candidates and cancel elections.

Influence of money is one of the biggest hindrances to fair elections, and thus to our democratic system itself. The commission must pay special attention to ensure that money does not unduly influence the by-elections. We believe that our EC should appoint monitors to scrutinise on a daily basis the election expenses of the candidates in the seven by-elections. In addition, the commission may arrange projection meetings in each constituency. SHUJAN has vast experiences in these activities and we can help the commission.

Despite all out efforts by the commission, fair elections are not possible unless the political parties behave. If the political parties and their candidates are committed to win elections at any cost, then the EC, despite its utmost sincerity, will not be able to deliver fair elections.

Political parties should have nominated candidates who are honest, competent and committed to people’s welfare rather than controversial candidates. However, one

cannot help but be disappointed by the nominations of the two major parties. More importantly, none of the political parties followed the law, which required them to nominate candidates based on the recommendations of their local committees. This is a violation of the law, which is clearly inconsistent with the rule of law. Compliance with only selective laws and ignoring others got our democratic system into trouble in the past, and the same consequence will follow with similar behaviour. Thus the EC and the relevant parliamentary committee must urgently look into the matter.

Responsible behaviour of the candidates and the parties must also be ensured for the sake of fair elections. Considering the seriousness of the matter, we hope the political parties will take urgent steps to clean up their act. At the same time the EC will also ensure full compliance with the law, rules, and the code of conduct.

The coming by-elections are also an important acid test for the media and the citizen groups. Media's responsibility is to create voter awareness. If they disseminate information disclosed by candidates and do further investigative reporting then the voters will have a chance to be informed. At the same time they must report the violation of the laws and the code of conduct.

Citizen groups also have very important roles in creating voter awareness. They can highlight the salient issues, analyse the information disclosed by the candidates for use by the media and thereby help voters make informed choice. At the same time, they can mobilize and generate voter activism and arrange candidate-voter face-to-face meetings. SHUJAN did similar things during the national elections.

Winners and losers in elections will ultimately be determined by the voters. Thus the voters will have to decide what kind of representatives they want to elect. If they are influenced by money or threats, the consequence is likely to be disastrous. If the tainted candidates get elected, they will feel validated and will feel encouraged to continue their misdeeds. Thus, the EC, media and the citizen group must be vigilant so that such a scenario does not unfold.

To conclude, the success of our democratic transition largely depends on free and fair elections. However, our political system has so far failed to ensure that. And this failure, in a larger sense, belongs to us all. Thus, we all have the responsibility to come forward to redress the situation. The government, the EC, media and the citizen groups will have to work together – only then can we expect to turn the failures of the past into successes of the future.

*The Daily Star: March 30, 2009*

## The Speaker and our Parliament

A recent front page article in *The Daily Star* ("Four years of Jamiruddin Sircar: Putting party before parliament," 30 October 2005) expressed serious disillusionment with the performance of the Honourable Speaker of our Jatiyo Sangsad. The article pointed out that during the last four years of his tenure as the Speaker, Mr. Sircar could not rise above partisan interests, clearly compromising the sovereignty and effectiveness of the legislature. It cited several incidents and quoted Mr. Sircar's

parliamentary colleagues in support of the contentions. Such contentions, if true, are clear threats to our nascent democracy.

Democracy is a rule by the ruled. Consent of the people is its basis. Parliament essentially embodies democracy. It is a pivotal institution through which the will of the people is expressed, laws are enacted and government is held to account. Through it, the popular self-government is established in practice. Thus, the functioning of parliament, or lack of it, truly reflects the effectiveness of a democracy.

A truly democratic parliament has several essential characteristics. According to Inter-Parliamentary Union (IPU), it is one which is –

**Representative:** The parliament must include representation of/by all sectors of society with a view to reflecting national and gender diversity. It must ensure representation of marginalised or excluded groups. As the elected body that represents society in all its diversity, parliaments have a unique responsibility for reconciling the conflicting interests and expectations of different groups and communities through the democratic means of dialogue and compromise.

**Transparent:** The proceedings of the parliament must be open to the nation through different media. There must also be transparency in the conduct of its business, which can be ensured through dissemination of relevant information about its activities.

**Accessible:** The parliament must ensure public participation in pre-legislative scrutiny and provide for open consultation for interested parties on matters of their interest. It must also allow lobbying within the limits of agreed legal provisions consistent with the principle of transparency.

**Accountable:** Members of the parliament must be accountable to the electorate for their performance in office. Such accountability must be ensured through proper monitoring and reporting procedures. There must also be strict ethical standards, enforceable codes of conduct, and limits on election expenses for them. They must also report outside interests and income to avoid conflicts of interest.

**Independent:** There must be mechanisms and resources to ensure the independence and autonomy of parliament, including its control over its own budget and its own committees. It must also have non-partisan professional staff separate from main civil service and capability for independent research and information gathering.

**Effective:** There must be effective organisation of parliamentary business in accordance with democratic values and norms to achieve efficiency. It must have systematic procedures for ensuring executive accountability and adequate powers and resources for enforcing such accountability. It must be able to shape national policies. Parliament must also have effective engagement in the national budget, including the subsequent auditing of accounts. In addition, it must have the ability and powers to address issues of concern to the society, to mediate in the event of tensions and prevent violent conflicts, and to shape public institutions that cater to the needs of the entire population rather than a few. Furthermore, parliament must approve senior ranking appointments and international treaties.

It is clear that parliament is the nerve centre of a democracy. The speaker is the guardian of the parliament. Thus, the role of the speaker must be to ensure that the characteristics of a democratic parliament prevail in reality. On a day-to-day basis,

more specifically, his/her job is to preside over the meetings of the parliament, to maintain order and decorum in legislative proceedings, to ensure parliamentary oversight, to represent the legislature in dealing with the government, and to oversee the parliament's administration. He/she must ensure fair and inclusive parliamentary procedures to turn it into a truly deliberative, rationalistic, open and consensual body. He/she must also maintain an atmosphere of collegiality and cohesiveness rather than a hostile environment, which is sometimes the case in mindless adversarial politics.

Another important role of a speaker is to engage in inter-party dialogue and also negotiations for executive-legislative balance. In Nordic countries – for example – where minority governments have essentially become the norm and “bargaining democracy” is regularly practiced, frequent negotiations are needed for compromised solutions to many issues of importance. In our country, the negotiating role of the speaker is particularly important because of the intolerant and confrontational attitudes of our political parties.

In order to successfully perform these roles, the speaker's neutrality must be beyond question. Sincerity, wisdom and courage must be his/her demonstrated qualities. He must also be a skillful facilitator.

The conduct of Mr. Sircar and the way of his conducting the Jatiyo Sangsad as its speaker, must be judged against his ability to ensure the characteristics of a democratic parliament. His performance must be assessed with respect to his success, or lack of it, in carrying out effective negotiations between our combative political parties. He must also be evaluated in terms of his personal qualities of head and heart. Readers can judge the justifications of the serious concerns raised in *The Daily Star* article against these criteria and easily make their own judgment.

However, one thing is clear. Mr. Sircar, like his predecessors, has not been able to improve the quality of debates in the parliament. Mudslinging and irrelevant rancorous rhetoric are still the norm of the discussions in the floor of the house. More seriously, his inability to strengthen parliamentary oversight functions in the face of accusations of rampant corruption and sleaziness by members of the executive branch is a matter of serious and far-reaching consequences. Many of our lawmakers have also become lawbreakers and are engaged in the naked pursuit of selfish interests to the detriment of national interests. The parliament has clearly failed to police itself against unethical and corrupt conduct, and thus has largely become a body devoid of accountability. What is most disturbing is Mr. Sircar's contention, reported in *The Daily Prothom-Alo* (28 October 2005), that a parliament can function effectively in spite of the ongoing absence of the opposition from its proceedings.

Another important issue. The speaker is only a heartbeat away from becoming the head of the state. In fact, Mr. Sircar had the unique opportunity to become the acting President for 73 days. Thus, he needs to demonstrate the highest ethical standard – higher than what is called for an ordinary citizen. National interest, rather than the coterie interests, must also be his highest priority. Many thoughtful citizens have been greatly surprised by our Honorable speaker's role, or lack of it, in the sordid incident of building the two houses for the speaker and the deputy speaker, defacing our Sangsad Bhavan, which is a world renowned architectural monument.

To conclude, the effectiveness of our parliament has been deteriorating over the years. According to some observers, it has increasingly become a lame and tame body.

Mr. Sircar, as the speaker of our eighth parliament, failed to provide effective leadership to prevent this slide toward dysfunction. In fact, during his tenure the slide has become perhaps more glaring and serious. Our parliament, in the face of the continuing boycott of the opposition, has now become more or less a rubber stamp body, giving stamps of approval to executive actions without penetrating and systematic questions and scrutiny. This clearly does not bode well for our budding democracy.

*The Daily Star*: December 23, 2005

## Absence of parliamentary oversight

In his commentary “The dangers of two thirds majority,” Mr Mahfuz Anam cited several examples of undemocratic behavior by governments in South Asia and attributed such behavior to the so called “curse” of the two-thirds majority. He argued that armed with an overwhelming majority, governments in this region often misinterpreted the people’s verdict and instead of initiating bold programmes to improve the conditions of the people, they undertook coercive measures against those against those who opposed them. This is an interesting argument about the psyche of our politicians. However, I feel that it is the absence of effective legislative oversight – rather than the curse of the two-thirds majority – which is the real culprit. Minus the precautionary measures in their system of governance, such excesses could also happen in other countries.

The repressive behavior is not unique to our politicians. Human beings irrespective of their national origin are not angels. As Bertrand Russell observed, people have a possessive instinct – instincts to concentrate power, dominate others, accumulate wealth, and so on. Every mortal is born with these weaknesses. However, social values, norms, traditions, sense of morality and laws prevent people from nakedly catering to such instincts.

When human beings assume governmental powers they gain the opportunity and the authority to indulge in these human frailties almost with impunity. In the words of Max Weber, all governments enjoy the “monopoly of the legitimate use of physical force” over its people. Such lawful authority can easily be misused and misapplied, resulting in the concentration of power and the creation of tyranny. The “tyranny of the majority” is one of its ugliest manifestations. The bigger the majority, the more arrogant the government obviously could become by enacting the so-called “black laws” or taking despotic actions. This is what happened many times in South Asia. It could happen anywhere if there is no restraint on the exercise of legitimate powers.

The true challenge even in a democracy therefore is to restrict the powers of the government to prevent excesses by elected officials. The principle of separation of powers was developed by political philosophers to put in place such a restraint. Under this principal, governmental authorities are fragmented and diffused among three competing organs or branches, namely the executive, legislative and judiciary. It is designed for each of the three branches to check the others’ power and balance those powers by its own. For the principle of separation of powers to work properly and

effectively in practice, the three branches must be coequal, autonomous and independent of each other. They must not perform the tasks of others and transgress the limits set by the Constitution.

In mature and well-functioning democracies, the principle of separation of powers is practiced aggressively and effectively, safeguarding people's liberties. In those countries, the legislature, for example, performs sometimes over jealously an oversight or surveillance function that prevents the government from degenerating into tyranny. The judiciary as the repository of the judicial powers of the state, interprets and safeguards the constitution in order to check excesses by the other two branches.

Although the doctrine of separation of powers can be more easily put to practice in a Presidential form of government, its exercise may be relatively more challenging, requiring more vigilance, in a Parliamentary system. In the latter, voters choose the legislators, who then choose one of their colleagues to be the Prime Minister to serve as the chief executive. The Prime Minister finally appoints a Council of Ministers, who serve as executives, from both within and outside the legislature. In such a system, the legislative and executive powers are thus, on the surface, combined in one institution, the legislature. The situation is further complicated by the fact that there are enormous attractions on the part of the legislature to perform executive functions, and at the same time the chief executive also has the incentive to "take care" of the legislators in order to keep them in line. However, in order to prevent the parliamentary government from becoming tyrannical, separate and autonomous identity of the executive and legislative branches must be maintained at all costs.

In a unitary state, the principle of separation of powers is even more critically important. Unlike the federal system, in the unitary form of government no demarcation is made between the central and provincial subjects. In addition, in a federal system opposing parties could be in power at the centre and in the Provinces, automatically putting in place a restraining influence. In a unitary system, one party or a coalition of parties hold power at all levels, magnifying the potential threats to liberty. A strong, autonomous and self-governing system of local government could have a moderating influence on the governmental excesses. Unfortunately creating such a system has remained an illusive goal for us for the last 30 years. The lack of judicial independence only makes things potentially worse. In the absence of such built-in restraints as provided by the federal system, the local self-government and the independent judiciary – the role of parliamentary oversight becomes even more important. The Parliamentary Standing Committees can provide the primary safeguard against executive excesses by holding the Council of Ministers and their colleagues to account.

It countries like ours the principle of separation of powers does not work, although it is a fundamental pillar of our constitution. We may not be even serious about it. We also hardly make any distinction between the executive and the legislative branches, compromising their independence.

In parliamentary democracies the oversight role is normally reserved for and vigorously performed by the opposition. Unfortunately, the continuing absence of the opposition from the Parliament has been depriving us, as a nation, of this vital safeguard. As a result, as our experience since 1991 shows, the successive

governments became more intolerant with the absence of the opposition MPs in the Parliament. Ironically, a vigorous watchdog role of the opposition in the Parliament could perhaps prevent the excesses of the government – the very excuse used by them for not participating in parliamentary activities.

Another reason for the absence of effective legislative oversight and thereby the failure of the system of checks and balances in our country is the concentration of powers in our political parties and also in the government. Such concentration puts the Members of Parliament under the iron grip of the party / government heads, turning them “voiceless” and restraining them from becoming adversarial. Article 70 of our constitution ensuring absolute party loyalty, accentuates this problem.

The essence of democracy is the rule by many rather the rule by an individual or small coterie. Where the whims of an individual rule, not the collective wisdom and the judgment of many reflected in laws and procedures, there is great danger of misrule and autocracy. Our experience from South Asia and elsewhere teaches us that every individual is capable of abusing power and if he / she attains it, is likely to do so unless there are restraints in the system. Effective parliamentary oversight and the judicial independence – that is a system of checks and balances – can provide such much needed restraints. Failure to institute the restraints is the prescription for government failure.

If the parliamentary oversights were effective in our country, the relevant parliamentary standing committees would hold hearings following the unfortunate event at Dhaka University last month to identify and recommendation against those who were responsible. With the necessary administrative / legal action taken against the offenders, the repetition of such events would be prevented in the future, making our democratic system work. Both the parties in power and in opposition are and must be equally responsible for such effective working of the system.

To conclude, democracy requires good, honest and responsible people running the government. More importantly, it requires external and continuing vigilance which will keep people honest and make them responsible. Merely holding elections after every few years is not enough.

*The Daily Star, August 16, 2002*

## Can the parliament expel one of its members?

A sub-committee of the Special Parliamentary Committee was formed to investigate the alleged corruption of the former Speaker Barrister Jamiruddin Sircar. The report recommended that he be expelled from the House for “massive financial graft involving moral turpitude.” The Special Committee and finally the full House will have to act on the recommendations. This is the first time the Bangladesh parliament is faced with such an important decision. Can the parliament expel one of its members?

Article 78 of our constitution, dealing with parliamentary privileges and immunities, provides unlimited powers of free speech and immunity from anything said or done or spoken in legislative proceedings. The concept of privilege is based on

the British principle that a sovereign legislature must be able to perform its functions freely and effectively in the face of royal tyranny.

Another set of privileges, known as penal jurisdictions, arise from the realisation that for Parliament to perform effectively, it must possess certain inherent powers to punish for contempt or breach of its privileges. Such punishment can be given to its members as well as to outsiders. Punishment of its own colleagues can even be in the form of expulsion to get rid of those unfit to be legislators.

Our Constitution calls for legislation to determine and give effects to the parliamentary privileges, which has so far not been enacted. Given this, precedents should be used as the guide. However, we do not even have any such precedents in Bangladesh. In that case, we can follow the conventions, that is, examples of other countries, including that of Britain and neighbouring India.

If a member of the House of Commons or Lords is in breach of the privileges, he or she can be suspended or expelled. Such past breaches included giving false testimony to a Committee of the House, taking bribes and similar transgressions. This power was very commonly used in the 17th and 18th centuries, but nowadays it is used very rarely – apparently it was used only three times in the 20th century. Britain does not have a written Constitution and hence its Parliament is considered to be supreme vis-à-vis other organs of government.

In India, the power to expel legislators was used a number times. On September 25, 1951, H.G. Mudgal was expelled from the Lok Sabha after a Special Committee of the House found that he accepted money for favours. Speaking on that occasion, Speaker Malvakar noted: “Even though there is a Committee of Privilege constituted under the rules, it is within the power of the House to constitute other special committees if there are any special circumstances and inquiries to be made.”

On November 18, 1977, the Lok Sabha expelled Indira Gandhi from the House for obstruction of justice, harassment and institution of false cases. Leader of the House Morarji Desai moved the resolution for expulsion. However, on December 19, 1998, the House rescinded Mrs. Gandhi’s expulsion. Several State Legislatures, namely Maharashtra, Haryana, Madhya Pradesh, and Tamil Nadu also expelled several of their members over the years.

The biggest such episode was the expulsion of 11 MPs – ten members of Lok Sabha and one from Rajya Sabha – from major political parties on December 23, 2005 for a cash-for-question scam, as shown on a private TV channel based on a sting operation. One expelled Lok Sabha member, Raja Ram Pal, challenged the decision before the Supreme Court that the Parliament did not have inherent powers to expel its members and that their fundamental rights had been violated as they had not been given a proper opportunity to be heard. Subsequently, another Lok Sabha member, Babubhai Katara, was expelled on October 21, 2008 with a resolution of the House.

Until recently, judicial decisions were divided on whether the Indian legislatures could expel their members. In a Special Reference in 1964, the Supreme Court of India observed that unlike the House of Commons, the Parliament and State Legislators of India are not superior court of record and hence cannot commit a person for contempt.

The privileges of the MPs, as laid in Article 87 of the Bangladesh Constitution, are not yet codified (which must be done forthwith) and a jurisprudence has not

evolved. Hence we will have to depend on the conventions of other countries, such as India, which follow a similar Westminster system. Modeled after the British, parliaments of the countries like ours are deemed to possess such powers and authority as are necessarily incidental to their proper functioning. Parliamentary precedents on the issue of expulsion of MPs are already established in India through removal of several of its members from the House. The Indian Supreme Court in its latest decision recognised the Parliament's right to discipline its members. In addition, the punishment of lawmakers, who have become lawbreakers, is in utmost public interest.

Thus, the expulsion of Barrister Jamiruddin Sircar from the Jatiya Sangsad, if allegations against him are found to be true, appears to be within its lawful jurisdiction. However, we hope that the Parliament will show extreme caution in order to avoid creating a bad precedent, while ensuring that corruption of their leaders, if proven, must not go unpunished. Otherwise the credibility of the Parliament itself will be tarnished. Members of Parliament hold an office of great responsibility and the protection given to acts done by them in good faith and furtherance of public interest cannot be extended to their mala fide acts. In this context, it should be remembered that the privileges to be enjoyed by our legislators must be governed by the principle of necessity rather than by historical precedents, and thus may not exactly replicate the powers and privileges found in the UK.

*The Daily Star: May 17, 2009*

## Privilege and democratic accountability

According to media reports, the Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs (the Committee) has decided to call Mr. H.T. Imam, Adviser to the Honourable Prime Minister, as a witness in its investigation in the matter of forced retirement of two district judges, and their subsequent reinstatement. This obviously relates to the Parliament's long-standing right to hold the executive branch accountable by exercising its constitutionally mandated privilege to call witnesses and documents. It also raises a new issue of "executive privilege" – the right of the head of government to receive candid opinion from advisers without fear of scrutiny of the Parliament.

Article 76 of our Constitution empowers the Parliament to appoint various Standing Committees. According to Article 76(3), "Parliament may by law confer on committees appointed under this article powers for – (a) enforcing the attendance of witnesses and examining them under oath, affirmation or otherwise; (b) compelling the production of documents." Article 78 of the Constitution addresses the issue of privileges and immunities on behalf of Parliament and its members. Again, such parliamentary privileges, according to Article 78(5), need to be determined by an Act of Parliament.

Our Parliament hasn't yet passed legislation under Article 78 to give effects to parliamentary privileges and immunities. Nor has it done so to regulate the functioning of Standing Committees. However, the Rules of Procedure, which were

also adopted by the Parliament, gives its Committees the power to take evidence or call for documents, and also send for persons, papers and records.

For example, Rule 202(1) states that: "A witness may be summoned by an order signed by the Secretary and shall produce such documents as are required for the use of a Committee." Rule 203 provides that: "A Committee shall have power to send for persons, papers and records: Provided that, if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final." Thus, under the Rules of Procedure, apparently it is within the rights and jurisdiction of the Committee to call Mr. Imam as a witness before it.

What is parliamentary privilege, anyway? According to Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23rd ed., "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively...and by member of each House individually, without which they could not discharge their functions, and which exceeded those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law." Parliamentary privilege allows the Parliament and its Committees to control its proceedings, including calling witnesses and summoning documents.

Is the executive branch compelled to comply with the Committee's decision to call Mr. Imam? Not necessarily. The prime minister may invoke executive privilege to prevent him from testifying before the Committee. Executive privilege has been invoked by many American presidents, beginning with George Washington.

According to the Congressional Glossary: "Executive privilege refers to the assertion made by the president or other executive branch officials when they refuse to give Congress, the courts, or private parties information or records which have been requested or subpoenaed, or when they order government witnesses not to testify before Congress."

The American Constitution does not provide for executive privilege. However, it is argued that such a privilege is implied in the constitutionally mandated separation of powers. In order to do their jobs, presidents argue, they need candid advice from their advisers and aides – and they may not be willing to give such advice if they knew they might be called to testify, under oath, before a Congressional Committee or some other forum.

In 1792, George Washington rebuffed efforts by Congress and the courts to obtain information about a disastrous expedition against Indian tribes along the Ohio River. He lost the battle and handed over all the records. President Eisenhower, by invoking the principle of executive privilege for the first time, successfully kept officials of his administration from testifying during the army's hearings on Senator Joe McCarthy.

During the Watergate investigation, which was a criminal inquest, President Nixon failed in his attempts to withhold White House audio tapes from special prosecutor Leon Jaworski. Nixon had to hand over the tapes, and, four days later, he resigned. In 1998, President Clinton invoked executive privilege and lost to the courts when a federal judge ruled that Clinton aides could be called to testify in the Monica Lewinsky scandal.

Although executive privilege is not a constitutional principle, American courts have recognised this right, which has been invoked over and over again by presidents. In the 1974 Supreme Court decision *United States v. Nixon*, the Court acknowledged “the valid need for protection of communication between high government officials and those who advise and assist them in the performance of their duties.”

The Court went on to state that human “experience teaches that those who expect public dissemination of their remarks may well temper candour with concern for appearances and for their own interests to the detriment of the decision making process.”

While the Court recognised the need for confidentiality in discussions between presidents and their advisers, it ruled that such right was not absolute, and could be overturned by the Court. In the Court’s majority opinion, Chief Justice Warren Burger wrote: “Neither the doctrine of separation of powers, nor the need for confidentiality of high level communications, without more, can sustain an absolute, unqualified presidential privilege of immunity from judicial process under all circumstances.”

The principle of separation of powers is also a fundamental feature of our Constitution, thus the concept of executive privilege should also apply to our situation. In addition, the Rules of Business also give the executive branch the power to “decline to produce a document on the grounds that its disclosure would be prejudicial to the safety or interest of the State” (Rule 203). It is reasonable to expect that the same privilege should apply to advisers called to testify before a Parliamentary Committee.

The decision of the Parliamentary Standing Committee to call an adviser to the prime minister to testify before it raises the dilemma of secrecy vs democratic accountability. In order to perform their oversight function effectively, the Parliamentary Standing Committees must have the right to call witnesses and ask for records, which is part of their privilege. However, this privilege must not be unlimited and must not come at the cost of the chief executive’s right to get candid advice and opinions from her advisers.

A balance must be struck, which can be done by enacting appropriate laws mandated by Articles 76 and 78 of the Constitution. We hope the Parliament will immediately pass a law. In doing so, the Parliament must not make the privilege unlimited, and limit it to ensuring the accountability of the executive branch.

*The Daily Star*: September 9, 2009

## EC infighting is unwarranted and unlawful

The infighting within the Election Commission (EC) over the electoral roll issue has not only gone on for too long, it has surpassed all reasonable limits. In fact, it has become rather silly and even farcical. According to media reports, the Chief Election Commissioner (CEC) claims that the decision to prepare a new electoral roll was taken by the full Commission. However, his other two colleagues accuse him of making the decision unilaterally and over their objections; the two Commissioners are reported to be in favour of only updating the existing electoral roll. The full Commission apparently has not even met for months and the CEC, as its Chairman,

took no initiative to resolve the matter. The impasse is clearly unwarranted and embarrassing, and it also appears to have made the Commission dysfunctional.

More seriously, the CEC's decision appears to be illegal. The existing law prohibits the CEC, or any Commissioner from acting alone without the authorization of the Commission. The Appellate Division of the Bangladesh Supreme Court has also addressed this issue and stated clearly that the EC is a composite body, and an individual Commissioner can only act when he/she is authorized by the Commission itself. We are surprised that our CEC, despite being a jurist himself, ignored the law and also the verdict of the highest court of the land.

#### Legal Basis of the EC and its Decision Making

The EC was established under Article 118(1) of our Constitution, which states: "There shall be an Election Commission for Bangladesh consisting of a Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time direct, and the appointment of the Chief Election Commissioner and other Election Commissioners (if any) shall, subject to the provisions of any law made in that behalf, be made by the President." Thus, it is a constitutional body entrusted with the responsibility of holding elections.

The Chief Election Commissioner and Election Commissioners (Remuneration and Privileges) Ordinance, 1983 deals with the salary, allowances and privileges of the Election Commissioners, but it is silent with respect to the decision-making procedure within the Commission. Perhaps the lawmakers thought it unnecessary and perhaps even improper to dictate how the EC should transact its business because of their regard for the sagacity and wisdom of the individuals that they had in mind for the Commission. Nevertheless, Article 3(3) of the Ordinance recognizes the equal standing of all Commissioners and states that "the term 'Election Commissioner' includes the Chief Election Commissioner."

Although the 1983 Ordinance is silent about the manner of decision making, The Representation of the People Order, 1972 clearly states that the CEC, the designated Chairman of the EC, or any other individual member of the Commission, requires authorization from the EC itself to act on its behalf. Article 4 of the Order states: "The Commission may authorize its Chairman or any of its members or any of its officers to exercise and perform all or any of its powers and functions under this order."

We can also refer to the relevant Indian law which more explicitly makes it clear that the CEC does not enjoy a status superior to that of the EC. Chapter III of The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Amendment Ordinance, 1993 of India clearly states:

#### "Transaction of Business of Election Commission

9. The business of the Election Commission shall be transacted in accordance with the provisions of this Act.

10. (1) The Election Commission may, by unanimous decision, regulate the procedure for transaction of the business as also allocation of the business amongst the Chief Election Commissioner and other Election Commissioners. (2) Save as provided in sub-section (1) all business of the Election Commission shall, as far as possible, be transacted unanimously. (3) Subject to the provisions of the sub-section (2), if the Chief Election Commissioner and other Election Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority."

### Court Decisions

In addition to the electoral laws, judicial decisions also clearly forbid the CEC from making unilateral decisions. For example, in *Jatiya Party vs Election Commission* (53 DLR (AD) (2001)), the Appellate Division of the Bangladesh Supreme Court reaffirmed that for exercising powers and functions of the EC (under The Representation of the People Order, 1972), “the Acting Chief Election Commissioner must get authorisation from the Commission itself, otherwise his action under the Order will be coram non judge and without jurisdiction.” This is clearly an unequivocal interpretation of the law by the highest court of the land regarding the decision making procedure within the Commission.

The Indian Supreme Court opinion on this issue is particularly instructive. In *T.N. Session v. Union of India* ((1995) 4 SCC), the Indian Supreme Court found: “By clause (1) of Article 324, the Constitution-makers entrusted the task of conducting all elections in the country to a Commission referred to as the Election Commission and not to an individual. It may be that if it is single-member body the decisions may have to be taken by the CEC but still they will be the decisions of the Election Commission. They will go down as precedents of the Election Commission and not the individual. It would be wrong to project the individual and eclipse the Election Commission. Nobody can be above the institution which he is supposed to serve. He is merely the creature of the institution, he can exist only if the institution exists. To project the individual as mightier than the institution would be a grave mistake. Therefore, even if the Election Commission is a single-member body, the CEC is merely a functionary of that body; to put it differently, the alter ego of the Commission and no more. And if it is a multi-member body the CEC is obliged to act as its Chairman...the function of the Chairman would be to preside over meetings, preserve order, conduct the business of the day, ensure that precise decisions are taken and correctly recorded and do all that is necessary for smooth transaction of business...He must so conduct himself at the meetings chaired by him that he is able to win the confidence of his colleagues on the Commission and carry them with him. This a chairman may find difficult to achieve if he thinks that others who are members of the Commission are his subordinates.” Thus building consensus rather conflicts with the primary role of the CEC.

To conclude, it is clear from the relevant laws as well as from court decisions from Bangladesh and abroad that the status of the CEC is not above the other Commissioners. The Election Commission’s decisions must be made unanimously, and in the case of differences of opinion, on the basis of the opinion of the majority. Yet our CEC has been acting as if he is above the other Commissioners and also above the law, and has made important decisions regarding electoral rolls ignoring the objections of his other two colleagues. (Curiously, the CEC is also reported to be happy with the working of the EC secretariat while there is widespread demand from many quarters for its administrative and financial independence.) These are unwarranted developments and they clearly raise serious questions about the transparency of the Commission. It also seriously erodes and undermines the credibility of the Election Commission – a very important constitutional body entrusted with the responsibility of holding free, fair and impartial elections.

*The Daily Star*, December 6, 2005

## The kind of election commission we want and need

Our Election Commission (EC), a constitutional body created for free, fair and impartial elections, has in recent years become a largely discredited organization and there is now widespread demand for reform to make it strong and independent. Drawing upon the experiences of neighbouring India, let me give the readers a few examples to illustrate the functioning of a powerful EC, which is held in high esteem by all concerned. These examples would indicate the kind of EC we would want and need to clean up our criminalised political system.

Prior to the 1990s, the Indian politicians, like the condition in Bangladesh at present, largely ignored their electoral laws, and India had, as one commentator once said, “the best democracy the muscle and money could buy”. The situation had drastically changed with the appointment of the legendary Mr. T N Session as the CEC in 1991. He greatly invigorated the EC and almost single-handedly curbed the manipulations of the electoral laws and the rules by politicians. Mr. Session forced candidates to abide by the electoral code of conduct and laws and strengthened EC’s supervisory machinery. For example, in state assembly elections of 1993 in Andhra Pradesh, Karnataka and Sikkim, he succeeded in getting candidates to adhere to the election spending limits by deploying 336 audit officers to keep daily accounts of the candidates’ election expenditures. He was also able to greatly control violence in elections. In the assembly elections of Uttar Pradesh of 1993, for instance, only two persons were killed as compared to 100 in 1991. He was able to achieve this by enforcing compulsory deposit of all licensed fire arms and banning unauthorised vehicular traffic during the elections. This is an example of how the committed leadership and the single-minded determination of an individual can shape an organisation.

A second example illustrates the assertiveness of the Indian EC. In December 1999, a group of professors from the Indian Institute of Management, Ahmedabad, filed a public interest litigation before the Delhi High Court seeking disclosures of the antecedents of candidates running for national office. The Court promptly directed the Indian Election Commission to collect from candidates, in the form of affidavits, information about their educational qualifications, criminal records, assets and liabilities etc. and disseminate the information. The major political parties, including BJP rejected the Court directives and the Union of India, Congress party and Samata party appealed the judgment. The Supreme Court of India dismissed the appeal with minor modifications in May 2002 and directed the EC to implement the judgment within two months.

The implementation of the judgment required modifying the nomination paper in order to make the affidavit part of it. This, in turn, required framing new rules under The Representation of People Act 1951, an authority the Indian EC, unlike its Bangladesh counterpart, did not enjoy. Consequently, the Indian EC requested the Ministry of Law, Justice and Company Affairs (Ministry) to frame the necessary rules. The Ministry refused to do so and asked the EC to seek an extension from the Court

on the pretext that the government called an all-party meeting to formulate a joint strategy against the Supreme Court judgment. In response, the EC told the Ministry that it did not need any extra time to implement the Court directives and the latter should approach the Supreme Court, if it so desired, for the extension. What transpired as a result of this row was that neither the Ministry nor the EC sought the extension, and the EC unilaterally went ahead in June 2002 to implement the judgment. It issued an order asking every candidate contesting in elections to Parliament or the State Legislature to file an affidavit along with the nomination paper disclosing fully and completely the information mandated by the Court. In spite of this unilateralism, the Ministry did not dare to raise a peep against the Commission.

The Indian EC also showed its unwavering firmness in implementing the Supreme Court judgments – there were two judgments – on disclosures to give the voting public the opportunity to make informed choice even though they included no consequence for noncompliance. For example, during the Raja Sabha election in 2004, two candidates of the ruling Congress party failed to file affidavits and consequently their nomination papers were cancelled. The opposition BJP candidates were declared elected unopposed. It may be noted that 115 Lok Sabha members are now identified as “tainted MPs” with criminal records as a result of the disclosures, and there is now a growing movement in India to throw them out of the Parliament.

It may be recalled that the Bangladesh High Court passed a similar judgment on disclosures in May 2005. Like Indian Supreme Court judgments, our High Court judgment also did not have a provision for consequences for non-compliance. However, unlike its Indian counterpart, our EC, led by CEC Justice M A Aziz, termed the judgment by our High Court as directory rather than mandatory and failed to fully implement it. With Justice Aziz on leave, can we expect the reconstituted EC to do better to promote public interests?

A more recent example. During the assembly election of Bihar held last year, 1,40,000 criminals were put behind bars at the behest of the EC. As a result, fair elections were held for the first time in Bihar, a state well known for criminalisation of politics. The arrest of the outlaws broke the back of leaders like Lalu Prashad Yadav and his party, Rashtriya Janata Dal, consequently lost the assembly elections.

The Indian EC also shows firmness in taming the errant political parties. Unlike in Bangladesh, any association or body of individual citizens of India calling itself a political party must be registered under the EC and political parties fielding candidates in elections have to abide by the electoral laws and code of conduct. The EC goes aggressively after offending political parties for any violation. For example, prior to last Lok Sabha elections, the EC issued a show-cause notice to BJP, the dominant partner in the ruling coalition, for an incident in the constituency of Prime Minister Atal Bihari Vajpayee where 22 impoverished women and children were trampled to death during the free distribution of saris. The EC directed the Uttar Pradesh state authorities to charge Mr. Lalji Tandon, a senior BJP leader and Vajpayee’s prospective campaign manager, with election bribery and to bring criminal charges against those organising the event. Similarly, the EC in January 2005 charged the Haryana state government for violating the “model code of conduct” and the concept of providing a level playing field for publishing a special newspaper supplement with

pictures of the Chief Minister and Finance Minister detailing the achievements of the government.

The Indian EC also took the initiative to institute far-reaching reforms of their electoral system. In July 2004, the EC proposed a bold, 22-point agenda for reform. The proposal called for, among other things, simplifying the procedures for disqualifying candidates found guilty of corrupt practices, limiting each candidate to contest in only one seat, providing for negative voting, strengthening the provisions for registration and re-registration of political parties, requiring compulsory maintenance of accounts by political parties and audit of such accounts, making the false declarations in connection with elections an electoral offense and so on.

Through these and other similar initiatives and actions, the Indian EC over the years has emerged as a real powerful institution championing the causes of the ordinary citizens. In doing so, it has commanded the respect of all concerned and the fear of political establishments. Recently this author has had a first-hand experience to observe the image that the Indian EC actually enjoys. Last September I had the opportunity to visit Dr. S Y Quaraishi, a distinguished member of the Indian EC and some of his colleagues, and during the visit I came to realise the standing of the EC in the Indian polity. While visiting them, I had seen them dealing with a request from the Indian Public Information Bureau (PIB), a governmental entity under the Ministry of Information, for permission to hold a seminar for a group of journalists at a location in one of the northeastern states. The reason the PIB sought the permission was that a by-election was to be held at a constituency located about 25 kilometers away from the place of the seminar around the same time, and the organisers wanted to make sure that the EC had no objection. The EC gave the verbally assent, but the PIB still insisted on a written “no objection”. The EC officials told this author that the PIB did not need the Commission’s permission and the EC also had no authority to tell PIB to what not to do. Nevertheless, the PIB would not go ahead with the seminar without the blessing of the EC because of the esteem the latter is held by all concerned.

Our EC, by contrast, suffers from a serious image problem. To many citizens, it is a partisan body composed of individuals with questionable competence and integrity. All the controversial decisions it took during the past year and a half – from the preparation of the electoral roll to half-hearted implementation of the Court’s judgment on disclosures of antecedents of candidates running in national elections – only further eroded its prestige. Only time would tell whether Justice Aziz’s going on leave and Justice Mahfuzur Rahman’s hurriedly becoming the Acting CEC, even before the names of the two new appointments are announced, would shore up public confidence in it. We are hoping for the better. However, we strongly feel that without significant reforms, mere reconstitution of the EC would not effectively serve public interests, public interests being de-criminalised politics and clean government.

*The Daily Star, November 28, 2006*

## EC reform will require more than reconstitution

The demand for reform of the Election Commission (EC) has now become almost universal. However, the reform idea appears to have become confined to the proposed reconstitution of the EC – that is, replacing the existing Commissioners or appointing some additional ones. Even the Caretaker Government (CTG) is reported to have decided to nominate two more Commissioners. However, we feel that there must be significant reform of the EC itself in conjunction with replacing the unwanted individuals.

#### Problems with the EC

There is no denying the fact that a strong, independent and effective EC is indispensable for free, fair and impartial elections. According to many thoughtful observers, with a vigorous and vibrant EC, even the caretaker system will become redundant. Nevertheless, our EC has now become an institution which is beset with many limitations. Problems with the EC are three fold: discredited individuals, systemic limitations and lack of institutional capacity.

Because of their appointments on partisan considerations and their subsequent activities, serious questions are now being raised about the integrity, competence and impartiality of the Chief Election Commissioner (CEC) and his three colleagues. In fact, the Commission itself appears to have lost the respect and confidence of much of the population. It seems that a drama is now being regularly played out at the Commission with the CEC as its villain, and an unknown quarter providing the script. In addition to the public ridicule of the Commissioners, serious concerns have been raised about the honesty and partisan behaviour of many of the EC functionaries.

The systemic deficiencies of the EC are primarily responsible for its present weakness. The Commission is now under the control of the Prime Minister's secretariat. In addition, it has to depend on the decision of the government for its budgetary allocations. Thus, despite its indispensable role for free and fair elections, the EC has failed to become an independent and robust institution. In fact, the EC is now, in the words of Justice Aziz, a mere "post office" – a toothless institution which is worth little.

A major problem of the EC arises from its lack of institutional capacity and also its unwillingness to use the powers and authorities it already enjoys. The existing laws give significant authorities to the EC, which it has miserably failed to exercise. For example, Article 12(1)(b) The Representation of People Order 1972 (RPO) empowers the EC to disqualify, on account of conflict of interests, the candidates to parliamentary elections who have a business relationship with government. We are not aware of any efforts ever by the EC to use this power. In addition, the Commission's past actions to disqualify loan defaulters have been timid at best.

In order to limit election expenses, political parties and candidates are required to submit reports of their election expenses in prescribed forms. However, no major political party ever submitted their accounts. Of the 1939 candidates in the 2001 elections, only 1473 submitted their expense reports and those reports were also fictitious. The punishment for non-compliance of such reporting requirements is rigorous imprisonment of two to seven years. The Commission failed to take any effective steps against defaulters or for submitting false reports. The EC also does not seem to have any headache about the big "money plays" that have now been going on even before the declaration of schedule for the coming elections. Similarly, the EC has

been given the authority to delimit parliamentary constituencies. However, it has totally failed to take any step in this regard after the Population Census of 2001.

The Commission, for the sake of fair and peaceful elections, has the power to intern criminal elements that could cause disturbances during elections. It may be pointed out that the Indian EC forcefully exercises this power. For example, 1,40,000 criminals were put behind bars prior to the last assembly elections in Bihar, as a result of which fair elections were held in Bihar for the first time.

A High Court judgment last year directed the EC to collect, in the form of affidavits, information about antecedents of candidates and make them available to the voters through the news media so that the voters could make informed choices. In addition, the RPO requires candidates to submit statements of their income and expenditures, assets and liabilities and even their income tax returns to Returning Officers. Unfortunately only 1587, out of 1939 candidates contesting the 8<sup>th</sup> parliamentary elections submitted such statements, but the Commission has failed take any effective steps against the defaulters.

The RPO also allows the Commission to frame its own rules, which even the Indian EC does not have, and this authority gives the EC great leeway to be assertive. More importantly, our Constitution gives the Commission enormous powers in the interest of holding fair elections. According to the Appellate Division of the Bangladesh Supreme Court, "Election Commission's inherent power under the provision of 'superintendence, control and direction' should be construed to mean the power to supplement the statutory rules with the sole purpose of ensuring free and fair elections" 45DLR(AD)(1993)). Unfortunately our EC has so far failed to assert this power. The main reasons for such failure are the incompetence, partisan behaviour and most of all, the unwillingness of the EC personnel, which greatly reduced the Commission's institutional capacity.

#### Ways to Strengthen EC

If we are to remedy the situation and strengthen the EC, obviously we must first of all find ways to remove the incumbent Commissioners. For this purpose, the President may be asked to convene the Supreme Judicial Council under Article 96 of the Constitution. The President is obliged to remove the Commissioners if, after inquiry, the Council reports to the President that in its opinion the Commissioners have ceased to be capable of properly performing the functions of their office or are guilty of gross misconduct.

The following allegations may be made against the Commissioners: (1) Ignoring the Article 7(7) of The Electoral Rolls Ordinance 1982, the EC, under the leadership of Justice Aziz, has prepared a new electoral roll which was found illegal by the Bangladesh Supreme Court. (2) In preparing the new electoral roll, the EC defied the High Court judgment of January 4, 2006, in which the Court directed the Commission to prepare the electoral roll by taking the existing (2000) electoral roll as a major basis. (3) By wasting Tk. 64 crores for the new electoral roll, which was found to be illegal by the Court, the EC failed to perform its fiduciary responsibility. (4) Legal experts have voiced concerns that the EC, by not preparing a draft electoral roll, has violated the Supreme Court judgment of May 23, 2006. (5) According to newspapers reports, the revised electoral roll prepared by the EC last August is full of serious errors, which amounts to its failure to perform its constitutional responsibility (Article

119) to prepare a reliable electoral roll. (6) By not revising the electoral roll before the forthcoming elections by sending enumerators to households to collect information, preparing the draft electoral roll using the information thus collected and preparing the final electoral roll after incorporating the objections and additions, the EC has disregarded Article 11(1) of The Electoral Rolls Ordinance. (7) By not fully and completely implementing the High Court judgment of May 24, 2005 on disclosures of antecedents of candidates, the EC has acted against the public interest – public interest being clean politics and honest government. (8) More seriously, Justice Aziz has failed to tell the truth about the President’s requests for him to step down. Clearly, the EC has consistently and willfully defied both the law and the Court directives, and the CEC has indulged in falsehood. Legal experts can only interpret whether these alleged facts constitute gross misconduct on the part of the Commissioners whether they have impaired their ability to properly perform the functions of their office by reasons of physical or mental incapacity. However, in the minds of the vast majority of the general public there appears to be grave doubts about their competence as well as the rationality of their conducts and judgments.

A serious constitutional question is also recently raised about the eligibility of the Justice M A Aziz and Justice Mahfuzur Rahman as members of the EC. According to Article 99(1) of our Constitution, “a person who has held office as a Judge ... shall not, after his retirement or removal therefrom, ... hold any office of profit in the service of the Republic not being a judicial or quasi-judicial office or the office of Chief Adviser or Adviser.” According to the Indian Supreme Court, “The functions of the Election Commission are essentially administrative but there are certain adjudicative and legislative functions as well.” When Justice Mahfuzur Rahman was appointed as a Commissioner, this author raised the validity of his appointment in light of this constitutional provision (*The Daily Star*, June 8, 2006, *Ittefaq*, July 4, 2006). More recently, after the retirement of Justice Aziz as a Judge of the Supreme Court, three legal experts – Dr. Shahdeen Malik, Dr. Asif Nazrul, and Dr. Borhan Uddin Khan – raised a similar question about the legality of his holding the position of the CEC. If the President has any doubts about the applicability of this constitutional provision in the cases of Justice Aziz and Justice Rahman, he can send a reference to the Supreme Court before taking action against them. However, many jurists feel that the Judges should not be eligible for any appointment after retirement, because such appointments have serious adverse impacts on the judiciary.

It is reported that the CTG is seriously considering to appoint two new Commissioners to the EC as a means to breaking the present political deadlock. We are concerned that such appointments to bring a balance and break the deadlock may do just the opposite. This may once again turn the EC – recall the experiences when Mr. M M Munsef Ali and Mr. A K Mohammad Ali were Commissioners – into a dysfunctional institution beset with partisan bickering. Such bickering may further lower the image of this vital democratic institution in the estimation of the people. In addition, these appointments will not solve the problems of dishonesty and incompetence of the incumbents. Furthermore, no one can guarantee that a political impasse will not be created over the new appointments.

The issue of the process of appointment of the Election Commissioners also needs to be solved once for all. We propose that a Committee comprised of the Prime

Minister, the Leaders of the Opposition and the Chief Justice, and headed by the President, should finalise the nomination of all constitutional posts and the President should make the appointment. Furthermore, the number and the qualifications of the Commissioners must be specified. These changes will require amending the Constitution, for which we will have to wait until after the election.

In order to strengthen the EC, some serious systemic reforms must be instituted immediately. It must be brought out of the jurisdiction of the Prime Minister's secretariat. The Commission must have its own independent secretariat and its own manpower. Article 88(d) of the Constitution must be expanded to make all expenses of the EC charged upon the Consolidated Fund of the government. Legal provisions must be made for the EC to take its decisions – decisions which involve public interests – in open meetings to ensure its transparency. Its activities may also be discussed in the Parliament to ensure its accountability. In addition, a code of conduct may be developed for the Commissioners.

The most formidable threat to fair elections is undemocratic and criminalised behaviour of our political parties and their nominated candidates. Political parties are the engines of democracy. Without democratic, transparent and accountable political parties, democracy cannot be functional and effective. However, our political parties will not bring about the necessary changes on their own. Thus, like India and many other countries, the political parties must be required to register under the EC. Conditions for registration must be the practice of internal democracy, financial transparency and reform of the nomination process to keep the criminal and other unwelcome elements from the political process. In order to give the EC such powers to regulate the functioning of political parties, section 90A of the RPO will have to be amended.

The EC must be given another authority. One may recall that on August 8, 2001, the President, through an Ordinance, empowered the EC, by inserting Article 91D to the RPO, to disqualify and debar candidates in parliamentary elections for illegal acts or gross misconduct. Unfortunately, the major political parties, on the eve of the elections, compelled the then President to remove the Article through the promulgation of another Ordinance. This Article must now be reinserted.

We believe that with the changing of the guard and the systemic reforms, the institutional capacity of the EC will greatly increase. With the nomination of honest, competent, non-partisan and courageous individuals to the Commission, it will become much more effective. The President can remove most of the systemic weaknesses of the Commission through an Ordinance. A draft of such an Ordinance has already been prepared by SHUJAN, and we are awaiting an appointment to hand over the draft to the President. We have also identified the changes that must be made in the long-run.

To conclude, it is clear that the EC is a vitally important democratic institution. Its strengths, independence, neutrality and effectiveness determine the success and the quality of democracy. Unfortunately, our democratic process is now under serious threat, pushing the country to a course of uncertain future. One main reason behind this state of affairs is the pathetic state of our EC. Because of the appointment of self-interested and incompetent individuals, our EC has now become an almost irrelevant and anti-people institution. In fact, the EC itself appears to have become the biggest

hindrance to fair elections. To overcome this condition, we must urgently find ways to remove the incumbent Commissioners. However, in order to make the EC a truly effective watchdog of our democratic polity, we must go beyond replacing the Commissioners. We must remove its systemic weaknesses and enhance its institutional capacity. The reform of the political parties must also be instituted at the earliest. In today's emotion-charged political atmosphere, all our efforts for ushering in better days ahead may go in vain unless we keep our focus on a comprehensive set of reforms. As our experiences of the last 35 years demonstrate, problems will repeat with more seriousness and ferocity unless they are solved once and for all.

*The Daily Star*, November 21, 2006

## Is this Election Commission any more acceptable?

After the Appellate Division's recent rejection of the appeal filed by the Election Commission (EC) against the High Court judgment on the preparation of the electoral roll, there have been widespread demands for the resignation of all Commissioners, including the Chief Election Commissioner (CEC), Justice MA Aziz. Not only the opposition parties, but also many distinguished citizens have been making the demand. Newspapers have written editorials and special commentaries to that effect. Even former colleagues of the CEC in the Appellate Division of the Bangladesh Supreme Court and in the Election Commission have joined the chorus.

Are these calls for resignation justified? There appear to be several reasons for these calls. First, the appointments of all three present Commissioners are controversial at best. Second, the Commission appears to have willfully and blatantly violated the directives of the High Court. Third, the actions and behaviour of some of the Commissioners also appear to be in contempt of court, and indeed the Court has asked them to show cause as to why they should not be held in contempt. Fourth, it is widely believed that the Commission so far has acted against the best interests of the general public. Fifth, as the head of the EC, the CEC clearly has failed to provide the necessary leadership of this important constitutional body which is entrusted with the responsibility of holding free, fair and impartial elections. Thus, the Commission appears to have lost the public confidence and is continuously subjected to ridicule and derision.

### Controversial Appointments

A serious constitutional issue is involved in the appointment to the EC of both Justice Aziz and Justice Mahfuzur Rahman. Justice MA Aziz, an advocate of the Supreme Court of Bangladesh, was appointed Additional Judge of the High Court Division in 1996. He was confirmed as a Judge of the High Court Division in 1998 and was elevated to the Appellate Division in 2004. As a Judge, Justice Aziz's duties are purely judicial and he took an oath under Article 148 of the Constitution to: discharge the duties of his office faithfully according to law; to preserve, protect and defend the Constitution and the laws of Bangladesh; and to do right to all people according to law without fear and favour, affection or ill will.

In May 2005, Justice Aziz was appointed the Chief Election Commissioner. “The functions of the Election Commission are essentially administrative but there are certain adjudicative and legislative functions as well.” (T.N. Session v. Union of India (1995) 4 SCC) The CEC’s nature of duties are essentially executive and administrative – not judicial – and Justice Aziz had to take a different oath of office. By taking the second oath, Justice Aziz can no longer claim to be bound under the first oath, and according to legal experts, ceases to be a Justice of the Appellate Division, although he has made statements that he would return to the bench if he ceases to be the CEC. Justice Aziz should not be able to return to the bench as he cannot simultaneously hold two constitutional offices. In other words, Justice Aziz’s being both a Justice of the Appellate Division and the CEC at the same time appear to be unconstitutional.

More importantly, Article 94(2) of the Constitution requires that in accordance with the terms of his appointment as a Judge, Justice Aziz is “to sit only in the Appellate Division” until “he attains the age of 67 years” or “he is removed from the office” under Article 96 of the Constitution, and independently exercise “judicial functions.” Thus, a Judge should be ineligible to assume any other office while being a Judge.

Furthermore, according to Article 118(2)(a) of the Constitution, “a person who held office as Chief Election Commissioner shall not be eligible for appointment in the service of the Republic.” Similarly, according to Article 99(1) of the Constitution, “a person who has held office as a Judge ... shall not, after his retirement or removal therefrom ... hold office of profit in the service of the Republic not being a judicial or quasi-judicial office or office of the Chief Adviser or Adviser.” Thus, what Justice Aziz cannot do after retirement or removal, he cannot do while in office as a Judge under oath. The restrictive provision of Article 99(1) of the Constitution must also be applicable in the case of Justice Mahfuzur Rahman’s appointment as an Election Commissioner.

There are thus a number of grounds to argue that the appointments of Justice Aziz and Justice Rahman to the EC violate the Constitution. On these very grounds, a writ petition was filed by three lawyers challenging Justice Aziz’s appointment as the CEC last year (Md. Ruhul Quddus and others vs. Mr. Justice MA Aziz and others, Writ Petition No. 3818 of 2005) and the Court issued a rule nisi on the respondents, including the Ministry of Law. Unfortunately the High Court benches due to hear this matter were suddenly deprived of their jurisdiction to do so, and consequently it is now virtually impossible to have the matter heard by any Court before the retirement of Justice Aziz from the Appellate Division at the end of June.

Justice Aziz’s appointment as the CEC is also untenable on ethical considerations. In the recent proceedings on the electoral roll issue before the Appellate Division, his colleagues in the bench had to sit in judgment on his appeal and at one point they even issued a suo moto contempt rule on him. This was at best an awkward situation, the avoidance of which must have been the original intent of Articles 118(2)(a) and 99(1) of the Constitution. Thus, the appointment of Justice Aziz and Justice Rahman to the EC violated not only the letter, but also the intent of the Constitution.

The appointment of Mr. SM Zakaria to the EC is most controversial. As the Secretary to the Commission, he has been accused of notoriously partisan behaviour and his non-cooperation with the former CEC is well known. In fact, it is widely viewed that as the Secretary he was responsible for much of the hullabaloo involving the EC. Thus, his elevation to the Commission was made with mischievous intentions and created further opportunity to call into question the very integrity of the institution itself.

#### Defying the High Court Judgment

Judgments passed by the High Court have the force of law and they, according to Article 111 of the Constitution, are binding on all concerned. Furthermore, Article 112 enjoins all authorities, both executive and judicial, to implement the judgments of the higher Courts. Unfortunately, our CEC and his other colleagues in the Commission have clearly failed to date to take necessary steps to implement two High Court judgments. More seriously, the Commissioners took public positions that they are not even obliged to do so – a position which may ultimately be found to be contemptuous of the Court.

In May 2005, the High Court Division of the Bangladesh High Court passed a historic judgment recognizing the voters' right to information with regard to the background and antecedents of candidates running for parliament. In *Abdul Momen Chowdhury and others vs Bangladesh*, the Court specifically directed the EC to collect, with a nomination paper from each parliamentary election candidate, the following information in the form of an affidavit to be sworn by each: (a) academic qualifications with certificates; (b) any pending criminal accusations; (c) any records of criminal cases and results; (d) the candidate's profession/occupation; (e) sources of the candidate's income; (f) description of the role she/he played in fulfilling her/his commitment to the people, if the candidate was an MP before; (g) description of assets and liabilities of the candidate and her/his dependents; and (h) particulars and amounts of loans taken from banks and financial institutions personally, jointly or by a dependent, or bank loans taken by companies from Banks where the candidate is the chairman/managing director/director. The EC was further directed to disseminate the information through the mass media. These directives were intended to empower voters with information about candidates as the "people have a right to know and such right is included in the right to franchise."

The EC has the solemn duty to judiciously and effectively implement both the letter and intent of the judgment in order to help voters make informed choices during elections. But, for reasons unknown, the EC failed to implement this seminal judgment fully and effectively, blatantly denying the people's right to know information about their future representatives. In the last five by-elections since the judgment, the EC merely went through the motions of implementation by issuing circulars requesting to Returning Officers (ROs) to do so. It failed to make the affidavits public despite formal requests by SHUJAN, a citizens' group committed to good governance, and also to take actions against candidates hiding or providing false and misleading information. It also failed to disclose the income and wealth statements and tax returns submitted by candidates under section 44AA of the Representation of People Order 1972 (RPO), even though we, on behalf of SHUJAN, made formal requests under section 44D(2) of the RPO. The EC and the ROs even

failed to acknowledge our request, let alone give us the information, clearly violating the provisions of the RPO.

More seriously, the CEC took the public position that the High Court directives requiring disclosures are directory rather than mandatory as the judgment provided no consequences for non-compliance. According to experienced jurists, Court judgments are directory only in the cases of interpretation of statutes. Even in interpreting statutes, Courts can hold that a judgment is mandatory for the concerned parties by specifically saying so or providing adverse consequences for non-compliance. Otherwise the judgment is directory. On the other hand, all other Court decisions are binding on the parties to the proceedings and are therefore mandatory. Thus, the CEC appears to have willfully misled the general public to justify the Commission's defiance of the High Court judgment. A writ petition was later filed by a group of concerned citizens asking the Court to direct the EC to fully implement its earlier judgment (Professor Muzaffer Ahmed and others vs. The Election Commission and others).

As is now well known, the EC has also more recently violated another important High Court judgment relating to the preparation of the electoral roll. On January 4, 2006, in Al-haj Advocate Mohammad Rahmat Ali and others vs The Election Commission and others (Writ Petition No.s 9157 and 9180 of 2005), the High Court gave a judgment directing the EC to prepare the electoral roll using the existing roll as the 'major basis' and without omitting any person on the existing roll, unless in the meantime they had died, or become insane, or were not residents in the area concerned, or could not be deemed to be so resident. The Court specifically directed the EC to arrange to "publish a copy of this judgment in the leading newspapers to dispel all doubts about the preparation of the Electoral roll which is going on." The EC appealed against the judgment and continued to prepare a new electoral roll without taking into consideration the existing roll, defying the judgment, even though the judgment was not stayed by the Appellate Division. Justice Mahfuzur Rahman, the newly appointed Commissioner, even publicly stated that the judgment was not binding on the EC. Thus, this appeared to be a clear case of willfully ignoring a Court judgment, which the EC was obligated to implement. More importantly, the EC published a new draft electoral roll on May 3, 2006 – just on the eve of the judgment of its appeal – perhaps with the evil intention of making the matter fait accompli. It should be noted that after the Appellate Division dismissed the appeal on May 23, 2006, a writ was filed against the EC for contempt.

#### Acting against Public Interest

While directing the BTTB to collect outstanding telephone bills from 427 MPs, the Bangladesh High Court, in Bangladesh Legal Aid Services vs. Bangladesh, recently observed that the people of Bangladesh are the owners of the state, and all functionaries and members of all state services must serve their cause and work only in their interests. Unfortunately, the members of the EC have blatantly ignored public interest in defying two important Court judgments – one on disclosures and the other on electoral rolls. In doing so in the second case, the EC, through its lawyers, even tried to mislead the public as well as the Court that it did not have the database of the previous electoral roll and could not update it. SHUJAN not only has the database, we are also working on it to post it on the web.

The defiance of the Court judgment on the electoral roll has significant financial costs. The EC was initially given about Tk. 60 crore for the electoral roll. Most of the money is already spent, although for nothing as the newly prepared roll may have to be thrown away. Squandering away such a large sum of money amounts to a serious breach of its fiduciary responsibility on the part of the EC. This has clearly harmed the public interest and the three incumbent Commissioners must now be held liable to repay the amount to the public exchequer.

Another example of the Commission's not acting in the best interest of the public was shown by the advertisement it placed in newspapers after the publication of its ill-fated electoral roll. We could find the advertisement only in five newspapers – New Age, Amar Desh, Ittefaq, Nayadiganta and Manab Zamin/Janatar Chok – which was apparently intended to inform the public of the draft roll. The advertisement was published only for two days and the largest circulating dailies were totally ignored. The logical question then arises – was the advertisement given really to inform the public or merely to patronise certain quarters?

#### Defaming the Judiciary

The actions of the Election Commission, with two Justices as its members, not only lowered the Commission in the eyes of the public, but may also have contributed to contempt of court. Newspapers and the electronic media constantly refer to Justice Aziz and Justice Rahman's status as Justices while covering the misadventures of the Commission with respect to the preparation of the electoral roll. They even interviewed and quoted former colleagues in the bench of the two Justices to give the stories additional spin. These have clearly and seriously undermined the prestige of the Judiciary, one of the three pillars of the state.

A quote from a letter of Justice Stone to American President Roosevelt, may be relevant in this context. "A Judge ... cannot engage in political debate or make public defense of his act ... But when he participates in the action of the executive or legislative department of Government, he ... exposes himself to attack and indeed invites, which because of his peculiar situation, inevitably impairs his value as a Judge and the appropriate influence of his office." (DLR 29, correspondence) The framers of our Constitution perhaps had this in mind when they included Articles 118(2) and 99(1) in the Constitution.

#### CEC's Failure to Provide Leadership

Article 118(2) of the Constitution designates the CEC as the chairman of the Commission. According to the Indian Supreme Court (T.N. Session v. Union of India ((1995) 4 SCC)), the functions of the chairman is "to preside over meetings, preserve order, conduct the business of the day, ensure that precise decisions are taken and correctly recorded and do all that is necessary for smooth transaction of business ... He must so conduct himself at the meetings chaired by him that he is able to win the confidence of his colleagues on the Commission and carry them with him. This a chairman may find difficult to achieve if he thinks that others who are members of the Commission are his subordinates." Justice MA Aziz has totally failed to provide such leadership. He blatantly sidelined his former two colleagues Messrs Munsef Ali and Mohammad Ali and they on numerous occasions publicly complained about it. At one point, it was reported, they were even prevented from talking to anyone in public.

Such behaviour of Justice Aziz undermined the prestige of the entire Commission in the estimation of the general public.

To conclude, it is clear that the appointments of Justice Aziz as the CEC and Justice Rahman as a Commissioner raise serious legal and constitutional issues. Mr. Zakaria is viewed to be a partisan individual. The Commission has defied willfully and repeatedly High Court judgments, for one of which a contempt rule has already been issued against it. The Commission's actions also blatantly undermined public interest and defamed the judiciary. As the CEC, Justice Aziz has failed to provide the necessary leadership of this important constitutional body. Given these factors, it is hard for the public to keep faith and confidence in this vital institution entrusted with the serious responsibility of holding free, fair and impartial elections. Thus, it is imperative that they tender their resignation without delay, for they have already caused irreparable harm to the nation. They have already violated public trust, and they cannot be trusted anymore. Given the events narrated above, any self-respecting person would resign immediately.

*The Daily Star*, June 8, 2006

## Highest judiciary victim of a blatant fraud?

Ensuring justice is important because, as the old adage goes, where justice ends, anarchy begins. This will also prevent our democracy from becoming a total monocracy. If the Court intervenes, *suo moto*, it will be a unique display of the judiciary's commitment to the protection of the public interest.

December 19, 2006 – a day that will live in infamy in the judicial history of Bangladesh. That was the day when a blatant fraud was perpetrated on the highest judiciary of the land by a vested quarter. That was the day when false and fabricated information was submitted before Justice Md. Joynul Abedin, the Chamber Judge of the Appellate Division, to obtain the stay of an historic judgment on disclosures passed in May 2005 by the High Court (*Abdul Momen Chowdhury and others vs. Bangladesh and others*, Wm Petition No. 2561 of 2005).

As a result of the unfortunate stay, the voters will be denied the right to know the antecedents and financial backgrounds of the candidates running in the coming parliamentary elections. Information about candidates is important because it is part of their fundamental right.

The background of the unfortunate incident is as follows. The High Court Division of the Bangladesh Supreme Court, in a seminal judgment delivered on May 24, 2005, directed the Election Commission (EC) to collect, with the nomination papers of each candidate in parliamentary elections, the following information in the form of an affidavit to be sworn by each of them: (a) academic qualifications with certificates; (b) any pending criminal accusations; (c) any record of past criminal cases and the results; (d) the candidate's profession/occupation; (e) sources of the candidate's income; description of the role he/she played in fulfilling his/her commitment to the people, if the candidate was a parliament member before; description of assets and liabilities of the candidate and his/her dependents; and (h)

particulars and amounts of loans taken from banks and financial institutions personally, jointly or by a dependent, or bank loans taken by companies from banks where the candidate is the chairman/managing director/director.

The Court further directed the HC to disseminate the information thus collected by using the media. On April 6, 2006, a three-judge bench of the Appellate Division, comprised of the Chief Justice and two other justices, granted leave to appeal filed by one Mr. Abu Safa against the above judgment. There was something unusual about the appeal. Mr. Safa was not a party to the original writ – he was a third party. In addition, the original petitioners and their lawyers were not present at the hearing – they were not informed of it.

In granting the leave to appeal, the bench of the Appellate Division refused to stay the High Court judgment. Instead, the Court directed that the matter be heard in the regular bench on a priority basis. Accordingly, during the last regular session of the Court, the case appeared in the cause list everyday bearing the serial number 186 and case number CA5706. In a normal situation, it would take a few months before the case would come for hearing.

In his leave to appeal the petition, Mr. Safa stated that because of poverty he could not pursue his education beyond class eight. However, by dint of his own effort, he became a self-educated person, and he is involved with many schools and colleges in his area in Sandwip. He is a dedicated politician and a social worker.

Although he came from a poor family, he made his fortune, and he was now a philanthropist in the locality. Mr. Safa also claimed that he was a very popular, credible and important leader in his area, and that he was a potential candidate in the coming parliamentary elections.

He further contended that disclosure of his educational qualifications by means of an affidavit would be discriminatory against him. In addition, he argued that the High Court judgment was against the basic structure of democracy – whatever that means – and it violated Article 66 of the Constitution. Thus, he filed the appeal in the public interest. After learning of the appeal the original petitioners, through their advocate-on-record, Syed Mahbubur Rahman, filed caveat and made the necessary preparations for the hearing before the full bench of the Appellate Division.

Representatives of the petitioners were present at the Court, in case the matter came up for hearing, until the last day of its last regular session. But none from Mr. Safa's side brought the case to the Court's attention for emergency hearing.

After the Court went on winter recess, the Chamber Judge, Justice Md. Joynul Abedin, suddenly stayed the High Court judgment on December 19 in a rather unusual manner. In the petition for the stay, Mr. Safa repeated the same untrue claims about his background and popularity.

He also claimed that he had already bought the nomination paper for the forthcoming parliamentary elections to be held on January 22. As a result of the petition, Justice Abedin directed the HC to accept the nomination papers without affidavits. In unusual and uncharacteristic haste, the EC implemented the Court's directives on the same day.

The decision by Justice Md. Joynul Abedin involving an issue of monumental public interest begs many serious questions.

First, while a bench of three of his senior colleagues, including the Chief Justice, refused to stay the High Court judgment, on what basis did Justice Abedin see it fit to reverse their decision? Second, as far as we are aware, when a caveat is filed, the lawful means is to ensure the presence of all interested parties at the proceeding and hear their arguments. Why did Justice Abedin not do this? Third, instead of raising the issue during the regular session of the Court, Mr. Safa's lawyers petitioned for the stay four days after the Court went on winter recess. Why did not Justice Abedin raise any question about this suspicious move? Fourth, even though Mr. Safa raised objections to disclosing his educational qualifications, the Court stayed the entire judgment.

Justice Abedin could easily stay the disclosure of educational qualifications while allowing the implementation of the rest of the judgment. In addition, instead of ordering a blanket stay, the Court could prevent the disclosure of only Mr. Safa's antecedents.

Finally, Justice Abedin must be aware that candidates in parliamentary elections are required to submit similar types of sensitive financial information, although not their criminal records, under Article 44AA(2) of The Representation of the People Order, 1972 and the High Court judgment only ensured their mandatory disclosures by using the media.

Why did the Honourable Court become an unwitting party to the unholy alliance against people's right to know, thereby allowing criminal elements to run in the coming parliamentary elections?

Justice Md. Joynul Abedin, unfortunately, was perhaps misled by the cooked-up information submitted by Mr. Safa's lawyers. Almost all the information about Mr. Safa in the original leave to appeal petition, as well as in the petition for the stay, is totally false.

In addition, pertinent information about Mr. Stifa's background was concealed. Based on newspaper stories and other sources, Mr. Safa is an ordinary soldier expatriated from Pakistan. Although he used the address of his ancestral home in Sandwip, he does not live there. In fact, he was not there for the last five years.

He had already sold his share of his ancestral homestead in Kalapania village – not Kalapahia, as written in the petition – and he did not even attend his mother's funeral,

The claims that he is a philanthropist, a social worker, a political activist, and that he is a patron of local educational institutions, are utterly baseless. In fact, according to local people, Mr. Safa is a cheat and an unsavoury character.

According to his first wife, children, and neighbours, he married more than once without spousal permission, and he then abandoned them. His wife and children do not even know where he lives, even though their speculation is that he works as a security guard somewhere in Dhaka.

That Mr. Safa is a popular political leader in his area, and that he is a contestant in the next parliamentary election is utterly false. His claim that he bought the nomination paper for the coming election is, according to newspaper reports, a total fabrication. In fact, his family and neighbors laughed at the news.

Furthermore, although he filed an appeal in the public interest, Mr Safa does not have any track record whatsoever of public service. In addition, if he was a well-known and popular leader in his locality, the voters would know his background,

including his educational background, and disclosure of his educational qualifications would not in anyway jeopardize his position. It is thus clear that an interested quarter has used Mr. Safa to achieve its evil intentions.

Unfortunately, the highest court of the land has become a victim of its fraudulent scheme. We fervently hope that, in the interest of ensuring public confidence in itself, the Court, after due investigations, would take drastic action against the perpetrators of this blatant fraud,

The action of the Court has already unnecessarily harmed the public interest. It is well known that our politics has become a safe haven for owners of black money and muscle power – that is, the criminal elements – which is a serious threat to our democracy.

This situation must be urgently redressed in order to keep our democratic system functioning. In addition, clean and efficient governance is a democratic right of every citizen, the achievement of which would require keeping the criminal elements out of the electoral process.

The historic judgment of the High Court on disclosures could contribute significantly to this end. Mr. Safa's claim that the High Court judgment violates Article 66 of the Constitution, which specifies disqualifications of MP candidates, is also totally without any merit. The judgment only ensures people's right to know the antecedents of candidates; it does not impose any new disqualification. In other words, the High Court judgment does not specify a minimum level of educational qualification for MP candidates. However, even if it did, it would not violate the Constitution, Article 6(3)(6) authorises the imposition by law of additional disqualifications for MP candidates. Thus, bank defaulters are disqualified from becoming MPs, even though such restrictions are not in the Constitution.

Furthermore, the argument that the High Court judgment violates the basic structure of democracy is utterly ill conceived. We are not sure what this term means: an online legal dictionary does not contain such a concept.

However, democracy is a part of the basic structure of our Constitution, and fair elections based on adult franchise are basic features of democracy. An essential condition for fair and meaningful elections is that voters should be able to make informed choices.

Given the above, we fervently hope that the Appellate Division will immediately vacate the stay on the High Court judgment so that it can take effect in the coming parliamentary elections. We further hope that the Court will dismiss the appeal as it was granted on the basis of false submissions. These actions will ensure justice and protect public interest.

Ensuring justice is important because, as the old adage goes, where justice ends, anarchy begins. These will also prevent our democracy from becoming a total monocracy. If the Court intervenes, *suo moto*, it will be a unique display of the judiciary's commitment to the protection of the public interest.

*The Daily Star, January 5, 2007*

**My lord, we beg you to act**

In his recent commentary (“My Lord, We Beg to Differ,” 13 August, 2007), Mr. Mahfuz Azam respectfully disagreed with the Honourable Chief Justice that the Supreme Court in the past always served the nation in times of crisis. He cited a few examples, and there are also other such examples. For instance, when Justice MA Aziz was appointed the Chief Election Commission in 2005, the appointment was challenged on constitutional grounds. After it issued a rule, the relevant High Court bench’s authority to hear writs was revoked, as a result of which the case was never heard.

Mr. Anam also cited the example of Abdul Momen Chowdhury and others vs. Government (Writ Petition 2561/2005), to which I too would humbly like to draw the attention of the Honourable Chief Justice and respectfully request him to act. This is a famous case, in which a High Court bench in May 2005 required MP candidates to disclose with their nomination papers information about their education, income, assets, loans, criminal records etc. in the form of affidavits. The purpose of this seminal judgment was to empower the voters so that they could make informed decisions and prevent criminal elements from being elected to parliament. Unfortunately a vested interest group has been trying to prevent this judgment from taking effect, using undue means and committing fraud every step of the way.

One Abu Safa – a third party – filed in public interest a leave to appeal petition in July 2005 against this judgment, and undue means were used from the very beginning of the appeal process. The Supreme Court secretariat objected to Mr. Safa’s petition on the ground that he was a stranger and had nothing to do with the case. However, for reasons unknown he was allowed to swear an affidavit to file the appeal.

The scam in the process of granting the leave to appeal was very blatant. The notice for the leave to appeal hearing was not served on the Election Commission (EC) and the Chief Election Commissioner, the only defendants in the case. The notices for the three lawyers, who were the original plaintiffs, were sent, with their names, and the Bangladesh Supreme Court as their addresses. With such an insufficient address, naturally the notices did not reach them. Consequently, a Division Bench of the Appellate Division, headed by the Chief Justice, granted the leave to appeal after a unilateral hearing; however, the Court did not stay the High Court judgment. Even though the case involved serious public interest, the Honourable Court did not bother to raise any question regarding the absence of the opposing party.

The next episode was even more bizarre. After the leave to appeal was granted, the original petitioners filed caveat and waited for the hearing before the regular bench. The usual practice, when caveat is filed, is to ensure the presence of the relevant parties and to hear them. Unfortunately, on December 19<sup>th</sup> – four days after the Court went for the winter recess and merely two days before the deadline for filing the nominations for the parliamentary elections scheduled to be held on 22 January 1007 – Mr. Safa’s lawyers approached the vacation bench of the Supreme Court and got a stay of the judgment, again through a unilateral hearing. The judge of the vacation bench did not hesitate or raise any questions before issuing the stay on this important judgment involving public interest even though a four-judge bench of his seniors, headed by the Chief Justice, did not do so. Interestingly, the stay order was transmitted instantaneously to the EC, which implemented it on the same day. In

addition, the vacation judge issued stay on the entire judgment for all candidates, even though Mr. Safa only objected to disclosing his own educational qualifications.

In his submissions for the stay order, Mr Safa claimed that he bought a nomination paper for the coming parliamentary elections and since he was not highly educated, the disclosure of his educational qualification would be discriminatory against him. His junior lawyer claimed in a TV interview that Mr. Safa directed him to file the petition for the stay. However, on inquiry we found that Mr. Safa did not buy nor submit nomination papers at his Chittagong-3 (Sandwip) constituency. His name was not even on the existing electoral roll.

Mr. Safa's leave to appeal petition also contained totally false and fabricated statements. He claimed that because of poverty he could only study through class VIII. However, he became self-educated and well to do and he was a benefactor of many educational institutions of Sandwip. In addition, he was a dedicated politician, social worker and a philanthropist. He also claimed that he was a popular and important leader with a great deal of public support, and he was planning to run for parliamentary elections.

All of these claims were completely baseless. We searched for Mr. Safa and could not find him in Sandwip. According to locals, Mr. Safa is an ex-soldier repatriated from Pakistan and is most likely employed somewhere in Dhaka as a security guard. He does not live in Sandwip, nor did he go there in the past six years. He does not even have a dwelling there. His former neighbours claimed that he was a cheat and married more than once without the permission of his wife. With repeated search, Mr. Safa could not also be traced in Dhaka.

The drama that was staged during the subsequent hearing of the appeal before the four-judge bench, headed by the Chief Justice, clearly lowered the prestige of the judiciary in the eyes of the citizens. During the hearing, the lawyer for the original plaintiffs, Dr. Kamal Hossain, challenged the maintainability of the appeal itself because of the fraud perpetrated in obtaining the leave to appeal. He claimed that Mr. Safa was a cheat and he was used by some interested quarter. According to Dr. Mohiuddin Farooque vs. Bangladesh [17BLD(AD)1977], a person, who serves the interests of others should not be allowed to file public interest litigation. In addition, Dr. Hossain brought before the Court the allegations of forgery against Mr. Safa and in support offered to show a video tape featuring Mr. Safa's wife, his relatives and the local chairman. He also asked the Court to direct the opposing lawyers to produce Mr. Safa, who was absconding, before the Court. Unfortunately the Court ignored Dr. Hossain's pleas.

Realising that they were cheated, the senior lawyers withdrew, one after another, from the case during the appeal hearing. Consequently, the junior lawyer of Mr. Safa pleaded the case and argued against the disclosure of educational qualifications of candidates. However, he had no objection to disclosing the other information required by the High Court judgment.

On 20 April 2007, the Court pronounced its judgment and to the utter surprise of all concerned, granted the appeal. This meant that a popular High Court judgment on disclosures, which was already implemented in five by-elections, was overturned in its entirety, although Mr. Safa's lawyer objected to the disclosure of only educational

qualifications. However, within a few hours, the Court, over the vehement objections of Dr. Kamal Hossain, withdrew its earlier order.

It is clear that undue means, deception and fraud have been used at every step of the way in this important case, and that neither the bar nor the bench can avoid its responsibility for the misdeeds. We humbly request the Honourable Chief Justice to seriously investigate this one case and give exemplary punishment to those found guilty. We further request him to, if necessary, take the necessary steps for constituting the Supreme Judicial Council under Article 96 of the Constitution. We feel that with exemplary punishment to the guilty, discipline will return to the Court. We also respectfully request the Chief Justice to ask his lawyers to produce Mr. Safa before the Court.

We recall in this context that in a speech last April, the Honourable Chief Justice stated that there was a proloy or catastrophe – a calamity of serious magnitude – in the appointments of judges. In a recent roundtable meeting held at the Supreme Court premise, he expressed the concern that the seeds that were planted would not give good harvests. Thus, we beg his Lordship to take urgent action to redress the situation.

It is true that the judges hold constitutional positions and there are strong protections against their removals. However, due diligence has not been shown in the recent appointment of many judges. Due diligence is a legal concept and it is opposite of negligence. According to Black's Law Dictionary, it means: "Such measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case." In others, without an absolute standard, the demonstration of due diligence depends on the situation. Thus, the degree of care and prudence will have to be far greater for the appointment judges, who cannot be easily removed, as compared to hiring, for example, security guards.

According to Article 95 of the Constitution, an individual to be appointed as a judge must have experience of practicing before the Supreme Court for a minimum of ten years. It is alleged that due diligence was not shown by all concerned in the appointment of 19 High Court judges during the last government. More specifically, many of the newly appointed judges, although enrolled in the Supreme Court, did not have meaningful experiences of practicing before the highest Court of the land. In addition, there is an allegation of tampering with the LLB marks sheet against one of them, which is still being litigated. Two of the judges were confirmed over the objection of the Chief Justice. It is thus clear that these judges were appointed in a negligent manner and without proper assessment of their capacity and competence, making the appointments at best faulty, if not outright illegal.

Your Lordship, the highest Court of the land is the last refuge of all citizens. We fervently hope that you will take the urgent initiative to turn this last refuge of the citizens into an institution which enjoys their utmost confidence. The nation will be eternally grateful to you for this initiative.

*The Daily Star: August 22, 2007*

## Justice will not be denied forever

The High Court Division of the Bangladesh Supreme Court, in a seminal judgment (Abdul Momen Chowdhury and others vs Bangladesh) delivered on May 24, 2005 directed the Election Commission (EC) to collect, with the nomination paper of each parliamentary election candidate, the following information in the form of an affidavit to be sworn by each of them: (a) academic qualifications with certificates; (b) any pending criminal accusations; (c) any records of past criminal cases and the results; (d) the candidate's profession/occupation; (e) sources of the candidate's income; (f) description of the role he/she played in fulfilling his/her commitment to the people, if the candidate was a parliament member before; (g) description of assets and liabilities of the candidate and his/her dependents; and (h) particulars and amounts of loans taken from banks and financial institutions personally, jointly or by a dependent, or bank loans taken by companies from Bank where the candidate is the chairman/managing director/director. The EC was further directed to disseminate the information submitted by candidates to the voting public through the mass media. The purpose of this directive is to empower voters with information about candidates as the "people have a right to know and such right is included in the right to franchise."

Unfortunately, the KG, for reasons unknown, failed to implement this historic judgment fully and completely, blatantly denying the people's right to know the antecedents of their future representatives. More seriously, very recently a petition has been filed for leave (permission) to appeal against the judgment, which gives rise to serious cause for concern regarding how it might undermine the public interest.

According to Article 111 of the Bangladesh Constitution, the High Court judgment has the force of law, and the EC has the solemn duty to judiciously and effectively implement both the letter and intent of it in order to help voters make informed choices during elections. Unfortunately, not only has the EC failed to fully and completely implement the judgment, the Chief Election Commissioner, as the head of the HC, has been instrumental in a misinformation campaign against it. It must be noted that Article 112 of the Constitution enjoins all authorities, executive and judicial in the Republic to act in aid of the Supreme Court.

Six by-elections – in Narsingdhi, Sunamganj, Faridpur, Uinajpur, Manikganj, and Gaibandha – have been held since the High Court judgment. There were also elections to the reserved women's seats. The EC has made only a feeble effort since the Sunamganj-1 by-election to implement the judgment.

For example, it issued a circular with a proforma of an affidavit, asking the Returning Officer (HO) of Sunamganj to collect the information from the candidates and disseminate them through the mass media. Similar circulars were issued during the other by-elections and elections of the women's seats. However, the affidavits were not made public, although a summary of the information submitted by candidates was made available. The EC also did not make public the statements containing information about the candidate's source of election expenses, assets and liabilities, annual income and expenditure, and copies of his/her income-tax return submitted by candidates under section 44AA of The Representation of People of Order (RPO) 1972.

We, as a coalition of concerned citizens committed to upholding voters' rights, formally asked for the copies of the affidavits and other statements, but never received them, although the EC is legally obligated under sec. 44D(2) of the RPO to provide them. Neither the Returning Officers nor the EC even bothered to reply to our written requests. More importantly, the HC took no action against candidates who submitted false or misleading information or concealed information despite serious allegations of such wrong-doing by candidates.

More seriously, the GHC took the position that the said High Court judgment is directory rather than mandatory since there was no consequence for failure to comply provided in the judgment. What this contention appears to mean is that even if the candidates do not file affidavits or provide erroneous, incomplete or misleading information, their nomination papers would still be valid. This would appear to amount to making the submission of affidavits optional.

According to experienced jurists court judgments are directory only in the cases of interpretation of statutes, given in interpreting statutes. Courts can make it mandatory for the concerned parties to accept and implement their findings by inserting "shall" and providing for adverse consequences for non-compliance. If the Court does not do so, the interpretation is directory. On the other hand, all other Court decisions are binding on the parties to the proceedings and are thus mandatory. Mandatory decisions can be enforced through execution proceedings or through contempt proceedings.

Clearly, the HC, if it wanted to, could fully and aggressively implement the High Court judgment requiring disclosures. It is a constitutional body created to hold free, fair and impartial elections, and Article 119 of the Constitution gives it a reservoir of powers to do so.

As the Appellate Division of Bangladesh Supreme Court, in Altaf Hussain vs Abul Kasem (45DLR (AD) (1993) observed: "Election Commission's inherent power under the provision of 'superintendence, control and direction' should be construed to mean the power to supplement the statutory rules with the sole purpose of ensuring free and fair elections." Thus, the question that now haunts many citizens is: why is the EC so blatantly undermining the public interest?

Not only has the HC failed to fully implement it, we have just discovered that there was a recent petition for leave to appeal by one Md. Abu Safa against the above High Court judgment. The petition, according to the newspaper report, was heard by the Appellate Division on April 6, and the leave was granted.

Mr. Safa filed the appeal on the ground of discrimination. He claimed that he could not pursue his education beyond class VIII, although he is a self-educated person. He further claimed that he is a popular and credible leader in his constituency and intends to contest in the upcoming parliamentary election. He reasoned that disclosures of his educational qualifications, as mandated by the I High Court, will result in discrimination against him and thus the disclosure will "impair the basic structure of democracy and Article 66 of the Constitution."

The High Court judgment of May 24, 2005 does not ask the voters to vote against the less educated, it simply requires disclosures so that voters can make informed decisions. Such disclosures, according to the Indian Supreme Court, protect the

"Voter's (right to) speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For his purpose,

information about the candidate to be elected is a must. Voter's right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers."

Similarly, the disclosures of educational qualification would enable the voter to make an informed choice among candidates — that is, whether he or she wants to vote for a more formally educated or more informally educated person. Thus, the disclosures, mandated by the High Court, will only strengthen democracy, not impair its basic structure – whatever it means, as claimed by Mr.Safa.

Democracy is governance with the consent of the people. Without the informed consent of the citizens, democracy will be weakened.

It must also be noted that the very purpose of disclosures is to allow the voters to discriminate – in a positive sense and select candidates based on their antecedents. How are they otherwise going to make choices given various alternatives? Besides, in elections voters choose lawmakers, thus candidates' education and experience are certainly relevant. It is thus clear that the "discrimination" mandated by the High Court judgment based on antecedents of candidates will promote democracy instead of hampering it.

The whole episode involving the half-hearted efforts of the EC to implement the High Court judgment, the CEC's contention that the judgment is not mandatory, and the circumstance of filing the petition for leave to appeal represent deliberate attempts to undermine public interest, and they have serious implications.

James Harrington in The Commonwealth of Oceana said: "The law is but words and paper without the hands and swords of men." That is, where law fails to deliver justice, hands and swords take over. And where the law is unable to protect public interest, the rule of the sword gets its way. That is when anarchy begins. This is the accumulated wisdom of human history. Are we heading that way?

*The Daily Star, May 7, 2006*

## CHAPTER THREE: DISCLOSURES

### In Search of Clean Candidates

It is now generally accepted that the breakdown of our democratic system on January 11, 2007 was due to systemic failures as well as the failures of our democratic institutions. Efforts are now underway toward instituting major reforms in our electoral system, political parties, and also rebuilding the relevant democratic institutions such as the Election Commission. Hopefully we will make significant headways on these fronts before the coming parliamentary elections. However, if dishonest, self-interested and incompetent individuals are elected to run the affairs of the state, all may be in vain and they may roll back whatever progress has been achieved. Thus, it is imperative that along with electoral and institutional reforms, serious efforts are made to ensure the election of clean, honest and competent candidates in the coming parliamentary elections.

### Nominating Clean Candidates

In order to ensure the election of clean and honest candidates, individuals with such credentials must first be nominated by political parties or they must be encouraged to stand as independent candidates. Electorates must be given the opportunity to vote for such candidates. Unless the voters are given a choice, they will have no alternative but to cast their votes in favour of less desirable candidates. Thus, the nomination process is critically important for electing clean candidates.

At present, there are few restrictions on the nomination of candidates with questionable backgrounds. Article 66(2)(d) of the Constitution provides: “A person shall be disqualified for election as, or for being, a member of Parliament who— ... has been, on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release.” In addition, The Representation of People Order, 1972 (RPO) provides additional disqualifications, which includes disqualification of loan defaulters and those who or whose dependents have a direct business relationship with the government.

Unfortunately, these disqualifications do not prevent criminals, corrupt persons, black marketers, land grabbers, or black money owners from standing in elections. To be eligible for contesting elections, they will have to avoid conviction or ensure that if convicted their sentence is for less than two years. In the case of longer-term sentences, they will have to wait for five years once out of jail. Thus, relatively petty criminals and even big criminals after a certain time period can contest elections – there is no legal provision to permanently bar them from elected offices. There are also no barriers against those who were removed from employment, or from an association, or organization, for criminal breaches. In order to ensure the nomination of only clean candidates, these legal loopholes must be removed and individuals convicted of a crime of any length by a competent court or found guilty of committing criminal malfeasance by a committee of inquiry in the place of employment, or in an organization should be barred from contesting and holding any elected offices.

To ensure clean candidates, the nomination process of political parties must also be changed. According to the constitution of most political parties, some sort of nomination boards, consisting of senior leaders, collectively decide on nominations based on interviews of candidates and the recommendations of their local committees. However, the reality is different. Nominations are often decided on the basis of personal connections of potential candidates with party leaders. Many times the party chief unilaterally hand-pick candidates. The ability of candidates to spend large sums of money for elections and mobilize muscle power to match the capabilities of opponents, rather than the qualities and competence of candidates, are usually the considerations for nominating candidates.

Nominations are also at times bought with money, which is now popularly known as mononoyan banijya. For example, it is alleged that prior to the elections to be held on January 22, 2007, Awami League nominations in 50 seats were sold for a minimum of Tk. 50 lac to a maximum amount of Tk. 20 crore, resulting in illegal transfers of huge sums of money. (Prothom Alo, 14 January 2007) Similar allegations also abound against BNP. Such practices must stop to facilitate the nomination of clean candidates.

In order to ensure the nomination of clean and honest candidates, the primary members of political parties must be given real say in the nomination process. A system of party primaries may be introduced or party members may formally meet to recommend a panel of candidates which the nomination board then narrows down based on a set of clear criteria. Requirements of party membership for a length of time (say three years) may also be imposed for anyone seeking nominations.

Nomination boards must be required to be transparent in their criteria for finalizing nominations. They must seek disclosures of pertinent information from candidates and make the disclosed information public. Such transparency would prevent party higher ups from making under-the-table deals and they may also be held to account for nominating undesirable candidates

#### Encouraging Clean Candidates

Attracting clean and competent candidates to run for elected office is one of the biggest challenges we as a nation face today. The widespread perception today is that politics is a dirty game and it is not for honest people. It is for people with questionable backgrounds who look at politics as business and make huge investments with the intention of recouping it after the election. Consequently our parliament has gradually become a sort of “private club” for businessmen of questionable repute. It is no wonder then that good people invariably stay away from the political arena. This situation must be remedied if we are to improve the quality of our political leadership.

One way to attract clean and honest individuals to elected offices is to restrict the role of MPs to law making, as required by Article 65 of our Constitution. Law making broadly involves enacting laws, policymaking and oversight roles. Such roles require different qualities and competence than are normally seen in our elected leaders. Our MPs have been allowed to indulge in local affairs and intervene in the functioning of local bodies, defying the constitutional demarcation of roles. Such interventions in the past have made local government bodies, especially the Union Parishad, totally ineffective. In order to spread their influence, MPs, normally the ruling party MPs, created a patronage network involving their party functionaries, subverting the existing administrative structure. Such a system, with the MPs as kingpins, has come to be known as “MP sarkars” giving rise to rampant graft, corruption and defiance of established rules, norms and law. If we are to attract clean and honest individuals to run for elected offices in the future and thereby enhance the quality of our leadership, the spheres of MPs must be confined to their constitutionally mandated roles. Parliament membership may also be made a full-time position.

There are now strong pecuniary incentives for investing money and muscle to become MPs. MPs used to enjoy the privilege of importing tax free vehicles before the present caretaker government cancelled it. Media reports indicate that such privileges were widely misused in the past to bring instant riches to MPs. In addition, MPs were often given residential plots in posh areas which also made them instantly rich. There have also been rampant misuses of the MP positions to capture business deals both with and outside the government, which clearly defied legal and ethical tenets. Such financial incentives must be done away with to discourage those who want to invest in politics as a business venture, and thereby encourage honest candidates.

#### Creating A Level Playing Field

Nominating good candidates or encouraging honest people to enter the electoral arena are not enough, if we are to enhance the quality of our elected leaders. Good candidates must have a fair chance to be elected through competitive elections, That would require creating a level playing field for them.

Creating a level playing field for good candidates would require removing the influence of money and muscle power from elections. Such influences degrade politics into a moneymaking business from something for the public good. Unfortunately in Bangladesh we have over the years managed to create the best democracy that money and muscle can buy.

The RPO imposes an election expense limit of Tk. 5 lac for each MP candidate, but this is hardly enforced. For example, the MP candidates are now required to submit Form 17A to declare their sources of probable election expenses and Form 17C to provide the actual accounting of such expenses following elections. But on the occasion of the 8<sup>th</sup> parliamentary elections, only 1587 out of 1939 candidates filed 17A and 1473 filed 17C and no serious action was taken against offenders although these violations represent electoral offences – corrupt practices and illegal practices – the punishment for which is rigorous imprisonment for at least 2-7 years.

In addition, all candidates after elections invariably report actual election expenses of Tk. 5 lac or less despite exceeding the limit, thus the lawmakers in reality become law breakers from the very outset of their tenure. An indication of how much major candidates actually spend during parliamentary elections can be found from a tracking exercise that the Transparency International Bangladesh (TIB) carried out prior to the ill-fated elections that were to be held on 22 January 2007. TIB report shows that 122 candidates in 40 constituencies spent an average of over Tk. 15 lac each during the three month period ending January 3<sup>rd</sup>, although one BNP candidate alone spent nearly taka two crore and a lone Awami League candidate spent one crore 67 lac taka. It must be noted that the amount does not include the potential expenses for the last 18 days of the campaign which would have been large. If we are to enable clean candidates with limited financial means and no muscle power to have a fair shot at being elected in the future, the godfathers and looters and plunderers must be made ineligible to contest elections and the statutory limits on election expenses must be strictly enforced. For instituting such ineligibility, the current drive against corruption must be brought to a successful end while ensuring fair trials to those who are accused. The enforcement would require the prompt settling of election disputes. But the reality is that none of the dozens of election petitions filed following the 2001 elections, alleging serious wrongdoings by elected MPs, were settled during the tenure of the 8<sup>th</sup> parliament. Hopefully our reconstituted Election Commission will do better in the future with regard to enforcement. We further hope that it will take the initiative to reduce election expenses by banning showdowns and arranging candidate forums. All expenses by candidates or their well wishers prior to the declaration of the election schedule must also be included in the Tk. 5 lac limit.

Clean and honest candidates can also be given fair chances of being elected if the disclosure requirements mandated by the higher judiciary are strictly and scrupulously enforced. On November 20, 2007, the Supreme Court confirmed an earlier High Court judgment requiring the disclosure of educational qualifications, income, criminal antecedents of candidates, and assets and liabilities of candidates and their dependents

in the form of affidavits. These requirements along with the obligations of disclosing candidates' expenditures and tax returns under the existing law are now incorporated into a newly proposed RPO by the Election Commission. If the proposed RPO is promulgated as an ordinance and vigorously enforced, it will create a level playing field for honest candidates. For that to happen, disclosures must be required to be made early, preferably with the declaration of the election schedules, so that there is enough time to disseminate the disclosed information to empower voters. The information submitted must be thoroughly examined and the election of those making false and misleading declarations must be cancelled.

A sad reality in Bangladesh is that over the years a large segment of our voters have developed a sort of blind loyalty to party symbols, which often helps dishonest candidates get elected. Citizen groups can help remedy this by enhancing the level of voter awareness. Another remedy could be to include the candidates' pictures on ballot papers replacing or at least in addition to party symbols. The inclusion of the provision of negative voting in ballot papers, as proposed by the EC in the draft RPO, will allow voters to reject undesirable candidates in polling booths and this may be a powerful tool for the election of clean candidates.

The above measures may keep unclean candidates at bay and help create opportunities for honest candidates to be elected. However, if and when the corrupt, or criminal dons, or self-interested businessmen do get elected, there must be provisions for a system of recall to remove them. The parliament must also be willing to take action against those members who break laws or violate ethical standards. With such weeding out, along with the commitment of political parties to nominate clean and competent candidates, encouragement of honest individuals to run for office and the EC and other official entities' effectiveness to enforce all legal and disclosure requirements to keep the looters and plunderers from running for elections, we may have a fighting chance to elect honest and competent individuals as our leaders in the future.

*The Daily Star: Anniversary Special, February 16, 2008*

## Clean candidates require clean political environment

Good, efficient and effective governance is a democratic right of all citizens. Such quality governance obviously requires clean candidates and a fair opportunity for them to get elected. In Bangladesh there has been increasing demands in recent years for political parties to nominate honest and competent candidates. Those demands, on the surface, did not appear to have made much of a difference, as demonstrated by the quality of nominations of the two major political camps for the parliamentary elections scheduled to be held on January 22<sup>nd</sup>. In view of this experience, a pertinent question that haunts many: is it possible to have clean candidates in an unclean political environment?

The political environment is primarily the product of the prevailing laws and their enforcement. The practices and behaviour of political actors and entities are greatly shaped by the legal environment. If the laws that exist are not appropriate or they are not vigorously enforced, politicians are likely to circumvent them, for like all human beings they are not angels. Thus, the institutional capacity to enforce electoral laws is also an important determinant of the quality of politics and politicians in a nation. The existing legal environment in Bangladesh – reflected in the prevailing legal framework, their enforcement and the institutional capacity of the enforcers – unfortunately does not appear to be conducive to the emergence of clean candidates and their getting elected.

#### The Prevailing Legal Framework

The legal requirements to be candidates in parliamentary elections are laid out primarily in the Constitution and The Representation of the People Order, 1972 (RPO). Article 66 of the Constitution provides for the qualifications and disqualifications of Members of Parliament (MPs). Any citizen of 25 or older is eligible to be a MP. Those who are insolvent, are of unsound mind, take citizenship of other countries and hold offices of profit, unless exempted, are ineligible. Convicted criminals – convicted of offences involving moral turpitude and sentenced to imprisonment for term of not less than two years – are also ineligible unless five years have elapsed after his/her release from prison.

The Constitution provides for almost nothing to encourage clean candidates or imposes very little restrictions on the candidature of undesirable elements. To remedy this void, the RPO, which is the main legal instrument governing the parliamentary elections, imposes in Article 12 some additional disqualifications for MP candidates. They include disqualifications for business relationships of the candidates and candidates' near relations with the government and for default of bank loans.

The RPO also requires a set of disclosures so that voters can make informed choices among the good and bad candidates. Article 44AA of the RPO requires the candidates to disclose their income, expenditures, assets, liabilities and the income tax returns. The law also requires candidates to provide statements of their potential sources of election expenses before elections and actual expenses incurred after elections. The law, however, provides no requirement for the statements to be examined and action taken against those who submit erroneous statements.

In addition to the RPO, the Court also imposed additional disclosure requirements. In May 2005, the Bangladesh High Court, in a historic judgment (*Abdul Momen Chowdhury and Others Vs Bangladesh and Others*, Writ Petition No. 2561 of 2005) directed the Election Commission (EC) to collect from candidates in parliamentary elections, in the form of affidavits, the following information: (a) academic qualifications with certificates; (b) any criminal accusations at the present time; (c) any past record of criminal cases and the results; (d) candidate's profession/occupation; (e) source or sources of the candidate's income; (f) description of the role he/she played in fulfilling commitments to the people if the candidate was a MP before; (g) description of assets and liabilities of the candidate and his/her dependents; and (h) particulars and amounts of loans taken from banks and financial institutions personally, jointly or by dependents, or of loans taken from banks by the company where the candidate is Chairman/Managing Director/Director. The EC was

further directed to disseminate this information via the mass media with the purpose of empowering the voters with information about candidates. Unfortunately the EC did not fully and completely implement the judgment and thus diminished its effects on the quality of candidates.

The RPO further imposes limits on election expenses to keep unclean candidates out of election contests. Without such restrictions dishonest candidates could “buy” the election with money. Article 44B limits election expenses to Tk. 5 lac and it prohibits the printing of multi-colour posters, wall writings, showdowns, erection of gates, giving bribes and using other unfair means of influencing voters. However, the law is silent as to the time frame from when the election expenses would start to be counted. It is also inadequate in that it does not include third-party spending for candidates.

Unclean candidates resort to unfair means and they often buy, steal or otherwise influence election results. Thus, to prevent unclean candidates from getting elected, candidates must be prevented from manipulating election results through unlawful and unethical means. In case of election disputes, the wrongdoers must be dealt with promptly and severely, including the cancellation of the election results. If the criminal elements can get away by winning election by using money or muscle, there will be strong incentive for others to do the same. Articles 49, 50, 51, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71 and 72 of the RPO deal with election disputes. Although Article 57(6) of the RPO states that “the High Court shall try an election petition as expeditiously as possible and shall endeavour to conclude the trial within six months from the date on which the election petition is presented to for trial,” it never happens. Election disputes almost always drag on beyond the expiry of the term of the parliament, thwarting its very purpose, for justice delayed is justice denied.

#### Lack of Enforcement

Although the law provides for some requirements to keep the dishonest individuals from contesting in elections, they are hardly enforced. For example, the expenditure limits of Tk. 5 lac is exceeded by every candidate without any exception. In fact, some wealthy candidates spend crores of taka while making declarations that they did not exceed the limit. Some even do not submit the declarations. For example, during and the following the 8<sup>th</sup> parliamentary elections in 2001, only 1587 out of 1939 candidates filed Form 17A (statement of potential sources of campaign expenditures), 1587 filed 17B (statement of assets and liabilities and annual income) and 1473 filed form 17C (statement of actual election expenses). Political parties are also required to file statements, but none of our major parties ever complied with this requirement. Although the RPO provides for two to seven years of rigorous imprisonment for noncompliance, nothing ever happened to those who did not file the statements. Thus, an environment of impunity exists in the country which clearly prevents honest individuals from getting into politics and succeeding.

Another important factor that prevents good people from getting elected to public office is the deeply entrenched culture of secrecy and non-disclosure. The functionaries involved in election-related activities invariably consider the statements submitted by candidates as “top secrets” and jealously guard them. For example, we could not get copies of the affidavits filed by candidates following the historic High Court judgment on disclosures of 2005, even though the Court specifically directed

the EC to make the information available to the voters. Recently, we had another bad experience. We filed applications, in the prescribed manner, with court fees to all the Returning Officers (ROs) and also to the EC for copies of the statements submitted by candidates in the parliamentary elections that were to be held on 22<sup>nd</sup> January. Unfortunately we were refused by all the ROs, except for the Dhaka metropolitan area. We received no help from the EC either, although we hope that things will change with the changing of the guard at the Commission.

Still another reason why our political scene is infested with dishonest people is that the statements submitted by candidates are never examined and no actions are taken for suppressing or disclosing wrong and misleading information. The information filed, if not audited and action taken against those did not fully comply, creates no impact on the quality of candidates. Thus our existing disclosure requirements serve no useful purpose in keeping the unclean candidates away.

#### Institutional Weaknesses

The weaknesses of the relevant institutions are greatly responsible for the ineffectiveness of the required disclosures to impact the quality of candidates in parliamentary elections. The EC has no capacity to process or examine the statements submitted by candidates. Nor does it have, unlike its Indian counterpart, the ability to monitor the activities of contestants. For example, in state assembly elections in Andhra Pradesh, Karnataka and Sikkim in 1993, the Indian Election Commission succeeded in getting candidates to adhere to the election spending limits by deploying 336 audit officers to keep the daily accounts of the candidates's daily election expenditures.

Another relevant institution is the judiciary. Quick resolution of election disputes is effective in keeping the ruffians away from election contests. Resolution of election disputes are the exclusive preserve of the Supreme Court. Unfortunately, our Apex Court has shown little effectiveness in promptly settling election cases. For example, of the 30 some election petitions filed following the last parliamentary elections, only one – the case of Sudhangshu Shekhor Halder vs. the Chief Election Commissioner was resolved in the High Court, although the Appellate Division stayed the judgment. In the meantime, Mr. Halder died and the Mr. Delawar Hossian Sayedee completed the term as MP.

The institutional weakness also at times enables unscrupulous parties to commit fraud on the Court and thereby frustrate the cause of justice. One such blatant example is the case of Abdul Momen Chowdhury and Others vs. Government and Others, where one Md. Abu Safa fraudulently filed an appeal against the High Court judgment and almost got away with it. Mr. Safa is a front for a vested interest group and he and his associates committed fraud every step of the way to make sure that the candidates in the election scheduled to be held on January 22<sup>nd</sup> did not have to disclose their antecedents. Unfortunately they succeeded, which allowed criminal dons and the owners of black money and muscle power to submit their nominations without affidavits. Now a petition is pending before a bench of the Appellate Division for instituting proceeding against Mr. Safa for committing fraud on the Court. Such fraudulent actions, unless dealt with severely by the Court, will help the criminal elements to continue to thrive in our politics.

The institutional weakness of political parties is another important reason for the persistence of dishonest individuals in our politics. Political parties normally consist

of individuals who come together to pursue an ideology or some specific programmes. But the biggest political parties in Bangladesh appear to have only symbols and slogans, but no strong ideology and philosophy as such. They act more like self-interested syndicates rather than people-oriented political parties. In fact, they have in recent years truly turned politics into a moneymaking business. Thus, it is no longer the ideology that attracts people to the major political parties, but the patronage distribution is the glue that brings and keeps them together. Political parties in Bangladesh have in essence become dens of corruption and most serious illegal activities are now carried out with the direct patronage of political parties or the criminals are actually protected by political parties. The syndicate-like behaviour of our two major political parties has been amply demonstrated by their mononoyan banijya (nomination trade) prior to the parliamentary elections that were to be held last January. It is no wonder that many known black marketeers, gangsters, murderers, looters and plunderers have been nominated by the two opposing camps for the elections.

To conclude, it is clear that criminalisation of our politics and the politicisation of crime have now become all encompassing problems in Bangladesh. We have essentially instituted the best democracy that the muscle power and money can “buy”. This emerging phenomena prevents clean and honest candidates from getting into politics and succeeding. In fact, politics now has become the safe heaven for the corrupt, the hooligans, the ruffians and the gangsters. This is unacceptable and it must be changed at the earliest. Politics must become the ideal place for honest, competent and committed people – people committed to other’s welfare rather than naked self-interest.

In order for such changes to take place, serious reforms must be instituted in our electoral laws and the institutions that enforce those laws. The purpose of the changes in laws must make the electoral system friendly for clean candidates and difficult for the criminals. The relevant institutions must be strengthened and their monitoring and supervisory capacities must be enhanced so that they can vigorously enforce the laws. However, merely amending the laws and enhancing the enforcement capacities of the relevant institutions are not enough, there must also be widespread public awareness that the old-styled criminalised politics is no longer acceptable. Then only the opportunities for people-oriented, clean politics will emerge. It must be noted that the present opportunity for such a change – that is, cleaning up our political environment – is created because of the growing public sentiment fomented by many organizations and individuals against the criminalised status quo.

16<sup>th</sup> Anniversary special, *The Daily Star*, February 2007

## Union parishad elections: information empowerment of voters for electing honest and competent candidates

Union Parishad (UP) elections are underway. Already we are more than half way into it. Many are hoping that the ongoing efforts to strengthen our system of local governance will get a much needed impetus through these elections.

Widespread consensus already exists in the country regarding the need for making our local government stronger and more effective. Such strengthening is vitally important if we are to move ahead as a nation. It can lay a solid foundation for our democratic structure at the national level. It can take governance to the doorstep of the people and ensure their effective participation, paving the way for true self-government. A strong system of local government is also vitally important for the socio-economic betterment of the people. It would enable local leaders to solve many of the problems they face at the local level by mobilising local people and resources. This obviously would make possible solid and sustained progress in economic, social and political development.

The Union Parishad is the oldest and the only on-going local body in our country. Thus efforts to strengthen local governance must start from transforming it into an effective democratic institution. This will obviously require devolution – transferring more power, authority and resources from the government at the centre to local bodies.

However, the most important condition for the success of devolution is to elect honest and competent people who are committed to public service to these bodies. This will also require avoiding divisive actions at the local level during elections, especially in view of the fact that our political culture has become sick and hostage to hooliganism and black money. We have observed with sadness during the current UP elections that just the opposite has occurred – violence, political conflicts and the violation of code of conducts have become rather rampant.

In order to facilitate the election of honest, committed and competent people to UPs and subsequently to other bodies, a platform – Citizens for Fair Elections – has recently been formed. The overriding goal of the platform is to promote fair elections and participatory politics at the local level. A group of distinguished citizens of our country are involved in it – individuals who are not into partisan politics and who want to make contributions toward strengthening our system of local governance. Several voluntary organizations, committed to creating democratic and effective local government structure, are also part of it.

The Citizens for Fair Elections is committed to starting a process of “information empowerment” to preserve and promote the rights of voters to get information about candidates. This initiative is designed to enable the voters to exercise their franchise after examination and due consideration of the information received. The ultimate goal is to help good people – people who are honest, committed and competent – to get elected and discourage those from standing in elections who do not share the societal values of participatory democracy and shared development. It must be clearly stated that the purpose of this process is not to support or oppose any particular individual or a party, but to provide the voters the needed information with complete neutrality so that they can exercise their voting rights with unhindered freedom.

In order to assist them in getting the desired information, the voters were first asked about the kind of information they want to know about candidates. They obviously want to get some basic information, such as the age, educational qualifications of candidates and so on. They also want to have information on some very serious and sensitive matters – candidates’ level, type and source of income and property ownership. More seriously, voters are interested to know whether the

candidates are loan defaulters; whether there are accusations against them for toll collecting, patronizing hooligans, corruption, repressing women, illegal occupation of property, intoxication or any other anti-social activities; and whether they are accused in any court case. Voters further want to know from candidates who ran in the previous election, how much they spent for the campaign; if elected, how much tax they collected, and what specific initiatives they undertook for the betterment of their constituents.

Voters are also interested to know how much the candidates would spend for the current election campaign, and what the sources of their campaign chest are; whether they would abide by the code of conduct of the election; if defeated, whether they would accept the people's verdict, and cooperate with the winner in the interest of local development; if elected, whether they would hold open budget meetings for demonstrating transparency and accountability, work with their defeated rivals, turn the UP into a truly democratic institution, what initiatives they would undertake on a priority basis for improving the conditions of the people, and how they would mobilise resources for such initiatives.

Based on the voters' desires, the Citizens for Fair Elections prepared a questionnaire to facilitate the collection of information from candidates. This questionnaire is now being used in many Unions around the country in order to ensure the effective participation of the people in the election process.

Based on the experiences of the Unions where the questionnaire was applied, we can identify a few essential steps for its proper application. The first step is to bring together a group of highly respected and non-partisan individuals. They can be committed social workers, teachers, imams or retired officers. It must be emphasized that these individuals must not have any political affiliation and their integrity must be beyond question.

The second essential step is to speak to the candidates to gain their confidence and get their consent to participate in this process of information empowerment of voters. It has been observed that if a group of highly respected individuals from the locality approach the candidates, they generally agree to participate in the process. Relatively honest and competent candidates usually come forward first. It is important that candidates have the total freedom either to participate or not to do so – there must not be any coercion of any sort. The candidates must also feel free to give partial information, if they so chose, and whatever information they give must be accepted.

The third necessary step for making this information empowerment process effective is to tabulate the information received through the questionnaire to develop "candidate profiles" and distribute these profiles among voters. These profiles may be distributed as leaflets or hung in public places as posters. It is very important that in preparing candidate profiles utmost care and honesty is demonstrated.

The last step of this process is to bring the candidates face to face with the voters in order to diminish the importance of money in elections. In these public gatherings, voters must be given the opportunity to ask questions without any fear and candidates must have the opportunity to speak about their future plans or give answers without any hesitations. It is very important that these public gatherings are conducted with complete fairness.

In many places in the country, local chapters of Citizens for Fair Elections have already been formed. In several districts – namely, Sylhet, Gaibandha, Noakhali, Lalmonirhat, Brahmanbaria – such citizen groups were formed to facilitate the work at the UP level. In some districts, existing social organizations, such as the Lathi-Bashi Samiti of Natore took responsibility to carry out this work. The Hunger Project animators, individuals belonging to other organizations, and many other conscious citizens are spearheading the process at the grassroots.

One may question the effectiveness of this process of information empowerment of voters if all candidates are unwilling to participate or they give only partial information or indulge in falsehood. Our experience shows that this does not matter. Even if one candidate gives information – even partial information – the process can work.

The whole process, it must be noted, is designed to create voter awareness so that they take into consideration the past background, present activities and future plans of the candidates in exercising their voting rights. If the voters come to the realisation that the issues and subjects included in the questionnaire need to be considered before voting, the process can be viewed as successful. Our experience from the field shows that the questionnaire has greatly attracted the attention of voters and in many places has become the subject of vigorous discussions among them, motivating them to properly exercise their franchise.

The process can work even if the candidates furnish partial or erroneous information. Most voters know a lot about the candidates. The biggest challenge in getting honest candidates elected is to make the information about the background of candidates the subject of conversations among voters. Based on our limited experience, we have seen that false information given by candidates has aroused intense discussions among the voting public. The candidates also faced serious scrutiny if they failed to provide complete information or refused to answer any particular question. Furthermore, it generates moral support for vulnerable voters.

Even though this process of information empowerment of voters has been carried out only in a limited number of Unions, the exercise appears to be working and shows promise. We are also convinced that this limited exercise has far reaching implications. However, we must not forget that cleaning up our election process, which has been blemished by our sick politics, cannot be achieved overnight through an exercise – however novel it may be – or in one election. There is also no magic formula for it. This will obviously require a strong sense of social commitment and persistent action by members of civil society and other conscious citizens. Mere election observation on election day is no substitute for promoting the right of voters to information. In the national interest and for the sake of our combined future, we ask all enlightened citizens to be part of the Citizens for Fair Elections.

All patriotic citizens will agree that we must bring about major changes in our political culture and our election process. Our elections must be freed from the influence of muscle power and black money. Thus, the initiative that has began at the UP level, although limited in scope, gives us hope. It must be applied in other cases and places and in our national elections. This must be done in the interest of institutionalizing our democratic process. We fervently request all good and well-meaning citizens to be associated with our initiative.

## Paurashava Elections: Finding Honest and Competent Candidates

Paurashava elections are almost underway. Election campaigns have already started in full swing in all cities. Many people are hoping that through these elections the task of strengthening local government will gain new impetus. This is important because strong local democratic institutions, which are accountable to the people, are urgently needed for us to move forward as a nation. Through such institutions our democratic system will grow deeper roots and lay a solid foundation for the democracy at the national level. Governance will reach the door steps of the people and their effective participation in the process will be ensured. This would in turn ensure self-governance as well as good governance. Furthermore, local democratic governance is a prerequisite for socio-economic development of local areas. Locally elected leaders can solve many local problems by mobilizing local people and local resources, ensuring sustainable socioeconomic progress.

The only on-going local government structure we now have in Bangladesh is the Union Parishad (UP) in rural areas and Paurashavas/City Corporations in urban centres. Thus efforts to strengthen local governance must start from transforming both of them as effective and democratic institutions. This will obviously require devolution – transferring more power, authority and resources from the national government to local bodies. However, the most important condition for the success of devolution and ultimate strengthening of local government is to ensure the election of honest and competent people, who are committed to public service, to these bodies. This will also require avoiding divisive actions at the local level during elections, especially in view of the fact that our political culture has become sick and hostage to hooliganism and black money.

In order to facilitate the election of honest, committed and competent people to UPs and subsequently to other bodies, a platform – Citizens for Fair Elections (CFE) – was formed in November 2001 under the leadership of Professor Muzaffer Ahmed of Dhaka University. A group of distinguished citizens of our country – individuals who are nonpartisan and who want to make contributions toward strengthening our system of local governance – became involved with it. Several voluntary organizations, committed to creating democratic and effective local government structure, became part of it. The overriding goal of this citizens' initiative was to promote fair elections and participatory politics at the local level. Last December, the name of this initiative was changed to SHUJAN (Shushanare Jainnay Nagarik) in order to expand the scope of its activities. The expanded goal of SHUJAN is to promote good governance – transparent, accountable, equitable and participatory governance – as well as the election of honest and competent people at all levels.

An important mandate of SHUJAN is to carry out an “information empowerment” campaign to ensure the rights of voters to get information about the background and the future plans of candidates. The campaign is designed to help the

voters make informed choices in elections. The ultimate goal of the initiative is to help good people – people who are honest, committed and competent – get elected; and prevent criminal elements, who use arms and black money, from standing in elections. It must be noted that the purpose of this initiative is not to support or oppose any particular individual or a party, but to provide the voters the information with complete neutrality so that they can exercise their voting rights in favor of candidates they consider to be the best and the most appropriate.

What information are the voters interested to know about candidates? Based on a survey, we found out that they want to know some basic facts about candidates, such as their age, their address and their educational qualifications. They also want to have information about some very personal and sensitive matters – candidates' level, types and sources of income, and their property ownership. More seriously, voters are interested to know whether the candidates are loan defaulters; whether they are accused of toll collections, patronizing hooligans, corruption, repressing women, illegal occupation of property, intoxication or any other anti-social activities; and whether they are accused in any criminal case. Voters further want to know from candidates who contested in previous elections, how much they spent for their campaign; if elected, how much tax they collected, and what specific initiatives they undertook for the betterment of their constituents.

In addition, voters are interested to know how much the candidates would spend for the current election campaign, and what are the sources of their campaign funds; whether they would abide by the election codes of conduct; if defeated, whether they would accept the people's verdict, and cooperate with the winner in the interest of local development; if elected, whether they would hold open budget meetings for demonstrating transparency and accountability, work with their defeated rivals, turn the UP/Paurashava into a truly democratic institution, what initiatives they would undertake on a priority basis for improving the conditions of the people, and how they would mobilise resources for such initiatives. Taking into account the above responses, CFE prepared a questionnaire to collect the desired information and successfully used it in 55 Unions during the last UP elections.

The information empowerment campaign of voters carried out with the use of this questionnaire during the UP elections brought positive results. Based on a post-election survey, we found out that a significant proportion of voters changed their voting decisions because of the information they received about candidates. In addition, in those areas where the campaign was carried out, election-related violence was nearly absent and the defeated candidates readily accepted the election results. In fact, in some UPs the losing candidates garlanded the winners, creating unique examples in our fractious political culture.

We are encouraged by the experiences of the UP elections where the questionnaire was used, and we would like it to be used again during the coming Paurashava elections. Based on the past experiences, we can identify a few essential steps for carrying out the information empowerment campaign. The first step is to bring together a group of highly respected and non-partisan individuals who are not candidates in Paurashava elections. They can be committed social workers, teachers, imams or retired officers. It must be emphasized that these individuals must not have any political affiliation and their integrity must be beyond reproach.

The second essential step is to speak to the candidates to gain their confidence and get their consent to participate in the information empowerment campaign. Experiences show if a group of highly respected individuals from the locality approach the candidates, they generally agree to participate in the process. Relatively honest and competent candidates usually come forward first. It is important that candidates have the total freedom either to participate or not to do so – there must not be coercion of any sort. The candidates must also feel free to give partial information, if they so chose, and whatever information they give must be accepted.

The third necessary step for making this information empowerment campaign effective is to tabulate the information collected to develop “candidate profiles” and distribute them among voters. These profiles may be distributed as leaflets or hung in public places as posters. It is very important that in preparing candidate profiles utmost care and honesty are demonstrated.

The last step of this process is to bring the candidates face to face with the voters in order to diminish the importance of money in elections. In these public gatherings, voters must be given the opportunity to ask questions without any fear and candidates must have the opportunity to speak about their future plans or give answers without any hesitations. It is very important that these public gatherings are conducted with complete fairness.

One may question the effectiveness of this process of information empowerment of voters if all candidates are not willing to participate or they give partial or false information. Our experiences show that this does not matter. Even if one candidate gives information – even partial information – the process can work. Not giving information itself is significant “information” for the voting public.

The whole process, it must be noted, is designed to create voter awareness so that they take into consideration the past background, present activities and future plans of the candidates in exercising their franchise. If the voters come to the realisation that the issues included in the questionnaire should be considered before voting, the process should be viewed as successful. Our experiences from the UP elections show that the candidate profiles have caught the imagination of the voters and in many places have become the subject of vigorous discussions among them, inducing them to exercise their democratic rights.

The process can work even if the candidates furnish partial or erroneous information. Most voters personally know the candidates. The biggest challenge in getting honest candidates elected is to make the information about their background the subject of conversations among voters. Based on our limited experiences, we have seen that false information given by candidates caused intense discussions among the voting public. The candidates also faced serious scrutiny if they failed to provide complete information or refused to answer any particularly sensitive question. Furthermore, the process generated greater interest among the relatively more vulnerable voters.

Although the information empowerment campaign of voters was carried out only in a limited number of Unions, the exercise appeared to have worked well. More importantly, it shows great promise and we are optimistic about its far reaching implications. However, we must not lose sight of the fact that the cleaning up of our criminalised election process and sick politics cannot be achieved overnight through

one exercise – however innovative and novel it may be – or in one election. There is obviously no magic formula for it. This will, however, require a strong sense of social commitment and persistent action by conscientious citizens. In our national interest and for the sake of our future generations, we urge all enlightened citizens to join in this campaign. It gives us great hope to note that efforts are underway in quite a few Paurashavas – namely, Tangail, Tanore, Nandail, Narail, Rangpur, Brahmanbaria, Noakhali, Durgapur, Daudkandi, Gaibandha, Lalmonirhat Jessore, Jhenidha, Noagan – to carry out this campaign. We hope that other patriotic citizens will come forward and mobilise SHUJAN committees in their areas to be part of this initiative.

*The Bangladesh Observer, May 7, 2004*

## Right to information about antecedents of candidates: a fundamental right

Imagine that you are traveling on a hot summer day, you are thirsty and you want to buy a bottle of water. You stopped at a roadside shop and looked at the various options. You may compare the ingredients of different brands available – the information listed on the bottles – to make the purchase decision. The manufacturer is legally required to divulge the information so that you can make an informed choice.

Imagine now that you are in a polling booth to cast your vote in the next parliamentary elections. You have many candidates to choose from, but you know very little about them. You have the pamphlet of every candidate in your hands, but they contain no substantive information except for the self-serving propaganda, tall claims and falsehoods. Note that although manufacturers of water bottles are bound to disclose ‘accurate’ information of the ingredients of their products, candidates in elections are not required to divulge any information about their backgrounds and antecedents. Voters have no right to information about antecedents of candidates running for office. Furthermore, the manufacturer/seller may be prosecuted for deceptive advertisement for making false claims, while the candidates can indulge in falsehood with impunity. Thus, although members of the general public can, at least in theory, make informed choices as consumers with respect to mundane decisions like buying a bottle of water, they are denied such opportunities in making the most important decision as citizens – voting for a candidate. Choosing a candidate in elections, especially national elections, is very important in that the elected representatives can make most critical decisions – decisions such as taking away citizens’ basic rights or binding them in debt.

Bangladesh has a sad history of elected leaders making self-serving decisions, depriving ordinary citizens of their rightful entitlements. Many elected leaders in the past, because of their incompetence, have also made inept and unscrupulous decisions, and in the process severely compromised the future of the country. The governance failures we experience today in the form of widespread graft, corruption, looting, violence, patronage peddling, deprivation of common people, lack of rule of law etc. reflect primarily our leadership failures. We in general have failed over the years to elect honest, competent and dedicated individuals to office, and the nation as a whole

has been paying dearly for it. Bangladesh's current difficulties, including the criminalization of our politics are clearly due to crisis of leadership.

Other countries facing similar challenges have done or are trying to do something about it. For example, in neighbouring India, which also faced the serious problem of criminalisation of politics, concrete steps have been taken requiring disclosures of the antecedents of candidates running for office. In fact, a widespread movement is being fomented in India to clean up its politics.

#### The Indian Experience: The Long Struggle

The Indian success in electoral reforms representing the culmination of a long struggle owes its origin partly to an experiment initiated by the Public Affairs Center (PAC), Bangalore prior to the municipal elections of 1996. This novel experiment – Choose the Right Councilor – involved collecting and disseminating information about candidates contesting in the Bangalore City Corporation elections. With the help of The Deccan Herald and other neighbourhood newspapers and an army of volunteers, the information collected was compiled and distributed among voters in order to help them make informed choices. The experiment created quite a sensation and such information empowerment campaigns for voters are now carried out in many municipalities in India.

A truly giant step in Indian electoral reforms was the formation of the Association of Democratic Reforms (ADR) by a group of academics. ADR filed a Public Interest Litigation (PIL) before the Delhi High Court in December 1999. The suit asked the Court to direct the Election Commission (EC) to collect from candidates in national and state elections information about their criminal antecedents, assets and liabilities, and make the information available to the public. The petition argued that: "... the right to life and liberty (a fundamental right) includes the right to effective and clean governance which alone can protect such right to liberty" and "... the right to be informed and the right to know is not just a judicial rhetoric, it is a fundamental right which flows from the available fundamental right of free speech and expression – the said right to know is a distinct, self-contained right."

The Court gave its historic verdict on November 2, 2000. The verdict stated that for elections to be free and fair in a parliamentary democracy, voters must have adequate information about the background of the candidates. The Court directed the EC to issue the necessary notifications to obtain the following information about candidates so that voters could be informed of the same: (1) Information about the criminal antecedents of candidates; (2) Details of assets of candidates, their spouses and dependents; (3) Facts regarding candidate's competence, capacity and suitability for acting as a legislator including details of his/her educational qualifications; and (4) Information which the EC considers necessary for judging the capacity and capability of political parties fielding candidates to Parliament and State legislature.

In January 2001, the Union Government, Congress Party and Samata Party appealed to the Indian Supreme Court (SC) against this judgment on the grounds that the judiciary encroached upon the legislative arena. People's Union for Civil Liberties (PUCL), ADR and the Lok Satta fought against the appellants.

On May 2, 2002, the Indian Supreme Court affirmed the Delhi High Court verdict with slight modifications. In its landmark judgment, the SC stated that "voter's speech or expression in case of election would include casting of votes, that is to say,

voter speaks out or expresses by casting vote.” Thus, “the little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted” ... so that “the little man may think over before making his choice of electing law-breakers as law-makers.” The Court further held that the EC has the jurisdiction under Article 324 of the Indian Constitution to implement its orders. The Court then directed the EC to seek information from candidates regarding their criminal records, assets and liabilities, and educational qualifications in the form of Affidavits to be submitted with their Nomination Papers. The Court also directed the EC to implement the judgment within two months.

The Ministry of Law refused to make the necessary rules to implement the SC judgment, and faced with such a refusal the EC issued an order on June 28, 2002. The order asked every candidate contesting in elections to the Parliament or State Legislatures to file an Affidavit along with the Nomination Paper disclosing fully and completely the information mandated by the SC.

The Government held an all party meeting on July 8, 2002, where 21 parties attended. The participants, in a rare show of complete unanimity, rejected the EC order of June 28, and decided to enact the necessary legislation to nullify the SC judgment and the EC order.

With remarkable and almost unprecedented alacrity, the Law Ministry drafted a Bill for amending the Representation of the People Act, retaining the requirement of disclosures of pending cases, but denying the disclosures of assets and liabilities stating that “no candidate shall be liable to disclose or furnish any information which is not required to be disclosed (under the proposed Bill), notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission.” The draft Bill was subsequently issued as an Ordinance, although President APJ Abdul Kalam, at the behest of a group of distinguished citizens, initially refused to approve it.

Civil society groups challenged the Representation of the People (Amendment) Ordinance, 2002. The SC on March 13, 2003 struck down the Section 33B of the Ordinance – which denied disclosures, defying the earlier SC verdict – as “illegal, null and void.” The Court held that “the Legislature in this country has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts.” It further held that “the casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of voter.” It restored its earlier judgment of May 2, 2002, and declared that the judgment “has attained finality.”

At the All India State Election Commissioners’ (SEC) Conference in Bangalore on June 25, 2003, a decision was made to implement the SC verdict on the citizens’ right to know the antecedents of candidates contesting elections to local bodies. Thus, the SC verdict became applicable in all Indian elections.

The EC subsequently issued orders requiring each MP and MLA candidate to file an Affidavit containing the mandated information along with the Nomination Paper. Provisions were also made for anyone to file counter-Affidavits. In order to disseminate the information received in Affidavits or counter-Affidavits, the EC, in a further order issued on August 7, 2003, provided for their display on the notice boards

of Returning Officers and the free and liberal supply of these documents to all other candidates, media and the members of the civil society.

In order to reduce the influence of money on elections, the EC issued a very bold order on October 29, 2003, requiring each candidate to maintain their election expenditures in a prescribed registrar on a daily basis and make the register along with supporting documents available to District Election Officers/Returning Officers once every three days. The copy of the relevant pages of the register would be displayed on the notice board of the Returning Officer and distributed, for a nominal fee, to all interested parties.

On June 2, 2004, the EC issued another order to prevent the candidates from submitting incorrect information in their Affidavits. The order provided for the prosecution of those submitting false information in their Affidavits under Section 177 of Indian Penal Code relating to furnishing false information to a public servant.

The SC directives and the subsequent EC orders have real bites in that they are rigorously enforced. This has been demonstrated during the recent Rajya Sabha elections from Uttar Pradesh, where the nomination papers of two ruling Congress party nominees were rejected as “invalid” because of non-submission of Affidavits, unfolding a week-long drama. The Returning Officer ended this drama on June 26, 2004 by declaring the opposition candidates elected unopposed.

#### Citizen Activism

The final Supreme Court verdict generated significant and high level citizen activism to give effect to it. ADR promptly convened a National Workshop in May 2003 to disseminate the verdict. The Workshop was attended by individuals and civil society groups from various states and was inaugurated by the then Election Commissioner T.S. Krishnamurthy. During the Workshop, groups from Chhattisgarh, Delhi, Madhya Pradesh and Rajasthan, where State Assembly elections were to be held in December 2003, decided to hold Election Watches in those four states. Large number of civil society groups became involved in Election Watches in these four states.

There was also an election watch during the Assembly Elections of Gujarat in 2002, when only the Ordinance was in force and the Affidavits submitted by candidates contained information merely regarding their criminal records. The Election Watch issued 40 advertisements appealing to the public for information and collected over 1,000 Affidavits filed by candidates and released the names of 138 candidates with criminal backgrounds. The information thus released was reported in the media and widely publicised.

In recent years, the citizen activism to implement the SC judgment snowballed into a national movement. This is reflected in the fact that in the 2004 Lok Shoba pollings election watches were carried out in 19 out of 29 States and 5 out of 6 Union Territories, covering 451 out of 543 or 83.05% constituencies throughout the country.

One unique aspect of the Election Watch groups is that they included some of the most distinguished citizens of the country, the involvement of whom helped catalyse a movement for electoral reforms. For example, Justice M.N. Venkatachaliah, the former Chief Justice of the Supreme Court of India and the Head of the Constitutional Review Commission and also the Human Rights Commission headed the Karnataka

Election Watch. Similarly, many retired High Court judges, former high government officials and other eminent citizens took leading roles in Election Watches.

#### The Outcome

The Supreme Court judgment and the subsequent citizen activism have had significant and lasting impact. The Affidavits submitted by the candidates during the recent Lok Sabha elections, for example, helped document the extent of criminalisation in Indian politics. By their own admission, 125 out of 542 MPs elected in the 2004 elections have criminal backgrounds, representing all parties. Consequently, the issue of “tainted” Ministers and MPs, thanks ironically to BJP, has now become a national issue. BJP in recent weeks has paralysed the Parliament, bringing into focus as never before the infiltration and acceptance of criminal elements in Indian politics. As a result, a most notorious don in the like of Mohammad Shahbuddin MP had to be arrested. Even Sibhu Soren, a Minister, had to resign and go to jail, although he was reinstated later.

Even before the criminalisation of politics became a national issue following the recent Lok Sabha elections, the citizens’ initiative began to have some impact on the behaviour of politicians and their parties. Both the major national political parties – the BJP and the Congress – had started prior scrutiny of potential candidates and checking their financial and criminal records. One of the parties showed a decline in the number of candidates with a criminal record from 16% in the Gujarat State Assembly elections in December 2002 to 9.7% in the December 2003 State Assembly elections in Chhattisgarh, Delhi, Madhya Pradesh, and Rajasthan. Members of Parliament lined up to clear lakhs of rupees of outstanding dues to the Government for rent, electricity, phone bills just before the Lok Sabha elections to avoid embarrassing disclosures.

A big breakthrough in Indian political reforms occurred on July 5, 2004, when the EC proposed a 22-point agenda for such reforms. The proposal called for widening disclosures and sweeping reforms including: disclosures of income; limiting each candidate to contest in only one seat; restricting the publication of opinion and exit polls; appointing district level authority for redressing voter registration issues; making false declarations in connection with elections an electoral offence; vesting the rule making authority on EC. These proposed reforms would provide legal basis and institutionalise some of the gains already made as a result of the activism of the judiciary, and others would open new frontiers for cleaning up the criminalised and self-interested politics of India. Fortunately, the Prime Minister already expressed his willingness to pilot reform legislation through the Parliament soon if the opposition would agree.

#### Lessons to be Learned

Elections are filters through which democracy gets its legitimacy. However, for democracy to gain true legitimacy and contribute to people’s welfare, it must be able to facilitate the involvement of honest and competent persons to run the affairs of the state. It is the quality of elected officials that determines the quality of governance and only good governance enhances people’s wellbeing. India has made tremendous strides in electoral reforms to deal specifically with criminalisation of its politics, from which we can learn important lessons.

The most important lesson that we can learn is that election reforms do not come easily and not without long and hard struggle. Despite their many differences, politicians and political parties are generally unanimous in resisting disclosures and reforms, and they would continue to field, notwithstanding the restrictions, tainted candidates with money and muscle power to win elections. Overcoming such resistance requires activism, especially on the part of the judiciary, the Election Commission and the leading citizens in order to ensure people's right to know the background of their elected leaders. A further lesson is that once the reform agenda is on the roll and gains momentum, its move forward is impossible to resist. But this is only possible if the push from thoughtful citizens and organizations is forceful and relentless.

We sincerely hope that our thoughtful and distinguished citizens will come forward to take the necessary initial action to get the electoral reform agenda rolling in our country, and thereby meet their moral responsibility to future generations. What is now clearly at stake for us is our future – the future of our children.

16<sup>th</sup> Anniversary Special, *The Daily Star*, February 2007

## Empowering electorates to make informed choices

Polling in the Indian parliamentary elections began on April 20. Something unprecedented is happening in these elections. All candidates for the first time submitted, along with their nomination papers, affidavits disclosing some very sensitive personal information – information about their educational background, past criminal records, assets they own and the debts they owe. This information is provided not out of the goodness of the hearts of the candidates, but because it is mandatory – required by the Indian Supreme Court. More significantly, the affidavits containing this information are public documents, with everyone having the right to access their contents.

This unprecedented disclosure requirement did not come easily or without fights. The compliant politician did not readily provide the information. Rather it was the result of a long and hard struggle by the vibrant civil society movement in India to ensure people's right to make informed choices in elections.

### The long struggle

The idea of requiring elected public officials to disclose personal information owes its origin to a novel experiment undertaken by Public Affairs Centre (PAC), Bangalore prior to the municipal elections in 1996. The experiment – Choose the Right Councillor – involved collecting and disseminating information about candidates contesting elections to the Bangalore city corporation and its different wards. With the help of a questionnaire, candidates contesting in each ward were asked to provide information as to whether they were taxpayers and whether they resided in the ward from which they contested. They were also asked to give information on their criminal records, their level of awareness of civic issues, their commitments and priorities for their wards, and their past achievements. With the help of The Deccan Herald and other local newspapers and an army of volunteers, the

information collected, was compiled and distributed among the voters in order to help them elect the best candidates. The experiment created quite a sensation and caught the imagination of other civil society groups. Such an information empowerment campaigns of voters is now carried out in hundreds of municipal wards in India.

Inspired by the experiment in Bangalore and its replication in other municipalities, a Public Interest Litigation (PIL) was filed in Delhi High Court by the Association of Democratic Reforms (ADR) in October 1999, seeking disclosures of past criminal records and pending criminal cases against candidates contesting elections. In December 2000, the Delhi HC upheld the ADR petition and directed the Election Commission to secure this information from candidates.

#### Politicians fighting back

In January 2001, the NDA government and Congress party appealed to the Indian Supreme Court against this judgment on the grounds that the judiciary encroached into the legislative arena. People's Union for Civil Liberties (PUCL), ADR and Lok Satta fought against the government and Congress party<sup>1</sup> on this issue.

On May 2, 2002, the Indian Supreme Court delivered a landmark judgment directing the Election Commission (EC) to make mandatory for each candidate in Parliament and Assembly elections to furnish: (a) whether the candidate was convicted, acquitted or discharged of any criminal offence in the past; (b) whether the candidate was accused in any pending case of any offence in the six months prior to the months of filing nominations; (c) lists of assets (immovable, movable and bank balances etc.) of the candidate; (d) lists of liabilities if any of the candidate particularly 10 public financial institutions and to the government; and (e) evidence of educational qualifications of the candidate.

Although members of the civil society welcomed the decision, political parties strongly opposed it. In fact, the government did not act even after the EC wrote a letter seeking the issuance of an order amending the Election Rules 1961, which prescribes the format of nomination papers for elections to legislatures. In order to give full effect to the Court's directives, the EC subsequently issued an order on June 28, 2002 making it mandatory for candidates to provide the above information. The order stated that furnishing of wrong or incomplete information or suppression of any material information by any candidate could result in the rejection of his/her nomination papers.

The Union Government convened an all-party conference on July 8, 2002, which unanimously rejected the EC's order. The government subsequently prepared a draft bill for electoral reforms, which was presented at another all-party conference on July 5, 2002. The bill nullified the Supreme Court and EC directives and only provided for disqualifying candidates convicted of heinous crimes by courts in two separate cases. Congress and left parties, however, rejected the proposed legislation on the ground that it would compromise people's right to information. In July 2002, PAC, Bangalore, and other leading civil society groups sent a letter to all MPs demanding the implementation of the EC directives.

The government submitted an Electoral Reform Ordinance to the President in the 1st week of August 2002. A delegation representing the National Campaign for Electoral Reforms (NCER) met with President Abul Kalam on August 16, 2002 and appealed to him not to assent to the Ordinance in order to protect citizens'

fundamental right to know about the candidates' antecedents. Consequently, the President returned the Ordinance on August 23, 2002 for clarifications and reconsideration. The Cabinet, however, rejected the President's request on August 24 and resent the Ordinance to him. The President signed the Ordinance on the assurance that the government would consider his suggestions at the time of legislating the Ordinance in Parliament.

In September 2002, the civil society groups challenged the Ordinance terming it as a "constitutional monstrosity." They argued that the legislature had no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts, or to declare that the decisions rendered by the Courts were not binding or were of no effect.

On December 28, 2002, the government introduced the Representation of People's (Third Amendment) Act. Section 33B of the Act nullified the May 2, 2002 Supreme Court directives for disclosures.

On March 13, 2003 the Supreme Court struck down Section 33B of the Act and required the enforcement of the Court's May 2, 2002 judgment and EC's notification of June 28, 2002. The Court specifically directed that the candidates disclose: (1) all their criminal records; (2) all assets and liabilities of themselves and their families; and (3) their educational qualifications. The Court further directed that the nondisclosure of the above information would be grounds for the rejection of nomination. The EC issued a revised notification on March 27 to implement the Court verdict:

On June 25, 2003, the All India State Election Commissioners' (SEC) Conference in Bangalore took the decision to implement the Supreme Court judgment, requiring candidates in elections of local bodies to make similar disclosures.

It is clear that the quality of governance of a society can be no better than that of the quality of its elected ' representatives. The members of the Indian civil society, supported by the activism of the Indian courts, have taken giant steps to clean up their electoral process by ensuring people's right to know about the background of their elected officials. I hope we will do something similar in our country soon. Otherwise we will have no right to complain about criminalisation of our politics, which has become a favourite pastime for many.

*The Daily Star, April 22, 2004*

## Empowering voters with information: An acid test for the Election Commission

The High Court Division of the Bangladesh Supreme Court, in a recent judgment (Abdul Momen Chowdhury and others vs Bangladesh, Writ Petition No. 2561 of 2005), directed the Election Commission (EC) to collect, with the nominations paper of each parliamentary election candidate, the following information in the form of an affidavit: (a) academic qualifications with certificates; (b) any criminal accusations at the present time; (c) any past record of criminal cases and the results; (d) candidate's profession/occupation; (e) source or sources of the candidate's income; (f) description

of the role he/she played in fulfilling commitment to the people, if the candidate was a parliament member before; (g) description of assets and liabilities of the candidate and his/her dependent; and (h) particulars and amounts of loans taken from Bank and Financial Institutions personally, jointly or by a dependent, or of loans taken by the Company from a Bank where the candidate is Chairman/Managing Director/Director. The EC was further directed to disseminate the information submitted by candidates to the voting public through the mass media.

The purpose of this directive, particularly the call to dissemination, is to empower voters with information about candidates as the “people have a right to know and such right is included in the right to franchise.” The Election Commission (EC) now has the solemn duty to judiciously and effectively implement both the letter and intent of the judgment in order to help citizens make informed choice. This offers an acid test for the EC.

#### The Indian Experience

The Indian Election Commission faced a similar test in 2002, and we can learn important lessons from their experiences. On May 2, 2002, the Supreme Court of India, in *Union of India vs Association of Democratic Reforms and Another* (Civil Appeal No. 7178 of 2001), directed the EC to get from each candidate seeking election to the Parliament or state legislature, as a necessary part of his/her nomination paper, the following information: (a) any convictions/acquittals/discharges for any past criminal offences, and details of any punishment with imprisonment or fine; (b) details of any pending case against the candidate for any offence, occurring prior to six months of filing the nomination, of which charge is framed or cognizance is taken by the court of law, and which is punishable with imprisonment for two years or more; (c) the assets (immovable, movable, bank balances etc.) of the candidate, of his/her spouse, and that of dependents; (d) liabilities, if any, particularly any existing past dues of any public financial institutions or government dues; and (e) the educational qualifications of the candidate.

In order to expeditiously implement the directives, the EC asked the Indian Ministry of Law, Justice and Company Affairs on May 14, 2002 to amend the nomination forms (Forms 2A to 2E), which are part of the Conduct of Election Rules 1961. On June 19, 2002, the Ministry wrote back to inform the EC that it had convened an all-party meeting on 8<sup>th</sup> July, and asked the Commission to seek from the Supreme Court a two-month extension of the time limit on the implementation of the Court order. The EC replied on June 21, 2002, stating that the Government should seek the extension, if it considered one necessary.

In the absence of any extension from the Court, the EC issued on June 28, 2002 a 5-page order, the directive portion of which reads as: “(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a council, shall furnish full and complete information in regard to all the five matters, specified by the Hon’ble Supreme Court ... on affidavit, the format whereof is annexed hereto ... (2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned. (3) Non-furnishing of the affidavit by any candidate shall be considered to be a violation of the order of the

Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the returning officer at the time of scrutiny of nomination for such non-furnishing of the affidavit. (4) Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the returning officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him: Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the returning officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations under section 36(2) of the Representation of the People Act, 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character. (5) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media. (6) If any rival candidate furnishes information to the contrary by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above." This order was later modified following the final Supreme Court judgment given in March 2003.

The EC posted the affidavits submitted by candidates on its website. More importantly, it strictly enforced its own order. For example, during the last Rajya Sabha election in Uttar Pradesh, the nomination papers of two upper-house Congress candidates were rejected for non-submission of affidavits, and the opposition BJP candidates were declared elected unopposed.

#### The Challenge for our Election Commission

Though the Indian Supreme Court judgment did not clearly outline any punishment for non-compliance, the Indian Election Commission specified on its own the punishment in the form of rejection of the nomination paper for non-submission of the affidavit. Similar punishment was also specified for furnishing wrong or incomplete information, or for the suppression of any material information by any candidate in the affidavit, which the returning officer could easily verify. In addition, it created the provision for submitting counter-affidavits by opponents. The argument used by the EC behind this bold and assertive stand are: "The limitation of the plenary character of power is when the Parliament or state legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, art. 324 (of the Indian Constitution) is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge for time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the

rules. By issuing necessary directions Commission can fill the vacuum till there is legislation on the subject.”

We have a similar constitutional provision relating to the power and functions of the Election Commission. Article 119 of our Constitution is similar to that of Article 324 of the Indian Constitution, and it gives the Commission the plenary power of superintendence, direction and control for holding free, fair and transparent elections. The recent judgment of our High Court is also similar to the judgment pronounced on May 2002 by the Indian Supreme Court, and the judgment has the force of law under Article 111 of our Constitution. Will our Election Commission show similar courage and will?

To date our Election Commission has not shown much assertiveness in the implementation of the High Court judgment. Rather, its action so far in this respect has been feeble at best. On June 18, 2005, it issued a very brief special circular to the DC, Sunamganj, who is the returning officer. The circular states: “RvZxq msm` wbe@vP#b cÖv`@x#`i wewfbœ Z\_`vexj cÖ`vb mæú#K@ gnvqvb` mycÖXg †Kv#U@i nvB#KvU@ wefv#M `vwLjK...Z wiU wcuUkb bs-2561/2005-Gi †cÖW#Z gvbbxq Av`vJZ 24†g 2005 Zvwi#L KwZcq wb#`@kbv cÖ`vb K#i#Qb| gvbbxq Av`vJ#Zi iv#qi Kwc cwiwkó-K-#Z mshy<sup>3</sup> Kiv nj| gvbbxq Av`vJ#Zi Av`k Abymv#i cÖwZØØx cÖv`\_@xMY #h njdbvgvq wewfbœ Z\_`vw` wiUvwb@s Awdmvi#K cÖ`vb Ki#eb Zv cwiwkó-L-#Z mshy<sup>3</sup> Kiv nj| g#bvbqbc# `vwL#ji mgq cÖv`\_@xMY wba@vwiZ njdbvgvq wiUvwb@s Awdmvi#i wbKU wewfbœ Z\_`vw` `vwLj Ki#eb| G mKj Z\_`vw` †fvUvi#`i ÁvZv#\_@ wewfbœ MYgva`#g wiUvwb@s Awdmvi#K cÖPv#ii e`e`v MnY Ki#Z n#e| 2| ewY@Z Ae`vq gvbbxq Av`vJ#Zi Av`k Kv#@Ki Kivi cÖ#qvRbxq Kv#@µg MÖn#Yi Rb` Aby#iva Kiv nj|” (In view of the Writ Petition No. 2561/2005 submitted before it, the Honourable High Court Division of the Supreme Court, on May 24, 2005, issued certain directives requiring the disclosure of varied information by candidates in national assembly elections. The copy of the judgment of the Honourable Court is enclosed as Annexure-A. The affidavit containing information to be submitted by candidates is enclosed as Annexure-B. Candidates will submit information in affidavits to the returning officer, along with their nomination papers. Arrangements must be made for the dissemination of the above information through the media for informing the voters. You are requested to take action to implement the directives of the Honourable Court.)

Unlike the order of the Indian Elections, the above circular is meek in tone and weak in content. I hope our EC will do better in the future and show its assertiveness and will to properly and effectively implement the High Court judgment. The judgment opens a window of opportunity to de-criminalise our politics and to create a real possibility for honest, competent and dedicated individuals—individuals dedicated to public service—to come to state power. Only such a change may pave the way for establishing a true democratic system, people’s rule, in our country, and hence usher in a better future for all of us.

*The Daily Star, July 1, 2005*

## The Sunamganj-3 by-election: A failed test case

The by-election in Sunamganj-3 constituency was held on July 20, 2005. It was a test case in that for the first time in our history candidates in an election had to, in response to a High Court judgment, disclose some critical information about their personal and financial background to help the voters make informed decisions. Unfortunately it was a failed test case. The reason for the failure is that the relevant stakeholders failed to effectively play their respective roles.

On May 24, 2005, the High Court Division of the Bangladesh Supreme Court (Abdul Matin Chowdhury and others vs Bangladesh, Writ Petition No. 2561 of 2005) directed the Election Commission (EC) to collect from each candidate in parliamentary elections, in the form of an affidavit, along with his/her nomination paper, the following information: “a. Academic qualification with certificate from the Board or University. b. Whether he is accused in any criminal case at present. c. Whether there is any past record of criminal case and the result. d. Profession/occupation. e. Source or sources of income. f. Whether he was a parliament member earlier and the role he played individually and collectively in fulfilling the commitment to the people. g. Description of assets and liabilities of the candidate and dependents of the candidate. h. Particulars and amount of loan taken from Bank and Financial Institutions dealing with public money personally, jointly or by a dependent or a loan taken by the Company from Bank where the candidate is Chairman/Managing Director/Director.” The EC was also directed to disseminate the information submitted by candidates among voters through mass media. The Court recognised that “people have a right to know and such right is included in the right to franchise.”

#### EC’s failure

The Election Commission took the initiative to implement the High Court judgment in Sunamganj-3 by-election. Unfortunately the Commission’s efforts lacked assertiveness and seriousness, and in fact, they were feeble at best. For example, it issued a one paragraph special circular on June 18 asking the DC of Sunamganj, who is the Returning Officer (RO) of the Sunamganj-3 by-election, to implement the directives. It simply sent a copy of the judgment along with a pro-forma affidavit. The Commission provided no guidance to the RO nor did it specify any punishment for non-compliance. In fact, the CEC in a recent television interview contended that since the judgment did not specify any consequence, it should be construed as directory rather than mandatory. What this contention seems to mean is that even if the candidates fail to file affidavits or provide wrong, incomplete or misleading information, their nomination papers would be accepted. This would in essence amount to making the submission of affidavits simply optional for candidates, flouting the High Court judgment. In fact, if the directives do not have to be complied to, they are not worth the paper on which they are written.

In this context we may cite the famous Secretary, Ministry of Finance vs Masdar Hossain case (20 BLD (AD)(2000), where the Bangladesh Supreme Court directed the government to separate the judiciary from the executive. The seminal judgment contained no provision for consequence for non-compliance, yet no one ever claimed that the Court’s judgment was directory rather than mandatory. In fact, the Appellate Division has been repeatedly taking the government to task for its failure to promptly

implement this historic judgment. Ironically, our present Chief Election Commissioner, as the judge of the Appellate Division, was part of these proceedings.

Clearly, the EC's contention is erroneous because our Constitution has empowered the High Court to issue orders and directives (Article 102) and they have the force of law (Article 111). Thus, it would be unlawful not to submit the affidavit with the nomination paper. Furthermore, without the affidavit the nomination paper would be incomplete and hence be liable to be cancelled for being defective.

Furthermore, Article 118 of our Constitution recognises the EC as an independent constitutional entity and Article 119 gives it a reservoir of power to ensure fair elections. As the Appellate Division of the Bangladesh Supreme Court, in *Altaf Hussain vs Abul Kasem* (45DLR(AD)(1993)), observed: "Election Commission's inherent power under the provision of 'superintendence, control and direction' should be construed to mean the power to supplement the statutory rules with the sole purpose of ensuring free and fair elections." Thus, although the High Court did not spell out the penalty, the Commission, given its residual power under the Constitution, could work out the norms and modalities, including the specification of penalty, to implement the judgment.

#### Indian example

Indian Election Commission did exactly that in a similar situation. On May 2002, the Indian Supreme Court gave a similar landmark judgment directing the EC to collect from each candidate seeking election to Parliament and State legislatures information about his/her criminal antecedents, assets owned by the candidate and his/her dependents, his/her liabilities, and his/her educational qualifications. The Indian judgment also did not specify punishment, yet the EC issued a 5-page order clearly directing the RO to cancel the nomination papers of candidates for non-submission of affidavits or for providing wrong or incomplete information or for suppressing material information. This order to cancel nominations was rigorously enforced. For example, during the last Rajya Sabha election, the nominations papers of two Congress candidates were cancelled for non-submission of affidavits. Furthermore, the Indian EC allowed the submission of counter-affidavits by opponents. In addition, it posted the original affidavits filed by candidates on its website. It may be noted that based on the information submitted in their affidavits, about 20 per cent or 115 Indian legislators with criminal records have been identified as "tainted MPs" and a movement is now afoot there to take away their parliamentary membership.

The Indian Election Commission rather unilaterally implemented the judgment as it did not have the rulemaking authority and the Indian Ministry of Law and Company Affairs refused to make the necessary rules when approached by the EC. In contrast, section 94 of The Representation of the People Order, 1972 of Bangladesh vests rulemaking authority in the Election Commission. Hence, unlike their Indian counterpart, our Election Commission could frame the necessary rules and specify the consequences for non-compliance, if it intended to do so. It could thus fully and completely implement the High Court judgment even without any reference to the government. It is clear that in contrast to the Indian EC our Election Commission has failed to exercise the power already vested in it under the existing statutes and perform its constitutional responsibility for holding fair elections.

### Misleading disclosures by candidates

Nine candidates contested the Sunamganj-3 by-election. We verbally sought copies of the original affidavits from the CEC, but failed to receive them despite repeated assurances. We also made written requests to the RO for them. Again, our requests were denied, although getting copies of the original affidavits is a question of citizens' rights endorsed by the High Court rather than a gesture of generosity by the authorities.

Instead of disseminating the original affidavits, a table is compiled and distributed by the RO apparently based on the affidavits submitted by the candidates. The most fundamental question about the data in the table is that one cannot be certain about their veracity. Human beings are not angels and there may have been errors, wilful or inadvertent, in the compilation. Such errors would make a mockery of the High Court directives. The court directives are intended to empower the voters with facts, rather than mislead them with erroneous information. Besides much of the information included in the table are too vague to be of any use to voters.

A careful perusal of the table also raises serious questions about the credibility of the information. For example, none of the candidates has any liabilities. Only one candidate has a bank loan. More seriously, none of the candidates seem to have any bank account or cash assets. If so, how are they, one may ask, going to defray their election expenses? In addition, contrary to the Court directives, the assets held by spouses and dependents are mostly absent in the table. We also fail to fathom how educational qualifications can be reported as "not applicable."

The EC and RO could easily verify the information contained in the affidavits. Under section 44AA of RPO, candidates in parliamentary elections are required to file, within seven days, the acceptance of their nomination papers, statements showing the sources of their election expenses, their assets and liabilities and also a copy of their most recent tax return. The authorities could easily, if they were interested, compare the information submitted under 44AA with the affidavits and verify their authenticity. Not only the EC and RO failed to verify the accuracy of the declarations made by candidates, they have also prevented us from doing so. We, on behalf of SHUJAN, formally sought the copies of candidates' declarations and also the original affidavits. Our request was denied, although we are entitled to those documents under section 96 of RPO.

The EC was directed by the High Court to publicise the information submitted by candidates in the form of affidavits through the mass media. The only visible action we have seen on the part of RO in this regard is to issue the summary table mentioned above and hold a news conference. We also wrote to the RO seeking information about the concrete and specific steps he had taken to publicise the affidavits. Again, we did not hear from him.

### Failure of civil society

Not only did the candidates fail to fully and completely disclose the information required by both the Court directives and the existing statutes, the EC and RO lacked seriousness to enforce these disclosures, and the so-called civil society institutions have also not done their part. They did not, in a significant way, come forward with their activism. No citizen groups, other than SHUJAN, made any demand for total compliance with the Court order and the existing law. No group took any initiative to

inform the voters about this information; however distorted it may be, compiled by the RO. Even the media, other than two exceptions, took no steps to investigate and verify the information disclosed about candidates, and they have failed to uphold people's right to know.

The relative inaction of our citizen groups may be contrasted with the activism of Indian civil society following its Supreme Court judgment of 2002. Distinguished citizens and voluntary organisations came forward to form Citizen Watch in each Indian state to ensure that the Court verdict is fully and completely implemented. For example, Justice Venkatachalia – who was the former Chief Justice of the Indian Supreme Court and former head of the Indian Human Rights Commission and the former head of the Constitutional Review Committee – became the head of Election Watch of Karnataka state. Unlike India, most of our distinguished citizens are unwilling to get involved – and we found it out the hard way.

#### Conclusion

The High Court recently gave a historic judgment requiring critical disclosures by candidates in national elections to empower voters with information. This is a historic judgment in that it opens a window of opportunity to de-criminalise our present system of politics by making it difficult for criminal elements and possessors of black money to run for election. It also creates openings for honest, competent and dedicated individuals – individuals dedicated to the service of the people – to come to state power. Only such changes can pave the way for establishing a truly democratic system, a people's rule in our country and usher in a better future for us all.

The recently-held by-election in Sunamganj-3 provided a test case for the implementation of the judgment. Unfortunately all interested parties failed in their respective roles. The EC shied away from its constitutional responsibility to seriously enforce the judgment to ensure fair elections. Fair elections require maximum disclosures by candidates so that voters can make their choice fairly based on information. Organised citizens groups largely failed to demand full compliance and accountability on the part of the EC and also show much activism to implement the court directives. The media also mostly failed to do any investigative reporting and uphold people's right to know. Despite the failures in Sunamganj, we hope we will learn from our experiences and do better next time – in Faridpur-1 by-election to be held on August 30. Our doing better in the future is important because the future – the future of our future generation depends – on it.

*The Daily Star, August 4, 2005*

## The high court directive and voters' right to know the antecedents of candidates

During a BBC dialogue on local government in 2005, Mr. Helal Rahman, the elected Councilor of London's Tower Hamlets stated that before receiving the nomination he was given several examinations by his party to assess his knowledge, experience, skills and his intentions for running for office. He also had to declare all his interests and give detailed descriptions of his assets, which were posted on the web

for informing the electorate. Such are the requirements for candidates seeking election for public office in countries where democracy has already taken deep root. If we are really to achieve institutionalization of democracy in our country, we must also develop such a culture of assessing qualifications and making disclosures by candidates.

#### The High Court Judgment

Fortunately in May 2005, the Bangladesh High Court, in a historic judgment (Abdul Momen Chowdhury and others vs. Bangladesh), directed the Election Commission (EC) to collect from candidates in parliamentary elections, in the form of affidavits, the following information: (a) academic qualifications with certificates; (b) any criminal accusations at the present time; (c) any past record of criminal cases and the results; (d) candidate's profession/occupation; (e) source or sources of the candidate's income; (f) description of the role he/she played in fulfilling commitment to the people if the candidate was a parliament member before; (g) description of assets and liabilities of the candidate and his/her dependents; and (h) particulars and amounts of loans taken from banks and Financial Institutions personally, jointly or by dependents, or of loans taken by the Company from banks where the candidate is Chairman/Managing Director/Director. The EC was further directed to disseminate this information via the mass media, the purpose of which is to empower voters with information about candidates.

Courts gave strong arguments in favor of disclosures. The Bangladesh High Court, in its historic judgment, stated that the "people have a right to know and such right is included in the right to franchise." The Indian judiciary went even further. The Indian Supreme Court, in *Union of India vs. Association of Democratic Reforms* (2002(95)SCC), viewed voters' right to know the antecedents of candidates as part of their fundamental right of expression. The Court stated: "Voter's (right to) speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be elected is a must. Voter's right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers."

According to Article 111 of Bangladesh Constitution, High Court judgment has the force of law. Article 112 of the Constitution makes it incumbent on all executive authorities to implement directives of the upper judiciary. Nevertheless, our EC has failed to fully and completely implement the High Court judgment on disclosures.

#### EC's Failure to Implement the Judgment

The EC took the initiative to implement the High Court judgment in Sunamganj-3 by-election held on July 20, 2005. Unfortunately the Commission's initiative was half-hearted at best. For example, it issued a one-paragraph special circular on June 18 "requesting," rather than giving specific orders to, the DC of Sunamganj, who was the Returning Officer (RO) for the by-election, to implement the Court judgment. However, it failed to give the RO clear directives for the implementation.

After Sunamganj, by-elections were held in Faridpur, Dinajpur, Manikganj and Gaibandha during the past year. Elections to the reserve seats for women were also held during this period. The EC again failed to forcefully implement the High Court

judgment. Consequently, the candidates submitted affidavits for the sake of doing so merely to meet the technical requirements. Yet, despite formal requests from SHUJAN, the EC failed to publish the affidavits, although, because of our pressure, the EC published a summary of the affidavits in each election.

A perusal of the published summaries shows that they contained many errors, omissions and misleading information. For example, one candidate in the Sunamganj by-election stated that his educational qualifications were not relevant. Similarly, many candidates in other elections showed that they did not have any cash or even bank accounts. They also concealed information regarding their assets and criminal records. Even though most candidates blatantly defied both the letters and spirit of the High Court judgment, the EC failed to take any action against them. We filed a writ petition seeking the Court's intervention to direct the EC to fully implement the Court directives, as a result of which *rule nisi* was issued against the dependents. However, because of the changes in the jurisdictions of the relevant bench, the hearing of the writ could not be held.

It may further be noted that in addition to the affidavits, under section 44AA of The Representation of People's Order, 1972, the candidates running in parliamentary elections are required to disclose within a week of the acceptance of their nomination papers information on their sources of election expenses, assets, liabilities, annual income and income tax returns. Unfortunately, despite repeated requests from SHUJAN, the EC refused to give us the disclosed information, defying the legal requirements to do so. The EC and the ROs even did not bother to respond to our formal requests.

#### The Indian experience

The Indian Election Commission faced a similar situation in 2002, and we can learn important lessons from their experiences. On May 2, 2002, the Supreme Court of India, in *Union of India vs Association of Democratic Reforms and Another* (2002(5)SCC), directed the EC to get from each candidate seeking election to Parliament or state legislatures, as a necessary part of his/her nomination paper, the following information: (a) any convictions/acquittals/discharges for any past criminal offences, and details of any punishments with imprisonment or fines; (b) details of any pending cases against the candidate for any offence, occurring prior to six months of filing the nomination, of which charge is framed or cognizance is taken by the court of law, and which is punishable with imprisonment for two years or more; (c) the assets (immovable, movable, bank balances etc.) of the candidate, of his/her spouse, and of dependents; (d) liabilities, if any, particularly any existing past dues of any public financial institutions or government dues; and (e) the educational qualifications of the candidate.

The Indian Election Commission did not have the rulemaking authority and it asked the Ministry of Law, Justice and Company Affairs to amend the nomination forms, which are part of The Conduct of Election Rules, 1961. The Ministry refused to do so. The EC then unilaterally issued on June 28, 2002 a 5-page order, the directive portion of which reads as: "(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a council, shall furnish full and complete information in regard to all the five matters, specified by the

Hon'ble Supreme Court ... in affidavit, the format whereof is annexed hereto ... (2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned. (3) Non-furnishing of the affidavit by any candidate shall be considered to be a violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the returning officer at the time of scrutiny of nomination for such non-furnishing of the affidavit. (4) Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the returning officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him: Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the returning officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations under section 36(2) of the Representation of the People Act,1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character. (5) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media. (6) If any rival candidate furnishes information to the contrary by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above." This order was later partly modified following the final Supreme Court judgment given in March 2003.

The EC posted the affidavits submitted by candidates on its website. More importantly, it strictly enforced its own order. For example, during the last Rajya Sabha election in Uttar Pradesh, the nomination papers of two upper-house Congress candidates were rejected for non-submission of affidavits, and the opposition BJP candidates were elected unopposed.

#### Conspiracy Against the People's Right to Know

Our Election Commission not only failed to fully and completely implement the Court directives, it also appears to be involved in a conspiracy against people's right to know. A few months ago, our Chief Election Commissioner (CEC) claimed that since the Court judgment contained no consequences for defiance, the judgment is directory rather than mandatory.

Many legal experts dismiss the CEC's claims. In their view, Court directives are directory only in the case of interpretation of laws. Even in interpreting statutes, Courts can hold that a judgment is mandatory for the concerned parties by specifically saying so or providing for adverse consequences for non-compliance. Otherwise the judgment is directory. All other Court judgments are considered to be mandatory whether or not any consequence is included in them. It is unfortunate that our CEC,

who himself is a sitting judge of the Appellate Division and who is responsible for protecting the public's interests, would provide such a misinterpretation.

A more serious threat against the right to know the antecedents of candidates appears to be in the offing. According to press reports, the Appellate Division of the Bangladesh Supreme Court recently allowed a third party named Md. Abu Safa, who was not part of the original litigation, to appeal the High Court judgment. What is most disturbing is that the original petitioners or their lawyers were not informed of the hearing. Shockingly, the whole thing took place in absolute secrecy. It may be significant to note that despite our repeated efforts, the appellant could not be traced.

What Must Now be Done to Protect People's Right?

After the Indian judgment on disclosures, Election Watch, composed of the most distinguished citizens of the country and many well known organisations, popped up all over the country. For example, Justice Venkatachalaiah, the retired Chief Justice of India and the former head of their Human Rights Commission, headed the Karnataka state Election Watch. These citizen groups, on the one hand, kept pressuring for more disclosures, and at the same time distributed among voters the information already disclosed by the candidates. They have also been trying to create public opinion to clean up the electoral system of India. The Indian EC worked closely with them and the Commission itself proposed a 22-point reform agenda. The media also came forward, and as a result, 115 of the 14<sup>th</sup> Lokshaba members are branded as "tainted MPs," and there are widespread public demands for their removal.

Not only did the candidates in the last five by-elections fail to fully disclose the information required by the High Court, the EC failed to enforce the Court judgment, and our citizen groups, except for SHUJAN, or the media also played no significant role to ensure people's right to know. The only significant exception was in the case of Faridpur by-election, where a front-page article in The Daily Prothom Alo stated the Four-party Alliance candidate failed to disclose in his affidavit the criminal case against him. Consequently his nomination was withdrawn by the Alliance.

It is clear that we now face three challenges. First, successfully resist the unwarranted efforts to thwart the voters' right to know and require the candidates in the upcoming parliamentary elections to make full disclosures. Second, take appropriate initiatives from now on to disseminate the information to be disclosed by candidates. Third, pressure the political parties to develop a set of concrete and information-based criteria for selecting nominees.

In order to successfully meet these challenges, there must be serious public pressure on political parties. Concerned citizen groups must play a vocal role in this regard. The media can obviously make the biggest contributions in molding public opinion. They can not only speak up for the people's right to information, they themselves can also start collecting information from potential candidates as a public service initiative. Fortunately, The Daily Prothom Alo has already started to collect information from them and we hope that the other media representatives will follow suit. In addition, the media can begin collecting information for possible investigative reporting later. SHUJAN has already started collection information, which we are planning to post on the web ([www. SHUJAN.org](http://www.SHUJAN.org)).

Politicians are responsible for running the affairs of the country. But their reputation is now under a severe cloud. However, in the national interest, it is

imperative that their good name is restored. For this purpose, political parties must now come forward to specify a clear and transparent set of information-based criteria for selecting candidates for elections. Honesty, transparency, competence, experience, selflessness, patriotism, respect for opposing views and so on must be the basis of such criteria.

*The Daily Star*, August 9, 2006

## CHAPTER FOUR: CIVIL SOCIETY

### Lathi-Bashi Samity – a citizens' initiative with a difference

It is now generally agreed that we do not have a vibrant civil society movement in Bangladesh. In fact, its absence is felt every day in our national life. Many of our challenging national issues impacting the lives of the common people are not adequately addressed and effectively remedied because of such an absence. What is even more disappointing is that the concept of civil society itself is not well understood in our country. Hence, the term is often misused. Many people liberally use – or abuse – this term without fully realising its meaning and significance.

The concept of civil society could perhaps be best understood from what it does or should do. Scholars in general see two important roles for civil society: first, to keep the state civil and non-intrusive. In our modern societal arrangements, only the state enjoys coercive powers and can legally exercise physical force over its citizens. Using this authority, a state can – and often does – usurp people's liberty. Scholars like Max Weber, Montesquieu, and James Madison warned us of such possibilities. Consequently, the principle of separation of powers was adopted to prevent the concentration of governmental authority. Under this arrangement, state powers are separated and assigned to three autonomous but interdependent branches, namely the executive, the legislative and the judiciary. This diffusion of state powers creates a system of checks and balances, which is intended to keep the government from becoming tyrannical.

In spite of these precautions, state powers may still be abused and misused for the benefits of individuals or the vested interest groups. Coteries enjoying the patronage of the people in power can also indulge in misdeeds. Examples of such abuses and misdeeds abound in history. The civil society as a distinct social force, composed of conscious and audacious citizens, has historically evolved to prevent such misdeeds by the state or state-supported groups. Driven by their own conscience and the desire to make a difference, members of the civil society boldly stand for the truth and the justice without fear of recrimination or victimisation.

In an authoritarian system or in a dictatorial democracy, the importance of civil society for its countervailing role can hardly be overemphasised. Its role can be that of the fourth branch of the state – along with the executive, the legislative and the judiciary – for holding the state to account. Civil society as an organised social force, with media included in it, can effectively play this role, enhancing the quality of

governance by ensuring that the state and public/private institutions perform their responsibilities.

The role of civil society is not just to be at loggerheads with the state. Another important role for it is to promote and organise voluntary citizen action. The state alone cannot meet all the challenges people face, even if it is fully committed to their welfare. Organised citizen groups can solve many problems locally, using local leadership, local initiatives and local resources. Civil society groups can be the catalysts, bringing people together at the local level to make it happen. In this role, members of civil society can work shoulder to shoulder with the state.

When people are organized, something magical happens – a form of capital is created – which is distinct from financial capital. This unique form of capital is called social capital. The source of social capital is interconnectedness and unity among people and their working together for a worthy common goal. History shows that societies, which enjoy more social harmony and generate more collective action, are relatively more well off. In countries like ours, where there is a great dearth of material resources, social capital can be an important substitute for financial capital. Civil society institutions can help create such social capital by catalysing citizen actions.

There are many reasons for the absence of a strong civil society movement in Bangladesh, one of which is our decadent political behaviour. An important cause for the decadence in our political process is a naked system of patronage. In our country, governmental facilities and favours are generally dispensed not based on a set of honest and objective criteria, but blindly to political henchmen without regard to fairness and justice. Such a spoils system, which is the worst form of corruption, creates an incentive for people, even for otherwise good people, to give up their neutrality and succumb to partisan positions. Consequently, many thoughtful individuals who should have remained non-partisan and, as members of civil society, speak up and speak out against injustices and misdeeds of the state, either becoming party to those deeds or remain silent about them. This state of affairs makes many people derisively refer to our so-called civil society as an “evil society.”

Voluntary organizations or NGOs are generally considered to be the most important civil society institutions. But unfortunately in our country they have in general failed to play this role. One important reason for this failure is that most of our NGOs have over the years become contractors, implementing projects either for the government or for external donors. As implementing entities, they do not normally enjoy the freedom to assert their own priorities. Rather they have to play the games according to the rules set by the donors and implement many frivolous projects representing fads or pet ideas of the aid bureaucracy. Given this situation, with the drying up of donor money reflecting changes in their priorities, the priorities of the NGOs also change. Thus, most donor-funded projects do not endure. However, the most damaging aspect of this donor-dictated system is that many of our NGOs have essentially surrendered to the wishes and dictates of the donors, giving up their sense of dignity.

Another reason for the failure of our NGOs as civil society institutions is that many of them, especially the big ones, have become corporate houses. This naturally makes them more concerned about their own business benefits rather than the public

interest. Consequently, NGOs often are unable to take bold and principled stands in the greater interests of the public at large. Even though they offer various services and even dispense charity to help the poor, they seldom fight for the legitimate rights of the people or mobilise disadvantaged groups to resist the misdeeds of the authorities or of the vested interest groups. The service delivery approach the NGOs use, it is often argued, makes poverty more tolerable. It is no wonder then that we have been able to only alleviate the poverty of some people, but not eradicate it from our land in spite much efforts and the expenditure of huge sums of money over the years.

Some of our NGOs have also become partisans. They overtly or covertly promote and protect the interest of specific political groups. As a result, they have lost their neutrality and are unable to play an effective watchdog role to protect the interests of the public.

While there is a great dearth of civil society organisations in our country, the Lathi-Bashi Samity of Natore has been an inspiring exception. It was organised in the backdrop of the state's failure to provide physical security to the people of Natore, especially to its business community. It was a voluntary initiative of the people. The lifeblood of this initiative was the unity of the sufferers against evil elements, not the money. It was not a project-based, money centered NGO initiative – rather a truly civil society movement to combat social ills.

In October 2002, I had the privilege of participating in the third anniversary celebration of the Lathi-Bashi Samity along with Justice Habibur Rahman, Professor Muzaffer Ahmed, Professor Abdullah Abu Sayeed, The Daily Prothom Alo's editor, Motiur Rahman, and the film director Tarek Masud. During that visit I saw with my own eyes how this organisation not only asserted a united front against the daunting challenges of hooliganism, it also charted a new path for our socio-economic upliftment. This new path involved awakening and mobilising people to create a social movement rather than implementing projects using large sums of donor funds. Social capital has been the basis of this initiative.

We know that most of the challenges people face are local and they must also be solved locally. The people facing them must be the key to their solutions. The Lathi-Bashi Samity not only organised and united the people in a lawful and non-violent manner to redress the challenge of toll collection, it also began to take initiatives to address other socio-economic problems like the subjugation of women and income generation. It goes without saying that the more such citizen initiatives are fomented around the country, the faster we will be able to redress many of our socio-economic problems and move forward as a nation. Nevertheless, the activities of the Lathi-Bashi Samity were abruptly stopped by the government a few weeks ago.

The Lathi-Bashi Samity is a legally registered organisation under the Directorate of Social Services. There are clear, mandatory procedures laid out by the registration authority for stopping the activities of registered organisations. However, according to newspaper reports, the activities of the Lathi-Bashi Samity were halted with administrative edicts, the legality and wisdom of which have already been questioned by many.

It is clear that a mistake was made in stopping the activities of the Lathi-Bashi Samity and disbanding its central committee. Fortunately, efforts are now afoot to redress this mistake and reorganise the NGO. We sincerely hope that another mistake

will not be made in the process of reorganisation. According to the established rules, the authority to elect the executive committee of Lathi-Bashi Samity belongs to its general members. Any effort to dictate this election from the outside will not only be against the rules, but may also destroy the path-breaking work the organisation has already initiated. We request the relevant authorities allow the general members of the Lathi-Bashi Samity to elect its own leaders and not interfere in the process.

*The Daily Star*, March 6, 2004

## People's victory in Kansat: some unanswered questions

Yes, the brave people of Kansat won – the government almost fully accepted their 14-point demand and signed an agreement to that affect. According to the agreement, the families of each death will get Tk. 2 lac, the one with a serious eye injury will get Tk. 1 lac, seriously injured 10 will get Tk. 50,000 each, severely injured 100 will get Tk. 25,000 each, and another 600 will get Tk. 3,000 each. It is reported that the government has already allocated Tk. 83 lacs for compensation to all Kansat victims. In addition, a monument will be erected in memory of the dead and all cases against the agitators will be withdrawn. Undoubtedly this was an extraordinary victory – victory achieved with blood – for the ordinary people of Kansat, and they deserve our congratulations.

Nevertheless, the Kansat explosion raises some serious questions which need to be addressed to take the movement to its ultimate end. (They deserve the attention. There are a lot of questions which remained unanswered.) Why did it happen? What factors contributed to the people's victory? Are the amounts of compensation enough? Who must bear the burden of compensation? The people of Kansat were apparently victorious, but will their problems be solved? (In order to avoid the tragedy of Kansat, we as a nation must fully understand the causes, consequences and implications of the whole episode and also learn lessons from it, if we are to avoid such tragedies in the future. (Only then can we expect to avoid its recurrence.)

I believe that a unique lordly mindset of the ruling elites (– the lordly mindset special attitude – the attitude of being supreme masters –) is primarily responsible for the Kansat incident. By expelling the British and then by defeating the Pakistani tyrants, Bangladesh was created at the cost of much blood. In an independent country, people are the owners and “all powers in the Republic belong to the people.” (Article 7 of the Bangladesh Constitution) (m. are the sources of all state powers.) Those holding state powers are merely their elected representatives or they are public servants, and they exercise powers on people's behalf. Even though this is recognised in our Constitution, the reality in practice has been different. In fact, people's powers have been usurped, rather snatched away by the interest groups. The employees of the Republic have become the administrators, people's representatives, people's masters – the people have become their compliant 'subjects' and recipients of their generosity and favour. Common people are now viewed with derision as flocks of sheep. The Kansat incident merely reflected this anti-people attitude of the people holding the levers of state power.

This medieval attitude of being masters is reflected in the strategy to use force – ‘use a stick to calm things down.’ When people raise grievances in a democratic country, those in positions of power and their underlings listen and try to redress them. Unfortunately democratic values have not taken root in the minds of our elected representatives. They do not hesitate to flaunt their power or do not hesitate to unleash the law enforcement agencies against the innocent citizens. That is what happened in Kansat.

Trigger happy

This attitude of being masters of the people is also widespread among the law enforcement officers. (A case in point is the second officer of the Kamarkand police station of Sirajganj district.) For example, after the dastardly incident of mistreating journalists by police in Chittagong a few weeks ago, the second officer of the Kamarkand police station of Sirajganj district (he had reported to have) said: “ (Expletive deleted) the journalists do not know how much power the police has. The British had handed sticks to the police to beat and that the law authorising to beat exists even today. Beating was done in Chittagong stadium under that law. What is the use of writing so much about it? Police are given a year-long training for beating. If you want to stop police beating, the law must be changed.” Such an attitude of impunity makes them trigger-happy.

The government has accepted the responsibility of killings in Kansat and agreed to compensate the victims and their families. When the government accepts the responsibility, it falls on the shoulders of the citizens. That is, the common people of the country will have to bear the burden of the compensation. But why? The people did not do anything wrong. They did not kill any innocent people of Kansat. Why do they have to shoulder the responsibility? There must be people responsible for these ‘wrongful’ deaths and injuries. Thus, we demand impartial investigations to identify the real instigators of Kansat killings and give them exemplary punishments. The real culprits must also be required to pay the compensation.

A related question. Is Tk 2 lac compensation enough for a death? Is the value of a life so little? How is that amount determined? There are standard procedures for determining the level of compensation in cases of wrongful death, for example, discounted value of future flow of earnings. If this procedure was used, the amount of compensation for each death would have been different.

Many reasons lie behind the people’s victory in Kansat. However, in my judgment, the unity of the people, the legitimacy of their demands, and the honesty and courage of their leadership were the most important reasons. That ‘people power’ can achieve unprecedented successes is proven once again, after 1971 and 1990, by the ordinary people of Kansat. As if poet Rabindranath Tagore wrote his famous ÒGevi wdivl †gv†iÓ poem with the people of Kansat in mind: ÒÛgyûZ© Zzwjqv wki GKÍ `uvovl †`wL m†e;/hvi f†q Zzwg fxZ †m Ab`vq fxi” †Zvgv-†P†q,/hLwb RvwM†e Zzwg ZLwb †m cjvB†e †a†q/hLwb `uvov†e Zzwg m†šy†L Zvnvi ZLwb †m/c\_Kz°z†ii g†Zv ms†Kv†P m†v†m hv†e wg†k|Ó Bravo, the people of Kansat!

The demands of the people of Kansat are reasonable and legitimate, although they received bullets instead of the electricity. The government also accepted the legitimacy of their demands by signing the agreement. The people of Kansat have

clearly shown that to achieve their legitimate demands – demands that are related to their life and livelihood – they are willing to even give their lives.

If the leaders are honest and the people have confidence in them, the followers generally show unconditional allegiance to the leadership. Mr. Golam Rabbani, the leader of the Kansat uprising did not show his allegiance to any political party even though he and his colleagues were under tremendous pressure and there was serious propaganda against him. So far we know, he has not betrayed the cause of the people. More significantly, the leadership has shown daunting courage and iron-clad determination. Personal honesty and the legitimacy of their demands perhaps were the source of their courage. Undoubtedly the determination of the leadership gave the followers hope and confidence, and kept them going.

Even though the people of Kansat achieved the victory through the unconditional surrender of the government, it is unlikely that their problems will be solved in the near future. The lack of electricity is not the problem of the people of Kansat alone – this is the nationwide issue. Shortage of supply relative to demand is the source of this problem. Thus, it is impossible to solve it locally. Furthermore, production of electricity cannot be drastically increased rapidly.

Many complex reasons lie behind the power shortage. The naked practice of patronage and partisan behaviour of the policymakers and corruption are some of the reasons. Where patronage and partisan behaviour are rampant, the incompetent and corrupt win, because competent and self-respecting persons do not normally succumb to sycophancy. Many of our public institutions are now headed by dishonest and corrupt individuals, causing many government services to be in really pathetic shape. Reasons for the shortage of fertilizers and diesel are similar to that of power crisis.

In an all pervasive culture of corruption and kleptomania like ours, only those projects are formulated and implemented where the people in power and their close associates can illegally profit. Power production has not significantly increased in the last few years probably because the vested interested group did not see the prospect of unduly benefiting from them, as power projects are generally financed by donors and they impose more stringent requirements of transparency. A few projects that have been implemented in recent years are also subjected to serious accusation of widespread corruption. Thus, solving the problem of the power shortage of the people of Kansat will require transparency and accountability in all government activities, removing corruption, patronage and partisan practices in all public procurements, ensuring rule of law, and above all good governance. However, the cry for good governance in our country falls onto deaf ears.

I am sure Mr. Golam Rabbani and his associates have come to realise that if the victory in Kansat is to be transformed into a national victory, they will have to go a long way. They will have to involve a lot more people in a lot more places. The mass uprising in Kansat will have to be turned into a national movement to achieve the legitimate rights of the citizens. For that to happen, they may have to make more sacrifices. Are they prepared for that?

The explosion of Kansat is not just a sudden accident. It is, in my view, the result of pent up unhappiness, accumulated over a long period, given the state of things. Shortages of fertilizers, electricity and diesel have caused the farmers to suffer enormously. Power crises have caused a lot of small manufacturing units to be closed.

The price spiral of many necessities of life has caused enormous sufferings of the common people. They are disgusted with the corruption in every step. They want redress. In addition, the burgeoning extremism has made many people deeply concerned. But the policymakers have no time to solve these problems, they are not even interested in doing so – the leaders and their followers are mostly busy looting and plundering. As a result, people are very angry. The Kansat experience show that the angry “flocks of sheep” are beginning to wake up and protest. Those who are in power and those who are aspiring to power must ponder seriously about the anger of the masses with the present state of affairs.

Another thing that is clear from the experiences of Kansat is that the common people have no confidence in any of the major political parties. That is why they threatened to oppose Mr. Rabbani if he decides to contest the coming parliament election from the Awami League and even the BNP, even though the area is known to be a fortress of BNP. However, they will support him if he runs as an independent. It is clear that the people of Kansat think that the major political parties do not speak for them, nor do they look after their interest; they are suspicious of the honesty of the politicians. Thus, the important priorities for us as a nation must be to take initiative to instill people’s confidence in the politicians and also overcome their lordly mindset.

Finally, there is now a great debate going on in the country about the civil society and its role. In my view, the members of civil society must be nonpartisan, they speak their conscience, they speak out against the deprivations of the common people, they fight for the rights of the underprivileged, they are not driven by personal business interests and they are not merely contractors for the donors to deliver services. Kansat Palli Bidyut Unnayan Sangram Parishad meet all the above criteria and is truly, in my judgment, a civil society institution.

*The Daily Star, May 27, 2006*

## Role of civil society in Bangladesh’s democratic transition

Democracy – rule by the consent of the people – requires elections. In fact, elections provide the starting point for a democratic transition, though whether or not a truly democratic system of governance subsequently emerges will depend on the future actions and behavior of the elected government. Elections must, of course, be free, fair and vigorously competitive. They must also be meaningful in that individual citizens who are honest, competent and committed to people’s welfare, rather than devoted to self or coterie interest, have a chance to be elected to run the affairs of the state. The Bangladesh Election Commission (EC) has a constitutional obligation to hold peaceful, fair and impartial elections – which may or may not be meaningful enough to elect honest and competent candidates – with the assistance of a constitutionally mandated Caretaker Government (CTG).

Free and fair elections require, among other things: an appropriate legal framework; a strong and independent EC; neutrality of the government, and an informed citizenry. Civil society or organized citizen groups can play important roles in this regard by providing a *supply* of ideas for electoral and institutional reforms and,

at the same time, by advocating or acting as a pressure group for the adoption of such reforms. Such groups can also create a *demand* for reform by mobilizing public opinion. In addition, they can collect information about candidates' backgrounds and *supply* the relevant information so that the voters are able to make informed choices in the voting booths, thus leading to meaningful elections. These groups can also play a *watchdog* role to ensure that everyone concerned adheres to the prevailing laws and thus performs their appropriate responsibilities.

This paper examines whether the civil society in Bangladesh played such a role during and prior to the national elections held last December to help achieve a democratic transition after nearly two years of rule by an unelected, military-backed CTG. It begins with a brief account of the breakdown of the electoral system of Bangladesh. It then reviews the state of civil society in Bangladesh and identifies SHUJAN as the primary (and almost lone) independent voice shaping the country's democratic transition. Next, the paper discusses the activities of civil society, led by SHUJAN, and how they, with the support of the media, created a *demand* for reform and change, provided a *supply* of reform ideas, and acted as a *watchdog* to ensure free, fair and meaningful elections. The paper concludes that Bangladesh's civil society played a critical role in the recent successful democratic transition. However, whether or not concrete steps for democratic consolidation follow the transition remains to be seen.

#### 1.0 Breakdown of the Electoral System of Bangladesh

Bangladesh was born out of a bloody war of liberation in 1971 which, by some estimates, claimed the lives of nearly three million people. Following independence, the country faced turbulent conditions with elected governments, one party rule and military dictators each taking turns at the helm. The most prolonged dictatorial rule was under the strongman General Ershad. Enabled by managed elections, Ershad remained in power until 1990 when he was deposed by a popular mass upsurge. This was followed by free and fair national elections held in 1991 under an interim government, leading to the reintroduction of the parliamentary system of government in Bangladesh.

The 1991 elections were free and fair due to several important reasons, namely: (1) The interim government was widely recognized as being neutral, consequently the state apparatuses, including the bureaucracy and law enforcement agencies, showed no political bias. (2) The EC was non-partisan. (3) In the process of overthrowing Ershad's autocratic regime, popular demand was created for free and fair elections and a peaceful democratic transition. (4) Elections were vigorously competitive. (5) Major political parties (namely, three alliances) signed a *Joint Declaration* and made a prior public commitment to abide by a "code of conduct" formulated for the purpose of free and fair elections. (6) The influence of money and muscle was largely absent from the electoral process.<sup>38</sup>

The next two national elections – in 1996 and 2001 – were subsequently held under a constitutionally mandated CTG. Although the conditions were less than ideal and allegations of rigging were raised by defeated parties, those elections were also

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<sup>38</sup> Badiul Alam Majumdar, "Elections and the Future of Democracy," *The Daily Star*, August 29, 2006.

considered to be reasonably free and fair. However, despite these periodic and vigorously competitive elections, democracy failed to establish deep roots in Bangladesh and continued to remain an illusive goal. In fact, the situation eventually deteriorated to the point that the whole electoral system collapsed with the promulgation of a state of emergency by the President in January 2007 and the subsequent cancellation of the national elections scheduled for January 22, 2007.

Many reasons account for the lack of democratic consolidation in Bangladesh. One problem is that democracy has become a one-day, “winner-take-all,” zero-sum game in our country with “elections” becoming synonymous with “democracy.” Such a reality fails to acknowledge that elections are only one component of democracy – one that transfers state powers through the consent of the people rather than by violent means. It is rather a procedural aspect of handing over power. Other vital components of democracy include: the rule of law; an effective parliament; transparent and accountable governmental actions; decentralized governance for effective service delivery; meaningful citizen participation; inclusiveness and social justice; respect for human rights; strong institution of checks and balances; democratic and transparent political parties; upholding democratic norms and values etc.

Unfortunately, the successive elected governments in Bangladesh since 1991 have failed to pursue these democratic practices with sincerity and vigilance. They have also failed to implement the commitments made by the *Joint Declaration* of the three alliances.<sup>39</sup> Consequently, Bangladesh has come to practice a system of “one-day-democracy”<sup>40</sup> with hegemonic control by the ruling party over state power and resources – a sort of a democratic charade which is more a slogan than a true practice of democratic rules and norms. It goes without saying that democracy is a rule-based system that encompasses rules to rule and rules to hold the rulers to account.

The democratic deficits of successive elected governments of Bangladesh became so flagrant over the years that the whole system came to be characterized by a kind of kleptomania, reflected in almost uncontrolled graft and corruption. Such

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<sup>39</sup> In 1990, the alliance of Awami League, BNP, Left parties, and their allies signed a historic *Joint Declaration* for the future democratic dispensation. The declaration, circulated on November 29, 1990, contained ten items under four categories. They included demands for a neutral interim government, a code of conduct to ensure free and fair elections, and some specific commitments for long-term reforms by the elected government. The commitments included the creation of an elected Parliament and ensuring the accountability of the executives to it. The alliance also committed to ensuring the rule of law and the independence of the judiciary, thus ensuring a system of checks and balances. In addition, the alliance committed to the repealing of all laws which violated fundamental rights. Most importantly, the alliance’s commitment included renouncing the idea of removing any elected government through unconstitutional or extra-constitutional means or/by any excuse other than through elections. Undoubtedly these were bold and wise commitments to usher in a democratic transition. Badiul Alam Majumdar, “Betrayal and Consequences,” *Forum* (a publication of *The Daily Star*), December 2007.

<sup>40</sup> Badiul Alam Majumdar, “Eakdinar Gonatontro,” *The Daily Jugantor*, February 27, 2003.

degeneration meant that winning national elections gave the victors a “lease” to plunder both state and privately owned resources for themselves and their cronies for the next five years. Thus, a system of “lootocracy” emerged. The all-out and increasingly violent confrontational politics of Bangladesh of the last decade and a half is deeply rooted in a competition for this “right to loot.” To perpetuate this “right” through generations, the last Four Party Alliance government indulged in blatant manipulation, including: changing the retirement age of the Supreme Court Justices; making partisan appointments to the Election Commission, and subverting the constitutional process to appoint a partisan President as the Chief Adviser of the CTG etc., in order to win elections to the ninth Parliament. It must also be noted that, in a “lootocracy,” the rich and privileged benefit at the cost of the poor and the disadvantaged, and thus hunger and poverty persist. Such deliberate mischief made the system unsustainable, pushing it to its brink and ultimately to collapse. The events of January 11, 2007 and two years of rule by an unelected government were the result.

## 2.0 Civil Society in Bangladesh

In order to examine the role of the civil society in Bangladesh’s democratic transition, it is important to define what is meant by the term. However, defining civil society is a daunting task as the literature, although burgeoning, is full of many approaches and viewpoints. The concept of *societas civilis* is thought to have been first applied by Cicero in Rome to mean a “good society” ensuring peace and order among the people. At the time, no distinction was made between the state and society; rather, it was believed that the state represented the civil form of society and that “civility” was the requirement of good citizenship.<sup>41</sup>

Following the advent of the modern state (as created by the Treaty of Westphalia in 1684), civil society has come to be viewed as the “third sector,” distinct from government and business.<sup>42</sup> Civil society organizations are now sometimes called “intermediary institutions” and include NGOs, community and social groups, professional associations, trade unions, self-help groups, social and political movements, advocacy groups and the like. Although distinct from government and business sectors, civil society’s role is intimately linked to the roles, responsibilities and accountabilities of the nation-state and the profit-making entities. In fact, civil society actors are often viewed as countervailing forces in a society.

Although the concept is at times confusing, several essential characteristics of civil society organizations emerge from the literature: (1) They are voluntary, self-generating and at least partially self-supporting. (2) They are engaged in citizen-directed collective action towards a worthy purpose. (These two characteristics obviously rule out the inclusion in civil society of organizations which are not home grown.) (3) The purpose of such organizations reflects a set of core values, such as honesty, neutrality, and public interest, to the exclusion of private gain. (Thus, partisan organizations or organizations with “uncivil” purposes, such as organized crime networks, are excluded from civil society. In addition, organizations with no moral

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<sup>41</sup> [www.en.wikipedia.org/wiki/Civil\\_society](http://www.en.wikipedia.org/wiki/Civil_society)

<sup>42</sup> [www.civilsoc.org.whatisCS.htm](http://www.civilsoc.org.whatisCS.htm)

foundation or those who fail to speak out for truth and justice, perhaps because of fear of recrimination, can hardly be called civil society.) (4) Civil society organizations are not for profit. As a result, corporate NGOs are often not included in the definition of civil society. (5) Civil society organizations are neither government nor family entities, although the scrutiny of government and business activities is part of their business.

In light of these characteristics, the space of civil society in Bangladesh is very limited and has become even more so over the years. Thanks to the extreme partisan policies of the successive elected governments since 1990, professional groups such as doctors, lawyers, teachers, journalists, artists etc. have become divided into warring camps based on affiliations, direct or indirect, to major political parties. Instruments used to achieve such divisions include appointments, promotions and other forms of rewards and punishments in various fields based on partisan considerations. These are, of course, in addition to the distribution of spoils. Over the years, an elaborate patronage chain has also emerged in Bangladesh to ensure continued party loyalty. In fact, today the “cost” of remaining neutral in Bangladesh has become so high that it means forfeiting rightful entitlements. In addition, neutral persons are sometimes intimidated, harassed and ridiculed. They are accused of hatching conspiracies, demeaning the image of the country, and even injuring the national self-esteem. They are at times advised to stay away from meddling in politics. “Give the dog a bad name before hanging it” is also a usual practice in Bangladesh. Thus, the term “civil society” has become quite controversial in Bangladesh, and some people prefer to call it the “citizens group.”

The legitimacy of NGOs, as civil society actors in Bangladesh, is also highly problematic. Most of our NGOs are *service delivery* types. Only a limited number of NGOs take on an *advocacy* role, that is advocating for human rights, inclusiveness, social justice, clean politics, transparency and accountability. Many of these organizations are also partisan. A large number of *service delivery* NGOs, on the other hand, engage in micro-credit, thus playing the role of “bankers.” Many other *service delivery* NGOs function like mercenaries and initiate activities based on the availability of funding instead of pursuing their own priorities. Such NGOs are neither self-generating nor even partially self-sustaining, and they generally shy away from taking positions critical of public authorities – even at the cost of sacrificing public interest. Many of them are also either aligned with political parties or are direct creations of political forces. Our largest NGOs are largely corporate entities. Thus, including most of the NGOs of Bangladesh into the civil society fold is problematic. They could at best be characterized as a kind of “benign” civil society, as opposed to the “pro-active” type.

The “pro-active” type of civil society seeks to keep the state, which has a monopoly on the use of coercive power, “civil,” non-intrusive and non-arbitrary.<sup>43</sup> The goal is to keep government as well as businesses honest, and their policies and activities transparent and pro-people. Such civil society groups must make efforts to inform the people of their rights, help them achieve those rights, and also fight for

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<sup>43</sup> Badiul Alam Majumdar, “Civil Society: Concept and Role,” *The Daily Star*, March 6, 2006.

clean politics and good governance. Unfortunately, there is a great dearth of such organizations in Bangladesh. Shushashoner Jonno Nagorik, or “Citizens for Good Governance” – known as SHUJAN– is an exception. Founded in 2002, SHUJAN has become a significant actor in shaping the activities of civil society in Bangladesh. This paper largely focuses on the activities of SHUJAN (an organization which takes no donor support) and how it paved the way for a democratic transition through the national elections of last December.

Other than SHUJAN, there are few non-partisan groups in Bangladesh that played a significant role in the recent democratic transition. Transparency International Bangladesh (TIB) is one such organization, although its main focus has been to diagnose and highlight corruption in various sectors of society. TIB has also carried out studies demonstrating the influence of money on elections. In addition, it highlighted both the inherent strengths and weaknesses in the functioning of the EC and Parliament. Furthermore, TIB worked with SHUJAN to disseminate the information disclosed by candidates running for Parliament. However, TIB’s most significant contribution was in demonstrating that thievery and corruption had become the order of the day in Bangladesh, an issue which ultimately became a major focus of the recent elections.

Another important civil society organization in Bangladesh was the “Nagorik Committee,” although it has been inactive since mid 2007. In March 2006, a partnership of the Center for Policy Dialogue (CPD), *The Prothom Alo*, *The Daily Star* and *Channel-i* launched a clean candidate campaign around the country to delineate “the role of civil society in accountable development efforts” and a “Nagorik Committee” was formed with a group of the most distinguished citizens of the country. The Committee held 15 “Citizens’ Dialogues” in different locations and received widespread media coverage, giving a much needed boost to the demand for clean politics.<sup>44</sup>

### 2.1 Media Partnership with Civil Society

Fortunately, in the last few years, SHUJAN and other civil society organizations have found a most willing ally in the media. Although made up of profit-making entities, the Bangladeshi media has been playing an increasingly significant role in articulating ideas for reform and mobilizing public opinion for change. They have been giving voice to citizens from all walks of life. Despite the corrupting influence of money and partisan ownership, the Bangladeshi media, with a few exceptions, has proven to be an effective partner to civil society in the last few years. In fact, the media and the limited number of civil society organizations, especially SHUJAN, worked shoulder to shoulder to generate public demand for reform, including a demand for clean candidates.

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<sup>44</sup> The Election Working Group (EWG), consisting of 32 organizations, with the support of The Asia Foundation, also carried out election-day observations of the national elections, although because of the strong presence of the armed forces at the time of elections and the peaceful atmosphere prevailing during the poll hours, their observations carried less importance this time. Nevertheless, they had role in making the recent parliament elections free and fair. In addition, EWG carried out a limited voter awareness campaign to motivate voters to enroll.

One reason for this positive role of the media is competition. In the last few years, more than half a dozen private satellite television channels entered the market in Bangladesh, all of which had to scramble for content to fill the airwaves. In addition, some private FM radio stations entered the market in recent years. They had to design new programs and initiatives. The print media also faced intense competition over the last few years due to some prominent entries into the market using the financial backing of large corporate houses. Such competition forced all newspapers to look for new content and to pursue their own niches.

The almost unhindered freedom that the media of Bangladesh has enjoyed over the years has allowed it to experiment with new types of programming and content. Experiments included in-depth coverage of issue-based seminars and roundtable meetings. They also carried out campaigns on social and political issues, sometimes in partnership with civil society organizations, such as the clean candidate campaign. Thus, in Bangladesh media activism has become an important phenomenon over the last few years.

### 3.0 Civil Society Interventions and Interactions

One of the first significant civil society interventions for the purpose of creating mass awareness on electoral issues occurred in 2002 when a group of concerned citizens formed the “Citizens for Fair Elections” (CFE) with the intent to help elect clean candidates in the forthcoming Union Parishad (UP) elections. Based on consultations with groups of voters, CFE developed a questionnaire to seek information from candidates contesting the UP elections. This information included background on the candidates’ education, professions, income, criminal records, assets and liabilities. Using this questionnaire, CFE volunteers collected information from UP chairmen candidates and were able to prepare candidate profiles, which they turned into posters and leaflets for distribution among voters. The volunteers then arranged “Candidate-Voter Face-to-Face” meetings, i.e., candidate forums, where contesting candidates had a chance to present their election “manifestos” and voters had the opportunity to ask questions. Despite warnings from well-wishers that seeking such information would put the volunteers’ safety at risk, the exercise was successfully carried out in 55 UPs, and the work received a great deal of acclaim from various quarters. A subsequent survey also showed that a significant proportion of voters changed their voting decisions based on the information they received. The same exercise was subsequently conducted in several *Paurashava* and parliamentary by-elections.<sup>45</sup>

Another far-reaching initiative toward creating mass awareness was the launching of a campaign for political reform in Bangladesh in September 2004. It was launched jointly by SHUJAN (which is the new name for CFE) and *The Daily Star*. Later, *The Prothom Alo* joined the campaign and, in a subsequent joint roundtable discussion held in April 2005, a comprehensive reform package was made public. The package included detailed proposals to reform the electoral process, the Election Commission

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<sup>45</sup>Muzaffer Ahmed and Badiul Alam Majumdar, “Shath O Joyggo Bakti Nirnoyar Lokha Thothovithik Voter Khomotayan,” *The Prothom Alo*, May 5, 2004; and Badiul Alam Majumdar, “Paurashava Elections: Finding Honest and Competent Candidates,” *The Bangladesh Observer*, May 7, 2004.

and political parties, and also included a requirement for all candidates to disclose their antecedents. Subsequently, similar roundtable discussions and workshops on reform issues were held all over the country, and have continued over the years. Rallies, courtyard meetings and human chains in support of such reforms were also held throughout the country. In addition, SHUJAN launched unique initiatives like “Election Olympiad” and “Electoral Debates” in 2006, abridged versions of which were televised by *Channel-i* as part of its public service program. All these initiatives helped identify important electoral issues, which were then highlighted by the media, thus leading to public education and awareness and consequently a movement for reform.

In Bangladesh, there have been systematic efforts over the years to “criminalize” politics and “politicize” crime. Therefore, a major challenge in the process of democratic transition and consolidation has been to keep those who are engaged in such undesirable activities away from the electoral arena. One milestone event in this direction was the High Court judgment of 2005, in response to a writ petition filed by a group of lawyers, which required candidates for Parliamentary elections to disclose personal and financial information about themselves and their families.<sup>46</sup> Subsequently, a fraudulent appeal was filed against the judgment on behalf of an imposter named Abu Safa. SHUJAN unearthed the fraud and brought it to the attention of the Court, and, after much drama in the highest judiciary,<sup>47</sup> the judgment was upheld in early 2007.<sup>48</sup> The Court proceedings invited much publicity, which created mass awareness and a strong demand for clean and competent candidates.

Following the initial Court judgment, efforts were made by SHUJAN volunteers to implement it in five by-elections held in 2005-06, despite non-cooperation from the

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<sup>46</sup> *Abdul Momen Chowdhury and others vs. Bangladesh*, Writ Petition No. 2561/2005. The High Court directed the EC to collect, in the form of affidavits from candidates, information about their educational qualifications, profession, sources of income, past and present criminal records, assets and liabilities of themselves and their families. The Court further directed the EC to disseminate this information to voters using the mass media.

<sup>47</sup> For example, the Appellate Division of the Bangladesh Supreme Court had to recall, in response to vigorous protests, its judgment overturning the High Court decision within a couple of hours. Another example of the drama was that the lawyer for the appellant could not produce him before the Court when asked to do by the Appellate Division. Still another dramatic incident occurred when, through a one-sided hearing in absence of the original petitioners, the Chamber Judge of the vacation bench of the Supreme Court stayed the requirement of submitting affidavits by candidates with their nomination papers just two days before filing the nominations.

<sup>48</sup> See Badiul Alam Majumdar, “Protarak Dara Shorbucha Adalat Protarito,” *The Prothom Alo*, December 30, 2006; and Badiul Alam Majumdar, “Jaliyati Rodher Mamlai Podhay Podhay Jaliyati,” *The Prothom Alo*, February 15, 2007. Reprinted in *Ganatantra, Nirbachan O Shushasha* (Dhaka: Agami Prokashoni, 2009). Also see Badiul Alam Majumdar, “Highest Judiciary Victim of a Blatant Fraud,” *The Daily Star*, January 5, 2007; “Blatant Fraud at the Highest Court,” *The Daily Star*, February 11, 2007; and “My Lord, We Beg You to Act,” *The Daily Star*, August 22, 2007.

EC led by Justice M.A. Aziz. Summaries of affidavits submitted by the candidates were distributed to voters by SHUJAN volunteers and “Candidate-Voter Face-to-Face” meetings were arranged in three constituencies. These activities, after much persuasion, received significant media attention, contributing to greater support for such disclosures as a means of identifying clean candidates and sidelining tainted ones. In the course of these initiatives, it may be noted, SHUJAN units cropped up in many parts of the country, and the organization became a platform for those who wanted to change the status quo and were willing to work towards that goal.

Another watershed event in creating public awareness for reform and change was the fiasco involving the electoral roll. It may be recalled that, after the reconstitution of the EC with Justice Aziz as the Chief Election Commissioner (CEC) in May 2005, the EC prepared a fresh electoral roll with more than 90 million voters. The authenticity of the electoral roll and the manner in which it was prepared generated considerable controversy. The matter was ultimately brought before the High Court for adjudication. SHUJAN prepared a database of the entire electoral roll and uploaded it on its website, [www.shujan.org](http://www.shujan.org), and, in the process, helped bring to light its many inaccuracies. The drama surrounding the electoral roll caused a media uproar leading to widespread voter outrage. A coalition of four organizations, headed by BROTEE, also carried out a study and pointed out the errors in the electoral roll. SHUJAN’s massive efforts of posting millions of names were reported in *Time* magazine<sup>49</sup>, and this initiative ultimately paved the way for a permanent electoral roll with photographs, an idea for which SHUJAN created popular support.

After the second Caretaker Government took over in January 2007, SHUJAN submitted to the government as well as to the EC a draft *Representation of the People Order*, which incorporated its reform ideas, and focused then its attention to mobilizing public support for reform. These efforts gave new impetus to the movement for change that was already underway. It should be noted that a big breakthrough in public opinion came with a news conference held by the Awami League President Sheikh Hasina on behalf of the Fourteen Party Alliance in July 2005, in which she proposed a unified outline for reforming the Caretaker Government, the Election Commission and the electoral process to ensure free and impartial elections – issues that had already been identified and put forward by SHUJAN. This reform movement received a further boost in November 2005 with the Awami League led Grand Alliance’s

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<sup>49</sup> Simon Robinson, “Can Web Poll Prevent a Rigged Election?” *Time*, December 26, 2006.

declaration at a mammoth public gathering of a 23-point “unified minimum program.”<sup>50</sup>

Strengthening local government is another issue which has received considerable media attention and galvanized popular support for reform in recent years. A large number of academics, thoughtful citizens and organizations like The Hunger Project have advocated reforms to strengthen our local government system for a long time. In June 2007, the CTG, primarily due to the advocacy of SHUJAN, formed a “Committee to Revitalize and Strengthen Local Government” – of which this author was a member. Based on nearly two dozen consultations with the stakeholders, the Committee recommended sweeping changes in the local government system. At that time, several roundtable meetings were also organized by SHUJAN, The Hunger Project, Governance Coalition, and Democracy Watch. These events, covered extensively by the media, elevated the demand for local government elections to a major national issue in order to fulfill the constitutional commitment, per Articles 11 and 59 of the Bangladesh Constitution, to have elected local bodies at each administrative unit.

As per the roadmap established by the EC, the first round of local elections – four City Corporations and nine Paurashavas – were held in August 4, 2008. These elections essentially served as a dress rehearsal for the coming national elections. Prior to the elections, SHUJAN volunteers arranged dialogues offering citizens the opportunity to voice their opinions regarding the kind of candidates they were willing to elect. During the elections, the volunteers collected copies of affidavits submitted by candidates in local elections, then went on to create candidate profiles and prepare leaflets with those profiles – profiles that were distributed among voters to help them make informed choices. In addition, SHUJAN arranged Candidate-Voter Face-to-Face meetings in all 13 City Corporations and Paurashavas where elections were held. BBC and Bangladesh Television, in partnership with the Election Commission, also arranged debates among mayoral candidates of four city corporations. Furthermore, the candidate profiles were released to the media by SHUJAN and were posted on SHUJAN’s website. SHUJAN also put pressure on the EC – by holding news conferences, for example – to ensure the full implementation of the reforms incorporated into law. Thus, SHUJAN volunteers played an effective watchdog role during this first round of local elections.

Another important civil society initiative was launched by the Sector Commanders’ Forum in 1997. This initiative, which called for the trial of war criminals, caught the imagination of many citizens and was quickly supported on by many citizen groups. In fact, thanks to widespread media coverage, the call for war criminal trials was on the lips of many voters by election time.

On the eve of the ninth Parliament elections held on December 29, 2008, a major initiative by SHUJAN attracted considerable media attention. SHUJAN volunteers collected the affidavits and tax returns, as applicable, of all 1566 contestants. They then prepared candidate profiles and distributed them throughout 299 of the 300

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<sup>50</sup> For a brief history, see Badiul Alam Majumdar, “Is Misgiving about EC’s Proposed Dialogue Justified?” September 10, 2007.

constituencies (the election in one constituency was postponed because of the death of a candidate). Leaflets and posters were distributed, urging voters not to vote for candidates with tainted backgrounds. Several news briefings were held to bring candidate profiles to public attention. The profiles were also posted on the website: [www.votebd.org](http://www.votebd.org), which was widely visited by journalists and other interested stakeholders. In addition, the website included an archive of over 5,000 stories covering the criminal activities of political personalities as reported in major national dailies. The media widely distributed this information, highlighting the criminal records, educational qualifications, financial background etc. of the candidates. Some enterprising journalists even launched investigative reports based on the information compiled and made public by SHUJAN. These media stories and reports during the December elections helped many voters make informed decisions.

In its watchdog role, SHUJAN volunteers also arranged “Candidate-Voter Face-to-Face” meetings in 87 constituencies throughout the country, some in partnership with CCC (Committee of Concerned Citizens) formed by TIB and Durniti Protirodh Committee (Corruption Prevention Committee) formed by the Anti-Corruption Commission. As part of these events, candidates signed a declaration promising, among other things: to refrain from corruption and hooliganism; to disclose assets and liabilities each year, and not to interfere in the affairs of local government etc. The most significant aspect of these meetings is that attending voters took oaths themselves to vote for “candidates who are honest, competent and committed to public service.” They also swore to “not sell their vote for money” nor vote for those who are “corrupt, hooligans, toll collectors, liars, war criminals, abusers of women, drug sellers, smugglers, convicted criminals, loan defaulters, bill defaulters, religious fanatics, land grabbers, black money owners.” Many voters were deeply moved as they pronounced the words contained in the oath.

SHUJAN volunteers developed two other tools for its awareness campaign prior to the elections. They developed a video entitled: “Vote: For Whom?” which was shown throughout the country. They also developed “Awakening through Songs” – a package of songs articulating the relevant issues. These songs were used by many SHUJAN units around the country and were quite effective in creating voter awareness. Some SHUJAN units arranged cultural events during both local and national elections for creating voter education.

Due to intense competition, the electronic media also launched some unique initiatives of their own over the last few years. These include “Tritiyo Matra” and other free-flowing discussions on various issues using formats like the “BBC Sanglap,” all of which gained large viewership. In fact, watching talk-shows and similar discussion-based shows covering various issues has become a favorite pastime for many citizens. Even Bangladesh Betar and Bangladesh Television entered the foray during the Caretaker Government. BTV not only aired talk-shows but also allowed programs like “Janatar Katha,” which contained candid voices of the citizens.

In addition, the innumerable number of post-editorials and articles regarding electoral reform issues published in major newspapers and magazines in the last few years have made a significant contribution towards creating public demand for change. When SHUJAN started putting forward reform ideas in 2002-03, the media published almost no post-editorials on relevant issues. To fill this void, this author

became a newspaper columnist and, over the years, wrote several hundred articles in major dailies articulating almost every reform issue. Other concerned citizens were also encouraged to write columns and were assisted by SHUJAN with relevant materials.

#### 4.0 Impact of Civil Society Interventions

It is clear that civil society, led by SHUJAN, initiated many interventions prior to and during the recent national elections of Bangladesh. What was the impact of these interventions, if any?

One of the most visible impacts of SHUJAN's efforts could be seen in its contribution to public awareness and education, which has led to popular support for various reforms and change. Prior to the Parliament elections, a large number of print and electronic media journalists went all over the country interviewing many citizens from all walks of life. A remarkable feature of these interviews is that almost all those asked about the elections stated unequivocally that they would vote only for clean candidates. More specifically, they would not vote for anyone who was not honest, competent and dedicated to public service, and, if necessary, they would cast negative votes. A large number of citizens also forcefully stated that they would vote against religious extremists and war criminals. They would support only those who sought a change in the status quo. This was the sentiment of a large segment of our citizenry, irrespective of age, education, location and social standing – which ranged from uneducated housewives in distant villages to urban elites.

This level of voter assertiveness, it must be noted, was visibly absent even a few years ago. Issues such as corruption, clean candidates, war crimes, etc. did not become pivotal talking points in the elections until recent years. Past elections were essentially fought on the basis of slogans and personality cults. In fact, until recently, most citizens, except the diehard supporters of political parties, were resigned to the status quo. Many of them felt that their views and opinions did not matter and that they themselves did not count. Unfortunately, such a dejected attitude became a growing phenomenon over the years. However, this trend was clearly reversed during the recent elections, as reflected in significant increases in voter assertiveness and participation. Available statistics show that the voting rate was 55% in 1991, 76% in 1996 and 2001, and rose to over 87% in 2008.

Based on the reports of all national and international observers, the Parliamentary elections held last December were free and fair. A recent survey by the Institute of Governance Studies found that 82 percent of respondents felt that the Parliament elections were completely free and fair.<sup>51</sup>

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Institute of Governance Studies, *The State of Governance in Bangladesh 2008: Confrontation, Competition, Competition and Accountability* (BRAC University, 2009), p. 106.

Civil Society Initiatives	Media Coverage	Awareness
<p>During UP/Paurashava elections</p> <p>Campaign for political reform</p> <p>Campaign for strengthening local government</p> <p>Legal battle for disclosures</p> <p>Legal battle re: electoral roll</p> <p>Clean candidate campaign by Nagorik Committee</p> <p>Citizens' Dialogue/Candidate-Voter Face-to-Face Meetings and distribution of candidate profiles during local elections</p> <p>Citizens' Dialogue/Candidate-Voter Face-to-Face Meetings and distribution of candidate profiles during Parliament elections</p> <p>"Vote: For Whom?" video</p> <p>Election Olympiad/Election debates</p> <p>Awakening through songs and cultural activities</p> <p>Courtyard meetings, marches, human chains</p>	<p>Issue-based roundtables/ debates/ election olympiads, etc.</p> <p>Citizens' dialogues</p> <p>Candidate profiles</p> <p>EC dialogues</p> <p>Highlighting inaccuracies in the electoral roll</p> <p>Hosting talk shows</p>	<p>In favor of honest, clean and competent candidates</p> <p>In favor of reforming the electoral process and its institutions</p> <p>In support of strong local government</p> <p>In support of negative voting</p> <p>Against hooliganism</p> <p>Against vote buying</p> <p>Against religious extremists/war criminals</p> <p>Against corruption</p>

Similarly, 93 percent of the respondents of an exit poll from 150 polling centers by the International Republican Institute (IRI) considered the election environment as

very good.<sup>52</sup> The reform of electoral laws, strengthening of the EC, creation of a reliable electoral roll, delimitation of constituencies, compulsory registration of political parties, and disclosure of candidates' antecedents all played significant roles in making the elections free and fair. Bangladesh's civil society, particularly SHUJAN, was the source of most, if not all, these reform ideas and was also instrumental in mobilizing citizens and creating public demand for the implementation of reforms with support from the media. In addition, SHUJAN volunteers collected and disseminated the information disclosed by candidates in the form of affidavits to help the voters make informed decisions. Thus, civil society's contributions to holding free and fair Parliamentary elections – which is the prerequisite for a democratic transition – were very significant and cannot be overlooked.

Were the elections meaningful? Has there been a significant change in the quality of our elected representatives? The answer is a qualified yes.<sup>53</sup> Because of reforms, many undesirable individuals were kept out of the electoral arena. However, through the interventions of the higher judiciary, some such candidates were allowed to contest and be elected. Still, because of the disclosure requirements instituted through the advocacy of civil society, especially SHUJAN, and SHUJAN volunteers' bold initiative to make the disclosed antecedents of candidates available to voters, many of the Old Guard with tainted backgrounds lost their elections. In fact, the ninth Parliament witnessed the largest influx of new faces ever. Based on available information, of the 293 persons elected from 299 seats (Sheikh Hasina, Khaleda Zia and General Ershad each won in three seats) on December 29, 2008, 163 (56 percent) of them were elected to the Parliament for the first time. These new MPs are also better educated than their predecessors. In addition, a record number of women – 19 from 23 seats – were directly elected to Parliament.

On the other hand, many controversial persons with past and present criminal records were elected, despite SHUJAN's efforts to track party nominations and expose the backgrounds of nominated candidates. Furthermore, no significant dent could be made to reduce the influence of money on the electoral process. While SHUJAN and other civil society organizations can claim credit for the watchdog role they played, it will take far more aggressive efforts on the part of all concerned, especially the EC and the main political parties, to keep undesirable elements from election contests in the future.

Obviously many voters were impacted and their voting decisions influenced through the interventions of civil society and the media coverage of those interventions. But, who are these voters? What are their identities?

Some simple arithmetic can be used to identify the segment of voters most influenced by the civil society interventions. According to knowledgeable observers, nearly a third of all voters are supporters of Awami League, and a slightly lower

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<sup>52</sup><http://www.iri.org/pdfs/2009%20January%206%20Exit%20Poll%20Bangladesh%20Parliamentary%20Elections,%20December%2029,%202008.pdf>

<sup>53</sup> In the Institute of Governance Studies survey, half of the respondents agreed that the CTG's efforts to reform the legal electoral framework could prevent the participation of corrupt politicians in elections, while 28 percent somewhat agreed with the statement. *The State of Governance in Bangladesh 2008*, p. 107.

percentage has a similar allegiance to the BNP. Other parties, including Jatiyo Party and Jamaat-e-Islami, account for the support of roughly another 15 percent of voters. Thus, between 20-25 percent of voters, many of whom are young, are not loyal to any political party. During the recent Parliamentary elections, the issues articulated by civil society, especially SHUJAN, and publicized by the media found expression in this segment of voters, and they gave the Grand Alliance, which promised change, a thumping victory. This support, it must be noted, may disappear if the government fails to deliver on its promises.

### 5.0 Conclusions

Democratic transition requires not only elections for peaceful transfer of power, but also free, fair and meaningful elections. Based on the evidence presented above, it is clear that free, fair and peaceful elections to the ninth Parliament were held last December, paving the way for a democratic transition. Reform of the electoral process, a reliable electoral roll, the independence and strengthening of the Election Commission, the delimitation of constituencies, and the compulsory registration of political parties contributed to this outcome. Pushing for the disclosure of antecedents by candidates and disseminating the information thus disclosed enabled the voters to make informed choices, which also contributed to this result.

Elements of civil society, particularly SHUJAN, have vehemently demanded these changes for the past few years; they have presented proposals and created public opinion in support of the changes, and have mobilized citizen groups for activism and engagement. Furthermore, the media has given expression to these reform ideas and publicized the information disclosed by candidates and distributed by SHUJAN volunteers. In this way, the ideas and information originating in a few civil society institutions have become the voices and aspirations of the people. Thus, the *supply* of reform ideas and the dissemination of information disclosed by candidates created their own *demand* – a classic illustration of what is known as Say’s Law.<sup>54</sup> The Grand Alliance, led by Awami League, embraced most of those ideas in their election manifesto entitled the “Charter for Change,” and was able to attract widespread popular support to gain a lopsided electoral majority. Thus, civil society has clearly played a significant role in our recent democratic transition. It may be noted that SHUJAN is not a donor funded organization and all its work was done by volunteers with little or no costs.

Although the recent elections were free and fair, they were not meaningful enough to completely bring about a much needed change in the quality and competence of our elected officials. The disclosure requirements mandated by the Court in response to demands by citizen groups, combined with SHUJAN’s watchdog role in bringing candidates’ antecedents to the attention of voters, prevented many of the tainted candidates from contesting. However, despite these efforts, many controversial persons slipped through the cracks and are now in Parliament. This obviously poses a risk for future democratic consolidation. Also posing serious risks to such consolidation are: the prospect of legitimization of arbitrary action by the

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<sup>54</sup> Say’s Law is an economic proposition, attributed to French economist Jean-Baptiste Say, which states that in a market economy, the supply of goods and services, by creating an equivalent amount of income, creates their own demand.

ruling party with a thumping majority; the rise of religious extremism; dynastic politics; politics of confrontation; use of public office for private gain; influence of money in elections; lack of willingness to undertake both systemic and institutional reforms, and the syndicate-like behavior of political parties, etc. Additionally, poverty and illiteracy are major impediments to the long-term sustainability of democracy in Bangladesh. Thus, whether or not democracy will take deep roots in Bangladesh will depend on whether further reforms are attempted and implemented with earnestness and sincerity by the EC and the major political parties. It will also depend on whether a democratic culture can be created in the country. Furthermore, it will depend on whether tainted individuals can be kept out of the electoral arena in the future. Lastly, it will depend on the freedom of civil society to function and to assume the much-needed, critical role of watchdog and pressure group in the coming days.

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## CHAPTER FIVE: POVERTY ERADICATION

### An Alternative poverty reduction strategy: Making people the principal authors of their own future

The government has recently prepared its Interim Poverty Reduction Strategy Paper (I-PRSP) to provide "a well-prioritized national strategy for poverty reduction, human development and gender equality." However, for Bangladesh truly to reduce poverty and promote human development and gender equality, we need an alternative national strategy which will harness the leadership and creative potential of our people – the most important resource of our country. We propose a people-centred development approach, where people themselves will be the primary actors for eradicating hunger and poverty, and other entities, including the government and non-government organizations, will be in supporting roles.

A people-centred development strategy calls for mobilizing the efforts of the people, their elected local representatives and the central government. For poverty to be eradicated and prosperity achieved, grassroots people – especially those who live in poverty and are disadvantaged – must be empowered to take responsibility for their own future. Women must be guaranteed equal opportunity to participate. Local government institutions must empower, mobilize and prepare them to do so. The role of the government is to provide essential resources and services for creating an enabling environment so that the people can succeed in becoming the principal

authors of their own future. The people-centred development approach obviously requires a paradigm shift – a shift from the entrenched mentality that development is basically a bureaucratic responsibility.

Why an alternative?

Many experts, civil society groups and stakeholders are highly critical of the draft I-PRSP. They are critical not only of the preparatory process of the document and its ownership, but also of its contents. Even though the consultative process of the draft I-PRSP was hasty and incomplete, the voice of the people came through loud and clear. The recommendations in the draft I-PRSP, however, largely ignore the consensus of the people expressed during those consultations. Consequently, the draft I-PRSP has bundled together a bottom-up, people-centred consensus with a top-down, traditional programmatic approach that would merely perpetuate the status quo.

Weakness of current I-PRSP: Reliance on macroeconomic policy

The greatest weakness of the current I-PRSP is that it reaffirms and rests on the belief that proper macroeconomic policies lead to poverty reduction. The assumption of the proposed I-PRSP is that correctly designed macroeconomic fundamentals stimulate strong GDP growth, which contributes to increased employment and in turn to poverty eradication. The worldwide experience of the past 30 years has shown this to be false – increased GDP has not led to a significant reduction of poverty. In a society where large sections of the population live in poverty because of entrenched structural problems, this framework is totally inappropriate. Only microeconomic improvements – that is, only better incomes and enhanced human development for each individual family – result in broad-based economic progress, which in turn results in broad-based GDP growth.

While it is important that the government creates a sound macroeconomic environment to promote investment and avoid economic chaos, macroeconomic policy in reality has only indirect influence in a poverty reduction strategy. As such, placing major emphasis on macro policies puts the cart before the horse. Achieving a 7 per cent growth rate will not unleash the productivity and creativity of people in poverty. However, unleashing their productivity will definitely achieve a 7 per cent growth rate or better. In other words, “trickle down”, which has not worked in ending hunger and poverty in the past, is not an acceptable strategy for the people of Bangladesh. The alternative strategy must promote “production by the masses” along with mass production through increased investments.

Any poverty reduction strategy must reflect the vision and experiences of the people of Bangladesh – not the vision of a handful of development professionals or donors. The vision that underlies this alternative development strategy is a vision of well-nourished, well-educated, healthy rural workforce, in control of its own destiny. It is a vision of strong, accountable local democracy with reverence for the rule of law. It is a vision of a peaceful, equitable, secure and primarily rural Bangladeshi people earning far better incomes, while working in harmony and partnership with our natural environment.

Alternative strategy

Based on the The Hunger Project’s long experience of working with the rural people living in poverty and on broad-based consultations with various stakeholders, we propose a 7-point strategy of radical reforms designed to unleash the creativity,

productivity and responsibility of the impoverished in Bangladesh, and at the same time to create an enabling environment for ensuring their success.

The proposed strategy, following the ideas of Amartya Sen and others, emphasizes capabilities, entitlements, freedom and rights of individual agencies rather than the traditional approaches that focus primarily on income, growth and economic efficiency. The thrusts of the proposed strategy are as follows:

**Unleashing and empowering the people:** Experiences from Bangladesh and abroad clearly show that those who are in poverty must be unleashed and empowered and their capabilities enhanced so that they can become the principle authors of their own future in order to end hunger and poverty in a sustainable way. This will obviously require concrete initiatives to motivate and mobilize people and transform their mindsets of dependency and designation.

**Overcoming gender inequality:**

Women bear primary responsibility for health, education, nutrition and – increasingly, family income – yet are still systematically deprived of their basic rights of equal opportunities for health, education, nutrition and voice in decision making. There must be an increased recognition and investment in the vital and central role of women in the social, economic and political development of Bangladesh.

**Strong local democracy:**

Local government institutions, especially of the lowest echelon, must become the conduits for participatory democracy at the grassroots. They must be the focal point for empowering, mobilizing and transforming people for achieving lives free from hunger and poverty. Government resources, power authority and accountability must be transferred to locally accountable bodies to expand and meet the entitlements of individuals so that an enabling environment is created for them to succeed. Nongovernmental organizations also need to coordinate their work with such local bodies.

**Ensuring good governance:**

Governance is not a sideshow — it is in reality the anchor of all development activities. An environment that tolerates graft, corruption and hooliganism at all levels of government wastes resources, undermines good governance, and ultimately subverts the democratic process. Governance failures create a predatory environment and penalize those with lower means. Furthermore, a safe physical environment is a basic human right. Personal safety of individuals and security of their possessions and investments must be ensured and the rule of law established so that all Bangladeshis, especially those in poverty, can pursue their own future without fear or penalty.

**Equity and better income opportunities for people in poverty:**

Income inequality and inequalities of opportunities have been widening in our country over the years. The rich are getting increasingly richer, and are commanding a greater share of our national wealth. Thus, for a poverty-reduction strategy to be successful, a larger proportion of national resources must be channeled to people in poverty. They must also be given opportunities to earn more income. This can be achieved by giving them access to more training, reliable and universally available banking services, better flows of information and improved marketing opportunities.

**Better health, education and other essential services:**

Although Bangladesh over the years has improved in the area of human development, the expansion of opportunities for education, health and other social services has not actually translated into an expansion of capabilities and consequently rapid reduction of poverty. This is because of the deterioration of quality coinciding with expansion of facilities. To remedy this, local government institutions must be equipped with the resources, training, authority and accountability to ensure that the priority needs voiced by the people for better quality health, education and public safety – can be met and their capabilities expanded.

Better use of existing resources:

Self-reliant development requires a shift in mindset away from always looking for more external resources to a more appropriate and environmentally-sustainable use of indigenous natural resources. Poverty eradication also requires better use of existing physical facilities and resources – including ports, water resources and infrastructure. A land reform programme must be initiated in order to streamline the ownership and enhance agricultural productivity.

Conclusion

Eradicating poverty in Bangladesh can be achieved – but only through a radical restructuring of government machinery – a radical change in the prevailing mindset of the policymakers – and a radical reallocation of resources in order to make the people themselves the principal authors of their own future. Such a dramatic change requires a vigorous, broad-based participatory dialogue and committed leadership – leadership with clear vision and daunting courage.

*The Daily Star, December 27, 2002*

## Poverty reduction, Local Government and empowerment of the people: An alternative development strategy for Bangladesh

The government has recently prepared a document “‘Bangladesh: A National Strategy for Economic Growth and Poverty Reduction,” subsumed as I-PRSP, for providing a well prioritized national strategy for poverty reduction, human development and gender equality. Our purpose here is to outline an alternative poverty eradication strategy which we feel will be most appropriate for Bangladesh and will accurately reflect the experiences of our people. We propose a people- centered development approach where people themselves will be the primary actors for eradicating hunger and poverty and other entities including the government and non-government organizations will be in the supporting casts.

A people-centered development strategy calls for coordinated efforts between people, their elected local representatives and the government. In this approach the role of the people, especially those who are in poverty and are disadvantaged, will be to take responsibility for their own future and the local government institutions will empower, mobilize and prepare them to so. The role of the government in this approach will be to deliver good governance and provide essential resources and

services for creating an enabling environment so that the people can succeed in becoming the principal authors of their own future. The people-centered development approach obviously requires a paradigm shift: a shift from the entrenched mentality that development is basically a bureaucratic responsibility.

The starting point for an alternative poverty reduction strategy must be the realization that abject poverty is first and foremost a violation of human rights. The Universal Declaration of Human Rights includes: (Article 21) the right of all people to take part in government (Article 23) the right to work and gain just remuneration (Article 25) the right to health and well being (Article 26) the right to education.

Why this alternative?

Many experts, civil society groups and stakeholders are highly critical of the draft I-PRSP. They are critical not only of the Process of the Preparation of the document and its ownership, but also of its contents. Even though the consultative process of the draft I-PRSP was hasty and incomplete, the voice of the people came through loud and clear. The recommendations of the draft I-PRSP, however, largely ignore the consensus of the people expressed during those consultations (see chapter 3 of I PRSP). Consequently, the draft released in April 2002 has bundled together a bottom-up, people-centered consensus with a top-down traditional programmematic approach that we feel would merely perpetuate the status quo.

Eradicating poverty in Bangladesh can be achieved but only through a radical restructuring of government machinery, a radical change in the prevailing mindset of the policymakers and a radical reallocation of resources. Such a dramatic change requires a vigorous national dialogue and committed leadership. This paper outlining an alternative I-PRSP is designed to contribute to calling forth this dialogue and leadership.

The Vision of a Poverty Free Bangladesh

Any poverty reduction strategy must reflect the vision and experiences of the people of Bangladesh not the vision of a handful of development professionals or the donors.

The vision that underlies this alternative strategy is a vision of a well-nourished, well-educated, healthy rural workforce in control of its own destiny. It is a vision of strong local democracy and local self determination with reverence for the rule of law. It is vision of a peaceful and secure, largely rural Bangladeshi people earning far better wages, working in harmony and partnership with our blessed natural environment.

Relevance of Macroeconomic Policy:

The greatest failure of the current I-PRSP is that it reaffirms and rests on the belief that proper macroeconomic policies lead to poverty reduction. The assumption of the proposed I-PRSP is that correctly designed macroeconomic fundamentals stimulate strong GDP growth which contributes to increased employment and then to poverty eradication. The underlying assumption is that with a target set for the rate of poverty reduction – in this case, a very modest rate of 1.6 per year – the required growth rate of GDP is calculated by taking into consideration the relevant elasticity coefficients measuring the responsiveness of poverty reduction to GDP growth. Appropriate macroeconomic policies can then be prescribed to influence investments, which would in turn lead to the required rate of GDP growth.

The worldwide experience of the past 30 years has shown this to be false. Increased GDP has not led to a significant reduction of poverty. In a society where large sections of the population live in poverty because of entrenched structural problems, this thinking is totally inappropriate. Only microeconomic improvements, that is, only better incomes and enhanced human development for each individual family result in broad-based economic progress, which in turn results in broad-based GDP growth. The current I-PRSP uses proper rhetoric without proposing any bold and imaginative initiatives to cause authentic improvements in the lives of the people in poverty. Furthermore, macroeconomic approaches which ignore microeconomic realities have proven time and again to be pro-rich policies, resulting in widening inequality. It is for this reason perhaps the draft I-PRSP promises only to prevent any serious worsening of income distribution to ensure poverty reduction as average income increases. (p.38) This is obviously a clear surrender to the interests of the rich and the powerful and with such a surrender it is hard to imagine that we will really be able to make a big dent in poverty eradication.

Macroeconomic policy in reality has only indirect influence in a poverty-reduction strategy. As such, putting major emphasis on macro-policies in a sense puts the cart before the horse. Achieving a 7 percent growth rate will not unleash the productivity and creativity of the people in poverty – however, unleashing their productivity will definitely achieve a 7 percent growth rate or better. In other words – “trickle down” which has not worked in ending hunger and poverty in the past, is not an acceptable strategy for the people of Bangladesh. The alternative strategy must promote “production by the masses” along with mass production through increased investments. This is particularly important given our dismal record in promoting investments, especially in manufacturing activities (annex 5 of I-PRSP).

We can take for granted here that the business interests and the aid agencies will ensure that the government creates a sound macroeconomic environment to promote investment and avoid economic chaos. Those in poverty will benefit from it if it creates sustained employment for them or gives them the opportunity to create better lives they deserve and are entitled to have.

Overview: the national strategy for eradicating poverty in Bangladesh

Based on broad-based consultations with various stakeholders and our long experiences of working with the people in poverty at the grassroots, we propose a 7-point strategy of radical reforms designed to unleash the creativity, productivity and responsibility of the impoverished in Bangladesh, and at the same time create an enabling environment for ensuring their success. The proposed strategy, following the ideas of Amartya Sen and others, emphasizes capabilities, entitlements, freedom and rights of individual agencies rather than the traditional approaches that focus primarily on income, growth and economic efficiency.

The thrusts of the proposed strategy are as follows:

1. Unleashing and empowering the people: Experiences from Bangladesh and abroad clearly show that those who are in poverty must be unleashed and empowered and their capabilities enhanced so that they can become the principle authors of their own future in order to end hunger and poverty in a sustainable way. This will obviously require concrete initiatives to motivate and mobilize people and transform their mindsets from dependency and resignation.

2. Strong local democracy: Local government institutions, especially of the lowest echelon, must become the conduit for participatory democracy (as opposed to representative democracy) at the grassroots and self-rule. They must be the focal point for empowering, mobilizing and transforming people for achieving lives free from hunger and poverty. Government resources, power, authority and accountability must be transferred to locally-accountable bodies to expand and meet the entitlements of individual agencies so that an enabling environment is created for them to succeed. NGOs also need to coordinate their work with such local bodies.

3. Ensuring good governance: Governance is not a sideshow; it is in reality the anchor of all development activities. The environment that tolerates graft, corruption and hooliganism at all levels of government, wastes resources, undermines good governance and ultimately the democratic process. Governance failure creates a predatory environment and penalises those with lower means. Personal safety of individuals and security of their investments must be ensured and the rule of law and personal freedom established so that all Bangladeshis, especially those in poverty, can pursue their own future without fear or penalty. Safe physical environment must be a basic human right

4. Equity and better income-opportunities for people in poverty: Income inequality and also the inequality of opportunities have been widening in our country over the years. The rich are getting increasingly richer, and are commanding a greater share of national wealth. Thus, for a poverty- reduction strategy to be successful, a larger proportion of national resources must be channeled to the people in poverty. They must also be given opportunities to earn more income. This can be achieved by giving them access to more training, reliable and universality available banking services, better flows of information and better marketing opportunities.

5. Overcoming gender inequality: Women bear primary responsibility for health, education, nutrition and - increasingly, family income - yet are still systematically deprived of the basic rights of equal opportunities for health, education, nutrition and voice in decision-making. There must be an increased recognition and investment in the vital and central role of women in the social, economic and political development of Bangladesh.

6. Better health, education and other essential services: Although Bangladesh over the years has done better in the area of human development, the expansion of opportunities for education, health and so on has not actually translated into expansion of their capabilities and consequently rapid reduction of poverty. This is because of the deterioration of quality coinciding with expansion of facilities. To remedy this, local government institutions must be equipped with the resources, training, authority and accountability to ensure that the priority needs voiced by the people for better quality health, education and public safety can be met and their capabilities expanded.

7. Better use of existing resources: Self-reliant development requires a shift in mindset away from always looking for more external resources to more appropriate and sustainable use of indigenous natural resources. Poverty eradication also requires better use of existing physical facilities and resources, including ports, water resources and infrastructure.

Each of these thrusts requires dramatic changes in government, which, in turn, will require a dramatic shift in the mindset of all concerned. All these call for a

sustained campaign for comprehensive reforms – political reforms, economic reforms and social reforms involving leadership from all sectors of our society.

In order to sustain enthusiasm for the necessary changes, the results achieved must be measured and publicized.

#### Thrust 1 - Unleashing and Empowering the People

People have unlimited potential: All human beings are endowed with enormous power and potential. Ending hunger and poverty in a sustainable way requires unlocking that potential. Such unlocking can happen when people are awakened to a vision for a better future and they come to realize their own power to bring that vision into reality.

Reaffirming the power of the people: When people are unleashed and their potential unlocked, they can shape their own destiny. Thus for a poverty reduction strategy to be credible, it must include programmes to empower people and provide opportunities for self-enlightenment and enrichment (in a non-pecuniary sense) of the people in poverty. A person (or a group of persons) who is (are) committed to create his/her (their) own destiny on the basis of his/her (their) realization about latent potential can proceed to equip and enrich himself/herself (themselves) through consciously selecting the areas of action and experience in order to create space for entitlement and empowerment. Such a process can become self-generating.

Expansion of people's capabilities: As Amartya Sen argues, poverty must be seen as the deprivation of basic capabilities rather than merely as lowness of income. Enhancement of capability – i.e., through education, training, good health and so on – could afford people lives they have reason to value and to enhance the real choices they have. It can give people substantive freedom as well as make them more productive. Thus the proposed strategy calls for programmes for augmenting human capability as a means of empowering them.

Mobilisation of the people, especially the impoverished: Empowerment of the impoverished requires mobilising them. When people are organised they are better able to help themselves. They are able to solve many of the manifested challenges of hunger and poverty utilizing the social capital that originates from collectivism and often without much external financial support. Most of those challenges are created locally and also must be solved there.

When people are mobilized, they gain voice and power. They can ask to be heard and exercise their right to fairness and equity. They are also able to demand meaningful participation in both the design and implementation of programmes to ensure that their rights are actually realized.

As a part of the strategy, NGOs and civil society groups must be encouraged to support the formation and strengthening of associations of the poor at every level of the society – Union, Upazila, District and Nation. People's associations should be encouraged based on affiliation to shared interests – i.e., farming, fishing handicrafts – rather than along "NGO boundaries." Those in poverty must be empowered to speak for themselves in government and in society – and not simply through the well-meaning intermediaries.

#### Thrust 2 - Strong Local Democracy

A strengthened, multi-tier system of local self-government: A top priority of the proposed strategy must be to put in place a multi-tier system of democratic local

government, designed on the principle of subsidiarity, which is enshrined in the United Nation's World Charter of Local SelfGovernment – that the maximum authority must be at the lowest level. The system should be designed to facilitate effective participation of the people in decisions that affect them. The primary responsibility of the Union Parishads/Paurashaves, the lowest tier, would be to awaken, mobilize and empower people for self-reliant action using their own creativity and initially their own resources.

**True local autonomy:** Each level of local government must be free from interference from “above”, reflecting the constitutional commitment to make elected local bodies autonomous and self-governing as found in Articles 9, 11, 59 and 60. As long as local government bodies are meeting basic requirements of transparency and financial accountability, they must be free to make their own decisions without interference from the bureaucracy or members of parliament (MPs). The authority of MPs must be limited to their national legislative role, as specified in Article 65 of the Constitution, to allow true local democracy to flourish. To the degree that local democracy can be enshrined by constitutional amendment, the better the chance that it will no longer be held hostage to national politics.

**Women’s leadership:** The 1/3 reservation of seats for women in local government is a good beginning, but it is not working in giving women the voice in the decision that affect their lives, and to bring their priority on human development to the fore. They are in most cases ‘show pieces’, and are excluded from full participation in regular local government activities. Thus the legal provision for women’s reservation must be strengthened, and extended to include reservations in the chairs of elected bodies. One idea is to rotate women’s seats on the basis of a lottery.

**Devolution of functions and resources:** A dramatic reallocation of functions and resources should be made to move them out of the central government and into the hands of local government. A bold move must be made to transfer much of the current functions of central government to local bodies and give those bodies the required resources. One bold suggestion is to allocate 50 percent all central revenues to the Unions, 25 percent to the Upazilas/Districts, and 25 percent to the Central Government. Funds to the bodies should be united and on the basis of a constitutionally- mandated, predetermined formula administered by an Independent Finance Commission. All wheat-based allocations must be abolished. The allocation must be from a single source, rather than from many Ministers, as is the practice now.

Funds can also be transferred to trusts set up for each local body and the access to the trust funds can be made contingent upon meeting specific transparency and accountability criteria.

**A formula-based resource distribution:** A formula for transferring funds from the Center must be created that takes into account four factors: (a) level of deprivation in the Union, (b) level of integrity of the elected leaders, based on public accountability with expenditures, (c) funds mobilized locally, (d) at least a baseline minimum, based on people’s rights to access public funds.

**Local tax authority:** Unions, Paurashavas and Upazilas/Districts, shall have distinct authorities for levying taxes appropriate to implementing local services, and the Central Government shall have no authority over the utilisation of these funds.

Public accountability: A new stronger local government system must be made more transparent and accountable to the people through a strong freedom of information law covering all aspects of budgeting and expenditure, and requirements for quarterly public assemblies.

Coordination of NGO action: All NGOs will be encouraged make the local bodies the locus of leadership for mobilization and action to empower the people, including encouragement to do everything they can to strengthen the capacities of local government institutions. All local government bodies will be encouraged to provide a forum for civil society organizations to make the maximum possible contribution.

Independent audits: Each level of government will be subject to publicly disclosed independent audits supervised by an Independent Finance Commission.

#### Thrust 3 - Ensuring Good Governance

Rule of law: Good governance requires rule of law, rather than of men, and equality of opportunities for all, especially for the less privileged. Rule of law can ensure personal safety and freedom, enabling people to pursue their visions and aspirations, whereas the lack of it is the prescription for anarchy, a situation that favors the rich and the powerful. Unfortunately, neither transition from autocracy to democracy nor changes in regimes have brought about qualitative changes in governance in our country. Thus the establishment of rule of law must become one of the highest priorities of the proposed strategy.

Corruption undermines democracy and hinders economic growth: Democracy cannot thrive without effective mechanisms to remove corruption. The persistence of corruption reinforces a feudal, anti-democratic mindset that erodes any confidence in democratic institutions. Corruption also leads to distorted allocation and waste of material resources, hindering economic growth. According to some estimates, elimination of corruption could add 2-3 percent to Bangladesh's GDP growth. The World Bank contends that each year, the country loses \$500 million in revenue income, \$100 million in power sector and Tk. 30-45 cores in public procurement due to corruption.

Corruption discriminates against the less privileged: Due to corruption and inefficiency, costs of basic services to the less privileged in many cases are higher than that for the rich. For example, according to a recent survey, slum dwellers in some areas of Dhaka get access to illegally-supplied electricity from evening until 5 AM at a monthly cost of Tk. 50 per bulb, whereas the Gulshan residents pay Tk. 13-15 for the same service but for 24 hours. Similarly, slum dwellers without regular and legal water connections pay Tk. 2 for each bucket of water while the rich in Baridhara pay only Tk. 4.33 per 1,000 liters. Thus elimination of graft and corruption must be another high priority if we are to become serious about eradicating poverty.

Establishment of An Independent Anti-Corruption commission and Appointment of Ombudsman: Elimination of corruption requires strong authority which, itself, must be protected against corruption. The poverty eradication strategy must include the immediate establishment of an Independent Anti-Corruption Commission and appointment of an Ombudsman with direct access to the judiciary for rapid review and action against any acts of corruption.

The Parliament must be made more effective: Vigorous Parliamentary oversight is needed to combat many of the ills that engulf our structure and process of governance. Thus the Parliament must be made more effective by immediately forming the Parliamentary Standing Committees and equipping the legislators with the necessary training and required facilities.

Reform of law enforcement: Reform is required to ensure that rural people are equipped to ensure public safety. The system of law enforcement must be reformed to increase the accountability and supervision of police by locally-elected civil authorities, per Article 59(2) of the Constitution. The quality of training – both in police work and in the understanding of the role of police in a democratic society based on human rights – must be enhanced. There must not be any political sheltering of criminals and their godfathers and the law enforcement agencies must be allowed to pursue criminals without any hesitations.

Thrust 4: Equity and Better Income Opportunities for the Less Privileged.

Greater equity: Hunger and poverty persists because of entitlement failures – failures to receive economic facilities and social opportunities. The inequality of income and opportunities has widened between the privileged and the impoverished over the years in Bangladesh. This trend must be arrested and in the long-run reversed through a bold programme to transfer resources to those who are in poverty.

Equitable allocation of resources to the people at the grassroots: Experience shows that as authority and resources go closer to the people, they provide the highest benefit to the people. Thus not only the power and authority need to be dispersed through an aggressive programme of decentralization, increased amount of financial resources must also be allocated to the people in poverty. However, we in Bangladesh have a dismal record of giving the rural people the economic facilities to which they are entitled.

In a recent investigation we found that the government directly spends about Tk. 1 crore in a typical Union, and only a small fraction of which, usually about Tk. 5 lacs flow through the Union Parishad. Of the TK. 1 crore, nearly 60 percent is spent on salaries and benefits for functionaries, including teachers; 30 percent is spent on low-level infrastructure, much of which is wasted; and the remaining 10 percent is on relief, overhead and the so-called development activities such as agriculture, education, health and the like. What is disturbing is that very little, if any, of these expenditures actually go directly to the underprivileged.

It is even more disturbing when one views the government's expenditure of Tk. 1 crore in a Union relative to what people are entitled. The share of a Union with 25,000 people in our national budget is about TK.8.5 crores. Thus, about Tk. 7.5 crores are spent by the political and administrative bureaucracy in Dhaka for the "benefit" of the people. Needless to say that much of this money goes to benefit the people with power and their rich associates. If a part of people's entitlement is actually channeled directly to them through locally-accountable government bodies, the poverty reduction goal will really get a significant boost. To demonstrate our seriousness about poverty reduction, we must take urgent measures to make available to the rural population a lot more resources. Without this, the poverty reduction strategy would suffer from a credibility gap.

It should be pointed out that the people, especially those who do not belong to the privileged segment of the society, pay twice for the meager and low-quantity services they get from the government. One price for those services, which is visible, is the cost incurred for maintaining an army of civil and political bureaucracy. Because of the widespread graft and corruption, people pay once more when they actually get the services.

**Universal access to training:** Income-earning opportunities must be created for the less privileged if we are to reverse the increasing level of economic disparity. This will require expanding training opportunities for them. Thus the current system of public support for agricultural and other rural income opportunity training must be transformed from one that serves a selected few, to one that provides information and education to all who want them.

**Universal access to rural banking service:** Rural people can only generate wealth when they are supported by reliable facilities for savings and credit. The Finance Ministry and the Bangladesh Bank must immediately specify a pathway by which grassroots people and/or local government structures can establish informal village banking structures and then develop them over time into formal recognised banks.

**Communication/Information technology:** Rural people must have better access to marketing and trading opportunities and information. A Task Force must immediately be convened to adopt public standards for Bangla on the internet. Universities and colleges must be encouraged to bring information technology to the people, including the establishment of Bangla-language trading sites. Rural people must be made computer literate and given easy access to computers and the information super highway.

**Managing the fallout of globalization:** While people may either praise or decry globalization, it is a reality that has harsh impacts on the people in poverty. Only a resilient system of micro-level democratic processes and direct investments in the productivity of the impoverished can begin to empower people to manage the negative fallout of globalization and seize whatever new opportunities may emerge. Access by grassroots people to more information and education becomes crucial for this.

**Reduction of trade barriers:** The Finance and Foreign Ministries should work in partnership with civil society and the international community to remove regional and global barriers to markets for goods produced by the rural people. Providing marketing opportunities will go a long way toward eradicating poverty of the marginal producers.

**Improved infrastructure for rural productivity:** Upazila/Zila Parishads should be given the authority to form Development Commissions to optimize infrastructure development for maximum economic growth, be it Upazila/District-wide storage facilities, feeder roads, or rail and water transport. However, emphasis must be given to higher level infrastructure such as electricity and information technology rather than the traditional wheat-based brickwork and earthwork. Upazila/Zila Parishads should have the authority to issue interest-bearing Upazila/Zila Development Bonds supported by tax levies as a vehicle for mobilizing local savings and foreign remittances for development.

Thrust 5 - Overcoming Gender Inequality

**Women's basic rights:** Economic development in rural Bangladesh is hindered because its population is malnourished. Childhood malnutrition rates are exceptionally high in Bangladesh because of the low social status of women. Steps taken to date to increase women's social status include: increased participation in higher education, increased public acceptance to allow women to participate fully in community life, and increased mass awareness of the equality guaranteed to women under the law and in the eyes of God. These activities must be continued with added vigor. An Independent Human Rights Commission must be immediately set up to protect the rights of women and other disadvantaged groups.

**Women as producers:** One of the greatest injustices against women has been to treat them only as recipients of an unfair share of welfare activities, rather than as key producers in society. To be effective, the poverty eradication strategy must place special emphasis on strengthening the ability of women to translate their hard work into decent livelihoods. This includes emphasis on encouraging the formation of women's association, women's enterprises and increasing women's access to vocational training and banking facilities.

**Women as decision makers:** Women bear primary responsibility for family health, nutrition and education – they therefore have the best perspective for decision-making about these issues that are critical to poverty eradication. The strategy should include enhanced opportunities for women to receive training and support as elected local representatives and organizers of rural enterprises and self-help groups.

#### Thrust 6 - Better Health, Education and Other Essential Services

**Primary and secondary education:** Placing greater resources for education and increased local accountability in the hands of local government will greatly improve the quality of rural education. Special training materials should be provided to Upazila/District level Education Boards to support them to set standards and enhance the quality of primary and secondary education.

**Primary health:** As with education, greater local accountability and more resources under the control of local bodies are critical to improving the quality of health care. The central government should set standards and provide resources to ensure that every Union establish and supervise a Health and Family Welfare Centre and that every Upazila/Zila establish and supervise a Health Complex. Publicly-employed medical professionals must be prohibited from operating private services, and Upazila/Zila-level inspectors must be held publicly accountable to ensure these regulations and the enforcement of standards.

**NGOs as service providers:** Unions and Upazila/Zila, Parishads should be encouraged to contract with NGOs and other civil service organizations for the provision of health and educational services through a publicly-transparent cost/benefit decision process.

#### Point 7 - Better Use of Existing Resources

**Efficient utilization of infrastructure facilities:** We must efficiently use some of the precious infrastructure facilities we have. Currently many of those facilities are serious drains on the national exchequer. For example, because of the mismanagement of Chittagong Port, the country loses about \$900 million a year, which is nearly 14 percent of our yearly proceeds from exports.

Better and sustainable management of natural resources: Experiences in South Asia and elsewhere show that when natural resources, such as forests and water, are managed by local people and user groups, as opposed to Ministries, these resources are better used and better protected. Local committees of those people most directly affected by natural resources must carry the responsibility for their management. We must also take effective measures for putting into use the vast amount of water resources we have and sustainable use of other natural resources.

The Transition Campaign – How Shall We Get There?

A clear, simple and widely-understood strategy: The strategy that is adopted must reflect the will and aspirations of the grassroots people. The only way to insure this is to have the strategy written in clear Bangla and communicated throughout the country. The entire strategy should not be longer than a dozen pages. The people can only hold government to account when they understand that the people are in charge, and when they understand and can wholeheartedly support the direction the government has committed itself to move.

A transition strategy: A set of goals without a transition strategy is no strategy at all. The revolutionary changes required to free Bangladesh from poverty will not happen overnight, and will be opposed by entrenched vested interests. Therefore, the most important elements of the Poverty Reduction Strategy must be a clearly defined process for mobilising the participation of all sectors of society into making the changes that will be required.

Dealing with political paralysis: One of the greatest barriers to poverty reduction in Bangladesh is the lack of democratic practices by both major political parties. Democracy itself is at risk in our country. How long will the people tolerate such paralysis before turning to dictatorship? Civil society and the international community must come together with democratically-inclined leaders of both parties in an intensive process of advocacy, diplomacy, education and litigation to restore civility and the rule of law at the national level.

Re-education of the Civil Service: The people who must make the greatest "apparent" sacrifice to bring about true devolution of power are the members of the bureaucracy. The necessity of these changes must be powerfully communicated to the entire civil service. A large number of Dhaka-based civil servants will need to be absorbed by the local government.

Ongoing forums for advocacy: Public forums on progress in the overall strategy must be enthusiastically supported by civil society at the national, District/Upazila levels for at least six years – one full election cycle, plus one year.

Measuring and reporting progress. Role of the media: In an environment of public accountability and empowerment, media has a vital role to play. It must understand the new direction, and develop new ways to serve people engaged in the poverty eradication process – increasing coverage on women's rights, people's successes, local accountability, health, education and rural development.

Budgets: The easiest and most telling measure of progress will be seen in the allocation of resources to the local government bodies and transparent budget reports of Union Parishads. How much money reached the Unions, and how was it used? This will foment a nationwide campaign for transparency and accountability at all levels.

Rural savings: The second easiest and most telling measure is rural savings mobilisation. How many local banks have been established? How many accounts does each have? What is the total level of rural savings mobilised?

Quality of health and education services: Each Upazila/District must have an Independent Board to assess the quality of health care and issue report cards to the public on an annual basis on progress made and further recommendations. All such reports shall be in Bangla and available on the internet.

Yardstick for good governance: Appropriate yardsticks must be developed and published annually by Independent Commissions on Corruption and Human Rights. Similarly, yearly publication of data on the sources of income and assets of people in key positions of authority must be ensured.

The implementation of the proposed poverty eradication strategy, and any strategy for that matter, will require daunting courage and ironclad commitment on the part of our policy makers. We sincerely hope that our politicians will rise up to this challenge and in the process demonstrate their greatness.

The New Nation, October 21, 2002

## PRSP and the proposed budget

The draft Poverty Reduction Strategy Paper (PRSP), designed to provide a roadmap for accelerated poverty reduction in Bangladesh, is now being finalised. It has, for this purpose, identified seven strategic agendas: employment, nutrition, maternal health, quality education, sanitation and safe water, criminal justice, and local governance. However, although the PRSP document is still in draft form, its implementation had already begun with a three-year rolling plan being implemented from the current fiscal year. Admittedly, the proposed budget for 2005-06 has been formulated to further its implementation.

### The Conceptual Problem with PRSP

The draft PRSP entitled “Unlocking the Potential: National Strategy for Accelerated Poverty Reduction” is a well-written, comprehensive document, and the authors deserve congratulations for their work. However, the critical question is: would the strategy work? Would it accelerate the rate of poverty reduction? I have grave doubts. My skepticism is founded on the fact that the draft document employs the same growth-oriented, trickle-down approach which we have been using, rather unsuccessfully, within the structural adjustment policies prescribed by The World Bank and IMF since the 1970s. The premise of the trickle-down approach is that, given macroeconomic stability and other incentives for production, growth will be stimulated—which will, in turn, increase employment and consequently reduce poverty.

The trickle-down approach has not worked in Bangladesh, and experts doubt whether it worked anywhere at all. Despite generous incentives and fairly stable macroeconomic conditions, there appears to be, at best, stagnation in our industrial

sector. For example, during the past five years, the Gross Domestic Investment share of GDP has increased by the negligible rate of 0.3 %. The performance of public investment is even more dismal. In fact, Bangladesh continues to be an under-invested country, with its gross savings rate (26.49 %) higher than the gross investment rate (24.43 %) for the current fiscal year. This is caused by the disabling environment that exists due to corruption, security concerns and bureaucratic hassles. Some experts are even claiming that we have been going through a gradual process of de-industrialisation. Not only were many large manufacturing enterprises such as Adamjee Jute Mills closed down over the years, so also were many small enterprises. A survey by Midas in 2003 showed that nearly 564,658 micro, small and medium sized enterprises folded in the previous 5 years.

More importantly, the effect of GDP growth on poverty reduction in Bangladesh has been modest at best, despite the many efforts of the government and non-government organizations and despite the spending of enormous sums of our own and donor money. The average rate of poverty reduction has been roughly 1%, despite a 4.8% increase in GDP in during the 1990s. During the same period, the rural poverty on the average declined by only 0.4% and urban poverty by 0.9%. The preliminary report of the Poverty Monitoring Survey 2004 indicates that the rate of poverty reduction during 2000-04 was rather dismal, only 0.52% per year.

Not only has the trickle-down approach failed to accelerate the rate of poverty reduction, it has produced inequality of income and opportunities as a serious (hopefully) unintended consequence. For example, according to government statistics, the income share of the poorest 5% families of our country declined from 1.03% in 1991-92 to 0.88% in 1995-96, and then to 0.67% in 2000. During the same period, the income share of the richest 5% families increased from 18.85% in 1991-92 to 23.62%, then to 30.66%. Thus, the rich-poor income disparity increased from 18 fold in 1991-92 to 46 fold in 2000. The disparity has, unfortunately, continued unabated in recent years. Thus, in spite of rhetoric claiming otherwise, we seemed to have followed a strange strategy of further enriching the rich in the name of reducing the poverty of the poor. This growing disparity has, in essence, created two Bangladeshs – one for the rich and other for the poor – in the same soil under one flag, thus threatening the very future of our society.

In view of the growing disparity resulting from the past blunders, the draft PRSP used the rhetoric of pro-poor growth. The experiences of Bangladesh and elsewhere show that growth has never been pro-poor, and perhaps it will never be as long as the trickle-down approach reigns. Only by changing our approach to a peoples'-centered development strategy—a strategy to empower people to become authors of their own future—will there be an opportunity for economic growth to significantly benefit the poor.

#### The Implementation Problems

Serious problems also exist with the implementation, or lack thereof, of PRSP. The implementation problem arises for three principal reasons: first, the lack of seriousness on the part of the government; second, the decline in the implementation capacity of the government; and third, the lack of good economic governance.

Let us take the issue of local governance to show the government's demonstrated unwillingness to take actions to strengthen local bodies consistent with the PRSP

policy recommendations. Strengthening local governance, designed to establish participatory, decentralised governance, is a core strategic agenda of PRSP. Similarly, it is an important election commitment of the ruling BNP. In its published manifesto prior to the last parliamentary election, BNP made the commitment: “In order to achieve administrative decentralisation, Upazila and Zila Parishad will be formed and they will be made, in a planned manner, the centre of all development activities. Special measures will be taken to make Union Parishads effective, dynamic and self-sufficient ... In order to take local governance to the grassroots level and create competent leadership at the village level, Gram Sarkar system will be reintroduced and invigorated.”

Nevertheless, Zila Parishad and Upazila Parishad elections were not held. It must be noted that the failure to hold Zila and Upazila Parishad elections is a clear violation of the Constitution and the Bangladesh Supreme Court directive. Article 59 of the Constitution mandates the creation of elected autonomous local government bodies at each declared administrative unit, namely the Zila, Upazila and Union. In *Kudrat-E-Elahi Panir vs Bangladesh*, the Appellate Division of the Bangladesh Supreme Court, the guardian of our Constitution, in 1992, directed the government to hold local body elections at relevant administrative units within six months. This is a directive which has so far been totally ignored. This defiance of both the Constitution and the Supreme Court directive, and the violation of the party’s own manifesto are clearly to cater to the vested interests of Members of Parliament. However, a non-elected Gram Sarkar system was established in 2003 at the UP ward level, although wards are not declared administrative units. Unfortunately the Gram Sarkar is now being touted by the government as a decentralisation measure, even though it does not represent democratic decentralisation, if decentralisation at all. Furthermore, the Gram Sarkar is beset with many difficulties, including constitutional and corruption issues; even the Gram Sarkar system under President Zia did not work. Thus, it appears that the goal of poverty reduction and even our constitutional mandate and Court directives have become hostage to the coterie interests of our MPs.

Not only has the government ignored its constitutional obligations, defied the Supreme Court order and violated its own election manifesto by not establishing elected local bodies at the Zila and Upazila levels, it has also greatly neglected, contrary to the recommendations of PRSP, the elected City Corporations, Paurashavas and Union Parishads in its budgetary allocations. For example, the total block grants for these three elected bodies increased by less than 3% – from 360 crore in 2004-05 to Tk. 370 crore for the coming year – even though the proposed ADP allocation has been increased by 20%. However, despite this very modest increase, the total block grant allocation for the three bodies has remained an insignificant share (2.12%) of ADP, which is even less than the average (2.67%) for the last 15 years. These allocations in no way reflect the stated commitment of the government toward elected local bodies. Furthermore, the proposed block grant allocation for the Gram Sarkar, which has been emerging as a parallel body for the Union Parishad, has increased by 50% to Tk. 60 crore in the new budget, while the proposed allocation for UPs increased by only 20% to Tk. 120 crore. It must be noted that the Union Parishad, which is the oldest elected local body closest to the people, is already in bad shape

because of the multiplicity of bureaucratic controls and undue intrusions of MPs. In fact, the very future of UPs is now at stake.

It must be pointed out that the draft PRSP rightly emphasized the need for strong local governance for accelerated poverty reduction. The day-to-day challenges the people face in the areas of health, education, nutrition, sanitation, environment, women's status, family planning, law and order etc. are local and must also be solved locally. The UP representatives, as local elected leaders, can awaken and mobilise people for solving many of these problems locally. For example, if the people are mobilised to initiate a social movement against mistreatment of women, dowry, early marriage, drug addiction, hooliganism, and the necessary habit and behavior changes, these social problems will get rather automatically solved through the creation of what is called "social capital". Similar positive results can be expected if UP representatives take stands for marriage and birth registration, cleanliness, good sanitation etc. Experiences show that social capital can complement economic capital and, with the solution of social problems, the ways and means for solving many difficult economic problems also emerge. The elected UP representatives can play an all important catalytic role in their solutions. Thus, strengthening of the grassroots-level local government bodies with the necessary power, authority and resources is an essential prerequisite for ushering in a peoples'-centred development approach and, ultimately, the accelerated eradication of poverty. Nevertheless, the government has so far taken no serious initiative, budgetary or otherwise, to make the local bodies effective.

The implementation capacity of the government has been greatly shrunk by the growing problems of graft, corruption and inefficiency within the central bureaucracy. This problem has been accentuated by the breakdown of long-held norms of neutrality and discipline fuelled by the extreme partisan behaviour of political masters in handing out rewards and punishment. The implementation capacity of the government could be significantly enhanced and also more resources made available to the poor by increased allocation to local bodies – an idea in which our Honourable Finance Minister has no interest.

Another serious challenge faced by the implementation of PRSP is the deteriorating quality of our economic governance. It is alleged that many projects are included in ADP not because of their true contributions to poverty reduction, but primarily to give patronage to vested interest groups. Given the impending parliamentary elections, this tendency has only worsened. Thus, the transparency of the budget-making process is now a crying need of the day. Furthermore, increased allocation is no doubt important for poverty reduction, but the quality of spending is at least equally important.

#### Conclusions

Although the proposed budget is intended to implement the draft PRSP for accelerated poverty reduction, it is unlikely to be successful. The growth oriented trickle-down approach, which underlies the PRSP and also the proposed budget, has not worked in the past to significantly reduce poverty, and is unlikely to be successful in the future. More importantly, the government does not even seem to be serious about implementing the recommendations of the PRSP. Other issues impeding its implementation are the reduced capacity of the government functionaries and the deteriorating quality of economic governance. In addition, much of the allocations for

poverty reductions are in the form of transfer payments, which does not permanently reduce poverty.

In order to achieve accelerated poverty reduction, we clearly need a new development strategy, a peoples'-centred strategy. The strategy should be designed to unleash the people's productivity and creativity in order to help them become the authors of their own future. Such a strategy would stimulate "production by the masses" along with mass production and truly unlock the potential of our nation. This would obviously require a radical change in the mindset of our policymakers, a radical restructuring of the government machinery and a radical change in resource allocation. This cannot be achieved by thinking "within the box".

*The Daily Star, June 27, 2005*

## MDGs: Thoughts on ways to achieve them

At the Millennium Summit in 2000, world leaders adopted the UN Millennium Declaration, committing their nations to a global partnership to end hunger, poverty and related deprivations that still grip a vast segment of humankind. They collectively committed to eight Millennium Development Goals (MDGs) and 18 quantitative time-bound targets under them of which seven goals are to be implemented by developing countries to improve the conditions of their poor and the hungry. The remaining goal and the seven targets under it, are to be implemented by developed countries to give a fair shake to their developing counterparts in the areas of trade and aid. Taking 1990 as the base year, all the targets, except one, are to be achieved by 2015.

### Status of Bangladesh achievement

Bangladesh is a signatory to the Millennium compact and hence committed to implement the MDGs. On the whole, Bangladesh is not in very good shape with respect to implementation of the MDGs. The first two targets relating to poverty and hunger are most critically important and Bangladesh is not doing well in achieving them. With the present fate of poverty reduction, the proportion of people below the dollar-a-day poverty threshold, an indicator about which many have serious reservations, will hardly change in 2015. In fact, given the present rate, it will be in 2648 after nearly 650 years when the target will be fulfilled. Similarly, at the present rate, Bangladesh will seriously miss the target of eliminating hunger. Bangladesh is also expected to fail to achieve the targets relating to environmental sustainability except for improved sanitation.

Bangladesh appears to be doing well with respect to the goals on universal primary education, gender equality in education, under-five mortality, maternal mortality and death from tuberculosis. However, the progress in education is to some extent misleading in that the 'expansion of educational opportunities for both boys and girls has been accompanied by sharp deterioration in their quality. Human development obviously requires enrollment, but more importantly the quality of instructions. The same argument is applicable to health services.

### Need to empower people's initiatives

It is clear that if Bangladesh is to fully achieve the MDGs and become truly hunger-free and poverty-free, then the common people, including the women, will have to be empowered. Empowerment encompasses mental empowerment to unleash their human spirit, social empowerment to ensure their freedom of movement, information empowerment to get them the necessary information, organizational empowerment to ensure the freedom to form their own organisations, economic empowerment to ensure that they receive the necessary skills and financial support for creating self-employment, and political empowerment to make sure that they receive their rightful entitlements. Such empowerment must be intended to help people take responsibility for their own future and ensure that they succeed.

In order to help people, especially the poor, succeed in becoming authors of their own future, their capabilities need to be enhanced, local democracy established and a social movement fomented. Their capabilities may be enhanced by ensuring their human development and creating opportunities for them to form self-help groups. A social movement is necessary because many of the social problems can be solved by awakening and mobilizing people and creating campaigns under the catalytic leadership of elected local leaders. When people are mobilized, a type of "social capital" is created, which can be used to solve many of the social problems without external financial support. With the social problems resolved by using social capital, opportunities are created for the solution of difficult economic problems as people can form self-help groups and catalyse savings for self-employment activities. For that to happen, a people-centred development approach needs to be introduced, which will require among other things, the strengthening of the UPs and transforming their role to that of catalysts.

### Need decentralisation and improved governance

Once people take responsibility for their own future and begin the journey to create a better future, they need an enabling environment to move forward. Such an environment requires transformation of policies leading to decentralisation and devolution. Decentralisation is the means to create local accountability for many of the basic services such as health, education, law and order, and devolve power and resources to local bodies. It is also the means to taking government to the door steps of the people and ensuring their effective participation in the affairs of the state, causing the democracy to deepen.

Good governance is also an essential prerequisite for creating an enabling environment and is critically important for those who are disadvantaged in the society. Good governance requires rule of law, social justice, and effective participation of the people in the decisions that affect them. It also requires the practice of transparency and accountability to ensure a corruption-free environment, which is most important for the poor as they are hurt most by corruption. It is clear that whatever achievements have been made in human development areas, Bangladesh is viewed to have made tremendous achievements so far relative to its neighbours. This cannot be sustained without accountability in the delivery of many of the services such as health and education by public authorities. There must also be corruption-free and accountable economic governance. That is, resources must be allocated based on considerations of

merit and social justice rather than to provide patronage to powerful vested interest groups.

In order to bring about decentralization and good governance, true people's rule need to be established. For that to happen, honest, competent and committed individuals committed to people's welfare rather than to self-interest need to be given the opportunity to go to state power. Many national level Institutions need to be transformed through major reforms for creating such opportunities.

An independent judiciary, a strong and independent Election Commission, neutral government during elections, an effective Anti-corruption Commission, efficient civil administration, and honest and transparent internal governance of political parties are now urgently needed to help achieve people's rule. Honest intentions of the government are needed to make progress in these areas and in the area of decentralisation. However, despite making unequivocal commitments otherwise, the government does not appear to be at all serious about any major reform initiative. A case in point is the issue of decentralisation and strong local governance, which is an essential pillar of the recently formulated Poverty Reduction Strategy Papers (PRSP). Despite commitments on paper, the government has not made any significant, shift in its policy decisions and resource allocations. For example, Upazila and Zila Parshad elections are not yet held despite constitutional obligations and Supreme Court order, and no increases are made for the allocations for three elected local bodies, i.e., are only about 2% of ADP, which no way reflects the government's priority.

*The Daily Star*, January 17, 2006

## A development strategy for a hunger-free, self-reliant Bangladesh

Creating a hunger-free self-reliant Bangladesh is our national commitment. Our constitution made this commitment explicit and unequivocal. Accordingly, successive governments since independence in 1971 have made poverty eradication and improving the lives of the people their highest priority. The international community has also provided a substantial amount of resources for this purpose. Nevertheless, hunger and poverty are widely prevalent in our country and have become an inescapable part of life for a large number of our people. Thus the prevailing aid-dependent, donor-driven, trickle-down, project-oriented, bureaucracy-managed and "beneficiary" creating development strategy has not worked in Bangladesh, pointing to the need for a new approach. In 1992, the SAARC Independent Commission on Poverty Alleviation came to a similar conclusion.

The strategy we propose will establish the primacy of the people and place them in the driver's seat for the creation of a new future for our country a future where all of our people, not just a fortunate few, will have a chance to live long, healthy and productive lives. People are Bangladesh's biggest and most precious resource, and our development strategy must make the best and most effective use of their creativity and productive powers.

We specifically propose a people-centred development approach where the people's power and their own resources will be the key factors. Empowerment of the people, social mobilization, creating local institutions and leadership, local level planning and action, and harnessing indigenous resources are the cornerstones of this approach. The participation of women and the creation of opportunity for them are its other important elements. Contrary to the traditional methods of service delivery or giving handouts, this strategy will require fomenting a social movement or a phenomenon, involving all segments of the society. The focus of such a movement will be like in 1971, to empower and mobilize citizens to take responsibility for their own future and initiate individual and collective action at the community level primarily capitalizing on whatever they have in order to meet the challenges of hunger and poverty. In a similar vein, it may be noted that the Rural Development Policy, recently adopted by the Government, also puts emphasis on popular participation and local resource mobilization.

It should be noted that the traditional development approach puts excessive emphasis on civil construction with bricks and mortar and big-ticket infrastructural projects. However, infrastructure building, which often represents showcase projects, is merely the means to an end, the end being human development or the transformation of human conditions. The principal focus of our proposed new strategy will be human development and improving the quality of human lives, and not merely indulging in the so-called "wheat-based" development.

Strong local government is the key player

In our prevailing development strategy, the government, with large amounts of human and non-human resources at its disposal, is the dominant player, shaping all development activities. Development, for all practical purposes, has now become a bureaucratic responsibility. The proposed new strategy has relieved the government of this traditional responsibility of planning and "delivering" development for people. Rather its main objective will be to make people the principal authors of their own future with the government creating a conducive environment for them to succeed. In this approach, the local government must play a key role by facilitating popular participation and action.

More explicitly, we see their principal forces as the people, their elected local representatives and the government paying the critical role in the proposed new strategy. In this arrangement, people are the principal players, taking the primary responsibility for ending their own hunger and poverty. The role of the elected representatives, which represent the tested grassroots leadership, will be to awake, animate and mobilize people and local resources to generate local level planning and appropriate citizen action that reflect the aspirations and priorities of the people. Article 59 of our constitution earmarks these planning and implementations functions for our local bodies.

Another important role for the local government structure will be to create effective linkages between people and public authorities to ensure that governmental resources and services reach those who need them and are entitled to them. Much of the resources now allocated for the rural poor do not actually reach them. As the late Prime Minister Rajiv Gandhi found out in India, only 15 % of all anti-poverty programs actually reached the poor, which induced him to push through the 73<sup>rd</sup>

amendment of the Indian Constitution, making the panchayati raj mandatory in all states. The situation is not much better in our country. If our system of local government at the grassroots could be strengthened and truly made the conduit for the delivery of all public services, as already mandated by article 59 of our Constitution, it is likely to have a significant impact in the prevailing level of poverty in our country. Fortunately, perhaps a step in the right direction in the regard was the declaration of Union Parishads and Paurashavas as “administrative units”.

A strong local government structure is also likely to redress another serious problem we face in the country. The distribution of income in Bangladesh has become increasingly skewed over the years. The income disparity between the rich and the poor, most of whom live in rural areas, is now acute. Direct and increased allocation of resources to local bodies at the grassroots and better utilisation of those resources by a transparent and accountable local government system will be the best way to reduce the income gap.

In our proposed strategy, the government’s main responsibility will be to make the skills and resources it has at its disposal available to the people in a transparent and accountable manner so that the latter can succeed in creating lives of self-reliance and dignity. The government must also provide an appropriate legal and policy framework in order to create a level playing field for those who are hungry and disadvantaged and to offer appropriate opportunities for them. In addition, it must devise an appropriate incentive structure to encourage investments and creation of wealth. In other words, in the proposed strategy the government’s role will be to create an enabling environment for the people to succeed.

We can illustrate our proposed strategy with the analogy of a soccer game. In our “game” the object, which is to create a hunger-free, self-reliant Bangladesh, the people, including the hungry, are the main players who will have to succeed in creating lives of self-reliance. The elected local representatives will not be in the field playing the game, but will perform the all-important tasks of coaches and managers, preparing the players and facilitating the game. The government’s role in this game is that of a referee and sponsor; It must define appropriate and equitable rules, enforce them and create opportunities for those who are disadvantaged. A Soccer game can not be successfully played with out the genuine partnership and effective cooperation of all three forces: players; coaches and managers, and referees and sponsors. Similarly, creating a new hunger-free, self-reliant Bangladesh will require an effective partnership and coordination between the people, their elected local representatives, and the government.

For this partnership to work and to be able to deliver the goods, the elected local representatives must play a central role. Many of the challenges of life that keep hunger in place must be faced and solved locally. Local initiatives, both individual and collective, are essential pre-requisites for creating income-earning opportunities to providing safe drinking water to eradicating repression of women. Elected local government representatives can effectively empower and mobilize people and local resources to devise appropriate solutions to most hunger-related problems.

Not only do many of the challenges that the poor and the hungry face have local solutions, those solutions are also in many cases nearly cost-free. If the people come together and work shoulder to shoulder, a form of “social capital” is generated, often

eliminating the need for large amount of material resources. There are other problems, whose solutions depend on creating awareness and generating commitment on the part of the people in order to change their habits and behaviour. Solutions for still other problems are already present in the community (for example, opportunities for quality education) and if the people are organized they can more effectively get access to them without having to shell out more money from their own pockets. Elected local representatives can again play the most effective catalytic role for mobilizing local people and resources for local level planning and action.

For all of this to happen the present system of local government in Bangladesh needs to be strengthened and its roles and functions transformed. It must be given appropriate legal authorities and adequate financial resources so that elected local representatives can be the change agents for creating a hunger-free, self reliant Bangladesh.

#### A weakened Local government Structure

Although a strong local government structure is an essential pre-condition for creating a new self-reliant future in Bangladesh, the system currently in place falls far short of the promise of the authors of the Constitution. The present system, as a result, is far from strong. In fact, it was not only weak to begin with, it has become weaker over time.

A major reason for the weakened status of local government bodies in Bangladesh is their neglect by the authorities concerned over the years. No serious efforts have been made by successive governments to take effective steps toward creating a powerful and viable local government system. The reform efforts have been mostly feeble and cosmetic in nature, often limited to only changing the nomenclature. In addition, there have been no serious initiatives for building the internal capacities of local government institutions, thus preventing them from becoming effective and autonomous institutions.

Local government entities have also been denied the necessary powers and resources. Some financial authorities such as the leasing as the local jal mahals, for example, were even taken away from Union Parishads. Consequently, these grassroots level institutions do not and cannot afford to have any staff of their own or offer even the most basic services to the rural people, services which could significantly impact their lives.

Another reason for the present poor state of the local government system in Bangladesh is its manipulation for political purposes by successive governments. Beginning with the Ayub regime, political expediency and patronage rather than the consideration of creating a potent instrument of governance has been the focus. This tinkering has turned it into a hodge-podge with no clear purpose.

More seriously, the local government structure has come to be a mere extension of central authorities and exists only in name. Government rules, circulars and bureaucratic edicts which are often vague and contradictory have become the instruments of central control. such control, for example, included the approval of the Union Parishad budget at three levels of central authority, totally undermining the Parishad's autonomy. Consequently, elected UP representatives primarily perform according to the wishes and priorities of their bureaucratic superiors, which range

from tree plantation drivers to literacy campaigns. The demands of the central authorities are also often most absurd.

For example, giving almost no resources, the central government has mandated 48 functions: ten compulsory and 38 optional for UPs.

As a result of continuing neglect, politicization and direct central control, the local government structure in Bangladesh has not grown into a representative, decentralized, autonomous and transparent system accountable to the people. Though there has been some decentralization of functions in some cases, those changes unfortunately were not accompanied by devolution of appropriate authority or resources. Thus, the system of local government in our country failed to become an effective instrument of the democratic process and of participatory development. Local government bodies are also now saddled with many internal weaknesses, including serious operational and management shortcomings.

Among the dark clouds, there is however a silver lining. The 1997 amendments to the Local Government Ordinance provided for the election of women to three “reserved seats”, creating opportunities for women to become elected to local bodies on their own rights and merits. Although there are serious questions as to whether the election of women reserved seats actually “includes” them in, or “excludes” them from, the local power structure, this legislation nevertheless opens a new horizon for unleashing women’s leadership at the grassroots.

#### Elements of an empowered system of local governance

In order to be able to play its due role of creating a hunger-free, self-reliant Bangladesh, the local government system, trapped in its present outmoded shell, must undergo major restructuring and reforms. Such reforms must be bold and based on “out-of-the-box” thinking. They must also be consistent with the principles of devolved authority and decentralised governance. This may require amending our Constitution.

The very first step in strengthening the system of local governance must be to overhaul the existing statute, which was inherited from the colonial period and has been tinkered with many times over the years. The purpose of the overhaul, as the Local Government Commissions in 1997 recommended, must be to make a system of local self-government responsive to the needs, aspirations and priorities of the people and accountable to them. The new statute must redefine the role of the local government representatives, especially the UPs and Paurashavas, so that they can harness the creativity and resources of the grassroots people and become the focal point of all poverty eradication and human development activities. It must also recognize the critical importance of increased participation of women and empowerment of their leadership for creating a hunger-free, self-reliant Bangladesh, and provide for their rightful inclusion and genuine representation in local bodies.

A fundamental step toward building a strong local government structure must be to channel adequate resources to it. A revenue sharing formula must be developed, specifying a regular transfer of a fixed proportion of central government resources to the local government. Such transfer of resources must be as a matter of right and not based on the discretion of central authorities. It must not also be an instrument to control or influence local government activities. In order to operationalise this revenue sharing formula, the Ministry of Local Government, Rural Development and

Cooperatives needs to be restructured and perhaps even renamed as the Ministry of Local Government Advocacy and Financing. In addition, the local government bodies must be given authority to raise revenue from their local constituencies and also from outside sources.

In order to make the local government bodies potent and effective entities, needed policy and administrative reforms must also accompany legal reforms. The purpose of the reforms must be to strengthen local bodies and to create an enabling environment for people to succeed. This will require the central government to shed some of its traditional command and control functions and assume the role of a facilitator and coordinator. This will, most importantly, require the decentralisation of functions and devolution of authority, making the local bodies accountable for many of the functions that have traditionally been the preserve of the central government.

Another important step toward strengthening the local government structure must be to increase its institutional capacity. This will require a comprehensive and continuous training programme to empower the elected local representatives and enhance their skills. The training programme must go beyond the traditional statutory function of informing the trainees of the official responsibilities, but must transform their roles to be catalysts of a hunger-free, self-reliant Bangladesh. There must also be a special training programme to empower the leadership of the elected women local representatives, particularly the female UP representatives, so that they can become the change agents for improving the lives of rural women.

To conclude, a strong local government structure is a fundamental pillar of an independent country and a vibrant democratic society. The idea of such a structure in our sub-continent owes its historical origin to the pre-colonial village panchayat system, which was designed to institute self-rule rather than rule by landlords, their agents or other outsiders. In our situation, we first rid ourselves of the British and then the Pakistani rulers in order to earn this right of self-rule and decision-making based on local needs and priorities. Now a politically empowered, economically viable and technically skilled local government system, which is transparent and accountable to the people, can ensure freedom and make independence meaningful. Such a system will also establish true grassroots democracy. With a decentralised, autonomous and democratic local government system, people will not only participate in the rituals of voting, they will also have an opportunity to shape and influence the decisions that directly affect their lives and livelihoods. Thus, democracy will turn into, in the language of Amartya Sen, not only the goal, but also the primary means of development.

*The Daily Star*: July 20, 2001

## What will happen to the Dukhimon Begums?

*The Daily Star* of July 24, 2003 published a back page article entitled “When Death Looks Greener than Starvation.” The story behind the headline goes as: On July 22, 2003, Dukhimon Begum, a 40-year old mother of four from Durgapur Upazila of Rajshahi district, had a quarrel with her rickshaw-puller husband, Manik Chand, over

buying a saree for her niece on the occasion of the latter's marriage. The family did not have any food at home to eat that night and the husband went to pull his rickshaw the next morning hungry. Faced with such abject poverty and starvation, Dukhimon fed her two small daughters pesticide-laced biscuits and ate some herself in order to be free from the misery. Finding them screaming from pain, neighbours took them to the Upazila Health Complex, where little Moni, 6, and Mitu, 8, died, but the mother survived. Dukhimon now screams at her well wishers – “Why do you want to save my life? I do not want to live...We do not have food and clothing ...Why should we lead such a life?” She also pleads with them: “Please let me go home and take the poison again.”

The story of Dukhimon Begum is not an isolated case. There are countless Dukhimons living in the nooks and corners of the country – they are perhaps the single majority of our citizens. According to knowledgeable observers, their numbers are increasing every day.

Last year, on invitation of a non-government organization, I, along with Professors Muzaffer Ahmed of Dhaka University and Mohammad Masum of Jahangirnagr University, went to a village in Jamalpur. We spent a few hours with a group of women there. During our conversation we found that none of the women get to eat more than two meals a day. They normally cook rice in the afternoon and eat it with chilli peppers or cooked leaves and vines. If there are any leftovers, they eat those the next morning – otherwise they starve. One of them said with much pain that she had to marry off her adolescent daughter to a blind man because she could not afford to feed or protect the girl.

Dukhimon Begum and the women of Jamalpur are citizens of Bangladesh, owners of this country. The liberation struggle of 1971 was for them – to free them from the exploitation of the Pakistanis, especially the 22 families of Pakistan. Millions willingly gave their lives in that struggle. After independence, the politicians gave countless promises, and are still doing so, to improve their conditions. The policymakers also, to this end, formulated many plans based on the trickle down principles. They accepted many prescriptions of the donors. Alas, the conditions of Dhukhimon Begums have not improved much over the years! In some cases, their conditions manifestly worsened.

Unfortunately the intolerable misery and the abject poverty of the Dukhimon Begums have been sold by many and in countless ways since independence. In the last 32 years, hundreds of thousands of crores of taka have been brought from abroad to this country by the government and non-government organizations as loans and grants. Regrettably, much of these huge sums of money were looted by a few thousand individuals and they have become unbelievably rich over a very short span of time. The Dukhimons, unfortunately, did not even get the crumbs of the resources that were brought from the donors to alleviate their poverty. As a result, most of the “leaders” of our “poor” country have become millionaires many times over. The same is true for unscrupulous businessmen and many leaders of governmental and non-governmental organizations. Their misdeeds earned Bangladesh the dubious distinction of being the most corrupt country in the world and brought shame for the entire nation. Many of these individuals have also been showing off their riches in the most naked and obscene manner.

The evidence of the mounting disparity of income and opportunities between the rich and the poor can be found in government statistics. According to the Bangladesh Economic Report, 2003, the share of national income of the richest 5% families of our country increased from 23.62% in 1995-96 to 30.66% in 2000. That is, during this short span of five years, the share of the national income of the richest 5% families increased by nearly 30%. During the same period, the share of the remaining 95% families obviously declined from 76.38% to 69.34%. What is most startling is that the share of the income of the poorest 5% Bangladeshi families declined from 0.88% in 1995-96 to 0.67% in 2000. In other words, during this five year period, their share of the national income declined by nearly 24%. With the growing disparity of income like this, the social stability of our nation could be under serious threat. Shame on the donors who are still continuing to impose the trickle down policy – a policy which is primarily responsible for this naked deprivation of the common people!

There is nothing wrong in becoming rich by earning money with honest means. But many of the rich in our country have amassed huge wealth through illegal and immoral means. Some cheated through under and over invoicing in their export-import transactions. Some indulged in smuggling. Some grabbed public property by flexing muscles. Some illegally “bought” official patronage. Some took bribes or otherwise engaged in corruption. Still others “looted” banks. Some did all of the above. Consequently, nearly Tk. 60,000 crore of black money and about Tk. 25,000 of defaulted loans exist in our country. Few have the courage to say anything against these bandits and defaulters, for they are now the most respected persons of our society and the Dukhimon Begums are on the receiving ends of their “generosity.” Unfortunately many of these people have been becoming our “leaders” and policymakers in recent years.

Another reason for the growing disparity between the rich and poor in Bangladesh is the widespread system of graft and payoffs that prevail in our society. For example, the prices of essential services such as water, electricity and gas are required to be occasionally raised because of the prevailing incompetence, mismanagement and corruption of the relevant functionaries. Such increases unfortunately cause transfers of resources, in a legal manner, from the service recipients to the corrupt officials. In addition, less privileged persons have to pay twice for these services – once as their official prices and the second time to cater to the illegal demands of the corrupt employees. Thus, the slum dwellers like Dukhimon Begum pay higher rates for electricity than the residents of the posh neighbourhoods of Gulshan and Baridhara.

There is now an almost unanimous demand to establish good governance by eradicating corruption and hooliganism from the country. However, people rarely raise serious questions about economic governance, which is a major problem. In our country, many of the economic decisions are made in order to provide patronage to the vested interests. Many projects are unnecessary and are undertaken in the interests of the powerbrokers – not for the wellbeing of the Dukhimon. Thus establishing transparency and accountability in the budget making in our country is a serious issue at this time. Our Honourable Finance Minister himself recently spoke strongly on this issue in his meeting with the Secretaries.

What is most disheartening is that the greed and needs of our rich seem insatiable. We can see the evidence of it from the recent decisions to raise the salaries and benefits of our Ministers and Members of Parliament. Many of our policymakers are rich – owners of crores of taka. They also get many governmental benefits. Nevertheless, they voted, by one estimate, Tk. 150 crore worth of benefits for themselves in the last budget session of the Parliament, while the Dukhimon Begums are trying to kill themselves to free themselves off the intolerable pains of poverty. This cruel situation reminds us of the two famous lines of Rabindranath Tagore’s *Dui Bigha Jomi*: “... Alas! In this world those who have much, they want still more...”

The goal of politics should be to serve the people. However, in our country it has, especially in the past decade, become the best means of serving naked self interests. The mainstream politics is now focused primarily on enriching those who are involved in it, rather than the wellbeing of the Dukhimons. It has unfortunately degenerated into a “business” – people are using governmental authority to earn personal gains. Democracy has come to be mostly an election-centred exercise to promote the interests of the elected officials. However, democracy is not all about elections, it is primarily about what happens in between elections. Thus, if this trend of self-serving politics continues, our democracy is in danger of turning into a “leaseocracy.” Even the donors, who have indirectly aided the process of criminalising our politics, are now sounding alarms. The head of The World Bank Mission in Bangladesh, Mr. Frederick D. Temple, spoke last July, before his departure, of the need for “deep reforms” in our election process.

Shameful as it may seem, we have managed to create “two Bangladesh” in the last 32 years – one for a limited number of the rich and the powerful, and the other for the Dukhimon Begums. Even though they are the vast majority, Dukhimons are in a weaker and relatively helpless situation. They have the right to vote, but no representation in the policymaking. There are also few champions of their cause – it appears that the number of idealists in our society is declining. Thus, the question that haunts many of us now is: what will happen to the Dukhimon Begums? Will they in the future get their due share of our national resources? Will they get a significant proportion of the \$2 billion expected from the Bretton Woods institutions as a result of our preparation the Poverty Reduction Strategy Paper (PRSP)? Will the youths of today come forward to ensure that the Dukhimons are treated fairly by the society? Will they thereby play their due role to remove the shame of having “two Bangladesh” exist side by side in the same land, under the same flag?

*The Daily Star, ??? 21, 2003*

## Budget and the common folks

While returning from the Aila affected areas, I watched part of the budget speech of the honourable finance minister in a rural tea stall surrounded by a group of villagers. They were surprised by my rapt attention to the speech and some wondered aloud: What’s the use of watching the budget speech? If the wood apple ripens, how does it help the crow? Will we get any share of the crores of taka of the budget?

Come to think of it, what benefits will the common folks derive from the budget? Very little of the increased GDP truly trickles down to them. The debate about whitening black money is not relevant to them. The change of the tariff rates on vehicles also does not directly affect their lives. Thus, the size of the actual budget presented matters little to most ordinary citizens.

In fact, more than three-dozen budgets were prepared since independence, much rhetoric spent on improving conditions of the poor and a lot of money was brought from abroad in their name, yet abject poverty is still a part of everyday life of most rural citizens. They never got a fair shake, and the disparity between them and the privileged class has been widening over the years.

Can anything better be expected this time? To probe into it, let me begin with a crude calculation. The proposed total budget is for about Tk.1,14,000 crore and the ADP is for Tk.30,500 crore. The per capita share of each citizen in the budget is about Tk.7,600 and Tk.2,000, and the share of a family of five is about Tk. 38,000 and Tk.10,000 respectively. It must be noted that these are their shares, but not their entitlement, as part of the budget goes into running the government to paying for debt servicing to ensuring national security.

Although not entitled to receive them, the citizens have the right to get services (education, health, credit, security etc.) of equivalent amount. Do the common citizens get them? If not, who gets them? In the past, the urbanite rich normally got most of the benefits. As a result, the urban-rural disparity in the country has continuously widened, creating a fertile breeding ground for social unrest and extremism.

If the total budget and the ADP are divided into approximately 4,500 UPs, their average share will be about Tk.25 crore and Tk.7 crore respectively. How much of this money is spent in a union and through the UP?

Several years ago, volunteer-animators of The Hunger Project introduced, for the first time, open budget meetings at the grassroots level, where we tried to estimate the amount of money directly spent by the government in a union. We found that in Fathepur UP under Mirzapur Upazila of Tangail, where such a meeting first took place in June 2001, about Tk.1.1 crore was spent via the upazila, from which about Tk.23 lac, or 23%, was spent through the UP. Only a puny amount of Tk.3 lac was allocated to the UP from the ADP. Of the remaining Tk.68 lac, nearly 73% was spent on salaries and benefits, especially for the primary and secondary school teachers.

Of their share of crores of taka, if on the average only Tk.1.1 crore is spent in a union, where does the remaining amount go? The remainder is obviously spent, although centrally through ministries, directorates and sub-directorates. A large portion of it goes into paying overheads, another into producing public goods, and still others for public services. A big chunk either falls prey to corruption or is wasted. It should be noted that little of the centrally spent amount normally leaves the cities, depriving the rural areas of much of their benefits.

I have seen the evidence of how the centrally spent money is stolen in Aila affected areas of Satkhira. The main reason for much of the devastation in the coastal areas of Satkhira was the tidal wave, which washed away the embankments. According to residents, the embankments were first built in 1962. Crores of taka were subsequently "spent" for repairs and maintenance but there was very little

improvement because of corruption. The result was damage to crores of taka worth of property.

The lack of a mechanism for ensuring the accountability of the government functionaries at the local level and the lack of people's awareness allowed them to get away with such corruption. An effective system of local government could redress these problems.

A UP's share in the proposed budget is a minimum of Tk.7 crore (from the ADP) and the maximum of Tk.25 crore (from the total budget). If a good chunk, say Tk. 3-4 crore, of this share is directly spent in each union every year while mobilising and involving the people, there would be significant changes in the lives of the rural people due to improvement in education, health, sanitation, safe water, women's conditions, environment, family planning, self-employment, etc. These problems are local, and they must also be solved locally under the leadership of elected local representatives – they cannot be solved centrally.

The transparency and accountability of these increased expenditures can also be ensured through legally mandated "gram sabhas" or "ward sabhas." Such an institutional mechanism can also ensure people's participation in solving the problems and a transition to participatory democracy. As our honourable prime minister wrote in 1995 (Poverty Eradication: Some Thoughts, Agami Prokashani): "If the democracy is not meaningful for the poor, its foundation is bound to get weakened."

If a large segment of the budget is spent at the grassroots with effective participation of the people, poverty will be eradicated in no time, the common people will get their fair share of the national resources and vibrancy will be infused in rural life. All these are part of the election manifesto of the present government, and achieving them will require massive devolution of power and resources and strengthening of the local government system.

Unless the local government is made the centre of all development activities, the common people will continue to be deprived of their rightful shares of national resources, and the budget will continue to remain the concern of the functionaries and businessmen. Our prime minister had rightly said in 1995: "Only a decentralised state, not the bureaucratic state, can effectively implement the poverty eradication programs and can ensure the participation of the people in such them. For this reason, a skilled and representative local government must be created."

There is also a practical reason for decentralisation and strengthening of local bodies. Large budgets will not bring any dividend unless they are implemented. Our past experience of ADP implementation is dismal. Only through decentralisation of power and resources can the situation be redressed. Thus, the commitment to eradicate poverty and halt disparity will require strengthening local government and empowering the leadership of nearly 60,000 elected local representatives. Such a change will ensure equity and social justice, which are missing from the current discourse on the budget. Lest we forget, we know the disastrous consequences of a highly centralised state like Pakistan.

Looking at the incentive package of Tk.5,000 crore earmarked for combating the possible impact of the worldwide economic meltdown, we would like to know who will get shares and how its distribution will benefit the common folks. Given the

present economic uncertainty, it is important to stimulate the domestic economy and increase internal demands.

Couldn't the finance minister come up with an additional incentive package of, say, Tk.6,000 crore, from which 6 crore poor of our country could be given a cheque of Tk.1,000 each? This would definitely give a shot in the arm to the domestic economy, and at the same time contribute to social justice and economic good governance. This would also make the recipients reach a higher indifference curve and gain larger benefits from these transfer payments.

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